

## Chapter 2

# E-commerce

*Much of the legislation related to e-commerce is governed by or reliant upon EU legislation. Both EU and national laws in the relevant areas are currently under review, principally within the framework of the EU's Digital Single Market strategy. The assessment of this sector looked at the core law on e-commerce, as well as other legislation directly or indirectly affecting it. Potential barriers to competition were found principally in the area of consumer protection, which is currently fragmented, with conflicting definitions and unclear provisions. Simplifying, streamlining and codifying consumer-protection legislation will remove legal uncertainty and compliance costs; better serve e-commerce providers, who rely on automated and standardised processes; level the playing field with foreign providers; and boost consumer confidence in making online purchases – and so remove impediments to growth in the sector.*

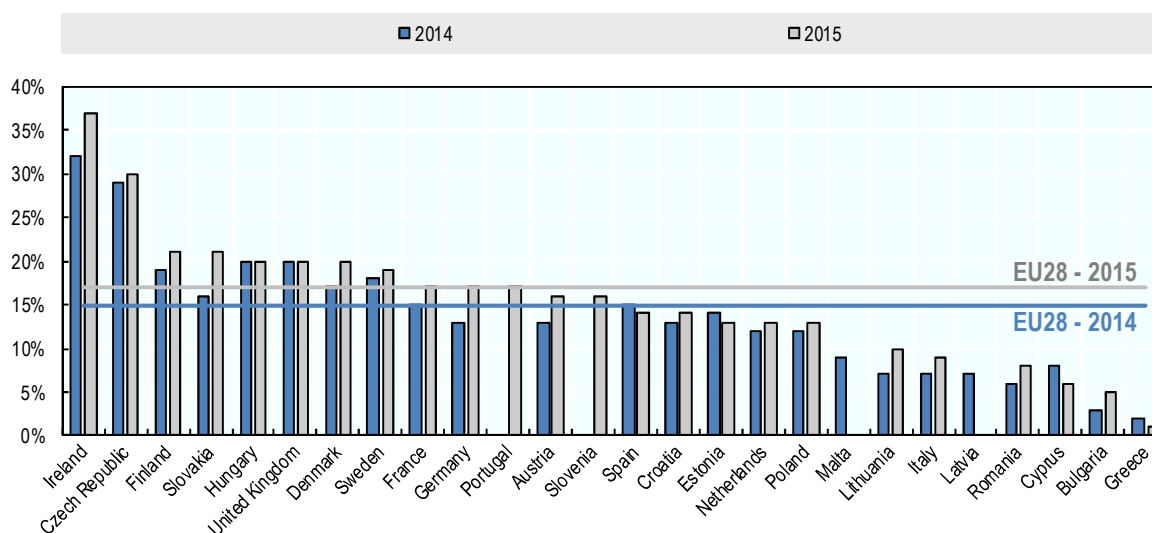
## 2.1. Definition and economic overview

Electronic commerce (“e-commerce”) includes a range of activities that cuts horizontally across the economy, in sectors including retail, wholesale and services. In that sense, it enables and facilitates trade, and mirrors many of the activities and sectors of the offline economy.

For the purposes of the present assessment, e-commerce is defined as business-to-business (B2B), business-to-consumer (B2C), consumer-to-business (C2B) or consumer-to-consumer (C2C) commercial transactions of products, services and data provided in principal against remuneration, at a distance, at the individual request of a recipient of goods and services, and conducted over computer-mediated networks. While distance selling is the key differentiating element of e-commerce transactions, each of those characteristics is important when considering whether a transaction falls within the scope of e-commerce. The sector includes orders made over the web (independently of the medium used to access the web), an extranet or an electronic data interchange. Orders made by telephone, facsimile or manually typed e-mail are not part of the sector.

In Greece, e-commerce appears to be less advanced than in other EU Member States. According to the most recent data from Eurostat, only 6% of Greek firms with 10 or more employees made online sales in 2015 (9% in 2014).<sup>1</sup> The value of e-commerce sales of similarly sized firms accounted for 1% of their total turnover.<sup>2</sup> The corresponding rates in the EU were 17% (15% in 2014), both in terms of number of firms and share of turnover.

Figure 2.1. Share of e-commerce value to total turnover in EU Member States, 2014-2015

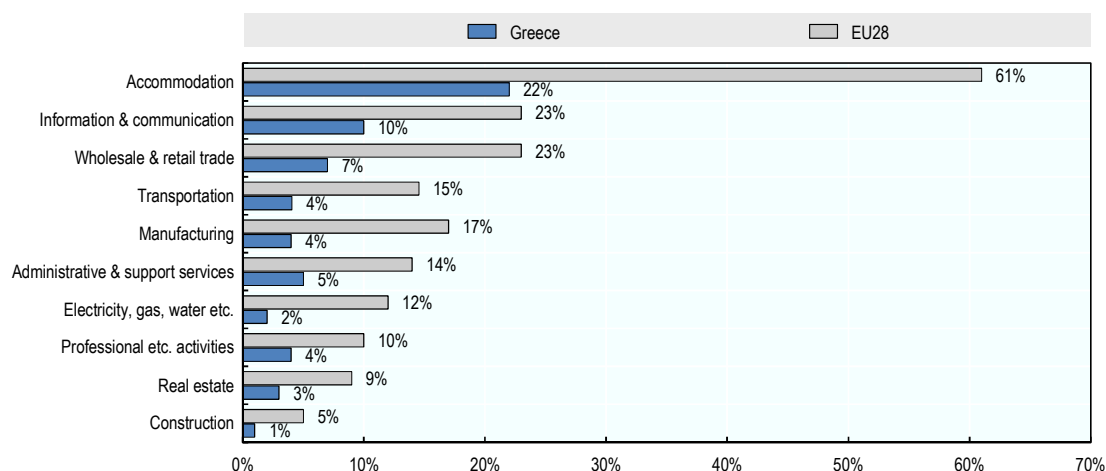


Notes: Percentage of turnover from e-commerce for all enterprises (excluding financial sector) with 10 employees or more.

Source: Eurostat, Information Society database (isoc\_ec\_evaln2).

The fact that e-commerce is less developed in Greece is also confirmed by comparing the importance of e-commerce in each sector,<sup>3</sup> as illustrated in Figure 2.2. The percentage of firms making online sales in the EU is 2.3 to 6 times larger than in Greece.

Figure 2.2. **Percentage of enterprises selling via Internet and/or networks other than Internet in Greece and EU28, 2015**



Notes: Percentage of enterprises (excluding financial sector) with 10 employees or more, selling at least 1% of turnover online.

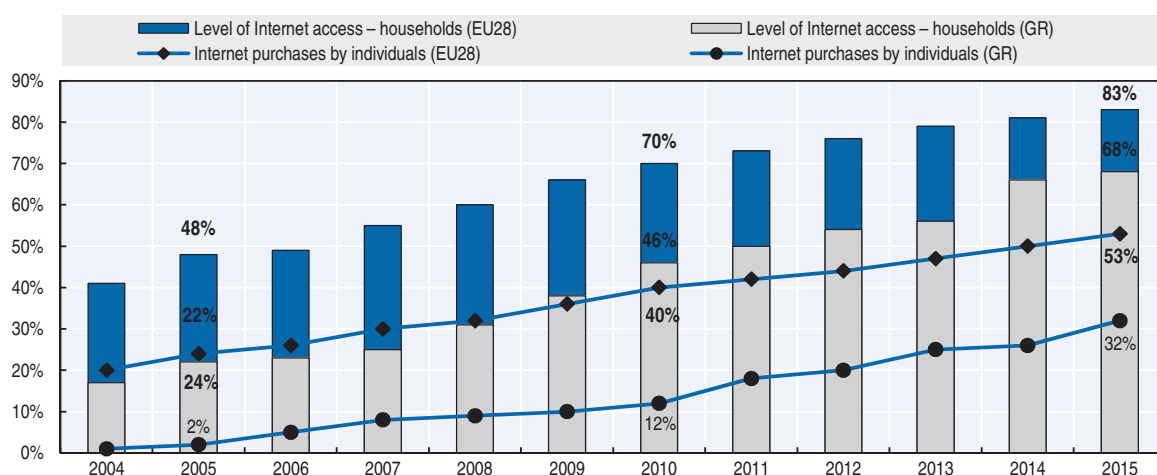
Source: Eurostat, Information Society database (isoc\_ec\_eseln2).

E-commerce appears to have potential for growth in Greece, with underlying factors trending upwards, as discussed below. According to the annual survey on Greek B2C e-commerce conducted by the E-Business Research Center of the Athens University of Economics and Business,<sup>4</sup> 25% of online buyers made more than half of their purchases online (9% in 2014), with an average spend up by 10% on 2014. Moreover, 65% of online purchases by Greek buyers were made on Greek websites (60% in 2014).

E-commerce is affected by a number of factors, exogenous to the sector itself, which are however critical to its development. For example, on the demand side, consumer culture (the propensity to make purchases online) and trust (for example, in using electronic payment systems<sup>5</sup>) are identified as critical determinants in the sector's growth.

Access to computer networks is also a critical factor, and Eurostat data shows a substantial increase in Internet penetration in Greece: 68% of households had Internet access in 2015, up from 46% in 2010. The percentage of Internet users making online purchases also increased from 27% in 2010 to 47% in 2015. These statistics on increasing Internet penetration, coupled with the relatively low penetration of e-commerce, suggest considerable untapped growth potential in the sector.

Figure 2.3. Level of Internet access (at household level), and share of Internet purchases by individuals in Greece and EU28, 2004-2015



Notes: Individuals who have purchased online in the 12 months, as a percentage of total population.

Source: Eurostat, Information Society database (isoc\_ci\_in\_h and isoc\_ec\_ibuy).

On the supply side, factors include sellers' ease of access to, and use of, the Internet, as well as costs – monetary or otherwise – associated with their operations (for example, in relation to parcel delivery and payment systems).

## 2.2. Overview of the legislation

E-commerce was designated as a priority sector within the context of the OECD Competition Assessment project in Greece. Consequently, the review of the relevant legislation and the analysis of potential barriers to competition were expedited, and ensuing recommendations were delivered earlier than those in other sectors. This prioritisation partly reflects the importance and potential positive contribution of e-commerce to the Greek economy. E-commerce is also considered a priority for the European Commission, as reflected in its Digital Single Market strategy,<sup>6</sup> which aims to “allow better access for consumers and business to online goods and services across Europe [and so] remove the key differences between online and offline worlds”.

OECD mapping of legislation for the sector found 71 laws and regulations. As previously discussed, the sector mirrors offline economic activities and sectors, so many of the laws reviewed also apply horizontally to other sectors. This is also reflected in the OECD's recommendations, most of which are best implemented in the context of wider review and consultation.

The mapped legislation includes:

- horizontal legislation **on e-commerce**: product- and service-related laws (applicable both to traditional trade and e-commerce) have largely been reviewed in previous OECD Competition Assessment projects, or they are being reviewed in other chapters of the present assessment;

- legislation **directly or indirectly affecting** e-commerce in such areas as: 1) consumer protection; 2) digital signatures; 3) protection of personal data and electronic communications; 4) payment services; 5) domain names; 6) intellectual-property rights; 7) accounting rules targeting electronic commercial transactions; and 8) taxation targeting electronic sales of products and provision of services.

### ***EU legislation***

Much of the legislation related to e-commerce is largely governed by or is heavily reliant on EU legislation, which has been transposed into Greek laws.<sup>7</sup> In most cases, other than those identified in the following sections, national implementing laws do not introduce changes to EU Regulations and Directives that would impede competition in e-commerce. Moreover, both EU and national legislation relating to e-commerce are currently under review and revision, mainly within the framework of the Digital Single Market strategy. For example, at the EU level, legislative proposals have been formulated on the portability of online-content services,<sup>8</sup> parcel delivery,<sup>9</sup> geo-blocking,<sup>10</sup> contract rules for distance sales,<sup>11</sup> and VAT.<sup>12</sup> Adoption of that legislation will significantly affect the development of e-commerce. Greek authorities are party to the ongoing reviews, and are or will be implementing new legislation as it comes into force.

### ***National legislation***

The core legislation on e-commerce is Presidential Decree 131/2003, which is largely in line with the EU Directive it transposes (Directive 2000/31/EC, the “E-commerce directive”).<sup>13</sup> A review of this Presidential Decree did, however, highlight a provision relating to intermediary service providers that needs to be amended.

Other potential barriers to competition were found principally in the area of consumer protection.<sup>14</sup> The main piece of legislation in this area is Law 2251/1994 on consumer protection: it has been amended multiple times since 1994 to bring it into line with EU Directives in this area, but the Greek legislator has made use of the discretion afforded to national legislators in various areas that affect e-commerce.

Law 2251/1994 has seen a number of revisions and amendments over the past 22 years. This practice of bringing amendments to the core consumer-protection law – including by legally authorised ministerial decisions<sup>15</sup> – without codifying them results in legal uncertainty and costs for suppliers and consumers. Both suppliers and consumers need to conduct extensive research in order to understand which regulations are in force and which are not.<sup>16</sup> Streamlining and codification of Law 2251/1994 would resolve to a large extent the confusion and inconsistency resulting from fragmented legislation.<sup>17</sup> Given the horizontal nature of consumer-protection legislation and its application beyond e-commerce, any streamlining should follow a broader consultation with market operators.

Simplification of the relevant legislation, which currently contains complex, obsolete and contradictory provisions, will better serve the needs of e-commerce providers, who rely on automated processes, including online contracts, terms and conditions, and communications. Such processes will be facilitated if based on clear, high-standard and transparent consumer-protection legislation. Furthermore, consolidating and streamlining this legislation will reduce legal uncertainty and compliance costs for e-commerce providers.

Such simplification will also boost consumer confidence in making online purchases,<sup>18</sup> which has been identified by market participants as a significant impediment to e-commerce growth.

Lastly, to the extent that Greek consumer-protection law imposes heavier obligations and restrictions on local e-commerce providers relative to internationally based e-commerce ones, it has the potential to disadvantage the former. For example, some C2C transactions are, perhaps unintentionally, regulated – with sellers having to provide guarantees over and above those required in other countries. Amending the relevant provisions will lift such potential barriers facing e-commerce providers based in Greece.

The main restrictions identified in e-commerce, as traced in the Greek legislation, are described in detail in the following sections. Their harm to competition, together with international comparisons where applicable, and recommendations are set out. The benefits of the recommendations are estimated at about EUR 4 million, assuming a conservative combined effect of 0.1% from all recommendations.<sup>19</sup>

#### Box 2.1. The estimated consumer benefits from reforms on e-commerce

An increase in the use of e-commerce as a means of facilitating trade has the potential to bring significant changes to demand- and supply-side fundamentals; and shift market outcomes.

A large body of empirical research supports a prediction that e-commerce leads to lower prices in various product markets. For example, Brynjolfsson and Smith (2000)<sup>1</sup> and Clay, Krishnan and Wolff (2001)<sup>2</sup> find that prices dropped following the establishment of online book markets. Scott Morton, Zettelmeyer, and Silva-Risso (2001)<sup>3</sup> document that consumers who used an online service to search for and purchase a car paid – on average – 2% less than those who did not. Brown and Goolsbee (2002)<sup>4</sup> estimate that the use of price comparison websites has resulted in the price of term life insurance policies falling by 8%-15%. Sengupta and Wiggins (2006)<sup>5</sup> find that airline tickets purchased online cost approximately 11% less than those purchased offline (controlling for ticket and flight characteristics).

The recommendations set out in this chapter are aimed at removing obstacles to furthering the adoption of e-commerce by businesses, and boosting consumer confidence in making online purchases. Removing obstacles and lowering the cost of e-commerce activity can foster growth in the sector: an increase in e-commerce turnover by 0.5% equates to an increase of €19million in the sector's turnover.<sup>6</sup> Moreover, on the basis of the evidence cited above, the (average) prices consumers pay are likely to fall. If prices were to fall by 1% (a range between 0.5% and 1.5%), the methodology outlined in Annex A suggests a consumer benefit<sup>7</sup> of €38.4 million (ranging between €19.1 and €57.9 million respectively).<sup>8</sup>

An additional benefit, not reflected in these figures, will likely come from wider consumer choice and improved access to markets – whether this concerns consumers' access to more distant Greek providers or providers based outside Greece. Similarly, Greek firms may benefit from a much wider, geographical pool of customers.

1. Brynjolfsson, E. and Michael D. Smith, (2000), "Frictionless Commerce? A Comparison of Internet and Conventional Retailers", *Management Science*, 46(4): 563-585.
2. Clay, K., Krishnan, R. and E. Wolff (2001), "Prices and Price Dispersion on the Web: Evidence from the Online Book Industry" *Journal of Industrial Economics*, 49(4): 521-539.
3. Scott Morton, F., Florian Zettelmeyer and Jorge Silva-Risso (December 2001), "Internet Car Retailing", *Journal of Industrial Economics*, 49 (4): 501-519.
4. Brown, Jeffrey R. and Austan Goolsbee (2002), "Does the Internet Make Markets More Competitive? Evidence from the Life Insurance Industry", *Journal of Political Economy*, 110(3): 481-507.
5. Sengupta, A. and Steven N. Wiggins (February 2014), "Airline Pricing, Price Dispersion and Ticket Characteristics On and Off the Internet", *American Economic Journal: Economic Policy*, 6 (1).
6. E-commerce Europe estimates that the turnover of B2C sales of goods and services in Greece in 2015 was €3.8 billion. Ecommerce Europe (2016), *European B2C E-commerce Report 2016*.
7. Assuming an elastic demand, with elasticity  $|e| = 2$ .
8. These estimates are based on the turnover of B2C sales. Consequently they underestimate the magnitude of the potential effect, given that B2B, C2B, and C2C transactions are not taken into account.

### *Parcel Delivery*

There is a close relationship between postal services and e-commerce;<sup>20</sup> in particular with respect to parcel and commercial express deliveries. Barriers to effective competition in postal services may affect e-commerce to the extent that delivery cost is passed on to consumers (either directly or indirectly, if borne by the supplier); and/or service quality (for example, the speed or security of deliveries) is reduced. If price and quality of postal services were affected, this may hinder growth in e-commerce. This issue is of particular importance to Greece given its geographical location and morphology.

Prices for (cross-border) parcel deliveries within the European Union are under review by the European Commission.<sup>21</sup> In Greece, the National Telecommunications and Post Commission (EETT) has launched Pricescop, an electronic observatory of prices for telecommunication and postal services. This platform aims to increase price transparency by giving consumers easily accessible and reliable price-comparison information about postal services, including parcel delivery.<sup>22</sup>

The Competition Assessment of e-commerce legislation included a review of targeted and self-contained laws and regulations related to parcel delivery.<sup>23</sup> One issue potentially seen as a hindrance to more efficient parcel-delivery services in Greece is the postal-code system, designed and maintained by Hellenic Post.<sup>24</sup> It is acknowledged that many addresses have incomplete (or inadequate) details to allow for easy and timely deliveries, and postal codes cover areas that are too broad. The make-up of rural areas in Greece and street naming and numbering both appear to play a role. A more efficient postal -code file, made available in a timely manner<sup>25</sup> to all market participants, may facilitate parcel deliveries. The inefficiency of the current framework may indeed have an impact on parcel delivery, but the magnitude of possible effects on price and quality of this service and the consequences for e-commerce remain unclear.

### **2.3. Monitoring obligations of Internet intermediary service providers**

#### ***Description and objective of the provisions***

Presidential Decree 131/2003 implements the EU Directive on electronic commerce<sup>26</sup> and addresses the liability of service providers who act as intermediaries in transmitting information, in the context of information -society services, such as, for example, Internet service providers (ISPs). The relevant provisions<sup>27</sup> limit the liability of service providers and their duty to act, on the condition that they:

- act as a “mere conduit”, i.e. they transmit information or provide access to a network, but they do not themselves initiate the transmission of information, select its receiver, or select/modify the information;
- perform “caching” services, i.e. they temporarily store information for the purpose of making its transmission more efficient, but they do not modify the information or obtain data on its usage, and they comply with conditions on access to information and rules regarding updating it, and disable access to it if required; or
- provide a “hosting” service, i.e. they store information at the request of a service recipient, but they are not aware that this information is illegal and they revoke access to it if they become aware of it.

In harmonisation with the Directive, the Presidential Decree further intends to relieve intermediary service providers of the obligation to monitor the legality of information they transmit or store. It includes a separate provision to that effect, with direct reference to the activities outlined above.<sup>28</sup>

### ***Harm to competition***

The exemptions described above are designed to cover intermediary service providers whose sole involvement is giving access to a communication network and facilitating the transmission of information, and so encourage such activities. The Presidential Decree, however, contains erroneous numbering in its text that constitutes wrongful implementation of Directive 2000/31/EC.<sup>29</sup> This error means that providers' obligations to monitor information when acting as hosts are not lifted.

This has the effect of imposing on intermediary service providers (for example, ISPs) the *unconditional* requirement to monitor the information they store. This requirement is in direct conflict with the Directive's intent to limit liability and lift the monitoring requirement under certain conditions, in line with its objective of encouraging the development of information -society services, in particular electronic commerce. It also directly affects (e-commerce) platforms, networks and applications hosting (e-commerce) traders, inadvertently imposing a general obligation that they monitor the content placed and transactions conducted upon their platforms, and actively seek indications of illegal activities.

These extended monitoring obligations of Greek ISPs/platforms, mistakenly introduced into Greek law, create legal uncertainty, as well as extra regulatory and compliance costs for local e-commerce providers.

### ***Recommendation and benefit***

The OECD recommends that the references in the text of Article 14 of the Presidential Decree 131/2003 be amended to point to Articles 11, 12 and 13, instead of Articles 10, 11 and 12. Correcting the erroneous cross references in the Law will align the text with the Directive it implements and achieve the legislator's intended purpose.

## **2.4. Definition of consumer**

### ***Description of the relevant provisions***

As mentioned above, Law 2251/1994 is the core law concerned with consumer protection and consumer rights in Greece. Since it first came into force, it has been amended and extended multiple times to incorporate new provisions and transpose EC Directives in relevant areas.<sup>30</sup>

This patchy implementation of amendments has left the law unclear and, in some cases, inconsistent.<sup>31</sup> In particular, the law contains varying definitions of the consumer: firstly, as an individual or legal entity that is the intended final recipient of products and services, including advertising message recipients or guarantors;<sup>32</sup> and secondly, as an individual acting for purposes that are outside that individual's trade, business, craft or profession.<sup>33</sup> The narrow latter definition was introduced and used by EC Directives; the wider former definition pre-dated relevant EC Directives and has survived subsequent amendments to the Law.<sup>34</sup>

Which of these conflicting definitions is used depends on the area of consumer protection that the provision pertains to. For example, the wider definition applies to general transaction terms; the sale of consumer goods and guarantees; a manufacturer's liability for defective goods; consumer health and safety; and the liability of service providers.<sup>35</sup> The narrow definition is explicitly applicable in the case of



contracts (including those for sale of goods or provision of services at a distance); the provision of financial services at a distance; and unfair commercial practices.<sup>36</sup>

Moreover, there are instances where it is unclear and a matter of interpretation which definition is applicable; for example, in the case of comparative advertising.<sup>37</sup>

The result is that the level of consumer protection is different in each of the above cases,<sup>38</sup> resulting in confusion and legal uncertainty.

### ***Harm to competition***

The existence of multiple definitions of “consumer” within the same core law on consumer protection results in real costs for suppliers, caused by the need to understand and comply with the legislation. Also, this lack of clarity in conjunction with potentially extended liability in certain areas of consumer protection harms competition and provides disincentives to enter into the relevant market(s). These effects are magnified in the case of e-commerce where the need for standardisation and certainty is greater, given that transactions are made at a distance without extensive communication between suppliers and their customers.<sup>39</sup>

More specifically, the confusion around multiple definitions:

- creates legal uncertainty concerning rights and obligations of consumers and suppliers: this necessitates a case-by-case approach and leaves the provision(s) open to interpretation as both suppliers and consumers may need to seek legal advice to interpret the law and clarify which provision is relevant;
- prevents e-commerce providers from applying automated processes, drafting terms and conditions of use, offering standardised contracts etc., given that rights and obligations vary depending on whether their customers are individuals or legal entities and whether they are acting for purposes that are inside or outside their business or profession;<sup>40</sup> and
- leads to regulatory and compliance costs, such as the cost of seeking legal advice and legal expenses for cases tried before the courts: there exists extensive case law, including Supreme Court decisions, on an issue that should not be contentious.<sup>41</sup>

In addition, the legacy definitions of consumer found in the law have the – unintended, in the case of certain transactions – effect of defining businesses as consumers and so affording them the protection and compensatory measures otherwise reserved for individuals. Extensively widening the scope of consumer-protection laws:

- extends the liability facing (e-commerce) suppliers in the context of consumer rights in certain areas and imposes an additional burden on suppliers;
- may act as a disincentive for new entry in the B2B market, given that provisions intended for B2C may apply in the case of B2B transactions; and
- puts local e-commerce suppliers at a competitive disadvantage, to the extent that other Member States (or other countries outside the EU) have adopted a narrower and less onerous definition of consumer.

### Box 2.2. Example of consumer definitions in selected EU Member States

The definition of consumer has been “revisited” by national legislators in other EU Member States, often as a result of a legislative streamlining and consolidation exercise undertaken following the transposition of EU Directives. In certain areas of consumer protection, some countries extend the protection given to consumers to additional persons by virtue of explicit legal provisions.

**Cyprus.**<sup>1</sup> The current consumer-protection law, which explicitly references Directive 2011/83/EC, uses the narrow definition of consumer as “an individual acting for purposes that are outside that individual’s trade, business, craft or profession”.<sup>2</sup> A similar definition was found in the pre-existing law on abusive terms in consumer contracts.<sup>3</sup>

**France.** The March 2014 law on consumer rights similarly adopts as a principle the narrow definition of a consumer as “any individual acting for purposes that are outside that individual’s trade, business, craft or profession”.<sup>4</sup> Until this law came into force, the consumer had not been defined, and it had been left to the courts to decide, on a case-by-case basis.

**Italy.** All consumer-protection legislation has been consolidated into a single law, Codice del Consumo (Consumer Code), which collects and synthesises all existing consumer-protection provisions. Consumer issues (advertising, accuracy of information, consumer contracts, product safety, access to justice and consumer organisations) were previously covered by specific regulations that were adopted on an ad hoc basis, mostly to implement EU Directives.<sup>5</sup> Under the Code, a consumer is “a natural person acting for purposes that are unrelated to that person’s trade, business, craft or profession”.<sup>6</sup>

**Spain.** The provisions on consumer protection are found in Royal Decree 1/2007. The law, as amended in 2014, defines a consumer or user as “a natural person acting for purposes that are unrelated to that person’s trade, business, craft or profession”. It extends this protection to “legal entities or institutions that act in a non-profit capacity in a field unrelated to their trade or business”, thus adopting a definition that is wider than the one found in the European Directives.<sup>7</sup> Spanish law provides for certain exceptions to the above uniform definition, such as civil liability for defective products and services. It also clearly distinguishes the definition used in the context of travel packages, whereby a consumer is “any person that is the principal contractor, beneficiary or assignee”.<sup>8</sup>

**United Kingdom.** Until the Consumer Rights Act came into force in 2015, each instrument transposing different EC Directives had its own definition of consumer. Under the Consumer Rights Act, which consolidates key consumer rights covering contracts for goods, services and digital content, and unfair terms in consumer contracts, a consumer is “an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession”.<sup>9</sup>

1. *Note by Turkey:* The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

*Note by all the European Union Member States of the OECD and the European Union:* The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

2. Law 133(I)/2013 on consumer rights. See Art.2(1): “«καταναλωτής» σημαίνει κάθε φυσικό πρόσωπο το οποίο, όσον αφορά τις συμβάσεις που καλύπτει ο παρών Νόμος, ενεργεί για λόγους οι οποίοι δεν εμπίπτουν στην εμπορική, επιχειρηματική, βιοτεχνική ή ελεύθερη επαγγελματική του δραστηριότητα.”

3. Law 93(I)/1996 on abusive terms in consumer contracts.

4. Law 344/2014 Consumer code. See Art.3: “est considérée comme un consommateur toute personne physique qui agit à des fins qui n’entrent pas dans le cadre de son activité commerciale, industrielle, artisanale ou libérale”.

5. See [www.codicedelconsumo.it](http://www.codicedelconsumo.it).

6. Legislative Decree 206/2005 Consumer Code, as amended and in force. See, for example, Art.3(1)a: “si intende per [...] consumatore o utente: la persona fisica che agisce per scopi estranei all’attività imprenditoriale, commerciale, artigianale o professionale eventualmente svolta”.

7. Royal Decree 1/2007 approving the amended text of the general law for the protection of consumers and users and other complementary laws, as amended and in force. See Art.3: “A efectos de esta norma y sin perjuicio de lo dispuesto expresamente en sus libros tercero y cuarto, son consumidores o usuarios las personas físicas que actúen con un propósito ajeno a su actividad comercial, empresarial, oficio o profesión. Son también consumidores a efectos de esta norma las personas jurídicas y las entidades sin personalidad jurídica que actúen sin ánimo de lucro en un ámbito ajeno a una actividad comercial o empresarial.”

8. See Art.151 par.1 rec.g: “‘Consumidor o usuario’: cualquier persona en la que concurra la condición de contratante principal, beneficiario o cesionario” in Royal Decree 1/2007 *ibid*.

9. Consumer Rights Act 2015. See Art.2(3): “‘Consumer’ means an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession”. This definition is wider than the one adopted by the EC Directive, stipulating that for individuals to be defined as consumers they need act wholly or mainly outside their trade, business, craft or profession.”

More generally, the lack of clarity weakens the effectiveness of consumer-protection law, especially for individuals who are the intended recipients of its protection, and burdens the enforcement system with the task of clarifying definitions on a case-by-case basis.<sup>42</sup>

### ***Recommendation and benefit***

The OECD recommends that a uniform definition of consumer applicable across Law 2251/1994 on Consumer Protection be adopted. This should be done in the context of a broader review of, and consultation on, the law, given that consumer-protection legislation is horizontal and applies beyond e-commerce.

A uniform definition of consumer (with or without explicit exceptions in relation to specific areas of consumer protection) will create legal certainty and increase transparency. It will also ensure that protection is targeted at, and clearly reserved for, those persons and entities that are the weaker party in transactions, thus fulfilling the intent of the law without extending cover beyond its scope.

## **2.5. Legal and commercial guarantees**

### ***Description of the relevant provisions***

EC Directive 1999/44<sup>43</sup> regulates the guarantees offered for the sale of consumer goods, including both commercial guarantees and lack-of-conformity rights, also known as a “legal guarantee”. It has the intention of ensuring “a uniform minimum level of consumer protection in the internal market” through the harmonisation of laws and regulations in Member States in the above field.

The Directive provides a common framework for legal guarantees and grants extended rights to consumers in relation to sellers, i.e. right of repair, replacement, reduction in price, or contract rescission in cases of non-conformity of goods with the contract or advertised properties; the legal guarantee is compulsory, extends over a period of two years as from the delivery of goods and burdens the final seller, who has, in turn, the right to seek redress from liable persons in the contractual chain.

The Directive also harmonises, to a lesser extent, the legal framework for commercial guarantees, i.e. additional optional warranties offered by the guarantor, be it the manufacturer, importer or seller.

The relevant provisions have been transposed in Greece in the form of amendments to:

- pre-existing articles of the Greek Civil Code,<sup>44</sup> to cover legal guarantee rights, thus applying not only to consumer goods, but also to all movable (and immovable) goods; and
- Law 2251/1994<sup>45</sup> on Consumer protection, to cover commercial guarantee rights.

Lastly, when implementing the EU Directive’s provisions, the Greek legislator has not considered and/or made use of the discretion afforded to Member States to provide for shorter legal guarantees on second-hand goods, on the basis of the contractual terms or agreements between the seller and the buyer.

### ***Harm to competition***

The fragmentation of provisions on guarantees, scattered through the consumer-protection law and the Civil Code, creates legal uncertainty with regards to the rights and obligations of consumers and suppliers. The complexity of the law, which has been open to interpretation, prevents e-commerce providers from providing clear communications to their customers and applying automated processes in

relation to legal and commercial guarantees, while raising regulatory and compliance costs for e-commerce providers.

Moreover, implementing the legal guarantee in the Civil Code has the unintended consequence of making the relevant provisions applicable not only to B2C transactions, but also B2B and C2C transactions.<sup>46</sup> This results in a potential barrier to C2C sales of goods on e-commerce platforms, including second-hand goods, the main platforms for such transactions. Such transactions, via e-commerce platforms, were not that common at the time of the EU Directive's implementation. Differential treatment of second-hand goods, given their nature, could help boost their sales on e-commerce platforms, which are most suitable for such transactions.

The complexity of the provisions and the fragmented legal framework create a lack of understanding and unclear communication of the rights and obligations stemming from commercial and legal guarantees. For example, the fact that a legal guarantee is in force irrespective of any commercial guarantees offered by the supplier/seller is often not advertised or communicated clearly.<sup>47</sup> As a result, consumers are left ill informed, with reduced confidence, and the legislator's objective – for e-commerce, in particular – is not achieved.

### ***Recommendation and benefit***

The OECD recommends that the definitions and distinction between legal and commercial guarantees be clarified and streamlined; the rights of consumers connected to each of the above are clearly defined in Law 2251/1994; and a shorter duration of the legal guarantee for second-hand goods be considered.<sup>48</sup>

This should be done in the context of a broader review of and consultation on the law, given that consumer-protection legislation is horizontal in nature and applies beyond e-commerce.

It is also recommended that a review of the Civil Code provisions is launched, which will take into account the specificities of C2C and B2B transactions, and the relevant legislative developments at EU level.

A clear and well-defined framework on the rights and obligations arising from legal and commercial guarantees will allow suppliers to better understand, organise and communicate the terms of sale and after-sale obligations. This will in turn boost consumer confidence in purchasing, especially online.

## **2.6. Definition of supplier**

### ***Description of the relevant provisions***

Law 2251/1994 on consumer protection also contains varying definitions of supplier.

The section concerned with the rights and obligations of consumers and suppliers in relation to retail sale of goods and associated guarantees<sup>49</sup> defines a supplier as “the manufacturer and/or importer and/or any person purporting to be a producer by placing his name, trademark or other distinctive sign on consumer goods”.<sup>50</sup>

This definition, though, is different to other definitions in the same law, which treat suppliers as “the legal entity or individual that supplies goods or services to the consumer, acting within his business or profession”;<sup>51</sup> or as “the individual or legal entity (whether governed by private or public law) that acts, even if through an intermediary acting in its name or on its behalf, for purposes related to its trade,

business, manufacture or profession”.<sup>52</sup> Further, the first definition is different to the definitions found in Directive 1999/44/EC,<sup>53</sup> which distinguishes between a producer and a seller,<sup>54</sup> and clearly links legal guarantees to the latter and commercial guarantees only to the entity that offers them (be it the producer or the seller).

### ***Harm to competition***

As with the different definitions of consumer, the lack of a uniform definition of supplier creates legal uncertainty and confusion; leads to regulatory and compliance costs for e-commerce providers; and complicates the use of automated processes.

Moreover, the fact that the Greek law bundles together sellers and producers within the definition of a supplier in relation to guarantees has implications for their respective liability, and burdens local (e-commerce) sellers with additional obligations.<sup>55</sup>

### ***Recommendation and benefit***

The OECD recommends that conflicts regarding the definition of supplier be resolved: a uniform definition of supplier applicable across Law 2251/1994 be adopted; and the definitions of producer and seller be clarified, in line with Directive 1999/44/EC. A uniform definition of supplier will create legal certainty and increase transparency.

This should be done in the context of a broader review of, and consultation on, the law, given that consumer-protection legislation is horizontal in nature and applies beyond e-commerce.

## **2.7. Commercial guarantees**

### ***Description of the relevant provisions***

Article 5 of Law 2251/1994<sup>56</sup> describes consumers’ and suppliers’ rights and obligations in relation to the retail sale of goods and guarantees for such sales.

The Greek legislator made use of the discretion afforded to Member States in transposing the corresponding EC Directive into this law and created extended obligations for suppliers to ensure additional consumer protection. For example, a commercial guarantee, offered by the “supplier”, is compulsory for durable goods – and should be made available in writing, in Greek.<sup>57</sup> This obligation is an additional requirement introduced in national legislation and is not part of the corresponding EC Directive,<sup>58</sup> which only requires that such guarantees, when voluntarily provided by specific “offerers”, be communicated to consumers under specific conditions.

Law 2251/1994 also stipulates that “suppliers” (according to the broad definition of the law, which includes both producers and sellers) are required to inform consumers in writing about the expected lifetime of a product,<sup>59</sup> and, in the case of durable goods, to offer a guarantee of such a duration that is reasonable and proportional to that expected lifetime, irrespective of guarantees given by the manufacturer.<sup>60</sup>

Finally, there is also the requirement that final “suppliers” repair, at their own cost, the product while it is covered by a commercial guarantee. This requirement applies to the final seller even in cases where the manufacturer and/or producer do not offer such a commercial guarantee. Moreover, this obligation may be more burdensome for local final e-commerce suppliers – who are often importers of products – since they also need to cover the cost of shipping products abroad for repair.<sup>61</sup>

### ***Harm to competition***

As discussed above, the law obliges suppliers (as widely defined above and in practice including e-commerce providers) to provide an array of rights connected to commercial guarantees. These obligations are binding not only for the “offerer” of the commercial guarantee – as foreseen by the Directive – but also for any final local supplier, importer or seller, even if the original manufacturer might have not provided a guarantee.

Not only do these provisions impose certain requirements on the final sellers (rather than the manufacturer/producer) but, most importantly, they directly regulate and remove elements of the competitive interaction among market participants, notably in relation to commercial guarantees for durable products. In contrast with legal guarantees, which intend to offer a minimum level of consumer protection, commercial guarantees are part of the competitive offering for consumers. Indeed, they are typically offered on most durable goods, as a result of the competitive process.<sup>62</sup>

The costs of these rights to suppliers are obvious. They include the provision of additional communications connected to the life cycle of products; repairs related to the obligatory commercial guarantee for durable goods; the duration of the guarantee linked to products’ lifetimes; and transportation and mailing costs related to the free repairs.

As the cost of a guarantee can in certain cases be reflected in the final price that consumers pay, imposing the above requirements reduces consumer choice by not allowing suppliers to offer lower-priced products to less risk-averse consumers willing to trade off a guarantee for a lower upfront cost. In that respect, these obligations limit their ability to offer products targeting different consumer groups.

The obligations placed on Greek suppliers (again, as widely defined above and in practice including e-commerce providers) in relation to commercial guarantees are also more burdensome than the provisions of Directive 1999/44/EC. Local e-commerce providers need to bear the cost of these commercial guarantees and associated repairs, for prolonged periods of time. Moreover, the effect on cost can potentially be exacerbated given that the guarantees and associated rights may be offered not only to individual consumers, but also legal entities (if they are the final recipients of the goods, in line with the wider definition of consumer)<sup>63</sup> that have significantly higher product-usage rates.

To the extent that similar requirements are not imposed on competitors abroad, there is also the potential that these requirements can hinder the ability of local providers to compete effectively in the Greek market.

### ***Recommendation and benefit***

The OECD recommends that the requirement that commercial guarantees have to be offered for durable products be abolished. Further, it is recommended that obligations linked to commercial guarantees only be imposed on the *offerer*, in line with the EC Directive. This should be done in the context of a broader review of and consultation on the law, given that consumer-protection legislation is horizontal and applies beyond e-commerce.

These recommendations should be read in conjunction with the recommendation on clarifying the rights and obligations relating to legal guarantees, as set out in Section 2.5 above.

Aligning Greek law with the European Directive 1999/44 will relieve the unintended burden placed on local suppliers and increase transparency.

## 2.8. Identification logo for online pharmacies

### *Description and objective of the provisions*

The European legal framework<sup>64</sup> regulating the sale of medicinal products by means of information-society services and the conditions required for such sale to take place allows Member States a degree of discretion about authorising the sale of medicinal products at a distance.<sup>65</sup> As part of this framework, a common Europe-wide logo has been established, which online pharmacies are required to display. This logo enables the identification of those offering medicinal products; and serves as a means of containing the illegal sale of such products.<sup>66</sup>

A recent Joint Ministerial Decision<sup>67</sup> introduces the certification process of legally operating e-pharmacies in Greece, i.e. granting the common logo to identify persons offering medicinal products for sale at a distance. The Joint Ministerial Decision designates the Panhellenic Pharmaceutical Association (PPA)<sup>68</sup> as the competent body for issuing the common logo to e-shops selling medicinal products and sets out the information required for the logo to be issued.<sup>69</sup> The same provision stipulates that applications to the PPA for the common logo must be submitted by pharmacists.

### *Harm to competition*

This provision does not afford the PPA any discretion in its decision to accept or reject an application for issuing the common logo of the EU Regulation 699/2014 to (legally operating) online pharmacies in Greece.

However, in contrast with references in other articles of the Joint Ministerial Decision and with requirements for the licensing of brick-and-mortar pharmacies,<sup>70</sup> the text only explicitly allows pharmacists themselves (and not pharmacies as businesses) to submit such applications. While it appears that the legislator's intention is to allow the persons responsible for the operation of online pharmacies and not only pharmacists to apply for and obtain the common logo,<sup>71</sup> the language is ambiguous, open to interpretation and creates legal uncertainty. As a consequence, it potentially restricts access to the process and to online trading, as permitted by the law in force.

### *Recommendation and benefit*

The OECD recommends that the wording of Article 4 of Joint Ministerial Decision Γ5(β)/Γ.Π. οικ. 20293/2016 be amended and/or clarified as regards the persons responsible for submitting an application for the common-logo of the EU Regulation 699/2014 for online pharmacies. It should be clarified that the persons responsible for the operation of online pharmacies can submit an application and not only pharmacists.

## Notes

1. Percentage of firms (excluding financial sector) with 10 employees or more selling online at least 1% of their turnover.
2. Percentage of turnover from e-commerce for all enterprises (excluding financial sector) with 10 employees or more.

3. According to the annual survey of Greek B2C e-commerce conducted by the E-Business Research Center of the Athens University of Economics and Business, the top categories of online purchases by Greek consumers in 2015 were for travel services; accommodation; IT hardware; event tickets; and apparel.
4. Press release, including key findings, available at [www.eltrun.gr/wp-content/uploads/2015/12/Ηλεκτρονιο2015-1.pdf](http://www.eltrun.gr/wp-content/uploads/2015/12/Ηλεκτρονιο2015-1.pdf).
5. It has been put to the OECD that the imposition of capital controls in Greece in June 2015 resulted in more electronic transactions being made. However, it is not clear whether this has boosted e-commerce sales (or indeed led to any change in consumer behaviour as regards making online purchases) or simply substituted other forms of payment for online transactions, such as cash on delivery.
6. See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on A Digital Single Market Strategy for Europe (06.05.2015).
7. Review of and recommendations on EU legislation are outside the scope of the OECD Competition Assessment project, except where EU Directives have been transposed into Greek laws and regulations, including areas where discretion is allowed to national legislators.
8. See Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market (09.12.2015); and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Towards a modern, more European copyright framework (09.12.2015).
9. See Proposal for a Regulation of the European Parliament and of the Council on Cross-border parcel delivery services (25.05.2016).
10. See Proposal for a Regulation of the European Parliament and of the Council on Addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC. (25.05.2016).
11. See Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Digital contracts for Europe – Unleashing the potential of e-commerce (09.12.2015).
12. See Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an Action Plan on VAT – Towards a single EU VAT area – Time to decide (07.04.2016).
13. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”) (Official Journal L178, 17.07.2000).
14. EU legislation on consumer protection is also under partial review within the Digital Single Market agenda. See Proposal for a Regulation of the European Parliament and of the Council on Cooperation between national authorities responsible for the enforcement of consumer protection laws (25.05.16).
15. See Art 14 par.4 of Law 2251/1994 on Consumer Protection (Government Gazette A’37/16.11.1994) as amended and in force.



- 16.. On 30 June 2016, the online legal library of the General Secretariat for Commerce and Consumer Protection at the Ministry of Development and Economy, the competent public authorities on consumer protection, included many regulations that are no longer in force, as well as an unofficial “codified” version of Law 2251/1994 *ibid* that does not include all the modifications and abolition of pre-existing provisions in the law. For example, the OECD team has identified two Ministerial Decisions, from 2001, superseded by more recent legislation, but not explicitly removed from the body of legislation and the website of the competent authorities. Firstly, Joint Ministerial Decision Z1-178/ 2001 on transactions by cards – harmonisation with Recommendation 1997/489/EC regarding transactions made by electronic payment instruments etc. (Government Gazette B’255/09.03.2001) has been largely explicitly abolished by Law 3862/2010: Art.2-4 were abolished by Art.82(β) of Law 3862/2010 Harmonisation with Directives 2007/64/EC, 2007/44/EC and 2010/16/EU – Government Gazette A’113/13.07.2010 on payment services etc.; Art.5 has been de facto abolished since it amends JMD Φ1-983/91 on consumer credit, which has been repealed and replaced by Art. 24 JMD 699/2010 on consumer-credit contracts; while Art.1 and Art.6 referring to objective and entry into force have not been explicitly repealed. Secondly, Joint Ministerial Decision Z1-404/2001 on the indication of prices on products offered to consumers – Harmonisation with Directive 1998/6/EC on Consumer protection regarding the indication of prices on products offered to consumers (Government Gazette B’827/28.06.2001) has been superseded by provisions in the Code on Marketing and Trading of Products and Services (see Art.2 and Art.6 of Ministerial Decision A2-718/ 2014 Code on Marketing and Trading of Products and Services – ΔΙ.Ε.Π.Π.Υ. – Government Gazette B’2090/31.07.2014).
17. Such codification is foreseen by the Greek legislator in Presidential Decree 116/2014 Organogram of the Ministry of Development and Competitiveness (Government Gazette A’185/03.09.2014), see Art.62 par.3 rec.α, γγ.
18. The OECD Council has recently revised its recommendations on how consumer protection should be applied in e-commerce. According to these recommendations, “Consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce”. See OECD (2016), *Consumer Protection in E-commerce: OECD Recommendation*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264255258-en>.
19. Turnover estimates for 2015 were taken from E-commerce Europe (2016) and include B2C transactions only. Assuming price elasticity equal to 2%.
20. This link is recognised in several reports. For example, see Report from the Commission to the European Parliament and the Council on the Application of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and 2008/6/EC) (17.11.2015).
21. See Proposal for a Regulation of the European Parliament and of the Council on Cross-border parcel delivery services (25.05.2016). The sector has been identified by the European Commission as one critical to its Digital Single Market strategy, and is thus under review. The review encompasses improvements in parcel delivery, consultations opened by the European Commission and its Green Paper. Moreover, the European Commission has identified significant cross-country issues. Large areas of related laws (for example, VAT) are under the European Commission and the European Court of Justice remit. Related themes, such as the Universal Service Obligations and the call for transparency, are also being discussed at a European level.
- 22.. See EETT Decision ΑΠ 743/014/2014 on the establishment and operation of postal services’ retail-pricing monitoring system (Government Gazette B’83/2014).
23. Parcel delivery is linked with other postal services (including Universal Service Obligations), which fall outside the scope of the current review. For example, there are issues relating to the interaction between incumbent operators and private companies; preferential treatment awarded to the former to attain

- public-policy objectives; blurred boundaries between various product definitions, e.g. what constitutes a service falling under Universal Service Obligation provisions; and the multiplicity of value-added services offered to customers in terms of traceability and speed or proof of delivery.
24. See Administrative Agreement οικ.55102/1727/2010 (4IHN1-II) between the Greek State and Hellenic Post, based on Art.19 par. 9 of Law 2688/1998. The agreement has expired but it has not been replaced and is still in force. It is common practice for the postal-code system be maintained by the formerly nationally owned/incumbent postal-service operator in each country, under monitoring by a competent regulator. The database is then made available to other providers or commercially traded, typically upon payment of a regulated fee. This is the case of example in France (see *Les droits d'accès des opérateurs autorisés aux installations ou informations postales détenues par le prestataire du service universel* at <http://arcep.fr/index.php?id=12332>); Germany (see [www.postdirekt.de](http://www.postdirekt.de)); Ireland (see [www.eircode.ie](http://www.eircode.ie) and [www.irishstatutebook.ie/eli/2011/act/21/section/66/enacted/en/html](http://www.irishstatutebook.ie/eli/2011/act/21/section/66/enacted/en/html), where the relevant law stipulates that “The Minister may, with the prior consent of the Minister for Public Expenditure and Reform, enter into a contract with one or more than one person for the development, implementation and maintenance of a system ... for the allocation, dissemination and management of postcodes for the purposes of, or relating to, the provision of postal services and the use of the national postcode system by other persons for such other purposes as the Minister considers appropriate”); Italy (see [www.poste.it/postali/cap.shtml](http://www.poste.it/postali/cap.shtml)); and the United Kingdom (see Ofcom, *Postcode Address File – Review*, 7 February 2013; and the online registry found at [www.poweredbypaf.com](http://www.poweredbypaf.com)).
  25. Regulations state that the National Telecommunications and Post Commission (EETT) must provide access to the database at a reasonable cost. They do not stipulate, however, that this be done within a certain time frame. Hellenic Post is in the process of making the database available in electronic form, which will likely make updates faster.
  26. Directive 2000/31/EC *ibid.*
  27. See Art.11-13 of Presidential Decree 131/2003 harmonisation with Directive 2000/31 of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Government Gazette A'116/16.05.2003).
  28. See Art.14 par.1 of Presidential Decree 131/2003.
  29. “Οι φορείς παροχής υπηρεσιών δεν έχουν, για την παροχή υπηρεσιών που αναφέρονται στα **άρθρα 10, 11 και 12** του παρόντος γενική υποχρέωση ελέγχου των πληροφοριών που μεταδίδουν ή αποθηκεύουν ούτε γενική υποχρέωση δραστήριας αναζήτησης γεγονότων ή περιστάσεων που δείχνουν ότι πρόκειται για παράνομες δραστηριότητες.” (Emphasis added), Presidential Decree 131/2003.
  30. See, for example, Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the Protection of consumers in respect of distance contracts (Official Journal L144, 04.06.1997); Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (Official Journal L290, 23.10.1997); Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (Official Journal L171, 07.07.1999); Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (Official Journal L271, 09.10.2002); 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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Official Journal L149, 11.06.2005); Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European

- Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (Official Journal L304, 22.11.2011).
31. The codification of consumer-protection legislation is foreseen in Presidential Decree 116/2014 Organogram of the Ministry of Development and Competitiveness (Government Gazette A'185/03.09.2014), see Art.62 par.3 rec.α, γγ).
  32. See Art.1 par.4 of Law 2251/1994 *ibid.*: “Καταναλωτής [νοείται] κάθε φυσικό ή νομικό πρόσωπο ή ενώσεις προσώπων χωρίς νομική προσωπικότητα για τα οποία προορίζονται τα προϊόντα ή οι υπηρεσίες που προσφέρονται στην αγορά και τα οποία κάνουν χρήση των προϊόντων ή των υπηρεσιών αυτών, εφόσον αποτελούν τον τελικό αποδέκτη τους. Καταναλωτής είναι και: αα) κάθε αποδέκτης διαφημιστικού μηνύματος, ββ) κάθε φυσικό ή νομικό πρόσωπο που εγγυάται υπέρ καταναλωτή, εφόσον δεν ενεργεί στο πλαίσιο της επαγγελματικής ή επιχειρηματικής δραστηριότητας του” (“The consumer is defined as any individual or legal entity or association of individuals who is the intended recipient of goods or services offered on the market and who is the user of those goods or services, when he is the final recipient; the consumer is also any advertising message recipient and any individual or legal entity who acts as a guarantor on behalf of a consumer, when he does not act in a professional or business capacity.”)
  33. See Art.3 rec.1, Art.40 par.1δ and Art. 9α rec.α of Law 2251/1994 *ibid.*: “[Ως] καταναλωτής [ορίζεται] κάθε φυσικό πρόσωπο το οποίο [...] ενεργεί για λόγους οι οποίοι δεν εμπίπτουν στην εμπορική, επιχειρηματική, βιοτεχνική ή ελευθέρια επαγγελματική του δραστηριότητα.”
  34. This definition of consumer was introduced in Art.1 par.4 rec. a of Law 2251/1994 *ibid.* and complemented by Art.1 par.5 of Law 3587/2007 amending and complementing Law 2251/1994 as in force and transposing Directive 2005/29 of the European Parliament and Council (Government Gazette A'152/10.07.2007). This Directive itself recites the narrow definition of consumer, see Art. 2(a) of 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 and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Official Journal L149, 11.06.2005).
  35. See Art.2 and Art.5-8 of Law 2251/1994 *ibid.*, respectively.
  36. See Art.3 and Art.4α-η, Art. 40, and Art.9α of Law 2251/1994 *ibid.*, respectively.
  37. Art. 9 of Law 2251/1994 *ibid.*
  38. For example, professionals who purchase insurance or undertake a loan online, in their professional capacity, are not considered consumers, but may be considered consumers if they make the same transaction offline. Professionals who purchase a durable product (e.g. a printer) online or at a bricks-and-mortar shop in their professional capacity are treated as consumers when they wish to exercise rights stemming from the commercial guarantee the supplier is obliged to provide them. Should they wish to withdraw from the purchase contract, however, they are not treated as consumers.
  39. See paragraph 1 in *Consumer Protection in E-commerce: OECD Recommendation*, *ibid.*: “Consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.”
  40. See paragraph 34 in *Consumer Protection in E-commerce: OECD Recommendation*, *ibid.*: “Businesses should provide consumers with a clear and full statement of the relevant terms and conditions of the transaction.”
  41. This is evident in a number of court decisions that have treated businesses as consumers in their capacity as final recipients of goods or services. See, for example, decision 1343/2012 of the Supreme Court of

- Greece (consumer definition is wide and includes any person who is the final recipient of a product or service, irrespective of whether it is intended for personal or professional use); decision 733/2011 of the Supreme Court of Greece (annulling the decision of a lower Court dismissing a liability for assets destined for professional use); decision 72/2011 of the Court of Appeals of Piraeus (extension of consumer protection to ship owner who agreed maritime insurance); decision 52/2011 of the Court of Appeals of Piraeus (extension of consumer protection to guarantor of third-party-trader debt); decision 118/2010 of the Court of First Instance of Corfu (consumer is the final recipient, irrespective of intended use, and the guarantor for contracts); decision 155/2008 of the Court of Auditors (municipal authorities are considered consumers in terms of protection rights). The fact that certain of these cases were decided by the Supreme Court for Greece shows the law's complexity and the potential costs involved.
42. See in *Consumer Protection in E-commerce: OECD Recommendation*, *ibid.*, p.9: "Recognising the value to governments, businesses and consumers of clear guidance as to the core characteristics of effective consumer protection in e-commerce, which can be supplemented by additional measures for the protection of consumers in e-commerce."
  43. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on Certain aspects of the sale of consumer goods and associated guarantees (Official Journal L171, 07.07.1999).
  44. Law 3043/2002 amended Art.534-561 of the Civil Code. The OECD understands that at the time a committee of experts, including civil-law expert academics, considered this the appropriate vehicle for incorporating the relevant provisions into Greek legislation with minimal intervention.
  45. Law 3857/2007 (Art.6) and Law 3043/2002 (Art.3) amended Art.5 of Law 2251/1994 *ibid.*, which describes the rights and obligations of consumers and suppliers in relation to retail sale of goods and guarantees for such sales.
  46. The OECD understands that this was not the intention of the legislator, but rather a formulation resulting from the fact that C2C transactions at the time of drafting were less common and not projected to increase at the pace they did once facilitated by online transactions.
  47. The OECD team was told about this uncertainty in the market by both consumer-protection associations and the competent authorities. For example, in March 2013, the General Secretariat for Consumer Protection performed a sweep of 13 e-shops selling durable goods online, and found that 55% of them did not explicitly mention the legal guarantee; and where they did, such references were either not made in tandem with the commercial guarantee or were not clear.
  48. This would make use of the discretion allowed pursuant to Art.7 of Directive 1999/44/EC *ibid.*
  49. Article 5 of Law 2251/1994 *ibid.*
  50. See Art.5 par.1 of Law 2251/1994 *ibid.*: "[Π]ρομηθευτής είναι και ο κατασκευαστής καταναλωτικού προϊόντος, ο εισαγωγέας του σε κράτος μέλος της Ευρωπαϊκής Ένωσης (Ε.Ε.), καθώς και κάθε πρόσωπο που παρουσιάζεται ως παραγωγός καταναλωτικού προϊόντος, θέτοντας σε αυτό το όνομα του, το σήμα του ή άλλο διακριτικό σημείο."
  51. See Art.1 par.4 of Law 2251/1994 *ibid.*: "Προμηθευτής, [είναι] κάθε φυσικό ή νομικό πρόσωπο το οποίο, κατά την άσκηση της επαγγελματικής ή επιχειρηματικής δραστηριότητάς του, προμηθεύει προϊόντα ή παρέχει υπηρεσίες στον καταναλωτή. Προμηθευτής νοείται και ο διαφημιζόμενος."
  52. See Art.3 par.2 of Law 2251/1994 *ibid.*: "[Προμηθευτής είναι] κάθε φυσικό πρόσωπο ή κάθε νομικό πρόσωπο, ανεξάρτητα από το εάν διέπεται από το ιδιωτικό ή δημόσιο δίκαιο, το οποίο ενεργεί, ακόμη και μέσω κάθε άλλου προσώπου ενεργούντος εξ ονόματος του ή για λογαριασμό του, για σκοπούς οι οποίοι σχετίζονται με τις εμπορικές, επιχειρηματικές, βιοτεχνικές ή επαγγελματικές δραστηριότητες του."

53. Directive 1999/44/EC *ibid.*
54. See Art.1 par.2 rec.(c) and (d) of Directive 1999/44/EC *ibid.*: “[S]eller shall mean any natural or legal person who, under a contract, sells consumer goods in the course of his trade, business or profession; [whereas] **producer** shall mean the manufacturer of consumer goods, the importer of consumer goods into the territory of the Community or any person purporting to be a producer by placing his name, trade mark or other distinctive sign on the consumer goods.” (Emphasis added.)
55. See further in Section 2.7.
56. Law 2251/1994 *ibid.*
57. See Art.5 par.4 of Law 2251/1994 *ibid.*: “**Σε περίπτωση προμήθειας καινούργιων προϊόντων με μακρά διάρκεια ζωής (διαρκή καταναλωτικά αγαθά), η παροχή γραπτής εγγύησης είναι υποχρεωτική.** Η εγγύηση πρέπει να περιλαμβάνει, με απλή, ευανάγνωστη και κατανοητή διατύπωση στην ελληνική γλώσσα, τουλάχιστον την επωνυμία και τη διεύθυνση του εγγυητή, το προϊόν στο οποίο αναφέρεται η εγγύηση, το ακριβές περιεχόμενο της, τη διάρκεια της και την έκταση της εδαφικής ισχύος της.” (Emphasis added.)
58. See Art.6 of Directive 1999/44/EC *ibid.* on “Guarantees”.
59. See Art.5 par.3 of Law 2251/1994 *ibid.*: “Κατά την πώληση, ο προμηθευτής **οφείλει να ενημερώνει τον καταναλωτή για την πιθανή διάρκεια ζωής του προϊόντος.** Πιθανή διάρκεια ζωής του προϊόντος είναι ο εύλογα αναμενόμενος χρόνος κατά τον οποίο το προϊόν θα μπορεί να χρησιμοποιείται σύμφωνα με τον προορισμό του, έστω και έπειτα από επισκευή ή αντικατάσταση ανταλλακτικών, εφόσπου η φθορά από την τακτική χρήση καταστήσει το προϊόν άχρηστο ή την περαιτέρω χρήση του οικονομικά ασύμφορη.” (Emphasis added.)
60. See Art.5 par.4 of Law 2251/1994 *ibid.*: “Η διάρκεια της εγγύησης πρέπει να είναι **εύλογη σε σχέση με την πιθανή διάρκεια ζωής του προϊόντος.** Ειδικά, για τα προϊόντα τεχνολογίας αιχμής, η διάρκεια της εγγύησης πρέπει να είναι εύλογη σε σχέση με το χρόνο κατά τον οποίο τα προϊόντα αυτά αναμένεται ότι θα παραμένουν σύγχρονα από τεχνολογική άποψη, αν ο χρόνος αυτός είναι συντομότερος από την πιθανή διάρκεια ζωής τους.” (Emphasis added.)
61. See Art.5 par.3 of Law 2251/1994 *ibid.*: “**Κάθε φυσικό ή νομικό πρόσωπο που διαθέτει, στο πλαίσιο της επαγγελματικής, εμπορικής ή επιχειρηματικής δραστηριότητάς του, απευθείας στον καταναλωτή καταναλωτικά προϊόντα, υποχρεούται, με επιμέλεια του και χωρίς καμία επιβάρυνση του καταναλωτή, στην επισκευή του προϊόντος, εντός των ορίων της εγγύησης που παρέχεται γι’ αυτό, συμβατικά ή από το νόμο.**” (Emphasis added.)
62. See, for example, Rec.21 of Directive 1999/44/EC *ibid.*: “[F]or certain categories of goods, it is **current practice for sellers and producers to offer guarantees** on goods against any defect which becomes apparent within a certain period ... [T]his **practice can stimulate competition** ... [W]hile such **guarantees are legitimate marketing tools**, they should not mislead the consumer.” (Emphasis added)
63. See Art.1 par.4 of Law 2251/1994 *ibid.*
64. Art. 85c of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (Official Journal L311, 28.11.2001) as amended by Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products (Official Journal L174, 01.07.2011); Commission Implementing Regulation (EU) No 699/2014 of 24 June 2014 on the design of the common logo to identify persons offering medicinal products for sale at a distance to the public and the technical, electronic and cryptographic requirements for verification of its authenticity (Official Journal L184, 25.06.2014).

65. Relevant laws and regulations were reviewed and assessed by the OECD in *OECD Competition Assessment Reviews: Greece* (OECD Publishing, Paris 2014); see Annex B.2, p.321.
66. *Op. cit.* note 64.
67. Joint Ministerial Decision Γ5(β)/Γ.Π. οικ.20293/2016 designating the competent authority for the accreditation of electronic pharmacies (Government Gazette B'787/23.03.2016).
68. Πανελλήνιος Φαρμακευτικός Σύλλογος (Π.Φ.Σ.).
69. Art.4 of Joint Ministerial Decision Γ5(β)/Γ.Π. οικ.20293/2016, *ibid.* The application needs to include information on the trading name, VAT registration and location of the pharmacy connected to the online store; the date when online operations commence; and the address of the online site, which should display links to and contact details for the PPA and the National Organization of Medicines (Εθνικός Οργανισμός Φαρμάκων, Ε.Ο.Φ.).
70. See Joint Ministerial Decision Γ5(β)/Γ.Π.οικ.82829/2015 regulating the profession of a pharmacist and establishing a pharmacy (Government Gazette B'2330/29.10.2015); and Joint Ministerial Decision Γ5(β)/Γ.Π.οικ. 6915/ 2016 amending and complementing joint ministerial decision Γ5(β)/Γ.Π.οικ.82829/2015 regulating the profession of a pharmacist and establishing a pharmacy (Government Gazette, B'138/29.01.2016).
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