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On Retail Services in the Internal Market

Accompanying document to the Report on Retail Market Monitoring:

"Towards more efficient and fairer retail services in the Internal Market for 2020"

{COM(2010)355 final}

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INTRODUCTION

The retail services sector including e-commerce (referred to henceforth as retail services) has been selected for conducting an in-depth market monitoring exercise, a policy approach introduced by the Single Market Review[1] whose objective is to identify major market malfunctioning at sector level impeding the smooth functioning of the Internal Market. This is because of its economic and social importance (e.g. in terms of GDP and employment), its apparent underperformance in terms of productivity growth and because retail services are key intermediary services in the modern EU economy. Retail services act as a two-way conduit between thousands of product suppliers and millions of final consumers, including the less privileged and vulnerable ones, whether located in inner cities or deprived /isolated rural communities, who need access to a wide choice of affordable necessities for their day-to-day needs. Retail services are a key building block of the European Internal Market since they enable consumers to get access to products from other Member States. Moreover, they are the key link between producers and consumers and the efficiency with which they reconcile these interests has implications for competition, innovation and competitiveness. Retail services also have a major impact on the environment given their direct links to rural and urban development, as users or suppliers of logistics and transport services, as energy users, as producers of packaging waste and as cross-border buyers of products.

These features of the retail sector have clear implications on how this sector should be monitored for policy purposes. The sector's complexity in terms of interconnectivity with other economic agents and activities, as well as the multitude of public interest objectives impacting on and affected by it, require a systemic and holistic approach both in terms of analysis of its performance, and in terms of design of possible policy responses where problems to a smoothly functioning Internal Market are suspected.

To measure performance and identify such problems, the analysis must therefore take a micro-economic approach to take due account of the considerable diversity of strategies of the retail sector across different downstream and upstream markets. The analysis must also evaluate the various contractual relations with wholesalers and suppliers (both within their national markets and across borders) as well as factors in the complex and diverse legislative environment that governs the various dimensions of its activities across the Internal Market. Since it is not feasible to analyse each supply chain for thousands of product lines that are serviced, pertinent examples, especially from the grocery and pharmaceutical sectors, have been looked at in more detail[2].

As regards working methods and data sources, the report draws on extensive research carried out internally, an open stakeholder and Member State consultation[3] and interviews held with Ministries and national stakeholders[4] in a number of Member States during 2009.

1 Commission Staff Working Document on "Implementing the new methodology for product market and sector monitoring" SEC(2007)1517, accompanying the Communication from the Commission on "A single market for 21st century in Europe" – COM(2007)724.

2 The automotive sector is not included in the scope of this exercise.

3 The official period of consultation took place between 08/04/09 and 05/06/09. The total number of replies received was 148, out of which 41 came from the Member States authorities and 107 from stakeholders.

4 In particular, DG Internal Market and Services conducted a number of interviews in the following Member States: Austria, Belgium, France, Germany, Italy, Luxembourg, Netherlands, Poland, Romania, Slovakia, Spain, Sweden and the United Kingdom in June and July 2009.

As regards structure, the Part I of the report gives an overview of the retail sector in Europe. Part II evaluates the performance of the downstream and upstream retail markets. For each market sub-section the main trends and/or key policy-related objectives are first set out. Subsequently, depending on data availability, a comparative review of performance in relation to those policy objectives across the Member States is provided. Finally, for each market a set of economic and regulatory explanatory factors that shed some light on the differing performance levels are presented. Part III provides a set of conclusions.

PART I – OVERVIEW OF THE RETAIL SERVICE SECTOR

1. What do EU retail services consist of?

Retail services are provided to two different kinds of customers i.e. downstream customers who are final consumers of retail products and upstream customers who are suppliers of products. Whilst monitoring the retail service market, one has therefore to take into consideration these two distinct markets i.e. one market where retailers and consumers interact and another market where retailers and suppliers interact.

In the downstream market, the core activity of retailers is to provide consumers with access to a range of products. In addition, retailers can provide commercial communications services to consumers (e.g. associated to loyalty programmes or particular price promotions). Retail service providers also offer advice through staff that is often more pronounced in specialised shops (pharmacy, book shops, electronic products, etc.), especially those of reduced format where personal relations between the seller and the consumer may be more easily established. The service offered by retailers to consumers may also include the possibility to see and sometimes test the product. Furthermore, in the case of distance selling (including e-commerce), as well as, in some instances, in the traditional bricks and mortar form of retail trade, retailers provide a delivery service to their customers. The latter service may be provided by the retailer himself or subcontracted to a third party (e.g. postal/courier companies). Financial services to consumers are also offered by many retailers, mainly in the form of a variety of electronic payment possibilities or, less systematically, in the form of consumer credit. These services are often outsourced to a third party (i.e. financial service providers). Finally, retailers provide after-sales services in the form of servicing warranties, repairs and in some instances waste take-back (e.g. for end-of-life electronic equipment, refillable bottles).

In the upstream market, retailers provide suppliers with access to the consumer market. This access is provided and/or further facilitated through different services whether remunerated or not, depending on the business model involved. To the extent that these services are being provided by the retailer, they would include logistics i.e. transport and stocking (retailers also increasingly integrate the wholesale function), product display (real or virtual depending on the sales channel concerned) and product merchandising which may include different advertising and promotion (commercial communication) activities. The retailer may also offer market research services which aim to provide the supplier with information on the profiles of consumers purchasing his/her product in order to maximise promotional and advertising efficiency[5]. In addition to these services provided to suppliers, retailers have also entered the field of product development and branding with the development of retailers' own labels, known as private labels.

In order to carry out their activities and to provide their services to both consumers and suppliers, retail service companies interact, directly or indirectly, with a multiplicity of business operators[6]. These include real estate operators, property developers, labour services,

5 The market intelligence that suppliers can collect via these channels is extensive. The monitoring of how consumers react to in-store promotions and the testing of differing types of promotions in differing local markets is common. Moreover, through the development of loyalty cards retailers can assist suppliers in targeting promotions to the particular categories of consumers that are of interest to them.

6 On this subject see also COM 2003/747 "The competitiveness of business-related services and their contribution to the performance of European enterprises" and the Staff Working Paper.

media and advertising services, logistics and IT services, public utility services (electricity), financial services, certification and auditing as well as security services. This means that behind the "retailers/suppliers", there is a wide variety of sometimes complex market situations that have to be taken into account in the assessment of the (mal)functioning of the retail service market, especially because they may require equally diverse public policy responses. The quality, efficiency and price of these support services may be a determining factor for the sound performance of the retail market.

2. Retail services in the EU economy

Retail services accounted for 4.2 % of total gross value added in the EU and for 8.4% of the total EU employment[7] (i.e. over 17.4 million people) in 2007. Combining retail and wholesale services, one gets an overview of the distribution sector as whole. Their cumulative share amounts to 8.7% of gross value added in the EU27 and 12.8% of employment. The importance of the retail sector can also be illustrated by comparing it with other service sectors. The retail sector is one of the three largest service sectors in Europe both in terms of value-added and of employment. For example, the construction sector accounted for 6.4% of the total gross value added and 7.5% of employment in 2007 whilst the financial intermediation sector accounted respectively for 5.5% and 2.8%.

There are significant differences between Member States in terms of contributions to the overall EU27 retail value added. In 2007, the lowest retail shares in total gross value added were in Luxembourg (2.9%), Netherlands (3.3%), Finland (3.4%), Denmark (3.5%) and Germany (3.8%), whereas the highest shares were in Latvia (8.0%), Lithuania (6.9%), Slovakia (6.8%), Cyprus (5.9%) and Greece (5.7%). Many Member States had shares that were very close to the EU average: for instance, the share was 4.1% in the Czech Republic and Italy and 4.2% in Belgium and Austria[8] . In 2007, gross value added growth in the retail sector across the EU27 was 1.1%, with large differences between Member States. Some experienced negative growth (- 2.1% in Germany, -8.6% in Greece) while others achieved very high growth rates (15.7% in Romania, 12.1% in Lithuania and 11% in Estonia)[9].

The retail service sector's contribution to overall economic growth also varies greatly across the Member States. In 2005, it ranged from 1% in Italy, approximately 2% in the Netherlands and Denmark, to 7% in Slovakia, Poland, Lithuania and Greece. Some Member States saw their retail sector contributing more to GDP than the EU average (4.7%), namely the UK, Latvia (6%), Estonia, Cyprus, Portugal, and Belgium (5%). New Member States are characterised by a higher level of retail service contribution to growth (6% average for EU10) and a larger retail service share in their GDP (4.7%) than in the EU15.

As to the productivity in the retail services, there are wide differences in terms of productivity levels and growth between the EU Member States. It is however difficult to provide a comprehensive picture of the productivity situation across the EU because comparable and systematic time series of productivity levels are not available. Nevertheless, it can be also observed that a clear catch-up effect has been taking place. In most of the new Member States

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7 Value added data are from Eurostat, National Accounts Statistics, 2007 (share of NACE G52 of total Gross Value Added at basic prices) and for the EU27. Employment data are from EU KLEMS, 2007, and for the EU 25. The EUKLEMS data are not necessarily compatible with the Eurostat data.

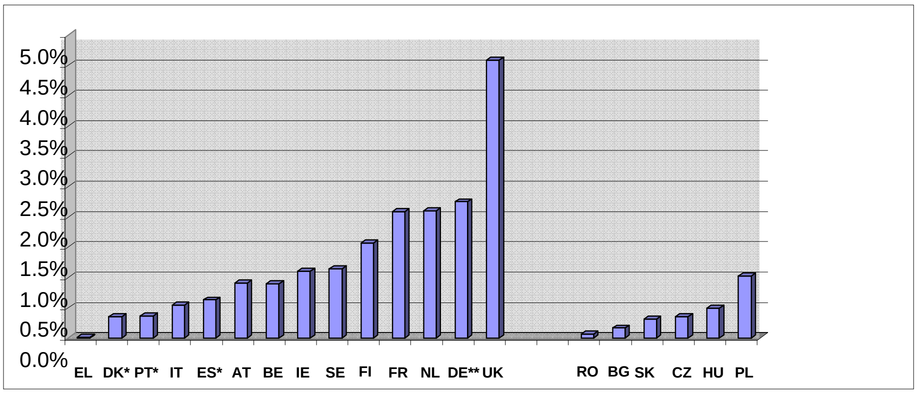
8 Eurostat, national Accounts Statistics, National Accounts per 60 Branches – aggregates at current prices NACE G52 share of Gross Value Added (at basic prices).

9 Eurostat, national account statistics, gross value added, 2007

where productivity levels were lowest, the retail productivity growth was the highest with an annual rate of more than 10%. On the other hand, the Member States with productivity levels above the EU average showed the lowest growth in productivity, in particular Luxembourg, France, Finland, Belgium, Sweden, Ireland, Denmark and the UK,. As regards the comparison of productivity growth between the EU and the US, it is well known that the EU is lagging behind the US. Over the period 1995-2005, productivity in the retail sector has grown more than four times faster in the US (67 %) than in the EU (16%)[10]. However, a large part of this growth differential comes from the productivity gains achieved by the largest American retailer, Wal-Mart.

In terms of share of the different categories of retail service providers, EU grocery sales represent around 50% of retail throughout the EU. In the non-grocery sector, home furniture is the leading category with 11% of total retail sales, followed by health and beauty (including pharmacy) 9% and clothing and footwear 8%[11]. When it comes to e-commerce (see figure 1), although it is the fastest growing segment of the retail market, its share of total retail sales (not just grocery) is still disappointingly small, if not marginal, in most of the Member States. In 2007, only 4 Member States recorded a share of internet sales higher than 2% and the UK was the only Member State where this was approaching a 5% share[12]. For the rest of the Member States for which data is available, there are no noticeable differences between EU15 and EU12. Nevertheless, internet sales are of growing relevance to retailers and their suppliers, in the context of multi-channel retailing (retailing that combines several types of sales channels, for example, physical stores and internet selling, to reach more and different consumers).

Figure 1: internet retailing as a share of total retailing (in 2007)



(* data for 2005, ** data for 2006)
Source: Euromonitor international

3. Recent trends in retail services

Today's retail markets in the EU are characterised by a drive for expansion across national borders, horizontal concentration, vertical integration and diversification. These have become key factors for growth.

10 EU KLEMS
11 Euromonitor International, year: 2007
12 Euromonitor international, year 2007

Expansion across national borders

EU retailers still generate the most significant (although decreasing) share of their sales on their home (i.e. national) markets[13]. Retail markets in many Member States have reached a level of saturation that has made sustained national growth difficult. This situation has created a powerful incentive for retailers to export their successful business models across borders and thereby benefitting from the Internal Market. This is particularly the case with German and French retailers. Similar market saturation partly explains the success of retailers from Belgium and the Netherlands in expanding into other markets. British retailers have been less prone to expand beyond their home market[14]. On the contrary, retailers from the new Member States do not appear to have, at this stage, any significant operations in other Member States, with the exception of one Hungarian grocery retailer. The new Member States have recently been targets for expansion by foreign retailers. In Poland, the Czech Republic, Slovakia, Latvia, Romania and Bulgaria foreign retailers now account for most, if not all, of the top 10 national retailers. In addition, the largest European retailers have also expanded outside the EU in their search for new and less saturated markets[15].

Horizontal concentration

Today's retail markets in the EU are also characterised by a growing importance of large corporations. In most of the mature EU15 retail markets, the 8 biggest companies accounted for between 50% and 80% of the national grocery retail market in 2007 (figure 2). The retail markets for durable goods (electronics and household appliance) within Europe are also characterised by relatively high concentration, with the 5 largest multinational retail operators accounting for one third of the market in 2008[16]. However, a very diverse market structure also exists in this sub-sector across Member States. In the clothing and fashion retail market, large corporations again play a major role, although with even more marked differences among Member States. In the UK and the Nordic countries the combined market share of large clothing retailers (both specialised and non-specialised) was well above 80% in 2007. In contrast, in the Mediterranean countries, this share stood at 40% (falling to even 27% in the case of Italy)[17].

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13 Sainsbury and Morrisson in the United Kingdom and Mercadona in Spain are extreme cases in this respect.

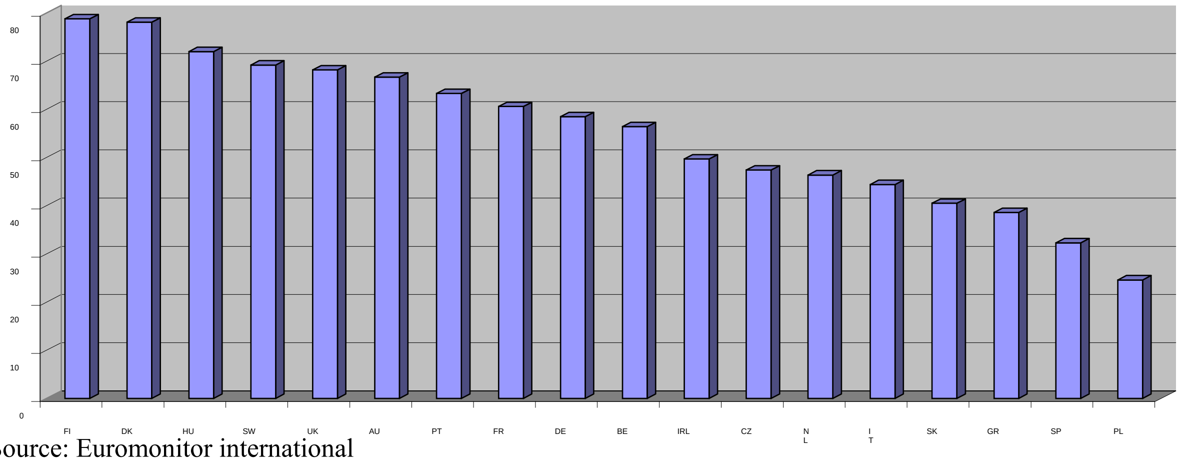
14 apart from Tesco, which is one of the leading global firms, and Marks and Spencer and Kingfisher,

15 Only to mention the 2 largest European international retailers, see the example of Carrefour, now active in Asia and South America and of Tesco in Asia and US.

16 ECORYS-IDEA estimates based on Euromonitor data

17 IFM study

Figure 2: grocery retail market concentration (C8) in 2007



Source: Euromonitor international

The decline of the share of more traditional, small and independent retailers is nevertheless a common phenomenon across the EU and across all sectors of retailing. Depending on the maturity, the cultural or the geographical characteristics of the market, the decline is more or less fast and advanced but in all cases, the market share accounted for by small independent retailers is shrinking. A combination of factors can explain this trend, but a main explanation is that small independent non-specialised retailers that cannot benefit from the cost advantage of a centralised purchasing system will typically be driven out of the market by their larger more price competitive rivals that can do so[18]. This is particularly pronounced in the grocery sector.

However, the picture becomes less clear when looking at the number of small retailers. In most of the EU Member States[19] (except in Estonia, Ireland, Spain, Cyprus, Poland, Romania and Slovenia) the total number of retail outlets employing a single person has increased in recent years. In the EU as a whole, the number of such outlets increased from 1,990,000 in 2004 to 2,046,058 in 2007. For the specialised food-sector, the picture is very different. In most of the Member States (except in Germany, France, Luxembourg and Portugal), the number of specialised food retail outlets employing a single person has decreased in recent years. In the EU as a whole[20], these decreased from 249,173 in 2004 to 236,885 in 2007, i.e. by almost 5%. As a comparison, the total number of specialised food retail outlets across all employment size classes in the EU[21] has also decreased from 503,129 in 2004 to 487,272 in 2007, i.e. by 3.2%.

Vertical integration

Another key characteristic of the larger retail business models today is their increasing tendency to be vertically integrated albeit in different manners.

First, there can be integration of the wholesale function into the retail business, enabling retailers to benefit from efficiencies associated with centralised distribution and to enjoy

18 An exception to this trend are small shops in niche markets such as high quality (e.g. Hi-Fi, fashion) or specialized (e.g. books, wooden toys).

19 Eurostat, Structural Business Statistics (SBS), Distributive trade broken down by employment size classes.

20 Excluding Bulgaria, Ireland, Malta and Slovakia because of missing data

21 Excluding Bulgaria and Malta because of missing data

significant increased economies of scale in purchasing. The increased centralised purchasing resulting from vertical integration into wholesale has, in turn, enabled a gradual internationalisation of supply sources. In the non-grocery market, centralised purchasing has allowed retailers to reap the full benefit of the globalisation process and to source an increasingly large amount of consumer goods from China, India and other low cost countries in South East Asia. Globalisation of sourcing in order to reduce product costs has been a strategic competitive factor in the retail business over the last decade[22]. Within the grocery sector, to further leverage bargaining power against multinational suppliers, several EU retailers have created international buying alliances**.** The affiliates of such alliances can include large multi-EU market or smaller national and regional retailers. The aim is again to achieve economies of scale in purchasing through increased buying power by pooling together both expertise and volume across different Member States. Many of these buying alliances also aim at developing, sourcing and managing private labels on a larger scale. Furthermore, these groups can also work as a platform for exchange of management expertise (especially in the area of suppliers' listing and logistics) or even to undertake joint investments, although this is still the exception. Currently, there are 4 major buying groups at the European level: AMS[23], EMD[24], COOPERNIC[25], Agenor/Alidis[26].

Second, retailers have also integrated vertically up the supply chain which allows them to respond more rapidly to changes in consumer demand. Therefore, they seek increased quality control over the supply chain. This development has become common in certain non-grocery retail markets notably in the "off the peg" clothing retail sector where retailers become involved in design (or vice versa, manufacturers have integrated forwards into the retail service function). In grocery retail, this integration upwards in the supply chain is reflected in the development of private label brands. Private labels started in the 1970s and have gradually grown in importance intoone of the dominant features of the EU retail market. Private labels mean that retailers contract manufacturers to produce goods that are sold under the retailers' brand name or as a white label (typically “bargain price”) product. Many, but not all, private labels are positioned as lower cost alternatives to national or international branded products. Private label products were priced on average 31% lower than their brand manufacturer's counterparts in 2005[27]. These competitive pricing and quality strategies have allowed private labels in many EU markets to grow rapidly to the extent that today they represent an industry worth more than €100 billion[28]. Such growth is attributable to two main factors. First, the growth of hard discounters has meant an increase in the number of store outlets focussing on private labels and has further incited the development of discount private label products by competing traditional retailers. Second, increasing qualitative demands from consumers are encouraging the development of innovation in qualitatively differentiated private label offerings. Most retailers have started to develop (e.g. Marks and Spencer in the UK or

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22 This is illustrated by the crisis faced by Marks and Spencer in early 2000 mainly because of its failure to shift its sourcing outside its traditional European boundaries. Another illustration was provided in a study carried out in 2005 for the Commission by the Institut Français de la Mode (IFM), where a strong correlation was identified between the market share of large fashion retailers on the one hand and the import penetration of clothing from non EU origin on the other.

23 With shareholdings of Ahold (NL), Booker (UK), Dansk supermarket (DK), Hagar (IC), Elornos (GR), ICA (SW), Jeronimo Martins (PT), Kesko (FI), Migros (CH) WM Morrison (UK), Superquinn (IRL), Esselunga (IT), Delhaize (BE), Système U (FR), Uniarme (PT)

24 With a much broader membership of more than 1000 smaller retail chain across 22 European countries

25 Set up as a cooperative with membership of Colruyt (B), CONAD(IT), COOP (CH), E Leclerc (F) and Rewe (D)

26 With shareholdings of Eroski (ES), Edeka (D) and ITM (FR)

27 "The power of private label 2005", a review of growth trends around the world. AC Nielsen 2005

28 Idem

Mercadona in Spain did so from the outset) specific product lines to cater for new consumer segments such as products focusing on gastronomic quality (delicatessen, regional specialities and prepared food), health (low fat), environment (organic, low carbon) or social values (fair trade). Retail brands have also increasingly become vehicles for product innovation as well as a means for retailers to control quality levels of products directly and therefore also their product liability obligations, which underline the strength of their respective brands.

Diversification

Another expected future tendency is increased diversification of formats by retailers in order to remain competitive. This is noticeable in the grocery-sector where the one-stop shop multi-line market is gradually becoming saturated in mature retail markets in the EU, in particular in the EU15. This is illustrated by the fact that the hypermarket format, which has been the spearhead of multi-line retailing in certain large EU15 Member States, is now declining in those same markets, whilst in the new Member States, where it is novel this remains one of the leading formats in terms of growth potential. In addition, the multi-line market with inter-brand horizontal competition is characterised by a process of gradual "commoditisation"[29] that has been accelerated by the hard discount format. This phenomenon creates downward competitive pressure on prices and therefore on retailers' margins. Such pressure is also transmitted to the supply chain and to factors of production, including human resources.

The saturation of the multi-line grocery market coupled with the commoditisation phenomenon had created a strong incentive for retailers in this sector to diversify their business so as to seek more lucrative niches. This diversification takes different forms with the most significant being: 1) Diversification of fasciae: retailers launch fasciae to respond to specific consumer needs. Traditional multi-line retailers have for instance launched specific hard discount fasciae to compete with pure player hard discounters; 2) Diversification of products: retailers segment their offer within the same fascia. The broadening of the private label offer is an illustration of this phenomenon; 3) Diversification towards the provision of new services: several leading retailers have entered in the provision of totally new services such as financial services or mobile phone services or even energy or package holidays.

Finally, sustainability issues are likely to shape tomorrow's retail sector. The growing number of environmentally and socially conscious consumers are placing new demands on sustainable/ethical retail services (retailers and their suppliers). On the other hand, some retailers and their suppliers see this as a means of keeping ahead of competition by extending quality control across supply chains in order to react quickly to problems which are becoming more important given the increasing length of supply chains. Sustainability issues are likely to influence the retail sector in a significant way, from energy consumption to packaging, from transport and logistics to supply chain management through to the use of certification and pricing strategies.

These trends characterise the modern retail landscape today. They have an impact throughout the downstream and upstream markets and affect the different players throughout the supply chains as will be seen in the following sections of part II of this staff working paper.

[29] i.e. a change in the consumer behaviour such that they treat all goods in particular categories whether branded or not as basic commodities i.e. products that are differentiated only by their price.

PART II - PERFORMANCE ASSESSMENT AND EXPLANATORY FACTORS

1. The downstream consumer market

In the downstream retail market, retailers offer consumers access to a range of products. First, retailers do this by informing consumers through different commercial communications about their offers. This information, although not impartial, can empower the consumer into making informed choices as to which retail service to use. Second, retailers give access to products and services of different variety, quality and affordability either through physical retail outlets or virtual ones or a combination of both. Third, the service provided to the consumer includes other elements such as home delivery, financing or after-sales services.

In principle, retailers' strategies as regards the services and products offered to consumers should meet the consumers' needs in terms of accessibility including accessibility to a choice of retailers and affordability. Consumer surveys[30], including the one for Belgium referred to in figure 3 below, outline the key criteria impacting on consumers' decisions to shop in a given outlet which, in addition to price, also include geographic proximity, variety and quality of products offered. Therefore, in order to comply with consumers' needs, retail services should be performing on two main dimensions: accessibility and affordability.

Figure 3 Choice of retail outlet

Source: CRIOC Belgique

Retailers' aim to reach as many consumers as possible will lead them to open their outlets in areas where there is a market need or to expand the number of profitable outlets, including in other Member States. However, in some cases, the normal market behaviour of retailers can lead to certain deficiencies in terms of accessibility and affordability due to, inter alia, clustering. On the other hand, retailers state that their strategies are often restricted by the regulatory framework both at national level and at cross-border level, which negatively impacts on accessibility and affordability.

The following analysis therefore seeks to evaluate retailers' performances on the downstream market across different Member States by focussing on two main elements: accessibility to different retail outlets/formats and the choice and variety of products and affordability of products and services. It will then analyse to what extent retailers' establishment, pricing and other relevant strategies across Member States' markets including the relevant regulatory framework impact on accessibility and affordability.

30 For France: UFC-Que choisir d'après CREDOC, enquête Commerce juin 2005. For Germany: "Caractéristiques essentielles et politiques de développement du commerce de détail dans les pays de l'Union Européenne", French Presidency conference on 23-24 October 2008.

1.1 Differences of accessibility and affordability within the Internal Market

1.1.1 Differences of accessibility across Member States

Accessibility to retail services consists of different components which do not only include the geographical proximity of the retail offer or the existence of alternative non-physical access to retail services. They also cover the diversity of the offer in terms of the type of retail service, the banner of the retailer or the choice and quality of the offered products and services.

Accessibility in terms of geographic proximity

As shown by figure 3 above, the geographical proximity of a retail shop has become a significant and even a decisive criterion in terms of consumers' choice of shops over the years. Moreover, results of a recent survey show that even in times of an economic crisis, 38% of consumers identify the location of the outlet (either close to the residence or to the office) as the most important criterion, followed by price (21%), variety (12%) and quality of products[31].

Proximity is therefore a key performance criterion but it is rather difficult to measure. The most precise way of measuring geographical proximity would be to compare the location of different types of shops with the location of the population in a given area. Such systematic assessment of geographical proximity is not widespread across Member States, even if there are a few examples of this type of mapping in certain Member States[32]. This is why alternative indicators have to be taken into account in trying to assess proximity of retail services.

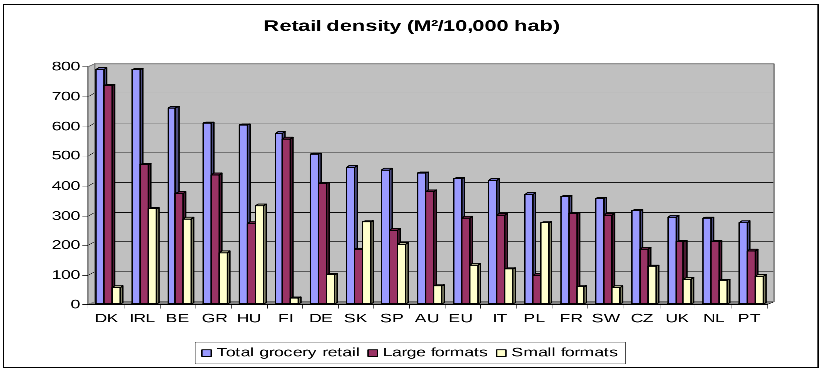
One such indicator is the retail density, which measures the amount of square metres of retail outlet available per inhabitant. It assumes that the higher the density, the higher the competition and therefore more retail outlets for consumers. However, this measure has its limitations because it only includes the total surface of shops per capita and not the number of outlets or their location. A high density may therefore reflect a high level of large stores concentrated in the major urban areas. In addition, this measurement does not take into account popularity of street markets or farm shops, which are channels of sales of food products in some Member States[33]. In spite of these limitations, the comparison of the retail density between Member States provides a picture of the differing retail landscape across the EU. Figure 4 below shows data for large and small formats in the grocery sector as a whole. First, the magnitude of retail density varies greatly between Member States. Second, it is interesting to note that retail density is not linked to population density. Some Member States with high population density (Belgium, Germany) have a very high retail density while this is not the case for others (the Netherlands, UK). This provides a good example of the difference in average proximity of retail outlets, pervasive in Belgium, (very high retail m² per km²) and less accessible in the UK or the Netherlands.

[31] CRIOC 2009 Report

[32] See for example the maps provided by the French National Institute for Statistics (INSEE) on a regional basis.

[33] There are few statistics about ambulant services, but it is estimated that more than one million persons were active in mobile trade in Europe in 2005, "Le commerce en France", édition 2005/2006, INSEE.

Figure 4 Retail density (square metres per 10'000 inhabitants) (2005)



Source: Euromonitor

Another possible measurement is the relationship between the number of large shops relative to the number of small ones. This can provide some further insight into the question of proximity, if it is assumed that a relation between the size of the outlet and its geographic proximity for consumers exists. By assuming that smaller outlets (employing 1-9 persons) provide a better proximity service than larger ones (employing more than 9 persons), the evolution of small shops' share within the EU during the last years can be interpreted as the evolution of proximity of retail services. One needs to be careful though as regards using the number of employees as a proxy to establish whether these shops are really small for the purposes of measuring proximity. Some shops might employ up to 9 persons and still be relatively large with a great catchment area. The format of the grocery outlet would therefore need to be verified if this measure is to be used.

The total number of retail outlets employing a single person has increased in recent years in most of the EU Member States (except in Estonia Ireland, Spain, Cyprus, Poland, Romania and Slovenia) [34]. In the EU as a whole (excluding Malta), these outlets have increased by 1% between 2004 and 2007. On the other hand, those employing 2-9 persons have decreased by 0.9%. In the category employing 10-19 persons, 20-49 persons and 50-249 persons, the total number of retail shops in the EU[35] increased by 6.9 %, 13.1 % and 12 % respectively over the same period.

It is particularly important to look at the evolution of the number of food outlets given their importance in selling products of first necessity. Here the picture is different. In the EU as a whole[36], the number of food outlets employing a single person decreased by almost 5% from 2004 to 2007[37] and the number of those employing 2-9 persons decreased by 4% in the period between 2003-2007[38]. On the other hand, the number of food shops employing 10-19 persons, 20-49 persons and 50-249 persons in the EU increased by 6.3%, 3.4% and 8.7%[39] respectively in the period between 2004-2007. This suggests decreasing accessibility.

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34 Eurostat, Structural Business Statistics (SBS), Distributive trade broken down by employment size classes.

35 Excluding Malta and, for the category employing between 50-249 persons, also excluding Ireland, Lithuania and Slovakia

36 Excluding Bulgaria, Ireland, Malta and Slovakia because of missing data

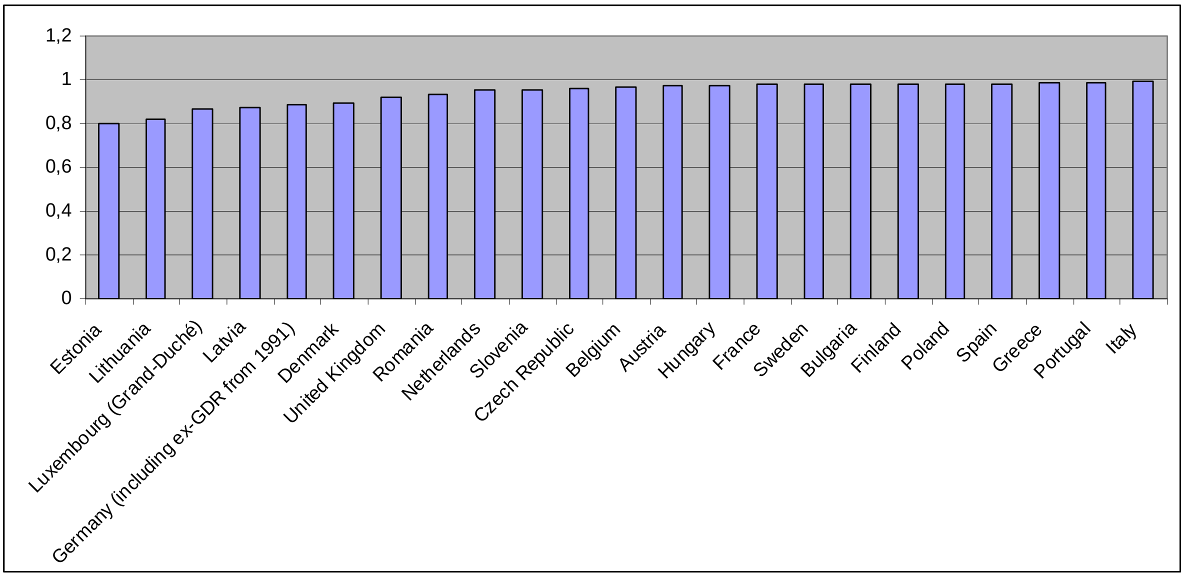
37 Depending on data availability the reference period is either 2003-2007 or 2004-2007

38 Excluding Malta and Ireland

39 Excluding Ireland, Greece, Italy, Cyprus, Malta, Slovakia, Czech Republic and Portugal

Furthermore, there are significant differences in the number and shares of smaller food outlets between Member States. For example, contrary to the general trend in the EU as a whole, the number of food outlets employing a single person actually increased in Austria, Belgium, Czech Republic, France, Germany, Latvia, Luxembourg, the Netherlands and Portugal in the period 2003 to 2007. Similarly, the number of those employing 2-9 persons increased in Belgium, Germany, Greece, Spain, France, Italy, Latvia, Romania, Slovakia, Finland and Sweden. As to their share of total number of food shops, the share of those employing a single person varied between 11% (Estonia) and 82% (Portugal) while the share of those employing 2-9 persons was between 17% (Portugal) and 72% (Netherlands) in 2007. Finally, the share of shops employing 1-9 persons was smallest in Estonia (80%) and highest in Italy (99.2) (see figure 5).

Figure 5: share of small food shops (1 to 9 persons employed) out of total food shops



Eurostat, Structural Business Statistics, 2007

As stated above, taking shop size as a measure of proximity, the assumption is that smaller shops mean better geographical proximity. On this basis, it seems that there has been a deterioration of accessibility for EU citizens to food shops in general, although differences between Member States should not be underestimated. However, this measure equally has its limitations given that the link between the size of the shop and geographic proximity is not clear cut and that the measure does not say anything about the location of the retail outlets. For example, in terms of accessibility, big formats located on the periphery of cities but with efficient public transport, infrastructures and parking space might be better for people living in the suburbs than smaller outlets located in the city centres with limited public transport modes, traffic congestion or limited parking space.

Geographical proximity plays also a particularly important role for the pharmacy retail sub-sector. In this case, available proximity measures either calculate the number of pharmacies per capita or, given differences in population density, the number of pharmacies per (100) square kilometres. The latter is a better indicator of the average distance to a pharmacy. According to this indicator[40] Malta, Belgium, Greece, Germany, Italy, the UK, Cyprus and

[40] Own calculations based on Eurostat geographic figures, information on the number of pharmacies provided by Member States at Commission services request and the publication "a picture is worth a thousand words", Valencian pharmacists order.

the Netherlands would have the best accessibility while Sweden, Finland, Denmark, Estonia, Slovenia, Latvia, Austria and Romania would have the worst. However, this indicator favours Member States with high population densities.

Finally, increasing geographic proximity may also have environmental benefits and give rise to more balanced urban centre and periphery development[41]. In the UK, for instance; it has been estimated that consumer car-food-shopping would contribute 21% of total CO2 arising from food transport. In France it has been shown that shopping in large retail facilities located in peri-urban locations increases transport related CO2 emissions fourfold compared with purchases from local supermarkets.

Influencing accessibility through opening hours

In addition to the location, shop size and structure, consumers' accessibility to a retail outlet and actual choice of alternatives can be influenced by opening hours. In large urban localities, social and cultural changes in working and living conditions, extended working hours, both adults (parents) in a household working and, large distances to shopping centres situated out of town, make late night opening stores attractive to larger numbers of the working population. It follows that for such citizens access to late night opening shops for so-called "top up purchases" becomes increasingly important as regards their perception of the accessibility of retail services. This will be particularly the case for the grocery retail segment.

Alternative forms of retail improving accessibility

The development of distance selling, including e-commerce, could counter the risk of reduced geographical proximity and choice of retailers by taking the retail service to the customer's door. However, as seen in part I, the potential for e-commerce, which is the most popular way of distance selling[42], still remains to be exploited. According to a 2009 survey[43], 37% of consumers in the EU have bought goods or ordered services over the internet over the last 12 months. The majority conducted Internet purchases from national sellers (34%) and a minority shopped from sellers in other EU countries (8%) or non-EU sellers (4%. The proportion of population who shopped online varied significantly between the Member States. For example, in the UK, 66% of respondents shopped online, while in Romania only 2% did so, over the last 12 months. As to retailers, 51% of retailers in the EU sold goods via the Internet in 2008[44]. In addition, the growth potential of the Member States' markets varies and can be illustrated according to the following typology[45]: a mature market in Northern Europe, including the United Kingdom, Germany, and the Nordic countries, where between 60% and 80% of Internet users are online purchasers; a growth market in France, Italy and Spain, where the number of online purchasers is lower compared to the number of internet users and the number of new online purchasers is growing fast; an emerging market in Eastern Europe, where the level of development of online purchasing is lowest and still very dependant on the level of accessibility to the Internet.

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41 "Caractéristiques essentielles et politiques de développement du commerce de détail dans les pays de l'Union Européenne", French Presidency conference on 23-24 October 2008.

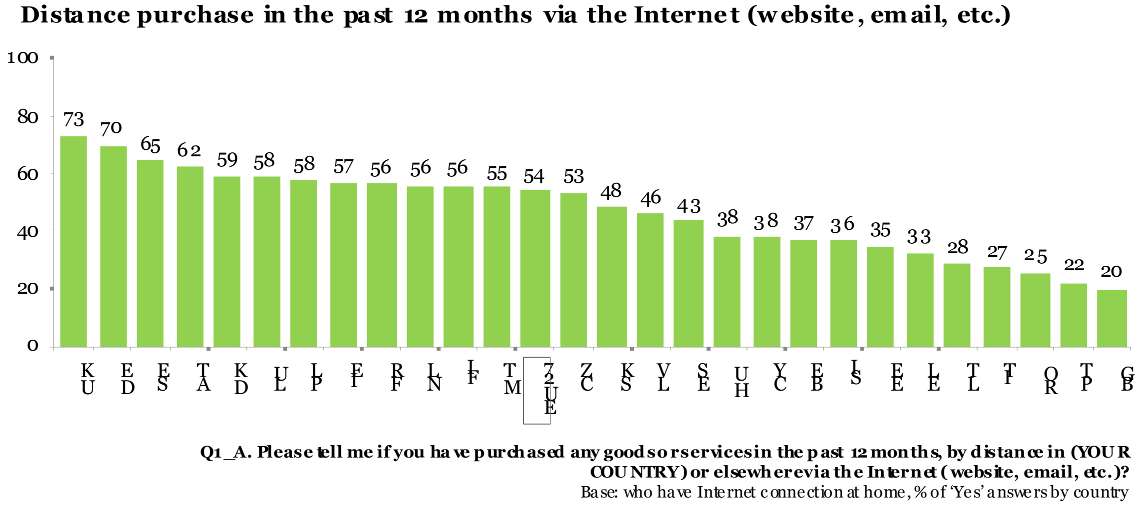
42 51% of retailers selling through the internet compare to 30% that sell through the post, 21% through representatives and 17% through telesales; Commission's Consumer Scoreboard (January 2009)

43 Eurostat Industry Trade Services 46/2009

44 Commission's Consumer Scoreboard (January 2009)

45 ACSEL: 'Europe, An opportunity for e-Commerce' (2008).

Figure 6: Distance purchase in the past 12 months via Internet



Source: Flash Eurobarometer 282, Attitudes towards cross-border sales and consumer protection, 2009

Increased online shopping – including e-grocery home delivery - might also have positive environmental impacts. E-commerce is often considered to be another way of reducing the environmental costs generated by transportation of consumer products. For example, a recent US study[46] has shown that e-commerce of electronic products had about 30% lower energy consumption and CO_2 emissions compared to traditional retail.

Accessibility to different retail formats, retailers and choice and variety of products

In addition to proximity, accessibility also includes other elements such as access to different types of the retail service, to a choice of different retailers and to greater choice and variety of products. Different formats provide different combinations of range of products, services, price etc. For example, hypermarkets are particularly popular in France and in the United Kingdom, whilst in other EU15 Member States the supermarket format is dominant. In addition, there is a strong hard- discounter presence in Germany. By contrast, in the EU12, small formats are still the main channel of grocery sales, although their share of the market has been falling fast due to the entry of the larger retail business models into these markets. These differences indicate that as the larger retail model develops in grocery retailing it tends to displace small format retailing and may therefore reduce geographic accessibility to the extent that small stores can locate more closely to the local customer base.

Surveys indicate that consumers in the EU27 are in general satisfied with the choice of products, which reflects the constant growth in the average number of product references available in retail outlets. In the modern retail business model based on the "one-stop-shop concept", hypermarkets may have up to 50,000 referenced products on sale[47]. Other retailers may provide less choice and focus their services on another component of consumer demand, e.g. low price (hard discount), organic products, home delivery, personalised service etc.

46 'Life Cycle Comparison of Traditional Retail and E-commerce Logistics for Electronic Products: A case study of buy.com', Green Design Institute, Carnegie Mellon University, December 2008.

47 Note that in Germany alone, there are over 950.000 referenced retail products (source, HDE, German Retail Federation study "Some facts about the bargaining power of commerce and industry", 2010).

However, recent surveys[48] suggest that consumers who are generally satisfied with product accessibility are less satisfied with the accessibility to products meeting specific ethical or environmental criteria. This is important given the increasing trend towards sustainable consumption patterns.

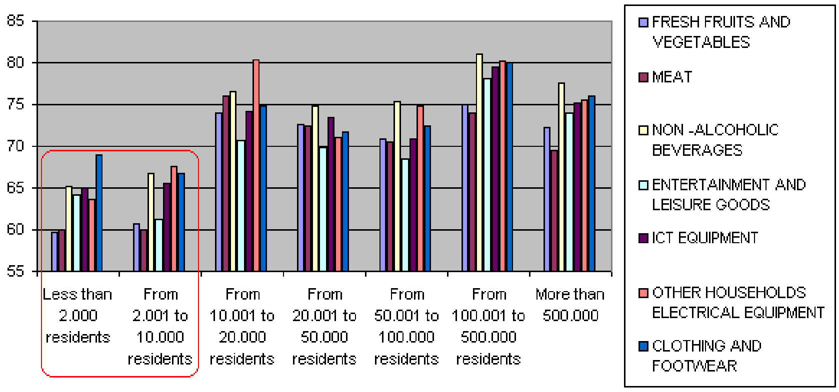
Moreover, the decline of certain forms of retail, such as ambulant or street markets can also have a negative impact on the choice of products. As stated before, these markets play an important role in terms of accessibility but they can also improve the variety of the products offered (e.g. by offering regional products or products which may not be provided on a regular basis in permanent shops) and may better meet local demand.

Some consumer groups more exposed to accessibility issues

In order to get a complete picture of accessibility, it is also interesting to look at consumers' perception on their choice of retailers. In a recent consumer survey, consumers were asked whether "*they had a wide enough choice of retailers that they could purchase from conveniently"*[49]. Depending on what the consumers understood as "conveniently", they might have answered for example on the basis of the following elements: they have easy access to shops because they are located in the neighbourhood or because retailers provided for transport, or that they can afford buying goods in the shops they have in mind, or that there is a parking place, wide choice, good quality of products etc.

Figure 7 below shows that consumer satisfaction concerning the choice of retailers was lowest amongst people living in small towns (with populations of less than 10,000), especially for fresh fruits and vegetables as well as meat.

Figure 7 Consumer satisfaction of choice of retailers by consumers' locality



Source: IPSOS Consumer Satisfaction Survey, 2008 [% share of consumers satisfied amongst all respondents]

As regards vulnerable consumers, given that 22% of the EU27 population live in sparsely populated areas (less than 100 inhabitants / km2) and 52% of these are professionally inactive (retired, unemployed, etc)[50], accessibility of retail services for this category of consumers is clearly not a marginal issue. Differences between the Member States are also significant.

[48] IPSOS Consumer Satisfaction Survey for the European Commission, 2008
[49] IPSOS Consumer Satisfaction Survey, for the European Commission, 2008
[50] Eurostat

Finally, 17% of the EU27 population live at risk of poverty and 9% of EU citizens cannot afford to own a car, (2% in Cyprus and Luxembourg to 56% of households in Romania[51]), which highlights even more the importance of the issue of proximity. It can also be expected that persons with physical disabilities[52] will also suffer significantly where there are no, or a limited number, of shops and no easily accessible distance selling services. In addition, Member States have also acknowledged the importance of paying particular attention to proximity commerce particularly for necessity products (grocery and pharmacy) in the light of ageing of the population (17% of the EU27 population are people aged of 64 or more[53]).

1.1.2. Differences of affordability across Member States

Affordability is naturally a key factor for all consumers and across all retailing activities but it is particularly important for vulnerable consumers when seeking to meet their day-to-day requirements for necessities. Affordability of retail services is best measured by retail prices, which will be analysed by looking at price inflation within the EU and price level differences across Member States, compared to the level and dynamics of per capita income in different EU countries.

Price inflation in the EU

At the aggregate level (i.e. in terms of price inflation of retail goods in general), it should be noted that retail consumer prices (grocery, clothing, and recreational goods) in the EU have in general been increasing below the base-line inflation rate over the last twelve years. The only exception to this trend, and only for the period 2006-2008, was the grocery sector where, after a decade of oscillating around base-line inflation rates, prices went up by 6.5% in 2008 in annual real terms as a result of the commodity price hike in 2007.

Price level differences across Member States

Price Level Indices[54] for the EU27 show a large degree of variation between individual Member States for the following product markets: food and non-alcoholic beverages, clothing, footwear and consumer electronics (representing on average respectively 18%, 4%, 1% and 2 % of household expenditure). Not surprisingly, in general, prices tend to be highest in the Nordic Member States followed by the Southern Member States and lowest in some of the new Member States[55]. However, looking at Member States with comparable purchasing power, prices in some Member States are clearly beyond or below EU average price levels. Although different objective reasons such as consumer preferences, demand elasticity or marketing strategies may explain such differentiation, it can also be a result of Internal Market malfunctioning.

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[51] Eurostat Living Conditions in the EU, 77/2009

[52] Furthermore, the accessibility of the outlet itself for persons with disabilities remains a problem. For example, persons using wheel chairs cannot often enter shops or shopping cars for persons with reduced mobility are not available. Persons with sensory disabilities also experience problems because of the lack of appropriate information about products and outlets.

[53] Eurostat Demography Statistics 2008

[54] Eurostat, providing a comparison of a countries' price level with respect to the European Union average.

[55] The variation coefficients within the EU27 are 19.3 for food and non-alcoholic beverages, 10.2 for clothing, 11 for footwear and 8 for consumer electronics.

For food and non-alcoholic beverages, in 2008, prices were highest in Denmark (147 % of the EU average) and lowest in Bulgaria (67% of the EU average). From the EU15, only the Netherlands (88 %), Spain (94%) and Portugal (86%)[56] have prices levels below the EU average. The difference in price levels is particularly striking when comparing neighbouring Member States with similar income levels. For instance, in Belgium price levels are at 113% of the EU average, whereas in the Netherlands prices are at 88% of the EU average (Belgian prices are therefore on average 28.4% higher than in the Netherlands). Similarly, prices in Germany are 106% of the EU average while in Italy these are at 115%. Also among the new Member States some anomalies can be observed. For instance, in the Czech Republic, which has a significantly higher per capita income than Latvia, price levels are at 82% of the EU average, whereas in Latvia price levels are at 85% of the EU average.

Interestingly, for clothing there is not such a clear price difference between the EU15 and the EU12. For example, prices in Ireland (91%), France (95%) and the UK (83%) are clearly below the EU average, whereas prices in the Czech Republic (113%) and Slovakia (112%) are clearly higher than the EU average. A similar pattern can be observed for footwear. Some EU15 Member States are clearly below the EU average, such as Ireland (95%), France (90%) and the UK (86%), whereas some new Member States are clearly above it, such as Estonia (119%). These are counter-intuitive findings given the negative correlation with real income levels.

For consumer electronics, prices are lowest in the UK (86% of the EU average) and highest in Malta (126% of the EU average). Almost no difference in prices can be observed between the EU15 and the EU12. Interestingly, only in the UK, Estonia, Latvia and Bulgaria are prices below the EU average, which is pulled down in particular by the UK. All other Member States have prices above the EU average.

On the basis of evidence from two Member States, it can be observed that retail prices for identical products may even vary across outlets of the same retail group within a given country, depending on the level of local retail competition[57], consumer income or preferences.

1.2. Explanatory factors: strategies of retailers within the Internal Market and the regulatory framework

The previous section suggests that EU citizens' access to affordable retail services varies between Member States or even between regions and that those consumers in remote areas with relatively low incomes and limited means of mobility could be suffering from lower levels of accessibility and affordability to grocery or other retail services. A number of reasons could explain this phenomenon. This analysis will focus on the reasons which may derive from retailers’ strategies and from the fact that markets may not be functioning optimally.

The analysis will focus on 1) establishment strategies of retailers which cover the establishment of physical or online sales points but also the development of networks, 2) their pricing strategies including the use of sales promotions, and 3) their service strategies which concern other aspects such as the range of the offered products in terms of variety and quality, opening hours, commercial communications, product information, personalised services, etc.

[56] Eurostat: Price levels of consumer goods and services June 2009

[57] See section 1.2.2.

In addition, the relevant regulatory framework which is likely to have an impact on these different strategies/retailers' performance is also examined.

1.2.1. Establishment strategies and different rules affecting them

Maximisation of "foot flow"

The starting point for the analysis is that retail operators will seek to maximise profitable sales. In the bricks and mortar segment, retailers aim to establish or rent outlets where there are a relatively high number of potential customers, often referred to as "foot flow". Indeed, retailers tend to establish near other retailers so as to benefit from existing foot flow and to attract additional consumers by increasing the offer in a given area. There are thus positive spill-over effects for retailers in being located in 'commercial' clusters which conversely can drain retail services from less attractive areas.

The size and format of retailers also play a role in terms of establishment strategies. As far as large retail groups operating differing formats and sizes of outlets are concerned, priority locations can be quite varied and their choices vary according to the maturity of the local market. In addition, the fact they can attract customers through commercial communication campaigns to a larger degree than their smaller independent competitors also gives them relatively more flexibility. At an early stage of retail market development, large supermarkets, hypermarkets or specialised stores will tend to cluster in peri-urban locations that benefit from comparatively lower rents/costs per square metre vis-à-vis city centres. These will offer greater surfaces than city centre locations and will typically be developed as dedicated shopping areas, easily reached by car, i.e. within the proximity of highways and served by large car parks. Once growth potential in the peri-urban markets begins to be exhausted, large retailers start to re-cluster in more central urban locations with smaller formats or may even consider less populated suburban areas.

Concerning the hard discount business model with its smaller formats and lean structure, it can accommodate smaller population density and can be found equally in urban and suburban areas. In contrast, medium sized retail chains tend to be more suburban or rural-based with a strong emphasis on the idea of "neighbourhood stores"**.** Small individual outlets or small local chains are found both in large residential suburban areas and in small villages. However they will have more difficulty to survive in rural areas or run down suburban or even deprived inner city areas with diminishing or ageing populations or with increasing proportions of working residents commuting to local towns and cities. As regards street markets, which play an important role in terms of accessibility and affordability, such ambulant retailers seek to work in city centres or in villages with sufficient population. In order to be viable they need to supply a number of street markets each week. They may also cover local markets in neighbouring Member States when operating in cross-border regions.

In order to have sufficient scale to be viable retailers will actually seek to establish a network of shops. Often this means a multiplication of sales points which can also happen through establishment of outlets in other Member States. The multiplication of outlets can lead to increased competition and therefore result in better accessibility and affordability for consumers.

In addition, part of the retailers' establishment strategies (both in the bricks and mortar segment and on-line) relate to the constitution of networks. Except for certain niche markets, the capacity of retailers to organise themselves into networks of outlets rapidly and at an affordable cost is essential to attain the minimum scale to make the relevant business model viable.

Finally, retailers' establishment strategies are clearly influenced by the conditions in local commercial property markets. While these markets typically reflect purely local conditions, in certain instances this may not be the case. With the participation of global capital, "standardised" commercial development projects providing large retail sites are emerging. In these projects, the profitability of properties must be significant and indeed generate attractive yields wherever the site is located. This global convergence would presumably impact on rental/acquisition costs and choice of location for development projects. The rent rates can affect the types of retail outlets that can establish there. In particular, independent food shops may find the rent levels too high to establish in such areas (such as butchers or bakers) and therefore become excluded from such prime sites. For further details please see the section on commercial property markets below.

Strategies in the e-commerce segment

In the e-commerce segment, retailers either operate as pure on-line players or operate bricks and mortar shops combined with on-line sales (e.g. on-line grocery services are primarily offered by existing large-scale off-line operators). Multi-channel strategies are also of growing relevance to retailers in non-grocery products as they can enable them to reach more and different customer segments. Similar to offline retailers, on-line players will also try to generate "foot flow" by differing numbers or geographical coverage of websites or by using third party sales platforms that allow them to reach the optimal level of consumers.

A potential problem is that major retailers may have little incentive to expand the e-commerce market for fear that they will cannibalise their own off-line market shares. Given the considerable fixed costs associated with owning or renting a network of stores coupled with the fact that it is more difficult to price-differentiate over the internet, such an investment may be less attractive. However, the number of retailers and producers present online is growing, as many of them perceive it necessary for their competitiveness. Thus, in the short term investment in distance selling including e-commerce may be more attractive for new retail service entrants selling new unbranded products and services. The offer will also be local for certain sub-segments, such as food, unless efficient logistics and transport services are independently offered to such start-ups. On the other hand, it would seem that the importance of international buying power is as great in the online market as in the off-line retail market. If this is the case, then until the existing retail brands further develop the e-commerce market, it is difficult to foresee how it will grow, particularly for branded products. In some circumstances, the restrictions on the use of on-line websites do not stem from retailers but are imposed upon them by suppliers (for example in the case of selective distribution), who fear their brands being undermined by the use of e-commerce. Furthermore, the development of e-commerce may be restrained by consumer behaviour although this is changing rapidly: Firstly, consumers still prefer to handle or test products (particularly clothing and fashion items) before purchasing them. Secondly, consumers like to be able to buy a product easily and using different payment systems including cash. Thus, having to use a credit card rather than a debit card or an electronic wallet and having to complete a paper or electronic order form may be dissuasive. Thirdly, consumers like to benefit from the product immediately rather than wait for it to be delivered.

Despite these obstacles, e-commerce is increasing its attractiveness, as evidenced by the strong growth rates in this channel. It offers a convenient alternative where accessibility to traditional channels is an issue, it increases consumer choice and it provides information to consumers to compare between offers and suppliers. It also provides small and medium enterprises with the means to enter new markets without having to establish costly distribution networks. For established companies or brand-owners, it can be a tool to maximise customer loyalty, promote brand awareness and provide a distribution channel for specialist products or repeat sales.

Regulatory framework

The regulatory framework applicable in the different Member States to the opening of new physical retail outlets, to the formation of retailers' networks, to the acquisition or renting of commercial properties and more generally to the creation of new retail businesses is likely to have an impact on retailers' establishment strategies.

a) Rules on the opening of physical retail outlets

Regulations on the opening of outlets have an effect on the capacity of retailers to determine their strategy in terms of the location and number of outlets, including the possibility to apply the same business model in other Member States. The way Member States have shaped these regulations reflect the attempt to strike a balance between the necessity to respect the freedom of establishment of retailers and the disadvantages of clustering and reduced accessibility that can arise from leaving market forces untouched. In addition, the fact that land is a scarce resource for which access has to be ensured in an optimal manner is also reflected in these regulations. Thus, many Member States have regulated the setting up of retail outlets to reconcile different public policy objectives, such as the protection of the environment, land and country planning and the need to ensure a sufficiently accessible, diverse and competitive offer of retail services.

It should be noted that, in the absence of harmonisation at EU level specifically regulating the opening of retail outlets, Member States' regulations vary appreciably. Although some principles relating to authorisation procedures or the criteria used are common across Member States due to the need for national regulations to comply with Union law[58], important differences remain. These can impact on retailers' strategies and the level of performance in terms of accessibility and affordability.

At national level, Member States generally provide for different types of authorisations for the opening of retail outlets. Some relate to the compliance of the premises with defined requirements or are linked to the sale of certain products (food, alcohol, tobacco, etc), others are directly linked to the retail activity. As far as this type of authorisation is concerned, two groups of Member States can be distinguished: 1) Member States[59] which rely on general planning provisions and building permits, and which at times resort to partnerships between private investors and public authorities and 2) Member States[60] which apply, in addition to the

58 In particular the principle of freedom of establishment enshrined in Article 49 of the TFEU as interpreted by the jurisprudence of the Court of Justice and the relevant provisions of Directive 2006/123 of 12 December 2006 on services in the Internal Market (the "Services Directive"). The "Services Directive" does not apply to pharmacy services.

59 For example DE, IE, NL, PL, SK, SE

60 For example RO, IT, AT, BE, ES, FR, EL

planning provisions/and building permits, a specific prior authorisation procedure to establish retail outlets. There are further differences within these groups. The objectives pursued will vary in emphasis, with some focussing more on the protection of the environment or the vitality of city centres and others more on regional planning or on the protection of the existing retail offer, in particular small retailers, as well as the adequacy of the offer in relation to consumer needs, balance between competitors and formats, etc. The criteria used for permits/authorisations can also be very diverse. In certain countries, "economic needs" tests have not been fully eliminated yet from authorisation procedures[61]. "Competition tests" aiming at assessing local market shares can also be found in various forms[62]. Some Member States provide for national rules or guidelines whereas in other Member States these are defined at regional or even at local level.

Concerning the scope of regulations, some apply only to certain sub-markets or foresee different provisions according to the relevant retail sub-market. Therefore, some authorisation schemes or attributions of building permits apply only to retail outlets above a certain threshold specified in square metres but then have derogations for "Do-it-yourself " (DIY) shops or garden centres, for example. The Services Directive has considerably contributed to simplifying authorisation procedures but their complexity, their length and their cost still varies between and within Member States. The Services Directive has also ensured that applications are dealt with more objectively. However, in some Member States, local authorities are granted more discretionary power to decide between applicants.

Many Member States are currently reflecting on the necessity to adapt their regulatory regime beyond the need to transpose the provisions of the Services Directive[63]. This reflects the fact that the current regulations have not always been able to attain their objectives in terms of discouraging clustering and encouraging accessibility and affordability, in particular in deprived areas or for the less privileged socio-economic groups of society. Moreover, the current regulatory frameworks do not always allow for coordination of the establishment of outlets which have an extended catchment area in particular in cross-border regions where 35% of the EU population is living[64]. It also reflects the belief that there is a need to give greater consideration to environmental protection in the planning of towns and cities, while at the same time not imposing unnecessary restrictions that affect retailers' strategies, in particular when they want to expand their successful business model to other Member States**.** In this respect, it is interesting to note that at the current time there appear to be no common measures of accessibility and affordability that could be used to benchmark differing systems in this quest for a modern retail service offer that maximises accessibility and affordability for the entire EU population[65].

Concerning the specific retail sub-sector of pharmacies, Member States have regulated the opening of pharmacy outlets through specific provisions. In general, Member States recognise the risk of clustering and therefore seek to render pharmacies accessible across their

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61 These are prohibited under Article 14 paragraph 5 of the Services Directive.

62 According to Article 10, paragraph 2, of the Services Directive, all the criteria for the granting of an authorisation should be non-discriminatory, justified by an overriding reason relating to the public interest and be proportionate to that public interest objective. Criteria also need to be objective and made public in advance.

63 Directive 2006/123/EC should have been transposed by 28 December 2009 (article 44)

64 Working paper, "Territories with specific geographical features", European Union Regional Policy, n°02/2009.

65 Some Member States have also specific regulation to ensure the accessibility of persons with disabilities to shops and other related venues.

territories. Some[66] fix a minimum distance between pharmacies and/or fix a minimum number of inhabitants or patients that each pharmacy should serve. Others[67] have abolished these restrictions because they were not considered necessary for ensuring geographic coverage and also because they hampered the competitiveness of the sector. Certain Member States recognise that bricks and mortar pharmacies will not be viable in very remote areas. In such instances they have either foreseen the possibility to subsidise such specialist retail outlets[68] or they have allowed the exceptional practice of local doctors providing local pharmacy services[69].

Finally, given the role of ambulant trading in terms of accessibility, especially in rural areas, and as a distributor of local products, it is also worth mentioning the impact of different regulations on the ambulant traders' strategies and their capacity to provide retail services, in particular at cross border level. Ambulant traders face various authorisation requirements. These typically include formalities connected with renting out the public space by municipal authorities, specific authorisations to access market places, requirements for certain qualifications to carry out the business and also food hygiene related clearances (despite the fact that hygiene requirements for selling food in open markets have been harmonised[70]). Some local authorities even impose discriminatory requirements whereby priority, in terms of the attribution of market space, is given to ambulant traders who are residents of the municipality. This kind of requirement makes ambulant trading activities at cross border level impossible and contradicts internal market principles.[71]

b) Rules applicable to distance selling

The existing legal framework at the EU and national level is meant to facilitate and enhance the development of distance selling activities, in particular at cross border level.

A number of Directives[72] have set up a general framework for EU consumer protection based on minimum harmonisation[73] with the aim of enhancing consumer confidence also in distance and direct selling, including e-commerce, by providing common rights for consumers and establishing common obligations for retailers throughout Europe. As regards e-commerce in particular, the Directive on electronic commerce[74] sets down common rules on the establishment, information requirements, commercial communications, liability of

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66 For example AT, BE, DK, EE, EL, ES, FI, FR, IT, LU, LV, MT, PT, RO AND SI

67 For example NL, SE

68 For example UK support scheme

69 For example France and the Netherlands

70 Regulation (EC) 852/2004 on the hygiene of foodstuffs, 29 April 2004; Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin, 29 April 2004.

71 Discriminatory restrictions should have been eliminated with the transposition of the Services Directive.

72 Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; 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; 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; Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises; Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.

73 Article 8 of Directive 85/577/EEC; Article 8 of Directive 93/13/EEC; Article 14 of Directive 97/7/EC; Article 10 of Directive 98/6/EC; Article 8 of Directive 1999/44/EC.

74 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), OJEC 17.7.2000, L178/1.

intermediaries and pre-contractual requirements necessary for the starting up and development of cross-border information society services as well as enshrining the country of origin control principle. However, the country of origin principle does not apply to retailer's contractual obligations in consumer contracts[75]. On another subject matter, a derogation from the country of origin principle was also made for copyright and industrial property rights in the Directive on electronic commerce, given the territorial nature of intellectual property rights. Finally, the e-commerce Directive did not cover the issue of differing national taxation regimes. These outstanding Internal Market hindrances have recently been identified by the Commission as undermining cross-border on-line trade[76].

In order to contribute to the better functioning of the business-to-consumer internal market by enhancing consumer confidence and reducing business reluctance to trade cross-border, the Commission proposed in 2008 a Proposal for a Directive on Consumer Rights[77]. This proposal intends to simplify and update four of the existing consumer protection directives in a single instrument based on the principle of full harmonisation at a high common level of consumer protection. The current fragmentation of consumer protection rules would be reduced as a result.

In addition, concerning the specific case of distance selling of on-line sales of prescribed and non-prescribed pharmaceuticals, there are regulatory differences across the Member States. Only a few Member States[78] allow the on-line sales of prescribed pharmaceuticals. As to the on-line sales of non-prescribed (Over-the-counter - OTC) pharmaceuticals, despite the European Court of Justice jurisprudence[79], not all Member States[80] allow such distance trading either. Where online sales of OTC pharmaceuticals are allowed, the conditions vary[81]. Further to this, retailers might be constrained by the fact that the sale of some product categories might be restricted as a result of diverging application of EU products definitions by the Member States[82]. These restrictions combined with ownership restrictions imply that network and buying power economies of scale cannot be achieved in the retailing of non-prescribed or prescribed pharmaceuticals. This could lead to lower levels of affordability that might be possible for these products in the relevant regions. However, distance selling of pharmaceutical products, whether prescribed or not, should not be viewed in the same context as sales of other goods. From a public health perspective, patients' safety and risk of counterfeits are particularly important factors to be taken into account.

Apart from the content of the regulation, one of the crucial questions is the level of enforcement of these rules. Since distance trading is the form of retailing that requires the

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75 Article 3.3 of the Directive on electronic commerce.

76 Commission staff working document "Report on cross-border e-commerce in the EU", SEC(2009)283 final and Communication on Cross-Border Business to Consumer e-Commerce in the EU, COM(2009)557

77 Proposal for a Directive of the European Parliament and of the Council on consumer rights, COM (2008) 614 final.

78 DE, MT, NL, UK

79 Judgement of 11 March 2003, Case C-322/01, Deutcher Apothekerverband e.V. v 0800 Doc Morris N.V. and Jacques Waterval

80 For example AT, BG, CZ, DK, HU, IE, IT, NL, PL, PT, RO, SE, SI, UK

81 For example in Italy the sale of OTC medicines outside pharmacies needs to be done in the presence of a pharmacist, sometimes the definition of OCT does not include blockbusters such as paracetamol or ibuprofen

82 In France, for instance, the sale of some types of bandage/plasters, mouth wash, anti-sceptics, disinfecting sprays and vitamin C is prohibited outside pharmacies because of their regulatory classification.

greatest level of trust by the final consumer, it is unfortunately also the form of trading that is most likely to suffer from lack of enforcement of rules. Since distance traders that will be welfare enhancing are likely to be small retail service providers, they will rely heavily on efficient enforcement by competent authorities. For example, if national enforcement authorities are not seen to be acting against illegal and fraudulent operators, the consumer trust in distance selling will be undermined and it will be difficult for compliant new entrants to develop sustainable growth. In such instances, distance selling will not fulfil its potential key role in improving accessibility and affordability of retailing across the Union.

Trustworthy retailers should also know consumer-related legislation. Results of a Eurobarometer survey of retailers[83] show that, although 60% of retailers perceive themselves as well informed and 23% as fully informed on legal obligations they have towards consumers, only 23% of retailers stated correctly the length of the "cooling-off" period for distance sales in their country. Although 99% of EU retailers claim that they themselves comply with this legislation, only 70% said that their competitors do so (and 21% did not know)[84]. In contrast, only 58% of EU consumers agree that sellers/providers in their country respect consumers' rights[85]. A proper enforcement of consumer legislation could improve consumer trust in retailers, including those selling online.

c) Rules applicable to independent retailers' networks

Another set of rules which can have an impact on retailers' establishment strategies and their capacity to survive and perform in terms of accessibility and affordability concern independent retailers' networks. The possibility for independent retailers to be organised into networks is often crucial. In order to survive, they may need to be able to join or be organised into groups (such as cooperative or franchise groups) that have upstream purchasing power. Networks can be developed both at the national level and at European level (for example buying groups of small retailers). The ability of retailers to put in place these networks, notably at cross-border level, is a very important element of retailers' strategies having an impact on accessibility (for example by allowing shops in remote areas to stay in business) and affordability.

There is no specific harmonisation of the creation and running of distribution networks at Union level[86]. However, since the organisation of non-integrated retailers' networks is based on a series of cooperation agreements between independent retailers (e.g. cooperatives) or between retailers and suppliers (e.g. franchise networks), they can fall within the scope of European or national competition rules. In fact, the importance and specificity of these distribution networks have been recognised by European competition rules applicable to horizontal and vertical agreements through the elaboration of Block Exemption Regulations and Guidelines[87].

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83 Flash Eurobarometer, No 278 "Business attitudes towards enforcement and redress", 2009.

84 Flash Eurobarometer, No 278 "Business attitudes towards enforcement and redress", 2009

85 Flash Eurobarometer, No 282 " Attitudes towards cross-border sales and consumer protection ", 2009

86 Except to a certain extent for the particular situation of commercial agents, Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents.

87 As far as the assessment of horizontal agreements between competitors, see Commission Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements. With respect to the assessment of vertical agreements between suppliers and distributors, see Commission Regulation

At national level, some Member States have tried to encourage the development of independent retailers' networks through the adoption of specific legal frameworks[88]. Some specific provisions exist also as far as franchising contracts are concerned. Some Member States impose pre-contractual obligations on the franchisor[89] that allow the franchisee to assess the specificity of the relevant concept and therefore its chances of success. The absence of harmonisation at the EU level and these differences in the national conditions to set up distribution and more specifically franchise networks can hinder the development of small retailers, in particular at cross border level[90].

In the specific sector of pharmacies, additional conditions relating to capital ownership, limit the possibility of establishing networks. Ownership of pharmacies by non-pharmacists is prohibited in some Member States[91]. These limits combined with restrictions on multi-ownership[92] prevent vertical and horizontal integration in this sector, in particular at the cross border level. They therefore restrict the development of network economies within pharmacy chains as well as prevent the pharmacy distribution sector from gathering buying power to negotiate prices or margins with pharmaceutical product suppliers. These rules seek to ensure the professional independence of the pharmacy service and given that in the prescribed area, prices of products are largely determined by the State, this is not as problematic as it initially seems. However, it should be noted that national Governments negotiate with the pharmaceutical companies separately and therefore do not maximise the cross-border buying power that they could raise were they to act in the same manner as the biggest retail groups in other sub-sectors.

d) Rules on the creation of new retail businesses

The regulatory conditions on the setting up of new retail businesses could have an impact on establishment strategies even though these may not be of overriding importance in retailers' strategies and their performance in terms of accessibility and affordability.

Small and medium sized enterprises (SMEs) are predominant in the retail sector and the creation of new start-ups that can expand rapidly should be encouraged in order to ensure that accessibility and affordability are maintained in the sector. In particular, micro-enterprises[93] are of vital importance for the dynamism of the retail sector and are important innovators by kicking off the development of niche retail service markets. In this respect, burdensome and costly administrative procedures are especially inhibitive. The regulatory barriers they face are of a diverse nature across the Member States and may relate to accountancy rules, taxation rules, registration obligations and authorisation procedures. These barriers may not only

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(EC) 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, and Commission Guidelines on vertical restraints [New Regulation and Guidelines were adopted on 20.4.2010 – Reference will be changed following the publication]

88 See for example in France, Article L125-1 and following of the Code de Commerce on the creation of shops of independent retailers, or Article L 124-1 and following on the cooperatives of retailers

89 BE, ES, FR, IT, LT

90 To address this issue, some stakeholders call for broadening the scope of application of Directive 86/653/EEC to also include SMEs so that certain harmonized rules are applicable to these companies in the distribution sector.

91 AT, BG, CY, DE, DK, EL, ES, FI, FR, IT, LU, LV, SI

92 AT, BG, CY, DE, DK, EL, ES, FI, FR, IT, LU, LV, PL, PT and SI

93 The Recommendation of 6 May 2003 (2003/361/CE) defines a microenterprise as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

hamper innovation and growth, but also seem to be positively correlated with the size of the informal economy.

At Union[94] and national level, there are diverse initiatives aimed at reducing administrative burdens and costs for SMEs. For example, for those microenterprises having "auto-entrepreneurial status" in France, the administrative procedures are simplified and exemptions from certain registration obligations apply[95]. In Luxembourg self-employed or family enterprises are partially exempted from professional qualification and opening hour rules. In Germany, enterprises with fewer than 10 employees are exempted from justifying the use of part time or limited duration contracts. An assessment of the impact of such simplification measures across Member States could be useful to improve the dynamism of the retail sector. Such an assessment should fully account for relevant social costs.

1.2.2 Pricing strategies and different rules affecting them

Competitive situation and comparable price information across geographic areas or retailers are determinant

First of all, the pricing strategy of a retailer depends significantly on the position he takes on the downstream market, as regards the type or the variety of the products sold, the level of the service provided etc. For example, some retailers have adopted a strategy to offer a limited range of products at a low price on a permanent basis when others offer more variety and use sales promotions.

The pricing strategy of a retailer is also, in principle, dependant on the level of local competition. As regards affordability, as noted above, competition between retailers, both within a national market as well as a regional market is essential to ensure that consumers are offered affordable retail services. The retailer's scope for increasing margins, if not decided centrally for the whole chain, will depend, among other factors, on whether the store falls in the catchment area of another competing store. It will also depend on whether consumers are informed of prices and can easily compare the relevant products in other geographic areas.

Regarding price strategies, the application of competition law to retail sales of daily consumer goods (i.e. hypermarkets, supermarkets and discount chains) has found that from the consumer perspective, the boundaries of a catchment area where the outlets can be reached easily concern a radius of approximately 20 to 30 minutes driving time. It is within the area defined by this drive time that consumers are deemed to compare and choose the retailers where they will carry out their purchases[96]. It follows that if there are no competing shops

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94 The simplification and the setting up of points of single foreseen in the Services Directive should significantly reduce certain administrative burdens. Likewise the Small Business Act provides guidance for (future) legislation at both EU and national level that will address some of the above-mentioned problems.

95 Registration in the "répertoire des métiers" or the "registre du commerce et de sociétés".

96 Notwithstanding this, there are other factors which have also been singled out by the Commission competition practice as proving that competitive relationships between major retail chains are not only limited to local competition conditions but also exist in a far wider geographical dimension (regional or national in scope). These specific circumstances include the degree of overlapping of the different supermarket/hypermarket catchment areas across a larger area or even a whole Member State, or the fact that particular business decisions and policies on price-setting, advertising, promotions or assortments are normally centralised and decided at national level by retailers. In these cases it has been considered appropriate to aggregate markets that from the viewpoint of a single consumer may be

within that boundary and if easily comparable price information is not provided regionally, nationally or even cross-border, then the margin for retailers to increase prices for such products, taking into account consumer income levels, will be greater. It should be noted that these catchment areas will shrink as personal transport costs increase in view of increasing prices of petrol etc. At the same time, the retailers' scope for increasing margins will also depend on the development of price competitive distance selling that should counter this tendency of retailers by diffusing more broadly information on the retail offer and prices.

For example, the UK Competition Commission carried out an investigation and gathered evidence demonstrating that the store level retail offer[97] of the same fascia varied according to local market competition conditions. Using store-based profit margins as an indicator of the relative prices of retail offer, the report concluded that consumers were adversely affected in highly concentrated local markets (with prices inflated between 10 and 22% (depending on the thresholds used to define the local market, mid sized and larger grocery stores) in highly-concentrated local retail markets i.e. in markets where the leading fascia has a market share of at least 60% of the local market[98]). Data collected also indicated that weak competition at local level resulted in grocery retailers offering less qualitative store-specific retail offers. This weakening of the offer may also include the part of the offer that is set nationally such as price[99] (e.g. by not applying price promotions or vouchering schemes). In the case of France, analyses[100] focused on the relation between prices and local competition, using a sample of more than 600 local markets corresponding to 40% of the local markets covering the French territory. The analysis of the impact of the competitive situation on pricing establishes a negative correlation between these two elements. Apparently, in a situation of "average" competition compared to a non-competitive environment, prices may fall indicating that the sole presence of one competitor suffices to exert downward pressure on prices. Depending on the fascia, differences in prices within a same fascia may account for between 5 and 20%, according to the local level of competition. Thus, a key driver of price levels and of affordability is the intensity of local competition. Additionally, as highlighted by the French analysis, a limited number of competing stores (2 in that case) can be enough to bring prices down. These two factors can explain in part that retail markets are usually deemed very competitive by stakeholders[101] despite their usually high-level of concentration.

Provision of independent and comparable information on prices (and also possibly quality) of products to consumers could assist them in choosing the retailer as well as incite retailers themselves to remain competitive.

Finally, one particular but important aspect of retailers' pricing strategy is the practice of price differentiation according to different geographic territories and notably between Member States. Some differing pricing strategies may be justified by objective reasons (such as

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considered as local (see, among others, Commission's decisions in Cases IV/M.784 *Kesko/Tuko* para. 21; COMP/M.1221 *REWE/Meinl* par. 18; COMP/M.1684 *Carrefour/Promodes* par. 25).

97 Retail offer include a wide variety of elements. In addition to price, other important elements include product range (number of products and number of brands), product quality (e.g. freshness), availability and quality of specific service (e.g. food counters, ATM, etc) and more intangible elements such as friendliness of staff, cleanliness of premises etc.

98 Competition Commission, "The supply of groceries in the UK market investigation", 30 April 2008.

99 Prices are not always set at national levels. There are indications that in several EU markets, retail fix price bands at national level, whilst the final price is fixed at store level within this bands according to the local market conditions.

100 UFC "Que Choisir" 3 avril 2008.

101 See SEC(2009)1449 on "Competition in the food supply chain", accompanying the Communication from the Commission on "A better functioning food supply chain in Europe", COM(2009)591.

differences in the local sourcing conditions, differences of VAT, etc). However, some price differences across Member States, in particular for standardised and branded products, are also probably driven by the willingness of retailers (or their suppliers in the case of recommended prices, for example) to maximise profits. These might sometimes be linked to restrictions to cross-border parallel importing or sourcing, in particular for online sales, or to fragmented access to certain individual products (e.g. models). Although blatant geographic price discrimination by retailers is more difficult for on-line traders than for bricks and mortar operators, given that their price offers can be seen over the internet, national price fragmentation is still observable.

As stated above, one important factor influencing retailers' pricing strategy, their scope to increase margins and the practice of price differentiation is the possibility for consumers to be informed of prices of the relevant products, not only across different retailers but across geographic areas, including abroad. The use of commercial communication by retailers or the development of independent information services should therefore have an impact on accessibility and affordability, as will be developed hereunder.

Regulatory framework

Retailers' pricing strategies could also be affected by the regulatory framework. First of all, since local competition conditions normally influence the level of prices, regulatory frameworks limiting market entry for retailers might, if they impact negatively on the level of local competition, also affect negatively the level of prices and the affordability of the products sold[102]. Other types of rules can have an influence on retailers' pricing strategies.

a) Regulations relating to the setting up of prices or margins

The principle of free determination of prices is a general principle of application in all Member States. This principle can however be limited in some Member States, notably through the direct intervention of public authorities to influence price levels. This can happen by setting maximum or minimum prices or through supervision of price variation in situations of crisis for certain products such as fruits or vegetables, or on a permanent basis for other products or services (for example pharmaceuticals). There are also indications that some Member States are considering imposing maximum margins for wide ranges of products like food. It should be noted that in some circumstances this type of rule could give rise to problems of compatibility with Union law, in particular with Internal Market rules and/or Competition rules.

Competition rules also limit the retailers' pricing strategy when such a strategy leads to predatory pricing in cases in which such as a practice amounts to the abuse of a dominant position. Some Member States also prohibit the use of "abusively low prices", independently from any evidence of abuse of a dominant position. There are also differing regulatory frameworks relating to sales below costs. Such practices are prohibited by a number of

[102] See for example the alleged effects of the French law on establishment of retail outlets together with the law on the prohibition of sales below costs, as modified in 1996, in "Rapport de la Commission pour la liberation de la croissance française, sous la Direction de M. Attali", 2008. The Commission services also received information concerning a particular Member State where this subject is dealt with at regional level. According to the information provided, the level of inflation would be higher in the region which has the stricter rules on establishment of retail outlets that in one of the more liberal regions of the country.

Member States. Where such regulations exist, their specific details can differ for example in their scope (covering the whole of the retail sector, or only a subset of operators or products) or in the extent to which derogations are provided for. There are indications that such regulations have not always been able to attain the objective pursued and that the differences in rules were restricting the development of retail services across the border and undermining the smooth functioning of the Internal Market[103]. On the other hand, retailers' strategy on price fixing can be indirectly affected by certain aspects of the regulatory framework applicable to their relationships with suppliers.

b) Rules on the relationships between retailers and suppliers

Competition law, in particular the prohibition of resale price maintenance, is one of the main aspects of rules on relationships between retailers and suppliers, which ensures retailers' freedom to determine their own pricing policies to consumers. The practice whereby suppliers impose a fixed or minimum resale price (or a fixed or minimum price level) upon retailers is in principle prohibited under competition law. Suppliers can however impose a maximum or recommended sales price, provided that they do not amount in practice to a fixed or minimum sale price as a result of pressure from, or incentives offered by, any of the parties.

c) Regulations having impact on price discrimination strategies

Price discrimination according to the residence of the consumer may be due to the remaining regulatory[104] and fiscal fragmentation noted above but it may also be due to retailers simply using national borders as a means to maximise profits. The transposition of Article 20 of the Services Directive will be a tool to prohibit such practices since it requires Member States to prohibit non-objectively-justified discrimination based on the residence or nationality of the consumer.

d) Rules on sales promotions

Other rules, such as those on the use of sales promotions (such as discounts, rebates, free gifts, premiums, promotional games, etc.), would also have an impact on retailers' pricing strategies. These will be developed in the following sub-section.

1.2.3. Other elements of strategies of retailers in relation to accessibility and affordability and different rules affecting them

The other elements of retailers' strategies that can have an impact on accessibility and affordability relate for example to opening hours, information provided to consumers, selection of the quality and variety of the assortment and personalised service, etc. The following analysis will focus on two main subjects: opening hours and commercial communications.

a) Opening hours strategy and regulatory framework

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103 Study commissioned the European Commission by London Economics, "National regulations of sales below cost and sales in the UE: The impact on the Internal Market for distributive trades", April 2006.

104 Exclusive reselling contracts are often territorial and can also explain such fragmentation that may or may not be welfare enhancing as noted above.

Beyond customary opening hours, retailers use late night or Sunday openings to serve customers more broadly. Foot flow of employed people is negatively correlated to general working hours and so retailers will seek to have their shops open outside these hours if they particularly target such buyers.

Regulations on opening hours are typically justified for two public interest objectives. The first relates to employment and social conditions (for Sunday opening see section on employment below) and the second to the need to protect "small" neighbourhood shops (and markets) from competition of larger market players. As regards the latter, many Member States' shop opening laws foresee derogations for small shops to open late at night during weekdays and on Sundays when other larger stores have to be closed. Thus opening hour restrictions can reduce accessibility to large shops but they may also help small shops in the local neighbourhood (that during the rest of the week are used for so-called "top-up shopping") to remain viable.

The rules on opening hours vary between the Member States; the main division line lies between EU15 and EU12. While in EU15 there are significant restrictions on opening hours, as regards EU12 with the exception of Malta and Cyprus, these rules are particularly looser if not non-existent in majority of the cases.

This initial review of the existing situation does not allow for any conclusions to be drawn. However, this initial analysis has revealed that differing opening hour rules may be of particular relevance in cross-border or touristic regions where they could have an impact on competitiveness of local retailers[105]. The retailers in the more liberal region would drain customers from the more restrictive one and might therefore cause the closure of certain shops in the latter region thus adversely affecting retail accessibility there for less mobile citizens. In a number of instances, Member States would appear to have attempted to account for this in their newest regulations. The question therefore remains open as to whether an optimal solution has been found in line with national cultural practices.

b) Commercial communications strategy and regulatory framework

Commercial and independent communications are determinant in improving accessibility and affordability

Retailers inform consumers about their offer through different commercial communications such as the shop window and in-store promotional material, local, regional or national media advertising and sponsorship or personalised promotional campaigns run through sophisticated customer loyalty programmes. The use of commercial communications is a way of attracting consumers to retailers' outlets, even if they are not in close vicinity. Their use is particularly important for distance selling operators and of course for retailers in border regions wanting to attract consumers from other Member States. In that sense, the different use of commercial communications influences consumers' awareness and knowledge of the market, and the level

[105] The rules on opening hours vary between the Member States; the main division line lies between EU 15 and EU 12. While in EU 15 there are significant restrictions on opening hours, as regards EU 12 with the exception of Malta and Cyprus, these rules are particularly looser if not non-existent in majority of the cases. (For example, Slovakia has been reported not to place any restrictions on opening hours, while in Austria, shops can be opened on weekdays between 6-21 hrs and on Saturdays 6-18 and on Sundays shops must be closed; Austrian residents living in the border with Slovakia area can freely shop on Sundays. Losing an important day for shopping might undermine viability of some shops on the Austrian side).

of ability and willingness to benefit from accessibility to the retail offer, in particular at cross border level.

Moreover, as explained above, commercial communication strategies and in particular the access to clear and comparable price information by consumers affect the extent to which retailers can use the structural characteristics, notably the local nature of the retail market, to price differentiate. Given the tens of thousands of product lines concerned, information costs (in terms of money, time and effort) for consumers searching for the best prices are not insignificant. Certain national retail service providers apply national pricing policies, but again cross-border differentials can exist. The extent to which retailers will use national or cross-border media to advertise prices will clearly improve the situation. On the other hand, given profit maximising behaviour and the fact that price differentiation can also be argued to be welfare enhancing under certain conditions[106] market forces may encourage a relatively greater use of local media for price advertising campaigns. Pan-regional, national or cross-border campaigns may then be limited to promote the "institutional" brand image of the retailer itself through for example promoting its services, special promotions or its own label offers. This could be the gap where independent sources of information, such as consumer organisations, could enter.

Consumer satisfaction data demonstrates that consumers are generally less satisfied with their possibilities to compare prices between retailers than at a single retailer[107]. The lowest levels of satisfaction both with choice and with comparability of prices can be observed on the fresh fruit and vegetables and meat markets[108]. The fact that consumers are generally more satisfied with choice and comparability of prices and quality on markets like electrical equipment or entertainment and leisure goods than on food markets may indicate difficulties with obtaining sufficient information on prices and quality on the latter but it may also result from the fact that consumers take longer to search for bargains when dealing with expensive durable products than when buying daily grocery requirements. In this regard, it is interesting to note that in the particular case of e-commerce, consumers complain about lack of information on cross-border offers, because it is difficult to make cross-border comparisons and because cross-border advertising is relatively uncommon[109]. The question of reliability of product or service comparison websites was also raised by consumers[110]. To respond to consumers' need for reliable information, in some Member States efforts have been made by some trade association to set up codes of conduct for price comparison websites[111] or the Commission has supported promotion of independent consumer product testing[112] by coordinating efforts of different testing organisations, concerning also publishing tests' results, at the EU-level.

106 For example charging higher prices for the same products to higher income city-residing citizens in order to charge relatively lower price to poorer rural residents (who may be more costly to supply) would be a form of welfare enhancing price discrimination.

107 This is particularly a problem for those with disabilities. For example data bases of existing assistive product rarely contain information on prices making the comparison very difficult. Also information about accessibility features of mainstream products is limited. Development of new technologies such as RFID may offer effective solutions to address some of these issues.

108 Survey on consumer satisfaction with the retail distribution of goods, IPSOS Belgium for the European Commission, DG SANCO, June 2008.

109 Commission's Report on cross-border e-commerce in the EU, 5.3.2009, SEC(2009) 283 final

110 Idem

111 Idem, quoting FEVAD: "Carte des sites internet comparateurs" (2008)

112 EU invests in building independent consumer magazines and websites in Cyprus, Czech Republic, Hungary, Poland, Romania and Slovenia, IP/09/1269. The Commission has also recommended that "all Member States have web-based and easily accessible food retail price comparison services" in its Communication on "A better functioning food supply chain", COM(2009)591.

Apart from that, the development of independent information services should also be encouraged to improve the accessibility and affordability of the retail offers, in particular at cross-border level.

The commercial communications strategy of retailers is evidently influenced by the regulatory framework applicable. As demonstrated above, it would not only have an impact on retailers' pricing strategies but also on the possibility to attract consumers from other Member States.

Impact of the regulatory framework applicable to commercial and independent communication

At Union level, commercial communications benefit from the principle of free movement of services and their cross-border use cannot be restricted by Member States unless they are justified by a public interest objective and proportionate to achieve that objective[113]. As regards commercial communications made on the internet, the E-commerce directive[114]. sets out certain minimum requirements with which information services providers must comply. This is in addition to other requirements set out elsewhere in other directives such as for example the Directive on unfair commercial practices[115].

Concerning one specific category of commercial communications, namely sales promotions (such as discounts, rebates, free gifts, premiums, promotional games, etc.), this has been regulated differently across Member States[116]. Their use is covered by the directive on unfair commercial practices[117] as interpreted by the Court of Justice[118]. According to this Directive unfair commercial acts shall be unlawful if they are likely to distort consumer's economic behaviour. It also provides for a list of practices which shall in all circumstances be regarded as unfair. The Court of Justice has already stated that the Member States were not allowed to maintain general restrictions going beyond the provisions of the Directive on the use of sales promotions for reasons falling within the field harmonised by the Directive, irrespective of whether in a particular case the practice adversely affected consumers' interests. This interpretation should have important consequences in terms of Member States' possibilities to maintain general prohibitions or impose conditions on the use of commercial practices such as, promotional games or prohibition of certain discounts, without taking into account the specific circumstances of each individual case. This could however lead, to a certain extent, to legal uncertainty since the compatibility of a given rule with the Directive will have to be assessed on a case-by-case basis. On the other hand, the Directive should help the cross border use of promotional strategies in the Internal Market and improve the level of consumer information on the promotional strategies of retailers established in other Member States, because it also provides that Member States should not restrict the free movement of services or goods for reasons falling within the field approximated by the Directive.

[113] Article 56 of the TFUE. See for example Judgement of 18/05/1993, Yves Rocher, C-126/91.

[114] See, in particular, Articles 6 and 7 of Directive 2000/31/CE of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, JOCE 17.7.2000 L178/1.

[115] Unfair Commercial Practices (UCP) Directive 2005/29/EC of 11 May 2005

[116] See the Communication of the Commission on sales promotions in the Internal Market, COM(2001)546 final.

[117] Unfair Commercial Practices Directive above mentioned.

[118] See Case C-261/07, C-299/07 or C- 522/08 concerning the use of combined offers or case C-304/08 on prize competition or lottery made conditional on the purchase of goods or the use of services.

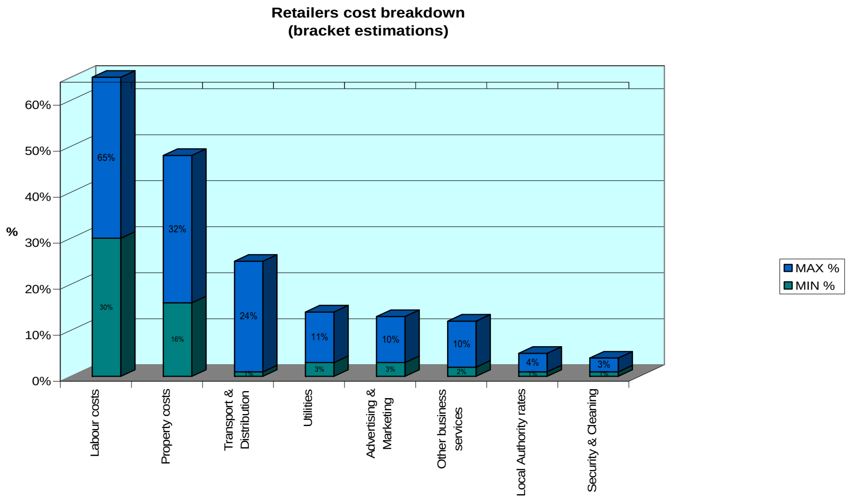
Moreover, other differing national rules applicable to commercial communications remain across Member States, such as restrictions on television advertising (see for example the French regulation limiting television advertising for sales promotions or the Greek law prohibiting television advertising for toys) or the use of certain advertising material (see for example differing taxes on advertising supports such as leaflets in France or cars in Italy), influencing retailers' commercial communications strategies and in particular the possibility to develop them at European level or at least for several Member States.

2. The upstream markets

In the upstream retail services markets, retailers offer suppliers of products and other input as well as employees the possibility to supply or work for them.

The breakdown of retailers' operating costs varies depending on the formats they use and on their location. However, it is clear that in order of importance of share of total costs the following upstream (input) markets are essential: labour, property (including local authority rates), transport and distribution, utilities and commercial communications. The handling and purchasing of products is the most significant accounting for some 70% of total costs[119]. Regarding the upstream markets, the following breakdown is representative (see figure 8).

Figure 8: Retailers cost breakdown (bracket estimations)



Source: Forfas

Certain specific characteristics of upstream markets such as concentration in the supplier markets or in the commercial property market can have negative spill-over effects into the other markets they serve or depend upon. The following analysis therefore seeks to evaluate retailers' performances on their upstream markets across different Member States according to a series of public policy related performance criteria. It will then analyse the extent to which retailers' strategies regarding product suppliers, employees, logistics and ICT, commercial property and other suppliers and the relevant regulatory frameworks may explain these performances.

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119 For example, in 2006 for the whole of the French retail sector, purchases of products represented 68% of annual turnover (INSEE, Comptes du commerce)

2.1 Relationships between retailers and their suppliers

In the upstream market of supply of products, retailers offer suppliers[120] a possibility to use their shelf space to test their products and expand their sales. The relation can either be direct, in which case retailers can also offer other services such as logistics and marketing know-how in exchange for which they may require payments or indirect through the intermediary of wholesalers. Retailers have also developed their own branded products by sub-contracting production to suppliers.

In principle, retailers' strategies as regards the services offered to suppliers should meet the latter's needs to develop their markets and undertake investment and innovation that is in line with final market requirements. In principle, innovation and investment will be optimised the shorter the supply chain and the more direct the relation between suppliers and retailers. However, as will be explained, this closer relationship coupled with other market or societal incentives (such as the search for lower prices) can give rise to increased tensions within the supply chain and pressure on the weakest parts of it. This could in certain circumstances lead to adverse effects as far as the general objectives of investment and innovation, in particular by SMEs, are concerned.

The following analysis therefore first seeks to look at retailers' performance as regards their suppliers, through an overview of recent trends in the supply chain and a description of complaints concerning certain practices within the supply chain. It will then analyse to what extent retailers and suppliers' strategies and the regulatory framework applicable to their relationships may impact on this performance.

2.1.1. Performance of retailers and trends in relationships along the supply chain across Member States

Retailers seek to shorten the supply chain

The closer the relationship between the supplier and the retailer (i.e. the fewer the intermediaries there are in the supply chain), the faster a supplier can adjust his output to the demand developments in the final consumer market. It follows that a supplier will seek to have a close relationship with his retailers because they hold market information that could be of great importance to his investment and product innovation strategies. This explains why many consumer electronics companies embraced e-commerce and selective distribution models as a means of having direct feedback in a market with very short product lifecycles.

One of the examples is the development of private label contracts. Some of the most durable and stable contractual relationships with suppliers have been developed in this way. Through such trusted relationships, the two work together and maximise the utility of the market trend information that the retailer collects. The retailer's product lines are therefore often trend-setting and innovative. Manufacturers in the clothing sector who have vertically integrated into retailing have achieved the same result. They have become leading world brands in fashion apparel because by internalising the contractual process their design and manufacturing investments are totally responsive to day-to-day market requirements.

However, as will be explained hereunder, direct contracts with retailers are more detailed and complex than those concluded between producers and wholesalers or between retailers and

[120] The term "suppliers" covers primary producers, manufacturers and importers.

wholesalers. This is why the smallest retailers will rely heavily, if not exclusively, on wholesalers for the bulk of their supplies. In these cases, it will be wholesalers who will negotiate the margins with suppliers and determine logistics charges for retailers or provide them with services. For example, pharmacy wholesalers provide independent pharmacists with services such as in-store design services or IT facilities for stock management purposes. On the other hand, selective distribution outlets that specialise in high value products can cover the costs of rather complex contractual agreements.

Greater complexity of supply contracts in more mature retail markets

There is no EU published data on the differences in typical contracts between suppliers and retailers or between wholesalers and retailers in the Member States. There is however little doubt that the complexity of such contractual relationships will be greater the closer the relationship with the final retailer and also the more mature the retail sector, the stronger the relevance of branding in the relevant product market and the more the relevant market is driven by environmental and social values.

In the grocery sector, the complexity associated with direct vertically integrated retailer contracts with food suppliers is likely to be a recent phenomenon in the EU12 compared to the EU15. Moreover, sensitivity to environmental and fair trade issues also varies across the Member States. Therefore, retail contracts demanding details to ensure that products meet the relevant environmental and social requirements for particular labels is more pronounced in some Northern (including NL, UK, DE and FR) Member States. This is because, to date, these values have been more prominently brought to the fore by more proactive government publicity and media.

Increasing levels of cross-border contractual relationships

The degree of cross-border contracting within the EU retail market will also vary across Member States.

In branded product markets, the presence of large vertically integrated retailers and their relative market shares is likely to be positively correlated to the level of cross-border contracting with suppliers. In the Member States where this exists, retailers are driving the demand for such cross-border sourcing. The same is true for large pure on-line sellers of durable branded products. They are therefore key Internal Market players since they realise the parallel trade that is at the heart of the EU market integration project. In contrast, in small Member States or in the EU12 where such retail models are relatively more recent, wholesalers or suppliers rather than retailers will be the drivers of cross-border business-to-business trade.

This will also vary according to retail sub-segment. For example, the OTC pharmacy sector, characterised in certain Member States by an atomistic independent retailer network and one of the most concentrated supplying industries, is one of the sectors that have the lowest levels of such parallel trade. Likewise, the fresh milk sector because of high transport and storage costs will have very few cross-border contracts except in border regions (butter on the other hand will have plenty). There is also likely to be a difference between the Northern and Southern Member States in the grocery retail market with a relatively higher level of local contracting in the latter, because of greater demand for fresh as against processed food.

Whether vertically integrated or not, in order for retailers to compete with their larger competitors, it is essential to rely on efficient wholesalers who provide them with qualitative and price competitive supplies. This pressure on wholesalers is found across the EU but may be relatively more recent in the EU12 and Southern Member States. National wholesalers can thus face competition from more efficient wholesalers from neighbouring Member States (for example offering value-added pre-sorting and packaging services for fresh foods) as retailers seek to drive out all cost inefficiencies.

It is clear that whatever the retail contractual relationship (with a supplier or wholesaler), the relative size of each of the contracting parties and the degree of competitive offer in each relevant market (i.e. competing suppliers, wholesalers and retailers, cross-border offer) will be key in determining which party derives the most benefit from the contract or whether it gives rise to an equitable result for both. This question of balance of relationships within the supply chain has been identified as one of the major issues which deserve attention and should be discussed at European level[121]. The main focus is on retailers' practices but complaints concern practices along the whole supply chain.

Alleged abusive practices within the supply chain across Member States

Reported practices relate to retailers' strategies but also to other levels of the supply chain, in particular branded manufacturers. They concern a large number of Member States.

As far as retail-driven practices are concerned, the Commission collected views from a wide range of suppliers through their representative organisations that have expressed their opinions on various matters[122]. Suppliers whose positions were gathered and are presented below include brand owners, food processing SMEs, textiles and clothing producing companies. The following practises were reported to the Commission. They are listed without prejudging their compliance with existing laws. They may not all concern large retailers.

The main category of alleged practices reported by suppliers relate to retailers' practices which tend to shift unforeseen costs on retailers and to demand retrospective changes to agreed terms. Examples of such practices include requests for retrospective discounts from suppliers due to lower than expected levels of product sales or of the retailer's profit, requests for price reductions for products soon before or after delivery, reduced quantities ordered just before delivery without financial compensation, excessive payments required for customer complaints, requests for retrospective payments of promotional actions that had not been

121 See for example Communication COMP(2009)591 on a better functioning food supply chain in Europe; numerous parliamentary questions raised by MEPs in the course of 2008/2009 or replies given to the questionnaire on Retail market Monitoring. The increasing number of legislative initiatives on this subject at Member States level is also an indication of its political importance.

122 The main sources of information are the stakeholders' contribution in the framework of the High Level Group on the Competitiveness of the Agro-food Industry and the bilateral meetings that have taken place both in Brussels and in several Member States, in the context of the present market monitoring exercise. The Staff Working Paper on "Competition in the food supply chain" annexed to the Communication on a better functioning food supply chain in Europe (COM(2009)591) also contains the views of stakeholders on these issues. The Commission has also received a number of spontaneous position papers touching upon the relations between suppliers and retailers. In addition, a number of studies and investigations have been carried out where this subject was analysed. The reference document in this respect is the UK Competition Commission's report on its market investigation on the supply of groceries. The study carried out for the Commission by the Bocconi University, ESSEC Business School and Baker Mc Kenzie on the Business relations in the EU clothing chain also provides valuable information for this sector.

agreed upon, requests for retrospective payments to cover wastage or theft of products, requests to suppliers to buy back unsold items or failure to pay for them, absence of written contract or no prior agreement on the sales price.

There are also complaints about fees that retailers charge to suppliers. Such fees include, inter alia, to introduce a new product, to be included on an approved list of suppliers, for favourable display of product in the shelves, for logistic services, for optimising the retailer's order and delivery system, for contributing to the loyalty card costs and other rebates, for in-store promotion actions, for store refurbishment or opening of new stores. These fees are often asked for by retailers but requests can also emanate from buying alliances, for example those established at European level. More generally, suppliers complain about the difference between the remuneration they get when selling their products and the consumer prices in retailers' outlets.

A number of complaints concern excessive payment terms or late payments and also the increasing use of private labels.

There are also complaints about unbalanced cost sharing related to the requirements as regards traceability of products and the related certification processes, since retailers would allegedly pass on all these additional costs down the supply chain to the operators concerned.

Finally, suppliers underlined the difficulty to object or complain about the practices because of the risks that this may imply for the trade relation. There may also be cases of implicit or explicit threats to be de-listed as a supplier in a case of complaint.

In order to provide a complete and balanced picture of the retail/supplier relationship, it should also be mentioned that the Commission has received information from suppliers, including SMEs that deliver products to large vertically integrated retailers or that produce private label products on their behalf, which do enjoy mutually beneficial and long standing trade relations with them.

As far as supplier-driven practices are concerned, retailers also complain about some of their suppliers, in particular international brand manufacturers imposing contractual arrangements to small, medium-sized and even large retailers that are clearly in their favour. Such complaints do not concern presumed unfair contractual practices but rather the level of respective margins. Another concern for retailers relates to the territorial partitioning of the Internal Market due to alleged practices of certain suppliers or wholesalers who fix different tariffs across Member States and then limit, in practice, the possibility for retailers to source from other Member States (by rendering the process longer and more complex, or even by refusing to supply). A distinction needs to be made between the decision of a manufacturer to allocate customers among its subsidiaries on the basis of the customer's geographic location (intra-group decision) and a restriction resulting from the contractual relationship between a manufacturer and its distributors/wholesalers. Evidence has been presented confidentially to Commission services suggesting that wholesalers and subsidiaries of manufacturers are refusing to sell to non-domestic retailers seeking to engage in licit parallel trade. The question of territorial restrictions needs to be scrutinised closely since these could deprive retailers and hence consumers from the benefits of the internal market.

Preliminary discussions about the abusive nature of the mentioned practices

The reality of the existence of the mentioned practice cannot be contested, even if they may not be as systematic as is suggested. The abusive nature of reported practices can be monitored more easily for certain types of practices than for others. For example, as regards complaints about excessive payments delays, data on average delays across Member States in business-to-business relationships can be found. The following table shows that late payments in commercial transactions are still a widespread practice within the EU:

Figure 9: Payment terms and duration in Business to Business relationships within Member States

	Average payment term in days B2B (2008)	Average payment duration in days B2B (2008)
Belgium	37.0	50.0
Bulgaria	--	--
Czech Republic	30.0	49.0
Denmark	29.4	35.5
Germany	30.0	36.0
Estonia	20.7	35.5
Ireland	39.1	57.5
Greece	84.0	110.0
Spain	73.0	89.0
France	49.0	65.0
Italy	68.0	88.0
Cyprus	67.2	95.8
Latvia	21.5	41.5
Lithuania	30.3	46.2
Luxembourg	--	--
Hungary	26.0	45.0
Malta	--	--
Netherlands	26.1	40.0
Austria	27.0	35.0
Poland	29.7	46.8
Portugal	47.1	80.1
Romania	--	--
Slovenia	--	--
Slovakia	31.0	39.0
Finland	21.0	27.0
Sweden	27.0	34.0
United Kingdom	33.2	51.0

(Source: Intrum Justitia, European Payment Index 2008)

However, for other issues such as complaints regarding unbalanced cost sharing or insufficient remuneration paid to suppliers compared to level of consumer prices, objective indicators are less easy to find.

An examination of respective net margins would seem to be a way to check for this. Although consolidated data on net margins throughout the sector in all the Member States is not available, data coming from a wide variety of sources[123] provide the converging view that average net margins in the EU grocery supply chain turn around 2 to 6%. However, these relatively low average margins miss the probability that retailers apply differing margins across different product categories. Cross-subsidisation will be applied by retailers according to the different price elasticities of demand of the thousands of products that they sell. Thus to determine abusive practices by retailers in supply chains would require comparing net margins of retailers with the other supply chain players for every single product that is sold. This is not only a highly costly exercise but it is also a very perilous one since such data are confidential and, even if available, have to be interpreted with caution. Since differing players in the chain add non-equivalent value-added to the product, they could justifiably require differing margins to cover for this value-added.

Nevertheless, some national work on examining net margins across product supply chains has been undertaken for certain food products with the simplest of supply chains. Data from two countries i.e. France and Poland[124] are of interest.

The French observatory for prices and margins analysed trends of four products (i.e. milk, yoghourt, butter and cheese) for the period between 2005 and second trimester 2009. For instance, in the case of UHT milk, the margins of retailers plummeted from 28.5% in the first quarter of 2005 to 12.2% in the third quarter of 2008 and went up again in the third quarter of 2009 to 17.1%. The share of producer prices (not margins) in the consumer price also declined from 32.2% in 2005 to 25.9% in 2009. In the same period, the share of industry price in the final price of milk increased from 34% to 52.1%. Retail prices of milk closely followed the prices of suppliers. Retailers transmitted less than proportionally the variations of the processor's prices leading to reductions in their margins. Milk processors on the contrary did not transmit proportionally farmers' prices variation leading to a significant increase of their margins.

Regarding the case of Poland, it has experienced significantly different patterns of price and margin development for similar products. In Poland, where retailing remains fragmented, farmers appear to keep a comparatively higher share of the average consumer prices of the dairy products analysed i.e. up to 60% of the milk price and 70% of butter's. This share has however been decreasing constantly since 2005. At the other end of the chain, margins of retailers appear on average to be higher than in France and above all they have experienced an increasing trend rather than a decreasing one as was witnessed in France. These price developments seem to indicate lower price competition in the retailer sector in Poland

123 UK Competition Commission, interviews with industry representative, Deloitte. We did not have access specific data on net margins in the new member states. Nothing indicates however that margins are higher than the EU 15. On the contrary, the share of large retailers is usually much smaller in these countries, meaning that they are submitted to more intense competition. In addition the fact that some major groups such as Carrefour, Rewe or Delhaize have withdrawn from some these markets only a few years after having invested is an indication that margins are not particularly high.

124 France: Observatoire des prix et des marges"/France Agrimer, la "filière laitière" et la "filière porcine" 2009; Poland: Institute of Agricultural and Food Economics – National Research Institute (Instytut Ekonomiki Rolnictwa i Gospodarki Żywnościowej)

reflecting a lower level of maturity of the latter, with a lower share of the vertically integrated grocery retailers sector in total retail trade. It would also suggest that those vertically integrated retailers who have invested in Poland have probably been able to be price competitive and yet make relatively high margins to fund their growth in that market.

Transmission of price changes between farmers, processors and retailers is slow, partial and asymmetric. This situation is problematic and impacts the distribution of the value added along the chain. As such, these findings may not indicate abusive practices by the retail sector from a legal point of view. However, it is highly relevant to investigate further and verify these practises, even if the difficulty of access to proper data and contracts makes this complicated. The product level margin data still aggregates across all suppliers of the relevant product and in the case of agricultural products these can consist of hundreds if not thousands of farmers and processors. Court actions which give rise to access to contracts between suppliers and buyers are means to monitor for such practices.

Moreover, if some of these alleged abusive practices would undermine fair business relations, it is not to be excluded that some others should be considered as normal remuneration for the service retailers provide to suppliers. The border between normal remuneration for the services provided by modern retail service providers and abusive exercise of market power is not always clear. Similarly, restrictive practices emanating from certain suppliers could find an objective justification.

Any intervention in the field of contractual relations and, to start with, any position taken on the abusive character of some business practices should be based on an analysis of the direct or indirect impact of these practices on overriding public objectives which should be determined. These objectives could for example relate to the level of innovation, the maintenance and growth of a network of producers or manufacturers, in particular SMEs (i.e. birth and death rates in the relevant retail supply chain), welfare of consumers, etc. Irrespective of the abusive character of the reported practices, the existence of these numerous complaints are revealing increasing tensions that the following section will try to explain.

2.1.2 Explanatory factors: business strategies of retailers and suppliers and the regulatory framework

2.1.2.1 Conflicting growth strategies of suppliers and retailers and different rules affecting them

Consumer requirements put pressure on the smallest players in the supply chains

The large retail and wholesale players' drive to meet consumers' needs often incite them to source non-differentiated products at lowest cost and best (including ethical) quality. This is often driving out small local suppliers, wholesalers and retailers from these markets. Nowhere is this clearer than in the fresh food market. Evidence suggests that in all Member States, irrespective of the presence of larger retailers, primary food producers who have neither been able to diversify into niche quality markets (for example through private label supply) nor consolidate into efficient wholesale cooperatives, nor integrate vertically into processing or retailing have seen their margins erode as downstream buyer power whether at collector, processing, wholesaling or retailing level has eventually been passed through the chain to them[125].

Tensions in contractual relationships between branded manufacturers and retailers

Branded product suppliers aiming at the mass market benefit from economies of scale as do retail service providers. It follows that both have a mutual interest to grow together and that consolidation will occur in both the retail and supplier sectors. However, their respective growth strategies will conflict.

The branded supplier is seeking to take market share from his direct competitors and preferably to achieve temporal market dominance to maximise profits, invest in innovation and maximise shareholder value. The supplier has to spend significant marketing expenditures in order to create brand equity. This has to be recouped by selling more volume and incremental variety of products under the relevant brand which he seeks to do by incremental innovation[126], through product diversification strategies or by buying other brands. The supplier will seek to operate across many national markets but will always seek to avoid price wars that would simply undermine the viability of his brand equity.

The vertically integrated retailer will welcome consolidation in the branded goods market but only up to a certain point (since it will require fewer sales contracts for the relevant category), since he needs the competition between rival brands to maximise his revenues for his own in-store and promotional services. These, in turn, allow him to negotiate discounts on the must carry brands with which he competes with his direct competitors. In other words, if there is only one branded supplier of a product category then the retailer cannot offer services of better in-store positioning or promotional campaigns (allowing him or her to make so-called reverse margins often paid through discounted supplier prices) given that there is no competing brand that threatens the position of the sole lead brand.

In addition, the multi-line retailer competes by expanding in order to maximise his buying power. The aim is to be able to negotiate the lowest supplier prices with the manufacturers and to attract customers by offering the most attractive prices for the must-carry products. In fact, some branded suppliers have claimed to the Commission services in confidence that certain vertically integrated retailers account for such large market shares for their relevant products that they have no option but to allow them to dictate the terms in their contractual relationships since they need to have their products on their shelves. As noted above, the Commission's services have been told that such retailers in certain circumstances have imposed service fees for services that were not actually provided. This need to compete on prices of multi-national must-carry brands has been exacerbated by the entry of lean limited line hard discounters. These hard discounters may not always carry the lead brand but offer a more interesting service for lower placed brands or smaller suppliers willing to supply the discounters own labels[127]. The same aim to benefit from the most competitively priced supplier explains the development of European level purchasing strategies that retailers are pursuing either individually or through central buying partnerships.

International on-line pure players can add to this tension indirectly, notably in the electronic goods sub-segment. Since they are not vertically integrated into logistics and wholesaling,

125 Communication "A better functioning supply chain in Europe" COM 2009 (591)

126 In the economic jargon this is referred to as horizontal differentiation.

127 This was initially the case but as hard discount chains grow in mature markets so the major brands are obliged to contract with them simply because they need volume of sales.

they rely on national supply contracts by the relevant branded product manufacturers or their wholesalers. Yet the fact that their web-sites are accessible globally forces manufacturers to reduce price discrimination that cannot be objectively justified. Otherwise their brand image will suffer in the higher priced markets[128]. This is particularly the case in the eurozone countries where prices are directly comparable. As existing vertically integrated retailers develop their own business model in the on-line market, it is evident that they will use this fact to further increase their call for common sourcing from the most competitively priced manufacturing/wholesaling outlets in the EU or in a third country.

The brand/product proliferation growth strategies of such manufacturers combined with retailers' wishes to limit contractual management costs can result in the crowding out of competitors from shelf-space in the relevant product category. There is evidence to suggest that this is happening in a number of consumer branded mature grocery and electronic goods markets i.e. although a variety of products are offered in product categories most of them are sold by the leading two or at best three manufacturers.

Development of private labels

Many multi-line retailers initially entered into the private label contracts business because, on the one hand, it was a way to maximise their own brand equity and, on the other, it was a way to increase their price competitive offer in relation to branded products. This has contributed to "commoditisation" of certain product markets[129]. It should also be noted that it has resulted in efficiency gains in certain processing plants where manufacturing line capacity can be more fully exploited. It has also allowed for less well known brands or medium sized companies who could not compete face on with the major brands to remain in business and grow.

Certain branded manufacturers have complained in confidence to the Commission's services that because of their need to have detailed service contracts with retailers and to prepare product launches well in advance they provide retailers with prior information on product innovations, which in some cases are nearly simultaneously found in competing private label products. The manufacturers thus suggest that private label brands are undermining investment in innovation by shortening or even eliminating the lead times when "new" innovative products can earn premium returns for the brand. More generally, there are claims about copycatting by private labels products of well-established brands and trademark images.

Even though no case of anticompetitive effects stemming from the increasing use of private labels has been found to date by any competition authority, they recognise the risk of such effects[130].

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128 One major branded electronic goods manufacturer has told the Commission services that this phenomenon resulted in it practising common catalogue pricing for retailers across the European Union.

129 Commoditisation may also be occurring by increasing media fragmentation and more individualism in advertising that works in favour of less branding and more niche marketing.

130 For example, the UK Competition Commission's conclusions on the UK grocery market are noteworthy in this regard: "*Our key concern with supply chain practices... is their <u>impact on suppliers' willingness to invest, given the uncertainty that they create and the consequent impact of this lack of investment on product quality and innovation</u>. While current trends in, and levels of, product innovation may not indicate a cause for concern, we must also have regard to whether product innovation performance might be better in other circumstances or if we can expect this level of product innovation to continue in the future. ...the evidence that we reviewed suggests that the prevalence of these practices is increasing. We are concerned that current levels of innovation or investment would not be maintained in the future were the practices that we observe to continue*".

The claim of the branded manufacturers would also suggest that they are unable to fully enjoy their intellectual property rights, pointing at difficulties to license their innovations at national level and to impose business secrets in their contracts with retailers. This may also reflect the type of innovations they refer to that may be largely incremental[131].

The increasing use of private labels may also raise concerns as regards their potential long-term anticompetitive effects on consumer choice, quality of products and pricing of food in general. Indeed, in a context in which retailers are increasingly viewed as competitors of their suppliers, the extensive use of private labels may lead a retailer and its competing leading brand supplier to coordinate their respective pricing and assortment strategies. In such cases, in-store competition between brands may be restricted and, in the absence of a sufficient competitive pressure from other retailers, consumers may suffer from higher prices or reduced choice for the relevant products.[132]

Joint purchasing agreements or "buying alliances"

In order to strengthen their buyer power, especially when facing strong suppliers, retailers have increasingly started to use the vehicle of buying alliances in some of their negotiations with suppliers. Such buying alliances now also regroup large EU trans-national retail chains as explained in Part I, Section 3. At their origin, such alliances aimed at pooling the required purchase volumes of their SME retail members together, so as to build a critical mass that would allow them to compete with large retailers (chains/groups). These alliances developed over time aiming to further obtain better negotiation terms from their strongest suppliers (e.g. often producers of must-carry branded goods). However, it seems that actual joint buying now also occurs with the aim of obtaining economies of scale in the specification and procurement of private label goods. It seems therefore that some international retail alliances thus go beyond the mere concept of "buying alliances". On the basis of the information gathered to date, the overall objectives identified for these modern retail alliances are to negotiate international discounts from suppliers based on the alliance’s performance (in addition to national rebates), to provide international marketing services to their suppliers and to achieve economies of scale in the procurement of private label goods.

However, in certain specific cases, such large transnational buying alliances may raise concerns as to their effect on competition and ultimately, on consumers. In particular, in certain circumstances, these forms of cooperation between large retailers may reduce the participants' incentives to expand into each other's domestic markets or may contribute to a standardisation of their purchasing policies, which could have a negative longer term impact on product variety and/or the ability of food suppliers to innovate. While joint purchasing agreements may give rise to important efficiencies, the extent to which such benefits are passed on to consumers depends on the specificities of each market, as well as on the scope and type of cooperation that takes place within each buying alliance.[133]

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131 Economists distinguish this form of horizontal differentiation (product/brand proliferation) as against vertical differentiation consisting of significant quality improvements to a product that are such that it would give rise to IP protection.

132 See Commission Communication on "*A better functioning food supply chain in Europe*" of 28.10.2009 (COM(2009)591) and its Staff Working Paper "*Competition in the food supply chain*" (SEC(2009)1449), already mentioned.

133 *Ibid*.

Regulatory framework

At Union level, there are no specific provisions regulating the relationships between retailers and their suppliers or seeking to limit the bargaining power of the more powerful party in the contractual relationship. The main Directives dealing with the question of unfair clauses or unfair practices only apply to business to consumer relationships and not to business to business relationships. As an exception, one could mention the Directive on commercial agents which constitutes a precedent in the regulation of contractual relationships in the field of distribution. It regulates the relationships between suppliers and their commercial agents and notably the rights of agents regarding their remuneration and the termination of their contract[134].

Competition rules[135] may influence relationships between actors of the supply chain since they prohibit any abuse of a dominant position in so far as it may affect trade between Member States, in particular imposing unfair purchase or selling prices, discriminatory or other unfair trading conditions or supplementary obligations to conclude a contract. Competition rules[136] also prevent anti competitive agreements, in particular those which fix purchase or selling prices or any other trading conditions, limit or control production, share markets or sources of supply, or apply dissimilar conditions to equivalent transactions with other trading parties. By doing so, competition rules play a key role in maintaining a level playing field in the retail sector and ensure that competition is not distorted by any market operator, to the ultimate detriment of consumers. Competition policy thus contributes to the overriding goal of achieving Internal Market integration. However, competition rules are not designed to protect individual competitors. They rather focus on the competitive process itself and, ultimately, the interests of consumers against the behaviour of certain undertakings that would have as object or effect the restriction of free competition on the market (e.g. cartels, resale price maintenance, abuses of dominant position, etc.). This means that European competition rules are not in principle designed to address unfair-trading practices, which in most cases amount to contractual imbalances and therefore pertain to the field of contractual or commercial law, as regulated by the laws of the Member States. Unfair trading practices do not *prima facie* entail direct consumer harm, but are rather revelatory of commercial tensions deriving from different bargaining positions. Commercial tensions between market players on retail markets may be symptomatic of the difference between what one party perceives as a "just price" for the contract products and the real price that results from the negotiations with his contract partner.

At Member States level, specific regulatory provisions on commercial relationships are not provided systematically for and the mentioned issues may be addressed through business tort law, contract law, or commercial law. However, in an increasing number of Member States, there have been attempts to regulate commercial relationships between suppliers and retailers by adopting specific legislation or through codes of conduct. Apart from presenting differences in the preconditions of application (some laws require the existence of economic dependency, whilst others simply provide for *per se* prohibitions of certain practices), the different regulatory or non-regulatory frameworks vary widely across the Member States. Indeed, the scope (in terms of sectors covered[137]), list of forbidden or limited practices or

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[134] Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents.

[135] Article 102 TFEU

[136] Article 101(1) TFEU

[137] Some provisions or codes of conduct are only applicable to food products (see for example the Romanian Order on the marketing of food products) or even to certain specific products (see for

nature of the list (exhaustiveness/non-exhaustiveness) all differ. In addition, enforcement authorities (competition authorities, administrative departments, civil or commercial courts) and sanctions (fines, ordered cessation of the practices, illegal clauses of contracts declared void, restitution of money paid without legal cause civil fine) can also be very different.

It is not excluded that certain of the provisions limiting the contractual freedom of one party of the supply chain would fall within the scope of the fundamental freedoms guaranteed by the TFEU, notably the freedom of establishment and the free movement of services. Some provisions could also fall within the scope of Article 34 TFEU, such as national provisions imposing a requirement on retailers to source a certain percentage of their supplies within a Member State[138].

Moreover, the efficiency of existing provisions aimed at tackling the problems of unfair practices imposed by retailers is somehow put into question by the persistence of complaints during the consultation from suppliers in all the Member States, including those with specific regulation. The major problem seems to result from the difficulty to enforce the provisions, since operators who are economically dependent on the relevant contract are not in a position to reveal abusive practices due to fear of retaliation (see for example the question of late payments, where, independently from the fixation of a payment period, suppliers rarely claim interest for late payments).

Some operators may also find ways of avoiding the application of measures limiting their margin of manoeuvre (i.e. suppliers stating in their contracts that they are not in a situation of dependency when this criterion is a condition of application of the law, by delocalising their contracts or by sourcing from neighbouring countries). In this respect, the practice of retailers basing their central buying office in a country without any restriction, even outside of the EU, indicates that some of the national measures may not be applicable (or even enforceable) to cross-border relationships. However, the application of the differing laws to cross border relationships is far from being excluded (see for example the UK supermarket code which applies to UK supermarkets in relation with direct suppliers based anywhere in the world; and the French case law stating that the provision relating to the prohibition on sudden breaks in a long term relationship is applicable even if one of the parties in the commercial relationship is not established in France[139]).

The apparent need to regularly modify the existing provisions in some of the Member States having started to regulate the relationships between retailers and suppliers is also an indication that some of those measures have not so far lead to satisfactory solutions (see for example the redrafting in 2009 of the UK Supermarket code of conduct established in 2001[140]). Some provisions were even repealed because of their counterproductive effects (see

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example the French code of commerce which states mandatory payment period of 30 days only for fruits and vegetables, see also the French code of Commerce which provides for specific payment periods for own label products).

138 The Court of Justice has already had the occasion to condemn national measures which, without even providing for "quotas" of national products, would have an effect on the on cross border sourcing, 24 November 1982, 249/81, Commission v Ireland, in which the Court considers that a national campaign aiming at promoting the sale and purchase of domestic products ("Buy Irish campaign") was contrary to article 28 EC.

139 Supreme Civil Court, 21 October 2008, n° 07-12.336, D

140 The UK Competition inquiry of April 2008 concludes that, while the Supermarket Code of Practice adopted in 2001 was effective at regulating some retailer supply practices, the transfer of excessive risks and unexpected costs continued, partly because of uncertainty regarding the ‘reasonableness’ standard employed in many clauses of the code (Final report p. 238)

for example the repeal of the prohibition on tariff differentiation in France, justified by the negative effects in terms of prices to consumers of this prohibition associated with the prohibition on sales below costs).

In conclusion, evidence suggests that given the partial character of the Union's acquis, the problematic relations between retailers and their suppliers remain. These are giving rise to increasing numbers of differing and uncoordinated national regulatory or non-regulatory restrictions whose efficiency and harmlessness for the Internal Market are questionable. There is a need therefore to reflect on how these imbalances can be addressed efficiently while minimising the counterproductive impacts on market efficiency.

2.1.2.2 Territorial supply constraints: strategies of suppliers and different rules affecting such situations

Since major branded manufacturers have no interest in reducing prices in contrast to integrated retailers, there is bound to be tension in their contractual relationships. Major branded manufacturers will try to negotiate contracts at national level since they still effectively control the logistics/wholesale chain in certain sub-markets. As multi-national European retail groups become more prominent, they seek to source from the lowest cost wholesale outlets or supplier subsidiaries and put pressure on manufacturers by contracting directly with competing suppliers to offer private label products. Both branded manufacturers and vertically integrated retailers will therefore increasingly contract across national markets.

Branded manufacturers will attempt to maintain price discrimination at all costs. As noted above, retailers in small Member States suggest that when they seek to source supplies from non-domestic wholesalers or even directly from suppliers in more competitive and attractively-priced neighbouring markets, they are redirected to the subsidiary responsible of that particular geographical market or their national wholesalers who have territorial contracts with the suppliers. Obviously there can be many objective reasons why wholesalers would not be allowed or would not be willing to engage in such contracts such as differing labelling obligations due to language differences or logistic reasons. However, evidence has been presented confidentially to the Commission services suggesting that where such barriers do not exist, some wholesalers or subsidiaries are refusing to sell to non-domestic retailers seeking to engage in licit parallel trade. Territorial restrictions need to be scrutinised closely since they could be preventing the smooth functioning of the Internal Market for retail services.

In addition, vertically integrated retailers have complained that certain suppliers are unwilling to source their European supplies directly from factory gates in other Member States, but require them to buy from their own national subsidiaries or contracted national or regional warehouse service suppliers. These retailers claim that if they were to use their own transport/logistic services to transport the products from these factories to their central warehouses and distribute them to their local stores, they could maintain or even increase their margins whilst still offering lower final prices to consumers. Moreover, in some cases, the distance to transport the product would be less than if it were supplied directly from the factory gate. Again this suggests that cross-border contractual relationships within the EU are being restricted. Finally, all large modern retailers whether in the multi-line or specialised field who contract directly with suppliers seek to limit stock levels and achieve just-in-time delivery schedules in order to minimise costs of stock management (see section on logistics). It follows that contracts will increasingly set down conditions both for delivery requirements and also for handling of unsold stock. This means that suppliers and wholesalers supplying these large chains will increasingly find that the contracts impose on them stock management requirements that previously would have largely been handled by the retailers themselves. These stock management problems are often passed down the supply chain to manufacturers or primary producers.

Regulatory framework

The regulatory framework at Union level does not always prevent such restrictive practices emanating from private operators. As mentioned earlier, Article 34 TFEU constitutes an important legal basis to contest restrictions to the free movement of goods and to cross-border sourcing, but it is only applicable if the restrictions are imposed by a Member State. For the same reason, it seems that territorial supply constraints do not infringe on Article 49 (right of establishment) or Article 56 (freedom of providing services) of the TFEU.

To the contrary, parallel trade between Member States is ensured by EU competition rules since market integration is one of the fundamental principles protected by competition law. In particular, EU competition rules (Article 101 TFEU) prohibit agreements between suppliers and wholesalers whereby the ability of the latter to engage in parallel trade and meet the requests from customers located in other Member States is prevented. However, it should also be noted that competition rules do not apply to intra-group arrangements (including territorial sales allocation per national markets) between a parent company and its subsidiaries if they form a single economic unit and therefore a single undertaking. This is the case when the subsidiaries, although having a separate legal personality, do not freely determine their conduct on the market but carry out, in all material respects, the instructions issued by their parent company, having regard in particular to the economic, organisational and legal links between those legal entities. Nevertheless, this kind of conduct may fall under the scope of Article 102 TFEU (which prohibits abuses of dominant position) if the conditions which trigger the application of this provision are met. [141] It is not excluded that the refusal of wholesalers or suppliers to sell cross border also results from regulatory barriers and not from contractual agreements. As regards the labelling rules, Directive 2000/13/EC[142] lays down provisions on mandatory labelling requirements, such as name of the product, ingredients, the quantity of the food, which are considered important to enable consumers to make an informed choice and for the safe use of the food once purchased.

Although, this Directive provides manufacturers, as well as retailers, with a set of harmonised rules, it allows for other Community provisions to be applicable to specified foodstuffs and not to foodstuffs in general which may provide that other particulars in addition to those listed in the harmonized provisions must appear on the labelling. Where there are no Community provisions, Member States may make provision for such particulars in accordance with the procedure laid down by the directive. However, such national measures must be justified on the grounds of the protection of public health, prevention of fraud and protection of industrial and commercial property rights, indications of provenance, registered designations of origin and prevention of unfair competition. In light of the above and on the basis of the principle of

141 See, for instance, Judgment of the CFI of 12 January 1995, Case T-102/92, VIHO Europe BV v. Commission, validated by Judgment of the ECJ of 24 October 1996, Case C-73/95-P.

142 Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

proportionality, the Commission is assessing the compatibility of draft national measures in the framework of the notification procedure.

In addition, another important aspect of the legislation is related to the provisions intended to ensure that the labelling can be understood by consumers. These stipulate that the Member State where the product is marketed can, in compliance with the rules of the Treaty, require that the labelling indications appear at least in one of the official languages of the Union. The Court of Justice has ruled several times that Article 34 of the Treaty and the labelling Directive preclude national regulations requiring the exclusive use of a specific language without retaining the possibility of using another language easily understood by purchasers or of ensuring that the purchaser is informed by other means . Finally, as regards the issue of the enforcement of the current labelling legislation, it is important to highlight the need for a clear repartition of the responsibilities in the food sector. Today, in the absence of specific provisions stipulating who is responsible for food information, in some Member States it has become a common administrative/jurisprudential practice to hold systematically retailers/distributors liable for the infringements of food information law, in scenarios with a cross-border element[143]. Member States consider it difficult to take steps against the producer in such cases and do not use effectively the mechanism of administrative cooperation, as provided for by the legislation and in particular Regulation (EC) No 882/2004[144]. So, contrary to scenarios of a purely domestic nature, in such cases retailers who do not affect food information and simply market the product as delivered by the producer, may be penalised by fines, even where a 'typical' production problem is involved, i.e. the product defect derives from the producer's area of activity.

The effect of this is that distribution of foods produced in another Member State involves greater risks since traders on the EU market are more likely to be subject to administrative or criminal proceedings than their competitors operating only on the domestic market. This practice would risk encouraging retailers/distributors to give preference to foods produced domestically to the detriment of the free movement of goods.

In this context, the Commission's proposal for a Regulation on the provision of food information to consumers[145] provides for clear determination of responsibilities among different food business operators in line with Article 17 of Regulation (EC) 178/2002[146]. The proposed rules would contribute to create an environment of legal certainty for both food business operators and the national enforcement authorities and to ensure the smooth functioning of the internal market.

2.1.2.3 Alleged abusive payment delays: cash management strategies' and contractual relations and different rules affecting them

Naturally, all large retailers and wholesalers, whether on-line, off-line, specialised or multi-line, have to handle significant monetary flows and a key part of their contracts concern payment delays.

In order to avoid over-reliance on trade credit, they will all seek to pay manufacturers close to the actual date of the retailer or consumer purchase. It is in the interest of suppliers to be paid

143 The producer of a suspect product has its registered office in another EU Member State.
144 OJ L 165, 30.4.2004, p. 1.
145 COM/2008/0040 final.
146 OJ L 31, 1.2.2002, p. 1.

as close to the delivery date to the retailer as possible whereas the retailer's interest is to pay for the stock bought from the wholesaler as late as possible and preferably no earlier than the date of a final consumer purchase. Likewise, the retailer will seek to get the supplier to fully cover his after sales expenses such as refunds and returns policy. The supplier on his side would prefer such fees to be shared since some of the problems could arise from incorrect in-store handling or poor customer information services. This is an issue of tension in the relevant relationships and smaller suppliers have complained of excessively long payment delays being imposed upon them as well as excessively high levels of product returns etc. Small retailers face similar problems when dealing with wholesalers and suppliers. It is noteworthy to see how many small retailers went out of business early in the most recent recession as sales levels declined but also as a consequence of tighter trade credit requirements by banks, without which those retailers could not fund their inventory requirements.

Retailers will also seek to minimise cash handling costs and so encourage the use of credit and debit cards. Other than offering such services themselves (larger vertically integrated retailers now offer banking services), they will seek to process the clearance of such payments in those Member State offering the most competitive interchange fees[147]. Many retailers have complained that interchange fee systems vary significantly between Member States and that it is not possible to source payment services across the borders of the Internal Market. Although such fees are paid by the retailers, they are eventually passed on to consumers through higher prices. Furthermore, it is often suggested that there is opacity in the fee structures for these services. Although complaints about the lack of competition across banks and payment card systems come mainly from large retailers, it is clear that smaller retailers with lower volumes are likely to suffer even more from this inefficiency in the banking market.

Regulatory framework

As regards payment periods and late payments, EU law[148] does not harmonise payment periods and does not provide for a mandatory maximum payment delay between businesses, since this is left to contractual negotiation in accordance with the principle of freedom to contract between economic operators. The legislation specifies, inter alia, that statutory interest may be charged when payment is not made within the contractual or legal deadline and covers the questions of retention of title and recovery procedures for unchallenged claims. The means provided for by the Directive, such as the right to claim interest for late payment or the right to seek compensation for recovery costs, remain an optional instrument for businesses.

Many businesses, and in particular SMEs, do not charge interest when entitled to do so**,** thus contributing to the situation in which debtors are not sanctioned for paying late[149]. 75% of EBTP (the European business panel)[150] respondents seldom or never claim interest for late payments. According to the responses to a specific questionnaire on claims for late payment interest, the average claim rate for SMEs is 13.5% of all late payments and the equivalent rate for large companies is 18.24%. According to a consultation organised in France, 90% of

147 Interchange fees are charged by a cardholder's bank (the 'issuing bank') to a merchant's bank (the 'acquiring bank') for each sales transaction made at a merchant outlet with a payment card.

148 Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions

149 Etude sur les délais de paiement", by Prof. Michel Glais, 2005.

150 http://ec.europa.eu/yourvoice/ebtp/index_en.htm

participating organizations think that less than 10% of their members put into practice the statutory interest provided for by law. Other sources confirm these figures:

Figure 10: Claims for late payments in 7 Member States

Companies claiming interest for late payments in 7 EU Member States			
	2005	**2006**	**2007**
Germany	54%	47%	52%
Belgium	39%	36%	34%
Spain	25%	22%	14%
France	11%	15%	12%
Italy	25%	21%	21%
Portugal	22%	20%	26%
United Kingdom	11%	13%	22%

Source: Eurofactor, Baromètres 2006, 2007 and 2008

The European Commission proposed, in April 2009, to recast the Directive[151] in order to strengthen the existing rules relating to late payments between businesses, and between businesses and public authorities. Under the new proposal, public authorities will have to pay their bills within 30 days or pay "dissuasive" financial compensation; businesses will not only be entitled to claim interest for late payment but also to obtain reimbursement of their recovery costs. Moreover, for the sake of clarity and to simplify procedures, the proposal fixes the amounts and it will be possible to charge even the smallest amount of interest (the threshold of 5 Euro will be abolished). This proposal does not provide for maximum payment periods for business to business contracts. In any case, as seen above, the question of enforcement is even more important in this context, since suppliers are unwilling to contest abusive practices from retailers due to fear of being delisted by their clients.

As regards interchange fees, the EU has recently created the conditions for putting into place a self regulatory system called SEPA, in the context of the Payment Service Directive. This system aims at creating an integrated market for payment services in Euros, with a harmonised set of business rules and technical standards. Retailers have however complained that the market remains fragmented since SEPA benefits are still to materialise. They also expressed concerns that the incentives put in place by such self regulatory mechanisms may not be sufficient to address effectively the fragmentation of the market.

In this context, it is worth mentioning that the Commission, in cooperation with the Member States, is considering setting an end-date for moving from the national payment systems to SEPA with regard to credit transfer and direct debit operations. Moreover, the Commission recently adopted a Communication on Completing SEPA providing a framework for action within six priority areas where greater involvement of all relevant actors is required in order to achieve the full implementation of SEPA.

2.1.2.4 Costs of ethical and quality scheme certification in cross-border contractual situations and different rules affecting them

In recent years there has been a substantial growth in private and national certification schemes for agricultural products and foodstuffs. These certification schemes provide

[151] Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions (Recast) {SEC(2009) 315} {SEC(2009) 316, 8.4.2009 COM(2009) 126 final.

assurance (through a certification mechanism) that certain aspects of the product or its production method, as laid down in a specification, have been observed. They cover a wide range of different initiatives, both public and private, that function at different stages of the food supply chain (pre- or post-farm gate, covering the whole chain or just a segment). They can operate at the business-to-business level or at the business-to-consumer level. They can make use of logos but, especially at the business-to-business level, many do not.

Certification schemes for agricultural products and foodstuffs in the EU range from compliance with basic production standards to additional requirements relating to environmental protection, animal welfare, organoleptic qualities, worker welfare, producer contractual arrangements (e.g., "Fair Trade"), climate change concerns, ethical, religious or cultural considerations, farming methods, and origin. Scheme owners are equally varied, covering the whole range from farmers and producers, NGOs, interest groups and retailers, to public authorities.

All of these schemes are voluntary. However, certification under some schemes may be requested by market actors. Most retailers demand some form of certification from their suppliers, thereby making it a de facto requirement for a contract of supply. Suppliers to more than one retailer may be faced with a situation in which they have to comply with largely overlapping schemes, each requiring its own reporting, certification and audit mechanism with the corresponding costs. In such a situation, producers who for a variety of reasons do not wish to comply with the certification requirements are effectively excluded from the supply contract, which could in theory lead to reduced consumer choice. Certification schemes should not result in de facto barriers to trade in goods in the internal market[152].

Retailers have played a key role in offering differentiation schemes with ethical product lines in response to consumer’s increasing concerns on environmental and social impacts ('Ethical' covers several societal issues, such as environmental and social considerations and animal welfare).

As regards fair trade products from third countries, NGO shops and NGO producer cooperatives were key in developing these first. Private ethical labels by retailers or the promotion and supply of ethical labelled products in vertically integrated retailers followed and it was this source of volume sales that allowed for such fair trade producer labels to develop into mainstream downstream markets. The fair trade schemes typically guarantee fair prices to primary producers and also guarantee that these producers meet international environmental and social standards. The resulting contracts are typically cross-border involving third countries. The certifying bodies of fair trade organisations offer auditing services to the primary producers such that they can enter the fair trade schemes. In some cases, it is left to suppliers to pay for the auditing and certification costs. These types of schemes are the most complex labels to put in place and yet they are the ones that consumers are seeking and that are essential if retailing is to play its role and encourage a more sustainable consumption path for European consumers[153].

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152 In its Communication on "Agricultural Product Quality Policy" (COM (2009) 234), the Commission announced that it will develop good practice guidelines for agricultural product quality certification schemes to ensure transparency and effectiveness of private and national certification schemes. These guidelines are part of the "quality package" initiative on agricultural product quality policy, for which adoption by the Commission is expected end of 2010.

153 The Commission Communication on "Contributing to Sustainable Development: The role of Fair Trade and other non-governmental trade-related sustainability assurance schemes" (COM(2009)215)

As to private labels, it is the multi-line retailers who have developed them in order to enter new market niches. This has been particularly noticeable for organic food lines and also for ecological product lines and has required complex contracts including auditing/certification requirements. The smallest of suppliers cannot afford these and there is evidence to suggest that although retailers offer higher margins to such suppliers, it is the suppliers who have to fully pay for all the necessary upfront investments. Such contracts will therefore only be possible for medium sized suppliers.

There are two major drawbacks arising from the current developments, which apply both to third country and to European sourcing. The first is that due to a lack of internationally agreed criteria for the environmental and social auditing of supply chains, some ethical or fair trade labels can start and finish with the primary producers and may not take into account the conditions of processing, packaging, transport, storage, etc. Therefore, when buying a product the consumer does not have a guarantee that social or environmental considerations have been accounted for throughout the supply chain with its numerous players spanning from the primary producer's farm or forest through to the retailers shelf[154].

The second is that, it would seem that, to date, it is sometimes left to the producers to pay to show that they are ethical. It is true that retailers sell their products at a slight premium but the upfront cost of auditing and certification are left to the producers. This could give rise to unethical outcomes. This is because certain producers who may be exceeding the fair trade standards are unable to declare it because they have, as a consequence of their ethical business model, insufficient margins to pay for the auditing/certification involved. As a consequence, such producers cannot benefit from the level playing field when entering the market. Moreover, the multiplication of private labels by retailers may imply a multiplication of certification procedures for a supplier, especially if seeking to operate in more than one Member State. This may amount to a significant financial and administrative burden given the multitude of such schemes and their sometimes overlapping requirements. Retail-driven certification schemes could also indirectly compel suppliers to sell to only one buyer. The potential competition risks that this would entail as a consequence would be the possible foreclosure of competing buyers.

If one combines the two factors it is evident that producers will be unable to fund the social and environmental auditing of the rest of the supply chain and so the much needed truly ethically produced and supplied product labelling will not materialise. Vertically integrated retailers might be able to revert to this but they seem to conclude that today's consumers would be unwilling to pay the premium for such products. The need to, on the one hand, agree reference criteria on which producers and retailers could compete in terms of their ethical performance and, on the other, collect the data on the costs of auditing and certifying such international schemes should be assessed.

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provides a more detailed analysis of private sustainability assurance schemes, and suggests considerations on the role of public authorities in relation to such schemes.

154 In COM(2009)215, the Commission announced its intent to explore the scope for further dialogue, co-operation and, where appropriate, convergence between different private labelling schemes to promote possible synergies and enhance clarity for the consumer.

Regulatory framework

As far as ethical labels are concerned, it should be recalled that they were first developed by NGOs but some labels have been adopted at European level (see for example the Eco-label [155] which aims to promote products with a reduced environmental impact compared with other products in the same product group). Many ethical labels are also developed at Member State level, be it by a national authority[156] or by operators (producers, manufacturers or increasingly retailers[157]). This is of course under a broad understanding of the terms "ethical labels" which includes public and private initiatives.

As explained earlier, the multiplication of public and private labels relating to the ethical performances of products or services may give rise to potential competition concerns or Internal Market problems, whether for the free movement of the products or services labelled or for the cross border use of certification services[158]. For some of the restrictions stemming from national or regional regulations (in particular as regards certification services), Article 56 of the TFEU concerning the freedom to provide services should be taken into account.

2.2 The commercial property market and retail services

Commercial property is an essential part of any bricks and mortar retail business and therefore commercial property markets play a key role in shaping emerging or mature retail markets. All retailers require the best positioning of outlets at local level and depend on how efficient the commercial property market is. It is estimated that costs of retail property whether owned or rented currently represent between 16-48%[159] of total operating costs, which is undoubtedly a significant figure on the balance sheet of a business with relatively low net margins. Moreover, compared with other inputs retailers may be less able to exert influence on the cost of commercial property. Since their business depends on ensuring relatively high levels of foot-flow and given the scarcity of sites, retailers, in particular small ones, will tend to be price takers in this market. Moreover, even when they rent rather than own the sites, they will be relatively "locked-in" to their rental contracts given that once their local customer base has been established and loyalty has been built up, they will be unwilling to relocate and start again. This lack of flexibility may explain retailers' behaviour in other upstream markets and may also contribute to explain price differences in differing local downstream markets. It follows that any malfunctioning in the commercial property market will have direct consequences on retail service providers.

The following analysis first seeks to demonstrate the influence of the commercial property market on the retail landscape and in particular on retail rents. It will then analyse how retailers react to these market developments as well as what is the role of the regulatory framework.

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155 See, for environmental claims, Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme

156 See for example for organic products, the AB logo in France.

157 See for example the logos "Agir" from Carrefour.

158 EU's obligations under WTO rules and in particular under the agreement on Technical Barriers to Trade might need to be considered.

159 Forfas

2.2.1. Indications on the commercial property market and its significance for retail service providers across Member States

Impact on the retailer landscape

Commercial property markets are of local nature to the extent that they respond to the market and regulatory conditions in the given area and that retailers entering these markets cannot but adapt to them. The local supply of land for new retail development and the existing stock of shops as set down by local planning requirements will obviously affect the nature of the local retail market in terms of ownership and/or rental costs and will impact on the accessibility and affordability of the retail services offered to local consumers. The growth or alterations of local commercial property markets are directly influenced by development projects proposed and executed by national and often multinational property developers. Pan-European or often global commercial property groups and their financial backers rent or sell properties to wholesalers and retailers at the local level. It should also be noted that some vertically integrated retailers are themselves major players in this market.

Traditionally, retailers entering a market will establish in the city centres with clusters of shops (usually termed prime sites). Alternatively, a new entrant may seek to establish an outlet in an area outside the city centre, where the rents should be lower[160], but the residential structure would generate sufficient clientele to go to the shop, and run it with reasonable profit (non-prime sites). However, with the advent of property development services over the past decades, more sophisticated factors come into play. This explains why the landscape of retail infrastructure has changed dramatically. The emergence of dedicated shopping centres, especially in the fast growing retail markets[161] has resulted in retailers abandoning non-prime sites while focusing on either city centre or on out-of-town, peri-urban newly developed brownfield locations. It has been reported to the Commission's services that retailing has become more polarised in and around city centres and out of town shopping areas with suburban and rural locations being less well served.

The information gathered suggests that new shopping sites (shopping centres and the like) are built by specialised developers either in direct co-operation with major retail brands or by offering a number of selected retail brands favourable conditions to open their outlets in these prime locations (e.g. a large hypermarket, a major clothing brand, etc.). To make this even more attractive for these retailers, various restrictions (covenants etc.) [162] are agreed to so as to strengthen the position of the retailer in the given site. It is assumed that this forms the backbone of the new retail site that would suffice to attract enough customers to travel there. The remaining space is then offered to other retailers and at higher rates, since sales are based on high foot flow and therefore attractive expectations. Such restructuring of the retail landscape possibly accentuates accessibility issues in locations in suburban and rural areas.

Rental costs

The existing commercial data which are reported by commercial property groups[163] provides a partial overview of the rents across different Member States and also illustrates the pan-

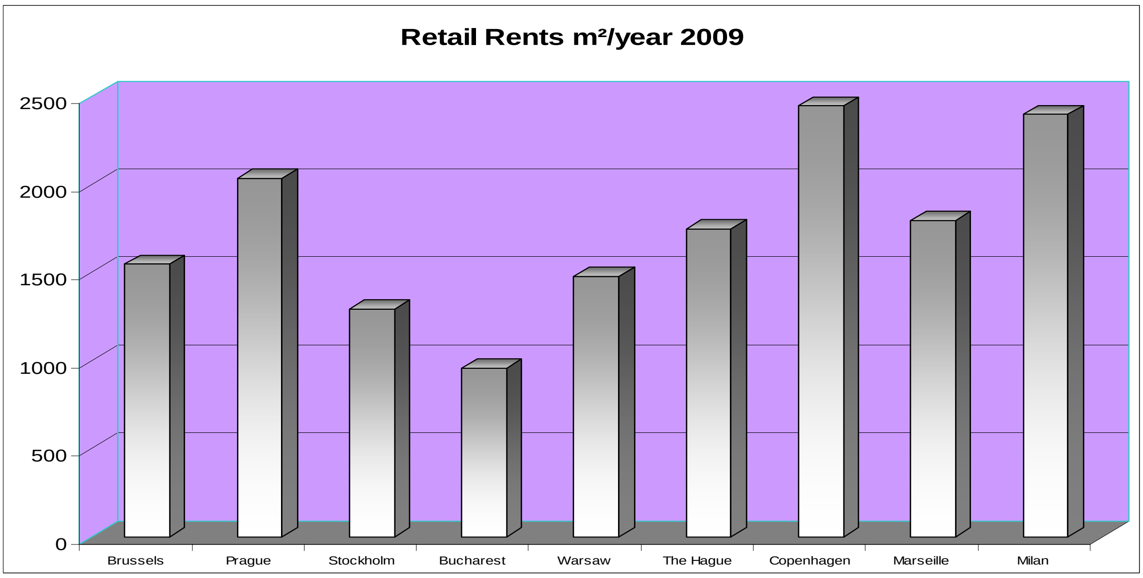
160 Security costs might be higher in such locations because of lower levels of policing etc.
161 Restructuring retail property markets in Central Europe – impacts on urban space, Herman J. Kok
162 The supply of groceries in the UK market investigation, 30 April 2008
163 Public data on costs of buying retail properties and commercial rents is not available.

European nature of these markets. This data consists of general trends in rents and more specific data on prime sites representing the safest and most profitable investments.

Not surprisingly, recent trends of commercial rents have been stable or negative due to the recession. As consumption declined, revenues of retailers decreased and properties either became vacant or landlords accepted reductions in short-term rents to allow their tenants to weather the downturn. According to commercial sources[164] between June 2008 and 2009 rents fell across Europe, but there were noticeable differences across the Member States. The largest discrepancies occurred within the EU12 and Nordic Member States. For instance, rental falls in EU12 were on average -38.9% in Romania, -23.1% in Hungary and -15.6% in Bulgaria but only -5.9% in the Czech Republic and -6.3% in Slovakia. Similarly, the rates in Denmark and Sweden fell on average by -5.4% and -3.6% respectively but decreased sharply, by -15.5 %, in Finland. In all these cases, it was the rents of secondary or tertiary locations that suffered most. Although rents decreased the leasing market remained buoyant due to the fact that some larger retailers took advantage of the lower entry costs to start investing or entering in the relevant regions, through the purchase of land or existing retail shops that could be developed for new retail purposes.

The graphs below show retail rents per square metre for certain major European cities and prime yields per square metre. Both exhibit significant regional differences but prime yields, which show returns to investors from the best placed (in prime locations) properties and best performing tenants remained strong in 2009. The rental costs do not appear to be closely correlated to GDP per head of the local population either. Thus for example, one would expect the rents in The Hague, Brussels or Marseille to be higher than those in Prague. Instead those of Prague are 10- 20% higher.

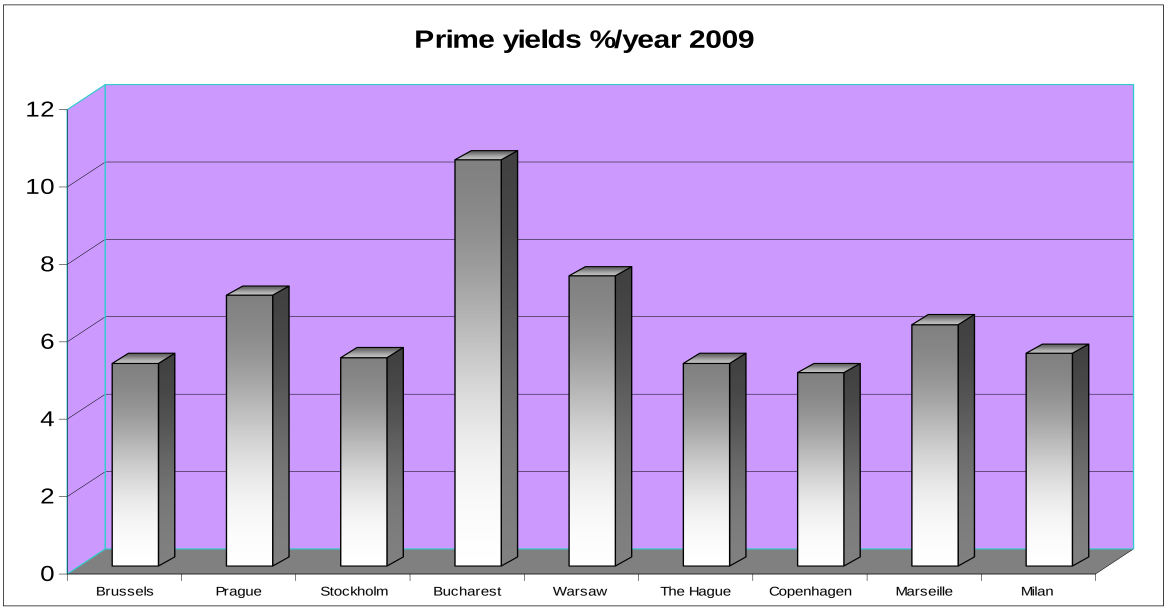
Figure 11: Retail rents in 2009



Source: DTZ public information

164 Ft.com/alphaville 30.9.2009

Figure 12: Prime yields in 2009



Source: DTZ public information

The partial data in Figures 11 and 12 above tend to show that the pan-European nature of the commercial property market is driving to certain levels of convergence when it comes to the rental costs of prime retail locations. Given that retailers are relatively locked-in to such sites and that rental costs for secondary or tertiary locations, although lower, are indexed to those of prime sites, this could well have resulted in escalating rental costs in the EU12 compared to the EU15. If rent levels in prime locations are similar in Member States with large differences in average per capita income levels, then this will have obvious negative consequences on other upstream markets where retailers will seek to minimise costs further, as well as the downstream retail market. As regards the latter, this development may well contribute to explain the counterintuitive cross-border price divergences in consumer goods referred to in the section on downstream markets above.

2.2.2 Explanatory factors: strategies of retailers vis-à-vis commercial property owners and developers and the regulatory framework

Prime locations are attractive for property developers and large new entrant retail groups

Property development is a business based on scale economies. The developer creating/refurbishing/refitting a major city centre location or a large periphery dedicated shopping centre complex will obviously require either large amounts of own funds or large financial backing from the markets to undertake such projects. Indeed, reputation and size will be key in being able to secure affordable funding. Moreover, in the retail market, although some retailers have vertically integrated into property development and property ownership, many others do not seek to buy properties but rather to rent them. Large property developers seeking stability in their rental contracts in order to attract institutional investors into their market will therefore offer qualitative services to their large retail rental customers. They may therefore for instance not only provide buildings but offer or sub-contract facilities management services with the package offered to the retailer.

Retailer groups entering new markets will be dependent on property developers to provide them with access to locations that bring in the required foot-flow for their businesses. To date, these retailers have grown through large format stores and hence they will not be interested in small semi-urban non-prime sites. The size of the site is key because the economies of scale in the business imply that for multi-line retailers sales per square metre increase as store size increases. They will therefore focus on prime sites, whether they are in city centre locations or in peripheral purpose-built shopping complexes. It should be noted that the rent levels between the two may be slightly different but not as high as one would expect since these shopping centres may offer more up to date buildings with better parking and store management facilities, all of which will be paid for.

Given the scale of the property development business for prime sites only the largest retail groups in the various sub-segments can afford to vertically integrate into this business. Such vertical integration is an attractive proposition given that by owning such valuable land in such prime locations, they can raise more capital to extend their businesses elsewhere. By entering this business practise they can, however, adopt anti-competitive strategies by only sub-contracting commercial retail lots to retailers who do not offer direct competition to their larger stores. This is not a direct reason to prevent such vertical integration but it signals the need for closer examination by competition authorities in the already concentrated property development market.

These requirements of property developers and large retail players explain why prime locations will typically be good investment decisions for investors. The point is that even in recessionary periods where established retail brands may suffer from a decline in business new entrants will be interested in such sites in the belief that their differing business models will be able to reanimate purchasing power from the high foot-flow that such sites benefit from.

This evolution reduces accessibility to affordable retail services for those who have limited mobility and it may also have negative environmental consequences given that use vehicles to undertake day to day shopping needs. As costs of transport and congestion increase, the attractiveness for large retailers to establish networks of proximity stores may increase. However, the lack of interest by large property developers in establishing small scale local shopping nodes, combining a supermarket with other service outlets (such as a bar or pharmacy and parking area) may make it difficult for such retailers to reintegrate these areas. It has been reported to the Commission's services that certain retail groups are establishing their own property development arms precisely because of the lack of service from existing property developers for these kinds of projects.

Regulatory factors

Urban and rural planning rules

As explained in the section on the downstream market, planning rules and notably zoning rules ideally seek to ensure a more even distribution of retail outlets in a given urban or rural area. Such rules aim to do this by limiting the level of development that can take place at prime sites and also the planning for commercial nodes in semi-urban or rural areas. However, it is clear from discussions with Member States' authorities that the development of zoning rules is at times partial and moreover takes place at a local level. In addition, where zoning plans are not in place, which is often the case, the competent authorities resort to individual planning decisions, the procedures related to which lack transparency and do not necessarily account for the needs of broader regions. Thus, the lack of a co-ordinated planning system across an entire territory can give rise to competition between local municipalities to have retailers established within their own territories, e.g. a local municipality in the outskirts of major town may welcome and even encourage the establishment of a large shopping park even if such a park will undermine the neighbouring semi-urban vicinity or give rise to major congestion problems in that area. An OECD report [165]suggests that contrary to the current local approach, planning for projects with broadly dispersed benefits should occur at non-local level.

Many of the EU15 Member States are currently reviewing or extending their zoning provisions to take account of such effects and to cater for accessibility and environmental accountability. For example, in France, mechanisms have been put in place to protect commercial activities in rural areas, city centres and sensitive urban areas by giving the municipalities pre-emption rights, or to address the issue of high rents. Carefully designed planning rules can also provide incentives to maintain retail diversity and encourage affordable entry in city centres. There are signs that this occurs in Germany where there are specialised developers of city centre shopping sites. Nonetheless significant national differences remain. These are even more apparent in the EU12, given that in the transition to market economy systems the needs for such detailed planning rules were not foreseen and/or were not elaborated in time and therefore allowed for uncontrolled free entry. Given that planning is costly both to design and to enforce, it is not surprising to find that certain cities in these Member States are literally being blighted by commercial developments that would not have been feasible in the EU15. On the other hand, excessively strict planning regulations can sometimes lead to scarcity of land available for retail development thus further increasing commercial rent levels (impacting on land prices). Restrictions on the use of land that decrease the amount of available retail commercial property space can drive rents excessively upwards which will then be reflected in inflated consumer prices of the products sold.

Local Taxes

Another key part of commercial property costs relates to fiscal costs associated with the ownership or renting of commercial property sites. In the same manner as retailers are key local community employers they are also a key source of local Government revenues. It follows that if central Government devolves greater power to local municipalities, those regional or local authorities need to increase their finance to fund those powers and residential and business rates are the main tools to achieve this. Unlike manufacturing or on-line /distance retailing, bricks and mortar retailers have no choice but to pay these local taxes.

Retail organisations have noted that in certain Member States, exclusive reliance on values of properties as a reference for local retail taxes discriminates against bricks and mortar outlets compared to distance selling operators including e-commerce suppliers. This also tends to discriminate against small local shops which generate far lower sales volumes per metre of floor space than their larger competitors. Again these factors may further encourage retail growth in prime locations and exacerbate the accessibility and proximity problems noted above.

[165] OECD report of 2008 "Land Use Restrictions as Barriers to Entry"

Competition policy and land leasing law

As noted above the strategy followed by certain retailers in the commercial property market may entail potential restrictive effects in specific circumstances. As retailers enter the commercial property development market, they should be encouraged to do so in such a way as to increase services in this market and thus competition rather than to undertake anti-competitive practices against their rival retail groups with potential foreclosure effects in downstream markets. The UK Competition Commission drew attention to this possibility in its report in April 2008 where it identified several practices that may result in decreasing the opportunities of competing retailers to enter the markets. These include land banking (keeping land potentially available for development empty), leasing and sub-leasing to non-grocery third parties (thereby blocking grocery competitors from entering the market), restrictive covenants, restrictive agreements (e.g. agreement of local authorities with the developer resulting in the imposition of restrictions) and exclusivity agreements (between developer and e.g. a grocery store).

Furthermore, the same report identified that the above strategies were possible because of the national legal framework concerning the use of commercial sites in the UK. Laws on leases and/or land acquisition, and potentially contracts and agreements (restrictive agreements, exclusivity agreements) between relevant actors may therefore need to be examined across the Member States not only to ensure that these practices are prevented but also to ensure that any remaining restrictions or regulations are consistent with the needs of proximity retail development.

Differing practices on rental contracts

There are differing practices on the regulatory frameworks surrounding the indexing and negotiation of retail rental contracts across the Member States. Some of these allow for more flexibility than others in times of crisis and may explain why certain retailers including small retailers have been able to weather the recent recession better than others.

In many Member States rental contracts are open to free negotiation. Nevertheless, there are national laws laying down constraints on what landlords can impose as well as obligations on tenants. For instance in Germany[166], if an indexation clause has not been agreed, the landlord cannot impose an increase within fifteen months of the start of the contract and any subsequent increase has to be justified either by referring to the rents for three comparable properties or by referring to a recognised "qualified rent" table". In France, there is, in principle, freedom to negotiate rental contracts but an inter-professional agreement was reached between landlords and retailers regarding a new rental indexing scheme to increase the link between the evolution of commercial rents and commercial activity in December 2007. This index is weighted as follows: 50% retail price inflation, 25% inflation of real estate and 25% increase in retail turnover and was put into law in November 2008[167].

2.3 Labour in the retail sector

The retail sector is a major employer in the EU given that it employs around 17.4 million people i.e. 8.4%[168] of the total EU workforce[169]. Some of the largest retail companies are also

[166] Petercam. German retail update 28/11/2007, the law on Obligations 558
[167] Procos press releases.
[168] EU KLEMS 2007, EU25

the most important private employers in Europe. The retail sector often recruits at local level and provides many job opportunities especially for young people, women and less qualified people. It is also an important source of employment for first time job-seekers, notably school-leavers. In addition, the retail sector is an important source of self- employment. In fact, in 2007, approximately 19% of those employed in general retail, were self-employed[170].

In addition to the quantity of available jobs, it is also important to account for the quality aspects (i.e. working conditions, including health and safety at work) of retail jobs[171]. These may vary according to the tasks performed, the nature of the employment (whether employee or self-employed) and the prospects of advancement that may be linked to the size and the legal form of the company. In general, especially in times of recession, the retail services sector is perceived in public opinion as offering deteriorating working conditions and as neither providing quality jobs nor long-term career prospects. In contrast to this, retailers complain that they cannot adopt labour patterns offering sufficient operational flexibility that is required in their highly competitive environment. Therefore it is important to aim at striking the right balance between the social objective of ensuring that retailers apply quality working conditions and the economic necessity to have flexible staffing schedules given differing daily, weekly and seasonal foot flow levels.

The following analysis therefore seeks first to examine the performance of the retail sector as an employer by looking at the employment levels and profiles as well as employment conditions across different Member States. It then examines to what extent these performances are driven by the retailers' strategies and how the existing regulatory framework is contributing to this performance.

2.3.1 Differences in terms of employment levels across the Member States

Employment levels in retail services vary between Member States. In 2005 the share of total employment in the retail sector was the highest in the UK (10.5%) and the lowest in Sweden (5.55%)[172]. In general, retail services continue to be a source of employment growth. In a large majority of Member States, employment in retail has been growing faster than in the whole economy. This is particularly manifest in the new Member States (except in the Czech Republic). In some Member States employment growth in terms of the number of employees has sometimes been largely in part-time employment. This is particularly relevant for Ireland, Spain, Slovakia and Greece where part-time employment has doubled or even tripled (Spain) over the period 1997-2007[173].

There are also variations across Member States in the share of total retail employment accounted for by retail companies of differing sizes. Figure 13 below shows that almost 70% of retail employment is provided by large retail companies in the UK whilst in Greece, Italy,

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169 Throughout this text, when statistical information is given reference is made to "declared employment levels"

170 Eurostat, Structural Business Statistics. In 2007 80.8 percent of those employed in general retailing were employees. A large share of the remaining 19.2 percent is assumed to be self-employed.

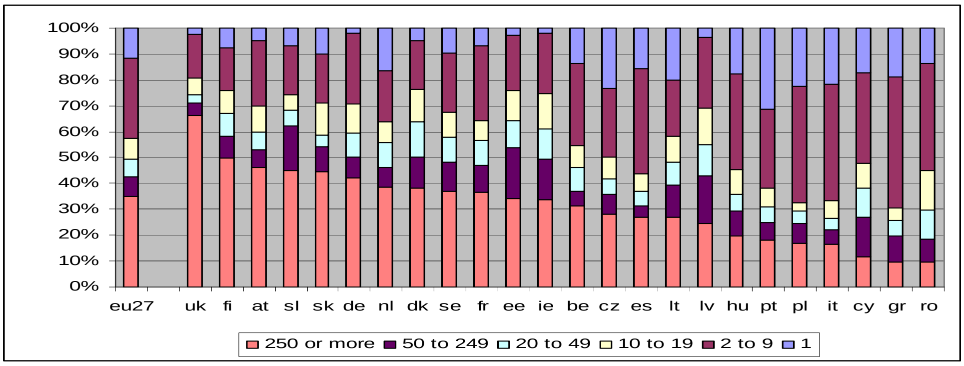
171 The EU definition of job quality was endorsed by Laeken European Council in December 2001. The Communication on Improving quality in work: a review of recent progress, COM(2003) 728 provides the list of indicators for monitoring quality in work. See also the Employment in Europe Report 2008 (http://ec.europa.eu/social/main.jsp?langId=en&catId=113&newsId=415&furtherNews=yes).

172 EU Klems (Share of employment) and Eurostat (Apparent Labour Productivity, labour costs)

173 Eurostat/ LFS, EU Klems

Romania and Poland around 70% is provided by the small (up to 19 persons employed) companies.

Figure 13: Share of employment (in %) by enterprise size (number of employees) - 2006



Source: Eurostat (SBS)

2.3.2 Differences in terms of employment profiles across the Member States

Service sectors generally employ a higher proportion of women than manufacturing and the retail sector is particularly significant in this respect (see Figure 14). Women represented more than 60% of people employed in retail services in the EU27 in 2007 (compared with 53% in services in general and 30% in manufacturing). Furthermore, the share of women employed by the sector in the new Member States was greater than in the old Member States[174]

The retail services sector is also characterised by a high proportion of self-employed. Although the share of self-employed of total employment in the EU retail sector as a whole has decreased from 22.8 % in 2004 to 19.2% in 2007[175], it nevertheless continues to be a sector offering considerable opportunities for entrepreneurs to set up a business compared to manufacturing (6%) and the services sector in general (15%). This is also the case across service sectors where the share of self-employed is 17% for hotels and restaurant services, 9% for transport, storage and communication services and 17 % for real estate, renting and business activities. Interestingly, there are also significant differences in this characteristic across the Member States (ranging from 48.1% in Italy to 1.6% in Slovakia in 2007).

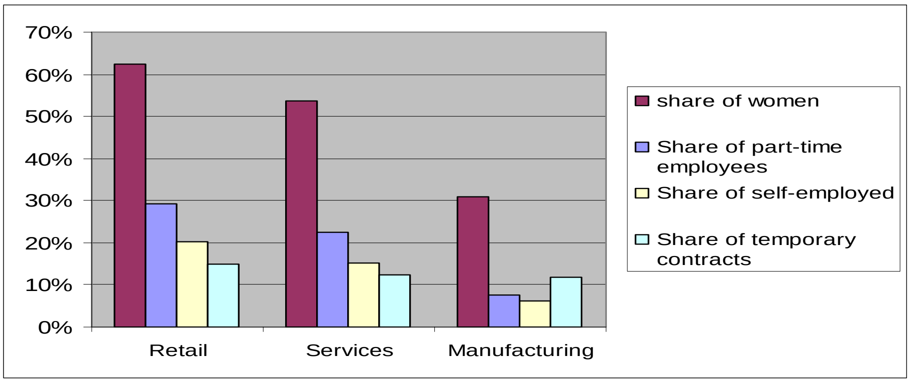
Within the retail sector itself, self-employment is the highest within the category retail sale via stalls and markets (70%)[176], followed by retail sale not in stores (49%), retail sale of textiles (39%), specialised food stores (36%) and the lowest within the category of non-specialised stores selling predominantly food (8%). For dispensing chemists (pharmacies), this share stood at 18%. As in the retail sector as a whole, the number of self-employed has been decreasing also in each of the sub-categories.

174 Eurostat (LFS) Share of women in total employment in retail, services and manufacturing sectors (2007)

175 Data on self-employment are based on Eurostat, Structural Business Statistics for 2007. It is assumed that the share of self-employed equals the share of non-employees

176 The percentage of self-employed in retail sale via stalls and markets is for 2006 (all others for 2007).

Figure 14: Structure of employment in retail trade (2007) – EU27



Notes: Exceptions to reference year: Share of self-employed (2006)
Source: Eurostat/ LFS (except for the share of self-employed: Eurostat/SBS)

In terms of age and skills profiles, employees in retail services are generally younger and have a lower educational level than the average for employees. More than 30% of workers in retail are under 30 years, compared with around 10% in both the manufacturing and general service sector. In Denmark and the Netherlands the rate is even higher (around 50%). On the contrary, Italy and the Czech Republic are below the average (22%)[177].

While the division of employment by age groups in retail has overall remained the same over the last 10 years in the EU15, the division by skill groups has been changing (see Figure 15). The share of low-skilled employees has been decreasing and both the share of medium and high skilled has increased[178]. Nevertheless, retail remains a sector where the share of low-skilled workers is particularly high and the share of high-skilled is particularly low compared to other sectors. Concerning the high-skilled category, 9.8% of women employed in retail[179] (against 13.1% of men) would fall into this category. In the entire economy, these figures would be roughly 30 percent of women and 10 percent of men[180][181].

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[177] Eurostat (LFS)

[178] Employees with the highest obtained level of education at the pre-primary, primary or lower secondary education levels are considered to be low-skilled, those with upper secondary or post-secondary non-tertiary education medium skilled and those with tertiary education high skilled.

[179] Eurofound analysis run in 2002

[180] Eurostat, Labour Force Survey, 2008

[181] Because the retail sector is a major employer of vulnerable groups of workers such as the young, inexperienced and because of its high churn rate, special attention should be given to health and safety risks and their management.

Figure 15: Division of employment in EU-15 by skill groups in retail, manufacturing and services sectors

Source: Eurostat (LFS)

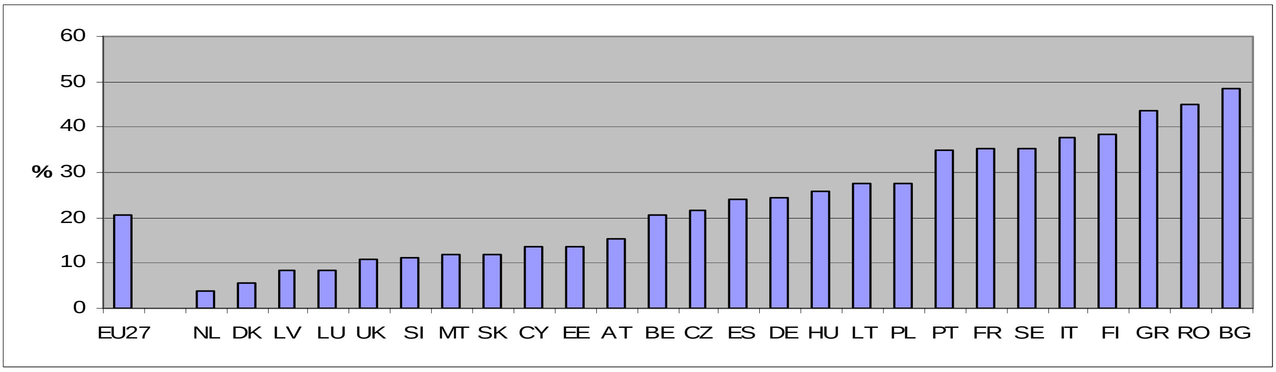
2.3.3 Differences in terms of employment conditions across the Member States

Like many service sectors, employment in the retail sector is characterised by a high share of part-time workers (29%) in the EU27. The retail sector's dependency on part-time work is higher than the average for services, which stands at 22% compared to 7.5% in manufacturing[182]. However, it is lower than in other services (30%), health (28%) and hotels and restaurants (27%)[183]. Moreover, there is a noticeable trend towards an increase of part-time workers in the retail sector (from 28% in 1997 to 35% in 2007 in the EU15)[184]. Part-time work is also more common for women than for men (49% compared with 17% for men)[185]. As to the differences between Member States, part-time work in the retail services sector is more common in the EU15 (with the highest rate in the Netherlands (65%) and the UK (49%)) than in the new Member States with the lowest rate in Bulgaria and Romania (2%).

Reported involuntary part-time employment (where the worker wants a different working arrangement than that offered) in retail services sector stood at more than 20% of part-time employees in the EU-27 (see Figure 16). This is slightly higher than the industry average (16% in industry as a whole) but given the greater reliance on part-time contracts this is not surprising. In fact, this proportion varies among Member States inversely with the level of reliance on part-time contracts ranging from less than 4% in the Netherlands to 48% in Bulgaria[186]. This might be explained by the fact that where such contracts are well established, they are well accepted, but also by favourable framework conditions such as the availability of child care. It is where part-time employment has increased recently that the aspirations for full time contracts are greatest e.g. the growth of part-time contracts has tripled in Spain and doubled in Greece and Italy over the last 10 years and these Member States rank amongst those which report the highest rates of involuntary part-time employees[187].

182 Eurostat, Labour Force Survey, 2007 and 2002
183 Eurofound, Working condition survey, 2007
184 Eurostat, Labour Force Survey, 2007
185 Eurostat Labour Force Survey, (2002).
186 Eurostat, Labour Force Survey, 2002
187 Eurostat, Labour Force Survey, 2007

Figure 16: Share of involuntary part-time employees in the retail sector (2007)



Notes: Exceptions to reference year: Slovakia (SK) and Luxemburg (LU): 2006
Source: Eurostat (LFS)

Fixed-term (i.e. short-term) contracts are slightly more common in the retail sector than in other sectors and their share has been rising slowly over the last years to around 15% in the EU27 in 2007[188] In the EU27, fixed-term contracts are most common in the hotels and restaurants sector (21%), education (16%), agriculture (15%), health and the wholesale and retail trade (14% in both sectors)[189]. The share of fixed-term contracts also varies between Member States[190] with the highest share in Poland (41%), followed by Sweden (28%) and the lowest share in Romania (1%). In general, new Member States (except Poland) have a very low share of fixed-term contracts.

Furthermore, the labour-intensive retail service sector has also traditionally been characterised by many low skilled employees and so, unsurprisingly, it has relatively low average wage levels. As to the average collectively-agreed pay increases in retail in 2006[191] (5.4%) and 2007 (6.8%), this lagged behind the whole-economy average in both years for the EU27 (-0.2 percentage points). However, the average EU increase in retail[192] had previously stood at 6.5% in 2003, 4% in 2004 and 3.8% in 2005 which indicates a rising trend since 2005.

2.3.4 Explanatory factors: employment strategies of retailers and regulatory framework

Pressure to optimise costs leads to increasing need for flexibility in retail working patterns and to alternative business models

The price competition taking place in the retail market leads retailers to put a high priority on cost minimisation. As a labour intensive activity where labour costs account for a significant part of total turnover[193], retailers will seek to optimise their labour costs. Given the differing daily, weekly and seasonal demand patterns, retailers first seek to optimise labour input costs by designing work schedules that fit as closely as possible to customers' demand schedules. This leads to increased labour flexibility which takes three different forms. First, retail service providers rely on part-time work with a range of different working hours to adapt staff numbers during the day or week according to expected foot flow in stores. Second, temporary

188 Eurostat, Labour Force Survey 2007 (except for the share of self-employed: Eurostat/SBS)Exception to reference year: Share of self-employed (2006)
189 Eurofound, Working Conditions Survey, 2007
190 Eurostat, Labour Force Survey 2007 (except for the share of self-employed: Eurostat/SBS)
191 'Pay developments – 2007', Eurofound, European Industrial Relations Observatory (EIRO)
192 Based on a smaller number of countries than 2006 and 2007 figures
193 In France 11 percent in 2006 (INSEE Comptes du commerce)

work (i.e. fixed term contracts) and the use of seasonal staff are used to adapt to variable seasonal demand shifts (e.g. in tourist areas or during seasonal sales periods). Third, retailers rely on personalised work schedules which can vary from week to week or even from day to day.

The importance of managing labour costs in view of price competitiveness can lead to novel labour-saving formats. Thus, in the grocery sub-sector, the hard discount retail model is based on lean structures allowing for reduced labour costs. By having fewer product lines, devoting less attention to shelf displays and presentation (the products are often put in bulk packaging or larger sized formats in the shelves etc.) and using multi-tasking, pure hard discount chains rely on far less labour input per square metre of grocery shop surface.

For certain retail sub-segments it is likely[194] that e-commerce or other forms of distance selling derive significant competitive advantage from their lower labour intensiveness and hence proportionally lower total staff costs. This is particularly true for the retailing of intangible goods such as music, software or films or for durable products that can be easily packed and delivered through existing postal and other delivery services. On the other hand, such in-store labour cost savings are likely to be of little interest in the grocery sub-segment given that home delivery services are labour intensive. Daily delivery requirements require the operation of dedicated services and therefore labour saved in terms of sales staff in shops is probably compensated for by labour used to operate complex delivery services.

Minimising labour costs is essential for independent SMEs and micro enterprises in the retail sub-sectors where vertically integrated groups operate

The pressure to optimise and minimise labour costs is even greater for independent micro and SME retailers in those sub-sectors where vertically integrated retailers are present. This is in view of their competitive disadvantage vis-à-vis lack of buying power and more limited control of other costs, such as the costs of their shops or rents. The competitive market pressure on owner operators and family businesses can be such that they are obliged to minimise wages and contributions for the social and retirement needs of their families and where relevant employees. In addition, where relevant, the existence of a relatively large informal economy working in the retail sector will put further pressure on licit operators to keep overall labour costs for unskilled work as low as possible to be able to compete with the illicit ones.

Strategic reliance on differing company forms to account for regulations and conventions framing working conditions

Labour regulations and conventions (see below) set down minimum working conditions in terms of working time, rates of pay for differing skilled work and shop opening hours. Given the importance to optimise labour costs, differing national rules can give rise to the adaptation of retail business strategies including the manner in which growth is achieved in a given national or regional market. In addition, where labour rules and conventions allow for Sunday opening of independently owned shops or lower levels of working conditions in such shops, large retail groups may enter and grow in such markets via franchising. Therefore, in general, those Member States with relatively high payroll tax and social security costs that have such a

[194] No hard data could be found on cost structure in e-commerce companies.

"loophole" for franchisees will be characterised by disproportionately high levels of independent retailers.

Retailers establishing in differing national retail markets may well be adapting their company form and business models to account for these differing treatments of labour across the Union. This might mean that retailers with good labour relations in their domestic EU countries when expanding into Member States with less effective and well enforced labour rules appear to adopt the questionable practices of the incumbents in those Member States in order to be competitive in the short-term in those markets. This shows a very significant failure in the Internal Market for retailing.

Labour cost optimisation should not imply lower wage and working conditions

Staff are an essential input for customer services and loyalty and therefore excessive labour cost minimisation strategies are likely to be counterproductive for retailers. This is particularly the case in specialist retail sub-categories as well as in small independent shops offering a more “personalised” service. It follows that whilst retailers will seek to optimise work schedules and labour contracting such that staff presence is tailored to the number of customers, they will also seek to ensure that their staff are well trained and service-oriented. Likewise, retailers will seek to keep experienced staff that can assist in ensuring that ICT related investments are fully optimised.

Higher levels of labour skills are expected to be needed by the retail service sector

ICT applications, such as self scanning and automatic check outs can be used to reduce staff levels directly or indirectly. In contrast, ICT can also be used to gather real time information on sales and supplies which in turn enable retailers to plan working schedules accordingly and to put in place just-in-time delivery systems which also have implications for staffing. This continually increasing use of ICT - and in particular of RFID technology - is therefore likely to impact employment levels and working conditions quite substantially. The skill profile of retailers' staff will gradually shift towards a higher median level such that the empowerment of ICT can be fully exploited by retailers. Similarly, retailers will increasingly rely on multi-tasking which on the one hand can reduce monotony, but on the other requires higher skills and proportionately higher levels of remuneration. The current skills set of those entering the labour market and the relatively high churn rate in services including retail could therefore become important challenges in that regard. It is interesting to see that, for example, in the UK, retailer associations are working closely with the relevant Government and educational authorities to ensure that school leavers have the minimum skill sets required for integration into the modern retail environment.

High churn rates demonstrate retails’ role of facilitating entry into the job market and only become harmful if they undermine social and economic performance

Relatively high churn rates are not a problem in themselves as long as they do not affect the differing skill levels required in a retail business. In so far as retailers will continue to need a relatively large number of low skilled workers, they can and do offer an important source of employment for those with minimum skills often seeking their first job in their local vicinity. Many persons enter the workforce this way and after having earned sufficient revenue and work experience change jobs. This in itself will not harm the retail sector as long as experienced workers with the relevant skill sets do not also move on. In other words, if the churn rates are not caused by bad working conditions for the relevant skill sets, then their high level will not be a problem. However, the current data on churn rates is not sufficiently disaggregated to measure whether this is the case or not.

Regulatory framework

The current regulatory framework obviously seeks to strike a balance whereby the labour flexibility required by such sectors is achieved but not at the expense of working conditions including minimum wages that form one of the fundamental values characterising Europe's social market economy. It is largely organised on a national level and this leads to differing retail strategies being applied across the Member States that at times demonstrate how some of the relevant provisions or differentiation made in such laws or the presence or absence of trade unions and/or employee representation at the work place can be exploited at the expense of employees.

At the European level, the EU acquis sets minimum standards for certain aspects of working conditions. For example, the directive concerning certain aspects of the organisation of working time[195] lays down minimum general safety and health requirements for the organisation of working time. It also develops the essential principles of period of daily rest, breaks, weekly rest, annual leave, night work and shift work. In addition, and of particular relevance for the retail sector given its very high level of part-time working, is the EU legislation that outlaws unjustified discrimination in employment conditions , between part-time and full-time workers simply on the ground that workers are part-time[196]. With regard to fixed-term work, the EU acquis[197] outlaws unjustified discrimination in employment conditions between fixed-term workers and comparable permanent workers and aims to prevent abuse arising from the use of successive fixed-term employment contracts or relationships. As to temporary agency work, a directive[198] will ensure as from December 2011 that temporary-work agencies and user undertakings to which agency workers are assigned treat them in the same way as workers recruited directly by the user company to perform the same work.

Furthermore, given the importance of self-employment in the retail sector, the European policies seeking to provide possibilities for micro-enterprises to operate under appropriate social conditions are of particular importance. For example, the directive related to helping spouses[199] ensures that spouses working in such businesses can benefit, on a voluntary basis, from the same social entitlements as foreseen for independents including statutory maternity leave. This regulation highlights how, as noted above, competitive market pressure from vertically integrated retail groups in the relevant retail sub-sectors including grocery can often lead to owner operators and family businesses under-evaluating or indeed foregoing the social and retirement needs of their families and where relevant employees.

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195 Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time

196 Directive 97/81/EC of 15 December 1997[196] implements the framework agreement on part-time work concluded on 6 June 1997 by the general cross-industry organisations (UNICE, CEEP, ETUC)

197 Council Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

198 Directive 2008/104/EC of the Parliament and of the Council of 19 November 2008 on temporary agency work

199 Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity

At the national level, with the exception of legislation on opening hours (see section on downstream markets), there are very few specific retail labour laws and generally the retail sector, as any other, falls under national general labour law provisions. Obviously the EU acquis allows for Member States to adjust for their own cultural specificities and thus significant variations in labour law exist across the Member States. The acquis ensures that fundamental labour rights are protected and therefore, in so far as it is enforced effectively, it helps ensure that the market incentives noted above are constrained in such a manner that they do not result in abusive practices. Over and above these rules, there exist collective agreements. In fact, most sectoral working conditions are negotiated through collective agreements which can be at national, regional, local, branch and/or at individual company level[200]but the manner in which those agreements are enshrined in national law varies. Collective agreements combined with underlying national labour law provide for different social protection depending on the geographical and sectoral scope of the collective agreements and on the nature of the employer (fully owner or franchisee for instance). They will also vary in effect according to the economic cycle. Thus, during boom times, collective agreements can have a strong effect in increasing the quality of employment conditions. During times of recession, they are less effective when employees, many of whom are on fixed-term contracts, will be asked not to request improvement for fear of non-renewal.

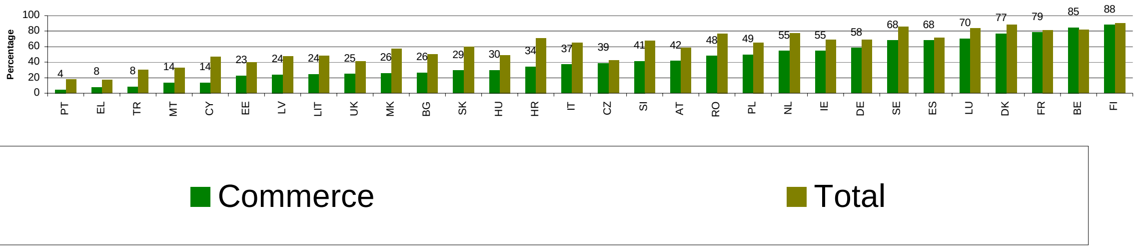
As regards industrial relations, collective bargaining coverage[201] is consistently lower in the retail sector than in the rest of the economy. In addition, in the countries with below average collective bargaining coverage in the whole economy the gap is even bigger. Equally, the existence of employee representatives and/or works councils at company level is less widespread in commerce than in the rest of the economy (see figure 17). This is consistent with lower rates of union membership of retail workers.[202] Furthermore, it seems that most of the central and eastern European countries should be distinguished from the other Member States in that positive industrial relations and social dialogue are less well developed. It also seems that, in small independent shops, social dialogue is rarely of an organised nature (apart from Denmark). This does not however imply that working conditions in such shops are always inferior. Those independent retailers which do not compete head on with vertically integrated groups may seek to have very good working conditions in order to maintain experienced staff that will enhance and build customer loyalty.

200 This will reflect the specific national labour relations traditions of the relevant Member State. To date there is no exhaustive list of these differing collective agreements across the EU but Eurocommerce and UNI Europa commerce have commissioned the European Foundation for the Improvement of Living and Working Conditions to compile such a review of 6 countries. .

201 Measured as the percentage of workers covered by a collective agreement compared to the dependent labour force.

202 Preliminary findings of the of the European Foundation for the Improvement of Living and Working Conditions from the European Company Survey 2009.

Figure 17: Percentage of establishments having an employee representative at establishment level or in headquarters



Source: European Foundation for the Improvement of Living and Working Conditions, European Company Survey 2009

The differing quality of labour relations and collective agreements can give rise to very significant differences in working conditions across a Member State's retail sector as well as across the EU retail sector in general. Furthermore, any such differences will be aggravated by differing levels of labour law enforcement across the Member States. It is clear that in such a fierce competitive environment and given the enormous number of firms, in particular small firms, enforcement will in itself be both expensive and difficult to ensure even in the best endowed Member States. The lower the level of investment and/or efficiency dedicated to enforcement functions, the greater the black market, the greater the level of unfair competition and the more difficult it will be for licit retail companies to invest in productivity enhancing human capital. Initial discussions with social partners seem to confirm that problems stem from the non-adherence to the existing rules and the ineffective enforcement of those rules.

2.4 Logistics including ICT use in the retail sector

Logistics plays an important role in today's retail business. It is essential for retailers in the highly competitive market not only to be able to buy the right goods at the right cost, but also to get them to the right place at the right time, at the lowest cost and in the right quantity. This requires management of product flows as well as monitoring of changes in demand. Logistics management aims to do this by spanning the whole supply chain. It consists of several interlinked components such as management of storage facilities and stock (inventory), transportation of products from point of production to consumption, packaging and collection of information. Retailers also increasingly invest in technologies to make the supply chain more efficient.

Logistics today are not only driven by the need to save costs and to be more efficient but also by the increased awareness and obligations to account for sustainable development. On the one hand, it seems that in general retailers are increasingly aware of the need to work towards sustainable solutions. On the other hand, cost-efficiency remains by far the main driver of global sourcing activities and in general companies do not fully account for external costs (such as environment, congestion, traffic safety related costs) when determining new sourcing strategies or locations[203]. As long as environmental costs do not have to be internalised, they do not influence the companies' profit maximising strategies.

[203] 'Global sourcing: shifting strategies', PriceWaterhouseCoopers, June 2008

The following analysis therefore seeks first to show the recent trends in logistics. It then evaluates the use of different transport modes, as one of the major components of the logistics chain, across the Member States and shows the challenges in measuring environmental impacts of transport. It then proceeds to analyse the role of ICT solutions rendering logistics chains more efficient and more sustainable across the Member States. Finally, it examines the factors influencing retailers' strategies in terms of logistics solutions and the impact of the regulatory framework.

2.4.1 Recent trends in logistics

Logistics, as many other economic activities, has been shaped by some major global economic trends. Over the last fifty years, a number of dramatic changes have occurred in sourcing, production and supply chain patterns, due among others to the continuous reduction of transport costs, resulting in a large increase in the distance consumer products travel from the factory/farm to the retailer's shelf. Retail logistics and their different components have been influenced by the increasingly cross-border nature of supply.

As an illustration of the cross-border nature of supply, the *index of openness*[204], which provides an indicator of trade within the internal market, has experienced a strong upward trend in intra EU27 trade in consumer goods over the last decade. This concerns in particular entertainment goods (140% growth), electronic products (130% growth) and, to a lesser extent, food and beverage products (70% growth). As for third country supplies, in the last decade, imports of clothing increased by 83%, consumer electronics by 114% and electronic appliances by 141%. Double digit growth has also been recorded in the food sector between 2000 and 2007 e.g. meat +60%, tomatoes + 122% or prepared vegetables + 64%.

Equally, the supply base has been concentrated into fewer, larger suppliers, partly due to a need to supply a large volume of uniform products all year-round and also to control contract management costs. As to the management of storage facilities and stock, in addition to their own warehouses or other storage facilities, the vertically integrated retailers are particularly channelling an increased share of their supplies through specialised distribution centres.

Furthermore, there is an increasing trend towards "on-demand" production and "just-in-time" delivery of products. The aim has been to do away with storage costs by cutting inventory levels throughout the supply chain and improving the speed of product flow. In addition, sharing relevant demand data with key suppliers allows production flows to be quasi-synchronised with demand requirements.

Finally, the advanced and increased use of information technology has made it possible to handle and control the increasingly large data and information flows that are key to modern, efficient and successful logistics systems. In fact, ICT and data collection are used in different stages of the supply chain to make processes more efficient and also to collect data not only about demand and supply, but also about volumes, stock, prices and movements.

[204] The indices of *openness* is based on the sum of intra EU imports and exports for several consumer goods i.e. food and beverage, electronic products, entertainment goods, textiles and clothing as well as category of "other consumer goods". The index is to be compared with trends of the GDP index. Intra EU import and export growing faster than GDP would indicate an increase in terms of openness and therefore of Internal Market integration. Calculations are based on Eurostat data.

2.4.2 Multiple transport modes across the Member States and no common measure of environmental impact

The transportation of products and raw materials sourced locally and globally by retailers requires the use of different means of transport depending on the products (fresh/non-fresh) in question and distance travelled. At the same time, increasing consumer demand to account for environmental impacts has obliged retailers and wholesalers to find greener solutions in terms of different transport modes as well as multimodal transport which is the combined use of road, rail, waterways and air.

The use of different transport modes varies within the EU. The choices are often determined by the specificities and technical limitations of the types of transport. Specifically, as regards intra-EU trade as a whole, road and rail transport prevail over sea and air transport. The largest quantities of goods transported by road nationally in 2006 were done so in the major EU economies, i.e. Germany, Spain, France, United Kingdom and Italy. These five Member States also head the league as regards the goods, both loaded and unloaded, in trade with other Member States. In contrast, the largest quantities of goods transported by rail in 2006 were in Poland, Germany, the United Kingdom, France and Romania. For intra-EU trade, it is again Germany that dominates the list followed by Poland, the United Kingdom, France and the Czech Republic.[205]

Road transport is still often the key distribution mode for products and is often the only way to reach the "last mile" in city centres. Transport as a whole makes up over 30% of the total energy consumed within Europe and within that 82% is attributable to road transport[206]. It should be noted that retailers' logistics are driven by the incentive to reduce costs. Costs resulting from goods being in transit are reported to represent around 10-15% of the final cost of the finished products and hence retailers have a strong incentive to minimise such costs to be competitive.

As to the costing of environmental impacts of transport modes, this is a difficult undertaking especially in view of the fact that the relationship of consumer products transport to overall sustainability is complex. Where supply chains are identical, except for transport, reducing transport will indeed alleviate the pressure on the environment. However, differences between supply chains often involve trade-offs between various environmental, social and economic effects[207]. Therefore, other than the distance covered between the place of production and the place of consumption many other parameters that have an influence on the total environmental impacts have to be taken into consideration, such as the sustainability of the production systems, spoilage and waste associated with transport, etc. It is becoming a common understanding that environmental costs have to be assessed on the basis of a comprehensive product life cycle approach but such an approach is not yet fixed at the European or international level[208].

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205 Eurostat Panorama of Transport 2009

206 Eurostat Panorama of transport report 2007. Data referring to both person and goods transport.

207' The validity of food miles as an indicator of sustainable development', DEFRA, UK, July 2005

208 Life Cycle Thinking seeks to identify possible improvements to goods and services in the form of lower environmental impacts and reduced use of resources across all life cycle stages. This begins with raw material extraction and conversion, then manufacture and distribution, through to use and/or consumption. It ends with re-use, recycling of materials, energy recovery and ultimate disposal. The key aim of Life Cycle Thinking is to avoid burden shifting. This means minimising impacts at one stage of the life cycle, or in a geographic region, or in a particular impact category, while helping to avoid

2.4.3 ICT as a driver for more efficient and ethical logistics solutions across the Member States

Retailers are increasingly collecting relevant data throughout the supply chain to improve the efficiency and effectiveness of their logistics operations. For example, as an item is sold and scanned in a shop, this data can be used in the re-ordering system, in planning transport as well as stock levels and therefore make 'Just-In-Time' delivery possible. Retail services have not only incorporated these innovations but they have also, due to their requirements, imposed them throughout the supply chain. They are therefore a driver of growth and innovations in many supplying industries, such as ICT and marketing and promotion services through which they collect refined data on existing and future consumption demand trends.

ICT and data use underlie innovation at all stages of the retail process: upstream (managing processes and material flows between retailers and their suppliers), internally (to manage in-house logistics and staffing operations) and downstream (interactions with consumers through management of marketing information, loyalty cards and after-sales information).

ICT solutions in supply chain management systems (e.g. exchange of data with suppliers and purchase via specialised software, strategic network design, demand planning, network supply planning, and warehouse management) aim to improve the functioning of the supply chain by reducing procurement costs, reducing the quantity of goods stored under the same sales orders, accelerating supply flows etc. The development of the RFID (Radio Frequency Identification) that allows product tracking through a wireless transmission is an example of such innovation[209]. As regards in-house operations, the Enterprise Resource Planning (ERP) system (product planning, parts purchasing, inventory management, order tracking, human resource and finance) is another example. Downstream innovations allow for precise tracking of consumer preferences. It is also through the use of ICT based tracking that ethical quality management schemes can become more widespread. These are based on collecting and disseminating information on social and environmental performance throughout the supply chain. Without the efficient use of such ICT the move towards more sustainable sourcing will simply not be achievable.

Concerning the use of innovative technologies and solutions between EU Member States, data available shows that there are significant differences as regards the pace at which these technologies develop in different EU markets (see Figure 18). For instance, ICT represented around 6% of total investment in the retail sector in Slovenia and close to 30% in Finland and Sweden in 2005. Finally, it is also widely considered that the productivity growth gap increases between the US and EU retail sectors were the result of the US sector adopting at a faster pace and diffusing more rapidly these innovations in the use of information and communication technologies to process these information sets.

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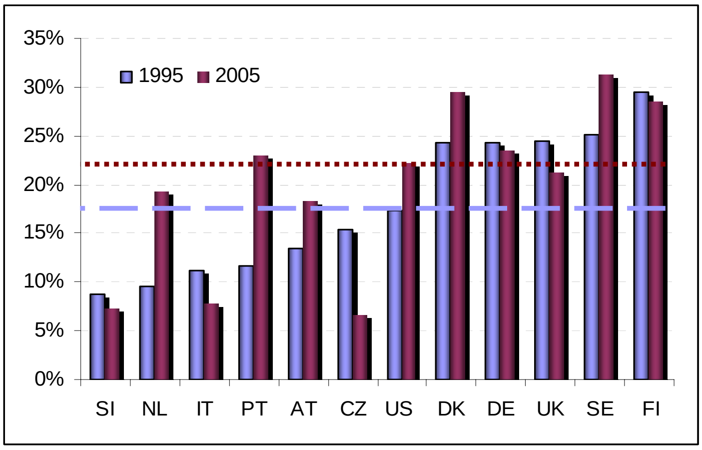
increases elsewhere. Retail and other activities between the life cycle stages are included where relevant. The life cycle of a product is hence identical to the complete supply-chain of the product plus its use and end-of-life treatment.

209 Currently, they are mainly used in supply chain, theft protection, recycling, etc, but not necessarily on the check outs, where they could dramatically speed up the waiting time.

Figure 18: ICT investment share in total investment in retail



Source: EU KLEMS; data for only 11 EU countries available
Blue dashed line: share of ICT investment in retail total investment in the US in 1995
Red dotted line: share of ICT investment in retail total investment in the US in 2005

Investment in ICT in the retail sector is expected to continue. The e-Business Watch Survey 2008 dedicated to the retail service sector has shown that the majority of the interviewed companies in the EU (74%) invested in ICT in 2006/2007 and would keep on (or increase) doing so in 2008/2009. In the EU, the differences between SMEs and large enterprises were quite wide: 56% of micro, 69% of small and 73% of medium and 91% of large enterprises invested in new hardware or software[210] in 2006/2007. The uptake of the new technologies is often too expensive and too complicated, especially from the point of view of micro enterprises. On RFID, the level of this technology used in France is higher than in the US and is at similar levels in the UK and Spain[211].

2.4.4 Explanatory factors: strategies of retailers in terms of logistics and ICT use and the regulatory framework

Cost optimisation strategies driven by scale

The main strategy for retailers when considering use of logistics and ICT is to shorten the time that products spend in the supply chain and reduce the costs of transport. The retailers' strategies to do this naturally vary depending on whether retailers are integrated into wholesaling and/or supply and on the size of the retailer. Thus, logistics functions can be run internally, by wholesalers or can be outsourced to specialist independent logistics companies.

Given the economic benefits of central purchasing, those larger retailers who have invested in local warehousing and transport services are now expanding their own activities to a cross-border intra-EU dimension. Their expansion into these activities is driven first by the advantages of lower purchase costs and secondly by gains in efficiencies that they can achieve by internalising transport and logistics services. It has resulted in the sourcing of products, notably branded and manufactured products, from further afield. It should also be noted that manufacturing has located production plants in more distant locations to account for global differences in labour costs and productivity. The cost savings associated with these decisions

210 Check that also comes from the e-Business Watch
211 e-Business Watch 2008

more than outweighs the increased transport and logistics costs that do not fully account for externalities.

A small retailer may have difficulties in imposing his requirements on transporters, wholesalers or eventually suppliers. To do this sufficient scale is needed. An example of this is the pharmacy sector: In those Member States that only have independent owner operators who have no buying power it has been necessary to impose legal requirements on wholesalers to deliver once or twice a day in order to reduce inventory costs for independent pharmacies.

Small retailers may also be "locked" into relying on regional or national wholesalers since wholesalers in other regions or other Member States with lower prices may be unwilling to supply a small retailer outside their transport catchment area. On the other hand, the small retailer is unlikely to have sufficient capital to invest in long distance haulage to meet his needs. This is another reason why small retailers may combine in franchise contracts with large groups. In this way, they will benefit from more efficient haulage distribution and also from the central buying groups of their franchisors. Indeed, it would appear that for local distribution, larger retailers with their own fleets of trucks are willing to work with smaller retailers and offer them their services. In this way they can maximise the efficiency of their vehicles across a delivery region. Such business models and truck sharing best practices can be extremely important in order to reduce environmental costs in this part of the retail supply chain. For example, the Commission's services were told that a small independent proximity shop needs 20 transport trips to stock up its product supplies against 1 trip when using an efficient retail distribution centre.

As to the use of ICT and the diffusion of data collection, processing and optimising strategies within retail logistics, given the costs involved, these are unlikely to be driven or indeed accessible to many small independent retailers. However, it is possible for large wholesalers working with large franchised networks of such small shops or vertically integrating downwards into retailing to make the necessary investments and make these innovations. Evidence of this can be seen in the pharmacy sub-sector in certain Member States as well as in the grocery sub-segment through certain signal group networks of small stores. It is also clear that as some large grocery retailers respond to consumers' needs for more proximity/local stores, they rely on their efficient logistics and ICT systems to render such proximity shops viable whereas independent owner operators might have difficulty to do so. This is precisely because the large ones can optimise their ICT investments and use their know-how to make logistics for such networks of small shops as efficient as possible.

Strategies to combine efficiency with sustainable targets

Due to the high pressure on sustainable development and the fact that environmental costs will have to become internalised, internal priorities in terms of sustainable systems and/or sourcing decisions are changing. Retailers, especially the larger ones, increasingly invest in technologies and other means to render the supply chains more sustainable which also means making them greener. Retailers are therefore looking for alternative solutions to reduce environmental impacts. Their strategies to do this vary according to their location and the products in question. The use of less polluting transport modes is obviously a solution, but other ways such as the use of backhauling in order to avoid having empty freight containers on the roads, co-operation with the suppliers to use the same vehicles for upstream and downstream transport, use of alternative fuels, reliance on the cleanest vehicles possible, modern computer scheduling and route planning systems are all important examples of such solutions.[212]

However, these strategies imply a trade-off between different elements and do not necessarily imply that the transport kilometres for products should necessarily decrease. For example, a can of processed food sold in France causes 225g CO2 if the product was bought in France (transport by truck), 235g if it comes from Asia by boat and truck but in excess of 300g if it comes from Eastern Europe by truck[213]. Neither does it imply that one should always switch into more environmentally friendly distribution models. For example, delivery by truck is often the only way to reach the retail outlets in city centres or air freight is sometimes necessary to shorten the time for distribution.

Regulatory framework

Retailers who are seeking to render their logistic chains more efficient and sustainable complain about the current regulatory framework which does not always facilitate the implementation of such strategies.

Concerning logistics, the principal European level initiative to address the challenges of the freight logistics sector is the Freight Transport Logistics Action Plan[214] This suggests a range of concrete actions in priority areas such as electronic information on freight, training and quality indicators, simplification of processes, vehicle sizes and loading units, urban transport and long-distance corridors.

In addition, there is an ample body of rules at the European level concerning road transport, the aim of which is promote sustainable, safe and efficient mobility and with reduced negative effects on the environment.

As regards road hauliers, cabotage levels in the EU are far too low. The current EU regulations contain definitions that have apparently given rise to problems of interpretation and enforcement of cabotage rules by national authorities (translated sometimes into additional regulatory burden), as well as uncertainty amongst EU operators[215]. A new regulation[216] is seeking to address these problems, but its effects over the long term remain to be seen. This is important because with the development and full use of logistics based ICT systems, truck loads could be optimised such that fewer vehicles run empty across the EU.

As regards rail transport, retailers and wholesalers complain about the current, in effect monopolised, structure of the current railway operations, coupled with the fact that efficient interoperable rail infrastructure is lacking across the EU. This makes it difficult for the sector to regularly use this mode of transport. Further complaints include lack of reliability, long lead times and general quality-of-service shortcomings. Cost is also an issue in some countries and/or for some stretches of rail transport where these have increased dramatically. High quality terminals that are a prerequisite for a cost effective shift between two transport modes is also a bottleneck that hinders broader use of this environmentally friendly transport

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212 European Retail Forum, "Distribution systems in the retail sector"

213 Quoted by a French retailer (Casino) in the Conference of the French Presidency 2008 quoted above

214 Freight Transport Logistics Action Plan, COM(2007) 607 final, 18.10.2007

215 Study on Road Cabotage in the freight transport market, final report (Contractor: Ecorys); http://ec.europa.eu/transport/road/studies/doc/2006_03_road_cabotage_study.pdf

216 Regulation No 1072/2009 of the European Parliament and of the Council of 21 october 2009 on common rules for access to the international road haulage market (recast), OJEU 14.11.2009 L300/72.

mode. Furthermore, full use of intermodal transport is undermined by difficulties stemming from a lack of harmonisation within different Member States and different players in the railway industry.

At the national level, there are additional differing rules regulating other aspects of transport activities. For example, hauliers and retailers complain of heterogeneous rules applying to loading and unloading, as well as to delivery schedules and authorisations to access urban areas (i.e. entrance to the cities) set up at municipal level. These vary not only across Member States but even across local municipalities. Vertically integrated retailers running their own fleets and road hauliers supplying services at national level claimed that the obligation to respect different local regulations impacts largely on their administrative costs and on the efficiency of their operations.

Furthermore, congestion tops the list of concerns of road transport operators, as it has significant environmental impact including noise pollution. The current anti-congestion regulatory framework targeting mainly/only trucks rather than private car use does not seem to be in line with the empirical evidence on how to incite traffic flows that are economically and environmentally efficient.

Finally, the full take-off of RFID tags[217] has been hindered by two regulatory factors. First, radio frequency is a scarce resource and therefore frequencies need to be found in the spectrum so that these devices can operate. Second, when used as check-out tags, some types of RFID either facilitate carrying or can carry themselves personal data about customers shopping habits and link them up with credit or debit card data (this might trigger consumers' concerns and if these are not carefully addressed the trust in these new technologies might be undermined). Divergent implementation of EU data protection rules carries risks that data protection authorities will apply different approaches in different Member States which will make it difficult to launch this application of RFID on a massive scale.

The Commission has been active in this area for years and even recently has been taking steps to address these issues. As regards frequency, the necessary radio spectrum for RFIDs in the UHF band has been harmonised[218]. Concerning data protection, a new Recommendation addressed to the Member States has been adopted.[219]

2.5 Energy use and waste production in the retail sector

The retail sector has the potential to be a key contributor for the EU to meet its "20/20/20" climate and energy targets[220]. This is, in particular, because the retail sector is a major energy user as well as a significant waste producer. It provides a broad assortment of products, offers fresh foods daily and creates sophisticated shopping environments which all entail a high

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217 These are small low cost circuits that communicate with fixed or potable reader and can carry certain number of information related to the package they are attached to. There are three main types of these devices; passive RFIDs, Semi-passive RFIDs and active ones. The radio frequency they use is an important factor that determines the distance from which they can be detected.

218 Commission Decision of 23 November 2006 on harmonisation of the radio spectrum for radio frequency identification (RFID) devices operating in the ultra high frequency (UHF) band

219 Commission Recommendation of 12.5.2009 on the implementation of privacy and data protection principles in applications supported by radio frequency identification

220 The aim is to reduce greenhouse gas emissions by at least 20% compared to 1990 levels; increase the share of renewable energy sources in our final energy consumption to 20%; and a 20% increase in energy efficiency.

energy demand. Lighting, ventilation systems, heating/air conditioning and food cooling and refrigeration are main contributors to the sector's energy consumption. In addition, retail operations generate different types of waste including packaging waste (transport, product and point of sale packaging, carrier bags), food waste and waste generated by retail promotional campaigns and are important players in the waste recovery chain.

Retailers today undertake actions to reduce energy consumption and waste production to make the supply chain more sustainable. Indeed, responding to consumer demands for greener products and services and to the general call for sustainable development, environmental actions have become an important part of the retailers' competitive positioning. However, it seems that these environmental actions are often driven by the attempt to attract more customers, generate more sales, and improve the product offer and not always by the environmental benefits themselves. On the other hand, it is true that investments in environmental measures can be significant, which explains why they are often primarily based on economic considerations. Although it is clear that both the realisation of the existing potential for reduction of energy consumption as well as the handling of waste lead to costs, they could also, at least in a medium or longer term, not only contribute to climate protection but also help retailers to reduce their operational costs.

The following analysis seeks first to illustrate the scope of the energy consumption and CO2 emissions within the retail sector as well as the amount of waste production and waste management across different Member States. It then explains the main issues which affect retailers' decisions about more sustainable energy consumption and waste production and treatment. Finally, it describes the existing regulatory framework which has an impact on retailers' strategies and cost structures.

2.5.1 Indications on the energy consumption and greenhouse gas emissions across the Member States

Energy consumption

The retail sector's energy consumption is very high, especially compared with other service sectors. For example, in Germany, the retail sector is the biggest energy user within the trade, commerce and service sectors[221]. In the UK, when comparing the final energy consumption in different service sub-sectors, retailing (including retail of both food and non food products) is by far the largest energy consuming service sub-sector, followed by 'hotels and catering' (67% of the retail consumption) and 'warehouses' (62% of the retail consumption)[222]. In addition, the trend has also been towards increased energy consumption in the retail sector over the last years in the UK. The retail (11%) and warehouse (44%) sub-sectors experienced significant growth in energy consumption despite a decrease of 14.5% of energy consumption in the overall service sector between 2000 and 2007. As a result, the share of retail and warehouse sub-sectors in the total energy consumption of the service sector went up from 27% in 2000 to 38% in 2007[223].

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221 "Energy consumption in the trade, commerce and service sector", ISI, IfE and GfK, May 2009

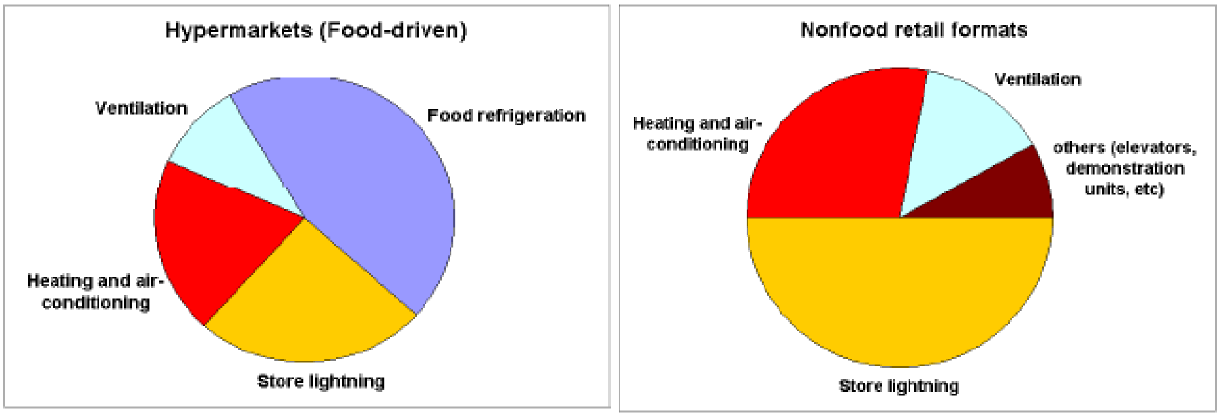
222 "Energy Consumption in the United Kingdom", Department for Trade and Industry, National Statistics, United Kingdom, July 2002

223 The above mentioned Statistical report refers to 2000 figures. Updated figures for 2007 are available in the DECC's 2009 update: http://www.decc.gov.uk/en/content/cms/statistics/publications/ecuk/ecuk.aspx

Average energy consumption represents approximately 6% of retailers' overall costs[224] and heating, cooling and lighting account for most of this energy consumption. In the EU as a whole, it is estimated that 75% of the sectors' energy demand relates to power consumption (i.e. lighting, air conditioning and food refrigeration)[225]. To illustrate the importance of the lighting in retail stores, for example in the British retail sector, the energy consumption for lighting equals the combined consumption of commercial offices together with five other important sectors (education, government, health, hotel & catering and the communication & transport sectors)[226].

On the other hand, retailers' energy consumption depends on the different store formats and, in particular, on whether or not the retailer offers food. Food refrigeration is obviously the biggest source of energy consumption in food-driven formats when store lighting accounts for around half of the energy consumption in the non-food retail formats (see figure 19). In addition, as to the formats, UK researchers[227] have found that hypermarkets located in large shed-like buildings are the most energy inefficient buildings in the retail/light industrial sector, despite the relatively new building stock.

Figure 19 – Internal distribution of energy demand for retailers



Source: EuroCommerce

The increase in energy consumption – for example 'cooling and ventilation', 'computing' and 'lighting' went up by 73%, 55% and 21% respectively between 2000 and 2007 in the UK[228] - this also reflects the changes in the retail landscape. Specifically for the food sector, increases in energy use reflect the increase in frozen and fresh food lines necessary to meet consumer demand as well as the increased need for ventilation and cold storage throughout the logistics chain. Furthermore, the fact that supermarkets may open seven days a week and in some instances twenty-four hours a day means that there is relatively little opportunity for energy saving measures, such as dimming the lights or covering refrigerated display cabinets. This

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224 "Survey on obstacles and success factors for energy efficiency in companies", KfW Bankengruppe, December 2005

225 "Issue paper on energy efficiency of stores", European Retail Forum, September 2009 http://ec.europa.eu/environment/industry/retail/pdf/Issue%20paper_Energy%20Efficiency.pdf

226 'Energy Consumption in the United Kingdom', Department of Energy and Climate change (DECC), 2009 http://www.decc.gov.uk/en/content/cms/statistics/publications/ecuk/ecuk.aspx Updated figures from a 2002 report cited below. In thousand tonnes of oil equivalent; retail 1.304 and the other 6 sectors mentioned: 1.293.

227 Elsayed MA, Grant JF & Mortimer ND (2002) "Energy use in the United Kingdom non-domestic building stock: 2002 catalogue of results" Resources Research Unit, School of Environment and Development, Sheffield Hallam University, UK.

228 'Energy Consumption in the United Kingdom', DECC's 2009 update

inevitably means more energy use. Finally, the availability of more brands and more variations on particular product types (e.g. chilled ready meals) may mean that more (refrigerated) shelf space is required. In other words, more choice leads to larger stores and a larger chilled food area, which in turn leads to greater refrigeration requirements. Something that may be considered as a positive performance for consumers (more choice) may have negative consequences for the environment.

CO_2 emissions

As indicated above refrigeration is responsible for a major share of the electrical energy consumption of retail food stores. By way of example, a major retailer reports that it accounts for approximately 20% of the overall greenhouse-gas emissions of a supermarket (including logistics and consumer and employee travel).[229] In Germany, the CO_2 emissions from food retail industry emanating from power consumption and refrigerant emissions currently account for approximately 1% of the total of German greenhouse gas emissions. The direct and indirect emissions from refrigeration in the German food retail sector amount to 7.5 Miot CO_2 -equivalent per year[230].

However, a large variability exists in the electrical energy intensity of the stores even within the same store category and the same retail food chain[231]. This is mainly due to the use of different types of refrigeration and space conditioning systems as well as differing operation and maintenance practices. In particular, it has been identified, that if the electrical energy intensity of the stores whose intensity was above average was reduced to the average, 10% electrical savings could be achieved, producing approximately 355.000 tonnes of CO_2 emissions savings (this saving is estimated to equal the annual emissions of 140.000 cars)[232].

2.5.2 Main sources of retail waste generation across the Member States

Waste generation in the supply chain

Waste is generated throughout the entire supply chain and the modern logistics management and ICT systems can be used to reduce it through just-in-time delivery, through reusable packing etc. Although comparable data on waste production throughout the supply chain in the EU are not available, some Member States have tried to examine this issue.

For example, the UK government has investigated various product supply chains to assess the waste chain within them. The study[233] demonstrates that suppliers are failing to make efficient use of the information provided by the retail market so as to better plan their production and delivery systems. Best practices are apparently promoted through ECR systems[234] and are most often applied with the larger branded manufacturers who have the capacity to invest in the necessary IT systems to run efficient logistics systems (see sub-section on logistics).

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229 "Towards a Greener Retail Sector", Bio intelligence services in association with GHK, Ecologic, TME and Ekopolitika, for DG Environment, European Commission February 2009, http://ec.europa.eu/environment/eussd/pdf/report_green_retail.pdf .

230 "Comparative Assessment of the Climate Relevance of Supermarket Refrigeration Systems and Equipment", Federal Environment Agency, March 2009

231 "Greenhouse Gas Impacts of Food Retailing", DEFRA, UK, October 2008

232 "Greenhouse Gas Impacts of Food Retailing", DEFRA, UK, October 2008

233 "Waste arising in the supply of food and drink to households in the UK", March 2010.

234 Efficient Consumer Response (ECR) is a form of logistics management through which retailers are incorporating aspects of quick response inventory planning, electronic data interchange, and logistics

Conversely, suppliers (and in particular manufacturers of chilled food products) complain that order quantities of retailers are volatile, lack forward planning accuracy (because retailers seek to adjust to daily consumer needs which for example can be affected by the weather conditions) and that they are characterised by short order lead-times, frequent changes to packaging design and short-term changes to packaging for promotional, qualitative and aesthetic reasons. They claim that these changing needs make it difficult for them to estimate material requirements and to plan production. They allege that the only way to meet this constantly shifting demand is to over-produce to ensure availability; factors that increase both physical and operational waste.

Retailers on their side are certainly demanding more qualitative fresh or chilled products with very short lead times. However, certain larger retailers who contract directly with suppliers for such products will, when waste management costs are fully internalised have an interest to work with suppliers to minimise these cost. Consolidated large primary producers or suppliers who can use the data retailers supply them with to plan their investments can address this but many others are clearly struggling. As a consequence a number of these supply chains are generating more waste than is necessary.

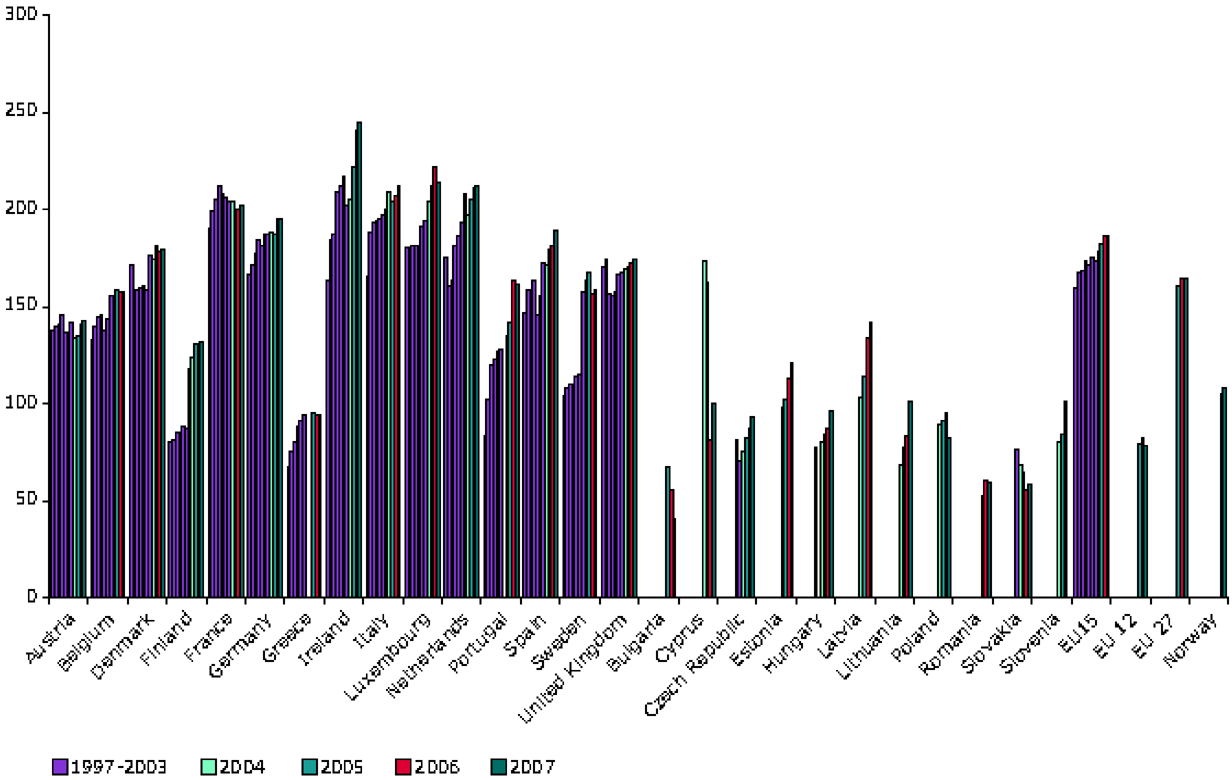
Packaging waste

The retail sector receives uses and offers packaging throughout the supply chain, from transport packaging to product packaging. Specific data on packaging waste in the retail sector across the EU is difficult to find. However, given that the retail sector is an important user of packing and that there is considerable pressure on retailers to minimise waste with much of the focus relating to excessive packaging, the examination of general trends on packing within the EU illustrates the scope of the issue.

While there are significant year to year variations, the general trend in EU-15 shows that amounts of packaging are still rising. Packaging waste generation in the EU-15 saw slight decoupling from GDP between 1998 and 2007 growing by 17.2%, compared to a nearly 23% real growth in GDP over the same period. However, all the decoupling occurred in the first years of that period; since 2001 growth in packaging waste has actually been more rapid than growth in GDP. As regards the four most significant elements found in the packaging waste stream (glass, metals, paper & cardboard, plastics), these have seen more sustained relative decoupling over the whole period, growing at half the rate of GDP.

There are large variations between Member States in the use of packaging per capita, ranging from 245 kg/capita in Ireland to 94 kg/capita in Greece and 41 kg/capita in Bulgaria (2007). The average 2007 figure for the EU-27 was 164 kg/capita. There are clear differences between the EU-15 and newer Member States reflecting different levels of use of packaging. The variations within EU-15 countries are harder to explain. One explanation may be different market shares of reusable packaging, whilst another may be the different consumption and production patterns. It is also possible that some Member States have uneven coverage of data collection or slightly differing definitions of packaging. Also the trends in packaging waste generation per capita vary between Member States. While some countries (e.g. Germany and Portugal) show a relatively constant increase, others (e.g. France, Austria) have been able to stabilise and even reverse the increases in generation of waste.

Figure 20: Packaging waste generation per capita and by Member State

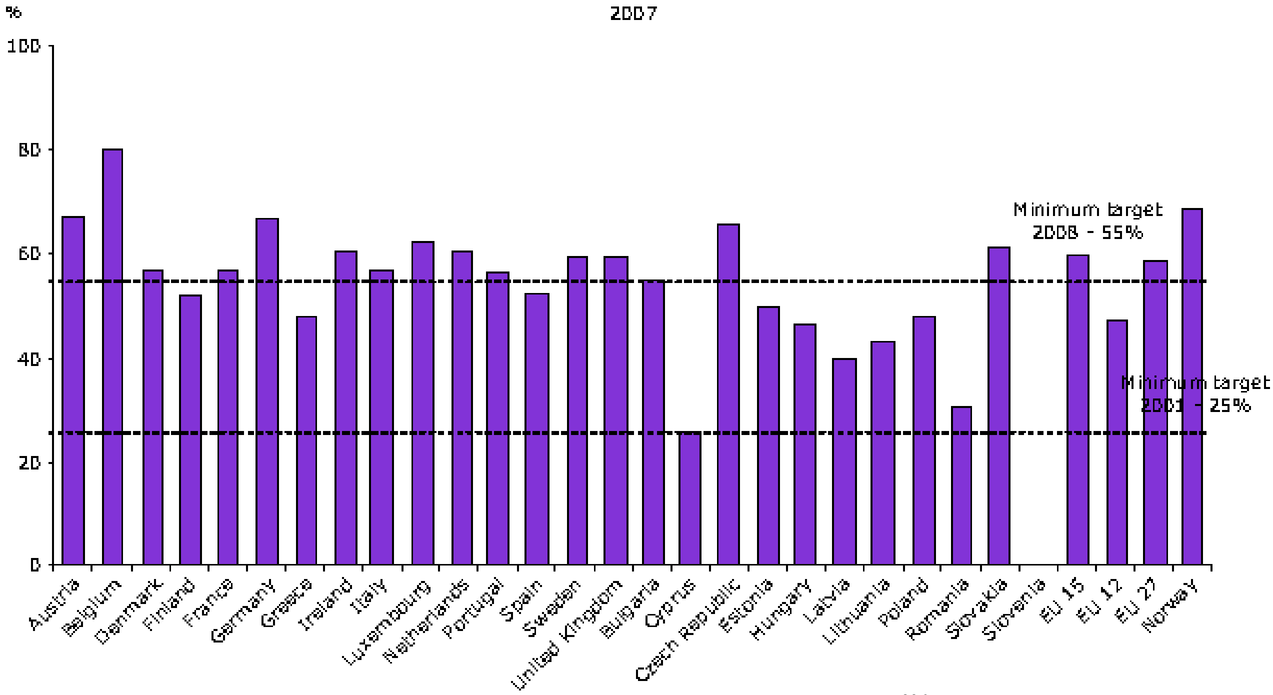


Source: EEA

Recycling is a key element in the management of packaging waste and it has been assessed that in some Member States up to 40% of the packaging in an average shopping basket cannot be recycled[235]. Here again, specific data on the retail sector are rare, but the general data about recycling in the EU provide an idea of the increasing trend towards recycling. The total EU-15 recycling rate increased from 45 % in 1997 to 60 % in 2007. The EU-12 recycling rate increased from 34% in 2005 to 47% in 2007. The total recycling rate in the Member States in 2007 varied greatly, from 26 % in Cyprus to 80 % in Belgium.

235 "Green, healthy and fair". A review of government's role in supporting sustainable supermarket food', Sustainable Development Commission, UK, February 2008. See: http://www.sd-commission.org.uk/publications/downloads/GreenHealthyAndFair.pdf

Figure 21: Recycling of packaging waste by Member State



Source: EEA (targets refer to targets defined in Article 6 of the Packaging Directive[236])

Food waste

In food retailing, the food spoilage by retailers is also an issue of concern[237]. For example, food waste from UK retail food operations is estimated at 1.6 million tonnes per annum and the overall retail value of the food waste that goes to landfill is calculated to be almost EUR 7 billion per year[238].

Greenhouse gas emissions from food, packaging and other waste are dependent on the waste treatment options available. If the food waste is sent to landfill without any composting or anaerobic digestion, the net greenhouse gas emissions can be four times higher than if the gas generated from landfill sites is recovered and flared. If on the other hand, the food waste is either composted or used in anaerobic digestion process to generate power, there will be even more CO_2 emissions savings[239].

Waste generated by retail promotional campaigns

There is no doubt that retailers thrive through local sales promotions that are short-term in nature. The preferred supports to do this to date are free media or door-to-door leafleting. This

236 European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste.

237 UK Waste and Resources Action Programme (WRAP)

238 WRAP (2007), http://www.wrap.org.uk/retail/food_waste/non_household_food.html. Studies in other Member States have to date focused on household waste. For example, a Swedish study on household waste only makes reference to the UK study http://www.konsumentforeningenstockholm.se/upload/Klimatavtryck%20från%20hushållens%20matavfall_KfS_aug%2008_uppdat%20jan10.pdf

239 'Solid Waste Management and Greenhouse Gases: a Life Cycle Assessment of Emissions and Sinks", Environmental Protection Agency, United State, September 2006

obviously uses a great amount of paper and generates significant amounts of waste. For example, in 2003, each household in Vienna received 37,2 kilos of promotional material of which 26,4 kg was unsolicited[240].

The magnitude of paper used in direct mail is also impressive, although it does not all originate from retailers. For example, in the UK, in 2002, between 500,000 and 600,000 tonnes of paper were used in direct mail and promotions. This corresponds to about 15% of the paper packaging waste flowing into the waste stream that year i.e. 3.7 million tonnes. The UK Government estimated that 13% of the "junk mail" was recycled[241]. Today, 95% of paper used in direct mail comes from recycled or sustainably managed sources (sustainable forestry). Direct mail represents 4% of the UK's total paper usage (not all originating from retailers) and accounts for 2% of household waste[242].

2.5.3 Explanatory factors: strategies of retailers in terms of energy consumption and waste management and the regulatory framework

2.5.3.1 Energy costs impact on the readiness of retailers to invest in energy saving measures

Most of the retail service providers already implement actions to reduce their energy consumption. This is often because they are seeking long-term savings (foreseeing that CO2 emissions will have to be factored into their businesses costs). German retailers for example pay more than 40 Euros per square metre of sales surface for energy in the non-food sector and more than 51 Euros in the food sector.[243] Given that across the EU, the price of electricity rose on average by 30% from 2005 to 2008 and that of natural gas by about 40%, this is even more pertinent. In addition, regionally, energy prices still vary significantly; for example, the price bracket for electricity is more than 100%[244].

Overall, there seem to be insufficient incentives or rewards for companies investing in energy efficiency or greener technologies. Improving store energy efficiency requires the convergence of the environmental objective of sustainability and the economic objective of cost savings. Today, some green technologies applied to stores require significant investment with relatively low return in terms of environmental and economic benefit.

From a retailer’s point of view, major investments in the field of buildings are only economically reasonable if the technology can be used over the long term. However, retail premises are frequently leased. At the end of the lease or in the event of a premature change of location, any capital investment would be lost. In certain instances there is a conflict as to whether energy efficiency improvements are to be paid by the owner of the building or by the tenant. This is further complicated by the lack of information sharing and comparability of data on energy use between owners and tenants, which makes it difficult to highlight problems and implement solutions.

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240 Institute for Waste Management of the University of Natural Resources and Applied Life Sciences, Vienna; https://zidapps.boku.ac.at/abstracts/oe_list.php?paID=3&paCF=0&paLIST=0&paSID=4464.

241 See MP and Minister of State (Climate Change and Environment) Morley's reply to a written question http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo031016/text/31016w04.htm

242 Confederation of Paper Industries and DMA, see http://www.dma.org.uk/information/env-facts.asp

243 Study "Energie-Monitor 2010", EHI Retail Institute.

244 Eurostat, Electricity – industrial consumers – half-yearly prices, April 2010.

Retailers are also developing green procurement practices for buildings. This seems to be at an experimental stage for most retailers, although several companies are currently piloting such stores. As time is a key factor for the development and return on experience, few retailers implement systematic environmental requirements for new buildings, or buildings under renovation. Some retailers have fixed objectives in terms of results for their new buildings[245], which, for example, can take the form of fixed energy consumption standards[246].

The actions to reduce energy consumption implemented by retailers depend on the nature and the size of the retailer[247]. Pilot projects have proven to be a good basis for retail companies to increase investment in energy efficiency. Cost-benefit analyses of measures taken in individual companies play an increasingly important role in the development of energy efficiency processes on a broader basis. In this context, especially planned new stores offer a good platform for technical innovation projects.

Regardless of these issues, the European retail sector is actively involved in achieving the European energy targets. In a voluntary move, some of the major European retailers have committed to reducing their energy consumption by 20% by 2020[248] compared to the year 1990 where feasible[249]. Retailers already engage in renewable energy use and production, including solar panel systems on roofing to produce electricity and hot water, photovoltaic-power plants, wind farms, geothermal plants, and bio gas plants fuelled by food waste from retailers' own markets.[250]

Regulatory factors

In order to achieve EU growth, energy and climate change policy objectives, the existing EU legislation offers a mix of tools intended to facilitate and promote the reduction of energy consumption across Member States.

The Directive on energy-use efficiency and energy services[251] foresees indicative energy saving targets for the Member States, measures to promote energy services and other energy efficiency improvement measures aiming at making the end use of energy more economic and efficient. As regards the energy consumption in the building sector, where the potential for cost-effective energy savings is significant, the Directive on energy performance of buildings[252] requires Member States to foresee minimum energy performance standards in new and existing buildings and ensure the certification of their energy performance. Moreover, other EU provisions (e.g. on energy labelling and ecodesign) have implications for some of the energy using and energy related products marketed by the retail service providers, particularly lighting and electronic household appliances.

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245 "Towards a Greener Retail Sector" cited above.

246 The Swedish retailer IKEA has fixed an energy consumption standard of 45 kilowatt hours per cubic metre sold by year five after store opening, see "Towards a Greener Retail Sector", cited above.

247 "Towards a Greener Retail Sector", cited above.

248 ERRT Declaration on Energy Efficiency: http://www.errt.org/uploads/MediaRoom/documents/08031020EnergyDeclaration.doc.

249 Where this is not possible, the most recent year for which companies have the necessary reference data will be used and extrapolated back to 1990 to provide a consistent reference year for the reductions achieved.

250 "Active climate protection – Retail and Energy Efficiency", German Retail Association.

251 2006/32/EC on energy end-use efficiency and energy services

252 Directive 2002/91/EC. The Commission presented a proposal for a recast Directive on the energy performance of buildings, whose formal adoption by the European Parliament and the Council is foreseen for this year.

As different measures are thus proposed at the EU level to improve energy efficiency and reduce energy consumption, the question is to what extent national policies encourage and support (i.e. through financial instruments/incentives[253], information and advice[254]) voluntary agreements or other market-based measures to promote more efficient end-use of energy by retailers[255].

Despite the limited data available, it appears from the consultation carried out by the Commission services that most of the Member States content themselves to solely transpose Union *acquis*, which does not address issues specific to the retail sector, into their national legislation. As a result, this transposition may not include policy instruments dedicated to the issue of energy efficiency for the retail sector. The retail sector appears to have an important energy saving potential that may not be fully exploited. The exchange of best practice in this area to avoid fragmentation in the EU might to be useful. On the other hand, many EU Member States are starting or have already set up financial incentives to help companies invest in energy efficient technologies. However, these incentives are not always adapted to the needs of smaller retailers.

2.5.3.2 Actions of retailers to reduce waste and to promote environmentally friendly products

Retailers already implement waste management related actions, which mainly consist of sorting stores' and warehouses' waste (as requested by regulation on collection and treatment of different waste streams). Some retailers are working to minimise waste going to landfill and a number of retailers are also investing in power generation based on anaerobic digestion.

Retailers also have the possibility to apply and promote separate waste collection in their shops and inform consumers about the importance of such collection for recycling purposes. In fact, empowering consumers and raising consumer awareness about the environmental impact of products is a key measure for sustainable consumption. In this respect, retailers have voluntarily put into practice product labelling systems in order to help consumers, businesses and local authorities to reduce waste and recycle more.

The example of plastic bags in the UK shows how retailers can contribute significantly to the reduction of packaging and at the same time promote their "green" credentials. In December 2008, the UK Government, the retail association and leading supermarkets agreed to a 50% cut in the number of single-use carrier bags given out to customers by spring 2009. Results announced in July 2009 showed a 48% reduction in the number of single-use plastic bags being used. The number of single-use plastic bags used by participating retailers fell from 870 million in May 2006 to 450 million in May 2009.[256] In general, retailers each year used to

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253 According to the "Towards a greener retail sector", cited above, financial incentives, such as VAT relief for green products, were considered the most effective driver to increase the market share of green products, due to their high costs (and prices, therefore impacting on their sales) compared to other products.

254 It seems to be the case in the UK: http://www.defra.gov.uk/environment/climatechange/uk/energy/efficiency/index.htm

255 Green public procurement is often seen as an efficient means to promote green products by national authorities, as they have an important impact on shaping consumption trends and enlarging markets for these products.

256 There are also British case studies that illustrates how retailers work with consumers to reduce the number of carrier bags (2009): http://www.wrap.org.uk/downloads/Carrier_Bag_Case_Studies_16_July_-_FINAL_TM.56e06149.7362.pdf

give out 17.5 billion plastic bags, which is equivalent to over 290 bags per person[257] and until recently, 80% of consumers used those the plastic carrier bags supplied at supermarket check-outs. This number has in a few years been cut in half and in 2008, 9.9 billion carrier bags were distributed[258].

As to promotional material, the move to on-line couponing and promotions could lead to significant reduction in promotional fliers and leaflets, which could have very positive effects in reducing waste generation.

Furthermore, the strict specifications placed by retailers as regards product appearance standards at times negatively impact on the waste generated, especially along the food supply chain. In fact, a study carried out in the UK shows that between 40 and 50 per cent of raw vegetables and salad (by weight) is rejected at some stage of the production line before reaching the shopper[259]. This would be partly because appearance standards imposed by retailers have not been met (e.g. too little or too much colour, wrong size, wrong shape or because of blemishes that do not affect eating quality). It should be noted that these standards were integrated into regulatory standards (see below). Retailers often explain that their actions are largely driven by the expectations of consumers which in turn suggests a lack of consumer awareness on environmental consequences of consumption patterns.

However, consumer attitudes can change as the example of the re-introduction of category 2 fruit and vegetables (originally considered as not being “presentable”) in certain UK supermarkets shows. These products were reintroduced as a trial during the recession. They were sold at lower cost than category 1 products. Retailers were surprised to find that such products were in great demand by consumers across the social spectrum. Less well-off consumers bought them because of the price advantage whilst better-off consumers bought them because of their differing taste and cooking qualities. Most of these products would have gone for processing or to waste had certain retailers not tested them. As a consequence of these trials many such products are re-entering the retail chain[260].

In addition, some food waste may also result from the discarding of foodstuffs, justified on food hygiene grounds. It was reported that some Member States impose a ban on the sale of products that are past their "best before" or "use by" date[261]. While it would seem justifiable to prohibit the sale of products labelled with the "use by" date, with which are labelled highly perishable foods, products labelled with the "best before" date, which typically lose only some qualitative properties after that date, could still be sold to those interested (low income

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257 http://www.wasteonline.org.uk/topic.aspx, the figure of 17.5 billion plastic bags is also referred to in "Green, healthy and fair", cited above. See also http://www.wrap.org.uk/retail/carrier_bags/

258 http://www.defra.gov.uk/news/latest/2009/waste-0407.htm

259 Henningsson S, Hyde K, Smith A & Campbell M (2004) "The value of resource efficiency in the food industry: a waste minimisation project in East Anglia", UK Journal of Cleaner Production

260 During negotiations on the reform of the Common Market Organisation for fruit and vegetables in 2007, the Commission committed itself to reduce unnecessary bureaucracy by eliminating a number of marketing standards for fruit and vegetables. On 1 July 2009 minimum market requirements for 26 types of fruits and vegetables were thus repealed. Specific marketing standards remain for 10 products: apples, citrus fruit, kiwi fruit, lettuces, peaches and nectarines, pears, strawberries, sweet peppers, table grapes and tomatoes. However, Member States may also exempt these from the standards if they are sold in the shops with an appropriate label.

261 Although the labelling of food products by the "best before" date and "use by" date is harmonised at EU level under Directive 2000/13/EC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, it is left for the Member States to legislate whether products the dates of which have expired can continue to be sold to the final consumer.

consumers, charities). In this manner, the consumer protection objective could be achieved by less intrusive means (such as additional labels, dedicated areas in the shop, etc.).

Finally, retailers themselves are in a position to improve the environmental performance of products sold. This includes: 1) actions to improve the environmental quality of all products sold by the retailer, including the use of biodegradable and compostable packaging (eco-design), 2) actions related to providing consumers with green products (use of environmental labels) and 3) actions to ban from shelves products with important environmental impacts (choice editing).

Regulatory factors

The waste related regulations at the EU level provide the framework for waste reduction and handling, but often leave the implementing measures to Member States.

a) Packaging waste

The Packaging Directive aims to harmonise national measures in order to prevent or reduce the impact of packaging and packaging waste on the environment and to ensure the functioning of the Internal Market. It contains provisions on the prevention of packaging waste as a priority and on the re-use of packaging and on the recovery and recycling of packaging waste as additional principles. Like the Waste Electrical and Electronic Equipment Directive[262] (WEEE Directive) or the Batteries Directive[263], it defines the targets but leaves the decision on how to achieve them to Member States. This may lead to differing implementing measures between Member States with consequences for cross-border operations. Indeed, past experience and ongoing cases indicate that unilateral measures adopted by Member States still pose problems as they require market operators to adapt their packaging to the requirements of individual Member States. This makes it more difficult for them to benefit from business opportunities within the Internal Market.[264] Administrative burden, the need for specific investments in infrastructures, in particular return, collection and recovery systems, mandatory deposit systems or the use of taxation to drive packaging policy can potentially disrupt the Internal Market if they are applied in a way that protects local producers [265].

Differing implementing measures by Member States also generate differences in compliance costs. Although the Packaging Directive does not contain an obligation for the Member States to transpose the directive by implementing the principle of producer responsibility, most Member States have introduced legislation based on this principle. Producer responsibility means that producers accept significant responsibility (financial and/or physical) for the treatment or disposal of post-consumer products. There are major differences between the various types of producer responsibility systems applied and costs of these schemes differ considerably between Member States.

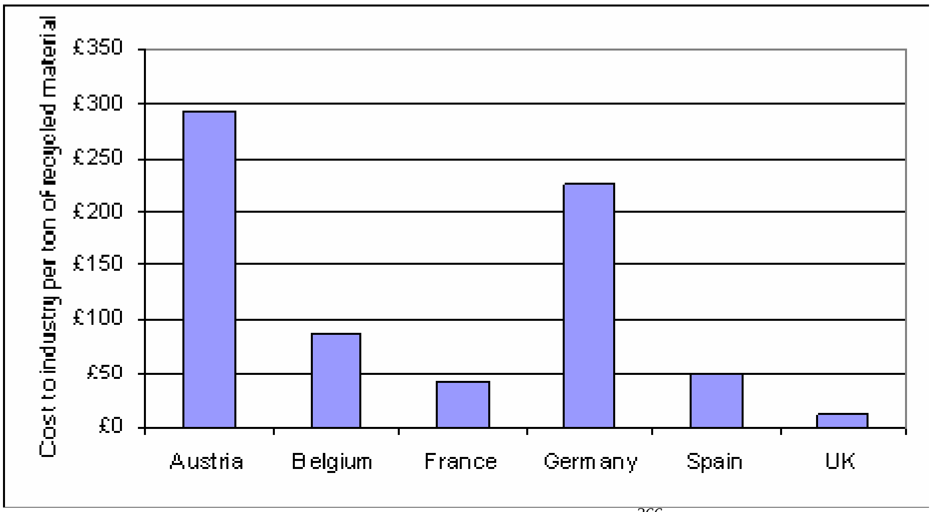
262 Directive 2002/96/EC on waste electrical and electronic equipment

263 Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators

264 Report from the Commission to the Council and the European Parliament on the implementation of directive 94/62/EC on packaging and packaging waste and its impact on the environment, as well as on the functioning of the internal market

265 Communication from the Commission on Beverage packaging, deposit systems and free movement of goods (2009/C 107/01)

Figure 22: Cost of producer responsibility schemes to industry per tonne of recycled material



Source: Associate Parliamentary Sustainable Waste Group[266]

b) Biodegradable municipal waste

The EU landfill directive[267] imposes targets for the reduction of biodegradable municipal waste that may be disposed of to landfill. The directive foresees a reduction to 35 % by 2016 of the amounts going to landfill (1995 as a reference year). Source separation, separate collection, more anaerobic digestion, more recycling, more composting and limits and bans on use of landfill are among the key instruments needed to reach this target. However, in the same manner as the waste stream related directives, different levels and ways of implementation influence treatment and treatment costs of such waste. In addition, EU policy initiatives concerning the management of bio-waste in the European Union[268] aim at establishing new strategies for the treatment of bio-waste, including food waste.

c) Waste management plans

The EU legislative framework requires the establishment of waste management plans across Member States. Thus, there are countries with several waste management plans, set up at national and regional level, or sometimes at the level of municipalities, which vary largely mainly as to their content and therefore, have different impacts in terms of requirements/obligations put on retailers. Stakeholders' responses raised issues perceived as obstacles to efficient strategies for reducing the environmental impact of waste. These were the diversity (in many cases across the same country) in collecting schemes and recycling facilities; and variations across Member States of the taxes levied according to the type of product packaging.

However, measures or incentives to minimise the production of waste and its treatment are matters that have been left to Member States. Despite a large spectrum of policy interventions

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266 Associate Parliamentary Sustainable Waste Group. Producer Responsibility. An investigation into the strategic issues and environmental and economic impacts related to the implementation of Producer Responsibility legislation in the United Kingdom, March 2004. PSWG0101A: 27 May 2004.

267 Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

268 Green paper on the management of bio-waste, COM(2008)0811 final

and tools at their disposal, certain Member States seem to largely depend on transposing the EU body of law in this field into national legislation, whereas others take a more pro-active approach by encouraging voluntary initiatives, standards development, and fiscal incentives waste management (i.e. UK and its Courtauld Commitment[269]). This has resulted in different impacts in terms of efficiency. For example, in Greece a waste fee is paid to the municipality on the basis of the square metres of the shop and not on the basis of the amount of the waste. In Belgium, the legislation foresees that flyers and advertisements are taxed according to their net weight etc.

Taking the specific example of plastic carrier bags, the UK approach was to seek self-regulation whereas in Ireland legislation was adopted to curb the excessive use of plastic bags[270]**.** According to the Irish rules, retailers are obliged to keep detailed records of bags sold and make the appropriate returns to the Revenue Commissioners. The Department of Environment claimed in February 2007 that the levy has resulted in a decrease in excess of 95% in plastic bag litter and that up to 90% of shoppers were using long-life bags in 2003, compared with 36% in 1999. Plastic bag per capita usage decreased overnight from an estimated 328 bags to just 21 upon initial introduction of the levy. The levy has now been increased from 15c to 22c so as to "have the desired effect in stemming the pattern of increased usage of plastic bags that has been evident"[271]

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269 Courtauld Commitment is a voluntary agreement between WRAP (a not-for-profit company backed by government funding) and major grocery retailers and brand owners. It supports less packaging and food waste ending up in household bins. According to Wrap it led to zero growth in packaging despite increases in sales and population. (see http://www.wrap.org.uk/retail/courtauld_commitment/)

270 http://www.irishstatutebook.ie/2001/en/si/0605.html, Waste Management (Amendment) Act 2001

271 Between the Levy's introduction in 2002 and the report of the Press Office of the Department in 2007, the levy has raised €75m. There is also an exemption for plastic bags designed for re-use, provided that the retailer sells them for not less than 70c.

PART III - CONCLUSIONS

Identified problems

This staff working paper has identified problems affecting the performance of retailers in the Internal Market by taking into account not only economic but also environmental and social performances. It has aimed to do this by looking at the performances across Member States and by analysing operators' strategies as well as the relevant regulatory framework both at the EU and Member State level. The analysis has shown that in recent years the retail services sector has performed well in some of these aspects but has underperformed in others.

Downstream market

Although the development of modern retailing has generally allowed more access to affordable products, there is a risk that certain segments of the EU population, most worryingly the least privileged and vulnerable ones, are facing reduced access to affordable day to day necessities. The following problems curtailing optimal performance of retailers as regards accessibility and affordability have been identified:

- Lack of efficiency and co-ordination of land planning systems affecting the establishment of retailers. Land ownership and rental rules possibly contributing to malfunctioning of the commercial property market and thereby having an impact on the retail landscape.

- Insufficient development of e-commerce across the EU.

-Insufficient provision of independent (including on-line) information services and commercial communications reaching beyond local retail markets on retail offers including ethical performance of retailers and enabling consumers to easily compare prices and qualities and products.

- Restrictions on cross-border sourcing by retailers, including on parallel importing.

- Restrictions on cross-border transactions, resulting from diverging national business-to-consumer laws implementing the minimum standard of EU consumer regulatory framework.

- Restrictions on the development of cross-border retail networks, including those on franchising and on multi-ownership in reserved areas such as pharmacies.

- Risk of different application of the EU labelling requirements[272].

Upstream markets

Suppliers

Although the development of modern retailing has allowed suppliers to expand their markets and make use of the Internal Market, it has also resulted in changes in the nature of the

[272] Nevertheless, review of the labelling Directive currently underway in the context of the Commission Proposal for a Regulation of the European Parliament and of the Council on the provision of food information to consumers should contribute to the uniform application of the labelling requirements in the EU (COM/2008/0040 final).

relationships between the actors of the supply chain. The following problems affecting optimal economic performance of these actors have been identified/reported:

- A lack of rules or lack of adequate enforcement of existing national contract law and other rules prohibiting or limiting unfair contractual relations or rules granting certain rights (e.g. interest for late payment), at all stages of the supply chain thereby undermining innovation and growth of enterprises, notably SMEs.

- A lack of transparency in ethical and other quality control schemes which are often non-transferable across the borders of the Internal Market. This key but fragmented market of quality control systems is costly and preventing ethical operators, particularly SMEs who may have very good social and environmental records from promoting their quality and may even discriminate against smaller suppliers for this very reason.

- Inefficiency of protection measures for incremental innovations that may give rise to copycatting and undermine investment in innovation.

Employees

The retail sector offers job opportunities at local level especially for the young, women and less qualified people. In addition, the retail sector is also an important source of self-employment. However, in spite of this positive effect on the labour market, qualitative aspects of retail employment deserve further attention. The findings include the following issues:

- Differing national labour law frameworks including collective agreements that result in differing working conditions in retail sector between the Member States.

- The mismatch between future skills needs of workers entering the job market through the retail sector given the increasing reliance of ICT in that sector.

- Insufficient enforcement of national labour laws and rules tackling informal economy.

Logistics and ICT

Efficient logistics systems make it possible for retailers to get the products to the right place at the right time and at the lowest cost. Logistics today are not driven solely by the need to save costs and to be more efficient but also by the increased awareness and obligations to account for sustainable development. The use of ICT is crucial to the development of optimal logistics systems. In this regard, it should be ascertained that environmental costs (including carbon footprints) are fully taken into account. The following problems hindering the logistics development towards more sustainable solutions have been identified:

- The lack of an accepted measuring system to assess environmental impacts across supply chains that integrate logistics.

- The lack of common methodology to assess the environmental costs on the basis of a comprehensive product life cycle approach.

- The lack of account taken in planning rules or decisions of issues such as congestion, unloading and loading schedules or lack of proper assessment of the environmental impacts of more proximity or home delivery and less use of private vehicles for shopping trips.

- The continuing lack of integration of rules on cabotage.

- The necessity to improve inter-modal transport possibilities within the European Union.

Energy and Waste

The retail sector is a major energy user as well as an important waste producer. Retailers already undertake actions to reduce energy consumption and waste production, but these actions are often driven by cost savings considerations. Because it is true that investments in environmental measures can be significant, incentives needs to be put in place in order to further encourage sustainable performance by retailers and stimulate more sustainable consumer choices. The following issues hindering development towards more sustainable solutions have been identified:

- Insufficient framework for energy consumption and lack of incentives or rewards for companies investing in energy efficiency or greener technologies.

- The lack of co-ordination between packaging waste and end-of-life electric and electronic products take-back and recycling systems between Member States.

- The lack of offer of environmentally friendly products at affordable prices.

Relevant policy monitoring indicators must be designed and agreed as a matter of urgency

The current staff working paper has also revealed, in analysing the retail services market, that there is lack of data and appropriate indicators to measure the policy-oriented performance that the Internal Market seeks to maximise.

For example, national aggregated price data fail to pick up on differential pricing of the same product across differing regions. Sales surface per head of population does not appropriately measure accessibility in terms of proximity. Public data on parallel import levels are also so general and partial that they are unusable. Data on the retail commercial property market or average rent levels are also not publicly available. Data on home delivery services are not in the public sphere. The measurement of CO_2 emissions associated with differing logistics and retail store types are apparently not yet fixed.

Yet without such data and appropriate indicators, it will not be possible to monitor and adjust the future policy responses to the identified problems and thus ensure that policy goals are achieved. Qualitative policy responses need such measures[273].

In many cases there is no time, nor public budget nor justification for increased administrative burdens to be put in place for a public statistical collection exercise to address this problem. However, it should remain clear that the collection of data by National Statistical Institutes should be constantly improved and coordinated at the EU-level to be able to help deliver in the near future reliable and comparable indicators, on the basis of the already existing data collections. In undertaking this analysis and speaking to national authorities, competition

[273] In some cases, the work on performance indicators has started and methodology of measuring and assessing market functioning is being developed. For example, through carrying out consumer opinion surveys screening 50 markets or collection of prices of individual consumer goods across the EU for the Consumer Markets Scoreboard, the Commission aims at improving its understanding of functioning of the market for consumers.

authorities and stakeholders, it has become evident to the Commission's services that in several instancess such data is collected for other policy purposes, notably for taxation purposes (e.g. business rates and intra EU trade flows). Moreover, it is also apparent that commercial databases exist from which subsets could be extracted to measure an agreed set of performance indicators. There is therefore a need to consider how best to co-ordinate access to such data sources such that the European, national, regional and local legislators and policy enforcers can all use them with a view to ensure an effective, co-ordinated and transparent policy monitoring system for retail services in the Internal Market.

Need for holistic policy responses co-ordinated across respective governance levels

Due to the systemic nature of retail services, as explained in this Staff Working Paper, the effects of the problems are felt through the entire retail supply chain. It is clear that for the most part, the policy responses to these problems must be holistic in nature and must be developed so that inconsistencies are avoided. A systemic problem has to be met by a systemic response.

In full respect of the principles of subsidiarity and proportionality, these holistic policy responses would need to be executed with a mix of coordinated European, national, regional or local policy actions.

Policy responses must be inclusive

Finally, the analysis has shown that the development and offer of retail services affects a wide range of interested parties be they consumers, large and small retailers, independent/franchised retailers, workers and their representative bodies, logistics suppliers, ICT suppliers, suppliers of thousands of different products, environmental groups, fair trade organisations and many others. It follows that any policy response that seeks to address the problems must be inclusive. The consultation on the Report and this Staff Working Paper is a first step in collecting the views of all these constituencies.