



Consumer market study on the functioning of the real estate services for consumers in the European Union

Final report

EUROPEAN COMMISSION

**Produced by Consumers, Health, Agriculture and Food Executive Agency (Chafea) on
behalf of the European Commission Directorate-General for Justice and Consumers**

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Glossary

Country codes

AT	Austria	IT	Italy
BE	Belgium	LT	Lithuania
BG	Bulgaria	LU	Luxembourg
CZ	Czech Republic	LV	Latvia
CY	Cyprus	MT	Malta
DE	Germany	NL	Netherlands
DK	Denmark	PL	Poland
EE	Estonia	PT	Portugal
EL	Greece	RO	Romania
ES	Spain	SE	Sweden
FI	Finland	SI	Slovenia
FR	France	SK	Slovakia
HR	Croatia	UK	United Kingdom
HU	Hungary		
IE	Ireland	IS	Iceland
		NO	Norway

Abbreviations used

Chafea	Consumers, Health, Agriculture and Food Executive Agency
ADR	Alternative Dispute Resolution
B2C	Real business-to-consumer
BOs	Business operators
C2C	Consumer-to-consumer
CPAs	Consumer protection agencies
DGs	Directorate Generals
EC	European Commission
ECJ	European Court of Justice
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EPC	European professional card
ESIS	European Standardised Information Sheet
GRETI	Global Real Estate Transparency Index
HOAs	Homeowner associations
ICTs	Information Communication Technologies
MCD	Mortgage Credit Directive
MPI	Market Performance Indicator
NCAAs	National Competent Authorities
OFT	Office of Fair Trading
SME	Small and medium sized enterprise
TAs	Tenants associations

Abstract

The real estate services market is underperforming in terms of consumer protection, an area the EU monitors and emphasizes. It is a complex sector, with several parties involved on convoluted processes with information asymmetries. This study explores regulation, practices, problems and understandings between all parties in the sector.

Although practices and legal frameworks vary across countries in scope, common trends emerge. Processes and practices are problematic across the EU. Transparency of information, its clarity and comparability remain a challenge as consumers consider it difficult to obtain and understand, or insufficient. Similarly, information on agent's fees and costs is not easily conveyed. Most frequent problems referred to hidden costs, terms and conditions that were too complex or unclear, and missing or misleading information on properties. These challenges were heightened in the case of cross-border transactions, and even if consumers seemed confident in national markets, this was not the case when dealing with transactions abroad.

Consequently, the consumer experience is unsatisfactory, with the demand side of the market being more prone to experience problems. And although several mechanisms exist for consumers to formally raise a complaint very few do so and only a minority are aware of their consumer rights.

1. Introduction and background

1.1 Objectives and scope of the study

The European Union (EU) has placed strong emphasis on **consumer protection** since the early 1970s. In the field of consumer policy, there are currently two main strategies in place to ensure a correct functioning of the markets from a consumer perspective: the '**European Consumer Agenda**' and the '**Consumer Programme 2014-2020**'. The former is set to be an action plan for the next years and is aligned to both the Europe 2020 goals and the growth strategy of the EU. It responds to four main objectives: (1) improving consumer safety; (2) enhancing knowledge; (3) improving implementation; and (4) stepping up enforcement and securing redress as well as aligning rights and key policies to economic and societal challenges¹. The latter is the financial instrument that backs the implementation of the current consumer agenda². The Consumers, Health, Agriculture and Food Executive Agency (Chafea) is in charge of implementing the Consumer Programme. In this regard, the Agency helps to improve the consumer conditions across the EU³ and collaborates closely with the relevant Directorate Generals (DGs) of the European Commission (EC).

In this context of consumer protection, the EC periodically monitors the functioning of consumer markets to ensure that consumers are treated fair and are protected. Specifically, **the real estate market** has consistently displayed symptoms of mal functioning regarding consumer protection. In their latest '**Consumer Market Scoreboard 2016 edition**'⁴, the Commission observed that the market for real estate services showed the worst performance of the 42 markets surveyed. Moreover, an analysis by country showed a 19-point difference in the Market Performance Indicator (MPI) between the country where the real estate market performed best (Malta) and the one where it performed worst (Croatia). The sector scored relatively better in Western and Northern Europe, while it scores less than average in the Southern and Eastern European countries. The worst performance was noted in the composite indicator that includes aspects such as consumer trust, consumer problems, choice and comparability of offers and the extent to which consumers' expectations are met. It is also worth noting that the 2013 edition displayed a comparable situation⁵.

In addition, the market also seems to be highly complex, as evidenced by different studies undertaken at EU level. Complexity is caused by numerous factors, for example:

- Several professionals are usually involved in real estate transactions;
- Different steps are included in the process of buying, selling, renting or letting a property;
- Information asymmetries are observed in the market;
- Controversy arises on the way more or less regulation, as well as different types of regulation, may affect levels of consumer protection.

Additionally, different legal traditions and national regulations may be found in the 30 countries in scope: this is reflected in variations across the countries in terms of market functioning and regulation of real estate professions. Hence, to understand why the consumer is experiencing problems and is being dissatisfied with the market, an analysis of the national frameworks is required. This will allow to understand which practices across

¹ European Commission, (2012). "A European Consumer Agenda - Boosting confidence and growth". SWD (2012) 132 final. Available at: http://ec.europa.eu/consumers/archive/strategy/docs/consumer_agenda_2012_en.pdf

² European Parliament, (2015). "Consumer Protection in the EU: A policy overview". In-depth analysis. Available at: [http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA\(2015\)565904_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf)

³ European Commission, (2016). "About CHAFAEA". Available at: <http://ec.europa.eu/chafea/about/about.html>

⁴ European Commission, (2016). "Consumer Markets Scoreboard. Making markets work for consumers". Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_markets_scoreboard_2016_en.pdf

⁵ Idem

the EU seem to be enhancing consumer protection in the real estate market, and which others seem to be detrimental for them.⁶

The objectives of the current study therefore are to:

- Explore the existing regulatory framework on real estate services, how the real estate services market works, the costs that it involves, and the extent to which it provides sufficient protection for consumers who are letting, buying, or selling a property in their own country or in another EU Member State, Norway and Iceland;
- Document the relevant practices in the real estate services market, consider the extent to which consumers are aware of their rights and willing to make use of them, investigate the nature and prevalence of problems they encounter when exercising their rights and how information is communicated to them;
- Provide a better understanding of the way consumers perceive information on real estate services and rights, and its impact on consumers' purchasing or renting decisions;
- Draw conclusions on e.g. the need for enforcement and awareness raising activities, policies to be considered by policy makers and/or self-regulatory initiatives to be considered by the real estate services industry.

The market activities⁷ covered under the study are:

- Intermediation in buying, selling and rental of real estate on a fee or contract basis;
- Advisory activities and appraisal services in connection to buying, selling and rental of real estate, on a fee or contract basis.

This first part of this study presents an overview, from a consumer perspective, of the current EU law and policy framework related to real estate transactions as well as of the professional services assisting consumers in such transactions. It should be noted that this study does not entail an exhaustive and thorough legal analysis of the functioning of the real estate services market in the EU28, Norway and Iceland. A comprehensive legal analysis from a comparative perspective would require further research that goes beyond the scope of this study. This is mainly because the conveyancing process as well as the renting and letting process are being regulated and organised differently across countries due to diverse legal traditions and other national specificities. This study aims rather at providing a general overview and an overall understanding of the functioning of the real estate services market in the EU28, Norway and Iceland.

The second part of this study looks more closely at the consumer experience. Although some research questions of the current study overlap with those of the EC's 'Consumer Market Scoreboard' (e.g. looking at comparability of services offered by real estate agents), the current study goes beyond the Scoreboard by focussing on specific elements of the consumer experience and by assessing these in more depth (e.g. the current study's focus on information provision by real estate agents about properties placed on the market, but also about the type of mandate contracts they offer). The current study also uses additional tools in addition to consumer surveys, such as stakeholder consultations, focus groups, mystery shopping and an online behavioural experiment. The main tasks, and tool used, are described in the following section.

⁶ Note: With respect to the definition of detriment applied in this study, it is important to distinguish between "structural" and "personal" detriment. On the one hand, structural detriment refers to a loss of consumers' welfare at an aggregate level; on the other hand, personal detriment is given by the difference between consumers' expected value from a good or service and the actual value that they derive from it. Personal detriment, therefore, covers the problems experienced by consumers after the purchase. The scope of consumers' detriment depends both on the prevalence and on the severity of problems encountered.

⁷ This definition is obtained from NACE Rev. 2, but it excludes the third category of activities part of the definition, "real estate escrow agents' activities". See Stats UN, "Class 68.31 - Real estate agencies". Accessed November 2011. Available at: <http://unstats.un.org/unsd/cr/registry/regcssm.asp?Cl=242&Lg=1&Co=68.31>

1.2 Main tasks and methodology used

1.2.1 Main task 1: Regulatory review, country fiches and stakeholder consultation

Main Task 1 consisted of several data gathering channels: a literature review, the collection of country fiches, stakeholder consultations and focus groups. Data gathering for this task was mainly conducted between March 2017 and November 2017.

Sub-task 1: Literature review

The literature review and desk research at the EU and country level aimed at collecting information and data to develop an in-depth understanding of relevant aspects related to the performance of the real estate services market. In specific, two distinct chapters have been elaborated as part of the literature review:

- The applicable EU legislation (covered in Section 2.1 of the report); and
- Professional services in real estate transactions and consumer protection (covered in Section 2.2 of the report).

The sections on the applicable EU legislation and professional services in real estate transactions and consumer protection were drafted in collaboration with the Tenlaw network and Professor Christoph Schmid, who provided input from a legal perspective.

Sub-task 2: Classification of existing national rules

Due to the high complexity of legal regulation in the residential real estate sector and the divergences across legal frameworks, Sub-task 2 aimed at obtaining a profound understanding of the national rules through the collection of 31 country fiches. Since differences from a legal perspective can be observed within the UK, two distinct country fiches were completed by national experts, namely a country fiche for England and Wales, and a country fiche for Scotland.

Specifically, the **country fiches** aimed at gathering reliable and detailed information on the regulation of the market and its operation in the 30 countries through **a detailed questionnaire covering legal and economic topics**. The collection of the country fiches was coordinated by the legal expert who collaborated with a panel of researchers who are members of the scientific network established through the EU funded collaborative project 'Tenancy Law and Housing Policy in the EU (Tenlaw)'⁸. National experts were academics or legal professionals with practical experience in the field of real estate.

Sub-task 3: Identification of 'top' cross-border real estate sellers

Sub-task 3 consisted of **identifying 'top' cross-border real estate sellers** in the countries under scope by the study as well as in the understanding of real estate agencies' business model for cross-border transactions.

In specific, the objectives of Sub-task 3 were to:

- **Identify 14 'top' cross-border real estate agencies** ("brokers") in the 28 Member States plus Norway and Iceland; and
- **Investigate the business model** of real estate agencies, both independent and franchised ones, in terms of **cross-border transactions**.

⁸ See on this, www.tenlaw.uni-bremen.de

Among the 30 countries included in the study, the **first six** countries displaying the highest **value added at factor cost** were considered for the identification of the 'top' real estate agencies:⁹ the UK, Germany, France, the Netherlands, Spain and Poland.

In order to collect data on the business model of real estate agencies for cross-border transactions, representatives of the selected largest real estate agencies across the six countries were contacted to collect information via **email** and, if necessary, via **semi-structured phone interviews**. The data collected through this exercise allowed to describe the companies' business model.

Sub-task 4: Identification of non-compliant marketing practices

The main data collection method to identify non-compliant marketing practices and practices that are detrimental to consumers consisted in **surveying** the following four stakeholder groups across the 30 countries in scope:

- Consumer protection agencies;
- National competent authorities (e.g. Competition Authorities, Chambers of Commerce, Cadastre);
- Homeowner associations; and
- Tenants associations.

Fieldwork took place between 8 June and 31 July 2017. The study received in total:

- 18 answers from consumer protection agencies out of 60 contacted stakeholders;
- 18 answers from national competent authorities out of 127 contacted stakeholders;
- 9 answers from homeowner associations out of 62 contacted stakeholders;
- 9 answers from tenant associations out of 60 contacted stakeholders.

In addition, four semi-structured interviews have been performed with representatives of consumer protection agencies between September and November 2017.

Sub-task 5: Survey of business operators

Business operators in the real estate market were also contacted and asked to complete an online survey. The **business operators' survey** aimed at obtaining information on the overall functioning of the real estate market from the perspective of business operators and to investigate to what extent business operators are aware of and compliant with the relevant legislation. The survey was addressed to the following distinct stakeholder groups across the 30 countries in scope:

- Franchised real estate agencies;
- Independent real estate agencies; and
- Individual real estate agents.

Fieldwork took place between 8 June and 31 July 2017. In total, 18 responses were received out of the 446 contacted business operators. Three in-depth interviews with representatives of associations of real estate agents were conducted between September and November 2017.

Sub-task 6: Focus groups

This sub-task consisted of conducting **two focus groups**, one in Germany and one in the Netherlands. The purpose of the focus groups was to assess consumer problems from the point of view of both service providers and consumers. In specific, the focus groups aimed at investigating consumers' complaints, the (perceived) levels of consumers' satisfaction

⁹ Retrieved from: http://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Value_added_at_factor_cost

with the provision of real estate services, and the delivery of adequate and transparent information to consumers.

Both focus groups were performed in the first half of November, respectively:

- In Cologne, Germany, on 7 November 2017;
- In Amsterdam, the Netherlands, on 14 November 2017.

In Cologne, 10 participants participated in the focus group, while in Amsterdam, 8 participants were interviewed. Participants' profiles included buyers/tenants, sellers/landlords as well as real estate agents.

1.2.2 Main task 2: Consumer survey

In-depth consumer surveys were carried out between 7 August and 12 September 2017 in the 28 EU Member States, Iceland and Norway. An online methodology was used in all countries, the exceptions being Cyprus and Malta. In the latter countries, no high-quality online access panels are yet operational and a telephone survey was conducted. The 'on the ground' execution of the online fieldwork was carried out by the Ipsos Interactive Service Bureau (IIS).

The target population for the consumer surveys were consumers who either let, rented, bought or sold real estate during the past seven years (since 2010), or who have attempted to let, rent, buy or sell real estate during this time frame. *For consumers who have rented or bought real estate*, only those who have looked at properties marketed by a real estate agency were included in the survey. *For consumers who let or sold real estate*, only those who have worked with a real estate agent to help them find a tenant or buyer were included in the survey. The incidence rate for the target population as defined above and as measured during data collection varied between 19% in Latvia and 50% in Bulgaria.

The questionnaire of the consumer survey was divided into two main sections: (1) a section focussing on buying or renting a real estate property; and (2) a section focusing on selling or letting a real estate property. By answering a set of screening questions about their real estate transactions in the past seven years, respondents were routed to one of these two sections, or to both sections, in case respondents had both rented/bought a property and let/sold a property in the past seven years. In total, across the EU28, 12,121 respondents responded to the section about buying or renting properties and 4,817 respondents answered questions about selling or letting real estate properties. Further detailed information about sample composition is presented in Annexes to this report.

In the countries using an online methodology, the average interview duration varied between 9 minutes in Luxembourg and 15 minutes in Lithuania. In Malta and Cyprus, using CATI interviewing, the average interview duration was 12 minutes and 17 minutes, respectively.

1.2.3 Main task 3: Price collection

Task 3 consisted in the collection and analysis of **intermediation and advisory fees** for the buying/selling and renting/letting of properties in all 28 Member States, Iceland and Norway. The data collection for Task 3 was mainly performed between August 2017 and January 2018.

Data on intermediation and advisory fees for all the 28 Member States, Norway and Iceland was collected through the country fiches (Sub-task 1.2), and through the consumer survey (Main task 2). The analysis of data collected through this task is reported in Chapter 7 and is structured around the following categories of payments and fees:

- Fees paid to real estate agents;
- Other costs and charges for real estate transactions;
- Time spent by consumers on real estate transactions.

A clear distinction is made between intermediation and advisory fees paid by buyers and sellers during the conveyancing process and fees paid by landlords and tenants during the renting/letting process.

1.2.4 Main task 4: Mystery shopping

Mystery shopping was conducted in eight countries: Germany, Greece, Italy, the Netherlands, Poland, Slovenia, Sweden and the UK. Between 17 June and 10 August 2017, 480 website evaluations and 320 in-store evaluations were carried out across these eight countries.

The mystery shopping exercise attempted to replicate consumers' experiences when it comes to:

- Seeking and comparing information regarding the letting or purchase of a property (in their own country and another EU country), and
- Information provision by real estate agents when enquiring about the possibilities for selling or letting a property.

To this purpose, specific scenarios were developed for buying, renting, selling and letting properties. The 'buying and renting' scenarios were conducted via online evaluations of real estate agency websites.¹⁰ In the 'selling and letting' scenarios, mystery shoppers were instructed to (physically) visit local real estate agents. The mystery shopping consisted of role-played scenarios; shoppers were instructed to look for information about a particular property they want to buy/rent or for information about how to sell/let their own property.

In each country (except Sweden), an equal number of evaluations was conducted for the in-store scenarios 'renting a property' and 'letting a property'. For the 'buying and renting' scenarios, the distribution of evaluations across sub-scenarios depended on the country's tenure status distribution – i.e. in countries with a larger share of owner-occupiers, the number of evaluations for 'buying' was increased, while in countries with a larger share renting a property, the number of evaluations for 'renting' was increased.

In Sweden, professional (private sector) brokerage of tenancies exists but is not very common due to a cap on the permissible remuneration. By contrast, municipal tenancy brokerage services are quite common – the latter type of services, however, are out of scope of the current study. For this reason, it was decided that all evaluations in Sweden would focus on selling and buying properties.

In both the 'buying' and 'renting' scenario, a small number of comparison tools was included in the exercise. In the 'buying' scenario, a further distinction was made between real estate website offering properties locally vs. abroad (i.e. in at least one other EU country). The comparison tools and the real estate websites offering properties abroad were pre-selected by the research team at Ipsos. Concerning the selection of the remaining real estate agencies to be evaluated, shoppers were instructed to select a local real estate agent in their region, which led to a good geographical distribution of the evaluations in the countries.

1.2.5 Main Task 5: Behavioural experiments

The behavioural experiment addressed two key objectives in the context of consumer search for information on real estate advertisements:

- How easy it is for consumers to find and assess information; and
- Assess how much information can be 'digested' by consumers.

¹⁰ An online approach was selected in this scenario, as anno 2017 consumers looking for a new property are likely to search online – in 2015, 79% of enterprises active in the real estate sector (with 10 employees or more) had a website or homepage.

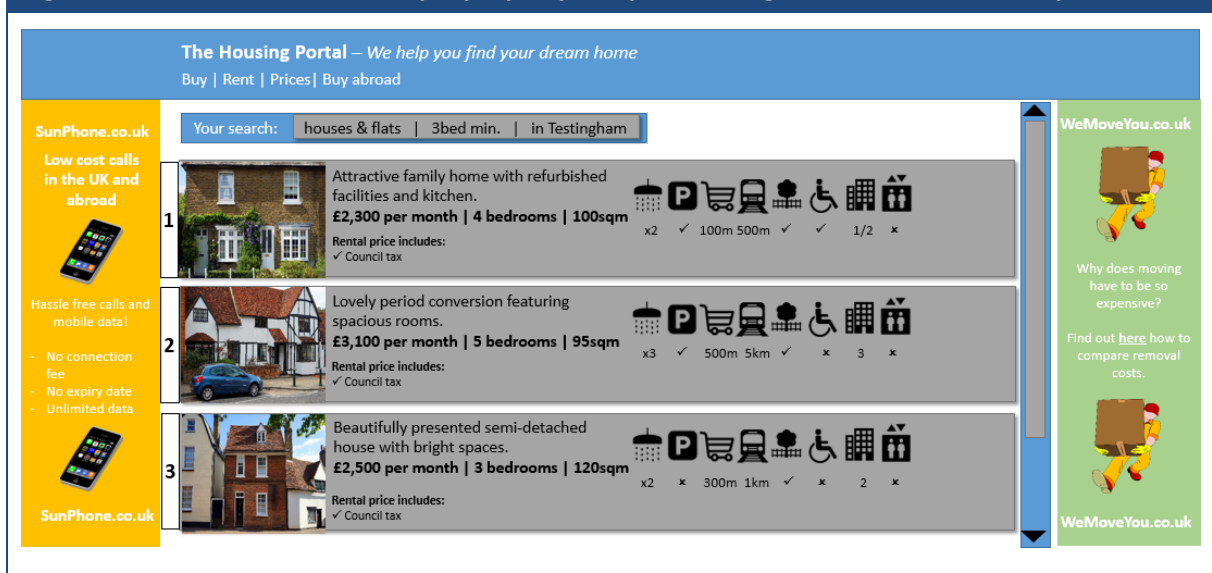
The experiment featured at the end of the consumer survey from Main Task 2 (see above) and had an average duration of 15 minutes. The experiment was conducted with 1,003 respondents in France, and 1,001 respondents in the UK. Roughly 70% of respondents from both samples had experience in the real estate market, either from renting, buying or letting properties in the last seven years. Performance in the experiment was incentivised using Ipsos panel points which convert to monetary payoffs via consumption vouchers at popular retailers in the respective panel countries. More specifically, respondents earned additional points via correct answers to objective questions with correct/incorrect answers.

Experimental environment

A simulated real estate website was constructed for the testing, with two key stages:

- **Stage 1 – comparison of multiple property advertisements:** At this stage, respondents saw summary information regarding a list of properties, similar to that seen on real world online property comparison websites. They could scroll through the information and were asked to answer questions which were presented on the same screen. A screenshot of Stage 1 is shown below.

Figure 1: Screenshot of the multiple property comparison stage in the behavioural experiment



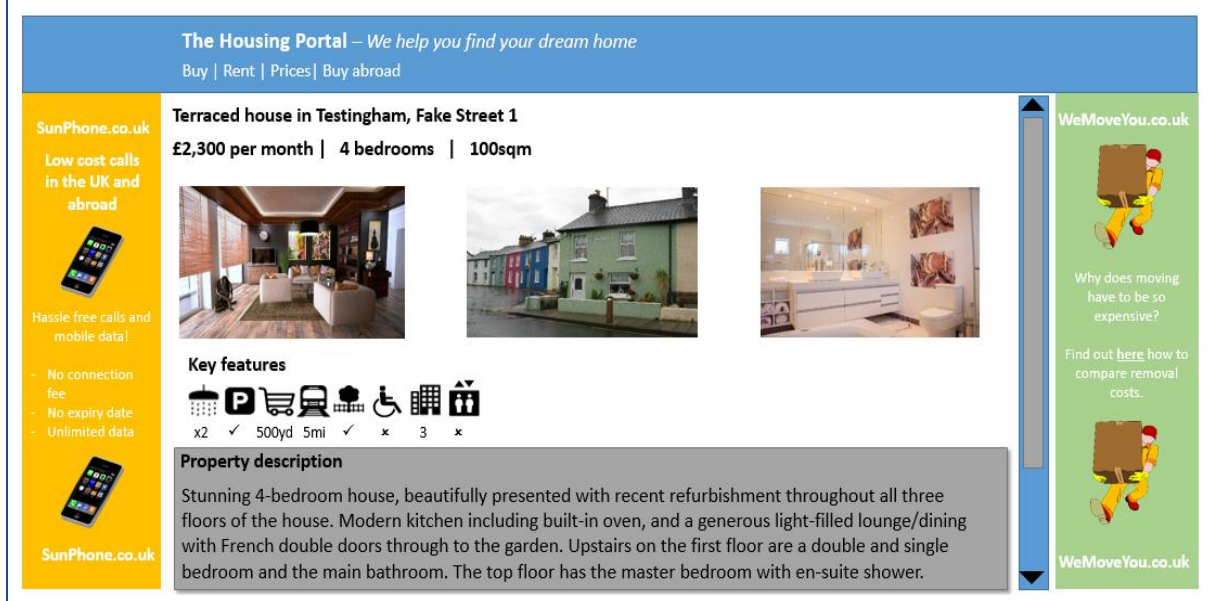
Note: 1) Property pictures from top to bottom from Pexel, and are licensed under Creative Commons Zero (CC0) license, meaning attribution is not required. 2) Icons in the grey box are taken from The Noun Project and from left to right are attributable to: Ralph Schmitzer/mikicon/Jugalbandi/b farias/Dairy Free Design/Rafael Farias Leao/iconsphere/Thomas Helbig. 3) Mobile phone and the movers' icon taken from Pixabay and both are licensed under the CC0 license. 4) Respondents could scroll up and down to see and compare six real estate properties. 5) Experimental scenario and treatments shown in this figure (see further below for a list of experimental treatments): Domestic rent with weekly rental price frame including residential taxes; size in sqm not shown; Energy performance rating not shown; a list of key features provided for easy comparability. The pictures shown in the example above are similar but not identical to those used in the experiment itself. This is due to copyright requirements.

Source: Main Task 5 Behavioural experiment

- **Stage 2 – in-depth assessment of one property advertisement:** This stage was independent from the Stage 1. It showed respondents detailed information for one property and again asked them targeted questions about the information shown on screen. This stage mirrored a situation in which a consumer has clicked on a property displayed in a comparison list to receive further information.

In both stages, the type and amount of information shown to respondents was systematically varied on screen. These variations are referred to as experiment treatments (see further below). The treatments were designed to assess whether different presentational formats helped or hindered consumers' ability to digest information, and assess and compare real estate advertisements.

Figure 2: Screenshot of the single property assessment stage in the behavioural experiment



Note: 1) Property pictures from left to right from Pexels/Pixabay/Pexels and are all licensed under the Creative Commons Zero license, requiring no attribution. 2) Icons in the grey box are taken from The Noun Project and from left to right are attributable to: Ralph Schmitzer/mikicon/Jugalbandi/b farias/Dairy Free Design/Rafael Farias Leao/iconsphere/Thomas Helbig. 3) Mobile phone and the movers' icon taken from Pixabay and both are licensed under the CC0 license. 4) Respondents could scroll down through the property description to reveal additional information. 5) Experimental scenario and treatments shown in this figure (see further below for a list of experimental treatments): Domestic purchase, size in sqm not shown; a list of key features provided via icons. The pictures shown in the example above are similar but not identical to those used in the experiment itself. This is due to copyright requirements.

Source: Main Task 5 Behavioural experiment

The tasks on the simulated real estate website were followed by qualitative appreciation questions. These asked respondents about their preferences for how they would like to see information provided on real estate websites, and their ease of understanding of the content shown. In addition, behavioural drivers and cognitive biases which might be at play in the real estate market were assessed namely: risk aversion, ambiguity aversion, overconfidence, trust, and self-assessed confidence in shopping cross-border.

Both stages covered four different scenarios to test for context specific behavioural differences. Respondents were randomly allocated to one of these four scenarios:

- **Domestic rental** (example shown in Figure 1)
- **Domestic purchase** (example shown in Figure 2)
- **Cross-border scenario 1:** Purchase of a property abroad from a website based in the home country. In this scenario, respondents from the UK had to complete the task at hand for properties located in Spain and French respondents looked at properties in Belgium. The images and property descriptions were thus adapted to fit the scenario. To highlight that respondents were shopping on a domestic homepage for a property in another country, the website had a domestic sounding name (e.g. The Housing Portal in the UK). The commercial advertisements shown on screen to the left and right of the real estate properties showed adverts relevant to the host country in the domestic language (e.g. an advertisement for Spanish wine and cheap phone calls to Spain written in English for the UK).
- **Cross-border scenario 2:** Purchase of a property abroad from a website based in the cross-border country. Again UK respondents assessed properties in Spain and French respondents properties in Belgium. The difference to the cross-border 1 scenario was that the website was setup in a way that gave respondents the impression of shopping directly in the cross-border country (i.e. in Spain or Belgium rather than in the UK or France). To make this distinction, the website name (e.g. El Portal de la Casas for Spain) and language of the commercial adverts (i.e. using Spanish and Dutch instead of English and French) were adapted.

The objective of the cross-border scenarios was to assess whether consumers behave differently when searching for real estate properties at home or abroad, as well as when shopping in countries close to home with a similar cultural context (France and Belgium), compared to in countries further away with a different cultural context (UK and Spain).

Experimental treatments

The following treatments systematically varied the look and feel of the experiment for respondents. Respondents were allocated randomly and independently to a variant within each treatment category. Each treatment category had two to three variants. Most treatments were applied across (both) stages 1 and 2 as indicated below in detail.

- **Size treatment (stages 1 and 2):** This treatment varied whether the property's surface in square metres (or square feet in the UK) was displayed, or not.
- **Key features treatment (stage 1):** This treatment varied whether key features of the real estate properties were shown via icons, and whether these icons were displayed consistently across properties, or on an ad-hoc basis.
- **Energy performance certificate treatment (stages 1 and 2):** This treatment varied whether the EPC of the property was displayed, or not.
- **Price framing treatment (stages 1 and 2):** This treatment varied whether the displayed rental and purchasing prices were inclusive or exclusive of, respectively, residential taxes, or stamp duty.
- **Rental price treatment (stages 1 and 2):** This treatment was applied to the domestic rental scenario only. It varied whether the displayed rental prices were shown as prices per month, or per week.
- **Key features treatment (stage 2):** This treatment varied whether key features of the property were displayed in icons, or not.
- **Tabular format treatment (stage 2):** This treatment varied whether the features of the property were displayed in textual format only, or also in a tabular format.

Approach to the experiment analysis

A range of statistical methods were used to analyse the experiment results. The key results are presented in Section 4.3. Further results are presented in an Annex to this report.

For each performance measure of interest, the data analysis commenced with firstly producing simple descriptive statistics. The performance measures are variables representing whether or not each respondent was able to correctly answer the various objective questions asked throughout the experiment, as well as their response times.

This was followed by testing whether the observed performance outcomes were statistically significantly different from each other across treatment groups (see above for a list of treatments).¹¹ These analyses were further separated for the different experimental scenarios as well as for socio-demographic groups and respondent groups displaying certain behavioural characteristics to see whether specific respondents behaved differently to the average. Subsequently, as robustness checks, the main set of results was verified using regression analysis in which the joint effects of treatments, scenarios, socio-demographics and behavioural drivers were assessed. This whole process was undertaken for each performance measure of interest.

For the qualitative measures (i.e. appreciation questions), frequency analyses were used to reveal respondents' preferences, and test if the outcomes were statistically different across treatment groups.

¹¹ Specifically mean outcomes for each performance measure were tested.

Table 1: Socio-demographic characteristics and behavioural drivers used in the analysis of the behavioural experiment

Demographics	
Gender	Gender of respondent (male / female)
Age	Age category of respondent (18-34 / 35-54 / 55+)
Financial situation	How easy the respondent thinks it is to meet make ends meet every month
Education: Highest level of education obtained	
Education: Low	Primary or lower secondary education
Education: Medium	Upper secondary or post-secondary education, not including university or equivalent
Education: High	Undergraduate and post-graduate university degree or equivalent vocational training, or higher
Cognitive ability: An indicator measuring respondents' ability to answer a question related to percentages	
Cognitive ability: Low	Question is not answered correctly
Cognitive ability: High	Question is answered correctly
Trust: An indicator based on respondents' answer to the question whether people can in general be trusted	
Trust: High	Respondent thinks most people can be trusted.
Trust: Low	Respondent thinks one can never be too careful when dealing with others.
Risk aversion: An indicator based on respondent's self-reported attitudes towards risk	
Risk aversion: Risk averse	Individuals who say they are less likely to take risks
Risk aversion: Risk seeking	Individuals who say they are more likely to take risks
Ambiguity aversion: An indicator based on respondent's answer to a question measuring their preference for ambiguity [1]	
Ambiguity aversion: Ambiguity averse	Individuals displaying aversion to ambiguity
Ambiguity aversion: Ambiguity loving	Individuals displaying preference for ambiguity
Cross-border orientation: A composite indicator based on respondent's answer to questions about their confidence in purchasing property in another EU country	
XB orientation: Low	Low confidence in purchasing property in another EU country
XB orientation: High	High confidence in purchasing property in another EU country
Overconfidence: An indicator measuring respondent's tendency to overestimate their abilities	
Overconfidence: Overconfident	Individuals who thought they performed better than average in objective questions (i.e. questions with a unique correct answer), but their actual performance was average or below average. [2]

Notes: [1] This question used the so-called Ellsberg paradox¹² to measure ambiguity preferences. Respondents were shown two urns with red and green balls. In one case, the proportion of red balls was known, while in the other it was not. They were told that they win if they draw a red ball and asked which urn they would prefer to draw from. Choosing the urn with known proportions indicated aversion to ambiguity. The urn with unknown proportions signalled a preference for ambiguity.

[2] The setup of this measure introduces some analytical difficulties. By construction, "overconfident" individuals are a subset of respondents performing worse than average. When observing how different remedies affected overconfident individuals, it might be difficult to disentangle two influences: Are overconfident individuals affected by the remedy i) because they are overconfident, or ii) because they are underperformers? This problem was addressed using several robustness checks, which used different measures of overconfidence.¹³

Source: Main Task 5 Behavioural Experiment.

¹² Ellsberg (1961) 'Risk, Ambiguity, and the Savage Axioms', Quarterly Journal of Economics.

¹³ Two robustness checks were performed. First, an alternative, stricter measure of overconfidence was used. To count as "overconfident", the individual must not only think they performed better than average while they, in fact, did not. In addition, the individual must have agreed with four statements that expressed their self-assessed confidence in the real estate market. This ensures that the indicator of "overconfidence" indeed captures only those who are too confident in their abilities. As a second check, the effects of low performance and overconfidence were attempted to be disentangled. The robustness check looked at how much the remedy improved performance of low-performers (without looking at confidence) and how much it improved performance of confident individuals (who may or may not thought they performed better than average). The measure of confidence in this case is solely using the four questions, in which individuals reported how confident they feel in the real estate market. These two variables then helped to understand if the observed effect for overconfident respondents is more likely to emerge from the fact that they are a subset of underperformers or if it is because they overestimate their ability.

1.3 Terminology used in this study

This section provides a list of useful terms and their respective definitions that have been employed throughout the study.

Table 2: Market definitions	
Market agents	
Term	Definition
Attorney	A person, typically a lawyer, appointed to act for another in business or legal matters ¹⁴
Estate agent	A person who represents a buyer or seller (or both, with proper disclosures) in the sale or lease of land; (also letting agent)
Fractional ownership	Fractional ownership is an investment structure for vacation properties. The fundamental difference between fractional ownership and timeshare is that, with fractional ownership, the investor owns part of the title, rather than units of time; with fractional ownership, if the asset increases in value, so does the value of the shares in the investment ¹⁵ .
Owner	One who has the right to possess, use, and convey an immovable or personal property
Landlord	One who leases an immovable to another; (also lessor)
Landlord-tenant relationship	The relationship existing between a landlord and a tenant
Professional landlord	A landlord in the business of building or purchasing immovables with the purpose to let for profit
Resident	A person who lives in a particular place
Solicitor	A member of the legal profession qualified to deal with conveyancing, the drawing up of wills, and other legal matters. A solicitor may also instruct barristers and represent clients in some courts ¹⁶
Tenant	One who pays rent for the use and occupation of an immovable owned by another under a lease or similar arrangement (also lessee)
Tenant association	An organisation of tenants who live in a certain building or development, or an organisation of tenants belonging to a county or citywide tenants' association
Legal terms	
Bad faith	Dishonesty of belief or purpose, usually in terms of ignoring a claim of which one has notice
Bona fide	In good faith; without fraud; without notice
Cancellation clause	A provision in a lease which confers upon one or all of the parties to the lease the right to terminate his or their obligations thereunder upon the occurrence of the condition or contingency set forth in the said clause
Cause	The theory of contract developed by the canon law providing a ground for legal action, based on the premise that the validity of a contract requires a reasonable and lawful cause, or moral justification, for making the promise
Deed	An instrument in writing duly executed and delivered that conveys title to an immovable
Encumbrance	Any right to or interest in land that diminishes its value (also <i>incumbrance</i>)
Eviction	The process of dispossessing a person of land and/or a dwelling
Immovable	Property such as land, buildings and other stable items that cannot be moved
Lease	A contract by which the rightful possessor of an immovable grants the exclusive right to occupy and use the property in exchange for consideration, usually rent; (when short in duration, usual term is <i>tenancy</i>)
Lease agreement	A written instrument memorializing the conveyance of a lease and its covenants
Mortgage	1. A lien upon an immovable created as security for the payment of a specified debt; (for civil law concept see hypothec); 2. the instrument specifying the terms of a mortgage transaction

¹⁴ English Oxford living Dictionaries. Available at: <https://en.oxforddictionaries.com/definition/attorney>

¹⁵ Investopedia, Fractional ownership. Available at: <https://www.investopedia.com/terms/f/fractionalownership.asp>

¹⁶ English Oxford living Dictionaries. Available at: <https://en.oxforddictionaries.com/definition/solicitor>

Table 2: Market definitions	
Ownership	The state of having the rights to possess, use, enjoy, and dispose of a determinate thing (either an immovable or personal property) and the right to exclude others from doing so
Possession	The right under which one may have or hold property in one's power; the right to exercise exclusive dominion over property;
Property	Any external thing over which the rights of possession, use, and enjoyment are exercised
Property tax	A tax levied on the owner of an immovable, usually based on the property's value
Registration	The act or process of recording an instrument, such as a deed or mortgage, into the public registry
Residence	The place where one actually lives
Tenancy	1. Possession or occupation of an immovable under a lease; 2. the period of such possession or occupancy
Tenancy agreement	The document by which a short term tenant holds
Timeshare	A type of joint ownership or rental of property, such as a vacation condominium, by numerous persons who take turns occupying the property
Transfer	1. The conveyance of title to property from one person to another; 2. the document passing title of a registered immovable; 3. verb – to convey ownership of property to another
Usufruct	A right to use and enjoy the fruits of another's property for a period of time without damaging or diminishing it, although the property might naturally deteriorate over time
Economic terms	
Assessed value	A valuation placed upon a property by a public officer or a board, as a basis for taxation
Choice	Consumers' satisfaction with the number of retailers/suppliers
Comparability	The ease/difficulty of comparing goods or services on offer
Complaints	Consumers' propensity to complain in particular to the seller/provider and/or a third party as a result of the problems experienced
Expectations	Consumer satisfaction, the extent to which market lives up to what consumers expect
Externality	A social or monetary consequence or side effect of one's economic activity, causing another to benefit without paying or to suffer without compensation; (also <i>neighbourhood effect; spillover</i>)
Market value	The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction
Trust	The extent to which consumers trust the retailers/suppliers comply with consumer protection rules
Valuation	1. An estimate of the worth or price of an immovable by an appraiser recognized as an expert in this work; 2. the act appraising the value of an immovable

Source: Ten-Law glossary of terms; Consumer market scoreboards

2. Legal foundations of real estate transactions and professional services in European and national regulation

This chapter presents an overview from a consumer perspective of the current EU law and policy framework related to real estate transactions as well as of the professional services assisting consumers in such transactions. Reference to the residential real estate market is made while relevant pieces of legislation and policy strategies that go beyond the scope of the study are not included.

2.1 The applicable EU legislation

A basic division line needs to be drawn between the regulation of substance and content of transactions, i.e. the rules on real estate conveyancing and residential tenancies themselves (Section 2.1), and the regulation of professional services and service providers facilitating such transactions, i.e. rules on market access and behaviour of the involved professionals and service providers, in particular notaries, lawyers, licensed conveyancers and estate agents (Section 2.2).

In specific, Section 2.1 covers the following topics:

- Fundamental constitutional dimension of the right of property from a consumer perspective;
- European consumer law and policy;
- European energy efficiency law;
- European tax law;
- European anti-discrimination legislation;
- European private international law.

Conveyancing and residential tenancies are largely regulated by autonomous national law, thus resulting in a very high degree of diversity across the 30 countries under scope by the study. Real property and real securities (mortgages) are defined differently; the registration of real property serves different purposes and requires different forms and procedures – ranging from declaratory to constitutive publicity, with some mixed systems (which require constitutive publicity for mortgages only).

The investigation of differences across national legislation and regulation is particularly relevant for the purposes of the study not only in terms of the process engaged when buying, selling, renting and letting a property but also regarding terminology and definitions, the role of professionals and registration in the land register. Several major differences can be noticed and are highlighted throughout the literature review and other study tasks. To provide an illustration, in some countries such as France, Italy and Spain, the transfer of real property ('conveyancing') depends on the validity of the sales contract, whereas, in Germany, the transfer of real property is valid even when the underlying sales contract is invalid (abstract system). Other differences are related to the legal instruments used. Whilst in Scandinavia, Great Britain and Ireland, private documents or deeds can be registered in the land register (on the request of the parties to the transaction), in most continental countries the transfer of property or other real rights to be registered in the land register requires a 'notarial deed' (acte authentique) – which, in turn, may be a substantive validity requirement or only a formal requirement for the registration procedure.

Despite national specificities on the legal framework of residential conveyancing and tenancies, guidance to Member States from the EU in relation to real estate transactions is observed through the following:

- The basic market freedoms which, though allowing different national rules, contain several rights that are relevant to real estate transactions and will be analysed from a consumer perspective (Section 2.1.1);

- The most important European input comes from European consumer law Directives (Section 2.1.2); and
- Further policy initiatives in this field also play an important role including European Energy Efficiency Law, European Tax Law, European Anti-Discrimination Legislation, and European Private International Law (Sections 2.1.3 – 2.1.6).

2.1.1 European right of property

The most important **legal infrastructure for real estate transactions** is provided by the **fundamental right of property**, which lays down a framework for both conveyancing and renting. From a consumer perspective, the European right of property is of paramount importance as it may be invoked directly against national regulation and administrative decisions both in the field of real estate conveyancing and rentals.

Whilst the right of property is part of the – written or unwritten – constitutions of all European Member States, it has also been recognised at the European level as a general legal principle by the European Court of Justice (ECJ) and it has been inserted into Art. 17 of the Charter of Fundamental Rights of the EU. However, these EU law guarantees have generated only limited impact on immovable property law and real estate transactions up until now; this is mostly because as a principle they may be invoked only against European and not national regulation and administrative decisions.

This is different for the European Convention of Human Rights (ECHR), which includes, in its first protocol, the well-known **protection of the right of property**. This right has been further specified in an ample jurisprudence by the European Court of Human Rights¹⁷, which extends to many legal aspects of real estate and tenancy transactions. As an example, the ECHR has repeatedly found a violation of the landlord's right of property in cases concerning extremely long waiting periods for eviction in Italy – even in cases in which the landlord intended to use a house or apartment for herself or close family members¹⁸. Most importantly for a private tenancy law context, the ECHR has in recent **years increasingly balanced the property rights of the owner against national regulation protecting the tenant**. In Malta¹⁹, Poland²⁰ and Norway²¹, which seem to have overruled previous jurisprudence²², it seems that, depending on the case, legislative and administrative restrictions of the landlord's property rights may be accepted in favour of tenants' protection.

As regards the **economic constitution of the EU**, the basic freedoms protect the three most important aspects of cross-border real estate transactions which are of highest relevance for consumers:

- The acquisition of real estate and the securing of financing debts with mortgages – as only this right allows most purchases of real estate properties by consumers;
- The latter encompassing both the right of the debtor (consumer) to secure a debt with a mortgage; and
- The right of the bank to offer a credit secured by a mortgage – which is so to speak the counterpart of the consumer's right.

Acquisition of real estate

The right to acquire real estate in other Member States is protected by the basic freedoms in all respects. For consumers, it is most relevant to see how the ECJ has concretised this right: i.e. if a foreign worker, acting as a consumer, wishes to buy an apartment in the

¹⁷ For older basic judgements, see J. De Meyer, *Le droit de propriété dans la jurisprudence de la Cour européenne des droits de l'homme*, in S. M. Helmons (ed.), *Le droit de propriété en Europe occidentale et orientale*, 1995, 55.

¹⁸ See case 22774/93, *Immobiliare Saffi v. Italy* of 28/7/99; case 22534/93, *A.O. v. Italy* of 30/5/00; case 28272/95, *Ghidotti v. Italy* of 21/2/02

¹⁹ Application no. 17647/04, *Edwards v. Malta* of 24/10/06

²⁰ Application no. 35014/97, *Hutten-Czapska v. Poland* of 19/6/06

²¹ Application no. 13221/08, *Lindheim and others v. Norway* of 12/6/12

²² Application no. 10522/83, 11011/84, 11070/84, *Mellacher and others v. Austria* of 19/12/89

host country, this has been qualified by the ECJ as an annex to the free movement of workers (Art. 45 TFEU, Ex-Art. 39 TEC)²³.

European debtor's (consumer's) right to secure a debt with a mortgage

The right of a debtor (consumer) to secure debt with a mortgage has been **acknowledged by the ECJ in 'the Trummer²⁴ case'**, which is a fundamental decision on the relationship of the basic freedoms and real sureties, though its facts are outdated after the introduction of the Euro currency. In this case, an Austrian prohibition on registering mortgages in foreign currencies was at stake. In its decision, the ECJ first confirmed the extension of the scope of the free circulation of capital to mortgages, as these "represent the classic method of securing a loan linked to a sale of real property"²⁵. Then, the Court found a violation of the freedom right:

*"The effect of national rules such as those at issue in the main proceedings is to weaken the link between the debt to be secured, payable in the currency of another Member State, and the mortgage, whose value may, as a result of subsequent currency exchange fluctuations, come to be lower than that of the debt to be secured. This can only reduce the effectiveness of such a security, and thus its attractiveness. Consequently, those rules are liable to dissuade the parties concerned from denominating a debt in the currency of another Member State, and may thus deprive them of a right which constitutes a component element of the free movement of capital and payments"*²⁶.

Following the ordinary scheme of analysis of the basic freedoms, the Court further went on to examine possible justifications of the violation. In this context, it made a statement of principle as regards to real sureties:

*"It should be noted that a Member State is entitled to take the necessary measures to ensure that the mortgage system clearly and transparently prescribes the respective rights of mortgagees inter se, as well as the rights of mortgagees as a whole vis-à-vis other creditors. Since the mortgage system is governed by the law of the State in which the mortgaged property is located, it is the law of that State which determines the means by which the attainment of that objective is to be ensured"*²⁷.

In the remainder of the case, the ECJ did not, however, accept the Austrian prohibition as a proportional limitation of the free movement of capital. Assuming that the Austrian rule is designed to attain the objective of a clear and transparent mortgage system, the Court reproaches it to enable lower-ranking creditors to establish the precise amount of prior-ranking debts and thus to assess the value of the security offered to them, only at the price of a lack of security for creditors whose debts are denominated in foreign currencies.

The bank's right to offer credits secured by mortgages

A well-functioning real estate market presupposes not only the debtor's (consumer's) right to secure a debt with a mortgage, but also the **bank's right to offer mortgage credit**. Such a right, which is principally protected by the freedom of services (Art. 65 TFEU), has been implemented by the second banking Directive 89/646/EEC, which came into force on 1 January 1993. Labelled the 'basic law for banks in Europe', this old Directive has brought about the **liberalisation of all important financial services**, including lending money in the form of mortgage credits.

The Directive aims at enabling the free circulation of financial services by a mix of harmonisation and mutual recognition. On this basis, it has been claimed in the literature

²³ Case 7/78, *Thompson*, ECR 1978, 2247.

²⁴ Case C-222/97, *Trummer and Mayer*, ECR 1999, I-1661; confirmed in case C-464/98, *Stefan*.

²⁵ ECJ, at no. 23.

²⁶ ECJ, at no. 26.

²⁷ ECJ, at no. 30.

that Member States would be under an obligation to mutually recognise foreign security rights on movables and immovables, notwithstanding the principle of *numerus clausus* of real property rights shared by all European legal orders²⁸. This would mean that the *lex rei sitae* rule²⁹ in private international law would no longer be applicable, but assuming that an Italian bank were to finance the acquisition of real estate in Sweden, Sweden would have to recognise and register a mortgage governed by Italian law. Such a duty of recognition, which has never since been recognised by the ECJ, would put national systems under considerable legal, technical and competitive constraints. However, this interpretation does not seem to be cogent as the banking Directive No. 89/646 refers to the state supervision and control of banks without dealing with private law aspects of single banking transactions.

Whilst the right of a bank to offer a credit secured by a mortgage in another Member State is thus firmly established under European law, **it does not appear to be employed frequently in practice**. Legal complexities are held responsible for this situation in the first instance. Thus, under private international law, the situation may frequently arise that the credit agreement and the mortgage are governed by different national laws. Whilst the latter follows the *lex rei sitae*, the former is in principle subject to the choice of the parties. This juxtaposition of different national laws may result in frictions and obstacles that may render cross-border transactions more difficult to handle and endanger the foreseeability of decisions and, thus, legal certainty³⁰. Beyond this, national privileges by which certain persons such as spouses (Spain) or builders (Germany) have a legal claim to prior-ranking mortgages only serve to heighten existing legal uncertainty.

Against this background, a uniform European mortgage has been recommended and academically prepared since 1966,³¹ but its chances of being enacted are still small due to major **divergences between national laws** – in particular as regards to the principle of accessoriness, i.e. whether the mortgage is extinguished automatically once the debt is repaid or whether it continues to exist (the danger being that it might be transferred to third parties) and can be 'recharged'³². Finally, to further promote the European mortgage market, a mortgage credit Directive has been enacted in 2014. However, it deals with the provision of mortgage services and not with the substantive law aspects of credit and mortgage agreements³³.

2.1.2 European consumer law and policy

European consumer law and policy generate significant impact on the substance of real estate transactions. The European consumer rights Directive 2011/83/EU of 2011 is of paramount importance as it integrates the former Directives on doorstep selling and distance sales, and aims at achieving a real business-to-consumer (B2C) internal market, with the aim to strike an adequate balance between a high level of consumer protection and the competitiveness of enterprises. This section refers to the pertinent pieces of legislation and policies at the EU level addressing consumers' rights in the real estate market. It includes:

- The Consumer Rights Directive (Doorstep Sales);
- The Consumer Credit Directive;
- The Unfair Contract Terms Directive;
- The Unfair Commercial Practices Directive;

²⁸ M. Wolf, *Privates Bankrecht im EG-Binnenmarkt, Wertpapiermitteilungen* 1990, 1941.

²⁹ *Lex rei sitae* means that immovable property (and other real rights) are governed by the law of the State where it is located.

³⁰ See in more detail on frictions between different legal orders affecting cross border transactions, Cross border acquisitions of residential property in the EU - problems encountered by citizens, Study for the EP, PE 556.936 (2016), p. 78ff.; available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU\(2016\)556936_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf)

³¹ Segré-Report, (1966). "The development of a European capital market". Available at: http://ec.europa.eu/economy_finance/emu_history/documentation/chapter1/19661130en382develeurocapitm_c.pdf

³² See e.g. A. Drewicz-Tulodziecka (ed.), *Basic Guidelines for a Eurohypothec*, 2005.

³³ See below sub II 7.

- The Mortgage Credit Directive;
- The Timeshare Directive;
- The Consumer Injunctions Directive;

Current consumer policy issues related to real estate are also outlined at the end of this section.

Doorstep Sales: The Consumer Rights Directive

The doorstep contracts regulation originally contained in the 1985 Doorstep Sales Directive,³⁴ which has been integrated into the 2011 Consumers Rights Directive,³⁵ is **intended to protect consumers in respect of contracts negotiated away from business premises**.³⁶ It applies to contracts executed between a seller and a consumer during an excursion organised by the trader away from his/her business premises. The Directive is also applicable to contracts formed during a visit by a seller to a consumer's home or place of work (Art. 2 No. 8). According to the Directive, **the seller is required to inform consumers of their right to cancel the contract (Art. 9)**. Once informed, consumers have 14 days to exercise this right of cancellation.

In the context of real estate transactions, Art. 3 lit. e (the former Art. 3 para. 2 doorstep selling Directive) stipulates: "This Directive shall not apply to: contracts for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property". Therefore, conveyancing contracts and other contracts concerning real estate transactions are not covered by the Directive but left to national law.

However, the ECJ has construed this exemption narrowly and has applied the Directive to real credit and mortgage contracts in the *Heininger* case.³⁷ In this case, the focus is the conclusion of a purchase contract for a flat and of a mortgage credit agreement with a bank in order to finance that purchase which was presumably done through a doorstep situation. A real estate agent, acting for the seller and his bank, had visited the Heiningers in their home without invitation. The bank argued "that a secured-credit agreement is, in substance, a contract concerning rights relating to immovable property since it creates a right *in rem* in the immovable property which constitutes the security for the loan"³⁸. The Court did not follow this position and held that the doorstep selling Directive was applicable to the secured-credit agreement and that the right to withdraw from the contract was, consequently, available. However, the case was not related to the substance of the actual sales contract and the creation of the mortgage, which is left to national law. The Court stated expressly that while "a credit agreement such as that in point in the present case accordingly falls within the scope of the doorstep-selling Directive, the effects of a cancellation of that agreement in accordance with the Directive on the contract for the purchase of the immovable property and on the provision of security in the form of a charge on it fall to be governed by national law"³⁹.

Finally, the conclusion of tenancy contracts is explicitly excluded from the Directive under Art. 3 f., which means that the **protection** of 'tenant-consumers' (including instruments such as a right of withdrawal in doorstep situations) **lies within the national law entirely**. In sum, the Directive does not apply to substantive law rules on tenancy contracts or real estate transactions.

³⁴ Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, 1985 O.J. (L 372) 31. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31985L0577>

³⁵ Directive 2011/83/EU, 2011 O.J. (L 304), 64. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

³⁶ See e.g. S. Grundmann, Die EU-Verbraucherrechte-Richtlinie, JZ 2013, 53.

³⁷ Case C-481/99, *Heininger*, ECR 2001, I-234. For comments see, J. Hoffmann, Realkredite im Europäischen Verbraucherschutzrecht, *Zeitschrift für Wirtschaftsrecht (ZIP)* 2002, 145; in English: G.-P. Calliess, The Limits of Eclecticism in Consumer Law: National Struggles and the Hope for a coherent European Contract law, *German Law Journal.Com*, 2002, vol. 3, no. 8.

³⁸ Case C-481/99, *Heininger*, ECR 2001, I-234, mn. 30.

³⁹ Case C-481/99, *Heininger*, ECR 2001, I-234, mn. 35.

The Consumer Credit Directive

The Consumer Credit Directive 2008/48/EC harmonizes the rules governing consumer credit and aims at **establishing a high level of consumer protection**. It applies to credit agreements whereby a creditor grants a consumer credit in the form of a delayed payment, a loan or a similar financial arrangement. Credit agreements are to be made in writing and should incorporate the essential terms of the contract including a statement of the annual percentage rate of charge and the conditions under which this may be amended. In particular, the consumer must be informed of the credit limit (if there is one), the annual rate of interest and charges applicable and any changes thereof and the procedure for terminating the agreement.

Under a consumer agreement, where a consumer has discharged his or her obligations before the due date, the consumer is entitled to an equitable reduction in the price of the credit. **Consumer rights are to remain unaffected by any assignation to a third party.**

The Member State must also ensure further consumer safeguards. Consumer has a right to withdraw from the credit agreement within 14 days without giving any reason. Also, under certain conditions, there is a right of redress against the grantor of credit when the consumer has purchased goods or services under a credit agreement from a person other than the creditor and the goods or service are not supplied or are not in conformity with the contract. This right is available only if the consumer has sought redress against the supplier but has failed to obtain satisfaction.

The Consumer Credit Directive Art. 2 para. 2 lit. a (newly introduced) and Art. 2 para. 2 lit. b (formerly Art. 2 para. 1 lit. a) contain one important exception for real estate credit: "This Directive shall not apply to the following: (a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property, (b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building [...]". Moreover, in the unlikely event that a credit to finance real property is not secured by a mortgage or a comparable security right and the credit do not fall within the scope of Art. 2 (2) lit. b Art. 2 (2) lit. c, the Consumer Credit Directive is inapplicable in case "credit agreements involving a total amount of [...] more than EUR 75,000". Within those limits the Consumer Credit Directive applies, however, to credits whose purpose is the renovation or increase of value of an existing building" (recital 14 Consumer Credit Directive).

Nevertheless, as mentioned, in 'the Heininger' case, the ECJ circumvented the limitations, contained in the old version of the Directive of "contracts for the construction, sale and rental of immovable property or contracts concerning other rights relating to immovable property" in a presumed doorstep sales situation and applied it to a mortgage loan agreement. However, since Directive 2008/48/EC explicitly introduced a restriction for "credit agreements which are secured either by a mortgage or by another comparable security", it is rather unlikely that this reasoning can be transferred to the reformed Consumer Credit Directive.

The Unfair Contract Terms Directive

The Unfair Terms Directive purports to **eliminate unfair terms from contracts between a professional and a consumer**. This Directive is particularly important in the real estate context, as unfair terms constitute one of the most frequent "consumer traps" in this field. The Directive applies to non-mandatory, non-negotiated contractual terms incorporated in these contracts (Art. 1). A non-negotiated term is unfair when it establishes a significant imbalance, to the consumer's detriment, between the rights and obligations of the contracting parties (a list of unfair terms is annexed to the Directive, Art. 3). An unfair contractual term is assessed in light of the nature of the goods or services covered by the contract, the circumstances in which the contract is drawn up and the other terms in the contract or in another contract to which it relates (Art. 4). Where there is doubt as to the meaning of a term, **the interpretation most favourable to the customer will prevail**

(Art. 5). In all cases, such contractual terms found to be unfair will not bind the consumer (Art. 6).

Unlike the Directives previously discussed, the unfair terms Directive does not contain an exception for contracts dealing with real property or contracts concerning other rights relating to real property. Therefore, standard clauses used in such contracts are subject to the terms of the Directive. According to the dominant view, this is in principle also true when these terms have been proposed by a third party, be it a solicitor, real estate agent or a notary, who holds a public office and is subject to neutrality duties. Against this background, the fairness of clauses contained in building contracts, purchase contracts or other contracts related to real estate transactions has been frequently debated. However, in the famous '**case Freiburger Kommunalbauten**' which concerns standard clauses dealing with instalment payments and a contractual guarantee in a building contract, the ECJ stated that it was up to the national judge to decide whether such clauses were unfair. In this case, a parking space located in a multi-storey car park built by Freiburger Kommunalbauten was sold from a business to a consumer. The question referred to the ECJ was whether "a term, contained in a seller's standard business conditions, which provides that the purchaser of a building which is to be constructed is to pay the total price for that building, irrespective of whether there has been any progress in the construction, provided that the seller has previously provided him with a guarantee from a credit institution securing any monetary claims the purchaser may have in respect of defective performance or non-performance of the contract" was unfair. The Court concluded that, when defining the concept of unfair terms, the Court "may interpret general criteria used by the Community legislature". However, it should not rule on "the application of these general criteria to a particular term, which must be considered in the light of the particular circumstances of the case in question. Therefore, the application of the concept of unfairness in the individual case, which is a key instrument of mechanism of consumer protection, is left to the national judge.

In more recent times, the Directive has also been applied in '**the Spanish case Caixabank**'. The case was about mortgage enforcement proceedings initiated by Unicaja Banco and Caixabank. At issue were clauses contained in standard terms foreseeing higher interest rates in case of default. The terms were held unfair by the Spanish court. However, according to national law, the interest rate only had to be lowered but the term did not become fully inapplicable. The ECJ ruled that, if the term was unfair, it was void and could not be applied at all. The national rule that required a lowering of the interest rate could only be applied to terms that were not unfair in the meaning of the Directive.

Even if the Directive 93/13/EEC on unfair terms in consumer contracts is introduced into a national legislation by Chapter VII of Consumer Protection Act, the Bulgarian order of Law is not in line with the European legislation. The European Court of Justice has accepted that consumer protection under the Directive 93/13/EC is also applicable in cases where the consumer has not objected to the creditor's application for immediate enforcement. Contrary to this, the national legislation in Bulgaria does not allow consumer protection in that case of non-opposition, even when consumers have raised objections to a warrant, arising from the Directive⁴⁰.

In Estonia, the Directive is transposed entirely but the scope of application of the national implementation legislation is not restricted to consumers. Indeed, the Estonian blacklist contains additional clauses as compared to the Annex of the Directive 93/13. The black list, which applies to B2C contracts (e.g. § 42(3) LOA) is, pursuant to § 44, to be considered as a grey list in respect of B2B contracts. However, in the Estonian transposition of the Directive the principle of transparency prescribed in Art. 5, sent. 1 of Directive 93/13 has not been explicitly transposed. In Estonia, pre-formulated ambiguous terms shall be interpreted to the detriment of the party supplying the term (most favourable in the Directive); in defining unfairness, reference is made only to a 'significant imbalance' without mentioning the additional criterion of 'good faith'. This is due to the fact that, under Estonian law, the criteria of good faith is not used in establishing the validity of the term (§ 42 of the LOA): a standard

⁴⁰ See Estonian country fiche.

term is void if, taking into account the nature, contents and position in the contract, the interests of the parties and other material circumstances, the term causes unfair harm to the other party, particularly if it causes a significant imbalance in the parties' rights and obligations arising from the contract to the detriment of the other party.

Similarly, in Lithuania, the black list of unfair terms contained in article 6.188 of the Civil code includes a higher number of unfair terms than the grey list laid down in the annex of the Directive 93/13/EEC. Nonetheless, several Directive provisions that are important to the protection of consumers have not been transposed, namely the requirement of good faith and the requirement that written contract terms should be put in plain and intelligible language.

In the UK and Norway, the Directive has been fully transposed with the exception of the grey list of unfair terms contained in the Annex of the Directive 93/13/EEC.

The Unfair Commercial Practices Directive

The following paragraphs outline the main points highlighted by the Unfair Commercial Practices Directive. The Unfair Commercial Practices Directive adopted in 2005 aims at counteracting potential detriment to consumers with the purpose to increase consumer confidence and make it easier for businesses (especially small and medium sized - SMEs) to carry out cross border trading. The Directive provides that **a range of misleading and aggressive trading practices are banned** if they are likely to cause appreciable impairment of the consumer's ability to make an informed choice in relation to the product concerned thus inducing the consumer to make a decision about a transaction that s/he would not have made. Thanks to the Directive, national enforcers have been able to curb a broad range of unfair business practices such as **providing untruthful information to consumers or using aggressive marketing techniques** to influence their choices.

Whilst the Directive does not address issues related to immovable property explicitly, its general limitations on unfair advertising and marketing practices apply to this field as well, as shown in particular in the latest official guidance document on the application of the Directive. The document stresses that many consumers invest in real estate as an alternative to a pension fund. They buy a property with a view to letting it and receive rent instead of receiving interest, as they would have done in case of investing in a financial product. Therefore, such buyers should also be qualified as consumers and the Directive should be applied to them, if for example they are misled by a real estate developer over the purchase price (including VAT and all unavoidable charges) or the surface area of the property.

Similarly, the mere fact that a person lets an apartment or a house to somebody else should not automatically qualify him as a trader under Art. 2(b) of the Directive vis à vis his tenant, if this is not his professional activity. On the other hand, if a person receives an essential part of his income from renting apartments to other people this person could be considered as a trader under the UCPD. Moreover, **individual landlords may be considered as consumers in their relations with selling agents**. Because of the importance and uniqueness of the decision that consumers make when purchasing immovable property, traders should pay particular attention to complying with the information requirements contained in Art. 6 (on advertising and marketing practices) and Art. 7 (on commercial practices affecting consumers transactional decisions) of the UCPD. For example, if an apartment bought from a developer is connected neither to water supply nor to electricity, this information would be likely to qualify as material information in relation to the 'main characteristics of the product' both under Art. 6(1)(b) and 7(4)(a) UCPD. The fact that an additional service would be necessary to connect the apartment to these facilities could also be material.

The Mortgage Credit Directive

The most recent European consumer law Directive, the Mortgage Credit Directive (MCD),⁴¹ lays down rules for creditors, credit intermediaries and appointed sales representatives **relating to the residential immovable market**.⁴² The MCD applies to credit agreements that are secured by a residential mortgage and to credit agreements that have the purpose to acquire or retain property rights in land or in an existing or projected building. The MCD was introduced by the EU as implementation of the G20 commitment to establish principles on sound underwriting standards and to improve the conditions for the establishment of an internal market in the area of credit agreements relating to residential immovable property. Furthermore, the MCD was designed as a preventive measure to avoid irresponsible lending and borrowing behaviour by market participants in the EU.

To this end, the MCD establishes common rules in the residential immovable market to better inform customers about the real costs of a mortgage, to enable customers to better compare between competitors and to reflect on the mortgage contract before contract closure. Moreover, it stipulates measures to better protect mortgage customers from unfair and misleading practices.

At the time of the current study, and based on research conducted as part of the study, the Mortgage Credit Directive has not been transposed in Spain and in Norway. In Portugal, the Directive has been transposed with the exception of Art. 21, 22 and Arts. 29 to 37.

The Timeshare Directive

The Timeshare Immovable Property Directive⁴³ **protects consumers wishing to buy real estate for a time-limited use only**, typically for holiday purposes. It is worth reporting the main content of the Timeshare Directive as the study also includes in its scope cross-border purchases or sales of homes such as secondary residences and holiday homes.

The Directive approximates laws, regulations, and administrative provisions of the Member States on the protection of individuals who purchase the right to use immovable property on a timeshare basis and long-term holiday products as well as exchange contracts (Art. 1 (1)). The Directive applies only in B2C relations and is "without prejudice to national legislation which: [...] (b) relates to the registration of immovable or movable property and conveyance of immovable property" (Art. 1 (2)).

The Directive covers **aspects relating to i) advertising** (Art. 3), **ii) information** on the constituent parts of the contract relating to the right to use immovable property on a timeshare basis (Art. 4), **iii) formal requirements**, including the requirement for a written contract that shall be drawn up in the language or one of the languages of the Member State in which the consumer is a resident or a national, as well as an expressed **reference to the right of withdrawal** (Art. 5), and **iv) the procedures for cancelling and withdrawing** (Arts. 6 et seq.) from such contracts.

In case of a timeshare contract the vendor is required to supply a document containing a general description of the property before the consumer is bound by the contract or offer (Art. 4 (1) lit. a, Annex I Part 3 N. 2). This is also true for certain minimum items referred to in the Annex to the Directive (identity and domicile of the parties concerned, number of

⁴¹ Directive 2014/17/EU, 2014 O.J. (L 60), 34. Available at : <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32014L0017>

⁴² See Frank Schäfer, Wohnimmobilienkreditrichtlinie, Verbraucher und Recht (VuR), 2014, 207.

⁴³ Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, 1994 O.J. (L 280) 83, reformed by Directive 2008/122/EC, 2009 O.J. (L 33), 10. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31994L0047>; <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008L0122> ; On the reform cf. e.g. Katrin Schubert, Neues bei den Teilzeit-Wohnrechten (Timesharing) – Der Vorschlag der EU-Kommission für eine Reform der Richtlinie 94/47/EG, NZM 2007, 665-671; Martin Franzen, Neue Regeln zum Time-Sharing – Das „Gesetz zur Modernisierung der Regelungen über Teilzeit-Wohnrechteverträge, Verträge über langfristige Urlaubsprodukte sowie Vermittlungsverträge und Tauschsystemverträge“, NZM 2011, 217-225.

the building permit etc.) that are to be supplied in the same document. This information forms an integral part of the contract.

The purchaser has a right of withdrawal. This may be done within 14 days from the conclusion of the contract or any binding preliminary contract or, if later, from the day the contract or preliminary contract is received by the consumer (Art. 6 (1-2)). The exercise of the right of withdrawal from the consumer terminates the obligation of the parties to perform the contract (Art. 8). If the pre-contractual information is not rightly provided, the right of withdrawal is extended by three months or one year – depending on the kind of infringement (Art. 6 (3)). If the right of withdrawal is exercised, ancillary contracts, including consumer credit contracts, shall be terminated at no cost for the consumer (Art. 11). Furthermore, any payment before the end of the withdrawal period is prohibited (Art. 9).

Any clauses incorporated in the contract that are contrary to the rights of the purchaser and/or the responsibilities of the vendor under the Directive will not be binding for the buyer (Art. 12 (1)). This also holds true if the law of a third country has been chosen as *lex causa* according to Art. 12 (2): “Where the applicable law is that of a third country, consumers shall not be deprived of the protection granted by this Directive, as implemented in the Member State of the forum if: — any of the immovable properties concerned is situated within the territory of a Member State, or, — in the case of a contract not directly related to immovable property, the trader pursues commercial or professional activities in a Member State or, by any means, directs such activities to a Member State and the contract falls within the scope of such activities.” Thereby, the scope of application of Art. 3 (4) Rom I is extended.⁴⁴

The Consumer Injunctions Directive

The Consumer Injunctions Directive⁴⁵ aims at promoting the position of the consumer (including the residential tenant) in the context of civil procedure by allowing certain collective actions. To this end, the Directive allows qualified entities in the meaning of Art. 3 (i.e. special independent public bodies or consumer protection organisations) to ask for injunctions against behaviour of companies in breach of consumer protection rights. The aim of the injunctions Directive is to **defend the collective interest of consumers in the common market** by providing a mechanism to halt infringements of consumer rights. To pursue this goal, a common procedure was established for injunctions against infringements of national provisions protecting consumer rights as set out, for example, by the Directives on unfair commercial practices and unfair terms in consumer contracts. Significantly, the available remedies are limited to (negative) injunctions; the award of damages is not possible according to the Directive.

The European Union succession regulation

Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession⁴⁶ applies to succession to the estates of deceased persons. The Regulation is mentioned here since it has implications on cross-border property transfers. As a matter of fact, the Regulation considers that “in order for a succession with cross-border implications within the Union to be settled speedily, smoothly and efficiently, the heirs, legatees, executors of the will or administrators of the estate should be able to demonstrate easily their status and/or rights and powers in another Member State, for instance in a Member State in which succession property is located”. To reach this objective, the Regulation establishes the creation of a European Certificate of

⁴⁴ On the private international law dimension in detail cf. e.g. Stefan Leible/Doris Leitner, Das Kollisionsrecht des Timesharing nach der Richtlinie 2008/122/EG, IPRax 2013, 37-44.

⁴⁵ Directive 2009/22/EC of 23 April 2009 on injunctions for the protection of consumers' interests. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0022>

⁴⁶ Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0650&from=EN>

Succession to be issued for use in another Member State “without any special procedure being required” (Art. 69 (1)). Pursuant to Art. 62 (2) of the Regulation, “the use of the certificate shall not be mandatory”.

Current consumer policy issues related to real estate

Apart from these already adopted legal measures, real estate related aspects are also addressed in current consumer policy strategy documents, in particular the **European Consumer Agenda of 2012** and the **Consumer Programme 2014-2020**.

In its communication ‘**A European Consumer Agenda – Boosting confidence and growth**’, which refers to the period from 2012 to 2020,⁴⁷ the Commission highlights the importance of consumer expenditure for the European economy and **sets out an agenda to empower consumers from a legal and an economic point of view**. In this context, two issues are strongly related to real estate transactions:

- The Agenda stresses the importance of the **cross-border provision of legal services**: “It builds on the high level of consumer protection already achieved and the progress made in creating a European Area of Justice by enhancing the role that judges, legal practitioners and enforcement authorities can play, including across borders”⁴⁸; and
- The Agenda also addresses the issue of **energy savings**, in particular in relation to real estate, namely “energy efficiency measures, such as insulating homes, installing thermostats and solar panels to heat water, double-glazing for windows and replacing old heating systems.”⁴⁹

The European Consumer Programme 2014-2020 builds on four objectives:

- Objective I - Safety: to consolidate and enhance product safety through effective market surveillance throughout the Union;
- Objective II - Consumer information and education, and support to consumer organisations: to improve consumers’ education, information and awareness of their rights, to develop the evidence base for consumer policy and to provide support to consumer organisations, including taking into account the specific needs of vulnerable consumers;
- Objective III - Rights and redress: to develop and reinforce consumer rights in particular through smart regulatory action and improving access to simple, efficient, expedient and low-cost redress including alternative dispute resolution; and
- Objective IV - Enforcement: to support enforcement of consumer rights by strengthening cooperation between national enforcement bodies and by supporting consumers with advice.

In particular, objective (ii) aims to improve consumers’ education, information and awareness of their rights, to develop the evidence base for consumer policy and to provide support to consumer organisations, including taking into account the specific needs of vulnerable consumers. Given that most consumers engage in real estate transactions only rarely in their lives and that such transactions are usually complex, information and education are particularly relevant in this field.

2.1.3 European energy efficiency law

Important influences on real estate law and transactions stem from relatively recent European energy efficiency regulation, in particular the Building Directive 2010/31/EU and the Energy Efficiency Directive 2012/27/EU as well as some minor pieces of legislation. This regulation has as well **an important impact on consumer protection**, in particular

⁴⁷ Commission Communication, A European Consumer Agenda – Boosting confidence and growth of 22.5.2012, COM(2012) 225 final.

⁴⁸ Idem, p. 2.

⁴⁹ Idem, p. 7.

as it fosters the completeness and transparency of information on energy consumption of buildings and dwellings.

The Building Energy Efficiency Directive

Directive 2010/31/EU on the total energy efficiency of buildings includes, in addition to regulations on energy certification which directly affect national land and tenancy law, also regulations on the **energy efficiency of new buildings and existing buildings**. The technical requirements, which are primarily to be taken into account in the case of new buildings, result in **costs that have an effect on the real estate and rental market**. However, a Member State is required only to establish minimum requirements for the overall energy efficiency policy, which are cost-effective over the estimated economic life of a building (Art. 4 para 1 S. 5).

Directive 2010/31/EU does not lay down a uniform level for the energy efficiency of buildings throughout the EU but rather standardizes a common general framework for a method for calculating the integrated energy efficiency of buildings and the application of the minimum requirements obtained by this method. **Member States may differentiate between new and existing buildings and different building categories when defining their requirements** (Art. 4 of Directive 2010/31/EU). While new buildings must meet the minimum energy efficiency requirements set by the Member States, to the extent that they are cost-effective, existing buildings are subject to an adaptation to the minimum requirements only under certain conditions (conditional requirements). Therefore, the provisions of the Directive do not require Member States to introduce a general energy renovation obligation for existing dwellings. However, in the event that a major renovation or the installation or replacement of certain components of the building envelope is undertaken with an impact on the overall energy efficiency, compliance with minimum requirements for energy efficiency is also mandatory for existing buildings, provided that this is technically, functionally and economically feasible (Art. 7). Member States are in principle free to apply the minimum requirements to the renovated building or to the renovated part of the building as a whole and/or to the renovated building components. The above regulations apply regardless of whether the buildings are used by the owner or rented to a third party.

The Directive also lays down requirements about the energy performance certificate that is defined as "a certificate recognised by a Member State or by a legal person designated by it, which indicates the energy performance of a building or building unit". According to Art. 12 of Directive 2010/31/EU, "Member States shall ensure that an energy performance certificate is issued for:

- buildings or building units that are constructed, sold or rented out to a new tenant; and
- buildings where a total useful floor area over 500 m² is occupied by a public authority and frequently visited by the public. On 9 July 2015, this threshold of 500 m² shall be lowered to 250 m²."

At the time of the current study, and based on research conducted as part of the study, it appears that the Directive has not been transposed into the nation legislation in Iceland.⁵⁰

⁵⁰ Iceland obtained an exemption from implementing Directive 2002/91/EC because of special circumstances regarding energy production and consumption. The ratio of renewable energy in Iceland is high. For example, only 0.5% of Iceland's greenhouse emissions come from the heating of houses, compared to an average of 36% in EU countries. Moreover, building regulations in Iceland guarantee quite efficient use of energy. When Directive 2010/31/EU replaced Directive 2002/91/EC, the government of Iceland requested the same exemption as it would not guarantee that its aim could be fulfilled. It has yet to be decided whether or not Iceland will get a similar exemption. No steps have been taken in Iceland towards implementation and the matter is still being discussed. For further reading see the Icelandic Foreign Ministry's remarks on the matter: <https://www.stjornarradid.is/media/utanrikisraduneyti-media/media/ESB/samningskaflar/15/15.-kafli-samningsafstada.PDF>

The Energy Efficiency Directive

Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency requires Member States to reach energy savings targets. In the building sector, **Directive 2012/27/EU focusses primarily on the involvement of the public sector**. The regulations for the public sector have no direct impact on the private real estate and rental market and are therefore not dealt with at this point.⁵¹ However, Member States are required not only to establish a long-term strategy to stimulate investment in the renovation of the national stock of public buildings, but also to establish a long-term strategy to stimulate investment in the renovation of private residential and commercial buildings, pursuant to Art. 4 (1). According to Art. 4 (2), this strategy essentially comprises an overview of the national building stock (lit. a), the identification of cost-effective renovation concepts, depending on the building type and climate zone (lit. b), strategies and measures to stimulate cost-effective comprehensive renovations of buildings (lit. c), a future-oriented perspective to direct investment decisions by individuals, construction industry and financial institutions (d); a proof-based estimate of the energy savings and benefits to be expected (lit. e).

These national strategies were presented by Member States in a first version as of 30 April 2014. Pursuant to Art. 4 (3), Member States are required to update their building renovation strategy every 3 years and submit it to the Commission as part of the national energy efficiency action plans. National strategies are intended to provide general incentives for investments in the renovation of buildings (point 6 of Directive 2012/27/EU). In addition, major cost-effective renovations are to be undertaken which will lead to a modernization and a considerable reduction in energy consumption as well as the total energy consumption of a building as compared to the pre-renovation costs and consequently to a very high overall energy efficiency. Such comprehensive renovations can also be performed step by step.

Member States are encouraged to create incentives, in particular for landlords and tenants of multi-party dwellings, in the area of existing buildings owned by private individuals in order to allocate costs and benefits of renovations in a fair and efficient manner. The central requirement for this is Art. 19, headed "Other measures for the promotion of energy efficiency". According to Art. 19 (2), Member States are required to report on the assessment of these obstacles and on planned measures within the Commission's national energy efficiency action plans, which most States have already done.⁵²

Other relevant EU legislation

Further effects on the quality and energy efficiency of buildings for residential use are deployed by the Directives in relation to dwellings (Directive 92/42/EEC⁵³) and elevators (Directive 95/16/EC⁵⁴), air-conditioning systems (Delegated Regulation EU No.

⁵¹ Directive 2012/27/EU of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0027>. Art. 5 (1) of Directive 2012/27/EU of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC provides that from 1 January 2014, 3% of the total use area of heated and/or cooled buildings owned and operated by the central government of a Member State shall be renovated annually, in accordance with the minimum requirements for overall energy efficiency, as determined by the Member State concerned pursuant to the requirements of Art. 4, Annex III of Directive 2012/27/EU. The 3% renovation rate is not compulsory since the Member States can also opt for an alternative approach (other cost-effective measures, for example, to change the behavior of the building users).

⁵² These are available online for all Member States at <https://ec.europa.eu/energy/en/topics/energy-efficiency/energy-efficiency-Directive/national-energy-efficiency-action-plans> (31.08.2015).

⁵³ Council Directive 92/42/EEC of 21 May 1992 on efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels. Available at: <https://publications.europa.eu/en/publication-detail/-/publication/0ceb1a24-8952-4b2f-8d9e-2f3e4092edc9/language-en>.

⁵⁴ Directive 95/16/EC of 29 June 1995 on the approximation of the laws of the Member States relating to lifts. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31995L0016>.

626/2011⁵⁵), heating and hot water systems in dwellings (Directive 2005/32/EC⁵⁶), which are regularly integrated components of a residential building.

To provide an example, in view of improving energy efficiency in the EU, Directive 92/42/EEC, Art. 5 (1) stipulates that boilers shall comply with specific energy efficiency requirements. Similarly, Directive 95/16/EC establishes that lifts covered by the Directive shall satisfy certain health and safety requirements. Pursuant to Art. 2 (1) of the Directive, Member States shall take all appropriate measures to ensure that lifts 'may be placed on the market and put into service only if they are not liable to endanger the health or safety of persons or, where appropriate, the safety of property, when properly installed and maintained and used for their intended purpose'.

As regards air conditioning systems, Delegated Regulation EU No. 626/2011 outlines requirements for the labelling and provision of air conditioners capable of cooling or heating, or both. The Regulation also establishes responsibilities of suppliers and dealers with respect to the provision of air conditioners. Finally, Directive 2005/32/EC (Art. 1) 'establishes a framework for the setting of Community eco-design requirements for energy-using products'. As it was the case for the above-cited Directives, also Directive 2005/32/EC (Art. 3) implies that energy-using products (EuP) may be placed on the market only if they fulfil specific technical requirements. In sum, all these pieces of legislation lay down standards on product quality, technical features and low consumption that are relevant for both tenants and home owners as consumers in the real estate market.

2.1.4 European tax law

Taxes make up a considerable part of the expenditure consumers have to bear when purchasing or renting real estate. Generally, European rules on VAT rates require Member States to impose a minimum of 15 per cent standard rate to most goods and services (Directive 2006/112/EC). Against this background, tax privileges in particular may provide positive incentives for consumer investments. Accordingly, the Council decided already back in 1992 that supply, construction, renovation and alteration of housing provided as part of social policy may be subject to reduced VAT rates (Directive 92/77/EEC⁵⁷, Annex H) and the Council expanded the permissive reduction of VAT rates in 2009 to cover renovation and repair of non-social housing as well (Directive 2009/47/EC⁵⁸). This may **influence the cost of renovations and thereby, have an effect on the rent of a renovated flat or house or on its selling price**, which entails advantages for consumers.

Having perceived no risk of unfair competition in this area between service providers in different Member States, the Council introduced the optional reduced VAT rate as part of its economic recovery plan. This reduction permits Member States to apply a reduced VAT rate of at least 5 per cent to no more than two categories among the enumerated categories of supplies. Thus, where previously only temporary reductions of rates on labour-intensive local services had been allowed, Member States may now permanently apply reduced VAT rates to the renovation and repair of private dwellings (as one of the enumerated categories), excluding materials when such materials account for a significant

⁵⁵ Commission Delegated Regulation (EU) No 626/2011 of 4 May 2011 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of air conditioners. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011R0626>.

⁵⁶ Directive 2005/32/EC of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council. Available at: http://www.industry.siemens.com/topics/global/en/energy-efficient-production/energy-management/Documents/eup_richtlinie_2005_32_eg_eng.pdf.

⁵⁷ Council Directive 92/77/EEC of 19 October 1992 supplementing the common system of value added tax and amending Directive 77/388/EEC (approximation of VAT rates). Available at: <http://publications.europa.eu/en/publication-detail/-/publication/f36c15da-7480-404c-9565-4ac618211cc5/language-en>.

⁵⁸ Council Directive 2009/47/EC of 5 May 2009 amending Directive 2006/112/EC as regards reduced rates of value added tax. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0047>.

part of the value of the service supplied. Finally, the letting of accommodation is completely exempted from VAT in all Member States (Directive 2006/112/EC⁵⁹).

2.1.5 European anti-discrimination legislation

The **provision of housing space**, which is of high significance in real estate transactions and tenancy contracts, has been incorporated in European anti-discrimination legislation.

Based on Art. 19 TFEU, introduced by the Treaty of Amsterdam, the Council adopted a Directive against discrimination based on race and ethnic origin in June 2000 (Directive 2000/43/EC). This Directive includes in Art. 3 para. 1 lit. h) access to and supply of goods and services available to the public including housing. This is important in practice for potential residential tenants (consumers) to prevent possible discrimination against members of ethnic minorities with respect to the access to rental housing. In addition, legislation to extend protection against discrimination based on religion or belief, disability, age, or sexual orientation has been proposed and would prohibit discrimination in the provision of housing on these bases⁶⁰.

2.1.6 European private international law

Real estate and tenancy law is also dealt with under European private international law (conflicts of laws) including international procedural law, with consumer protection also being pursued at this level. Thus, Art. 24 Nr. 1 Brussels I a-Regulation⁶¹ establishes an exclusive competence of the State of location for proceedings concerning immovable property rights and tenancies. An exception only lies in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State (Art. 24 Nr. 1 S. 2).

In European private international law, real estate transactions are not regulated; however, in all Member State the famous *lex rei sitae* rule applies, whereby such transactions are governed by the law of the state in which the immovable is located. Similarly, according to Art. 4 para. 1 lit. c Rome I-Regulation⁶², tenancy contracts are governed by the law of the place of location of the immovable. However, choice of law is possible even in residential tenancy contracts. This means for example that an English business landlord may impose on a tenant consumer a choice of law clause according to which the tenancy of an apartment located in Italy may be subjected to English law. However, national judges are inclined to counteract these European provisions by drawing on internationally mandatory provisions of domestic law, the resort to which is allowed under Art. 9 para. 2 Rome I-Regulation.

⁵⁹ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0112>.

⁶⁰ See Directive proposal of 2008 (COM(2008) 426). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008PC0426&from=EN>

⁶¹ Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012R1215-20150226>.

⁶² Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008R0593>.

2.2 Regulation of professional services in real estate transactions and consumer protection at the EU level

In European and national legislation, the overall quality of consumer protection depends not only on the regulation of real estate and rental transactions themselves, but also on the regulation of professional services and service providers whose intervention is typically sought by consumers, i.e. in particular estate agents, lawyers, notaries and licenced conveyancers. The study investigates the role of professionals, or services providers, involved in residential real estate transactions as well as the extent of their engagement (mandatory, usual, unusual) and the provision of advice and mandatory information to consumers by professionals.

This section outlines the regulation of professional services by making reference to:

- The policy background;
- Regulation on establishment and provision of services; and
- Regulation on legal services.

2.2.1 The policy background

In several communications, the Commission has recently addressed the policies and measures to be adopted in relation to professional services. The implementation of policies and measures related to professional services may impact independent professionals active on the conveyancing and real estate market.

The relevant communications refer to:

- Upgrading the Single Market: More Opportunities for People and Business;
- Evaluating Regulations on Access to Professions; and
- Communication on reform recommendations for regulation in professional services.

Upgrading the Single Market: More Opportunities for People and Business (2015)

In its Communication 'Upgrading the Single Market: more opportunities for people and business',⁶³ the Commission focuses on the market for services in Europe and addresses **the restrictiveness of the level of regulation of professional services rendered by liberal professionals**. The Commission criticises the "unnecessary regulatory barriers to the provision of services and a lack of clarity and predictability in certain key sectors for those who want to provide a service in other Member States".⁶⁴ The Commission states that regulatory reforms (often related to a reduction in the restrictiveness of regulation) of the liberal professions had in the past in several Member States⁶⁵ led "to job creation and better prices for consumers".⁶⁶ In this context, the Commission explicitly refers to **'services of legal professions' and 'real estate agents'**⁶⁷, which are central to real estate transactions. The "Commission will therefore propose, through periodic guidance, specific actions to improve access to, and the exercise of, regulated professions at the

⁶³ Commission Communication, Upgrading the Single Market: more opportunities for people and business of 28.10.2015, COM(2015) 550 final. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A550%3AFIN>

⁶⁴ Idem, p. 7.

⁶⁵ The Commission refers to the following studies in idem, Fn. 20: Koumenta M., Humphris A., 'The Effects of Occupational Licensing on Employment, Skills and Quality: A Case Study of Two Occupations in the UK', Queen Mary University of London; Pagliero M., 'The effects of recent reforms liberalising regulated professions in Italy', University of Turin & Carlo Alberto College; Athanassiou E., Kanellopoulos N., Karagiannis R., Kotsi A., 'The effects of liberalisation of professional requirements in Greece', Centre for Planning and Economic Research (KEPE), Athens; Rostam-Afschar D., 'Regulatory Effects of the Amendment to the HwO in 2004 in German Craftsmanship', Free University Berlin and German Institute for Economic Research (DIW Berlin) — studies commissioned by the European Commission in 2014.

⁶⁶ Commission Communication, 'Upgrading the Single Market: more opportunities for people and business of 28.10.2015, COM(2015) 550 final', p. 7 et seq.. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A550%3AFIN>

⁶⁷ Idem, p. 8, fn. 21 & 26.

national level and across the EU. These actions will identify concrete reform needs for specific Member States.”⁶⁸

Moreover, the “Commission will also set out an analytical framework for Member States to employ when reviewing existing professional regulations or proposing new ones. This framework will contain a methodology for comprehensive proportionality assessments of professional regulations. Member States will need to demonstrate that public interest objectives cannot be achieved through means other than limiting access to, or conduct in, the professional activities in question.”⁶⁹ To this aim, the EU has recently adopted the Directive (EU) 2018/958 on a proportionality test before the adoption of new regulation of professions⁷⁰.

Evaluating Regulations on Access to Professions (2013)

In its 2013 Communication “on evaluating national regulations on access to professions”⁷¹ the Commission has analysed, in continuation of its evaluation of the regulation of liberal professions, the importance of adopting less restrictive regulation for liberal professions more in detail. This strategy is of particular relevance to assess **how differences in regulation may impact the quality of services provided to consumers**.

In the introduction of the Communication, the Commission states: “In order to boost growth potential and consolidate the way to economic recovery, this review of regulated professions should be a priority.”⁷² To do so, the Commission introduces a “case-by-case analysis of the barriers to access a profession and of the possible alternative regulatory mechanisms”⁷³ based on a peer-review-process. The objective of this process is “to assess the benefits and weigh them against the economic costs behind domestic regulations.”⁷⁴ Within this assessment, it needs to be scrutinized whether restrictions to access a profession, including restrictions pursuing consumer protection objectives, are non-discriminatory, justified by an overriding reason of general interest and proportional.⁷⁵ The Commission wants to carry out this evaluation sector by sector. Whilst in the Commission’s working plan of 2013 real estate agents are among the first group of professions to be evaluated,⁷⁶ general providers of legal services such as lawyers and notaries are not explicitly mentioned.

In substantive terms, **the Commission recognizes that regulation may be necessary to address market failures based on asymmetry of information, to ensure health and safety and to enable positive external effects, as in the case of auditors.**⁷⁷ On the other side, less restrictive regulation is advocated as it leads to better prices, more choices for consumers, increased competition, the creation of new jobs and an increase in GDP.⁷⁸ Contrary to some prominent authors in the field of economic analysis of law,⁷⁹ the

⁶⁸ European Commission (2017) ‘Communication from the Commission to the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services’. Available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/COM-2016-820-F1-EN-MAIN-PART-1.PDF>

⁶⁹ Idem, p. 8.

⁷⁰ Directive (EU) 2018/958 of 28 June 2018 on a proportionality test before adoption of new regulation of professions. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018L0958>.

⁷¹ Commission Communication, on Evaluating national regulations on access to professions of 2.10.2013, COM(2013) 676 final. Available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2013/EN/1-2013-676-EN-F1-1.Pdf>

⁷² Idem, p. 2.

⁷³ Idem, p. 2.

⁷⁴ Idem, p. 5.

⁷⁵ Idem, p. 7.

⁷⁶ COM(2013) 676 final, p. 9.

⁷⁷ Idem, p. 3 et seq.

⁷⁸ Idem, p. 4.

⁷⁹ See e.g. George A. Akerlof (1979), The Market for Lemons, The Quarterly Journal of Economics; for our field see Peter L. Murray (2007), Real Estate Conveyancing in 5 European Union Member States: A Comparative Study. Based on empirical studies indicating a correlation between the liberalisation of professional service regulation and the quality of the service provided, cf. e.g. Kuijpers, Noailly and Vollaard (2005), ‘Liberalisation of the Dutch notary profession: Reviewing its scope and impact’; Nahuis and Noailly (2005), ‘Competition and Quality in the Notary Profession’.

Commission cites other prominent authors as well as several empirical studies⁸⁰ that “conclude that no correlation between regulation and the quality of a service could be demonstrated.”⁸¹

Communication on reform recommendations for regulation in professional services

With a view to remove unjustified restrictions to the access to the profession of real estate agent, the **Communication from the Commission on reform recommendations for regulation in professional services**⁸² formulated reform recommendations for each Member State on seven professions including the one of real estate agent. The Communication takes into account the fact that regulatory approaches in the real estate sector vary significantly across countries. Recommendations are provided with respect to the following aspects:

- The possibility to open to other professionals the activities exclusively reserved to estate agents;
- The duration of mandatory qualification requirements;
- Alternative pathways to access the profession;
- The need for shareholding and voting rights restrictions;
- Citizenship requirements;
- The avoidance of multiple layers of regulation;
- The monitoring of ongoing debates as regards new regulation of the profession;
- The necessity and proportionality of prohibitions on incompatible activities;
- The revision of existing regional regulation;
- The procedure for academic recognition of diploma.

2.2.2 Regulation on establishment and provision of services

In various Member States, the provision of professional services is mandatory or usual in real estate transactions. These services include real estate agents’ and legal services, the latter being provided by notaries, lawyers or licenced conveyancers.

In the context of the four market freedoms, various Directives have an impact on professional services. In general, the **Professional Qualifications Directive** (Directive 2005/36/EC⁸³ as amended by Directive 2013/55/EU⁸⁴) and sector specific regulations – e.g. for lawyers (Directive 98/5/EC⁸⁵) – aim to facilitate the mobility of professionals within the EU through the recognition of professional qualifications.

⁸⁰ The European Commission quoted in COM(2013) 676 final, 5, fn. 9: Carroll and Gaston (1981) ‘A Note on the Quality of Legal Services: Peer Review and Disciplinary Service’; Maurizi (1980) ‘The impact of regulation on quality: The case of California contractors’; Kugler and Sauer (2005) ‘Doctors without Borders? Relicensing Requirements and Negative Selection in the Market for Physicians’.

For further studies suggesting no correlation between liberalisation of the regulation of professional services and the quality of the services provided cf. e.g. Rojek and Masior (2016) ‘The Effects of Reforms liberalising Professional Requirements in Poland’; Rostam-Afschar (2015) ‘Regulatory Effects of the Amendment to the HwO in 2004 in German Craftsmanship’; Pagliero (2015) ‘The effects of recent reforms liberalising regulated professions in Italy’.

⁸¹ COM(2013) 676 final, 5.

⁸² European Commission (2017) ‘Communication from the Commission to the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services’. Available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/COM-2016-820-F1-EN-MAIN-PART-1.PDF>

⁸³ Directive 2005/36/EC of 7 September 2005 on the recognition of professional qualifications. Available at : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:EN:PDF>

⁸⁴ Directive 2013/55/EU of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:354:0132:0170:en:PDF>

⁸⁵ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0005&from=EN>

The **Service Directive** (Directive 2006/123/EC⁸⁶) aims to facilitate the provision of services on the market of another Member State for matters not linked to professional qualifications. It limits national hurdles to the provision of professional services in other EU Member States and introduces reporting and evaluation commitments. The effect of these Directives and, to the relevant extent, the impact of the four freedoms on the relevant liberal professions needs to be analysed separately for the various professions.

Real estate agents

To complete the internal market for services of real estate agents, the *European professional card (EPC)*⁸⁷, which is available since 18 January 2016, has been introduced by Commission Implementing Regulation (EU) 2015/983⁸⁸, based on amendments to the Professional Qualifications Directive 2013/55/EU.⁸⁹ Norway and in Iceland are not bound by the EPC provisions pending incorporation of Directive 2013/55/EU into the EEA Agreement. This implies that professionals can neither apply for an EPC with Norway or Iceland as host country, nor can these countries handle EPC applications as home Member States.

Although called a “card”, the EPC is an electronic standardised procedure for the recognition of professional qualifications. In specific, the EPC can be defined as ‘an electronic procedure professionals can use to get their professional qualifications recognised in another EU country’⁹⁰. Other requirements for the permanent establishment in another Member State such as registration, membership in a professional organisation or licences must be optioned in addition, if required in the host Member State. Therefore, the EPC as such does not ensure the right of establishment in the country by which the EPC is issued. The EPC aims to facilitate the recognition of qualifications through a faster and less burdensome process by issuing an electronic certificate through an entirely online procedure. At the moment, the EPC is available for the following professions: i) general care nurses; ii) physiotherapists; iii) pharmacists; iv) real estate agents; and v) mountain guides.

The EPC can be used for the purpose of **the provision of cross-border services and the establishment in another EU State**. It co-exists with traditional recognition procedures under the Professional Qualifications Directive. The EPC is issued for each Member State separately. Already uploaded documents can be re-used when applying for an EPC in another Member State. The recognition process can always be monitored online. The Professional Qualifications Directive (Directive 2005/36/EC), which is also applicable to real estate agents, differentiates between three types of recognition of qualifications of restricted professions:

- **Professions with harmonised minimum training conditions**, such as doctors, pharmacists and architects, **can benefit from automatic recognition of qualifications meeting such requirements**. Real estate agents do not, however, fall under this category. Therefore, their qualification can only be recognized based on the other types of recognition;
- **On the basis of their professional experience**, professionals in crafts, trades and industry can also request automatic recognition;

⁸⁶ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0123&from=EN>

⁸⁷ At this state, that EPC is available for nurses responsible for general care, pharmacists, physiotherapists, mountain guides and real estate agents only.

⁸⁸ Commission Implementing Regulation (EU) 2015/983 of 24 June 2015 on the procedure for issuance of the European Professional Card and the application of the alert mechanism pursuant to Directive 2005/36/EC of the European Parliament and of the Council. Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32015R0983>

⁸⁹ Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’). Available at: <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0055>. On the EPC see e.g. *Alina Kaczorowska-Ireland* (2016), European Union Law, pp. 807 et seq.

⁹⁰ European Commission (2018) ‘Commission Staff Working Document. Assessment of stakeholders’ experience with the European Professional Card and the Alert Mechanism procedure’. Available at: <https://ec.europa.eu/docsroom/documents/28671/attachments/1/translations/en/renditions/native>

- **If professionals do not benefit from automatic recognition, the general system of recognition applies**, which allows host country authorities to verify professional's qualifications against their national requirements. In this context, an adaptation period or an aptitude test can be required if the authorities of the host state find substantial differences in the qualifications of the applicant, as compared to the requirements of the host state.

Service Directive (Directive 2006/123/EC, see Section 2.2.2) is also applicable to real estate agents for matters not linked to professional qualifications. In conformity with Article 9 et seq. of the Services Directive the possibilities for the Member States to subject activities to an authorisation scheme have been limited. Furthermore, Art. 6 ensures that the possible service provider can complete the relevant admission procedures and formalities online through points of single contact. Finally, the Member States are obliged to periodically evaluate the requirements for market access of service providers.

It is important to note that only the countries in which the profession of real estate agents is considered as regulated can be host countries for EPC applications. Out of the countries in scope, 12 Member States notified the European Commission that they regulate the profession of real estate agent (Austria, Belgium, Croatia, Cyprus, Denmark, France, Hungary, Ireland, Italy, Luxembourg, Slovenia and Sweden)⁹¹. At the time of the current study, the total number of EPC applications for real estate agents correspond to 132, thus 3% of the total number of EPC applications for the different professions⁹². Out of the 132 applications, 63 EPCs were issued (among which 11 allow for establishment in the host country and 52 allow for the temporary and occasional provision of services). This does not mean that the other applications were rejected or refused (this includes applications that were withdrawn by the professional, applications closed by the system when the professional did not pursue the application and did not react to the authorities' queries about missing documentation or fees, and ongoing applications pending assessment by the authorities). The following Table provides an overview of the countries concerned by the issuance of the 63 EPCs for real estate agents.

Table 3: Issuance of EPCs (Real estate agents)			
Submitted EPC applications from real estate agents on the basis of their home Member States		Issued EPCs on the basis of the most selected host Member States	
Home MS	EPC applications	Home MS	Issued EPC certificates
IT	29	FR	25
FR	23	IT	15
DE	21	BE	10
LU	19	AT	5
ES	10	HR	1
Others	30	Total (all MSs)	38
Total (all MSs)	132		

Source: European Commission (2018) 'Commission Staff Working Document. Assessment of stakeholders' experience with the European Professional Card and the Alert Mechanism procedure'. Available at: <https://ec.europa.eu/docsroom/documents/28671/attachments/1/translations/en/renditions/native>

According to a survey on stakeholders' experience with the EPC, the EPC is generally considered as a helpful addition to the traditional recognition procedure by both the competent authorities of the Member States and the professional organisations⁹³.

⁹¹ Idem.

⁹² Idem.

⁹³ Cf. Commission Staff Working Document, Assessment of stakeholders' experience with the European Professional Card and the Alert Mechanism procedures of 9.4.2018, SWD(2018) 90 final, 21 et seq. Available at: <https://ec.europa.eu/docsroom/documents/28671/attachments/1/translations/en/renditions/native>.

2.2.3 Regulation on legal services

Lawyers

For lawyers, the Freedom to provide services of Lawyers Directive 77/249/EEC⁹⁴ and Lawyers Establishment Directive 98/5/EC⁹⁵ are, in practice, the important legal bases for the establishment in other Member State and for the intra-European provision of services to ensure the recognition of professional titles. These allow lawyers established in one Member state to freely provide services or establish themselves in another Member State under the title conferred to them in their home state. Their right to provide legal services is almost congruent to that of national lawyers.

A lawyer can also choose to have his/her professional qualifications recognised under the Professional Qualifications Directive to be authorised to practice under the home professional title. He/she can be subject to an aptitude test or an adaptation period in case of substantial differences before being allowed to act under the host title without further limitations applying.⁹⁶

Notaries

Secondary EU Law does not apply to the professional regulation of public notaries in the EU. According to Art. 2 (2) lit. I, notaries are explicitly excluded from the scope of application of the Service Directive 2006/123/EC. Whilst after the ruling of the CJEU in C-54/08 (*Commission/Germany*) it was subject to academic debate whether the Professional Qualifications Directive 2005/36/EC would be applicable to notaries in the EU,⁹⁷ Directive 2013/55/EU amending the Professional Qualifications Directive clarified that the Directive shall not apply to public notaries. Therefore, the freedom of establishment (Art. 49 TFEU et seq.) and the freedom to provide services (Art. 56 TFEU et seq.), as enshrined by the TFEU, and clarified by CJEU case law, are the only European rules directly applicable to the professional regulation of notaries in the Member States.

Following infringement proceedings engaged by the Commission and CJEU rulings, the nationality requirements in force in some Member States to become a notary have been repealed. Any EU citizen who has the relevant professional qualifications can access the profession of notary in a Member State by establishing there. The question what are the rights of notaries based on the TFEU is currently subject to academic debate.⁹⁸ While some Member States, such as the Netherlands, seem to allow notaries from other Member States to provide temporary services if they have the permission of the authorities of their home state, this is forbidden in other Member States. According to the German Federal Court of Justice (BGH), German notaries are not allowed to establish German deeds in other Member States⁹⁹ nor can notaries from other Member States establish deeds of their home states in Germany¹⁰⁰. The CJEU has not yet decided on the conformity with EU law of these rulings.

⁹⁴ Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31977L0249&from=EN>

⁹⁵ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0005&from=EN>

⁹⁶ For details see e.g. *Tobias Pinkel/Christoph U. Schmid* (2011), *Ein Markt für transnational ausgebildete europäische Juristen?*, *Hanse Law Review* (HanseLR), 77-151, 79-105; *Hildegard Schneider/Sjoerd Claessens* (2008), *The Recognition of Diplomas and the Free Movement of Professionals in the European Union: Fifty Years of Experiences*, Working Paper IALS Konferenz at <http://www.ialsnet.org/meetings/assembly/HildegardSchneider.pdf>

⁹⁷ Cf. *Tobias Pinkel/Christoph U. Schmid* (2011), *HanseLR*, 77-151, 127 et seq.

⁹⁸ Cf. *Andreas Spickhoff* (2012), *Das deutsche Notariat in Europa - Qualität versus Niederlassungsfreiheit?*, *JZ* 333-340; *Kilian Henssler* (2012), *Das deutsche Notariat im Europarecht* *NJW*, 481-487; *Thomas Ritter* (2011), *Entstaatlichung der deutschen Notariatsverfassung*, *EuZW*, 707-710; *Tobias Pinkel/Christoph U. Schmid* (2011), *HanseLR*, 77-151, 124 et seq.

⁹⁹ BGH judgement of 4 March 2013, *BGHZ* 196, 271-284.

¹⁰⁰ BGH judgement of 20 July 2015, *NJW* 2015, 3034-3039.

Licensed conveyancers

Licensed conveyancers exist only in England and Wales. They are a specialized group of legal service providers in the context of real estate transactions. The special EU legislation concerning the freedom of establishment and the freedom to provide services of lawyers does not apply to licensed conveyancers. The Professional Qualification Directive 2005/36/EC will be applicable to ensure recognition of professional qualifications obtained in another Member State.

Clients from other Member States may receive services from licensed conveyancers when buying property in England or Wales. Licensed conveyancers may also provide their services in another Member State subject to the specific provisions of the Professional Qualifications Directive in case of temporary provision of services or establishment.

2.3 Regulations of professional services in the real estate market at the national level

This section compares the **level of regulation of the real estate market and the professional service providers** that are involved in transactions therein, both concerning conveyancing of real property and renting. Firstly, it is discussed **which professional services, both legal and technical, are mandatory or usually provided** in the process of conveyancing or renting. In particular, the level of regulation of real estate services as such will be discussed. Secondly, **the regulation of the relevant technical profession**, i.e. of services provided by real estate agents to consumers are addressed. Thirdly, this section compares the **regulation of legal services provided by notaries** (considering whether the involvement of the professional is mandatory or usual), **and by lawyers**. In doing so, best legislative practices at national level are described on the basis of the data contained in the 31 country fiches.

2.3.1 Mandatory involvement of professional services and important regulations

When considering the level of regulation of the real estate market, thus of real estate transactions, it is hardly possible to cluster countries in terms of highly regulated, partly regulated or de-regulated/non-regulated countries. Rather, the regulation of real estate transactions at the national level can be disentangled into **features related to the conveyancing process**, to the **renting and letting process** and to **cross-border transactions**.

Information related to the aspects of real estate transactions which are regulated at the national level has been collected through the country fiches. Information on the regulation at the national level as reported by national experts is summarised in Tables 4 and 5.

Table 4: Regulation of aspects of real estate conveyancing					
	Mandatory involvement of a notary	Mandatory involvement of other legal services	Mandatory involvement of real estate agents	Mandatory registration procedure	Optional registration procedure
AT	(X) ¹			X	
BE	(X) ¹			X	
BG	X			X	
CY		X (lawyers)		X	
CZ				X	
DE	X			X	
DK			X	X	
EE	X			X	
EL	X			X	
ES	(X) ²				X ²
FI				X ³	

Table 4: Regulation of aspects of real estate conveyancing					
	Mandatory involvement of a notary	Mandatory involvement of other legal services	Mandatory involvement of real estate agents	Mandatory registration procedure	Optional registration procedure
FR	X			X	
HR	X			X	
HU	(X) ⁴	(X) ⁴		X	
IE		X		X	
IT	X			X	
LT	X			X	
LU	X			X	
LV	X			X	
MT	X			X	
NL	X			X	
PL	X			X	
PT	(X) ⁴	(X) ⁴		X	
RO	X			X	
SE					X
SI	X			X	
SK	(X) ⁵			X	
UK – EN		X (Solicitor or licensed conveyancer)		X	
UK -SC		X (Solicitor)		X	
IS					X
NO					X
Total	21	6	1	27	4

Note: Indications on the aspects of real estate transactions regulated at the national level stem from the country fiches. The list of countries addressing each of the above-mentioned aspects is comprehensive but not exhaustive.

Note 1: In theory, the only task performed by the notary mandatorily (certification of the signature) could be performed by a court (and in the case of Belgium by other state officials as well) instead. This, however, does almost never happen in practice.

Note 2: Only in some cases, such as the registration of a mortgage, the involvement of a notary is mandatory.

Note 3: Many apartment flats are legally constructed as companies, and rights comparable to ownership rights of single dwellings are transferred through the transfer of shares in that company. In this case, no registration is required.

Note 4: It is the choice of the parties to either consult a notary or a lawyer.

Note 5: Only notaries or municipal offices are allowed to authenticate signatures. Only a contract with an authenticated signature of the seller is considered as a valid document. In practice, this task is always performed by a notary.

Source: Main Task 1 Country fiches

A similar analysis can be provided for key aspects of residential tenancies. The **mandatory involvement of any professional service provider** in the context of the conclusion of a rent contract has not been reported by a single country subject to this study. This aspect was not, therefore, included in the table below.

Table 5: Regulation of aspects of residential rent

	Written form of rent contract required	Registration of rent contract required	Registration in the Land Register possible
AT			X
BE	X	X	X
BG			X
CY	(X) ¹		(X) ²
CZ	X		X
DE			
DK			X ³
EE			X
EL	X	(X) ⁴	
ES			X
FI			X
FR	X		
HR	X		X
HU	X		
IE	(X) ⁵	X	
IT	X	X	(X) ⁴
LT			X
LU			
LV	X		
MT	X	X ⁶	
NL			
PL			X
PT	X	X ⁶	X ⁷
RO			X
SE	(X) ⁸		
SI	X		X
SK			(X) ⁹
UK – EN			
UK – SC	X		
IS	X		X ¹⁰
NO			X
Total	16	6	19

Note: Indications on the aspects of rental contract regulated at the national level stem from the country fiches. The list of countries addressing each of the above-mentioned aspects is comprehensive but not exhaustive.

Note 1: For contracts with a duration of more than one year.

Note 2: The option to register the contract in the Section on Leases of the Land Register only refers to rent agreements with a duration of more than 15 years.

Note 3: If the rental agreement contains unusual terms that are not automatically provided for in rental legislation or other legislation, tenants may require the rental agreement to be registered as an encumbrance on the property in the land register (tinglysning.dk).

Note 4: The contract must be registered in the Land Register if the duration of the contract is more than nine years.

Note 5: A rent contract with a duration of more than one year must be drafted in writing.

Note 6: For purposes of taxation only.

Note 7: Mandatory if the duration of the rent contract exceeds six years.

Note 8: Both parties have a right to receive the contract in a written document. But if both parties do not want to conclude a written contract, an oral contract is equally possible.

Note 9: Lease contracts on agricultural land concluded for a period longer than 5 years can be registered in the land register. No other contracts can be registered.

Note 10: Registration is optional, but highly recommended and usual, due to the fact that most social benefits connected to housing are subject to such a registration.

Source: Main Task 1 Country fiches

2.3.2 Regulation and standards pertaining to real estate agents

It is not possible to compare the level of regulation and relevant standards in relation to the profession of real estate agent, and to the services provided by real estate agents, at an abstract level. Therefore, **several aspects related to the regulation of the profession and relevant standards are considered separately** to provide the reader with an overall understanding. These aspects include qualification requirements, license requirements and the need for a compulsory insurance for damages caused in the exercise of the profession. Moreover, this section also presents an overview of the reduction of the level of regulation or **deregulation of the profession of real estate agent** which occurred in Spain, the Netherlands, Poland, Romania and Slovakia with the abolishment of certain legal requirements.

Overview of regulation and standards across countries

The table below illustrates whether specific aspects of the profession of real estate agent are regulated or underlie professional standards in the 31 countries/regions in scope (the UK – Scotland being also included).

Table 6: Regulation of the profession of real estate agent							
	Qualification requirements	Licence requirements	Compulsory insurance	Advertising restrictions	Compulsory membership	Professional standards	Total
AT	X		X			X	3
BE	X	X	X		X	X	5
BG							-
CY	X	X	X	X		X	5
CZ							-
DE		X	X			X	3
DK	X		X			X	3
EE							0
EL	(X) ¹	X			X	X	3
ES			(X) ²				1
FI	X ³	X	X	X		X	5
FR	X	X	X			X	4
HR	X		X	X		X	4
HU	X	X					2
IE	X	X	X	X		X	5
IT	X		X			X	3
LT						X	1
LU	X		X			X	3
LV							-
MT							-
NL			(X) ⁴				0
PL							-
PT		X	X			X	3
RO							-
SE	X	X	X			X	4
SI	X	X	X	X		X	5
SK	X	X		X			3
UK – England and Wales		X	X			X	3
UK – Scotland		X	X	X		X	4
IS	X	X	X			X	4
NO	X	X	X			X	4
Totals	16	16	18	7	2	20	

Note: Indications on the regulations and requirements to exercise the profession of real estate agent stem from the country fiches. The list of countries addressing each of the above-mentioned aspects is comprehensive but not exhaustive. Regulation of professional standards, for the purposes of this study, also includes Codes of Ethics.

Note 1: Only a High School degree is required.

Note 2: Insurance is compulsory for professionals who are in the professional college of estate agents (Colegio de Agentes de la Propiedad Inmobiliaria).

Note 3: An estate agent is a person who has passed an estate agent exam. Passing a real estate agent exam entitles the person to use the designation 'LKV' (legalised real estate agent) and passing a letting agent exam entitles the person to use the designation 'LVV' (legalised letting agent). Passing the exam, however, is not mandatory for all service providers operating in the field.

Note 4: Insurance is compulsory only if real estate agents are voluntary members of a professional organisation, which requires compulsory insurance.

Source: Main Task 1 Country fiches

As displayed in

Table 6: Regulation of the profession of real estate agent

, divergences are observed in the EU28, Norway and Iceland with respect to the aspects listed.

To provide the reader with a better understanding of the implications of the listed requirements for real estate agents, illustrative examples are reported below. Examples were identified through the analysis of the 31 country fiches.

A. Qualification requirements

Qualification requirements refer to the need for real estate agents to obtain certifications or diploma, or to pass a knowledge test to use the title real estate agent. As noted in Table 4, qualification is requested in 16 countries in scope.

To provide an illustration, in Belgium, the real estate agent needs to:

- Obtain a bachelor degree in real estate or an equivalent degree;
- Succeed in an expertise test organised by the Professional Institute of Real Estate Agents;
- Undergo one year of professional training as a trainee with a licensed real estate agent;
- Passing a second competence test organised by the Professional Institute of Real Estate Agents;
- Obtain a license of the Professional Institute of Real Estate Agents.

In Finland, it is necessary to pass an exam in order to exercise the profession. Passing a real estate agent exam entitles the person to use the designation 'LKV' (legalised real estate agent) and passing a letting agent exam entitles the person to use the designation 'LVV' (legalised letting agent). However, taking the exam does not require prior professional experience.

In Luxembourg, the required qualifications are the similar for all the professions considered as real estate professionals: i) real estate agent (*agent immobilier*), ii) real estate developer (*promoteur immobilier*), iii) administrator of real estate/real estate management firms (*administrateur de bien / syndic de copropriété*). These professions only require a professional diploma (*Diplôme d'Aptitude Professionnel – DAP*) or any high school or university diploma (e.g. Bac, Bachelor, Master). However, there is a compulsory specific 50-hour training session organised by the House of Training in order to be allowed to establish oneself as a real estate professional.

The current study shows that qualification requirements vary widely across countries and that the profession may be relatively accessible in some countries (e.g. in Luxembourg) whereas it is governed by a strict regulatory framework in other (e.g. Belgium).

In general, most countries introducing a qualification requirement to use the title of real estate agent, restrict the permission to provide brokerage services in that field to qualified real estate agents. This is, however, not always the case. In Finland, for example, only persons engaged in brokerage activities within a business entity or a branch need to be qualified as real estate agents.

B. Licence requirements

Procedures regarding **licence requirements also vary widely across Member States**. In some cases, certain qualification requirements alone allow professionals to acquire a licence, which is mandatory in more than half of the countries (16). This applies, for example, in Ireland where applicants for a licence must meet certain minimum qualification

requirements¹⁰¹ including a minimum academic qualification (the Property Services Regulatory Authority has a certified list of courses as well as key qualification criteria¹⁰²).

In Germany, real estate agents need a license under § 34c Trade Regulation Act (GewO) for whose award it is sufficient to show to be **a reliable person**. This requirement is, however, in the process of being changed. Draft legislation foresees that real estate agents may only obtain a licence if they prove knowledge in the field (Sachkundenachweis) and show proof of professional insurance. If a real estate agent is already registered for six years, the additional permission is not required¹⁰³. The main concern raised by all focus group participants in Germany (real estate agents included) is the lack of certification for real estate agents in the country. There is no specific real estate agent certification that must be completed in order to pursue the job.

An interesting case is the one of the UK, where the Estate Agents Act 1979 imposes a **'negative licensing regime'** meaning that an estate agent found to be in breach of duties or convicted of offences of dishonesty may be banned from estate agency activities.

Within the group of countries in which a license is not required to exercise the profession of real estate agent, **other subjective and objective requirements do not, generally, exist either**. Real estate agents, however, generally have the possibility to obtain a professional accreditation, or to become members of a professional association. In this case, i.e. if real estate agents wish to obtain a certificate or become members of an organisation, certain requirements need to be fulfilled by the professional. As an example, in Estonia, real estate agents have the possibility to obtain a professional accreditation issued by the Estonian Chamber of Real Estate Agents. To obtain the professional accreditation, a diploma of secondary education is needed. Similarly, the Lithuanian Association of Real Estate Agency offers the opportunity to professionals to pass a certification exam. However, only agents operating in a real estate agency owned by the Association may take part in the examination.

In the Netherlands, should estate agents wish to register in the *Het kwaliteitsregister van Makelaars* (the register of brokers) or to become members of one of the three professional organisations, special education requirements based on self-regulation need to be fulfilled (e.g. mandatory participation to a seminar or course).

In Spain, the concept of licensed real estate agent does not exist. However, in case a professional wants to join the professional college of estate agents (Colegio de Agentes de la Propriedad Inmobiliaria), the agent must have the title of graduate, engineer, technical engineer or technical architect or hold the official title of Real Estate Agent issued by the Ministry. Besides, a clean criminal record needs to be shown¹⁰⁴.

Finally, in Latvia, a license is not necessary to exercise the profession of real estate agent but professionals need to mandatorily register in the Commercial Register.

C. Compulsory insurance

Insurance is compulsory in the majority of the countries in scope. Conversely, insurance is not mandatory in 13 countries (Bulgaria, Czech Republic, Estonia, Greece, Hungary, Lithuania, Latvia, Malta, the Netherlands, Poland, Romania, Slovakia and Spain).

¹⁰¹ Property Services (Regulation) Act 2011 (Qualifications) (Amendment) Regulations 2015.

¹⁰² Property Services Regulatory Authority 'Guide to becoming a licensed property services provider' (Dublin: Stationary Office, 2017), para. 4.2.

¹⁰³ Draft Act of the Federal Government (Gesetzentwurf der Bundesregierung): Entwurf eines Gesetzes zur Einführung einer Berufszulassungsregelung für gewerbliche Immobilienmakler und Verwalter von Wohnungseigentum, BT-Drs 18/10190, online at: <http://dip21.bundestag.de/dip21/btd/18/101/1810190.pdf>

¹⁰⁴ In Catalonia (2007) and in the Basque Country (2015) deregulatory measures relating to the profession of real estate agent have partly been enacted. In Catalonia, which constitutes an exception within Spain, it is however compulsory for real estate agents to possess an academic qualification related to the profession and to be registered in the Estate Agents Register. In the Basque Country, deregulatory measures were passed (First Additional Disposition Housing Act 3/2015, of 18 June) but not implemented yet.

D. Advertising restrictions

In most countries, only general regulations on advertising, in particular regulation on unfair commercial practices, need to be observed by real estate agents (e.g. Estonia, Greece, Germany, Hungary, Latvia, Slovakia, Spain, the UK and Iceland). In seven countries, specific restrictions concerning advertising in the real estate services market need to be respected by agents.

Advertising restrictions are often defined by law (e.g. Croatia, Cyprus, Finland, Slovenia) and provide indications on the **elements that must or need not to be included in advertisement** of properties. As an example, in Cyprus, real estate agents shall state in any advertisement the title of 'licensed real estate agent', the registration number and license number of the profession. In other cases, the agent shall disclose the name of the company or business, and, if necessary, other pieces of information viewed as significant for the business (Croatia). In other countries, restrictions refer to the content that shall not be published on advertisements, such as misleading or dishonest information (Ireland, Slovenia).

E. Compulsory membership

Compulsory membership to a professional body is rare. This practice is observed only in two countries, Belgium (membership to the Professional Institute of Real Estate Agents) and Greece. In the UK (England and Wales), membership in a professional body is not compulsory, although membership in a redress scheme is required by the Consumers, Estate Agents and Redress Act 2007, c 17.

F. Professional standards

Professional standards **are either defined by law or are left to professional organisations**. Only in a minority of countries (for example in Austria, Belgium, Cyprus, Ireland and Italy) are professional standards established by national legislation. In Bulgaria, the Czech Republic and Slovakia, professional standards are established by professional organisations on a voluntary basis.

Similarly, **ethical codes have also been introduced** in some countries (e.g. Croatia, France, Greece, Lithuania, Luxembourg and Poland). Ethical codes are either promoted by the Chamber of Commerce (Croatia) or by associations of real estate agents (inter alia Lithuania, Poland).

Countries with liberalised or deregulated real estate agent profession

Deregulation, i.e. the removal of all special restrictions on the exercise of the legal profession, and liberalisation, i.e. **the abolition of some existing legal requirements**, occurred in Spain, the Netherlands, Poland, Romania and Slovakia. As explained more in detail in the section *Ongoing debate on the regulation and professional standards of the profession of estate agent* in this Chapter, the possible reasons behind the reduction in the level of regulation of the profession are the absence of a constitutional basis to justify regulation (Portugal), and the attempt to counteract anti-competitive practices (Poland).

It is interesting to consider separately the group of countries that decreased the level of regulation since **there are currently ongoing debates** around the question whether after the abolition of legal requirements a high level of quality of the services provided to consumers can still be ensured. It is discussed whether general consumer protection law combined with the presence of non-mandatory rules on self-regulation are sufficient to this end.

The group of countries in which the profession of real estate agent is liberalised or deregulated includes Spain (with the exception of Catalonia where the profession is regulated), the Netherlands, Poland, Romania, and Slovakia.

In the Netherlands, on 1 March 2001, the legal requirements to use the title of real estate agent (makelaar) have been abolished. Since 2001, everyone can call himself/herself

'makelaar'. The foundation *Stichting VastgoedCert* has set up a voluntary register for real estate agents who have completed a voluntary professional exam. In addition, the three existing professional organisations (where membership is not mandatory) have introduced rules on self-regulation such as compulsory insurance and continuous education. It is currently debated whether these non-mandatory rules on self-regulation are sufficient to ensure the quality of the service provided to consumers.

Another interesting case is the one of Poland where the profession of real estate agent is deregulated since 2014. Prior to this date, real estate agents were requested to possess at least a bachelor's degree, a certificate of postgraduate studies, and a certificate of completion of a six-month training in a real estate agency. Since 1 January 2014 no special training or license is required any longer.

Absence of legal requirements to access the profession

The requirements listed in Table 4 are not defined by law as a basis to exercise the profession in 8 out of the 30 countries. This cluster of countries includes Bulgaria, the Czech Republic, Estonia, Lithuania, Latvia, Malta, Poland and Romania.

In Bulgaria, despite the fact that no subjective or objective requirements are laid down by law, such requirements are nevertheless asked for by employers (in particular to have a clear criminal record, to possess diploma of secondary education, and to have passed six months of professional training). No license is required regardless of the fact whether the real estate agent works independently or as an employee.

Similarly, in Estonia there are no obligatory requirements established for estate agents by law, such as the need for a certificate or for a license. However, there exists since 2002 the possibility for agents to acquire a professional accreditation issued by the Estonian Chamber of Real Estate Agents (ECREA). In order to qualify for the professional examination, candidates must have passed at least secondary education and 2 years of professional experience as a real estate agent.

Ongoing debate on the regulation and professional standards of the profession of estate agent and/or the services delivered by estate agents

The debate on the level of regulation of and professional standards related to the profession of real estate agents, and to the services provided by real estate agents is lively in several Member States. Those who are in favour of more regulation argue that strict regulatory measures allow to improve the quality of the services provided to consumers and other clients. They also consider that the non-regulation of the profession and/or the service can result in severe consequences including the over-indebtedness of consumers, unfair contractual terms in preliminary contracts, and the lack of knowledge of consumers about property rights and public limitations or charges on the property. On the other hand, it is argued that high levels of regulation may likewise be detrimental since they may limit the amount of competition on the market, may not necessarily result in more qualitative services and may lead to an increase in prices to the detriment of consumers. In addition, the numbers of persons working in the field may be reduced with a negative effect on the economy as such.

In a pro-regulatory approach, Austria, Norway, Denmark, Finland and Sweden have **regulated the profession as well as the real estate services themselves for a long time**, to secure transactions, to guarantee an impartial service to both parties involved in the transaction, to improve consumer protection and competition in the market, to reduce administrative burdens and, overall, to secure a more efficient real estate market¹⁰⁵. In Belgium, Slovenia, Croatia, Ireland and the Czech Republic, regulation has been introduced

¹⁰⁵ European Commission, (2014). "Mutual evaluation of regulated professions: Overview of the regulatory framework in the real estate sector. Report based on information transmitted by Member States and on the meeting of 6 June 2014", DG GROW. Available at: <http://ec.europa.eu/DocsRoom/documents/15486/attachments/1/translations>

more recently either to professionalise agent services and to boost their quality, as well as to prevent fraud, money laundering, financing of terrorist activities, and to ensure the protection of creditors¹⁰⁶.

In Sweden, which is already a highly-regulated country where agents also provide legal services, even proposals for further regulation have been made by the Swedish Consumer Agency. The suggested changes may be summarised as follows:

- The possibility for the Estate Agents Inspectorate, which currently supervises all real estate agents, to be granted legal supervisory powers;
- The possibility for the Estate Agents Inspectorate to be granted the right to issue regulations with respect to the obligations and prohibitions in the Estate Agents Act; and
- The obligation for brokers to inform the public, when advertising a property, of the estimated market value of the property.

In addition, the reform should also implement other instruments of consumer protection in the field of real estate agents such as the introduction of a consumer bureau to offer impartial advice to consumers.

On the other side of the spectrum, **reforms towards deregulation of the profession** have occurred in different countries on several grounds: the absence of a constitutional basis to justify regulation (Portugal), and the attempt to counteract anti-competitive practices (Poland). Countries that do not regulate the profession also consider that consumer protection legislation, civil law and jurisprudence suffice to protect the consumer. Nonetheless, in Spain and Poland, there is an ongoing debate on the possibility to re-introduce regulatory provisions concerning the profession of real estate agent.

In Spain, where **the profession of estate agents is deregulated** since 2000, experts believe that this situation may affect both local and cross-border acquisitions of real estate. Considering the severe consequences for consumers that may result if the quality of the services provided by real estate agents would be lowered in fact, the professionalisation of the sector is currently debated. Besides, several Spanish Autonomous Communities have tried to regulate the real estate profession, such as the Basque Country in 2015. Similar efforts have been unsuccessful so far at national level.

Similarly, in Poland there are ongoing concerns about professional standards after deregulation. Some have voiced concerns that real estate agents that entered the market as from 1 January 2014 have undergone no professional training or verification of their professional expertise and that the services they offer are largely limited to keeping a database and matching buyers and sellers. Services exclude, therefore, the provision of legal advice or consumer support during the whole conveyancing or renting process. However, in case of conveyancing of land, the involvement of a public notary is required and legal advice will, therefore, be obtained by consumers. In case of renting, no legal professional is usually involved. It is, therefore, more difficult for a consumer to obtain all relevant legal information, if the latter cannot be provided by the real estate agent. In other countries, such as Bulgaria, the Czech Republic, Lithuania, and Malta, there are currently attempts to foster regulation¹⁰⁷. In Bulgaria, the debate is structured around the **responsible authority that is supposed to supervise the activities of real estate agents**. Either the government or real estate agent associations themselves may undertake this responsibility. However, the government is reluctant to supervise the profession due to a lack of funding, while the concept of 'self-regulation' is not well perceived by real estate associations. At the time of the current study, the Draft law is yet to be discussed in Parliament. In the Czech Republic, the Ministry of Regional Development drew up the intention of Law that regulates the provision of services by agents given the current absence of strict legal provisions. In Lithuania, efforts have been unsuccessful so far and no such legislation has hitherto been adopted. In Malta, the current debate focuses

¹⁰⁶ Idem.

¹⁰⁷ All information on the ongoing debate around the regulation of the profession of real estate agent stems from the country fiches.

on whether rules on the **capping of agent commission** shall be introduced. In addition, the debate encompasses aspects such as the introduction of **ethical standards for agents**, the increasing professionalisation of the sector through licensing, as well as the introduction of adequate education and training requirements through minimum criteria for qualification.

To sum up, based on the summary of the current discussion across the EU28, Norway and Iceland as presented in the country fiches by the national experts, **there seems to be a tendency of government representatives and academics to support more regulation at large**. Regulation and professional standards are supposed to cover not only various aspects of real estate transactions but also the status of, and the services provided by, real estate agents. The goal of increasing regulation is generally to improve levels of consumer protection.

With respect to the need for more or less regulation of the sector, it is worth mentioning the position of the sector organisation *European Association of Real Estate Professions* (CEPI). Overall, CEPI does not 'want to see deregulation' of the profession of real estate agent¹⁰⁸. The Association maintains that there remains 'a lack of common rules in the real estate sector' and that 'there is a general need to raise the standards in the sector'¹⁰⁹. Besides, CEPI stresses the importance of cross-border mobility in the sector that could be fostered, for example, through the use of the European Professional Card.

2.3.3 Regulation of the profession of Latin notaries

Alongside agents, public notaries play an important role as legal service providers in real estate transactions, though their activities are generally limited to the provision of legal services (with the exception of France where notaries may also act as estate agents). Notaries in the continental tradition inspired by Roman law (and therefore also called Latin Notaries) are holders of a public office and liberal professionals at the same time. Unlike lawyers (solicitors and advocates), the notary **always acts as a neutral legal advisor on behalf of both parties**.

In most EU Member States, the involvement of legal professionals in general and of notaries in particular is mandatory in real estate transactions. The following countries possess a system of public notaries, which are involved in the real estate conveyancing process: Austria, Belgium, Bulgaria, Germany, Estonia, Greece, Croatia, Italy, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Romania, Slovenia and the Slovak Republic. Since in these countries, public notaries play an important role in the real estate market, it is essential in the present context to examine the level of regulation of the profession.

Important cross-country differences can be noted in the regulation of the profession. The following Table provides an **overview on the extent to which important restrictions of the profession of a public notary are regulated in the relevant countries**. Thereafter, these restrictions are discussed from a comparative perspective.

¹⁰⁸ CEPI Position Paper on the Implementation of Directive 2005/36/EC as Regards Regulation and the Need for Reform in Professional Services. Available at: <http://www.cepi.eu/index.php?mact=Profile,cntnt01,downloadfile,0&cntnt01returnid=400&cntnt01uid=59e5ec12c777e&cntnt01showtemplate=false&hl=en>

¹⁰⁹ Idem

Table 7: Regulation of the profession of public notary											
	Nationality requirement (EU, EEA, CH)	Qualification requirements	Official residence/ geographical limits	Regulated number (<i>numerus clausus</i>)	Inter-professional cooperation prohibited	Compulsory insurance	Advertising restrictions	Compulsory membership	Professional standards	Regulated fees	Total
AT	X	X	X	X	X	X	X	X	X	X (maximum fees)	10
BE	X	X	X	X		X		X	X	X (fixed fees)	8
BG	X	X	X	X		X		X	X	X (fixed fees)	8
CZ	X ¹	X	X	X		X		X	X	X (fixed fees)	8
DE		X	X	X	(X) ²	X	X	X	X	X (fixed fees)	9
EE	X	X	X	X	X ³	X	X	X	X	X (fixed fees)	10
EL	X	X	X	X	X		X	X	X	X (fixed fees)	9
ES	X	X	X	X		X		X	X	X (fixed fees)	8
FR	X	X	X	X		X	X	X	X	X ⁴ (partly fixed fees)	9
HR	X	X	X	X		X	X	X	X	X	9
HU	X	X	X	X	X	X	X	X	X	X (fixed fees)	10
IT	X	X	X	X	X	X		X	X		8
LT	X	X	X	X	X	X	X	X	X	X (fixed fees)	10
LU	X	X	X	X	X			X	X	X (fixed fees)	8
LV	X	X	X	X	X	X	X	X	X	X (fixed fees)	10
MT	X	X			X	X	X	X	X	X (fixed fees)	
NL		X	X			X		X	X		5
PL	X	X	X	X	X	X	X	X	X	X (maximum fees)	10
PT		X	X	X	X	X	X	X	X	X (fixed fees)	9
RO	X ⁵	X	X	X	X	X	X	X	X	X	10
SI		X	X	X	X	X	X	X	X	X (fixed fees)	9
SK	X	X		X		X		X	X	X (fixed fees)	7
Totals	18	22	20	20	14	20	14	22	22	20 Strictly fixed fees: 16	

Note 1: Till now, Czech law requires notaries to have Czech nationality. On 15 March 2018, the CJEU has decided Commission/Czech Republic (C-575/16) that this is in breach of EU law.

Note 2: Germany is for historic reasons divided into regions where single-profession notaries and advocate notaries (advocates who, after an additional exam, acquire the right to act as notaries as long as there are no conflicts of interest) exist. The strict prohibition to cooperate with professionals of any other profession but notaries only applies to single-profession notaries.

Note 3: The only exception is sworn translators.

Note 4: For deeds in some areas, the fees are fixed and also discounts are strictly regulated. For some fields of law, such as commercial leases, or real estate bargaining, the price of a deed can be freely negotiated.

Note 5: It is required, in addition, that the notary has his/her domicile in Romania.

Source: Main Task 1 Country fiches

As shown in the table on the previous pages, **almost all notarial systems could be described as strictly regulated**. Only the Netherlands have a notarial system, which may be described as partly deregulated. In the following section, the strictly regulated systems are discussed in a comparative perspective. Thereafter, the Dutch deregulated notarial system is discussed separately.

The strictly regulated (traditional) notarial system

A. Nationality requirement

Traditionally, all Member States required that **notaries have the citizenship of the country in which they operate**. Yet, in several decisions following an infringement procedure of the European Commission against Belgium,¹¹⁰ France,¹¹¹ Luxemburg,¹¹² Portugal,¹¹³ Austria,¹¹⁴ Germany,¹¹⁵ Greece,¹¹⁶ the Netherlands,¹¹⁷ Latvia¹¹⁸, Hungary¹¹⁹, and the Czech Republic¹²⁰, the CJEU has decided that notaries do not exercise public authority in the meaning of art. 51 TFEU and, therefore, must not be subject to a nationality requirement which discriminates against citizens of other EU countries who are protected by the fundamental freedoms of the European Union (i.e. Member States of the EU, the EEA and Switzerland).¹²¹

As a consequence, most Member States have in principle uphold the nationality requirement but **extended it to European citizens and other persons protected by the fundamental freedoms**. There are, however, some exceptions. The Czech Republic still upholds the nationality requirement. The European Commission has taken actions against this infringement of European law¹²² and the CJEU has decided on 15 March 2018 that the nationality requirement in the Czech Republic is also in breach of Art. 49 TFEU. It is, therefore, expected that the nationality requirement in the Czech Requirement will be modified soon to comply with the European law. On the other side, some Member States, such as Germany, have abolished the citizenship requirement completely. In Germany, even third country citizens can thus be appointed as notaries, now.

B. Official residence and numerus clausus

All notaries in strictly regulated systems are **appointed within a certain locally defined area**, which normally corresponds to the district of a court or a county or a municipality. This local nexus reflects the need for notarial services, for which reason the overall number of admitted notaries is controlled and limited (so-called *numerus clausus*). In all relevant systems, notaries must **establish their office within the area to which they have been appointed** (official residence). Mostly, the notary's right to provide services is restricted to the area of the official residency. However, in some countries, such as Estonia, notaries are allowed to provide services also outside the area for which they are appointed. So, they can provide services everywhere in the country. This right does not, however, extend to the right to establish a branch office.

¹¹⁰ C-47/08.

¹¹¹ C-50/08.

¹¹² C-51/08.

¹¹³ C-52/08.

¹¹⁴ C-53/08.

¹¹⁵ C-54/08.

¹¹⁶ C-61/08.

¹¹⁷ C-157/09.

¹¹⁸ C-151/14.

¹¹⁹ C-392/15.

¹²⁰ C-575/16.

¹²¹ In details on these proceedings cf. e.g. Christoph U. Schmid/Tobias Pinkel (2009), Die Zulässigkeit nationaler Einschränkungen der Grundfreiheiten für juristische Dienstleistungen im Grundstücksverkehr vor dem Hintergrund des Verfahrens Kommission ./. Deutschland (EuGH C-54/08), *HanseLR*, 129-161, 131.

¹²² Cf. European Commission, Press release: Nationality requirement for notaries: Commission refers the Czech Republic to Court of Justice of the EU of 25 February 2016 online. Available at http://europa.eu/rapid/press-release_IP-16-322_en.htm

The only exception within the jurisdictions belonging to the strictly regulated notarial systems is Malta, where neither the *numerus clausus* nor the official professional residence restriction exist. The only other jurisdiction that abandoned those principles is the Dutch jurisdiction with its deregulated notarial system.

C. Qualification requirements

All Member States report qualification requirements for notaries. To provide an example, in Germany, while lawyers are allowed to register and practice after the completion of a 4.5 years university study, a first state exam, a professional training stage in different fields of legal practice and a second state exam thereafter, this is only a first step in the education of a notary. The further qualification of a notary depends on the region in Germany, which distinguish between the single-profession notaries - as in all other EU Member States - and lawyer-notaries. The latter become first lawyers and qualify as second profession notaries only after some time of practice and passing an additional exam. Conversely, to become a single-profession notary, candidates, who are recruited among the 5% of the best absolvents of the second state exam, have to complete a 3 years practice as a trainee notary (*Notarassessor*) under the supervision of a notary (section 7 Federal Notarial Code (BNotO)). They then become eligible to be appointed to vacant notary offices without an additional exam.

Furthermore, in all Member States with a strictly regulated notarial system (except for Croatia, the Slovak Republic and Malta) it was reported by national experts that **notaries are subject to the requirement of ongoing education**, which is in most countries supervised by the Chamber of Notaries or a similar organisation.

D. Mandatory insurance

National experts for all countries in which notaries are involved in the conveyancing process (except Greece and Luxemburg) reported that notaries must have a **professional liability insurance before they are appointed**. Concerning the regulation of this mandatory insurance, however, large differences exist between Member States. Whereas the Czech law does not contain any regulation concerning the minimum coverage of this insurance, other Member States require such a minimum coverage. In Estonia, for example, the minimum amount of insurance coverage per incident shall be not less than €63,910, and the overall coverage shall be at least €191,700 per year. In Hungary, the minimum coverage is HUF 50,000,000 (approx. €165,000). In Lithuania, the compulsory minimum insurance coverage for professional civil liability amounts to €28,900 per incident. In other Member States, the required minimum insurance is much higher. In Italy, all notaries are legally required to contract insurance coverages for a minimum sum of €3,000,000.

In France, in addition to an individual mandatory liability insurance, all notaries are also jointly and severally liable for all damage claims raised against any French notary. In order to cover joint liability claims, the Regional Guarantee Fund and the Central Guarantee Fund, financed by contributions paid by the notaries, have been established.

E. Advertising restrictions

Differences exist also in relation to the **regulation of advertising of notaries**. However, it was reported from all countries with a strictly regulated notarial system that advertisement does almost not exist in practice.

F. Compulsory membership in the Chamber of Notaries and professional standards

In all countries with a notarial system, notaries are by legal decree automatically members of the Chamber of Notaries or a similar organisation. All notaries must follow special professional standards that are partly set by law and partly by self-regulation of the profession through the Chamber of Notaries.

G. Inter-professional cooperation prohibited

As regards, inter-professional cooperation, **in most jurisdictions the cooperation of notaries with any other profession is strictly prohibited.** Also in those jurisdictions in which the cooperation with other professional service providers is allowed, this possibility is strongly regulated and may only extend to lawyers or similar professions. Yet, recent reforms have taken a more liberal stance in certain countries. For example, after a recent reform, France now allows professional associations for the joint exercise of nine liberal professions including notaries, lawyers and accounting experts.

H. Regulated fees

Almost all jurisdictions following a strict regulatory approach for notaries have regulated fixed fees. The parties are not allowed to agree to a higher or a lower fee. Only Italy has left the fees for notarial services to the free agreement of the parties. In this aspect, the Italian system is similar to the deregulated system in the Netherlands described below. In Austria and Poland, only the maximum fees are regulated but parties are free to agree on lower fees.

I. Cross-border regulation

It is an ongoing debate how far the ruling of the CJEU according to which notaries do not exercise public authority enables them to provide cross-border services. **Member States take different views on this issue.** Some countries, such as Estonia, **allow their notaries to provide services outside the country**, notwithstanding the territorial limitations within the country. Other countries, such as the Netherlands or Slovenia, **allow foreign notaries to certify only foreign deeds** within the territory. However, **other Member States prohibit both.** In Germany, the Federal Court of Justice (BGH) has ruled that no permission may be granted to a German notary who wanted to draft a German deed according to German law and in German language in the Netherlands¹²³ nor to a foreign notary (in this case from England) who wanted to draft a foreign deed inside Germany¹²⁴.

The Netherlands: A partially deregulated notarial system

The liberalised and largely deregulated notarial system as introduced in the Netherlands is based on the following features:

High level of personal qualification

To be appointed as a notary in the Netherlands, the following **qualifications must be obtained:**

- A university degree in notarial law;
- At least six years practice as a 'candidate notary' under the supervision of a notary (Art. 31 para. 1 Notary Law (Wet op het notarisambt, Wna));
- Three years of professional education during the aforementioned six years, which end with an exam (Art. 33 para. 1 Wna).

Continuing education is mandatory and managed by the Dutch Notarial Organisation (KNB). Within two years, every notary must earn 40 points ('opleidingspunten'). For each hour of professional education, one point is awarded. The program needs to be recognised by the KNB on the request of the institution that offers the courses. In addition, points can be awarded for professional functions within the KNB.¹²⁵

¹²³ BGH, Judgement of 4 March 2013, BGHZ 196, 271-284.

¹²⁴ BGH, Judgement of, 20 July 2015

¹²⁵ For details cf. <https://www.knb.nl/de-notaris/het-beroep-notaris/permanente-educatie>.

Principle of official residence is uphold

The notary needs to be appointed for a certain area by the Ministry of Justice (Art. 6 para. 2 Wna). The notary is appointed for that region only and must not establish an office outside but may provide services wherever s/he prefers. As for the freedom to provide services across the country, the traditional regulation of notaries has thus been relaxed.

A business plan instead of a numerus clausus

Since the numbers of notaries are not restricted in accordance with a need-based plan by the government, an alternative mechanism for the appointment and allocation of notaries had to be established. To be appointed as a notary for a region, the candidate must submit a business plan, showing that s/he can run a sound and profitable office (extending to a period of three years, Art. 7 Abs. 2 Wna).

Liberalisation of business structure

Inter-professional cooperation is allowed between notaries, lawyers and tax advocates. The cooperation must not affect the neutrality or impartiality of the notary. While the right to establish joint offices is extended as compared to most traditional notarial systems, after the last reform the French system is even less regulated in this respect.

Liberalisation of advertisement

No special restriction for notaries applies. Only the general law on commercial advertisement is applicable. However, advertisement is not very common.

Liberalisation of fees

Fees can be freely negotiated between the parties. Internet platforms exist where consumers may compare notarial fees for certain transactions.¹²⁶

Mandatory membership in the Dutch Notarial Organisation (KNB)

Every notary in the Netherlands must be a member of the KNB. The KNB has a very important function in supervising the notaries and ensuring the high quality of the service provided.

High professional standards

Notaries are subject to a set of statutory duties under Dutch law (Wna) and regulations elaborated by the Dutch Notarial Organisation (KNB), such as the duty to inform the parties of the results of the various checks, or to inform the parties on the consequences of certain contractual arrangements including their alternatives. Details have been settled by self-regulation of the KNB and by decisions of the local chambers of notaries.

Compulsory indemnity insurance

An insurance by each notary individually of €1,000,000 and by the Dutch Notarial Organisation of €24,000,000 as an additional collective coverage is required.

Ongoing debate

It is highly controversial whether the deregulation of the civil law notary in the Netherlands in 1999 was successful in terms of increasing efficiency without endangering the quality of the services provided to consumers and other clients. It is not objectively possible to collect

¹²⁶ See e.g. <https://www.degoedkoopstenotaris.nl/>.

empirical evidence on many of the relevant factors, such as the legal quality of the services provided. The effects of the reform on those parameters are, therefore, ambiguous. Different studies seem to suggest different results¹²⁷.

2.3.4 Regulation of the profession of lawyer

Although not as common as the involvement of notaries, **in some Member States the involvement of a lawyer is mandatory or usual** in real estate transactions. Countries that require the involvement of lawyers for the performance of real estate transactions are *inter alia* Cyprus and the UK. Moreover, in Hungary and Portugal the consultation of a notary or a lawyer is alternative, but it is mandatory to involve a legal service provider. Since in these countries the professional service of lawyers is central to real estate transactions, key professional regulations are shortly addressed here. Although their intervention is not mandatory, lawyers play in fact a significant role in the real estate market in countries such as the Czech Republic, Denmark and Spain.

	Nationality requirement (EU, EEA, CH)	Qualification requirements	Official residence/geographical limits	Regulated number (<i>numerus clausus</i>)	Inter-professional cooperation prohibited	Compulsory insurance	Advertising restrictions	Compulsory membership	Professional standards	Regulated fees	Total
CY	X ¹	X				X	X	X	X		6
CZ		X				X	X	X	X		5
DK	X	X				X		X	X		5
ES	X	X				X	X	X	X		6
HR	X	X				X	X	X	X	X (fixed fees)	7
HU		X				X		X	X		5
IE		X			X ²	X	X	X	X		6
PT		X			X	X	X	X	X		6
UK – England and Wales		X				X	X	X	X		5
UK – Scotland		X				X	X	X	X		5
Totals	4	10			2	10	8	10	10	1	

Note 1: A spouse or child of a person fulfilling the nationality criteria can also become a lawyer in Cyprus.

Note 2: According to a legislative proposal (Legal Services Regulation Act 2015) that restriction might be abolished soon.

Source: Main Task 1 Country fiches

Compared to notaries, **the legal profession of lawyers is much less regulated**. It is, however, important to note that in Hungary the fees for legal services provided by lawyers during a real estate transaction are regulated by law and not subject to the negotiation of the parties.

¹²⁷ Studies suggesting that the deregulation was a success e.g. *Commissie Evaluatie Wet op het notarisambt* (2005). For studies that suggests that the deregulation led to a decrease in quality cf. *Kuijpers/Noailly/Vollaard* (2005); *Nahuis/Noailly* (2005). For discussion in the literature see e.g. *Plaggemars* (2011), 315 et seq., who is very critical about the reform, and *Van den Bergh/Montagnie* (2006), *Journal of Comparative Law and Economics*, 289 at 203 et seq. who are also very critical.

3. Key features of real estate transactions

In the last decade, in the EU as a whole, the real estate sector grew on average more than the whole economy both in terms of value added and employment, although the dynamics of the sector vary from country to country¹²⁸. The real estate services market is complex since it involves the presence of different market agents and several steps are required in one single real estate transaction. Moreover, distinct pieces of legislation and regulation concerning real estate transactions differ from country to country.

This section presents, in detail, the **functioning of the real estate services market** and, in particular, the process when a consumer wishes to buy, sell, rent or let a property. **Cross-country differences, as well as the potential risks incurred by consumers** during real estate transactions, are also presented. Thereafter, the **role played by the real estate agent** in this sequence is portrayed. Finally, insight is provided in the specificities of **cross-border transactions**.

Box 1: Summary of findings – Features of real estate transactions

- Although only mandatory in Denmark, in all other Member States it is not uncommon that consumers request the intermediation of a real estate agent, whereas other professionals may provide additional support. Information technology and the internet is increasingly important, particularly in the identification of properties.
- For conveyancing processes, the intervention of legal professionals (notaries, lawyers, advocates, solicitors, attorneys) in the course of the transaction varies widely between countries. The amount of information that is expected to be disclosed is also largely different from one country to another. Risks include fraud, gazumping or misleading information, and a lack of legal certainty.
- In rental exchanges, the main differences among the countries in scope were regarding the amount of information that can be requested by potential tenants and that must be disclosed upon contract signature. In some countries, the various pieces of information are specified by law, however this is not common. Omitted information in rental exchanges results to be problematic to all parties.
- Real estate agents primarily serve the matching function between relevant parties. Still, the range of services offered varies widely in a pattern that matches the Nordic or Latin heritage of the countries.
- Agents that deal with cross-border transactions in principle provide the same services as in regular local transactions.

¹²⁸ European Commission, (2015). "Mutual evaluation of regulated professions. Overview of the regulatory framework in the real estate sector". Available at: <http://ec.europa.eu/DocsRoom/documents/15486/attachments/1/translations/en/renditions/native>

3.1 The stages of real estate transactions and the intervention of legal and other professionals

Real estate transactions can be broadly divided into the two following processes:

- The conveyancing process (buying and selling); and
- The renting and letting process.

In turn, each transaction process can be disentangled, for the sake of clarity, into several stages. The latter are presented in the following sections to provide an overall understanding of the typical sequence followed during real estate transactions for both the buying/selling and the renting/letting process.

3.1.1 The process to buy or sell a property

In order to understand the transaction process, its various steps and the problems encountered by consumers, a basic knowledge of key differences among European legal systems is first needed, in particular as regards the registration systems and the legal stages of the transaction process¹²⁹.

An overview of legal registration systems

All EU Member States have some competent national authorities for registering ownership of and charges on land. In this report, we use the term land register. In the various legal systems covered by this report, this authority is called for example:

Table 9: Competent national authority for registering ownership of and charges on land			
Country	Name of national authority	Country	Name of national authority
AT	Grundbuch	IT	Registri immobiliari
BE	Conservation des hypothèques	LU	Conservation des hypothèques
CZ	Katastru nemovitostí	NL	Kadaster
DE	Grundbuchamt	PL	Księga wieczysta
DK	Tinglysningskontoret	PT	Conservatória do Registo Predial
ES	Registro de la Propiedad	SK	Katastru nemovitostí
EL	Υποθηκοφυλακία	SL	Zemljiške knjige
FI	Lainhuutorekisteri (title register) and Kiinnitysrekisteri (mortgage register),	SE	Inskrivningsmyndigheter
FR	Conservation des hypothèques (in Alsace-Moselle 'bureau foncier'),	UK – England and Wales	Land Registry
HU	Földhivatala	UK - Scotland	Land Register (besides the older type of 'Register of Sasins', which is being replaced gradually)
IE	Registry of Deeds (as the old type) and the Land Registry (as the modern type)	-	-

Source: Analysis by the legal expert

¹²⁹ These parts draw on earlier publications of the legal experts: Schmid, C.U. & Hertel, C. with contribution from Wicke, H., (2005). "Real Property Law and Procedure in the European Union", General Report (final), European University Institute (EUI). Available at: <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>

In all countries, there is a difference between the **land register** and the **cadaster**. Technical mapping and land survey is usually documented in the cadaster, while the land register is competent for the legal state of affairs, i.e. registering ownership and charges on the land. In some states the cadaster also has **tax purposes** (in particular in the Code Napoleon countries, such as Italy and Spain). Typically, both registers are run by separate offices. Even if there is only one agency handling both registers in the Netherlands, Hungary, the Czech Republic and Slovakia, these are nevertheless clearly distinguished by the law in most cases. Finally, the land register is part of the court system (in most countries) or runs as an administrative authority.

Nowadays, registration of property transactions is mandatory in the land register in a majority of countries, at least as regards the transfer of ownership. Therefore, registration of land covers most of the land in all countries (in most countries more than 95% of all land).

In Europe, there are **two basic types of land registers**: either real rights in land are registered or documents are registered. Within the EU, the registration of titles enjoys a slight majority by countries and by population:

- The **registration of rights** is used in the Central European 'land book', the new British Isles 'land register', the Nordic system and in the Hispanic subgroup of the mortgage register. It is thus usual *inter alia* in Austria, Denmark, England, Finland, Germany, the Netherlands, Poland, Portugal, Scotland, Spain, Sweden and Switzerland;
- The mere **registration of documents** is being used in the 'mortgage register' of the French type and in the old common law 'register of deeds' (e.g. in Belgium, France, Greece, Italy and Luxembourg). The registering authority is called 'mortgage register' (conservatoire des hypothèques). Whereas the Polish, Portuguese and Spanish registers are also called 'mortgage register', they contain rights, not only documents.

As regards the basic formats for registration, the **registration of rights** is always done in the form of a **realfolium** (i.e. ordered by the land registered), whilst the **registration of documents** is normally done in the form of a **personalfolium** (i.e. ordered by the name of the respective owner). This means that finding information on the legal status of a plot of land is normally more difficult for consumers and other interested parties.

An important distinction refers to the **substantive effects of the registration**. Registration may be either **constitutive**, meaning that the transfer of ownership or the contractual creation of a real right in land will be completed only with registration, or merely **declaratory**. The first system may be found in countries influenced by the German and English legal systems; the second is typical of the countries of the French legal family. In a system with **declaratory registration**, a transfer or a real right is usually opposable to third parties (third party effect) only after registration. Moreover, the time of registration (or the time of filing for registration in the Code Napoléon countries) determines the **rank** among different rights. Other effects of registration may be the legal presumption that registered rights really exist (and, conversely, that non-registered rights do not exist) and, even further, the protection of good faith, i.e., that a **bona fide** purchaser may rely on the content of the register (the so-called positive as opposed to a negative system). The protection of **good faith acquisition** is dominant in countries with constitutive registration whereas no such protection exists in the countries of the French legal family. In the English system, registration in itself grants the right of disposition irrespective of the good faith of the other party to the transaction. In addition, in some countries, registration is merely declaratory for the transfer of ownership, but constitutive for the creation of limited rights in land such as mortgages or easements (Italy, Poland and Spain, only for mortgages).

A common need of all registration systems is to render available a **mechanism for the secure reservation of a property** for a potential buyer, after checking the register but before the contract is concluded and the price paid. This may be achieved in different ways.

The most commonly used technique is to block new registrations in the land register for a certain period after a check in view of a transfer has been made ('**freeze**'). This is the case for example of England, Scotland, and Sweden. Not a legal, but a factual freeze is used in Spain by a permanent exchange of information between the notary and the registrar, after the notary has checked the land register. Another solution is a **provisional registration** of a contract that does not yet fulfil the required formats (e.g. France). The provisional registration reserves rank if the ordinary application is made within a certain timeframe afterwards (e.g. within 3 years in France, 1 year in Austria, 6 months in the Netherlands, 60-180 days in Spain). Similarly, but not subject to any temporal limitation is the **priority notice** under German law which renders impossible the registration of a right whose contents is in contradiction to the reserved right (Vormerkung, section 883 BGB). It requires a valid contractual obligation. Another method, which may coexist with the above mentioned methods, is an **abstract reservation of rank** (e.g. Germany, Hungary, Poland). In other countries, such an abstract reservation of rank is not possible (e.g. Greece, Spain).

As regards the **registration procedure**, formal requirements that aim at the protection of buyers (consumers), need to be respected for the valid filing of an application or registration. In the mortgage register of the Code Napoleon countries, only **authentic acts** (i.e. notarial documents) can be registered (Belgium, France, Luxembourg, Netherlands, Portugal, Spain). The same applies in Germany, but for the transfer of ownership only. If an authentic act is required, the parties need to consult a notary (Latin type). Typically, the civil law notary has a professional duty to counsel the parties on the legal effects of the transaction undertaken. This involves consumer protection in particular. The **Central European land register** typically requires only a certificate of signatures to enable registration (Austria, Czech Republic, Germany, Hungary, Slovakia, Slovenia). For a **certification of signatures**, normally there is no professional duty for the official (usually the notary) to counsel on the legal effects. However, quite regularly, the civil law notary drafts the document before certifying the signatures also in central European countries. Thus, the document is prepared with a legal counsel, and a legal check is carried out before the document is issued and before the right is registered. The British Isles systems (both old and new) require a **signed and witnessed deed**. In practice, it is common to consult a conveyancing lawyer for land transactions who drafts the deed. Only the Nordic systems have no formal requirement but parties are often assisted in the registration procedure by legally qualified estate agents.

Access to the information contained in the land register (e.g. on whether the seller is the actual owner of the plot of land), which is particularly relevant for consumers, is publicly available in most countries. However, in some countries, access is **restricted for privacy reasons to persons showing a legitimate interest** (Belgium, Germany, Spain). In some other countries, the files of the mortgage register of the French type (which contain the most relevant information in a system registering documents, not rights), are only accessible with a legitimate interest as well (e.g. France, Poland). Today, **electronic registration is the norm**. Most countries possess a completely electronic registration system.

A legal overview of the transaction process

As **consumer protection depends on the legal structure of the transaction process**, its main steps need to be explained and may be summarised as follows for the **four main legal systems**:

Table 10: Legal overview of the transaction process			
Constitutive systems		Declaratory systems	
Germany	England/Scotland	Code Napoleon (Belgium, France, Italy)	Sweden
Sales contract (notarial act)	Sales contract (exchange between solicitors for seller and buyer) often 10% down payment	Preliminary contract (promesse/compromis de vente) 5-10% down payment	Draft of sales contract 10% down payment
Priority notice (Vormerkung § 883 BGB)	Priority period after search	-	-
Payment	Payment in escrow account before or at completion	Sales contract (authentic act): transfer of ownership	Sales contract: transfer of ownership
Agreement on transfer of ownership (Auflassung § 925)	Completion = sales deed may be used for registration	Payment during signing of sales contract	Payment during signing of sales contract
Registration: transfer of ownership completed	Registration: transfer of ownership	Registration: opposability	Registration: opposability

Source: Analysis by the legal expert

In **Germany**, the parties first conclude the **sales contract** by notarial act. Afterwards, the notary registers a **priority notice** for this contract. As a consequence of the priority notice, all posterior dispositions of the property are invalid against the holder of the priority notice. Thus, the buyer can pay now without running any risks. The next step is a **legally separate agreement** on the transfer of ownership, which needs to be done also by authentic act and is in practice always contained in the same document as the sales contract. However, the notary does not register it until payment has been effected. The final step is, thus, the **registration of the transfer in the land register**, which is required for the valid transfer of ownership.

In **England**, the sales contract documents are drafted and exchanged between the seller's and the buyer's solicitors (who keep them in escrow). Usually, then, a **down payment** of 10% is made into an escrow account of the conveyancer acting for the seller. At the **date set for completion**, the payment is made into an escrow account of the conveyancer acting for the seller. Simultaneously, the keys are handed over and the purchaser takes possession. Only after the payment is credited on the escrow account, is registration carried out. As a last step, the money is paid out from the escrow account to the seller. Consumers are also protected relatively well against fraud in this system.

In **France** (and in other Code Napoleon countries including Belgium, Italy, Luxembourg, Portugal and Spain), first a **preliminary contract** is signed. Usually also a down payment between 5% and 10% of the overall price is made at that time. After the buyer has obtained financing from a bank (or otherwise shown his/her solvability), **the sales contract is concluded in a notarial act**. At the same time, payment needs to be made, since the sales contract already transfers ownership. Registration is made afterwards, but it has merely declaratory effects. In **Sweden**, the various steps are basically the same as in the Code Napoleon countries except from the fact that there is no preliminary contract but only a **draft sales contract** which constitutes the first stage of the transaction.

In sum, there are in practice **two consecutive transactions** in all countries though the legal structure and design are widely different:

- The contractual obligation and
- The transfer of ownership.

The first transaction entails the **contractual obligation** after the conclusion of which everything is prepared for performance. Then, in a second transaction, **ownership is transferred**. Payment is carried out in between the two transactions or at the same time as ownership is transferred.

From a buyer's perspective the transfer of ownership is crucial. It depends, as mentioned, on whether the system is **causal** (ownership is transferred with a valid sales contract) or **abstract** (the transfer requires another real contract on top of the sales contract). In the **Code Napoleon countries** (Belgium, France, Italy, Luxembourg, Portugal, Spain), the sales contract, thus, already transfers ownership and there is no other requirement. Also the registration is merely declaratory. The same applies for the Nordic countries (e.g. Sweden). In the new **British system**, ownership is transferred by registration in the land register. Only registration matters. Neither the **sales contract** nor an agreement for the transfer of ownership are requirements for a valid transfer. The **Austrian system** combines the sales contract and the registration as the two requirements. In Germany, the two requirements are an agreement on the transfer of ownership (Auflassung) and the registration, irrespective of the validity of the sales contract. Only **in the Netherlands**, there are **three requirements**: i) the sales contract, ii) a separate agreement on the transfer of ownership, and iii) the registration.

Table 11: Causal and abstract systems						
	Causal systems				Abstract systems	
	France, Belgium, Luxembourg, Sweden	Spain	Austria	The Netherlands	Germany	England, Ireland, Scotland
Titulus	Sales contract				Agreement on transfer of ownership	
Modus		Form of sales contract (escritura)	Registration	Agreement on transfer of ownership + registration	Registration	Registration
	Declaratory systems		Constitutive systems			

Source: Analysis by the legal expert

The main challenge of performing a sales transaction is to ensure that **the parties' obligations** (transfer of title and payment) are fulfilled reciprocally. This task is accommodated differently depending on the various legal systems.

In legal systems in which **ownership is transferred upon mere consent** even without registration (declaratory registration, e.g. in Belgium, Finland, France, Italy, Poland, Portugal, Spain and Sweden), payment has to be made at the same time as the contract is concluded. In these systems, either a preliminary contract or a draft contract is made. A **preliminary contract** is used mainly if the legal system requires a specific form for the sales contract (in particular a notarial authentic act). In this way, it is easy to distinguish the preliminary from the final contract already by the form. The preliminary contract binds the parties and is enforceable in the Code Napoleon systems but does not yet transfer ownership. The purchase price is paid directly upon signature of the contract. Usually, after a preliminary notice, competing registrations in the land register are either blocked for a certain time frame or the notary who obtained an excerpt of the register will be informed of any changes (e.g. Spain).

Conversely, in legal systems in which the **registration is constitutive**, payment has to be made before the transfer is registered. In the English system, at completion, payment is effected into an escrow account of the seller's solicitor. Only then can registration be made. Following an official search of the land register, the register is blocked for a certain time. In Austria, the main protection mechanism is also the (notarial) escrow account. Yet it may be combined with a reservation in the register similar to the German priority notice (Veräußerungsrangordnung in Austrian terminology). In the German system, the buyer is secured because the seller needs to authorise the registration of a priority notice before

the buyer carries out the payment. The payment may be done on an escrow account only in the case of more complex transactions as this mechanism involves a considerable cost for buyers. In Italy, a German style priority notice for a sales contract has been introduced in Art. 2645-bis Codice Civile. The protection is limited to one year after the sales contract, but not more than three years after the registration of the priority notice.

In sum, it is possible to identify **three main methods to synchronise the payment on the one hand and the transfer of ownership on the other**:

- The parties try to do **'all at the same time'**, implying that the payment is made already when the contract (transferring ownership) is concluded (in particular in the Code Napoleon countries);
- The opposite approach is to complete the contract **'step by step'** so that a party cannot withdraw unilaterally, but the other cannot receive the performance without fulfilling his/her own obligations either (e.g. the German priority notice);
- One or both parties may pay or deliver the title documents to an intermediary in escrow.

An **escrow** may be used either for the payment (escrow account) or for the transfer of documents, in particular, if the documents transfer title. This was the case under the old British system, where the title was transferred in the sales deed, but it is also the case under the new British system for the sales deed which is necessary for registering the transfer. An escrow of documents is also usual in Austria (for the *Aufsandung*-document, which is necessary for the registration of the transfer of ownership) and in Germany (for the *Auflassung*-document, which again is necessary for registration of the transfer). Especially in a constitutive system, an escrow of documents plays a role since the withholding of the documents blocks the transfer of ownership. For buyer protection reasons, a professional indemnity policy for escrow agents is required (e.g. notaries on the continent or conveyancers in England).

Payment is never a statutory requirement for the transfer of ownership. Only in some declaratory systems, the transfer is legally **conditioned upon payment**. Such contractual clauses are used quite commonly in countries such as Finland or Spain (*condición resolutoria explícita*, art. 34 LH, which has to be registered). In Poland, the sales contract may also be conditional. In this case, an additional, unconditional contract is required for the transfer of ownership. **In other countries, a conditional transfer of ownership is prohibited by statute and invalid** (e.g. section 925 par. 2 BGB Germany, an abstract system). Also under the new British system, where only registration matters, a conditional registration is not possible, the sole option being to apply for registration only after payment. Finally, a **mortgage** to the benefit of the seller may sometimes be set up to ensure that the seller receives the purchase price. **In all systems, a seller's mortgage may be created by contract.** In some systems, a **statutory mortgage** is set up automatically by law if the purchase price has not yet been paid (e.g. in Spain).

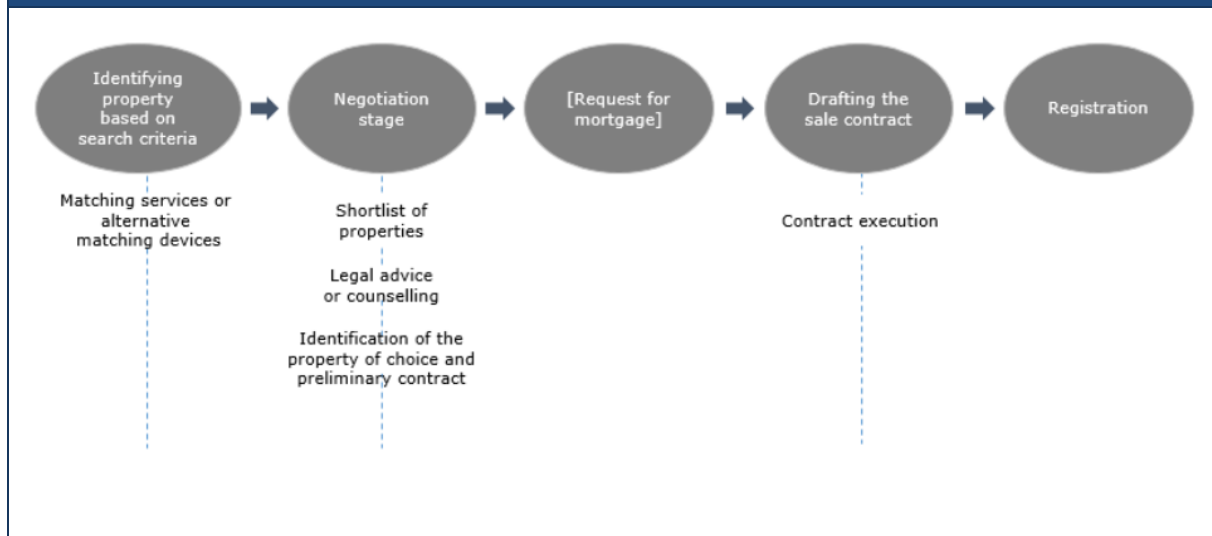
Overall, it may be concluded that legal security for buyers exists to a wide degree in all EU Member States irrespective of considerable legal differences between the various legal systems and families.

The stages of the transaction process

In this section, the different stages and selective problems of the conveyancing process are discussed from a practical point of view and in a comparative perspective.

Five different stages of the conveyancing process can be identified through the literature review and the country fiches (Figure 3). Following the definition of each of these, national specificities will be provided thus enabling to identify cross-country divergences in the conveyancing process. Specific attention will be paid to the actors intervening in the conveyancing process as well as to the potential risks that may arise at each stage.

Figure 3: Conveyancing process¹³⁰



Source: Main Task 1 Analysis

Identification of the property

Matching services or alternative matching devices

In this first step, the potential buyer would **consult a real estate agent, advertisements on newspaper or online** in view of identifying a suitable property. The potential buyer first defines the research criteria including the profile of the property s/he wishes to purchase (e.g. location, size of the property) as well as financial aspects such as the minimum and maximum price of the property based on the available budget.

The **actors that are generally involved in this step** are parties themselves (the seller and the potential buyer) or parties together with the guidance of a real estate agent. In specific, the real estate agent provides intermediation services with the purpose of matching the parties, namely buyers and sellers.

Reference to a real estate agent during this first step is optional in all the countries in scope. However, according to this research **it is usual for consumers to request the intermediation of a real estate agent in the majority of the countries**. To provide quantitative insight on the extent consumers ask for the intermediation of a real estate agent in the conveyancing process, in Finland approximately 70% to 80% of apartments and 90% of dwellings are sold via the intermediation of a real estate agent. In France, 68% of real estate transactions are carried out through a real estate intermediary. In Iceland and in Norway, it is optional for consumers to refer to a real estate agent. However, the intervention of a real estate agent during the whole conveyancing process becomes mandatory in case consumers explicitly address themselves to a real estate agent in this first step.

Apart from the intervention of a real estate agent, **other professionals may provide support to consumers** in finding a counterpart interested in buying a property or, vice-versa, in selling a property. Lawyers but also personal contacts or so-called 'property finders' may intervene in this process to support consumers.

Finally, newspaper advertisement or magazines, as well as internet portals allow buyers to identify a property displaying characteristics that match their needs. The role of **information technology is increasingly important** in this first step. A potential buyer may easily refer to internet portals or to the website of a real estate agency, and the seller as well can easily advertise online the property s/he wishes to sell incurring limited costs

¹³⁰ Figure 3 provides a simplified view of the conveyancing process without taking into account national specificities from a legal point of view. These are discussed in the whole Section 3.1.1.

or no costs. The main advantage of technology is that both buyers and sellers can commence the conveyancing process **by saving time and costs**.

Evidence collected on the increasing use of the internet for the identification of a property is supported by the literature review. The **internet** makes it **easier for sellers to find real estate agents, and for buyers to search for properties**. Consequently, the internet lowers buyers' search costs, in particular for those who look to move out of their local area, thus resulting in more search by buyers¹³¹. The internet can be regarded as a means allowing buyers and sellers to find the best match. Besides, online portals can comprise services that keep track of markets on behalf of the client, e.g. services where planned future sales can be on 'silent sale' or services where buyers can indicate their intention to buy a property in a specific area. This is the case for example in Finland where digital conveyancing is regulated.

At this preliminary stage, potential buyers need to pay attention to the **risk of fraud that can occur when a buyer contacts a seller that is not the owner of the property**. If, after the signature of the sales/transfer contract(s), it turns out that the seller was not the owner of the property (e.g. the buyer discovers that the seller is not the owner), all systems agree that the sales contract is still valid¹³². There are, however, differences to highlight. In Germany, Poland, Portugal and Spain the buyer would acquire in bona fides (a deed concluded without fraud) after the registration if the seller's right was registered properly in the register; in England, the buyer acquiring in bone fide is protected with the exception of one case, i.e. when the seller 'is on occupation of the land'; in Belgium, France, Italy and the Netherlands, the bona fides acquirer is not protected and ownership may be acquired only by 'usucapio': ownership can be gained during a period ranging from ten years (Italy) to thirty years (France)¹³³.

Negotiation stage

Shortlist of properties and inspection

The potential buyer generally shortlists a limited number of properties based on his/her research criteria and subsequently inspects the properties. Preliminary checks are performed to **ensure that the potential buyer is aware of all legal obligations** as well as of all relevant features related to the property. Depending on the country, different professionals may perform preliminary checks: notaries, lawyers, attorneys or solicitors, or the real estate agent.

Notaries carry out preliminary checks in all continental countries, for example in Belgium, Germany, Estonia, France, Italy, the Netherlands, and Poland. Lawyers, attorneys or solicitors intervene at this stage in Bulgaria, Ireland, and the UK.

Finally, the real estate agent is the professional generally involved at this stage in Finland, Poland (in collaboration with a notary), Sweden, Iceland and Norway.

In case the potential buyer decides to purchase a property, thus selecting the property of choice, the signature of the preliminary contract follows.

Legal advice or counselling

In view of concluding the sales contract and/or the deed of conveyance, consumers may receive **legal advice or counselling through** the intervention of a legal professional. This step ensures that the transaction is valid and that the parties are aware of their rights and

¹³¹ Ford, J.S., Rutherford, R.C., Yavas, A., (2005). "The effects of the internet on marketing residential real estate". In: Journal of Housing Economics, 14, 92-108.

¹³² Schmid, C.U. & Hertel, C. with contribution from Wicke, H., (2005). "Real Property Law and Procedure in the European Union", General Report (final), European University Institute (EUI). Available at: <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>

¹³³ Idem.

duties. However, in many systems, before the intervention of a professional legal obligations might have already been created (see on this in detail in section 3.2).

The intervention of a professional for the delivery of legal advice or counselling is, though not necessarily mandatory, **usual in the majority of the countries** in scope. To provide an illustration, in all Latin notary countries, it is a professional duty of the notary involved in the transaction to provide legal advice to the parties. In the UK, the provision of legal advice is standard practice and falls under the **obligations of a solicitor or licenced conveyancer** while in Scandinavia **real estate agents provide legal advice** as well as expert advice to the buyer when complex questions of technical or economic nature arise.

Only in a minority of countries including Estonia, Latvia, Poland, Romania and Norway, the provision of legal advice is not usual or left to complex situations where special contractual arrangements are made.

The provision of legal advice or counselling was highlighted by national experts as **highly relevant in cross-border transactions**. For example, in Spain a lawyer is often consulted for the provision of legal advice by foreign buyers, i.e. when buyers that do not permanently live in Spain are involved in the transaction.

The preliminary contract

As mentioned, the **preliminary contract** is concluded in Code Napoleon countries with the purpose to **secure the transaction before the final contract is signed**. Through the preliminary contract, **both parties** show that they have an intention to conclude a transaction if specific conditions are fulfilled, i.e. if the buyer and the seller agree on particular terms and conditions of sale.

When considering the parties intervening at this step, in some countries, **the engagement of professionals is optional but not necessarily usual** (Cyprus, Latvia, Spain and Slovenia). In Spain, for example, parties may themselves agree without professional assistance on the object of the contract, the sale price, the method of payment as well as the conditions under which both parties can withdraw from the preliminary contract. In Belgium, **parties themselves** can sign a private sales contract to define the essential rights and obligations determining the conveyance. However, based on the input provided by national experts, the intervention of a real estate agent and/or the involvement of a notary is recommended at this stage.

In the majority of the countries, the intervention of professionals is optional but usual. In this case, different professionals may be involved:

- The real estate agent;
- A lawyer, advocate, solicitor or an attorney at law;
- A notary.

Finally, the intervention of a professional is mandatory in Denmark (real estate agent) and in Germany (notary) if an enforceable preliminary contract is supposed to be concluded.

The table below shows for each country whether the intervention of a professional is usual and, in this case, the type of professional involved.

Table 12: Preliminary contract – Intervention of professionals			
	Real estate agent	Lawyer/advocate/solicitor/attorney at law	Notary
AT	Usual	Sometimes	Sometimes
BE	Optional but usual	<i>Not involved</i>	Optional
BG	Optional but usual	Optional but usual	<i>Not involved</i>
CY	Optional and not usual	Optional but not usual	<i>Not involved</i>
CZ	<i>Not involved</i>	Optional but usual	Optional but usual
DE	<i>Not involved</i>	<i>Not involved</i>	Mandatory, if an enforceable preliminary contract is supposed to be concluded
DK	Mandatory	<i>Not involved</i>	<i>Not involved</i>
EE	Optional	<i>Not involved</i>	Optional
EL	<i>Not involved</i>	<i>Not involved</i>	Optional
ES	Optional and not usual	Optional but not usual	Optional but not usual
FI	Optional but usual	<i>Not involved</i>	<i>Not involved</i>
FR	Optional but usual	<i>Not involved</i>	Optional but usual
HR	<i>Not involved</i>	Optional	<i>Not involved</i>
HU	<i>Not involved</i>	Optional	<i>Not involved</i>
IE	Optional and not usual	Unusual	Unusual
IT	Optional but usual	Optional but usual	Optional but usual
LT	Optional but usual	Optional but usual	Optional but usual
LU	Optional but usual	<i>Not involved</i>	<i>Not involved</i>
LV	Optional and not usual	Optional but not usual	Optional but not usual
MT	<i>Not involved</i>	<i>Not involved</i>	Usual
NL	Optional and not usual	Unusual	Unusual
PL	<i>Not involved</i>	<i>Not involved</i>	Optional but usual
PT	<i>Not involved</i>	Optional but usual	<i>Not involved</i>
RO	Optional but usual	Optional but usual	Optional but usual
SE	Unusual	Unusual	Unusual
SI	<i>Not involved</i>	Optional but not usual	Optional but not usual
SK	Optional but usual	<i>Not involved</i>	<i>Not involved</i>
UK	Optional and not usual	Unusual	Unusual
IS	Optional and not usual	Unusual	Unusual
NO	Optional and not usual	Unusual	Unusual

Source: Main Task 1 Country fiches

During the negotiation stage, consumers are confronted with the **risk of gazumping**, which occurs when a seller accepts a verbal offer on the property from a potential buyer but subsequently secures another offer from a second buyer that is willing to pay a higher purchase price.¹³⁴ Thus, gazumping is mainly a risk for the first interested party.

Another potential risk that may occur at this stage refers to the **delivery of misleading information or the omission of information** by the real estate agent. In specific, the latter may provide unclear and misleading information on advertisements with the purpose to conclude a transaction in a short time frame. This behaviour, which can also be referred to as 'pressure to buy/sell' may result in suboptimal matches for both the buyer and the seller.

¹³⁴ The risk of gazumping was indicated in the country fiches for a minority of countries, namely for Ireland and the UK (Common Law systems), and for Slovenia.

To conclude, depending on the country, the implications of a preliminary contract may have a different extent. The latter may either be binding or just serve the purpose of establishing a certain liability between parties demonstrating as well the interest of the parties in concluding the transaction. Different actors can be involved at the moment of the signature of the preliminary contract.

Request for mortgage

The request for a mortgage eventually allows the buyer to secure a loan from a creditor for the purchase of the property. It is important to note that the request for a mortgage is not a mandatory step. This step depends on the buyer's need of a loan for the purchase of the property. Besides the creditor or credit institutions, a wide spectrum of actors can intervene at the stage of the request and creation of the mortgage. Across the 30 countries in scope, these actors include legal professionals (notaries, lawyers or attorneys at law), real estate agents or solicitors, and licenced valuers.

When considering the minimum standards for information, on a general note, national experts indicated that comprehensive advice and information shall be provided to consumers. Besides, pre-contractual communication shall be fair, clear and not misleading. Moreover, credit institutions normally provide borrowers with information allowing them to compare available credit products on the market.

In addition, the **European Standardised Information Sheet (ESIS)** plays an important role as regards the minimum standards for information related to the request for a mortgage. ESIS can be defined as a standardised template of information that should be provided by the financing bank to the loan taker (e.g. potential buyers of a real estate) ¹³⁵. Given that the request for a mortgage is not a mandatory step, ESIS is provided to consumers only when there is negotiation for a mortgage.

In specific, the ESIS Model is presented in the Annex II of the Directive 2014/17/EU of the European Parliament and the Council on credit agreements for consumers relating to residential immovable property and amending Directive 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010¹³⁶. As stated in the Directive, the main purpose of ESIS is to provide the consumer with all relevant information to make an informed choice. Besides, the Directive establishes that 'the consumer should receive information by means of the ESIS without undue delay [...] in order to enable him to compare and reflect on the characteristics of credit products and obtain third party advice if necessary [...]'¹³⁷.

The main purpose of ESIS is to provide the consumer with all relevant information to make an informed choice. The information sheet contains information about¹³⁸:

1. Lender;
2. (Where applicable) credit intermediary;
3. Main features of the loan;

¹³⁵ According to the Directive 2014/17/EU Art. 14, "Member States shall ensure that the creditor and, where applicable, the credit intermediary or appointed representative, provides the consumer with the personalised information needed to compare the credits available on the market, assess their implications and make an informed decision on whether to conclude a credit agreement:

(a) without undue delay after the consumer has given the necessary information on his needs, financial situation and preferences in accordance with Article 20; and

(b) in good time before the consumer is bound by any credit agreement or offer.

2. The personalised information referred to in paragraph 1, on paper or on another durable medium, shall be provided by means of the ESIS, as set out in Annex II.

¹³⁶ Directive 2014/17/EU of the European Parliament and the Council on credit agreements for consumers relating to residential immovable property and amending Directive 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0017&from=EN>

¹³⁷ Idem.

¹³⁸ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0017&from=EN>

4. Interest rate and other costs;
5. Frequency and number of payments;
6. Amount of each instalment;
7. (Where applicable) illustrative repayment table;
8. Additional obligations;
9. Early repayment;
10. Flexible features;
11. Other rights of the borrower;
12. Complaints;
13. Non-compliance with the commitments linked to the loan: consequences for the borrower;
14. Additional information;
15. Supervisor (i.e. the lender's supervisory authority).

ESIS, therefore, allows consumers to receive a well-defined set of pieces of information related to the loan. Besides, consumers receive information on additional costs they would face if they request a mortgage (such as the value in percentage of the interest rate and the amount of the fee to register the mortgage).

Drafting the sale contract and/or deed of conveyance

The signature of the **sale contract and/or deed of conveyance** allows to summarise and formalise the agreement of the party in the transaction.

As it was the case for the preliminary contract, the drafting of the sale contract may be carried out by different professionals depending on the country and on the conveyancing system as previously described. **Either a notary, a lawyer or a real estate agent** may be responsible for the drafting of the sale contract. The intervention of a professional for the drafting of the sale contract may be either mandatory or optional.

Table 13: Drafting of the sale contract/deed of conveyance – Intervention of professionals			
	Real estate agent	Lawyer/advocate/solicitor/attorney at law	Notary
AT	<i>Not involved</i>	Optional	Mandatory for the deed of conveyance (unless the signatures are certified by a court) but optional for the sales contract
BE	<i>Not involved</i>	<i>Not involved</i>	Mandatory (with the exception of 'buying committees')
BG	<i>Not involved</i>	<i>Not involved</i>	Mandatory
CY	Optional but not usual	Optional but not usual	<i>Not involved</i>
CZ	<i>Not involved</i>	Mandatory	Mandatory
DE	<i>Not involved</i>	<i>Not involved</i>	Mandatory
DK	Optional but usual	Optional but usual	<i>Not involved</i>
EE	Optional but usual	Optional but usual	Optional but usual
EL	<i>Not involved</i>	<i>Not involved</i>	Usual
ES	Optional but usual	Optional but usual	Optional but usual
FI	Optional but usual	<i>Not involved</i>	<i>Not involved</i>
FR	<i>Not involved</i>	<i>Not involved</i>	Mandatory
HR	<i>Not involved</i>	Optional	<i>Not involved</i>
HU	<i>Not involved</i>	Mandatory	<i>Not involved</i>
IE	<i>Not involved</i>	Usual	<i>Not involved</i>
IT	<i>Not involved</i>	<i>Not involved</i>	Mandatory
LT¹³⁹	Usual	Usual	Usual
LU	Optional but usual	<i>Not involved</i>	<i>Not involved</i>

¹³⁹ In Lithuania, as indicated by the national expert, the drafting of the sale contract is mandatory. As per the legal professional involved, real estate agents, lawyers and notaries can intervene at this stage.

Table 13: Drafting of the sale contract/deed of conveyance – Intervention of professionals			
	Real estate agent	Lawyer/advocate/solicitor/attorney at law	Notary
LV ¹⁴⁰	Usual	Usual	Usual
MT	Not involved	Not involved	Usual
NL	Not involved	Not involved	Sales contract: frequent Deed of conveyance: mandatory
PL	Not involved	Not involved	Mandatory
PT	Not involved	Mandatory	Mandatory
RO	Not involved	Not involved	Mandatory
SE	Mandatory	Not involved	Not involved
SI	Optional but not usual	Optional but not usual	Optional but not usual
SK	Usual	Usual	Usual
UK	Not involved	Usual	Not involved
IS	Mandatory (if the professional is involved in the transaction)	Not involved	Not involved
NO	Mandatory (if the professional is involved in the transaction)	Not involved	Not involved

Source: Main Task 1 Country fiches

In Germany, the **intervention of a notary is mandatory** and all focus group participants assessed that notaries intervening in the transaction process as efficient and professional. However, participants explained that some problems might result from the notary's approach, in particular when specific rules are lacking. As an example, in Germany, it is not mandatory for the notary to review the 'register of construction encumbrances' (Baulastenverzeichnis) and explain its content to the buyer. This register defines the obligations of the owner towards the appropriate authorities about the typologies of constructions on the property that the buyer is not allowed to undertake. Focus group participants agreed that information on the 'register of construction encumbrances' should be mandatorily delivered to buyers. This could prevent buyers, *inter alia*, from undertaking illegal constructions on their property in the future.

In Iceland and in Norway, **the intervention of a real estate agent is mandatory** in case the intermediary is involved in the transaction. However, the involvement of a real estate agent in the transaction is not mandatory in those countries.

Problems of New Build in particular

At the stage of identification of the property, a potential buyer may be interested in purchasing new build houses (i.e. future constructions whose erection is laid down in the contract). Legislation related to developer contracts on new build objects may impact levels of consumer protection by **improving the protection of buyers who purchase such a building not yet completed**. To reach this objective, two possible measures have been identified: i) the ownership of the non-existing object may be gradually transferred as the construction works proceed and ii) a system of legally defined guarantees (in particular bank guarantees in favour of the buyer covering the instalments that the buyer has already paid) may exist which make sure that the risk of the bankruptcy of the builder during the works is addressed. Such guarantees are legally required e.g. in section 632 a BGB.

Contract execution

Following the conclusion of the sales contract and/or the deed of conveyance, its/their **execution** is about ensuring that both parties perform their obligations. The intervention

¹⁴⁰ In Latvia, as indicated by the national expert, the drafting of the sale contract is mandatory. As per the legal professional involved, real estate agents, lawyers and notaries can intervene at this stage.

of a legal professional is in most countries not mandatory at the execution stage but notaries, solicitors and Scandinavian agents offer this service as well.

In several countries, legal professionals, notaries and solicitors in particular, **play the role of an escrow agent** meaning that the buyer transfers the payment into the professional's escrow account. The professional, therefore acts as a guarantor for the fulfilment of this obligation. This practice is typical, for example, in Belgium, Bulgaria, France, and the UK. In Germany, referral to a notary trust account (Notar-Anderkonto) is only made in case there is a special need for protection according to section 54a para 2 Notarisation Act (BeurkG).¹⁴¹

Registration

The execution of the sales contract and/or the deed of conveyance includes the **registration of the contract in the land register** in view of making the transaction known to third parties and to the public. As mentioned, the registration in the land register may not only be a matter of evidentiary significance (declarative systems) but also a legal prerequisite for the valid acquisition of the property (constitutive systems). Registration ensures that the transaction may be invoked against third parties. In many countries, the registration in the land register can also occur **electronically** by uploading the sale contract/deed of conveyance to the e-service of the authority responsible for the registration. To provide an example, in Belgium it is possible to send a scanned version of the deed to the Mortgage Registry Office via the so-called 'e-notariate' (the software program of the Royal Federation of Belgian Notaries). In Finland, the sale contract can be uploaded to the e-service of the National Land Survey. Whilst the registration of the transaction in the land register is usual in most countries, there are also exceptions, such as in Scotland, where this happens only rarely.

Regarding the intermediate steps involved in the registration procedure, the conclusion of the sale contract and the transcript of the contract by the relevant authority is normally needed prior to submitting a proposal for registration. Simultaneously, the submission of supporting documents as well as the fulfilment of administrative formalities (e.g. the payment of taxes for registration) occurs. Finally, the person applying for registration is notified about the successful conclusion of the registration eventually through the receipt of a registration certificate.

Problems for consumers

In the country fiches drafted by legal experts, various problems faced by consumers in the conveyancing process were reported. However, the fact that certain problems have not been reported in a country does not necessarily mean that they are of no practical relevance there. This summary can only be understood as a collection of problems that may occur.

In general, several countries that require an early participation of public notaries have reported that court cases between buyers and sellers of real property are rare due to the fact that the notary oversees the transaction closely (on this issue also see Section 3.2). The intervention of notaries may thus promote consumer protection.

¹⁴¹ A recognised justified interest for the intervention of a notary via an escrow account is inter alia:

- If the buyer wants the delivery and possession of the immovable before payment - in that case, a guarantee payment may be made on the escrow account;
- If the buyer finances the purchase price with loans taken from several banks or if loans from several banks are to be paid off (in that case, complex payment flows justify the escrow);
- If the buyer purchases an immovable under bankruptcy administration (in this formalised procedure, the insolvency creditors must be sure to receive the money);
- If no justified interest exists, it is illegal for the notary to use an escrow account. In practice, bank guarantees (for the solvability of the buyer) are used more often as they are usually cheaper than notarial escrow services.

Disputes concerning hidden defects of the purchased building

In Belgium, as reported by the national expert, **disputes related to hidden defects** of the real estate (in accordance to arts. 1641 et seq. Belgian Civil Code) are quite common. The ordinary courts decide on these issues.

In Estonia, disputes concerning hidden defects and misinformation are the most common disputes in the context of real estate transactions. In the Supreme Court, there have been 11 cases concerning non-conformity of residential dwellings between 2004-2017. Buyers are well protected by a high standard of conformity of dwellings developed by the courts. The seller is liable also for hidden defects which were misrepresented during the negotiations and which were not known to the buyer at the time when the risk of accidental loss of, or damage to, the building passed to him/her even if the lack of conformity only became apparent after that time (§ 218 of the LOA).

Also in Portugal, the most common court cases concerning conveyancing of real property relate to hidden defects.

In Iceland, disputes concerning defects of the sold property form the most common claim as well, though their numbers dropped over the last years. This may be due to the Real Estate Transactions Act, passed in 2002 (No. 40/2002).

Disputes concerning the payment

Disputes concerning a **delayed payment or non-payment of a contract price** occur in every jurisdiction. The ways in which cases of non-payment are solved may, however, vary. One solution particularly frequent in countries following a Napoleonic system is to **conclude a sales contract under the condition that the payment is made at a certain point**. If the payment is not made at the agreed time, the contract is dissolved and, therefore, no dispute settlement body needs to be involved unless damages for non-payment are sought. This solution was reported to be common in Belgium. In addition, notaries in Belgium would not normally pass an authentic act before the sales price is paid to an escrow account of the notary.

In other countries, the seller has different options in case of delayed payment or non-payment. Firstly, he/she can **withdraw from the contract**, mostly after having set an additional delay for payment (this is not possible in country such as Poland and Portugal unless agreed otherwise). Secondly, in countries where a down payment is usual such as Sweden, this payment forfeited through the contract will also be resolved. Similarly, effects can be generated by a contractual penalty clause (e.g. 10% of the total purchase price in the Netherlands)¹⁴².

Disputes concerning transfer of ownership

Disputes concerning the **refusal to transfer ownership after a valid sales contract has been concluded seem to be less common**. Particularly in countries where valid sales contracts can be concluded before a legal expert is involved, sellers may refuse to transfer the ownership of the property. The reason for that can be manifold. It might be the case that a seller was not aware of the fact that s/he was concluding a binding contract at this stage, entered into it under conditions s/he was unaware of and does not, therefore, want to perform the contract subsequently. In these cases, the validity of the sales contract might also be in question between the parties. However, the reason reported most often for refusing the transfer of property seems to be that the seller has found another buyer who is willing to pay a higher price.

¹⁴² Schmid, C.U. & Hertel, C. with contribution from Wicke, H., (2005). "Real Property Law and Procedure in the European Union", General Report (final), European University Institute (EUI). Available at: <http://www.eui.eu/Documents/DepartmentsCentres/Law/ResearchTeaching/ResearchThemes/EuropeanPrivateLaw/RealPropertyProject/GeneralReport.pdf>

In Belgium, it was reported that cases of refusal of the seller to pass an authentic deed in front of a notary are decided by courts every now and then. If the court finds that a valid sales contract was concluded, it will order specific performance, i.e. the seller will be ordered to appear in front of a notary to pass the authentic deed.

Risk of fraud of dealing with non-existing sellers

The exceptional risk that **a potential buyer deals with a non-existing seller** was reported for some Central and Eastern European countries including Slovenia and Bulgaria. This seems to be a particular problem if **the notary or another official authenticating the seller's identity is only involved at a late stage of the conveyancing process or is not involved at all**. In these cases, buyers may think that they have entered into a legally binding agreement and may even start performing the contract although the other contractual party does not exist.

Risks related to preliminary contracts and sales contracts validly concluded without professional help

The conclusion of legally binding preliminary contracts is possible in many jurisdictions before the parties have received legal advice. Therefore, **the risk exists that parties enter without the necessary caution into a preliminary contract**. If the contract is, thereafter, refused by a party without good reasons, this leads to different consequences in various EU Member States.

In Bulgaria for example, a down payment of 10 % of the purchase price is usually due at the conclusion of a preliminary contract. If the buyer, thereafter, refuses to conclude the sales contract without good reasons, s/he will lose this payment, which functions as a sort of deposit. If the seller refuses without good reasons to conclude the final contract, s/he will have to refund the deposit twice. Considering the high value of real estate transactions, this practise must be considered as a substantial risk for buyers.

To counteract such risks, in Denmark, **a statutory right of a consumer-buyer of residential property to withdraw from the preliminary contract exists**. If the consumer uses this right, s/he must pay a fee of 1% of the purchase price, which is rather low. It was reported that this leads to a delay in some sales transactions (as parties may wait until the end of the withdrawal period). In these cases, buyers may request and expect a discount of the price originally claimed.

In Germany, a preliminary contract is not enforceable if it has not been notarised. Consumers with limited legal knowledge may not know the notarisation requirement at this stage if no professional service provider who could give advice is involved. Therefore, the conclusion of a written preliminary contract without any legal effect could, in theory, lead to wrong expectations of one of the parties, the consumer with limited legal knowledge in particular. The same holds true for the Slovak Republic, where preliminary contracts do not have binding effect.

Problems related to preliminary checks: public law permits and burdens

Before the contract of sales is concluded, preliminary checks are usually carried out, which are of high importance. These may reveal that **the buyer has not been informed or has incorrectly been informed** about relevant features of the plot and/or building.

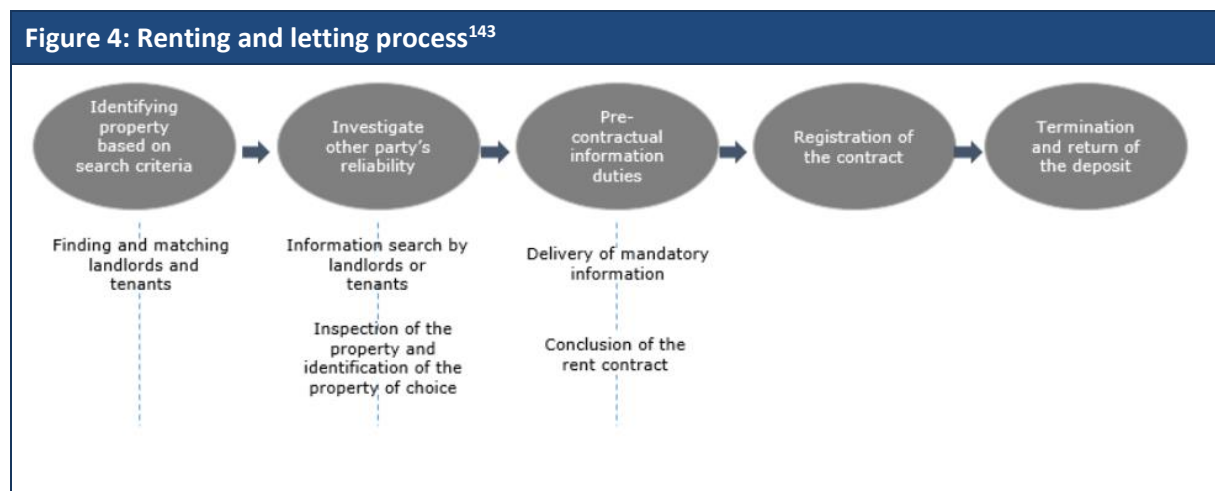
Two typical risks were reported by the national expert of Croatia: i) Sometimes there can be a problem with data which is inaccurate or not promptly updated in the land register, and ii) problems may also arise when the content and scope of buildings and use permits (which may be mandatory for a specific use of a completed building) were not known to the buyer. The latter problems were reported to cause most legal disputes in connection with the transfer of property in Croatia. In a similar context, the risk of selling the property twice to different buyers was reported for the Czech Republic.

In Denmark, it may also be difficult to check the necessary permits for the buyer for the purchase and use of the property or for the permission to acquire real estate in Denmark when the buyer is a foreigner. Even though it is usual that these checks are carried out by the buyer's lawyer, **it sometimes turns out too late that the permits are missing**. This may lead to a forced sale of the newly acquired property generally with losses.

Also, for Poland it was reported that the preliminary checks are often not sufficient. In Sweden, problems at the level of preliminary checks were reported, as many real rights that are validly established may not be registered.

3.1.2 The process to rent or let a property

As it was the case for conveyancing, the renting and letting process can be divided into several stages that have been identified through the literature review and the country fiches. The process of renting and letting is summarised in Figure 4.



Source: Main Task 1 Analysis

Following the definition of each of the above-mentioned stages, national specificities will be provided thus enabling to identify cross-country divergences in the renting and letting process. For each of the identified stages, specific attention will be paid to the actors intervening in the process as well as to the potential risks that may arise at each stage.

Identification of the property

Finding and matching landlords and tenants

At the outset, **no major differences are observed between the buying/selling and the renting/letting process**. Landlords, on the one hand, advertise their property to be let in newspapers, through online portals or through the intermediation of a real estate agent. Potential tenants, on the other hand, can search for a property to rent by consulting newspaper advertisements, online portals or property advertised by real estate agents. In addition, **personal contacts** may also be useful for the identification of the counterpart in the transaction. As it was the case for the buyer, the potential tenant first defines the research criteria including the profile of the property s/he wishes to rent (e.g. location, size of the property) as well as financial aspects such as the suitable amount of monthly rent.

The engagement of a professional in the preliminary stage of identification of a property is optional in all the countries in scope.

National experts indicated that **explicit reference to a real estate agent** is generally made in Bulgaria, Greece, Finland, France, Romania, and in the UK. In Luxembourg, most often the process involves a real estate agent who assists the landlord in i) defining the

¹⁴³ Figure 4 provides a simplified view of the renting and letting process without taking into account national specificities. These are discussed in the whole Section 3.1.2.

monthly rent, ii) advertising the units to rent in newspaper and on websites, and iii) organising the collection of files of potential tenants.

In Belgium and in France, **parties themselves generally conduct the search for a suitable tenant or for a suitable property** to rent. However, it has been noted that tenants and landlords increasingly consult a real estate agent at the beginning of the transaction. In Germany, it is quite common that the landlord identifies the tenant without consulting a real estate professional; similarly, in Iceland, private sector rent brokers exist but it is unusual for consumers to refer to them.

Investigation of the other party's reliability

Information search by landlords and tenants

This step consists in the information search on the other party. On the one hand, the landlord can search for information in order to avoid renting the property to an unsuitable tenant. On the other hand, the tenant can check in the Land register if the landlord is the owner of the property that is going to be rented.

From a viewpoint of a landlord, an unsuitable tenant can be defined as a lessee that:

- Uses the premises in a manner which violates the contract;
- Flagrantly or persistently violates house rules;
- Is in rent arrears for more than one month;
- Subleases the premises without the lessor's (normally written) consent.

The survey of Latvian notaries carried out in 2013, further defined an unsuitable tenant as a lessee that:

- Fails to pay rent and to make other payments on time;
- Does not keep in order the rented dwellings;
- Damages or destroys the rented dwellings;
- Leaves the dwellings without prior warning¹⁴⁴.

Thus, it is frequent that the landlord requests information about the tenant's current employment situation, salary or outstanding debts to reduce the risk of being left with the cost of unpaid rent or damages to the property.

While in some countries there is **no obligation for landlords or tenants to provide information** to the counterpart related to their personal situation (for example in Estonia, Greece, Hungary, Poland and Romania), in other countries the list of pieces of information that the landlord can request to the tenant is defined by law. This is the case in France where the list of documents that may be requested by the landlord, the notary or the real estate agent has been defined by Law D. n° 2015-1437, 5 Nov. 2015: JO 24 Nov. 2015.

Depending on the country, the following pieces of **information on the tenant can be collected by the landlord**:

- ID or passport;
- Employment situation and income;
- Bank account statement;
- Outstanding debts;
- Number of children;
- Pets;
- Whether the tenant is a smoker.

¹⁴⁴ Survey of Latvian notaries and The research centre SKDS of 2013 [Latvijas notāru un SKDS pētījums] available at <https://www.latvijasnotars.lv/lv/actual/news/entry/169/>.

Sometimes, bank references, employment or personal references may be requested as it is the case in Ireland and in Spain. In Germany, the "SCHUFA Auskunft" about the personal creditworthiness is almost always required¹⁴⁵. In Luxembourg, where the demand for properties to rent most often exceeds the supply, landlords request the copy of the current employment contract of the potential tenant and/or a copy of the last three payslips.

The collection of information on the tenant's employment situation may **prevent the risk for landlords to let the property to an unsuitable tenant**. This risk seems to be common across the 28 Member States, Norway and Iceland. Simultaneously, information search may lead to **discrimination of the tenant** by landlords by virtue of his/her belonging to ethnic minorities or based on their income category. Collected evidence shows that some forms of discrimination can be observed in the real estate market. Participants to the focus group in Germany highlighted that the buyer/tenant is generally dependent on the personal experiences and opinions of the seller/landlord and that the selection of the final tenant is not transparent.

Besides potential discrimination, there is a risk for tenants that **renting is granted from a person that is not the landlord**. This situation occurs when false owners cheat and pretend to be landlords. To avoid this problem, checks in the Land register are recommendable. Nonetheless, the legal position of the landlord cannot always be checked since, depending on the country, a large number of apartments are not registered in the land register (e.g. Hungary).

Inspection of the property

Besides the investigation of the other party's reliability through information search about the counterpart, it is common practice for the tenant to visit the property before making the decision to rent. The potential tenant generally shortlists a limited number of properties based on his/her research criteria and subsequently inspects the properties. The **inspection of the property** gives the opportunity to a potential tenant to pinpoint eventual defects and signal these to the landlord. The inspection of the property is common practice in each of the 31 countries/regions, but it may of course have a different scope and intensity.

The intervention of a professional during the inspection of the property by tenants is never mandatory but optional in all countries. However, if a real estate agent is involved in the process of concluding the rent contract, some countries such as Croatia and Slovenia require the engagement of the agent also at the stage of the inspection of the property (e.g. Art. 23 Slovenian Real Estate Agencies Act). Most often, the inspection of the property is carried out by the tenant accompanied either by the landlord or by the real estate agent. In Greece, usually an engineer or an advocate are also involved at this stage.

Pre-contractual information duties

Delivery of mandatory information

Before concluding the rent contract, **mandatory information is delivered to the tenant by the real estate agent and/or the landlord**. This extends to the characteristics of the property, the contract conditions (including the duration of the contract and the amount of the monthly rent), and eventual fees. **Information about hidden defects of the property** may also be conveyed to prospective tenants.

In some cases, **the pieces of information that compulsorily need to be provided to potential tenants are defined by law**. In France, the landlord must supply a document called "dossier de diagnostic technique" (technical diagnostic record), which includes: i) an

¹⁴⁵ Schufa Holding AG is an information bureau collecting information about failing credits and unpaid bills. It calculates an index of personal creditworthiness. Schufa issues an information sheet, which is designed to be given to a landlord by the tenant and which only contains the information necessary for that purpose. It costs €29.95, which must be paid by the tenant

energy performance certificate, ii) a certificate to identify the risk of lead or asbestos exposure, when applicable, iii) a status report regarding the electrical and gas installation, and iv) a report about the natural and technological risks connected to the property. Similarly, in Spain, the minimum information to be provided is defined based on RD 515/1989 and includes, for example, information on building layouts, a description of the property, a description of the materials employed for the construction of the building, and the amount of the monthly rent. In Slovakia as well, the law requires that the landlord/tenant agreement contains personal data (name, address, DOB, etc.), the correct address of the property (address, number of flat etc.), the price of rent and the price of utilities (electricity, water, heating, garbage etc.).

Within this step, the **delivery of information to tenants on the energy performance certificate** deserves particular attention. This practice prescribed by European law (Directive 2010/31/EU on the energy performance of buildings) has become usual almost in all of the 30 countries examined. There are a few exceptions such as in Latvia and in Luxembourg where the delivery of the energy performance certificate to tenants was indicated as not mandatory for landlords. Nonetheless, in Luxembourg the new tenant has the right to ask for the energy performance certificate. In Malta, the delivery of the energy performance certificate seems to be largely unobserved by landlords and in Romania this practice is not usual. It was also reported from Bulgaria that the delivery of the **Energy Performance Certificate** is still uncommon in practice. Finally, Iceland is the only country that has not implemented Directive 2010/31/EU on the energy performance of buildings, therefore, the energy performance certificate does not apply in the country.

Overall, **omitted information is a problem that may affect both parties in the transaction**. On the one hand, the tenant may be affected if the landlord withholds information about hidden defects of the dwelling. On the other hand, the tenant may withhold information concerning the current income, thus the possibility for him/her to afford the dwelling and pay the monthly rent.

Conclusion of the rent contract

Following the delivery of mandatory information to consumers, **the rent contract can be concluded**. It is usual in most countries, and in some even mandatory, that the contract is concluded in writing and signed by both parties. The payment of the monthly rent and of the deposit follows (see Section 7.3).

Registration of the contract

Different **systems of registration** of rent contracts exist. Many countries do not know any forms of registration of rent contracts. In some countries, though, **special registers for rent contracts** were set up. Their main purpose is to ensure the correct taxation of the income generated by the landlord or to facilitate systems of collective consumer protection, as in Ireland. Besides the special registers for rent contracts, some countries require or allow a rent contract to be registered in the general register in which real rights on land are documented, i.e. typically the **land register**. It is also possible that both systems of registration are combined, i.e., that registration in a special register for rent contracts is mandatory and, in addition, a registration in the land register is optional or even mandatory. An overview of these systems of registration is provided in the table on the following page.

Table 14: Overview systems of registration of rent contracts

	No registration	Registration in a special register mandatory	Registration in a special register optional	Registration in the land register mandatory	Registration in the land register optional
AT					X
BE		X		(X) ¹	
BG					X
CY					(X) ²
CZ					X
DE	X				
DK					X ³
EE					X
EL				(X) ⁴	
ES					X
FI					X
FR					
HR					X
HU	X				
IE		X			
IT		X		(X) ⁵	
LT					X
LU	X				
LV					
MT		X			
NL					
PL					X
PT		X		(X) ⁶	
RO					X
SE	X				
SI					X
SK					(X) ⁷
UK – EN	X				
UK – SC	X				
IS			X ⁸		
NO					X
Total	6		1	4	15

Note 1: If the rent has a duration exceeding 9 years, it must be published in the mortgage register to gain opposability towards third parties in good faith (art. 1 of the Mortgage Act). The same is true for contracts containing a discharge of at least 3 years of rent payments. If the rent contract was not registered in the mortgage register but has been registered at the Registration Office, it is only opposable for a period of 9 years.

Note 2: The option to register the contract in Register of Registration of Leases of the Land Registry only refers to rent agreements with a duration of more than 15 years.

Note 3: If the rental agreement contains unusual terms that are not automatically protected by rental legislation or other legislation, tenants may require the rental agreement to be registered on the property in the land register (tinglysning.dk).

Note 4: The contract must be registered in the Land Register if the duration of the contract is more than 9 years.

Note 5: This is mandatory for rent contracts exceeding a duration of 9 years.

Note 6: Mandatory if the duration of the rent contract exceeds six years.

Note 7: A lease contract on agricultural land that is agreed for periods longer than 5 years can be registered in land register. No other contracts can be registered.

Note 8: The registration at the District Commissioner's office is optional, but highly recommended and usual, due to the fact that most social benefits connected to housing are subject to such a registration. Moreover, it is reported that registration is supposed to protect consumer rights.

It is **mandatory to register the rent contract in a special register for rent contracts** in Belgium, Greece, Italy, Ireland, Malta, and Portugal. To provide an illustration, in Belgium, the (residential) rent contract must be registered at the registration office within two months after its conclusion. In Luxembourg, the registration of the contract used to be mandatory before 2017, but many contracts were not registered in practice. From 1 January 2017, the registration of the rental contract is not mandatory any more.

While in countries such as Italy, Malta and Portugal, the main purpose of the registration in a special register for rent contracts is to secure correct taxation, in Ireland a system of public consumer protection is central. In Ireland, in fact, private landlords are obliged to register any tenancy of a dwelling rented by them with the Residential Tenancy Board. The Private Residential Tenancy Board has powers to enter and inspect a dwelling for the purposes of determining whether any particular feature specified in the application for registration is correct. The landlord must register the tenancy within one month of commencement. In order to register, the landlord must submit an application along with a fee corresponding to 90€. In Belgium, the registration in the special register is mandatory to give the contract effect towards third parties, e.g. a buyer of the dwelling. However, this effect is limited to contracts with a duration of not more than nine years. Otherwise, a registration in the land register is required.

In Iceland, the registration of rent contracts in a specialised register is optional but highly recommendable. It is required to allow the tenant to apply for social benefits such as housing allowance and it is supposed to be an element of consumer protection.

In other countries, the contract must be **registered in the land register** (or similar general device for the registration of rights on real property), **but only in case the period of rent exceeds a certain duration**. In Greece and in Italy, a rent contract must be registered in case the duration of the rent agreement is longer than nine years. Similarly, in Portugal, registration is mandatory in case the rent contract has a duration of more than six years.

Registration of the rent contract is not possible in Germany, Finland, France, Hungary, Luxembourg, the Netherlands, Slovakia, and the UK.

In the remaining countries, the registration of the rent contract in the land register seems to be optional.

Moreover, the substantive law effects of registration vary. In some countries, the **registration in the special register** for rent contracts is a **constitutive element** for the formation of a rent contract, in others it is only of **declaratory nature**. The (optional) registration in the land register is typically required to give the rent contract effect towards third parties, e.g. a buyer of the rented object. However, in some countries that allow an optional registration in the land register, the rent contract can also be enforced towards third party buyers without registration, i.e. the registration is only of declaratory nature.

The effects of the lack of registration in a special register for rent contracts may be illustrated with the Irish example. Where a landlord fails to register the tenancy, s/he may face prosecution by the Residential Tenancy Board for failing to register after being warned.

In Italy, a strict regime was introduced to force landlords to register the rent contract in time. If the contract was registered, the tenant or an official can apply for registration. In this case, the contract is deemed to be concluded for a period of four plus four years from the moment of registration, which is longer than normally, and the rent is limited to three times the cadastral rent, which is in most cases much lower than the typical market price.¹⁴⁶ However, the latter consequence is no longer available following a decision of the constitutional court.

¹⁴⁶ Cf. Ranieri Bianchi (2014), Tenancy Law and Housing Policy in Multi-level Europe: National Report for Italy, 85 et seq. Online available at: http://www.tenlaw.uni-bremen.de/reports/ItalyReport_09052014.pdf

Performance of the contract

The last step consists in the **transfer of the rent deposit to the landlord and in the payment of the monthly rent** during the performance of the contract on the side of the tenant and the delivery of the dwelling to the tenant on the side of the landlord. The deposit represents a guarantee for the landlord in case damages to the property are made during the tenancy. In such cases, the deposit would (partially) cover the costs for the reparation of damages. The amount of **the deposit** ranges on average from 1-month rent to 3-month rent. There are differences between countries regarding whether the level of rent is subject to a system of rent control or can be freely agreed between the parties.

Termination of the rent contract and return of the deposit

The **level of security of tenure for the tenant varies extremely between the countries** subject to the study. The regulation of the termination of rent contracts, be they open-ended (as in the German tradition) or limited to longer periods of several years (as in the Code Napoleon tradition), and the possible restrictions to the conclusion of time limited contracts without legitimate reasons are very diverse.

The deposit **is returned to the tenant after termination of the tenancy** if no damages to the property are observed. Conversely, landlords may **refuse to pay back the deposit or parts of it** at the termination of the tenancy contract, claiming that the tenant caused damages to the dwelling. In many jurisdictions, the right to withhold the deposit is limited to physical damages to the rented object. An offset with other claims that the landlord may have, such as unpaid rent, is often explicitly forbidden. Related to this, in some countries, it may be arduous for the landlord to request and obtain the eviction of the tenant due to legislative measures aiming at protecting the tenant. The **eviction procedure may be complex** and lengthy and also implies costs for the landlord. In Hungary, for example, the eviction of the tenant has to be preceded by civil litigations confirming the validity of the termination of the tenancy agreement. This procedure may also take several years¹⁴⁷.

3.2 Consumer protection through mandatory professional intervention

This section focuses on one of the key elements for consumer protection in real estate transactions, namely the **mandatory involvement of professionals**, in particular of legal professionals (such as notaries and lawyers), and ‘non-legal’ experts (such as real estate agents and architects). The above-mentioned professionals can protect consumers from entering into potentially highly detrimental contracts. Whether professional intervention is effective depends, however, on the time at which a professional is involved and on his/her obligation to provide neutral guidance.

To answer this question, the conveyancing process is simplified and divided into four parts only:

- The time preceding the creation of **any legal obligation**;
- The time preceding the creation of **a significant obligation**;
- The time preceding the **existence of an obligation to specific performance**, and
- The time following the **transfer of property**.

¹⁴⁷ For information on eviction procedures in a comparative perspective, see, Padraic Kenna, Sergio Nasarre, Peter Sparkes and Christoph U. Schmid, *Evictions in Europe*, forthcoming 2018, Elgar.

3.2.1 Involvement of legal professionals in the conveyancing process

Based on the four stages previously listed, a summary of the involvement of professionals in the conveyancing process is provided in the table below.

Table 15: Involvement of professional legal service providers				
	Before any obligation is created	Before a relevant legal obligation is created (10 % of value)	Before the obligation of specific performance is created	After the duty of specific performance is created or the ownership has been transferred
AT	Not mandatory but in consumer cases very usual involvement of a notary	Not mandatory but in consumer cases very usual involvement of a notary	Not mandatory but in consumer cases very usual involvement of a notary	Mandatory involvement of a notary (or – in theory – a district court)
BE	Not mandatory but in consumer cases not untypical	Not mandatory but in consumer cases not untypical	Not mandatory but in consumer cases not untypical	Mandatory involvement of a notary ¹ (or – in theory – a court or state official)
BG	Not mandatory but usual (lawyer or notary)	Not mandatory but usual (lawyer or notary)	Mandatory involvement of a notary	Mandatory involvement of a notary
CY	Not mandatory but involvement of lawyers typical	Not mandatory but involvement of lawyers typical	Mandatory involvement of lawyers	Mandatory involvement of lawyers
CZ	Not mandatory but involvement of a lawyer or notary typical	Not mandatory but involvement of a lawyer or notary typical	Not mandatory but involvement of a lawyer or notary typical	Not mandatory but involvement of a lawyer or notary typical
DE	Not mandatory, but the involvement of a notary is typical	Mandatory involvement of a notary	Mandatory involvement of a notary	Mandatory involvement of a notary
DK	Not mandatory at this stage, but a real estate agent who is basically trained in related legal matters is typically involved	Mandatory involvement of a real estate agent who is basically trained in related legal matters; normally thought not mandatory, both sides are represented by a lawyer in addition	Mandatory involvement of a real estate agent who is basically trained in related legal matters; normally thought not mandatory, both sides are represented by a lawyer in addition	Mandatory involvement of a real estate agent who is basically trained in related legal matters; normally thought not mandatory, both sides are represented by a lawyer in addition
EE	Not mandatory, but the involvement of a notary is typical	Mandatory involvement of a notary	Mandatory involvement of a notary	Mandatory involvement of a notary
EL	Not mandatory, but the involvement of a notary or lawyers is typical	Not mandatory, but the involvement of a notary or lawyers is typical	Mandatory involvement of a notary	Mandatory involvement of a notary
ES	Not mandatory, but involvement of notary or lawyer is typical	Not mandatory, but involvement of notary or lawyer is typical	Not mandatory, but involvement of notary or lawyer is typical	Mandatory involvement of a notary if a mortgage is required
FI	Not mandatory, but legally well trained real estate agents are typically involved	Not mandatory, but legally well trained real estate agents are typically involved	Not mandatory, but legally well trained real estate agents are typically involved	Not mandatory, but legally well trained real estate agents are typically involved
FR	Not mandatory, but a notary is typically involved	Mandatory involvement of a notary	Mandatory involvement of a notary	Mandatory involvement of a notary
HR	Not mandatory, but involvement of lawyer typical	Not mandatory, but involvement of lawyer typical	Not mandatory, but involvement of lawyer typical	Mandatory involvement of a notary
HU	Not mandatory involvement	Mandatory involvement of a lawyer or notary	Mandatory involvement of a lawyer or notary	Mandatory involvement of a lawyer or notary
IE	Not mandatory	Not mandatory	Mandatory involvement of a Solicitor	Mandatory involvement of a Solicitor
IT	Not mandatory, but notaries are often involved	Not mandatory, but notaries are often involved	Not mandatory, but notaries are often involved	Mandatory involvement of a notary
LT	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Mandatory involvement of a notary	Mandatory involvement of a notary
LU	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Mandatory involvement of a notary	Mandatory involvement of a notary

Table 15: Involvement of professional legal service providers

	Before any obligation is created	Before a relevant legal obligation is created (10 % of value)	Before the obligation of specific performance is created	After the duty of specific performance is created or the ownership has been transferred
LV	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Mandatory involvement of a notary
MT	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Mandatory involvement of a notary	Mandatory involvement of a notary
NL	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Mandatory involvement of a notary	Mandatory involvement of a notary
PL	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Mandatory involvement of a notary	Mandatory involvement of a notary
PT	Not mandatory involvement	Mandatory involvement of a lawyer or notary	Mandatory involvement of a lawyer or notary	Mandatory involvement of a lawyer or notary
RO	Not mandatory, but involvement of notary typical	Not mandatory, but involvement of notary typical	Mandatory involvement of a notary	Mandatory involvement of a notary
SE	Not mandatory, but typically a legally trained real estate agent is involved	Not mandatory, but typically a legally trained real estate agent is involved	Not mandatory, but typically a legally trained real estate agent is involved	Not mandatory, but typically a legally trained real estate agent is involved
SI	Not mandatory	Not mandatory	Not mandatory, but involvement of a notary or lawyer typical	Mandatory involvement of a notary
SK	Not mandatory	Not mandatory	Not mandatory, but involvement of a notary typical	Mandatory involvement of a notary
UK – EN	Not mandatory, but solicitor or licensed conveyancer normally involved	Not mandatory, but solicitor or licensed conveyancer normally involved	Mandatory involvement of a solicitor or licensed	Mandatory involvement of a solicitor or licensed
UK SC	Not mandatory, but solicitor normally involved	Not mandatory, but solicitor normally involved	Mandatory involvement of a solicitor	Mandatory involvement of a solicitor
IS	Not mandatory, but real estate agent with basic legal training in the field usually involved	Not mandatory, but real estate agent with basic legal training in the field usually involved	Not mandatory, but real estate agent with basic legal training in the field usually involved	Not mandatory, but real estate agent with basic legal training in the field usually involved
NO	Not mandatory, but real estate agent with legal training in the field usually involved	Not mandatory, but real estate agent with legal training in the field usually involved	Not mandatory, but real estate agent with legal training in the field usually involved	Not mandatory, but real estate agent with legal training in the field usually involved
Total	Mandatory: 0	Mandatory: 6	Mandatory: 18	Mandatory:

Note 1: Between the parties the title may already have passed before the involvement of a notary due to the causal system. To render the transfer effective (invokable) towards third parties, the draft of an authentic act capable of registration is, however, required.

In most countries that legally require the involvement of a notary or another legal professional **only at a late stage of the conveyancing process** (such as Austria, Belgium, Greece, Italy or Latvia), in practice, **the professional normally participates already at an early stage of the process**. For example, even if the intervention of a notary is only mandatory for certifying the signatures, it is usual in practice that the notary already gives advice to the parties before they enter into a legally binding agreement. This, in fact, creates a **high level of consumer protection**. However, fraudulent behaviour of one party trying to force a consumer into a contract without any form of legal advice cannot be excluded. On the other hand, while leaving more flexibility to professional parties in a transaction, this constellation safeguards consumer protection in most cases.

The same holds true, in principle, for countries requiring the involvement of legal professionals before a contract is concluded but allowing preliminary contracts (or other forms of anticipated agreements) which may lead to substantial claims for damages before

the involvement of any professional services. This may be the case in Bulgaria, Ireland, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Romania and Cyprus. Such pre-contracts leading to significant obligations are reported to be uncommon.

A similar situation may be found in Spain. Here, the involvement of a notary is only required if a mortgage needs to be set up. Since this is the case in most real estate transactions, the involvement of a notary is *de facto* obligatory. Nonetheless, the transfer of real estate in Spain is possible without the involvement of any legal professionals.

An exception from this constellation seems to exist in Croatia. While the involvement of a notary is mandatory to certify the signatures on the sales contract for the registration in the Land Register, his/her involvement is uncommon at earlier stages, including the conclusion of the binding sales contract itself. Until that point, it is not mandatory to involve any legal professional, but consumers will typically be represented by lawyers. Similarly, in Slovenia and in the Slovak Republic, even if a notary is involved to authenticate the signatures of the parties, it is apparently not usual to consult the notary at an earlier stage, i.e. pre-contracts are usual and normally concluded without legal advice.

The **lowest level of consumer protection** is observed if the involvement of a legal professional is not required at all. This is *inter alia* the case in the Czech Republic, Sweden, Finland, Norway and Iceland. Here, contracts of a high value, which may be detrimental to consumers, can be concluded and enforced without any legal advice provided to the consumer. Nevertheless, most consumers choose to contact a lawyer or a notary to prevent such risks. However, **this protection is not guaranteed by law**. The same, in principle, holds true for Denmark. However, the involvement of a real estate agent is mandatory, and the professional regulation of agents ensures that they are trained in land law. Therefore, basic expertise on legal issues will be available to the consumers. As a result, the **mandatory intervention of a real estate agent ensures a relatively high level of consumer protection**. That notwithstanding, most parties decide to resort to additional legal advice by a lawyer.

In sum, mandatory involvement of professional service providers could be one route to protect **consumer protection**; however, this route can only be achieved in countries such as Germany, Estonia and France in which the involvement of a notary is legally required **before a relevant legal obligation is created**. The same applies for Hungary and Poland where it is mandatory to consult a lawyer or a public notary before the sales contract is drafted. After all, while mandatory involvement of notaries or lawyers at a later stage (after the sales contract has been drafted) might help to increase the level of consumer protection, **most countries do not ensure the involvement of a legal professional at all relevant stages of the transaction**.

3.2.2 Involvement of real estate agents or other technical experts in the conveyancing process

This section provides insight on the mandatory involvement of real estate agents and other technical experts in real estate transactions and in special situations. Examples are provided for specific countries.

Mandatory involvement of real estate agents or other technical experts in every transaction

According to EU legislation, an 'Energy Performance Certificate' must be presented in the conveyancing process in all Member States. While the details of the drafting of such a certificate vary, **the involvement of technical experts is thus mandatory**.

In other areas, the involvement of real estate agents or other technical experts is not usual in most EU Member States. Only Denmark requires a real estate agent to act as a technical expert in every conveyancing process. Belgium and Greece require a mandatory involvement of technical experts more frequently. However, they do not prescribe a general assessment of the property to be transferred but only an analysis of particular aspects (e.g. the absence of asbestos in building materials).

In Denmark, it is required by law that **a real estate agent acting both as a legal and a technical expert is involved in the process of conveyancing** since the very beginning of the real estate transaction. The real estate agent is required to value the property which is to be sold and helps setting the sales price before any legal obligation is created.

Although not legally required, it is, in addition, common in Denmark that **a building expert undertakes an inspection of the property** and draws up a status report on the property's physical features and defects. With a status report, it is possible for the seller to free himself/herself from a 10-year liability (together with such a report, also a change of ownership insurance needs to be agreed)¹⁴⁸.

In Greece, a 'certificate for potentially illegal surfaces' is mandatory. This, however, focuses on the legal and factual conditions of the ground on which the building is built and does not address most types of technical problems of a building.

Mandatory involvement of real estate agents or other technical experts in special situations

Belgium introduced a system that requires the **involvement of technical experts in specific situations during the conveyancing of real estate**. There exist, however, differences between the various regions, as most of the relevant powers on these issues have been transferred to the Regions:

Firstly, in all Belgian Regions, on the basis of the Act of 1971 concerning the sale of building 'on plan',¹⁴⁹ the intervention of an architect is required i) if (part of) the building is sold to a private party prior to its completion and ii) that party is obliged to make a down payment before the building is built. The architect must control and sign the plans for the building and these plans must be added to the agreement. Outside the scope of application of this Act, all parties can, on a non-mandatory basis, decide to ask for the expertise of an architect before entering into the agreement.

Secondly, in all Belgian Regions, the seller must obtain a certificate that declares that the oil tank of the building, in case there is one, is safe. This can also be recognised by a mark, such as a coloured sticker, on the tank. Oil tanks below a certain volume must, however, only be mentioned in the sales agreement.

Thirdly, in all three Regions, it is compulsory to provide the purchaser with an Electricity Certificate at the moment that the authentic deed is passed. This certificate can only be drafted by a licensed expert organisation who controls the electricity system of the building. If the last Electricity Certificate predates 1 October 1981, a new control must take place.

In addition, in the Flemish Region, the seller of real estate must obtain a soil certificate from the Public Flemish Waste Company (OVAM), before entering into a preliminary agreement. Compliance with these obligations is a validity requirement for the private sales agreement.

3.2.3 Involvement legal professionals in the conclusion of a tenant contract

For none of the countries, it was reported that professional service providers are mandatorily involved in the conclusion of a rent contract. However, tenancy regulation is very complex in some Member States such as Austria. Therefore, unprofessional landlords as well as consumer tenants may not be aware of the obligations they are creating by entering into the rent contract, and the lack of legal advice may entail problems for both non-professional landlords and for tenants.

Only in some Member States in which the rent contract can or, under some circumstances, shall be registered in the Land Register, may notaries be mandatorily involved at the stage

¹⁴⁸ See Consolidation act 2016-11-30 nr. 1426 about authorization of building specialist and making report of condition as part of the housing inspection system

¹⁴⁹ Act of 9 Juli 1971 regulating residence building and the sale of residences that will be built or are being built, *Belgian Official Gazette* 11 September 1971, 10442.

of registration. However, since a resolution of the contract is not unilaterally possible at that stage, this is not an instrument to ensure consumer protection. In addition, contrary to the situation in the conveyancing process, it was not reported that notaries are typically involved at an earlier stage of the conclusion of the contract if their involvement is legally required for the registration of the rent contract in the land register only.

3.3 Type of services/assistance provided by real estate agents

The real estate agent represents a buyer or seller (or both, in rare circumstances with proper disclosures) in the conveyancing or renting process (also letting agent)¹⁵⁰, and is referred to as a broker affecting buyers' behaviour or as an expert that disposes of an informational advantage with respect to the client¹⁵¹. The main role of the real estate agent is to arrange the sale, purchase, rental and lease of properties, usually on behalf of clients and on a commission and/or remuneration basis¹⁵².

Section 3.3.1 sheds light on the different services provided by real estate agents by referring to their business structure, their main function and their extent of engagement. Section 3.3.2 presents further details about the services offered by real estate agents to consumers, focussing on the findings from the consumer survey and mystery shopping. According to the 2016 edition of the 'Consumer markets scoreboard', the real estate services market scored lowest in terms of the extent to which the services on offer live up to the expectations of the consumer.¹⁵³ It should be noted that this study did not ask respondents in the consumer surveys whether the services provided by real estate agents had lived up to their expectations. Instead, the study focussed on the type of problems experienced when using the services of a real estate agent (as an indicator of a "low" level of satisfaction). Detailed results for these questions are presented in Chapter 8.

3.3.1 Services provided by real estate agents: business structure, main function and extent of engagement

Real estate agents may **work independently or as part of a firm** and, in general, in each of the countries in scope, both forms of business structure coexist. In particular, when considering the business structure of real estate agencies, cross-country differences can be observed in terms of the size class in number of persons employed. In this regard, Eurostat data has been retrieved on the number of enterprises dealing with real estate activities on a fee or contract basis based on the number of employees. Data refer to year 2015. The data shows that in each of the 30 countries, micro companies outnumber small and medium-sized companies as well companies employing 250 persons or more.

¹⁵⁰ Idem - Christoph U. Schmid, Steffen Sebastian, Marcel Fink, Iain Paterson (2007).

¹⁵¹ Baryl, E.A., & Zumpano, L.V., (1995). "Buyer search duration in residential real estate market: the role of the real estate agent". *The Journal of Real Estate Research*, 10(1), 1-13. Levitt, S.D., & Syverson, C. (2008). Market distortions when agents are better informed: the value of information in real estate transactions. *The Review of Economics and Statistics*, XC(4), 599-611.

¹⁵² European Commission, (2014). "Mutual evaluation of regulated professions: Overview of the regulatory framework in the real estate sector. Report based on information transmitted by Member States and on the meeting of 6 June 2014", DG GROW. Available at: <http://ec.europa.eu/DocsRoom/documents/15486/attachments/1/translations>

¹⁵³ European Commission, (2016). "Consumer Market Monitoring Survey". Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/market_monitoring/index_en.htm (see page 59)

Table 16: Persons employed for real estate activities on a fee or contract basis in 2015					
	From 2 to 9 persons employed	From 20 to 49 persons employed	From 50 to 249 persons employed	250 persons employed or more	Total
AT	2,839	75	30	2	6,890
BE	3,699	19	9	0	15,923
BG	1,291	41	9	0	4,800
CY	238	N/A	N/A	0	572
CZ	N/A	N/A	N/A	N/A	17,075
DE	23,574	622	N/A	N/A	50,512
DK	1,408	72	16	10	3,683
EE	228	17	11	0	1,486
EL	741	15	8	0	3,758
ES	13,515	N/A	N/A	N/A	38,396
FI	1,168	52	11	4	2,765
FR	10,250	549	N/A	N/A	65,263
HR	481	27	9	2	1,363
HU	1,345	45	22	4	6,939
IE	N/A	N/A	N/A	N/A	4,655
IT	14,787	N/A	15	N/A	46,504
LT	496	36	19	1	2,103
LU	276	5	0	0	1,059
LV	1,092	52	29	3	3,144
MT	70	4	0	0	500
NL	3,319	64	33	2	14,477
PL	6,454	447	326	30	19,460
PT	2,339	37	4	2	10,425
RO	1,286	63	23	2	4,692
SE	1,658	79	39	8	7,788
SI	221	15	5	0	1,105
SK	695	38	N/A	N/A	6,766
UK	17,903	782	317	79	33,367
IS	51	0	0	0	334
NO	721	50	18	3	3,518

Source: * Services by employment size class (NACE Rev. 2, H-N, S95), [sbs_sc_1b_se_r2]

Main function

The main role of the real estate agent, regardless of the country, consists in matching the parties, i.e. buyers and sellers during the conveyancing process, and tenants and landlords during the renting process. The duties of the real estate agent, however, go far beyond the activity of matching the parties involved in real estate transactions. Real estate agents may deliver a wide spectrum of services including:

- Advertising of properties;
- Providing general advice and guidance to parties;
- Inspecting the property;
- Negotiating contractual conditions;
- Securing the transaction before the contract is concluded; and
- Drafting of the preliminary contract or the sale contract.

Especially in countries belonging to the Latin system, the real estate agent provides services before the intervention of the notary (e.g. Spain). In countries displaying a Nordic tradition, such as Finland, Sweden, Iceland and Norway, the intervention of the real estate agent generally occurs during the whole process of conveyancing, i.e. from the orientation phase until the conclusion of the contract, the transfer of the deed and payment. In fact, the real estate agent also provides legal services, namely services that in Latin systems are generally provided by a notary. Also in Latvia and Slovakia, as indicated by the national legal experts, the real estate agent is a professional involved in all transaction stages.

The survey of business operators collected evidence on the different kinds of services that real estate agents provide to consumers. Business operators were asked to list the different services and kinds of assistance they provide to consumers **involved in the process of buying or selling** a property. Figure 5 shows that, out of 18 respondents, 17 estate agents (94%) indicated that they help **'finding and matching sellers and buyers'**. Another 15 out of 18 respondents (83%) provide advertising services, mandatory information to buyers, and guidance to buyers for the signature of the sale contract and mediates the interests of the seller and the buyer. This is followed by guidance to buyers when inspecting the property and guidance to buyers when a problem arises (14 respondents or 78%).



Note: Survey of BO, Q.4: What kind of services and assistance do you provide to sellers/buyers? Please tick all options that apply.

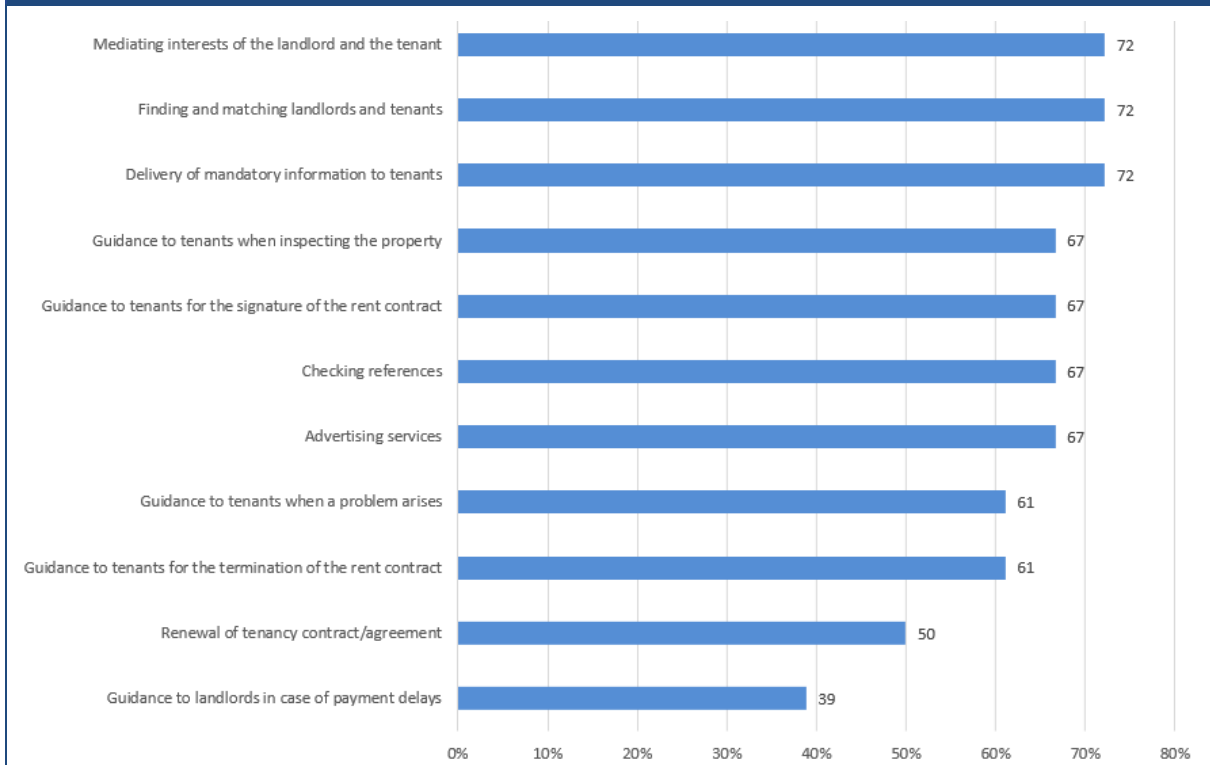
Number of BO respondents: 18

Source: Main Task 1 Survey of business operators

A similar picture can be drawn for the provision of services **to landlords and tenants**. As displayed in Figure 6, the majority of the respondents (13 out of 18 or 72%) indicated that they help finding and matching landlords and tenants, they mediate interests of the landlord and the tenant and provide mandatory information to tenants. A high number of respondents (12 out 18 or 67%) delivers advertising services, provides guidance to tenants when inspecting the property as well as for the signature of the rent contract and provides support when checking references. Another 11 respondents (or 61%) provide guidance to tenants for the termination of the rent contract and provide support to tenants when a problem arises.

Further details about the services offered by real estate agents to consumers, focussing on the findings from the consumer survey and mystery shopping are presented in Section 3.2.2.

Figure 6: Services and assistance provided to landlords/tenants (Survey of business operators)



Note: Survey of BO, Q.5: What kind of services and assistance do you provide to landlords/tenants? Please tick all options that apply. Multiple-choice question.

Number of BO respondents: 18

Source: Main Task 1 Survey of business operators

Extent of engagement

The extent of engagement indicates whether the intervention of a professional is mandatory for the successful conclusion of a real estate transaction. Based on insight provided by national experts, it was concluded that **in none of the countries in scope the intervention of a real estate agent is mandatory during real estate transactions**. This holds true for the conveyancing process as well as for the renting and letting process. However, in case parties in a transaction request the intervention of a real estate agent, the latter shall, in some cases, provide mandatory services to consumers including the delivery of mandatory information.

Despite the fact that the intervention of a real estate agent is not mandatory in any of the 30 countries in scope, a real estate agent is usually involved in the transaction, especially in the conveyancing process. In France, for example, 68% of transactions are carried with the intermediation of a real estate agent¹⁵⁴. In Luxembourg, most of the transactions are concluded through real estate agencies and the sale of a property without the intervention of a real estate agent is considered as an exception¹⁵⁵. In Hungary, however, only 20% of real estate transactions is carried out with the help of a real estate agent¹⁵⁶.

In case a real estate agent is consulted, specific services may need to be mandatorily provided by professionals. As part of the stakeholder consultation, business operators were asked to indicate, based on their knowledge, if there are any activities or services that real estate agents mandatorily need to provide to consumers according to the law of their country. To this question, 10 out of 18 respondents (56%) answered positively while four respondents (22%) indicated that no activities or services need to be provided mandatorily by law.

¹⁵⁴ Main Task 1 Country fiche - France.

¹⁵⁵ Main Task 1 Country fiche - Luxembourg.

¹⁵⁶ Main Task 1 Country fiche - Hungary.

3.3.2 Services offered to real estate consumers

The type of services and assistance provided by real estate agents to consumers in the market was varied and tailored to the specific transaction. These are described in turn below.

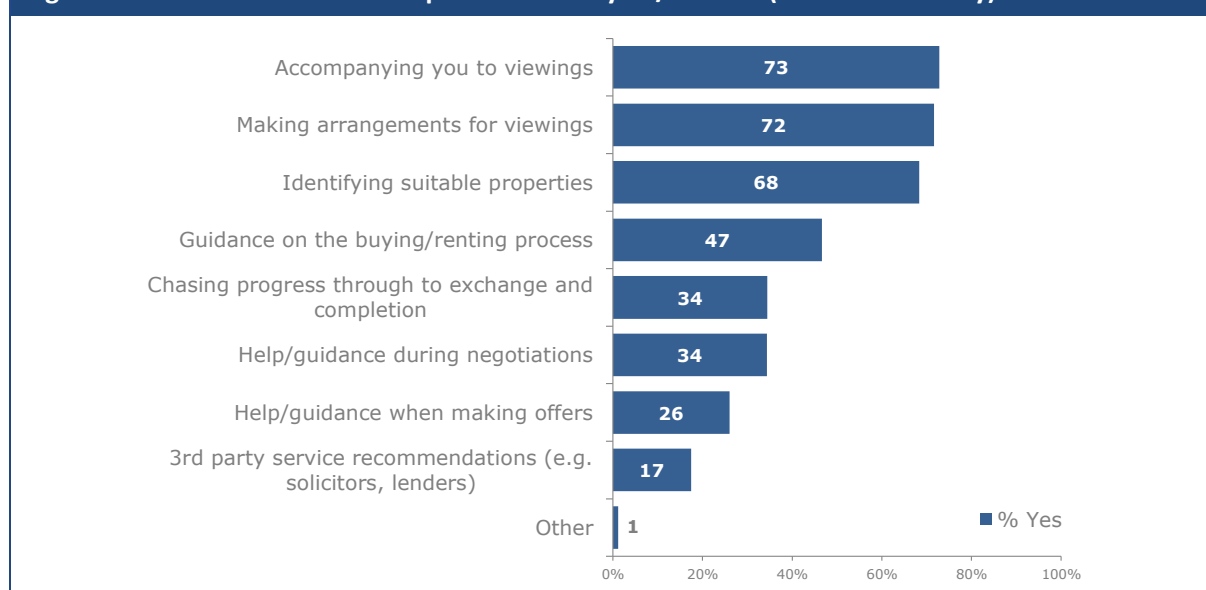
Services offered to consumers in the market on demand of properties

Real estate agents provided a wide variety of services assisting those in the market in **demand** for properties to either rent or buy. Findings from mystery shoppers evidenced that real estate agencies most generally provide renting and buying services concurrently, and this was the case for 85% of the visited websites, in comparison for instance to websites specialising in only rentals, which were a distinctive minority (1%).

According to the consumer survey, services offered to potential buyers or tenants were most frequently in relation to the arrangement and attendance to property viewings. The identification of the suitable properties and provision of guidance on the process were also frequent, albeit less common. More precisely, at an aggregate level (EU28), over 70% of survey respondents who bought or rented a property marketed by a real estate agent attended viewings that had been arranged by the real estate agent (72%) and were accompanied to these viewing by the real estate agent (73%). For 68% of the respondents, the real estate agents also assisted in identifying suitable properties. Less frequent was the guidance on the overall process (47%), or the help and guidance during the offers and negotiations (34%).

The aforementioned services seem to be the most recurrent across surveyed countries. Arrangement of viewings ranged between 89% in Malta and 29% in Norway and accompaniment to viewings between 90% in Malta and 23% in Sweden. Still, some outlier trends are revealed in the sample. For instance, in the Czech Republic the second most frequent service included the chasing progress through to exchange and completion (63%), whereas in Sweden a minority of survey respondents were accompanied to viewings (23%) but instead the most frequent service was the guidance and help in placing offers (50%). In Ireland, a very large majority of respondents (95%) received assistance in the identification of suitable properties.

Figure 7: Services and assistance provided to buyers/tenants (Consumer survey)



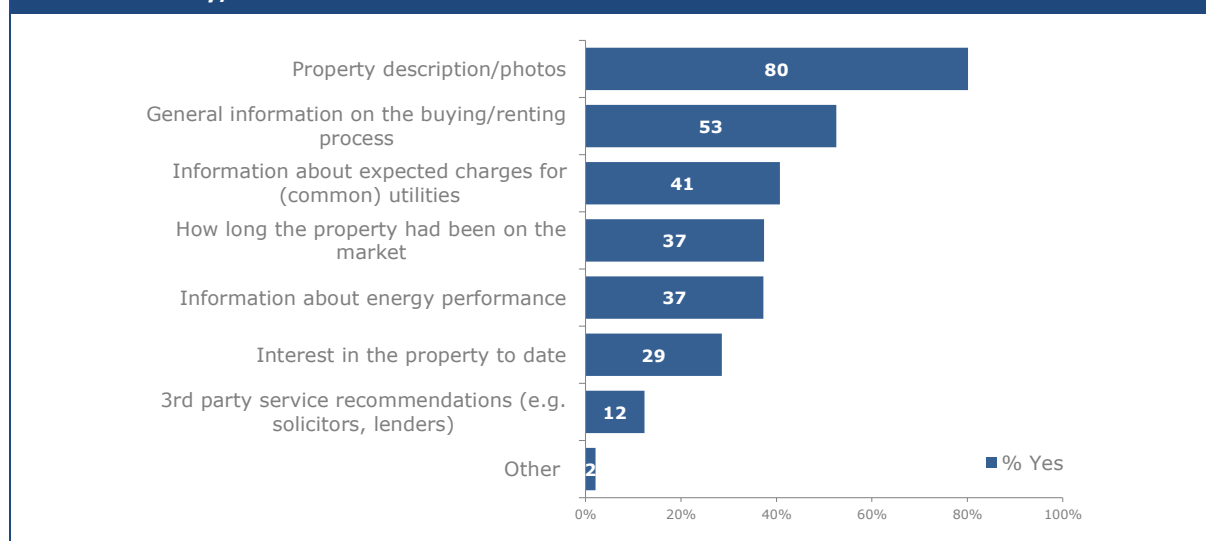
Question: Q12. You replied that you hired a real estate agent to find you a property. What services did you buy/receive from your real estate agent?

Base: respondents who hired a real estate agent to find them a property (EU28: n=1,921)

Source: Main Task 2 Consumer survey

Fewer respondents received during this process also information from the agent of the other party, namely that of the seller or landlord. In those situations, the most frequent services included information on the property and the buying or renting process as well as the expected charges for common utilities. More precisely, at an aggregate level (EU28), four out of five (80%) of the survey respondents who bought or rented a property marketed by a real estate agent received information including a description or photos of the property, whereas only two out of five (41%) received information on its expected charges for common utilities, and even fewer (37%) had received information regarding energy performance. A slim majority of respondents (53%) had received general information about the buying/renting process from the real estate agent of the seller/landlord.

Figure 8: Services and assistance provided by the real estate agent of seller/landlord (Consumer survey)



Question: Q6. You replied that you looked at properties (or bought/rented a property) marketed by a real estate agent. What information/assistance did you receive from the estate agent(s) of the seller/landlord about these properties?

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

Source: Main Task 2 Consumer survey

Additionally, consumers looking to buy a property were most likely to state that the real estate agent of the seller had provided them with energy performance information, while real estate agents of landlords appear to be somewhat less likely to provide this type of information to consumers looking to rent properties (41% vs. 37%).

The geographical breakdown of these figures is also informative. On average 53% of respondents had received general information about the buying/renting process from the real estate agent of the seller/landlord. There were, however, wide differences at the national level. For instance, this was the case for just over a third of respondents in Denmark (36%) but well over two thirds of those in Slovenia (73%). Other countries with a high proportion of consumers who had received this type of information were Austria (69%), Bulgaria (67%), Portugal (68%) and Slovakia (69%).

Also, in countries such as Denmark and Sweden, more than half of consumers had received information about the energy performance of the property from the real estate agent of the seller/landlord (65% and 53%, respectively); in Malta, on the other hand, just a handful of respondents had received this type of information.

Last, across the EU28, 12% of respondents received 3rd party service recommendations from the real estate agent of the seller/landlord; this figure was higher for buyers than for tenants (16% vs. 6%). In Bulgaria and the Czech Republic, somewhat more than a fifth of respondents (21%-22%) had received 3rd party service recommendations from the real estate agent of the seller/landlord.

Table 17: Services and assistance provided by the real estate agent of seller/landlord, by country (Consumer survey)

	Property description/ photos	General information on the buying/ renting process	Information about expected charges for (common) utilities	Information about energy performance	How long the property had been on the market	Interest in the property to date	3rd party service recommendations (e.g. solicitors, lenders)	Other
AT	83%	69%	52%	43%	24%	22%	13%	4%
BE	83%	48%	31%	49%	39%	27%	8%	3%
BG	81%	67%	19%	18%	37%	37%	21%	2%
CY	76%	55%	32%	18%	26%	32%	7%	7%
CZ	83%	56%	52%	32%	29%	34%	22%	1%
DE	84%	62%	54%	48%	31%	22%	10%	1%
DK	86%	36%	57%	64%	53%	18%	13%	3%
EE	82%	55%	58%	25%	36%	41%	10%	1%
EL	81%	64%	42%	31%	37%	39%	13%	2%
ES	71%	55%	42%	22%	34%	29%	11%	3%
FI	83%	47%	55%	32%	32%	30%	10%	2%
FR	86%	44%	44%	46%	41%	25%	15%	2%
HR	83%	63%	38%	35%	51%	37%	10%	1%
HU	87%	60%	45%	27%	38%	30%	18%	2%
IE	84%	43%	23%	40%	53%	52%	8%	2%
IT	70%	49%	36%	31%	35%	26%	11%	1%
LT	67%	57%	51%	26%	39%	28%	15%	2%
LU	83%	48%	39%	45%	28%	25%	10%	4%
LV	78%	54%	46%	22%	30%	30%	13%	1%
MT	91%	43%	14%	4%	40%	27%	8%	4%
NL	82%	57%	29%	28%	44%	22%	10%	5%
PL	72%	55%	48%	28%	37%	26%	11%	2%
PT	82%	68%	34%	37%	26%	32%	12%	2%
RO	83%	64%	34%	28%	50%	36%	16%	2%
SE	83%	45%	49%	53%	38%	33%	9%	3%
SI	80%	73%	42%	37%	39%	28%	7%	1%
SK	75%	69%	57%	32%	38%	40%	17%	3%
UK	86%	38%	21%	43%	42%	37%	12%	2%
EU28	80%	53%	41%	37%	37%	29%	12%	2%
EU15	81%	51%	40%	40%	37%	28%	12%	2%
EU13	78%	60%	43%	28%	39%	32%	15%	2%
IS	93%	61%	42%	10%	41%	38%	5%	4%
NO	85%	62%	55%	42%	27%	30%	12%	3%

Question: Q6. You replied that you looked at properties (or bought/rented a property) marketed by a real estate agent. What information/assistance did you receive from the estate agent(s) of the seller/landlord about these properties?

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

Source: Main Task 2 Consumer survey

Services offered to consumers in the market on supply of properties

Mystery shoppers visited real estate agencies in **supply** of properties to either sell or let. As with agencies dealing with the demand side of the market, visited agencies offered primarily both selling and letting services (this was the case for 81% of visited branches), and that whereas there were some agencies specialized in sales (16%) it appeared very rare to only concentrate on the lettings market.

Almost all real estate agents mentioned to the mystery shoppers that their services consist of advertising/marketing the property (99% in the 'selling' scenario and 95% in the 'letting' scenario), arranging viewings (97% and 92%, respectively) and valuation of the property offered for sale or advice on how much rent to ask (95% and 90%, respectively). A large majority of agents would also help with delivering mandatory information to buyers/tenants (90% and 85%, respectively) and drafting the sale contract or rent agreement (85% and 86%, respectively).

When selling a property, more than 80% of real estate agents said they would also offer help during negotiations (86%) and guidance on which offer to accept (81%). This type of services was somewhat less frequently mentioned by real estate agents that were asked for their services when helping to find a tenant (76% and 69%, respectively).

In both scenarios, support to get certification documents, such as the EPC, was mentioned by a lower number of real estate agents (65% in the 'selling' scenario and 56% in the 'letting' scenario).

Table 18: Services and assistance provided to landlords/sellers (Mystery shopping)

	'Selling' scenario		'Letting' scenario	
	Number of agencies	% of agencies	Number of agencies	% of agencies
Advertising/marketing the property	178	99%	133	95%
Arranging viewings	174	97%	129	92%
Valuation/advice on how much rent to ask	171	95%	126	90%
Delivery of mandatory information to buyers/tenants	162	90%	119	85%
Drafting the sale contract or rent agreement	153	85%	120	86%
Help/guidance during negotiations	154	86%	107	76%
Guidance on which offer to accept	145	81%	97	69%
Obtaining references/organise credit checks	112	62%	89	64%
Help with certification documents (e.g. energy performance)	117	65%	79	56%
Ancillary services (e.g. mortgage services, document notarisation)	114	63%	71	51%
Preparing inventory	-	-	61	44%
Other	6	3%	7	5%

Base: 180 real estate agencies in the 'selling' scenario and 140 in the 'letting' scenario (all countries)

Question: Which services are offered by the real estate agent?

Source: Main Task 4 Mystery shopping

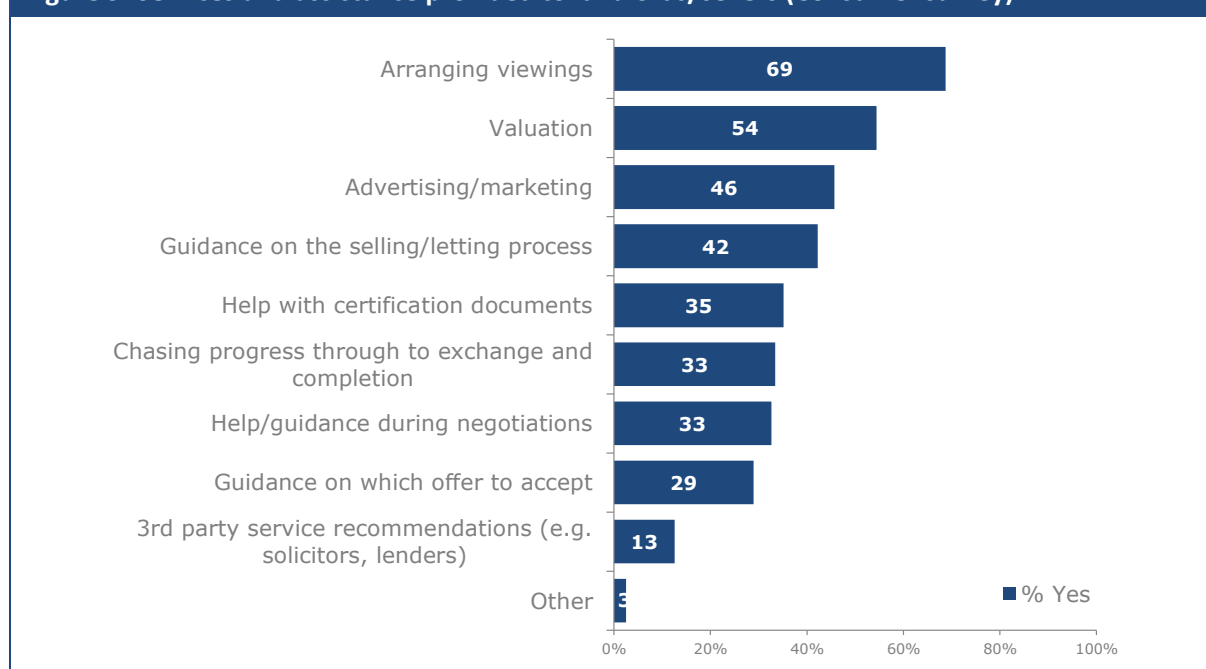
A slim majority of mystery shoppers (53%) in the 'selling' scenario completely agreed, and another 34% agreed, that the real estate agent provided clear information about the services they offer. Shoppers in the 'letting' scenario were less likely to 'completely agree' (43%), but they were somewhat more likely to agree (39%). Just a handful of shoppers across both scenarios was not satisfied about this aspect of their conversation with the real estate agent.

The largest shares of landlords and sellers surveyed across the EU28 answered that their real estate agent had made arrangements for viewings (69%), had taken care of the valuation of the property (55%) and had advertised and marketed the property (46%). Among consumers who were letting a property, arranging viewings were the most important service expected from real estate agents (63% compared to, for example, 38%

for helping to determine the value for monthly rent). Among consumers selling a property, however, valuation services were almost as important as arranging viewings (62% and 71%, respectively).

About 4 in 10 (42%) survey respondents had also received guidance on the selling/letting process and 35% had received support with certification documents. Each time roughly one in three respondents mentioned that the real estate agent had helped them throughout the selling/letting process (34%), had provided guidance during negotiations (33%) and guidance on which offer to accept (29%).

Figure 9: Services and assistance provided to landlords/sellers (Consumer survey)



Question: Y5a. What services did you buy/receive from your real estate agent?

Base: respondents who sold/rented out a property (EU28: n=4,186)

Source: Main Task 2 Consumer survey

When asking respondents if the real estate agent had referred them to any third party services, 13% answered that the real estate agent had provided recommendations on insurance products. Among these respondents who had been referred to third party services, 21% had been referred to services to conduct different type of surveys (e.g. pre-sale homebuyer surveys or building surveys) and 29% to notary/conveyancing services.

Across all countries, making arrangements for viewings and valuation of the property (or estimating monthly rent) are common services offered by real estate agents. Some of the largest variation across countries was observed in the frequency of advertising and marketing services by real estate agents; while 92% of respondents in Norway replied that their real estate agent had advertised and marketed their property, this figure was just 24% in Latvia and Poland.

General guidance of the selling or letting process was most frequently mentioned by respondents in the Netherlands (81%), Sweden (77%) and Norway (70%). Help with certification documents was mentioned by a majority of respondents in the Netherlands (60%), Iceland (58%), Slovenia (57%), Belgium (56%), Denmark, and Finland (both 54%).

Table 19: Services and assistance provided to landlords/sellers , by country (Consumer survey)

	Arranging viewings	Valuation	Advertising /marketing	Guidance on the selling /letting process	Help with certification documents	Chasing progress through to exchange and completion	Help/ guidance during negotiations	Guidance on which offer to accept	3rd party service recommendations (e.g. solicitors, lenders)	Other
AT	76%	48%	52%	45%	23%	32%	40%	28%	18%	2%
BE	82%	69%	68%	46%	56%	23%	30%	31%	8%	1%
BG	71%	38%	32%	38%	39%	13%	33%	21%	13%	1%
CY*	60%	19%	52%	26%	28%	31%	38%	16%	7%	5%
CZ	56%	44%	31%	47%	24%	53%	34%	15%	9%	2%
DE	71%	53%	33%	46%	21%	39%	36%	30%	16%	5%
DK	83%	72%	85%	60%	54%	54%	39%	47%	14%	2%
EE	72%	55%	59%	53%	35%	45%	42%	15%	13%	0%
EL	67%	55%	29%	31%	26%	36%	32%	28%	8%	0%
ES	61%	35%	49%	32%	32%	28%	27%	32%	10%	4%
FI	86%	76%	74%	42%	54%	49%	37%	48%	11%	4%
FR	81%	71%	41%	27%	44%	30%	24%	28%	12%	3%
HR	64%	45%	51%	49%	22%	25%	30%	14%	9%	2%
HU	72%	35%	53%	28%	42%	41%	22%	20%	14%	1%
IE	83%	59%	69%	42%	32%	28%	34%	34%	10%	4%
IT	54%	47%	31%	41%	41%	21%	30%	32%	16%	2%
LT	61%	33%	37%	40%	47%	33%	33%	24%	9%	4%
LU	84%	51%	49%	36%	36%	47%	28%	38%	9%	4%
LV*	41%	45%	24%	41%	40%	34%	36%	18%	12%	2%
MT*	59%	53%	48%	24%	5%	12%	28%	16%	0%	2%
NL	79%	67%	58%	81%	60%	31%	61%	58%	14%	2%
PL	46%	39%	24%	55%	49%	29%	33%	22%	7%	2%
PT	72%	27%	49%	51%	46%	51%	39%	28%	7%	0%
RO	42%	35%	30%	44%	32%	25%	30%	22%	8%	3%
SE	84%	74%	87%	77%	26%	68%	45%	32%	12%	2%
SI*	77%	48%	67%	54%	57%	28%	37%	34%	6%	1%
SK	74%	29%	51%	45%	34%	37%	20%	29%	11%	2%
UK	83%	77%	78%	35%	26%	39%	34%	26%	15%	1%
EU28	69%	54%	46%	42%	35%	33%	33%	29%	13%	3%
EU15	73%	59%	49%	41%	34%	34%	33%	31%	14%	3%
EU13	54%	38%	34%	47%	39%	31%	31%	21%	9%	2%
IS	61%	66%	75%	66%	58%	76%	60%	40%	2%	1%
NO	88%	84%	92%	70%	45%	60%	40%	44%	10%	2%

Question: Y5a. What services did you buy/receive from your real estate agent?

Base: respondents who sold/rented out a property (EU28: n=4,186)

Note: * n < 100

Source: Main Task 2 Consumer survey

3.3.3 Cross-cutting topic: cross-border aspects

One study objective is to explore the extent to which the existing regulatory framework provides protection to consumers dealing with real estate transactions in their own country but also in another EU Member State. Higher incomes, cheaper travel, and successive agreements made at a European level covering banking, tax, insurance, health care and travel have helped the overall trend of cross-border real estate transactions over the past few years. Yet, whether buying a secondary residence, making an investment, or purchasing property after relocating, cross-border real estate transactions in Europe are estimated to be a far more complex operation than purchases made in one's home country. While these hindrances differ in scope and degree, each presents difficulties that may affect both individual consumers and businesses when considering cross-border real estate transactions. Given this background, this section provides a definition of cross-border transactions and sheds light on the similarities and differences observed between local and cross-border real estate transactions based on insight provided by business operators.

Cross-border transactions would occur when a buyer or tenant in country X is purchasing or renting a property in country Y. More specifically, cross-border activities can be twofold. Firstly, cross-border transactions comprise the activity of selling/renting a property located in a foreign country to local buyers/tenants (scenario A). Secondly, cross-border transactions also include the activity of selling/renting a property located in a specific country to a foreign buyer/tenant (scenario B).

Besides the definition of cross-border transaction, a clarification for the definition of foreign consumer is provided. For the purposes of this study, a **foreign consumer** can be defined as a buyer or tenant that has an interest in purchasing/renting a property in a specific country where s/he does not live permanently.

Following semi-structured interviews with cross-border real estate sellers, evidence showed that the majority of the contacted real estate agencies (9 out of 14), both independent and franchised, do not distinguish between residential real estate transactions at the local and cross-border level both **in terms of accounting and in terms of service provision**. The remaining five real estate agencies (including four franchised agencies and one independent agency) do make this distinction. The five real estate agencies are located respectively in France, Germany, the Netherlands and the UK.

Based on evidence collected, forms of collaboration for cross-border transactions may exist among the offices of franchised agencies located in different countries, while independent agencies tend to develop their market exclusively at the local level and there is little interest for them to invest in the development of a cross-border market.

Scenario A

In the case of franchises, interviewees from the UK and France confirmed that one of the reasons why the distinction between local and cross-border transactions is not made is that franchised agencies located in different countries generally work independently. It implies that, a potential buyer located in the UK will **directly refer to a real estate agency located in the target area in France** where the consumer wishes to conclude a transaction.

Nonetheless, certain forms of collaboration exist between offices of franchised real estate agencies located in different countries. This was explained by one of the interviewed franchised agencies in Germany that makes the distinction between local and cross-border services. To provide an example, if a potential buyer from the UK interested in buying a property in France **addresses herself/himself to a franchised real estate agency in the UK**, the real estate agency may eventually establish a contact with professionals in France and collaborate with its network in France.

This practice is supported by evidence provided by the interviewed real estate agents. One **independent agency** explained they "try to provide the same services as much as feasible" and if this is not possible they turn to other agencies in the country concerned.

In specific, the Dutch independent agency illustrated that they collaborate with other real estate agencies located in Germany and in Belgium.

About the moment at which a consumer is allowed to **visit a property located abroad**, the same process applies as for local transactions. The potential buyer/tenant can visit the property/ies of interest during the orientation phase. As previously outlined, the sole difference with real estate transactions at the local level is in terms of time and costs spent to visit the property in another country. This aspect may disadvantage consumers from abroad over local consumers. The latter are closer to the property being sold or rented and can more easily visit the property.

Figure 10: Cross-border transactions – Possible scenarios



Source: Main Task 1 (Source of the maps: Esri, DeLorme Publishing Company, Inc.)

Scenario B

With regard to the process of selling/renting a property to a foreign buyer/tenant (i.e. a consumer that does not permanently live in the country where s/he is interested in buying/renting a property), the interviewed franchised and independent real estate agencies **provide the same services in cross-border transactions than in regular local transactions.**

One franchised agency in the UK reported that “at the first contact with the consumer, we would not know whether he/she is a local buyer or he/she comes from abroad”. In the Netherlands, the interviewed independent agency explained that real estate agents “**are not interested in who the buyer is and the firm provides real estate services regardless of the nationality or country of residence of the buyer**”. This given, the activity of selling/renting a property in the local market to a foreign buyer/tenant is identical to the provision of services at the local level.

Also in this scenario, there are no substantial differences between local and cross-border transactions about the moment at which the potential buyer can visit the property. Two Dutch independent agencies explained that consumers from abroad can visit the property in the orientation phase, i.e. in the first step of the conveyancing process. This implies that a potential buyer/tenant interested in buying/renting a property in the Netherlands, will be able visit the property s/he is interested in buying or renting in the orientation phase. As for scenario A, a consumer from abroad needs to spend more time and money to visit the property in another country. This aspect may disadvantage consumers from abroad over local consumers.

Provision of cross-border services to potential buyers/tenants

Within this framework, business operators were asked whether they provide cross-border services to potential buyers and to potential tenants.

With respect to the conveyancing process, all respondents (6 out of 6) indicated that they **provide cross-border services to foreign consumers interested in buying a property in their country.** Four out of six respondents (67%) provide intermediary services to consumers in their country interested in buying a property abroad. Independent real estate agents indicated that they provide services both to foreign consumers interested in buying a property in their country, and to consumers in their country interested in buying a property abroad. Independent agencies, instead, only provide services to foreign consumers interested in buying a property in their country.

Results collected are different when considering the renting process. In this case, only two respondents out of six (33%) provide services to both foreign consumers interested in renting a property in the country in which the agency is located and to local consumers interested in renting a property in another country.

Percentages of sales/renting transactions that comes from cross-border purchases

In case business operators provided cross-border services, they were asked to illustrate the percentage of sale and rent transaction that is derived from cross-border purchases/renting transactions. Two respondents out of six (33%) indicated that the percentage of their sales transactions coming from cross-border sales is less than 1%. Three other respondents (50%) selected the option 1% to 10%, and only for one respondent, sales transactions coming from cross-border purchases were between 20% and 40%. Preliminary findings suggest that the percentage of transactions coming from cross-border sales is relatively low and, generally, does not exceed a value of 10%.

For renting transactions, instead, one respondent out of two selected the option 1% to 10% and another respondent indicated that cross-border transactions were between 20% and 40%.

Services and assistance provided by real estate agents to consumers dealing with cross-border transactions

Also in case of a positive response to the question whether business operators provide cross-border services, respondents were asked to select out of a wide range of services, the ones that the estate agency provides to consumers in case of cross-border transactions. With respect to the buying and selling process, the main services/assistance provided to consumers refer to finding and matching buyers and tenants, the delivery of mandatory information to buyers, advertising services, translation services, and guidance to buyers when a problem arises. In terms of offering of cross-border services for the renting process, services range from finding and matching landlords and tenants, to the provision of legal advice and translation services, and to guidance to landlords and tenants.

Overall, results show that real estate agencies, both independent and franchised, do not generally distinguish between residential real estate transactions at the local and cross-border level both **in terms of accounting and in terms of service provision**. Besides, it seems that the same range of services (to the extent possible) are provided by real estate agencies to consumers regardless of the fact that the transaction occurs at the local or at the cross-border level.

4. Consumer information on real estate properties

This chapter considers information delivered to consumers on the characteristics of a property, as well as on prices and fees related to the transaction. It addresses the minimum standards of information, whether information is clear and comparable, and the consumer understanding of real estate advertisements.

Box 2: Summary of findings – Consumer information on real estate properties

- **The minimum standard of information varies in buying and renting scenarios.** In the former, the type and detail of minimum information to be provided, which might vary, is legally specified in some countries, albeit not all. In this regard, if there is a mortgage, the ESIS is a useful standardising tool providing consumers with all relevant financial information on the loan to make an informed choice. In the latter, minimum standard of information is significantly less well defined, and provided details tend to focus on payment and costs, rather than about property details.
- More precisely, consumers (of both buying and renting scenarios) seem to experience the greatest difficulties obtaining information on **real estate agency fees, energy performance of the property and charges for utilities.**
- **Transparency of information**, including clarity and comparability of information towards consumers, remains a challenge in the real estate market. Only a minority of survey respondents considered the information very clear and comparable. This was consistent with answers from focus groups where information was regarded both difficult to find and difficult to understand. It was further validated in the mystery shopping results, where buyers and renters considered the overview information to be insufficient, particularly as it relates to amenities and energy performance. These challenges were heightened in the case of cross-border transactions.
- The consumer **understanding of the real state advertisement** was tested in relation to the size, energy performance and key features of the property. The most successful means of presenting that information are detailed in this section. This understanding was also conditional to information-framing practices. Interestingly, real estate consumers do not seem to reach a peak of information overload and appear to have a preference for ever-more information.
- A **standardised list of pieces of information** would be beneficial for consumers since it would improve consumers' understanding of the information they should be aware of, and deliver a defined and comprehensive set of pieces of information on the property of interest.

4.1 Minimum standard for information on properties

This section presents the minimum standards for information provision, namely the pieces of information that need to be delivered to consumers as established by the law. A distinction is made between the minimum standards for information regarding the conveyancing process and the renting/letting process. In both cases, examples are provided for the countries in scope of the study. The current study shows that there are various differences across countries as regards the mandatory pieces of information to be conveyed to consumers.

While the current section focuses on minimum standards of information, findings on possible ways to improve information provision about properties on the market are provided in Section 9.3.

4.1.1 Conveyancing process

The question related to the pieces of information that need to be mandatorily delivered to consumers (to buyers, in particular) during the conveyancing process is addressed in the following paragraphs, and the main scenarios identified through the country fiches are described.

Firstly, in some countries, **a defined list of mandatory pieces of information** that shall be delivered to consumers is **included in the legislation**. To provide an example based on the data collected through the country fiches, in Romania, Art. 94 of the Government Ordinance no. 21/1992 on consumer protection establishes that information must be provided in writing before concluding a contract with the real estate agent. In specific, information about the following items shall be provided to consumers:

- Prices on the market for properties of the type which is of interest for the consumer;
- Deficiencies and inconveniences of a property of interest for the consumer that are known by the real estate agency;
- Fees applied by the real estate agency;
- The legal situation of the immovable property, and
- An estimated level of costs to be borne by the consumer in order to obtain and draft the documents related to the transaction.

In Sweden, according to Art. 18 § EAA, the real estate agent must provide a prospective buyer with a description of the property by specifying:

- The taxable value and operating costs of the property;
- The area in which the property is located;
- The presence of any mortgages, easements, or other encumbrances;
- The presence of any joint facilities, and
- The year of construction, the size and the type of the property.

Secondly, in **some countries, the national legislation does not establish a specific list of minimum standards** of information that needs to be conveyed to consumers. This seems to be the case for Croatia, Estonia, Hungary, Latvia, the Netherlands, Poland, Slovakia (no minimum standards of information to be delivered at the outset of the transaction), and the UK (England and Wales). In some cases, there is no obligation to inform parties about circumstances of which parties could not reasonably expect to be informed.

In **other countries**, despite the fact that a clear list of mandatory pieces of information is not defined by law, the national legislation establishes that professionals need to provide consumers with **comprehensive advice and with all information that they know or should know**. In this case, rather than covering a detailed list of elements (related to the conveyancing process or to the property itself) that shall be disclosed to consumers, the national legislation indicates on a general note that all circumstances that are necessary to carry out the transaction need to be disclosed. In Austria, for example, all circumstances

that are essential for the assessment of the transaction shall be provided to consumers depending on individual cases (§ 3 Maklergesetz, § 30b Konsumentenschutzgesetz). Another example refers to the case of the Czech Republic where, according to § 2446 para. 1 of the Civil Code, a real estate agent shall, without undue delay, inform the client of everything that is relevant for him/her to make the decision of concluding the contract. In Italy, according to Art. 1759 of the Civil Code, the real estate agent has the duty to inform the parties about any circumstance that can influence the legal soundness of the transaction.

In this context, it is also worth to mention the **Energy Performance Certificate**, which is a certificate that indicates the energy performance of a building or building unit¹⁵⁷ and is governed by Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings which has been implemented in all the countries in scope of the study with the exception of Iceland. The Directive establishes that 'Member States shall require that, when buildings or building units are constructed, sold or rented out, the energy performance certificate or a copy thereof is shown to the prospective new tenant or buyer and handed over to the buyer or new tenant' (Art. 12 para. 2). In addition, according to the Directive, 'Member States shall require that when:

- Buildings having an energy performance certificate,
- Building units in a building having an energy performance certificate, and
- Building units having an energy performance certificate

are offered for sale or for rent, the energy performance indicator of the energy performance certificate of the building or the building unit, as applicable, is stated in the advertisements in commercial media' (Art. 12 para. 4).

ESIS (see Section 3.1.1 for more details) is another example of a **standardised template of information** within the conveyancing process that should be provided by the financing bank to the loan taker in the case of a mortgage request. Through ESIS, consumers that request a mortgage have a better understanding of the basic features of a loan such as the interest rate or the frequency and number of payments. However, ESIS is limited to information related to the loan and thus not cover information on the property itself.

4.1.2 Renting and letting process

When considering the renting and letting process, it seems that the pieces of information about the property that need to be mandatorily provided by law are **less well defined as compared to the conveyancing process**. Based on the input provided by national experts, more attention is paid to information about the rent payment, deposit schemes and guarantees than to information about the property to be rented. As a general rule, information about the property is provided to tenants at the moment of inspection of the property. Also in relation to the renting and letting process, main scenarios could be identified based on information collected through the country fiches.

Firstly, only in a minority of countries, the **national legislation specifies the pieces of information that need to be delivered to consumers** during the renting and letting process. In Spain, the Royal Decree 515/1989 of 21st of April on Consumer Protection regarding the information to be provided in the sale and rental of housing, establishes that information such as building layouts, the description of the property, materials of the building, and costs shall be delivered to consumers. In Slovakia, it is required by law that the rent contract contains personal data (name, address, DOB, etc.), information related to the identification of the property (address, number of flat etc.), price of rent and price of utilities (electricity, water, heating, garbage etc.).

Secondly, in some countries, the national legislation establishes that **professionals need to provide consumers with comprehensive advice and with all circumstances** that

¹⁵⁷ Directive 2010/31/EU of the European parliament and of the Council of 19 May 2010 on the energy performance of buildings. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0031&from=EN>

they know or should know. This is the case, for example, in Austria, Croatia, Estonia, Italy and Sweden. In Norway, some mandatory information is delivered to tenants only in case a real estate agent is involved in the renting transaction.

Finally, based on insight provided by the national experts, no specific pieces of information need to be mandatorily delivered to tenants prior to the conclusion of the rent contract in the following countries: Denmark, Germany, Greece, Hungary, Latvia, Luxembourg, the Netherlands, Poland.

4.2 Clear and comparable information on properties

Transparency of information, including clarity and comparability of information towards consumers, remains a challenge in the real estate market. In fact, the real estate services market seems to display a “culture of secrecy and insider advantage”¹⁵⁸. To assess the levels of clarity and comparability of information, especially on properties, which is delivered to consumers, a triangulation of data collection methods has been employed. In this regard, the point of view of stakeholders, business operators as well as of consumers has been collected and analysed.

4.2.1 Clear and comparable information from real estate services

Level of clarity and comparability of information

Stakeholders (Consumer Protection Agencies - CPA, National Competent Authorities - NCA, Home Owner associations – HOA, and Tenants associations - TA) were asked to indicate, based on their experience, whether they believe that information on real estate properties placed on the market is very clear/comparable, quite clear/comparable or not clear/comparable (Figure 11). The results of this question suggest that information delivered to consumers is generally considered to be quite clear and comparable by the stakeholders surveyed. This conclusion seems to be contradicted by the results of the consumer surveys, behavioural experiment and focus group discussions. This apparent contradiction may be explained by the fact that consumers, on the one hand, and stakeholders, on the other hand, may have different views when it comes to the level of clarity and comparability of information delivered to consumers. This is not necessarily due to the quality of information per se, but could also be explained by the inherent difficulties and risks of a transaction with a substantial economic impact on the life of an individual. As a consequence, consumers may perceive the level of clarity and comparability of information on real estate properties as unsatisfactory.

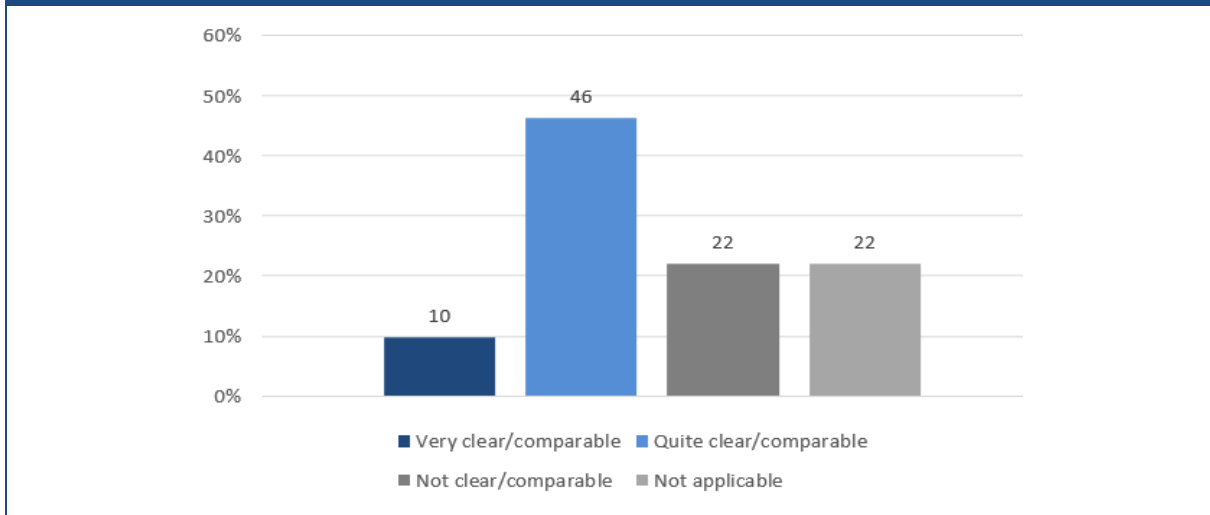
It is interesting to note that across all surveys, **only a minority of respondents selected the option ‘very clear and comparable’**. In particular, in the CPA and NCA surveys no respondent selected this option. In the HOA survey, 2 out of 9 respondents (22%) selected the option ‘very clear and comparable’ and in the TA survey, 2 out of 9 respondents (22%) believes information is very clear and comparable.

When considering grouped results, the majority of respondents, 19 out of 41 (46%) indicated that **information received by consumers about properties placed on the market is quite clear and comparable**. A similar trend is observed across the different surveys when considering these separately. The answer option ‘quite clear and comparable’ was given by 5 respondents out of 16 (31%) to the CPA survey, by 4 out of 7 respondents (57%) to the NCA survey, by 5 out of 9 respondents (56%) to the HOA survey and by 5 out of 9 respondents (56%) to the TA survey.

Information is not clear and comparable according to 5 out of 16 (31%) respondents to the CPA survey. This option was selected by 1 respondent out of 7 (14%) to the NCA survey, by 2 out of 9 respondents (22%) to the HOA survey and by 1 out of 9 respondents (11%) to the TA survey.

¹⁵⁸ Kummerow, M. & Chan Lun, J., (2005). “Information and communication technology in the real estate industry: productivity, industry structure and market efficiency”. In: Telecommunication Policy, 29, 173-90.

Figure 11: Clarity and comparability of information (Survey of CPA, NCA, HOA and TA)



Note: Survey of CPA, Q.10; Survey of NCA, Q.17; Survey of HOA, Q.5; Survey of TA, Q.5: To your knowledge, information that consumers receive on real estate properties placed on the market is: 1) Very clear/comparable; 2) Quite clear/comparable; 3) Not clear/comparable; 4) Not applicable.

Number of respondents: Grouped responses: 41; CPA: 16; NCA: 7; HOA: 9; TA: 9.

Source: Main Task 1 Stakeholder surveys

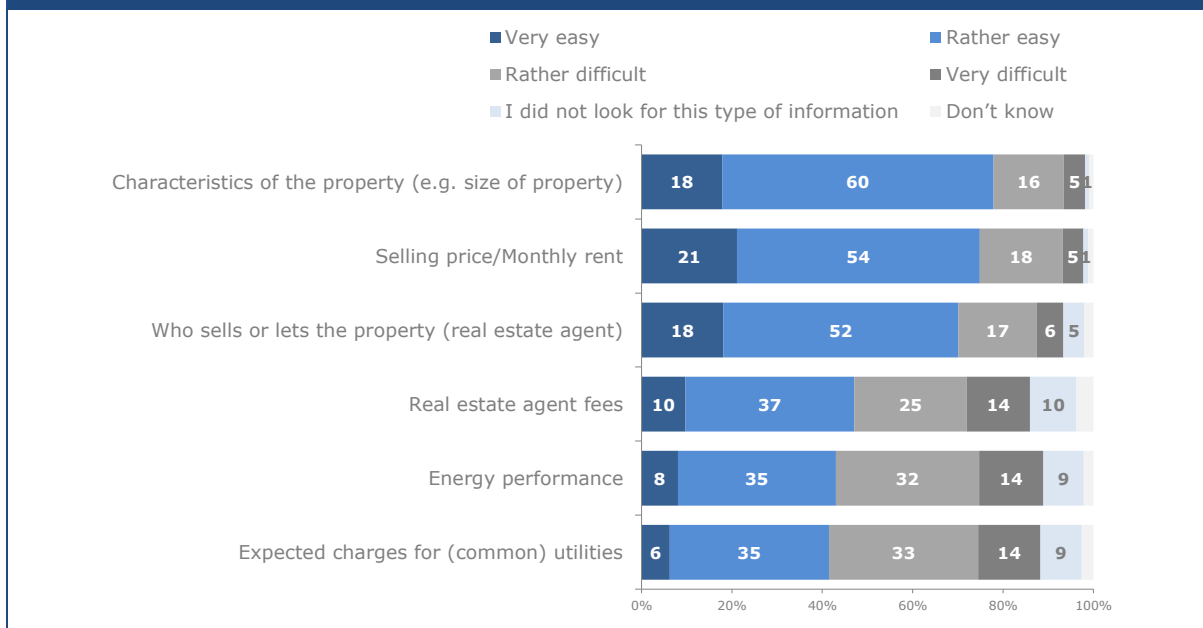
Turning to the **perspective of business operators**, respondents seem to agree that information that the average buyer/tenant receives on real estate properties placed on the market is very clear/comparable (2 out of 6 respondents or 33%) or quite clear/comparable (3 out of 6 respondents or 50%). Only one respondent (17%) indicated that information delivered to the average buyer/tenant is not clear/comparable. It shall be noted, however, that due to the low number of respondents to this question, results shall be read with caution.

More pessimistic results emerged during the **consumer surveys, behavioural experiment and focus group discussions**.

Findings from the consumer surveys

A minority of consumers surveyed thought it was very easy to find detailed and reliable information about properties placed on the market. Nonetheless, although just about one in five respondents who had bought or rented a property in the past seven years (or who had attempted to buy or rent a property), said it had been *very easy* to find detailed and reliable information, a slim majority answered that information about the **characteristics of the property** (60%), **selling price/monthly rent** (54%) and **information about who sells the property** (52%) had been *rather easy* to find. Moreover, mostly minor differences were observed with respect to this question between respondents who had recently bought (or attempted to buy) a property and consumers who had recently rented (or attempted to rent) a property.

Figure 12: Ease of finding information about properties placed on the market (Consumer survey)



Question: Q2. And how easy was it to find information on properties placed on the market? How easy was it to find detailed and reliable information about:

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

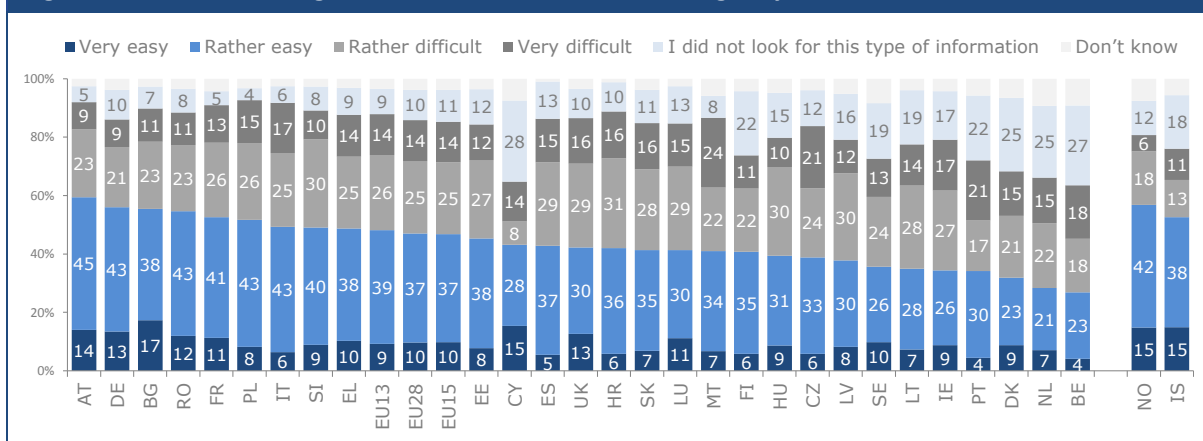
Source: Main Task 2 Consumer survey

A different picture emerged when respondents were asked about **real estate agency fees, energy performance of the property and expected charges for (common) utilities**. For example, looking at the findings for real estate agency fees, 47% of respondents answered that reliable information had been easy to find, compared to 39% who stated the opposite; 10% of consumers had not looked for information about real estate agency fees.

Overall, across most countries, roughly equal shares of respondents answered that detailed and reliable information about real estate agency fees had been either easy or difficult to find. For example, in Spain, 42% of respondents answered that reliable information about real estate agency fees had been very or rather easy to find, compared to 44% who stated the opposite.

In about half of the countries surveyed, 90% – or more – of consumers had considered real estate agency fees when looking to buy or rent a property, while in other countries, a considerable proportion of respondents had not looked for information about real estate agency fees. In Finland, Portugal, Denmark, the Netherlands, Belgium and Cyprus, between 22% and 28% of consumers who had looked at properties marketed by real estate agents, explained that they had not searched for information about real estate agency fees during the buying/renting process.

Figure 13: Ease of finding information about real estate agency fees



Question: Q2. And how easy was it to find information on properties placed on the market? How easy was it to find detailed and reliable information about: real estate agent fees

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

Source: Main Task 2 Consumer survey

It is also interesting to note that it is especially younger consumers who experienced difficulties to find information about real estate agency fees when looking to buy or rent a property. For example, 57% of over 54 year-olds replied that information about real estate agency fees had been very easy or rather easy to find; among 18-34 year-olds, just 39% shared this view.

Respondents who replied that detailed and reliable information about properties placed on the market had been difficult to find, were also asked whether this was mainly due to the fact that information about the properties was incorrect or whether the information was difficult to understand. One in three (32%) of these respondents replied that information about properties placed on the market was incorrect, 25% answered that the information was difficult to understand and 27% replied that the information was not only incorrect, but also difficult to understand.

Findings from the behavioural experiment

The behavioural experiment simulated a situation in which consumers search for and compare real estate advertisements (see Section 1.2.5 for the setup and Section 4.3 for in-depth results). The results closely mirror findings from the consumer survey in the sense that a majority of respondents find information 'rather easy' to understand, find and assess for comparison, while a much smaller share (around 15-30%) finds it 'very easy'. The ease of understanding furthermore was significantly increased by targeted remedies which were designed to increase transparency or comparability of the information provided (e.g. ease of understanding was rated higher in remedy conditions SQM, EASYCOMP and EPC, compared to the other experimental conditions). It thus seems that consumers could significantly benefit if information disclosure was clearer, more transparent and comparable.

Figure 14: Answers to the qualitative appreciation question following tasks on comparing multiple properties (stage 1) to the questions on the ease of understanding information provided:



Source: Main Task 5 Behavioural experiment

Focus group discussions in Germany and the Netherlands

Participants in these groups indicated that , in general, it is difficult to (i) understand which elements of information are relevant and (ii) assess the completeness and truthfulness of information. In Germany, participants maintained that available information is not sufficiently clear and comparable, and it is often incorrect and misleading. In the Netherlands, too, participants believe there is a lack of clear information delivered to consumers.

Moreover, in both countries, **participants indicated that they would not know where to find specific information.** As a consequence, in many cases, information provided by the service providers (real estate agents, sellers and landlords) is commonly considered as exhaustive and not questionable. In addition, many mandatory documents are not easily understandable and do not display the actual financial impact for the potential/buyer.

During the focus group in Amsterdam, the participants ranked the level of transparency of information provided/received on the following aspects:

- Real estate agents' fees;
- Selling price/Monthly rent;
- Who sells or lets the property;
- Characteristics of the property (e.g. size of the property);
- Expected monthly charges for (common) utilities;
- Energy performance.

In the focus group, consumers rated **real estate agents' fees** as very/quite transparent. Consumers in these groups stressed the fact that they were always informed on the fees applied by the agency; these were generally ranging from 1%-3% of the property value. The national legislation also foresees requirements for the agent to communicate the fees directly to the consumers.

Information on **the selling price and monthly rent** was rated as very/quite transparent by the consumers in the focus groups. In most cases, the selling price and monthly rent were directly communicated by the real estate agent publishing information of the property, or in any other format where the property was displayed (online, publications on paper). Also, in most cases, the prices were clear and comparable to other properties. Information on **who sells or lets the property** was perceived as relatively transparent.

The information on the characteristics **of the property** was rated as quite transparent. In most cases, the characteristics of the property were communicated directly to the consumers through the information published on the property. The main areas covered were: surface, number of rooms, bathrooms, and construction year. Most focus group participants rated the characteristics of the property as quite transparent because they would have liked to have more information on the property on top of the aspects mentioned in the focus group.

The transparency of **expected monthly charges for (common) utilities** was rated poorly. The main cause was the inability by the landlord and/or real estate agent to estimate the costs of gas and water correctly. Also the level of transparency regarding information on **energy performance** scored rather poorly. In the Netherlands, the energy label is determined based on different property characteristics including the year in which a property has been constructed¹⁵⁹. However, the energy label does not take into account any renovations that were performed after the construction of the property aiming specifically at increasing the energy performance. It appears that the energy performance can be changed, however, the owner of the property needs to go through a time-consuming process to report renovations that have been undertaken. Moreover, a new assessment of the property's energy performance needs to be made. Most landlords do not undergo that process. Besides, information on energy performance is not always communicated by the landlord to tenants, specifically, for buildings with a poor energy performance.

¹⁵⁹ Energielabel woningen. Available at: <https://www.energielabel.nl/woningen>

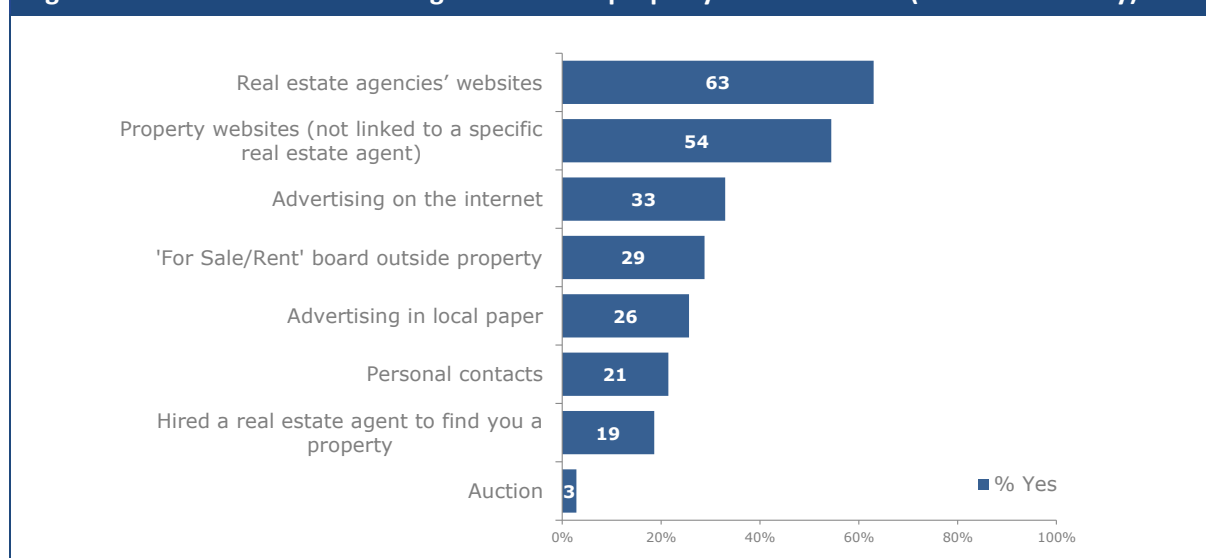
A similar view was shared by participants in the focus group in Germany who also mentioned the complexity of the **energy performance certificate**. This document is mandatory but is most often not requested as consumers are not aware of the importance of the energy certificate or as it is not perceived as a proof for the actual consumption. The energy certificate must be separated into two parts: a '**demand certificate**' and a '**consumption certificate**'. The demand certificate assesses the approximate demand of energy of a property. The consumption certificate is supposed to explain the actual consumption. Participants explained that many criteria need to be assessed with the help of experts to produce such a certificate. Also, as regards advertised additional charges, participants believed that information delivered is not accurate. By regulation, the maximum amount of those charges must be shown, however, due to different economic reasons (like inflation, yearly price increases by the provider) the actual costs usually differ.

Sources and means to inform consumers

Related to the inquiry about the level of clarity and comparability of information is the question about the means through which information is communicated to consumers. In this regard, it is worth noting **the role played by the internet**. It seems, in fact, that **consumers in the real estate market mainly refer to online ads and to websites of real estate agencies** to look for information about properties. This finding corroborates results presented earlier in the report where the internet was shown as a means facilitating the collection of information at the outset of real estate transactions.

The **consumer surveys** showed that, among respondents who had bought or rented a property in the past seven years (or who had attempted to buy or rent a property), 63% had looked at **real estate agencies' websites** for finding this property and 54% had visited **property websites** (not linked to a specific real estate agent). One in three respondents (33%) had looked at **advertisements on the internet**. The survey findings show that the internet is a very important source of information for consumers who are looking to buy or rent a property, especially among consumers below 55 years-of-age.

Figure 15: Sources used for finding a real estate property for sale or rent (Consumer survey)



Question: Q1a. Thinking about the last time you bought/rented a property (or attempted to buy/rent), which sources did you use for finding a property?

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

Source: Main Task 2 Consumer survey

Real estate agency websites and property websites are an important source of information for both consumers who are looking to buy a property and those looking to rent a property. In terms of difference between these two groups, it can be noted that consumers who are looking to rent a property are somewhat more likely than consumers who are looking to buy a property to rely on advertising on the Internet (38% vs. 31%), advertising in local newspapers (29% vs. 24%) and personal contacts (25% vs. 20%). Consumers looking to

buy a property in turn are more likely to hire a real estate agent to find them a property (21% vs. 15% for consumers looking to rent).

In total, across the EU28, 19% of consumers who had bought or rented a property in the past seven years (or had attempted to do so), had hired a real estate agent to help them find this property. Consumers who are looking to buy a property are somewhat more likely to hire a real estate agent, and this observation is also correct for older respondents. The survey shows that 24% of over 54 year-olds answered that they had hired a real estate agent to help them find a property; this figure decreases to 19% for 35-54 year-olds and 14% for 18-34 year-olds.

When business operators were asked about the means through which information is communicated to consumers, **the majority (5 out of 6 or 83%) indicated that a) online ads; b) websites of real estate agencies, and c) the real estate agent** are the most effective sources and means of communication. In addition, four respondents out of 6 (67%) ticked the option 'price comparison tools for market aggregators'. Two respondents (33%) selected 'print newspaper advertisement' and 'open house'. The remaining possible options, i.e. home book or magazine and yard signs were selected by only one respondent. Results further support evidence collected through the stakeholder consultation: the role of technology is increasingly relevant and information seems to be provided to, and accessed by consumers through the internet.

An additional question related to the effectiveness of the sources and means to inform buyers and tenants aimed to assess **whether the same level of information on the property is provided through online and offline marketing material**. Divergent results are displayed in relation to this question: 2 respondents out of 6 (33%) indicated that better information is provided online, while 2 other respondents retained that information is better delivered offline. One respondent believed that the same level of information is provided regardless of the fact that information is conveyed online or offline.

4.2.2 Information offered in real estate agency websites: Findings from the mystery shopping exercise

Information offered to consumers on properties on offer to buy or rent

The information offered in the websites analysed by mystery shoppers in search of properties to rent or buy was analysed in a two-step approach: first, the information offered for a comparative overview of properties, and then the specific details made available for one particular property.

A majority (57%) of shoppers reported that the website that they evaluated listed more than 50 properties for sale/rent, and 17% replied that there were between 21 and 50 properties offered on the website. A minority of shoppers (9%) has evaluated a website that offered less than six properties, while the remaining 17% of shoppers could choose between 6 and 20 properties.

Most shoppers were able to filter the initial list of properties to exclude non-residential properties and to include only properties for sale or for rent (depending on the scenario). Sorting the properties on the overview page by one or more additional characteristics was also possible for 96% of websites. The average number of criteria that could be used for sorting the properties was 4.5 criteria for websites with rental properties and 4.7 for websites with properties for sale; the most common criteria for sorting were location, minimum and maximum price or rent, type of property and number of rooms in the property.

Information provided on the overview page

Shoppers looking to rent a property counted, on average, 6.3 pieces of information per property on the overview page, while shoppers looking to buy a property counted, on average, 6.8 pieces of information. Icons to indicate whether certain features are present or not for each property were used on 16% of websites with rental properties and 12% of websites with properties for sale. A large majority of shoppers who had evaluated a website

that used icons to indicate whether certain features were present, agreed that these icons were clear and easy to understand (35% 'completely agreed', 34% 'agreed' and 14% 'somewhat agreed').

The table on the following page provides details about the type of information that is provided on the overview pages about the properties. Almost all websites contain pictures, details about the asking price/monthly rent and the location of the property. Other common pieces of information are the surface of the property (listed on 77% of websites with properties for sale and 66% of websites with rental properties) and the number of rooms in the property (respectively, 59% and 63% of websites).

Information about the properties' energy performance rating or label was provided on 7% of overview pages with properties for sale and 9% of overview pages with rental properties; just a handful of overview pages (2%-3%) contained information about the properties' environmental impact CO₂ rating or label.

Table 20: Information provided about properties on the overview page

	'Buying' scenario		'Renting' scenario	
	Number of websites	% of websites	Number of websites	% of websites
Picture(s)	335	97%	129	96%
The asking price/monthly rent	331	96%	125	93%
Location	326	94%	126	93%
Surface of the property	266	77%	89	66%
Number of rooms in the property	202	59%	85	63%
Number of bedrooms in the property	140	41%	47	35%
A list of key features (e.g. garden, garage, accessibility)	92	27%	34	25%
Number of bathrooms in the property	91	26%	31	23%
Number of floors of the building	68	20%	18	13%
The date the building was built, or last refurbished	70	20%	14	10%
List of all rooms in the property (kitchen, hall, storage etc.)	49	14%	18	13%
Street view	53	15%	14	10%
Indication if property is under offer or sold/let agreed	54	16%	12	9%
Map	46	13%	16	12%
Information about neighbourhood (distance to amenities, schools etc.)	44	13%	14	10%
Information about heating system	37	11%	13	10%
Energy performance rating or label	25	7%	12	9%
Floorplan	21	6%	6	4%
How long the property has been on the market	20	6%	2	1%
Size of each room/room dimensions	14	4%	5	4%
(Expected) charges for (common) utilities	12	3%	5	4%
Information about type of insulation	13	4%	2	1%
Furnished/unfurnished	-	-	12	9%
Environmental Impact CO ₂ rating or label	6	2%	4	3%
The level of taxes to be paid (e.g. council tax)	5	1%	1	1%
Whether rent includes cost of utilities (water, electricity, etc...)	-	-	4	3%
Other	34	10%	17	13%

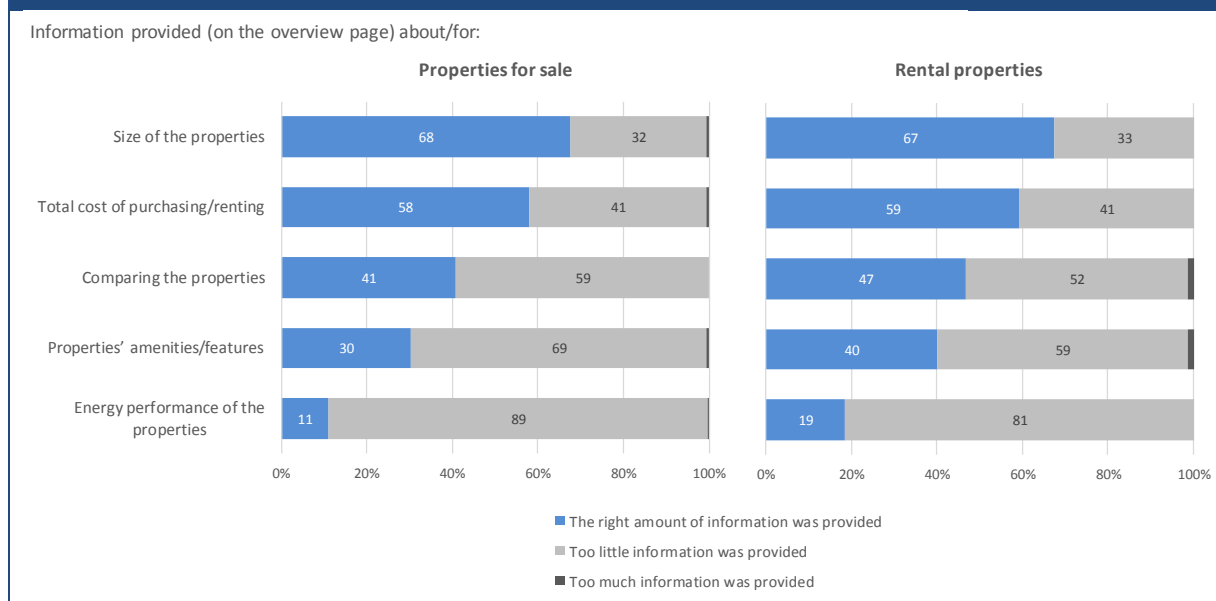
Base: 345 real estate agency websites with properties for sale and 135 websites with rental properties (all countries)

Question: What type of information is provided about the properties on the overview page?

Source: Main Task 4 Mystery shopping

When rating the amount of information provided on the overview page of the real estate agency website, 68% of shoppers in the 'buying' scenario answered that the overview page contained the right amount of information about the size of the properties and 58% said the same with respect to the total cost of purchasing the properties; however, 69% of these shoppers in the buying scenario thought that overview information was insufficient regarding the amenities and features of the properties, and 89% were dissatisfied about information regarding the energy performance of the properties. In the renting scenario, shoppers were equally satisfied with overview information provided about the size of the properties and the total cost for renting, but were somewhat less dissatisfied with this aspect of the overview page: 59% replied that not enough information was provided about amenities and 81% said the same about energy performance.

Figure 16: Shoppers' evaluation about the amount of information provided on the overview page



Base: 345 real estate agency websites with properties for sale and 135 websites with rental properties (all countries)

Question: What do you think about the amount of information provided (on the overview page) about/for:

Source: Main Task 4 Mystery shopping

According to the shoppers in this evaluation, 59% of overview pages with properties for sale and 52% of overview pages with rental properties did not contain enough information to allow them to compare properties. In line with this finding, a minority of shoppers *completely agreed* that it was easy to compare the properties listed on the overview page (7% of shoppers in the 'buying' scenario and 10% in the 'renting' scenario).

Specific details made available for one particular property

In the next step of the evaluation, shoppers were asked to select two properties from the overview page, and to visit the pages that listed details about these specific properties. As for the overview page, shoppers were asked to record what type of information was provided about each property on the individual property pages. Shoppers now counted, on average, 12.8 pieces of information for a property that was for sale and 12.4 for a rental property; or, in other words, about twice as many items as on the overview page.

Details about the asking price/monthly rent and pictures of the property are repeated on the individual property pages. Other common items for both rental properties and properties for sale are the number of rooms (listed for 87% of properties for sale and 90% of rental properties) and surface of the property (respectively, 90% and 79%), followed by a list of key features (80% and 69%, respectively), the number of bedrooms (78% and 72%, respectively), number of bathrooms (72% and 70%, respectively). Location data is available for 97% of properties for sale, but for only 60% of rental properties.

Just 10% of overview pages contained information about the energy performance rating or label of the properties; on the individual property pages, shoppers found such information for 32% of properties for sale and 40% of rental properties. For 28% of properties, shoppers also reported that they found information about the Energy Performance Certificate (EPC) – this figure was somewhat higher for rental properties than for properties for sale (32% and 27%, respectively). For 29% of these properties, the EPC could also be downloaded from the real estate agency website.

For 20% of rental properties, information on whether the rent includes the cost of utilities (water, electricity etc.) was provided on the property page. When specifically searching for additional information about the cost of utilities, 54% of shoppers could not find any information at all, while 33% reported that the information provided stated that the rent does not include the cost of utilities and 13% confirmed that the cost of utilities was included in the rent.

Table 21: Information provided about properties on the individual property page

	'Buying' scenario		'Renting' scenario	
	Number of websites	% of websites	Number of websites	% of websites
Location	666	97%	163	60%
The asking price/monthly rent	665	96%	259	96%
Picture(s)	669	97%	252	93%
Number of rooms in the property	599	87%	244	90%
Surface of the property	621	90%	213	79%
A list of key features (e.g. garden, garage, accessibility)	549	80%	187	69%
Number of bedrooms in the property	539	78%	194	72%
Number of bathrooms in the property	499	72%	188	70%
Number of floors of the building	483	70%	151	56%
List of all rooms in the property (kitchen, hall, storage etc.)	463	67%	166	61%
Map	400	58%	169	63%
Information about heating system	396	57%	161	60%
The date the building was built, or last refurbished	400	58%	108	40%
Information about neighbourhood (distance to amenities, schools etc.)	379	55%	117	43%
Street view	250	36%	88	33%
Energy Performance rating or label	221	32%	107	40%
Floorplan	222	32%	57	21%
Size of each room/room dimensions	152	22%	49	18%
Information about type of insulation	140	20%	47	17%
Indication if property is under offer or sold/let agreed	142	21%	21	8%
(Expected) charges for (common) utilities	97	14%	51	19%
Furnished/unfurnished	-	-	94	35%
How long the property has been on the market	56	8%	24	9%
The level of taxes to be paid (e.g. council tax)	52	8%	12	4%
Environmental Impact CO ₂ rating or label	38	6%	21	8%
Whether rent includes cost of utilities (water, electricity etc.)	-	-	55	20%
Other	82	12%	31	11%

Base: 690 properties for sale and 270 rental properties (all countries)

Question: What type of information is provided about the property you selected?

Source: Main Task 4 Mystery shopping

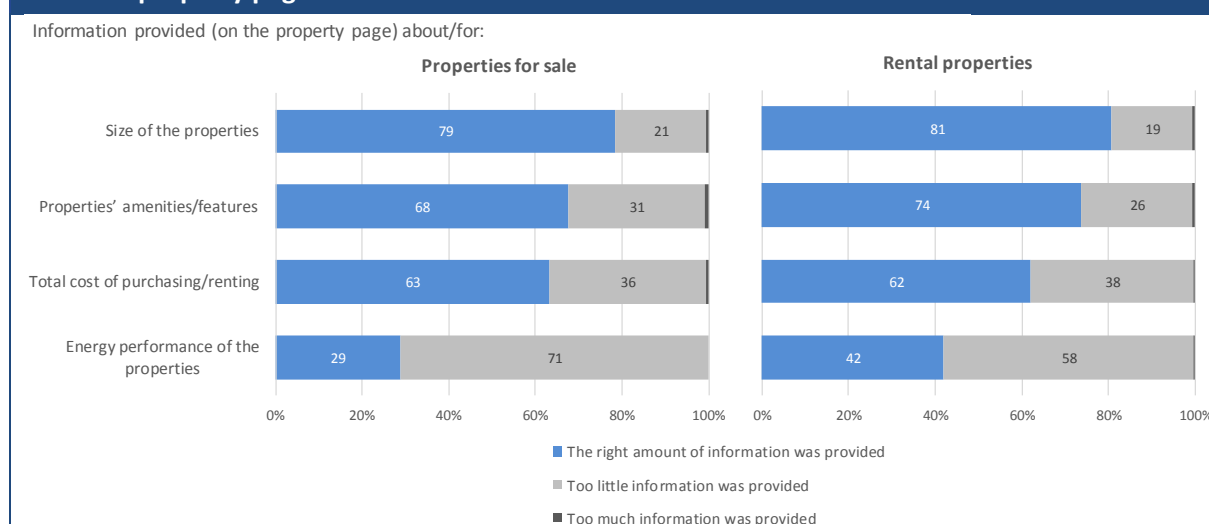
When rating the amount of information provided on the individual property pages, 79% of shoppers looking at properties for sale and 81% of those evaluating rental properties agreed that the property pages contained the right amount of information about the size

of the properties and, respectively, 63% and 62% said the same with respect to the total cost of purchasing/renting the properties; for both items, the results are about 10 percentage points higher than for information provided on the overview page.

Just 30% of shoppers looking for properties for sale answered that the overview page contained the right amount of information about the amenities and features of the properties; their evaluations were considerably more positive when reviewing the individual property pages – with 68% of shoppers who replied that enough information was available about amenities and features. For rental properties, 74% of shoppers answered that the property page contained enough information about amenities and features.

Finally, 29% of shoppers in the 'buying' scenario said that the property page contained enough information about the energy performance of the property; this figure was again higher for rental properties with 42% of shoppers stating that enough information was provided. For both types of property, this figure is considerably higher than for information provision on the overview page.

Figure 17: Shoppers' evaluation about the amount of information provided on the individual property pages



Base: 690 properties for sale and 270 rental properties (all countries)

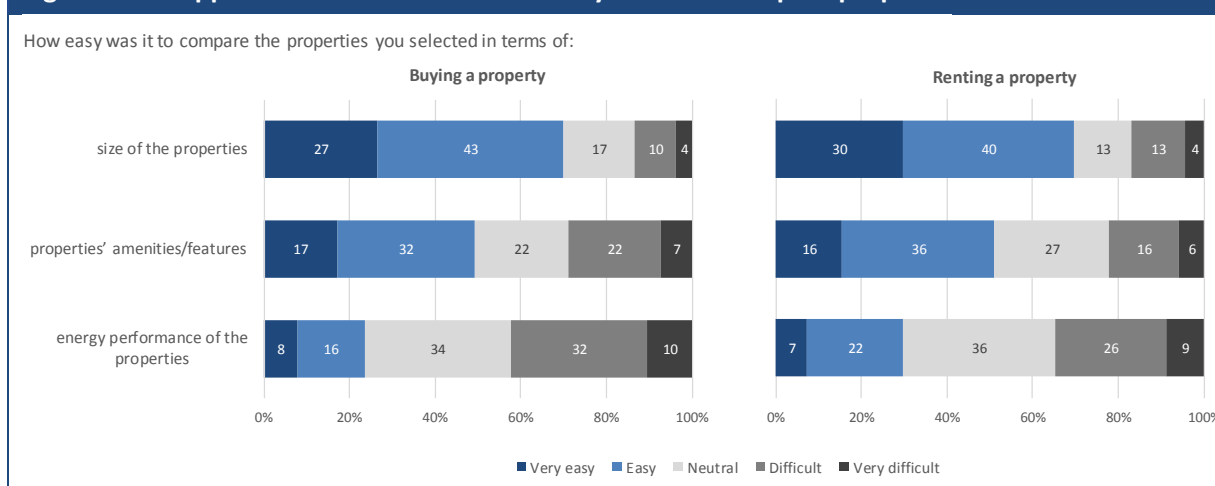
Question: What do you think about the amount of information provided (on the property page) about:

Source: Main Task 4 Mystery shopping

Comparing information on properties on offer to buy or rent

After having completed the evaluation, shoppers were asked whether it was easy to compare the properties (taking into account all the information they have reviewed, both on the overview page and on the specific pages for the two properties they had selected). In line with the findings discussed in the previous sections, shoppers found it easiest to compare properties in terms of their size and had most difficulties to compare the properties' energy performance. For example, 8% of shoppers in the 'buying' scenario replied that it was 'very easy' and 16% said it was 'easy' to compare properties in terms of their energy performance, compared to 10% who selected the 'very difficult' response and 32% the 'difficult' response. This is in sharp contrast to the 27% of shoppers in the 'buying' scenario who found it very easy to compare the size of the properties and 43% who thought this was easy.

Figure 18: Shoppers' evaluation about how easy it was to compare properties



Base: 345 real estate agency websites with properties for sale and 135 websites with rental properties (all countries)

Question: Taking into account all information you have reviewed (on the overview page and on the specific pages for the two properties you selected), how easy was it to compare the properties you selected in terms of

Source: Main Task Mystery shopping

The case of cross-border transactions

In the evaluation of real estate websites, the mystery shoppers were able to assess the overall availability of information on properties. They accessed websites with properties for sale both in their home country but also abroad. It is therefore possible to compare whether the availability and quality of information to the potential buyer is consistent across cross-border transactions. The results from the mystery shopper task reveal that this is not the case. In fact, for more than half (52%) of the properties based abroad for which consumers inquired information, they considered it either difficult or very difficult to obtain comparable information in terms of the energy performance of the properties, and in a third of cases (32%) it was also either difficult or very difficult to obtain comparable information regarding the properties' amenities and features. Instead, comparable information on energy efficiency was only difficult or very difficult to retrieve in 40% of domestic properties, and this was the case for 28% of properties when the information dealt with amenities and features.

4.3 Consumer understanding of real estate advertisement

This section reports the key findings from the behavioural experiment conducted for this study, full results can be found in the Annex to this report. Similar to tasks undertaken during the mystery shopping, the experiment lead respondents through two typical stages of real estate websites (see section 1.2.5 for a short overview). In the first stage, respondents compared multiple properties on screen with limited information regarding each property. In the second stage, respondents were shown one property with in-depth information. At both stages, respondents were asked to answer questions regarding the real estate advertisements at hand. Key performance measures in the following sections consist of answers to these questions, as well as response times.

The experiment tested common, potentially harmful market practices as well as their respective remedies (see experimental treatments in section 1.2.5). In addition, the socio-demographic background of respondents as well as some key behavioural drivers and cognitive biases were assessed which might be at play in terms of explaining behaviour. In the following, the overall effectiveness of the tested remedies is reported and the most interesting patterns for specific socio-demographic groups, and where behavioural biases might be at play are highlighted.

4.3.1 Missing information in real estate advertisements

In line with observations in the market (see mystery shopping results in section 4.2.2), some experimental treatments systematically varied whether specific pieces of information were shown to respondents, or not.

The objective of these treatments was to assess whether respondents realised when they were given sufficient information to answer a question, or not. Moreover, the treatments revealed whether participants who were not given sufficient information relied on other, erroneous, pieces of information to infer answers when in fact they were unable to give answers.

Impact of not showing information on the size of the property

The first performance criteria in the experiment measured respondents' ability to identify the size of a property, or to identify the largest property among a list of six properties. The experimental conditions varied whether respondents were shown the surface area of the properties, or not. Answers to these questions were counted as correct when the correct property/size was identified, or when respondents correctly said that they did not have enough information to answer.

The objective of these questions was to confront a common, and potentially harmful market practice of not showing property sizes on comparison screens compared to the remedy practice of consistently showing property surface area in square metres/feet. Indeed, the latter is already common market practice in many Member States, as shown also in the mystery shopping exercise of this study (see section 4.2.2). However, in some Member States such as the UK, living space in square metres/feet is rarely displayed when comparing multiple properties and often not even shown in more detailed advertisements of individual properties. In the UK, for example, surface information is typically 'hidden' in floorplans, or not available at all.¹⁶⁰

Table 22: Share of respondents in each treatment condition indicating correctly the largest property, or correctly indicating when they did not have enough information to answer, by experimental scenario

	Stage 1 – comparison of multiple property advertisements			Stage 2 – in-depth assessment of one property advertisement			No. of respondents
	Size in sqm/sqft not shown	Size in sqm/sqft shown	Difference ⁽¹⁾	Size in sqm/sqft not shown	Size in sqm/sqft shown	Difference ⁽¹⁾	
All respondents	0.60	0.83	0.23***	0.86	0.93	0.08***	2,004
Domestic rent	0.55	0.83	0.28***	0.84	0.95	0.11***	811
Domestic purchase	0.62	0.78	0.16***	0.84	0.86	0.02	398
Cross-border scenario 1 (shopping on domestic site)	0.64	0.87	0.23***	0.89	0.95	0.06**	398
Cross-border scenario 2 (shopping on foreign site)	0.66	0.85	0.19***	0.88	0.94	0.06*	397

Notes: 1) *, **, *** indicate statistical significance levels of 10%, 5% and 1%, respectively.

Source: Main Task 5 Behavioural experiment

The experiment found that displaying information about property surface area helped consumers both to better assess one real estate property in-depth as well as to compare multiple properties (see Table 22). In the experiment, when the simulated real estate advertisement of an individual property contained the surface area in square metres/feet,

¹⁶⁰ Examples can be found on mainstream UK property comparison websites such as www.zoopla.co.uk and www.rightmove.co.uk

83% of respondents were able to identify the largest property among six different properties (Stage 1) and 93% of experiment participants were able to correctly report the size of the property's living space (Stage 2). By contrast, when surface area was not indicated, a significantly lower share (60% and 86% respectively in Stages 1 and 2) correctly recognised that they were not given enough information, while the rest used pictures of the property, the number of rooms or the rental/asking price to infer the size of the property. Evidently, without information on the surface area, it was not possible for respondents to correctly identify the size of properties.

Among those who did not realise they did not have enough information to identify the largest property, almost 15% (N=54) said they used information about surface area in square metres/feet to answer the question, even though the information was not shown to them. These participants tended to be overconfident, and more often than not, also displayed low cognitive ability.

Respondents without experience in the real estate market, respondents aged 55 and above, and those with low educational attainment were most likely to benefit from information about surface area when comparing properties. As mentioned, of those who were not shown surface areas, 60% understood that they did not have enough information to compare the property sizes, but this share was only 54% among inexperienced respondents, 49% among older respondents (over 55) and 37% among respondents with low education. When shown surface area, on the other hand, respondents in these groups were only slightly less likely to identify the largest property compared to the average respondent. These socio-demographic groups also displayed the largest reduction in the time needed to answer the question in the remedy condition.

In terms of behavioural influences, the improvement in performance when the remedy was introduced was again most notable in the case of overconfident participants.¹⁶¹ In addition, performance of less trusting participants improved significantly more than performance of more trusting participants.

It is worth pointing out that a sizeable share of respondents in the experiment qualified as being overconfident, roughly one in four. This incidence of overconfidence is in line with overconfidence in other markets¹⁶², however, the effects of overconfidence in the real estate market might be different. In particular, search costs might be higher for those who misinterpret their ability to interpret information on real estate advertisements.

Impact of not showing information on the energy performance of the property

In line with the tests on showing property sizes, the experiment systematically varied whether respondents were shown energy performance certificates (EPCs) for the different properties. The objective of these questions was to verify whether respondents were able to identify missing information as well as their ability to read and interpret EPCs when shown.

The experiment did not uncover important differences in performance between situations in which the EPC was displayed compared to when it was not. It remained unclear if showing information on the energy performance of the property helped respondents assess and compare properties. In the experiment, participants who were not shown EPC ratings actually outperformed those who were shown EPCs, both when assessing an individual property in depth and when comparing multiple properties (see Table 23 for detailed results). However, this is likely due to the fact that the level of difficulty of the task was slightly lower when the EPC was not shown. In this case, the correct answer was "I do not have enough information to answer". Instead, when the EPC was shown, respondents had to read and understand the rating on the EPC correctly. Moreover, when comparing multiple properties, they also needed to identify the second best performing property.

¹⁶¹ Overconfidence participants were defined as people who thought they performed better than average in the experiment, but in reality performed worse. See section 1.2.5 and the Annex for further detail.

¹⁶² See Odean (1998) 'Volume, Volatility, Price, and Profit When All Traders Are Above Average', Journal of Finance for evidence of overconfidence in financial traders and an overview of overconfidence in various other markets.

There was thus a greater possibility for error in the case where EPC ratings were shown. As a result, it is impossible to ascertain whether the difference in performance is attributable to the observation of EPC ratings, or the difficulty of the task. Given the results from the consumer survey and mystery shoppers, it seems plausible to conclude that reading EPCs is difficult and that this is driving the result in the experiment as well.

Table 23: Share of respondents in each treatment condition answering a question on energy performance correctly, or correctly indicating when they did not have enough information to answer, by experimental scenario							
	Stage 1 – comparison of multiple property advertisements			Stage 2 – in-depth assessment of one property advertisement			
	EPC not shown	EPC shown	Difference ⁽¹⁾	EPC not shown	EPC shown	Difference ⁽¹⁾	No. of respondents
All respondents	0.75	0.69	-0.06***	0.94	0.89	-0.05***	2,004
Domestic rent	0.76	0.71	-0.05	0.94	0.90	-0.04**	811
Domestic purchase	0.72	0.69	-0.03	0.91	0.87	-0.04	398
Cross-border scenario 1 (shopping on domestic site)	0.73	0.70	-0.04	0.93	0.89	-0.04	398
Cross-border scenario 2 (shopping on foreign site)	0.80	0.64	-0.16***	0.96	0.90	-0.06**	397

Notes: 1) *, **, *** indicate statistical significance levels of 10%, 5% and 1%, respectively.

Source: Main Task 5 Behavioural experiment

Nevertheless, two findings emerged. First, when respondents were not shown the EPC ratings, they were usually able to recognise that they did not have enough information to assess the energy efficiency of a property. This contrasts with consumers' assessment of the size of the property, where a considerable share of consumers wrongly believed that pictures or information about the number of rooms were sufficient to assess the surface area. When inspecting one property in depth, 94% of participants correctly answered that they could not determine the energy performance of the property without further information. When comparing multiple properties, 75% realised that they needed more information to answer to the experiment questions. By contrast, only 86% and 60% of participants, respectively, made this correct inference in the case of the size of the property.

Thus, participants were not only aware that they were missing information, but also knowledgeable about what kind of information they would have needed to answer.

However, older and lower educated participants were significantly less able to read and evaluate EPC ratings. When asked to identify a property with the second best energy performance, only 45% of those with lower education answered correctly, compared to 74% of those with higher education. The difference in performance between those aged under 35 and over 55 was 13 percentage points. Inexperienced and male respondents were also less likely to answer correctly, but this result was not statistically significant.

In about 5% of cases, people who were shown EPC ratings reported that they did not have enough information to assess the energy efficiency performance of the property. This suggests that a small, but non-negligible, share of respondents was not only unable to read and interpret information provided by the EPC, but they were also not able to recognise the tool or identify its purpose.

Impact of not showing key features of a property

As a third and final test of the impact of not showing information in real estate advertisements, participants were asked to identify some key features of properties. As before, the experimental conditions participants were randomly assigned to systematically varied whether and how individuals were shown property information. This time, there were three conditions for the stage at which respondents needed to assess and compare six properties:

- **Baseline:** No key features of the properties shown.
- **Ad-hoc features:** This tested a common market practice used in many EU countries. It is the practice of showing key features of a real estate property on comparison screens, but the displayed features are selected ad hoc. The highlighted features (e.g. garden, parking space, wheelchair accessibility etc.) differ between properties and almost exclusively focus on what the property contains rather than what it does not. Furthermore, these lists of ad hoc features are rarely exhaustive. The simulated market practice also coincides with findings from the mystery shoppers who found that icons were displayed on just 16% of property pages (see section 4.2.2).
- **Consistent and easily comparable key features shown:** This tested a remedy for the above ad-hoc practice. A consistent list of icons was displayed for all properties with ✓ and ✗ indicating whether a feature was present in the property or not.

The experiment showed that the ad hoc market practice decreased consumers' ability to assess and compare properties, compared to a situation where there was no list of key features at all. The ad hoc provision of information might mislead consumers as they could find it more difficult to compare properties on key dimensions. Interestingly, however, when the key features of properties were displayed in a consistent and easily comparable way, consumers' ability to assess and compare properties improved significantly, both relative to the baseline of no key features and to the market practice of showing ad hoc features.

Table 24: Share of respondents in each treatment condition answering a question on property features correctly, or correctly indicating when they did not have enough information to answer, by experimental scenario

	Stage 1 – comparison of multiple property advertisements						No. of respondents
	No key features shown	Ad hoc features shown	Difference to no features ⁽¹⁾	Easily comparable features shown	Difference to no features ⁽¹⁾	Difference to ad hoc features ⁽¹⁾	
All respondents	0.39	0.15	-0.24***	0.54	0.15***	0.39***	2,004
Domestic rent	0.40	0.11	-0.29***	0.57	0.18***	0.46***	811
Domestic purchase	0.34	0.14	-0.19***	0.57	0.23***	0.43***	398
Cross-border scenario 1 (shopping on domestic site)	0.40	0.21	-0.20***	0.47	0.07	0.26***	398
Cross-border scenario 2 (shopping on foreign site)	0.40	0.19	-0.21***	0.52	0.12*	0.33***	397

Notes: 1) *, **, *** indicate statistical significance levels of 10%, 5% and 1%, respectively.

Source: Main Task 5 Behavioural experiment

With no list of key features shown, 39% of participants were able to correctly identify the amenities of a property at the multiple property comparison stage.¹⁶³ This share decreased to 15% among those who were shown an icon-based list with an ad hoc selection of key

¹⁶³ Or indicate correctly when they did not have enough information to answer.

features, but increased to 54% when the list of features was displayed consistently for all properties (Table 24 also shows results disaggregated by experiment scenario).

With the exception of young and inexperienced respondents, the above patterns were consistently found across socio-demographic groups as well as across groups with different behavioural drivers. This is an important finding for policy because the tested remedy seems to help most consumers who might otherwise risk suffering from harmful practices.

Furthermore, respondents did not only perform better under the remedy condition, they also had a high appreciation for the provided icons and reported having used them to answer the questions (see the Annex for further results).

4.3.2 Impact of framing of information

The framing of information refers to how information is presented to consumers. According to classical economic theory with fully rational individuals, different information framing should have no impact on behaviour as long as the same underlying information is available. If, however, individuals are not fully rational, as often suggested by behavioural economics¹⁶⁴, then framing of information may impact individuals' assessment and understanding of information, and thus their behaviour.¹⁶⁵

The following types of framing were used in the behavioural experiment:

- Impact of different price frames
- Impact of framing information using text, icons or tabular format
- How much information can be digested

The results of these tests are discussed in turn below.

Impact of different price frames

The experiment tested whether respondents' understanding of the total cost of rental/purchase differed across various price frames. The tested treatments were in part motivated by previous research showing substantial consumer detriment from potentially misleading price frames.¹⁶⁶ Two price frames were tested in the experiment:

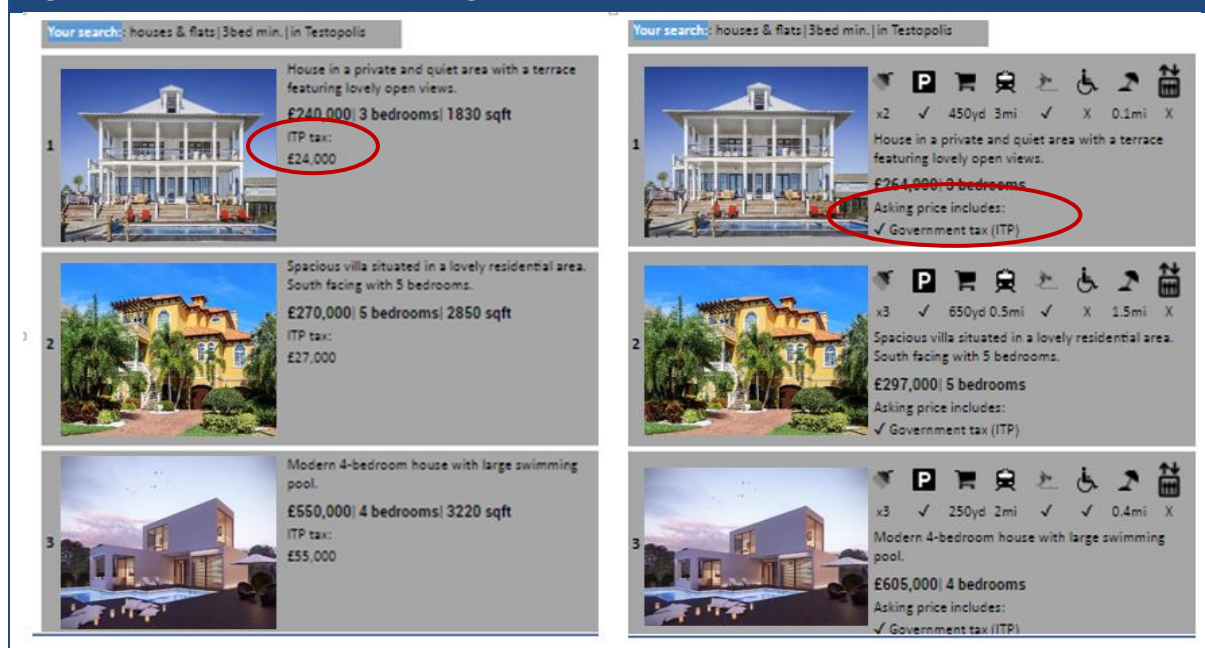
- 1) **Tax frame treatment:** This treatment varied whether rental (purchasing) prices were shown inclusive of residential tax (stamp duty), compared to when the taxes were displayed separately. The impact taxes have on the total cost of a property may not always be clear during the initial search for a property, therefore, this treatment was developed to assess how understanding of property prices varied in the two conditions. Example screenshots of the two conditions are shown below.

¹⁶⁴ For some overview articles in behavioural economics see for example: Rabin (1998) 'Psychology and Economics', Journal of Economic Literature. DellaVigna (2009) 'Psychology and Economics: Evidence from the Field', Journal of Economic Literature. Camerer and Loewenstein (2004) 'Behavioral Economics: Past, Present, Future' in 'Advances in Behavioral Economics' edited by Camerer, Loewenstein and Rabin, Oxford University Press.

¹⁶⁵ Tversky, Kahneman (1981) 'The framing of decisions and the psychology of choice', Science. Tversky, Kahneman (1986) 'Rational Choice and Framing of Decisions', The Journal of Business.

¹⁶⁶ Office for Fair Trading (2010) 'The impact of price frames on consumer decision making'. Report prepared by London Economics, available at : <https://londoneconomics.co.uk/blog/publication/the-impact-of-price-frames-on-consumer-decision-making-2/>

Figure 19: Screenshot the tax framing treatment variants



Notes: 1) Properties in the grey boxes top to bottom are taken from Pezels/Pezels/Pixabay and are all licensed under the Creative Commons Zero license, thus requiring no attribution 2) Icons in the grey box are taken from The Noun Project and from left to right are attributable to: Ralph Schmitzer/mikicon/Jugalbandi/b farias/Dairy Free Design/Rafael Farias Leao/iconsphere/Thomas Helbig. 3) Mobile phone and the movers' icon taken from Pixabay and both are licensed under the CC0 license. 4) The left-hand side shows a treatment variation in which the ITP (Spanish government tax on property purchases) is shown separately to the asking price. The right hand side instead shows prices inclusive of Government tax using '✓' for indication. The pictures shown in the example above are similar but not identical to those used in the experiment itself. This is due to copyright requirements. Source: Main Task 5 Behavioural Experiment

- 2) **Rental price frame treatment:** In the domestic rental scenario, respondents were shown rental prices framed either as weekly or monthly prices. In most Member States rents must be paid on a monthly basis. Nevertheless, rental prices are sometimes advertised as prices per week. For example, this is standard practice across the UK, and also common practice for short-term lettings. A potential problem with this commercial practice arises if individuals do not know, or do not understand that the monthly rent does not equate to four weekly rents, but to 4.33 weekly rates.¹⁶⁷ Underestimating the monthly rent might cause individuals to struggle with their household budgets.

The first key performance measure in this section was respondents' ability to identify the cheapest property in terms of total monthly rent including residential taxes (asking price including stamp duty). Second, respondents in the domestic rent scenario were asked to indicate the monthly rent of one advertised property.

In the case of respondents' ability to identify the cheapest property, **the tax frame treatment** did not provide clear effects (Table 25).

¹⁶⁷ To convert a weekly advertised rent, it must be multiplied by 52 weeks, and then divided by 12 months (52/12=4.33). For example: a €150 rent per week results in a €650 rent per month (€150 rent per week * 52 weeks in a year / 12 months in a year = €650 per month).

Table 25: Share of respondents in each treatment condition indicating correctly the cheapest property in terms of monthly rent (asking price) including residential taxes (stamp duty), by experimental scenario				
Tax frame treatment	Tax amounts displayed separately	Prices shown inclusive taxes	Difference ⁽¹⁾	No. of respondents
All respondents	0.72	0.72	0.00	2,004
Domestic rent	0.72	0.71	-0.010	811
Domestic purchase	0.75	0.75	0.000	398
Cross-border scenario 1 (shopping on domestic site)	0.72	0.72	0.000	398
Cross-border scenario 2 (shopping on foreign site)	0.69	0.72	0.030	397
Rent price frame	Weekly prices indicated	Monthly prices indicated	Difference ⁽¹⁾	No. of respondents
Domestic rent ⁽²⁾	0.69	0.74	0.05	811

Notes: 1) *, **, *** indicate statistical significance levels of 10%, 5% and 1%, respectively. 2) The rent price frame was only applicable to the domestic rent scenario. The analysis was thus not further split into scenarios.

Source: Main Task 5 Behavioural experiment

While the tax frame treatment had no measurable effect on respondents overall, presenting prices as inclusive of tax slightly improved performance of respondents with high cognitive ability. For respondents with low education, the same remedy instead led to significant deterioration in performance. Respondents with low education seemed to perform better when the tax amounts were simply shown in addition to rental/purchasing prices. This was the case for the domestic and cross-border scenarios alike, though the result in the individual experimental scenarios was not statistically significant due to a small number of participants.

It is worth pointing out that both tested framing practices can be seen as using 'best practice' in the market. This is because both price frames fully and consistently showed the impact of taxes on prices or rents. In reality, as uncovered in other parts of this study (e.g. mystery shopping and consumer survey), full information on prices is not always available, or not always shown up front.

Delaying the disclosure of important price information, a practice called drip-pricing, has previously been found to cause significant consumer detriment in a study commissioned by the UK Office for Fair Trading.¹⁶⁸ The study furthermore found that misleading price frames are likely to cause most harm to consumers in markets with high search costs and low frequency of purchases – two characteristics which apply to the real estate market.

Therefore, as long as price information was consistently displayed, consumers in the experiment understood it fairly well. Yet, a substantial share of respondents (25-30%) did not understand prices nonetheless. Policy makers should take this into consideration by strengthening market practices which encourage comparability and transparency in prices.

Next, Table 26 presents the **rental price frame**. When prices were framed as monthly, 92% of respondents on average were able to indicate the monthly rent of the property

¹⁶⁸ Office for Fair Trading (2010) 'The impact of price frames on consumer decision making', a report prepared by London Economics and University College London.

correctly.¹⁶⁹ When prices were framed as weekly, however, only 15% of respondents were able to correctly convert this figure into a monthly rent.

Table 26: Share of respondents indicating the correct monthly rent by rental price frame treatments				
	Weekly prices indicated	Monthly prices indicated	Difference ⁽¹⁾	No. of respondents
Domestic rental ⁽²⁾	0.15	0.92	0.77***	811

Notes: 1) *, **, *** indicate statistical significance levels of 10%, 5% and 1%, respectively. 2) The rent price frame was only applicable to the domestic rent scenario. The analysis was thus not further split into scenarios.

Source: Main Task 5 Behavioural experiment

The difference in performance was highly significant for all socio-demographic groups. The remedy was particularly effective for women and younger respondents. Most respondents simply multiplied the weekly price by four, which considerably understated the actual monthly price.¹⁷⁰ Older respondents, as well as those with high education or cognitive ability, and respondents with experience in the real estate market performed on average better, but even in these groups the share of correct answers remained below 20%. Since virtually nobody overestimated the monthly rent, the experiment thus indicated that respondents systematically underestimate the monthly rent when prices are advertised using weekly figures.

While the experiment did not allow an estimation of the amount of consumer detriment caused by this practice, it seems natural to conclude that it certainly increases search costs for consumers. For example, it might lead prospective tenants to search for properties which are beyond their financial abilities, or it may cause tenants to run into financial difficulties if they need to pay rents which are higher than anticipated.

Impact of framing information using text, icons or tabular format

During the in-depth assessment of one property, respondents were asked to indicate the number of bathrooms in the property. For this task, respondents were ***always shown*** all the information required for answering the questions, and the experimental treatments systematically varied ***how*** this information was displayed. There were four information frames used:

- The number of bathrooms was disclosed in the property text description (labelled below as 'Text only')

In addition, some respondents saw one of three remedies which showed the property's key features, including explicitly mentioning of the number of bathrooms via:

- A list of icons (labelled below as 'Icons'); or
- An information table (labelled below as 'Table'); or
- A list of icons and an information table (labelled below as 'Both').

Compared to when the information on the number of bathrooms was given only in the text description, each of the three remedy frames significantly improved overall respondent performance. Icons appeared to be the most effective way of communicating property key features to respondents, compared to the tabular, and icon and tabular frames.

¹⁶⁹ The majority of the 8% of respondents who answered incorrectly even though the monthly rent was given seems to have done simple typing/copying mistakes such as typing €360 instead of €1360, or €1365 instead of €1360.

¹⁷⁰ The correct multiple is $52/12=4.333$. Prices approx. +/- 8% of the actual monthly price were counted as correct, but the 'correct' range excluded prices which would be obtained by simply multiplying the weekly rent with four.

Table 27: Share of respondents in each treatment condition indicating the number of bathrooms correctly, by experimental scenario

	Stage 2 – in-depth assessment of one property advertisement							
	Text only	Icons	Difference to text only ⁽¹⁾	Table	Difference to text only ⁽¹⁾	Both (icons and table)	Difference to text only ⁽¹⁾	No. of respondents
All respondents	0.66	0.83	0.17***	0.77	0.11***	0.80	0.14***	2,004
Domestic rent	0.62	0.83	0.21***	0.71	0.09*	0.75	0.13**	811
Domestic purchase	0.66	0.84	0.17**	0.66	0.00	0.72	0.06	398
Cross-border scenario 1 (shopping on domestic site)	0.68	0.84	0.16**	0.83	0.15**	0.89	0.21***	398
Cross-border scenario 2 (shopping on foreign site)	0.72	0.83	0.11	0.92	0.20***	0.91	0.19***	397

Notes: 1) *, **, *** indicate statistical significance levels of 10%, 5% and 1%, respectively.

Source: Main Task 5 Behavioural experiment

How much information can be digested

This section presents key results from the experiment on the amount of information provided to respondents and how the volume (or density) of information impacts their performance. The analysis was motivated by evidence in the academic literature which finds that consumers can be overwhelmed with choice and/or information and that decision-quality often deteriorates when more choice/information is provided.¹⁷¹

The experiment found no evidence for information overload. In this experiment, it appears that respondents appreciated any additional pieces of information they received.

Table 28 illustrates this result via a regression analysis which verifies the effect of different information densities on overall performance in the experiment. Information density was defined via an indicator function which takes higher values if a respondent was shown more information during the experiment via the different treatments.¹⁷²

Respondents improved their overall performance when they were shown more rather than less information. It does not seem that a fuller or, 'more crowded' screen distracted and overwhelmed the experiment respondents.

¹⁷¹ See for example Malhotra (1982) 'Information Load and Consumer Decision Making', Journal of Consumer Research ; Iyengar, Lepper (2000) 'When choice is demotivating: Can one desire too much of a good thing?', Journal of Personality and Social Psychology.

¹⁷² For example, the indicator would indicate 'Low information density' for respondents who saw no size in sqm, no EPC rating, and no key features via icons or a table. On the contrary, it would indicate 'high information density' for respondents who saw size in sqm, EPC ratings, and key features via icons and tables. Medium information densities would lie between these extremes.

Table 28: Regression analysis of overall performance in the experiment by information density			
	Model 1	Model 2	Model 3
Medium information density	0.0184 (0.112)	0.0205 (0.115)	0.0380 (0.118)
High information density	0.276** (0.125)	0.281** (0.128)	0.265** (0.131)
Additional control variables included in regression	none	Experimental scenarios	Experimental scenarios, socio-demographic characteristics and behavioural drivers
Number of respondents	2,004	2,004	1,959

Notes: Estimation using ordered logit regression of categorical variable taking values 0 to 8 for overall performance in objective questions in the experiment. Baseline for information density is 'Low information density'. Standard error in parentheses. *, **, *** indicate statistical significance levels of 10%, 5% and 1%, respectively.

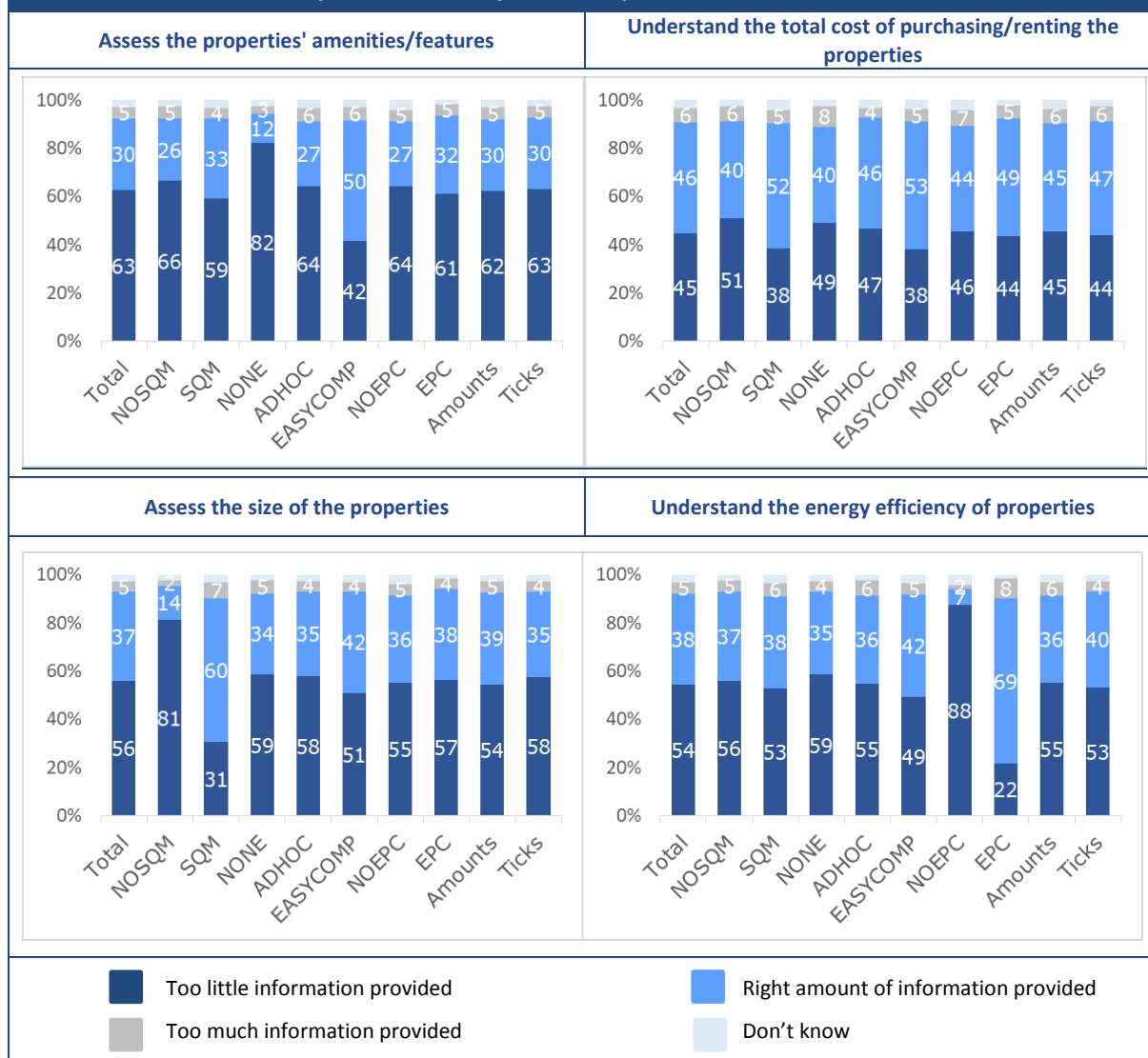
Source: Main Task 5 Behavioural experiment

At the same time, the previous section showed that respondent performance was best when key features were shown via icons, and that showing key features in tabular format in addition to the icons did not further improve response quality. Yet, this also does not imply that respondents performed worse when more information was presented.

These findings are all in line with another strand of academic literature dealing with information overload and information processing. A paper by Lurie (2004) argues that individuals do not necessarily struggle with high information densities as such, but that they struggle when information is not consistently shown, or when there is a large variation in information. This can also be seen in the results presented in Section 4.3.1. Showing ad hoc key features of properties significantly lowered respondent performance while showing key features in a consistent and easily comparable way significantly improved response quality.

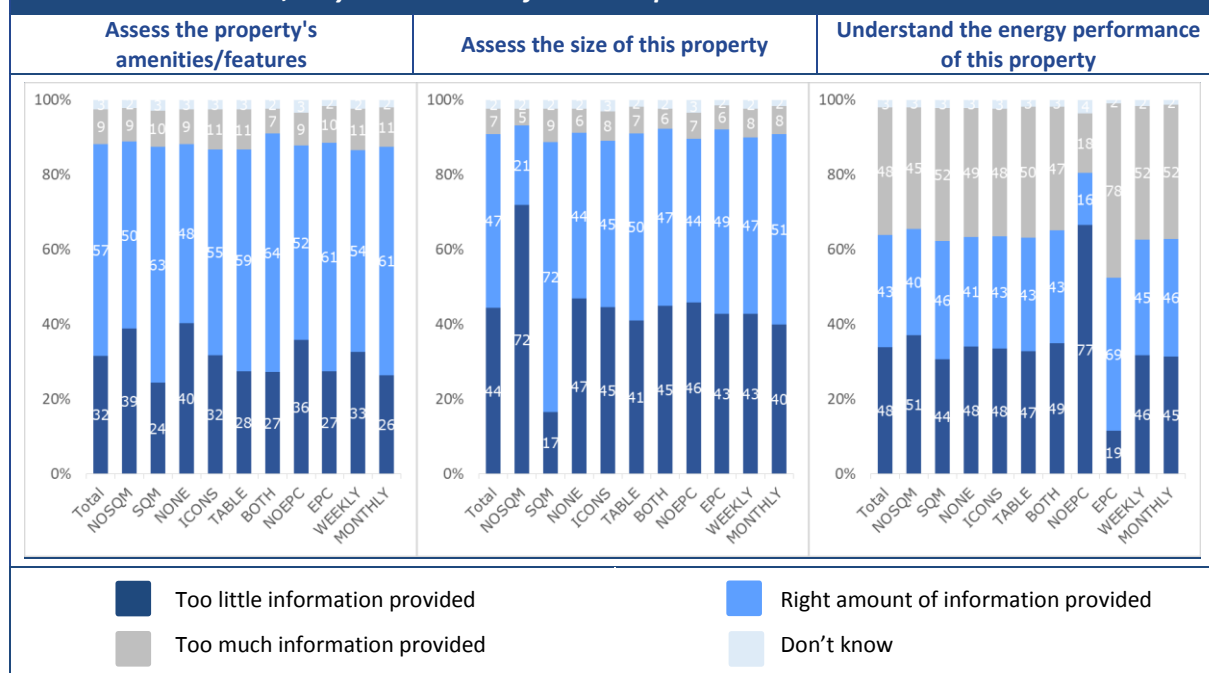
Finally, as shown in Figure 20 and Figure 21 below, respondents generally did not feel that they were provided with too much information. Moreover, in experimental conditions which provided more information, respondents were more likely to feel that they had the right amount of information. This was especially the case when the information was directly linked to the question at hand. For example, 14% of respondents felt they had the right amount of information to assess the property sizes in the condition where surface in sqm/sqft were not shown, compared to 60% in the condition where surface area was shown.

Figure 20: Answers to the qualitative appreciation question following tasks on comparing multiple properties (stage 1) to the question ‘If you were looking for real properties on this website, do you think the information provided was too little or too much to:’



Notes: A corresponding regression analysis showing the statistical significance of the shifts in responses due to the experimental treatments can be seen in the excel file "Stage 1 - Presentation of information" tab "S1_G2".
Source: Main Task 5 Behavioural experiment

Figure 21: Answers to the qualitative appreciation question following tasks on assessing one property in depth (stage 2) to the question 'If you were looking for real properties on this website, do you think the information provided was too little or too much to:'



Notes: A corresponding regression analysis showing the statistical significance of the shifts in responses due to the experimental treatments can be seen in the excel file "Stage 2 - Presentation of information" tab "S2_G6".
 Source: Main Task 5 Behavioural experiment

It is important to note that the above results do not imply that information overload is not present in the real estate market and that information overload does not cause harm in this market. It simply means that there was no such detriment present in the experiment. This might be due to the design of the experiment which was a simplified simulation of real-world property comparison websites. Almost all information shown in the experiment was eventually needed to answer the questions and it is therefore not surprising that respondents did not feel overwhelmed by any of the shown elements. Furthermore, respondents spent quite a long time looking at the different elements of the advertisements in order to answer the various questions. In reality, respondents might scan through a large number of advertisements more quickly and as a result find it more difficult to process the information provided.

4.3.3 Differences between domestic and cross-border scenarios

As mentioned before, the experiment environment was varied slightly to mimic situations in which consumers assess domestic properties to rent or buy, or cross-border scenarios in which consumers assess properties abroad from their home country, or directly in the country where the property is located.

Overall performance was significantly better in the cross-border scenarios compared to the domestic settings. There is no clear conclusion regarding a differential effectiveness of the tested remedies in the different scenarios because some remedies were effective in domestic but not in the cross-border settings, and vice versa.

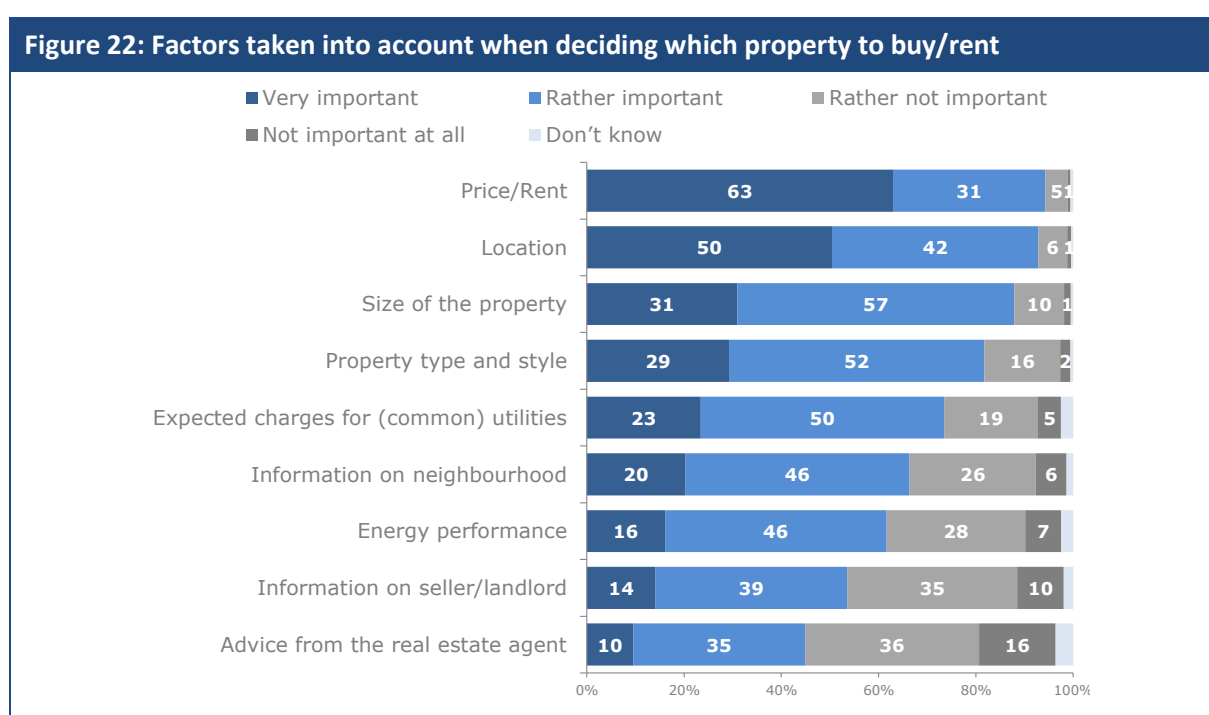
A possible explanation for the higher performance in the cross-border scenarios is that respondents were more suspicious, or uncertain, and more concentrated in the cross-border scenarios, and as a result less reliant on experience or intuition. This may have led them to assess advertisements more carefully and thus understand them better.

4.4 Information about charges for utilities

4.4.1 Charges for utilities in properties to buy or rent

The following figure illustrates that sale price/monthly rent and location are the most important factors in consumers' decisions about which property to rent/buy, but the figure also shows that almost a quarter (23%) of those that bought or rented a property (or attempted to buy/rent) considered information about charges for utilities to be a very important piece of information.

The **expected charges for common utilities** were the specific item where survey respondents who bought or rented (or attempted to buy or rent) a property experienced the greatest difficulties in obtaining information (see Figure 12 in Section 4.2.1). This was equally difficult for those buying and renting (14% for both segments of the survey respondents considered 'very difficult' to obtain information on the expected cost of utilities).



Question: Q4a. Still thinking about the last time you bought/rented a property (or attempted to buy/rent), how important were the following aspects in your decision?

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

Source: Main Task 2 Consumer survey

Information on the expected charges for (common) utilities was also part of the information that the estate agents of sellers and landlords provided to those in the market to buy or rent (see Figure 8 in Section 3.3.2). In fact, it was the third most frequent item of information made available at an aggregate level (EU28) after the description of the property and the information on the buying and renting process (at 80%, 53% and 41% respectively). This was most frequently made available to buyers (41%) in comparison to sellers (31%) is negligible.

The information made available on the utility charges is again mentioned in the survey as one of the problems encountered by respondents, which will be discussed in Chapter 8.

4.4.2 Arrangements for charges for utilities in properties for let

As noted above, information on the charges for utilities is the least accessible detail for consumers that either bought or rented a property, and only 6% mentioned it was very easy to obtain whereas 14% rated it as 'very difficult'. This is the case for both those interested in buying as well as those interested in renting. This is a stark contrast with the perspective of landlords, as more than 71% of those surveyed are of the opinion that the information provided to prospective tenants was realistic.

The consumer survey findings show that in a significant majority of letting arrangements the agreed cost did not include the cost of utilities such as water or electricity (81%). In the cases where landlords let a property for which the cost of utilities is not included in the rent the most frequent arrangement is that the tenant would pay the utility company directly (65%), and when this is not the case the landlord would charge the tenant either depending on actual usage (23%) or alternatively a fixed monthly rate (12%).

Consistently with earlier sections, whereas this seems to be a consistent scenario across most of the surveyed countries, marked exceptions occur. Tenants paying directly to the utility company is the most frequent arrangement between landlord and tenants in the majority of countries except in Germany, Estonia and Malta. In all of these countries, the most frequent arrangement for survey respondents is a usage related cost paid to the landlord instead.

Demographically, there also seems to be a consistent trend for utility paying arrangements in let properties. For instance, whereas less than half of young (18-34 years of age) tenants pay directly to the utility companies (48%), this happens in 7 out of 10 of the properties let to tenants over 55 years old. Furthermore, highly educated tenants also primarily pay directly to the utility company (71%) compared to tenants with lower levels of education, that are more frequently charged a cost directly related to usage.

5. Availability and choice in the market and satisfaction with services

This chapter discusses the consumer interaction with the real estate market per se. It covers the market concentration of its services, the consumer process in selecting a real estate agent, as well as consumers' confidence and satisfaction in the market.

Box 3: Summary of findings – Availability and choice in the market and satisfaction with services

- The real estate **market is generally competitive**; real estate agencies and real estate agents do not have an exclusive residential portfolio, and this is supposed to foster the level of competition. Business operators tend to differentiate by offering diverse typologies of dwelling and by privileging strong and personal connections with clients.
- Less than half of consumers **compare agents ahead of making a choice**. Instead, rental consumers choose agents primarily on the basis of their reputation or personal recommendations, although the magnitude of their fees is also considered to a lesser extent. The same criteria apply to consumers in selling situations, and in this case the valuation of the property is also taken into consideration.
- Although consumers seemed to be rather confident in their own national markets, a majority were **not confident in dealing with real estate transactions in other EU countries**. The unknown legislations, a different language, and the increased complication of the transaction were among the reasons identified for this lack of confidence.
- **Consumer satisfaction also appears to face numerous hindrances**. These include the delivery of mandatory information (which lacks a personalised approach), the overall guidance received (which is unclear and difficult to understand), the legal guidance (which is insufficient and incomprehensible), and the cost and fees involved (which affect consumer satisfaction).

5.1 Market concentration for real estate services

The level of market concentration for real estate services is linked to the level of competition in the market and will, therefore, affect the quality of the service provided to consumers. Given this assumption, one can hypothesise that the higher the number of real estate agents per inhabitant, the better the quality of the service provided by real estate agents.

From a quantitative point of view, one way to assess the level of competition of the real estate market in each of the countries in scope is to **estimate the number of real estate agencies and real estate agents per inhabitant**. In this case, one may assume that the higher the number of real estate agencies and real estate agents in one specific country, the higher the level of competition in the market. It is important to note, however, that other variables should be considered for a thorough analysis of the level of competition. Such variables include, for example, the level of demand and supply in the market or the location/area in which consumers wish to purchase a property. In fact, the presence of a shortage of supply of properties compared to the demand for properties is an important factor influencing the level of competition in the market. Moreover, levels of competition in the market seem to be higher in urban areas (including capital cities) as compared to rural areas.

Based on data from the Eurostat database, as well as on data obtained through the country fiches, it was possible to **estimate the number of real estate agencies and real estate agents per 1,000 inhabitants in the 30 countries in scope**. The complete dataset is reported in Table 22 and includes information related to:

- The number of real estate agencies per country;
- The number of real estate agents per country;
- The number of inhabitants; and
- The estimated number of real estate agencies and agents per 1,000 inhabitants.

Information on the number of real estate agents per country could not be obtained for all of the 30 countries. Some national legal experts indicated that this information is not available.

Considering first the **number of real estate agencies per 1,000 inhabitants**, the lowest number is recorded in Romania and corresponds to 0.7 real estate agencies per 1,000 inhabitants. This is followed by Greece (0.8) and by Croatia (0.9). On the contrary, the countries displaying the highest number of real estate agencies per 1,000 inhabitants are Norway (9.6) and Iceland (8.9), followed by Latvia (6.8) and Sweden (6.2). In the EU28, Norway and Iceland, the average at the aggregate level corresponds to 3.5 real estate agencies per 1,000 inhabitants.

Turning to the number of **real estate agents per 1,000 inhabitants**, the lowest values are observed in Spain (0.1), Croatia (0.2) and Lithuania (0.3). The highest number is recorded in Hungary and corresponds to 19.6 real estate agents per 1,000 inhabitants.

Table 29: Number of real estate agencies and agents per inhabitant					
	Real estate agency (2015)*	Real estate agents**	Population (2015)***	Real estate agencies per 1,000 inhabitants	Real estate agents per 1,000 inhabitants
AT	17,923	N/A	8,576,261	2.1	N/A
BE	45,001	9,887	11,237,274	4.0	0.9
BG	20,815	>1500	7,202,198	2.9	N/A
CY	807	N/A	847,008	1.0	N/A
CZ	45,033	15,300	10,538,275	4.3	1.5
DE	127,155	N/A	81,197,537	1.6	N/A
DK	26,932	3,172 ¹⁷³	5,659,715	4.8	0.6
EE	5,545	2800	1,314,870	4.2	2.1
EL	8,917	N/A	10,858,018	0.8	N/A
ES	135,528	4,149 ¹⁷⁴	46,449,565	2.9	0.1
FI	25,444	4,600	5,471,753	4.7	0.8
FR	244,367	N/A	66,488,186	3.7	N/A
HR	3,954	936	4,225,316	0.9	0.2
HU	31,544	193,334	9,855,571	3.2	19.6
IE	13,228	N/A	4,628,949	2.9	N/A
IT	238,273	N/A	60,795,612	3.9	N/A
LT	12,818	750	2,921,262	4.4	0.3
LU	3,250	N/A	562,958	5.8	N/A
LV	13,434	N/A	1,986,096	6.8	N/A
MT	1,586	N/A	429,344	3.7	N/A
NL	26,582	12,400	16,900,726	1.6	0.7
PL	47,841	N/A	38,005,614	1.3	N/A
PT	32,154	5,057	10,374,822	3.1	0.5
RO	14,472	N/A	19,870,647	0.7	N/A
SE	60,696	6,856	9,747,355	6.2	0.7
SI	2,618	1,986	2,062,874	1.3	1.0
SK	13,520	3,000	5,421,349	2.5	0.6
UK	88,911	50,000	64,875,165	1.4	0.8
IS	2,944	400	329,100	8.9	1.2
NO	49,733	3,500	5,166,493	9.6	0.7

Source: *Eurostat, Annual detailed enterprise statistics for services (NACE Rev. 2 H-N and S95), [sbs_na_1a_se_r2];

**Country fiches

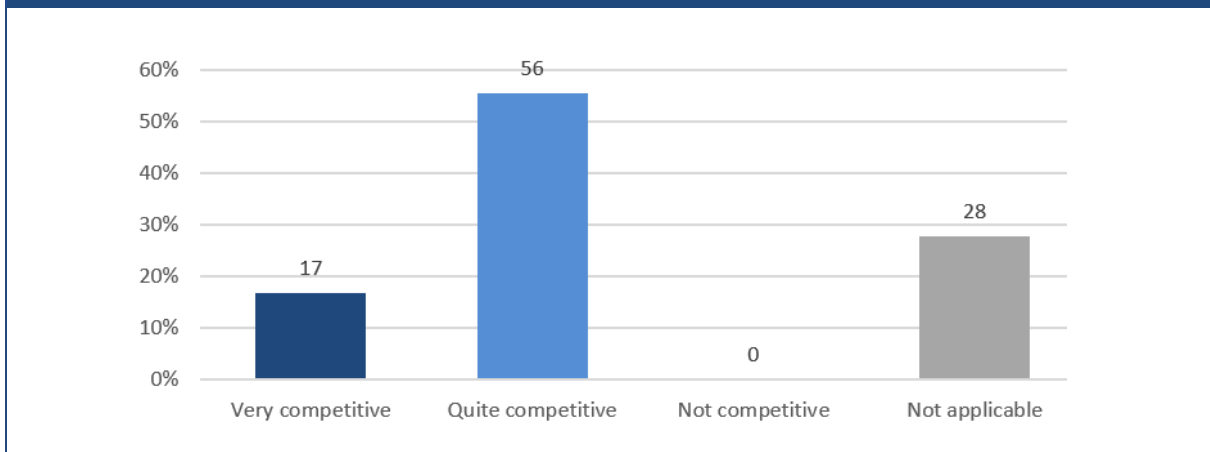
***Eurostat, Population change – Demographic balance and crude rates at national level, population on 1 January [demo_gind]

To further assess the level of competition in the real estate market, the surveyed National Competent Authorities (NCAs) were asked to indicate, based on their knowledge, how competitive the real estate market in their country is. A minority of respondents (3 out of 18 or 17%) pointed out that the real estate services market is very competitive. The majority of respondents, 10 out of 18 or 56%, maintained that the real estate market is quite competitive. Overall, it seems that the real estate services market is competitive.

¹⁷³ Statistics from The Danish Real Estate Association. However, the figure only indicates the number of members of the Danish Property Brokerage Association. The individual brokerage chains may have more employees and business locations than those contained in the number.

¹⁷⁴ Estate agents registered in the professional college and exercising the profession.

Figure 23: Levels of competition in the real estate market (Survey of national competent authorities)



Note: Survey of NCA, Q.1: To your knowledge, how competitive is the real estate market in your country based on the number of service providers?

Number of NCA respondents: 18.

Source: Main Task 1 Survey of national competent authorities

In relation to the level of competition in the market, the aspect of exclusivity of real estate agents' residential portfolio was investigated. Despite the low number of responses (6 responses), consistent evidence was collected to answer the question whether estate agencies' residential portfolio is exclusively assigned to one estate agency. **All 6 respondents indicated that they do not exclusively manage the residential portfolio assigned to their estate agency.** This means that the same property is normally advertised by two or more real estate agencies and this potentially increases the level of competition in the real estate market.

Business operators were also asked to select among a wide range of options those **aspects that differentiate their business with respect to the one of their competitors**. The majority of respondents, namely 5 out of 6 (83%) indicated the following options: a) offer of more and more diverse dwellings; b) exchange of information through email and text messages; c) strong and personal connections with clients. This is followed by the option 'faster services' that has been marked by four respondents (67%). Two respondents (33%) selected the option 'offer of dwellings accommodating new technologies' and 2 others 'online access to information'. The remaining options were selected by one respondent (17%).

Considering the above stated results, it seems that real estate agents are inclined to attach more value to the level of quality of the service in terms of better communication with clients than in terms of faster communication and faster services.

Main findings related to the level of competition in the real estate market can be summarised as follows:

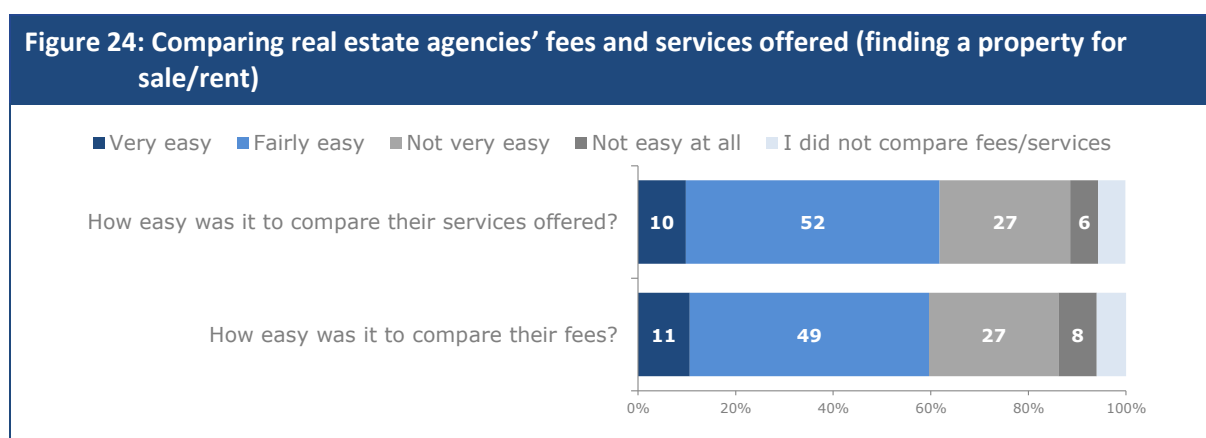
- The real estate services market is generally competitive;
- Real estate agencies and real estate agents do not have an exclusive residential portfolio, and this is supposed to foster level of competition;
- Business operators tend to differentiate their business as regards other competitors by offering diverse typologies of dwelling and by privileging strong and personal connections with clients by exchanging information through emails or text messages.

5.2 Consumer selection for real estate agents

5.2.1 Selecting a real estate agent for buying and renting

In Section 4.2.1, it was noted that, across the EU28, 19% of consumers who had bought or rented a property in the past seven years (or had attempted to do so), had **hired a real estate agent to help them find this property**.

Close to one in two (46%) consumers who had hired a real estate agent to find them a property said they had compared real estate agents before making their eventual choice. A minority of these respondents who had compared real estate agents answered that it had been very easy to compare the services offered (10%) or fees charged (11%); although comparisons were not likely to have been “very easy”, one in two consumers thought that making comparisons of fees and services offered had been “fairly easy” (49% and 52% respectively). This finding seems in line with observations made in the context of the ‘Consumer Market Scoreboard 2016 edition’¹⁷⁵, where the proportion of consumers who described understanding and comparing different offers in the real estate services market as “very easy” was lower than in other markets, but the proportion who reported that comparisons has been “not easy” stayed, nonetheless, relatively low (at 14%).



Question: Q18a. How easy was it to compare their fees? Q18b. How easy was it to compare their services offered?
Base: respondents who compared real estate agents before hiring one of them to find them a property (EU28: n=886)

Source: Main Task 2 Consumer survey

When asked **what had made consumers decide to use the real estate agent they had selected**, 40% referred to the real estate agent's reputation and professionalism, 26% said that the real estate agent had been recommended by an acquaintance and 15% had used the agent before. One in three respondents (32%) mentioned the location of the real estate agent as a decisive factor.

It is also worth noting that 21% of consumers had selected a specific real estate agent based on the size of the fees charged. The size of the real estate agencies' fees was mentioned by 29% of 18-34 year-olds, compared to just 19% of over 54 year-olds.

¹⁷⁵ European Commission, (2016). “Consumer Market Monitoring Survey”. Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/market_monitoring/index_en.htm (see page 51)

Figure 25: Reasons for choosing a specific real estate agent (finding a property for sale/rent)



Question: Q19. What made you decide to use the real estate agent you selected?

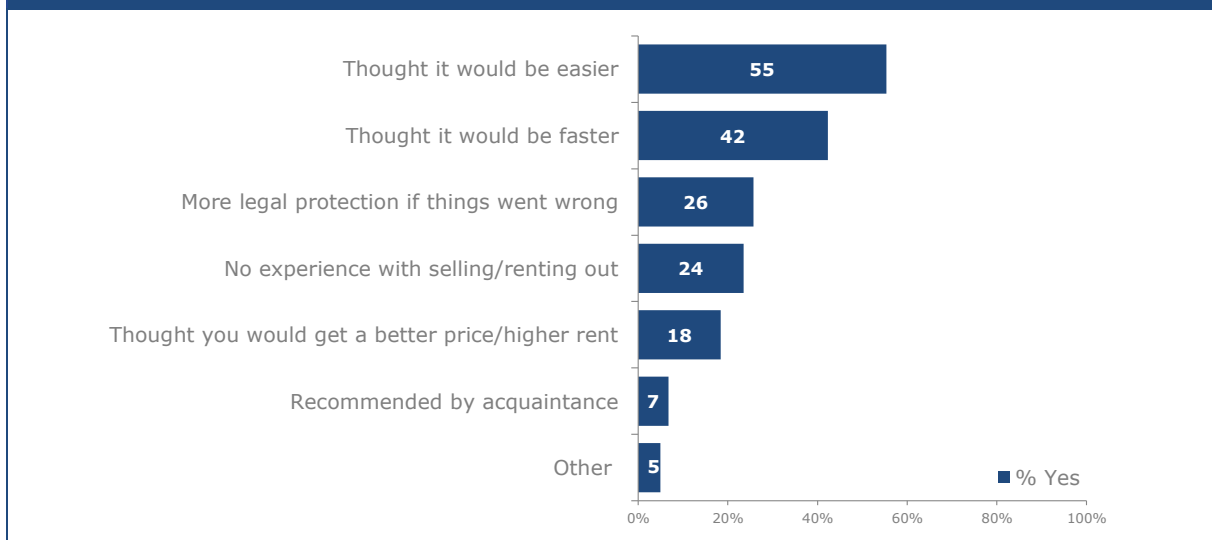
Base: respondents who hired a real estate agent to find a property (EU28: n=1,921)

Source: Main Task 2 Consumer survey

5.2.2 Selecting a real estate agent for selling or letting

A slim majority of consumers (55%) who had sold or let a property, or had attempted to do so, in the past seven years (via a real estate agent), had decided to go through a real estate agent because they thought it would be easier. Roughly 4 in 10 respondents (42%) thought it would be faster to go through a real estate agent. These two reasons were the most important ones across all socio-demographic groups.

Figure 26: Reasons for working with a real estate agent when trying to find a buyer/tenant (EU28)



Question: Y1. For which reasons did you go through a real estate agent?

Base: respondents who sold/rented out a property (or attempted to sell/rent out a property) (EU28: n=4,838)

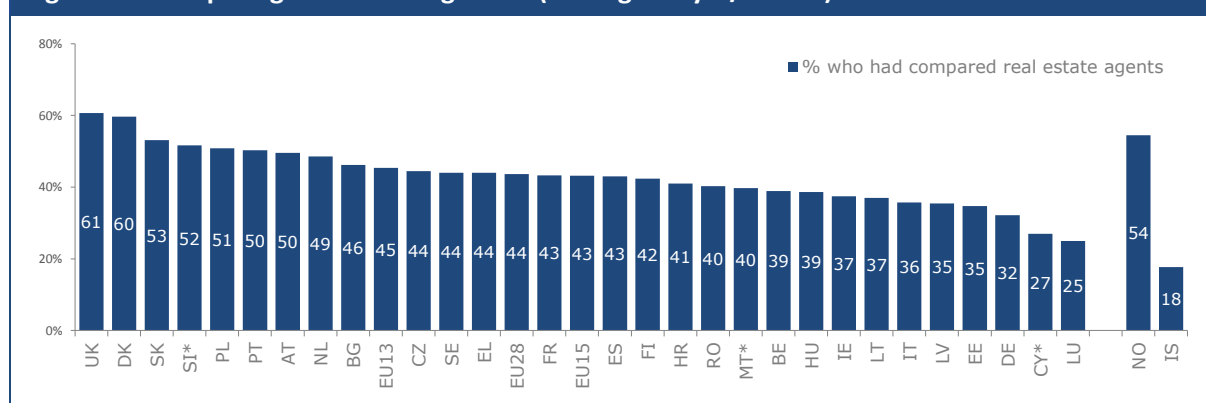
Source: Main Task 2 Consumer survey

One in six consumers (18%) thought they would get a better price or higher rent with a real estate agent. A quarter (24%) of respondents had gone through a real estate agent because they did not have experience with selling or renting out a property, and 7% had chosen this approach because an acquaintance had recommended this approach.

Finally, 26% mentioned the benefits of more legal protection; this type of benefits was mainly recognised in some of the Nordic countries: Denmark (41%), Iceland (53%) and Norway (56%).

Across the EU28, less than half (44%) of consumers interviewed, who had recently sold or let a property, or had attempted to do so, had compared real estate agents before making their eventual choice. Consumers who wanted to sell a property were more likely than those looking for a tenant to have compared real estate agents (46% vs. 37%). In Luxembourg, just 25% of consumers had compared real estate agents, while in Denmark and the UK, this figure was 60%-61%.

Figure 27: Comparing real estate agencies (finding a buyer/tenant)



Question: Y3. Did you compare real estate agents before you made your eventual choice?

Base: respondents who sold/rented out a property (or attempted to sell/rent out a property) (EU28: n=4,838)

Note: * n < 100

Source: Main Task 2 Consumer survey

Among respondents who had compared real estate agents before making their choice, 13% answered that it had been very easy to compare the services offered by the real estate agents, and a further 53% said that this comparison had been fairly easy. The corresponding figures for comparing real estate agency fees were 16% and 50%, respectively.

When asked **what had made consumers decide to use the real estate agent they had selected**, 39% referred to the real estate agent's reputation and professionalism, 21% said that the real estate agent had been recommended by an acquaintance and 17% had used the agent before. Previous experience with a real estate agent was more frequently mentioned by older consumers (20% vs. 10% of 18-34-year-olds), while recommendations by an acquaintance were important across all age groups.

One in five respondents (21%) explained that they had chosen the real estate agent based on their valuation of the property, while 22% had considered the size of the real estate agency's fees. Among the youngest sellers/landlords, the size of the real estate agency's fees was as important as their reputation (mentioned by 35% and 37%, respectively).

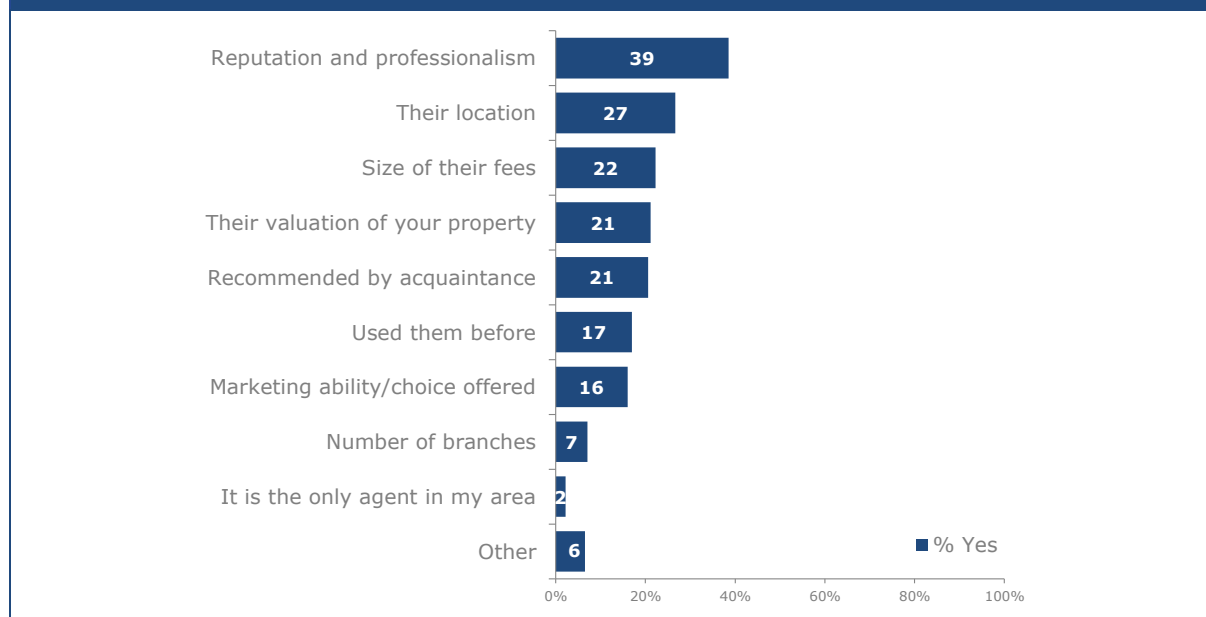
One in four respondents (27%) referred to the location of the real estate agent, and 7% had looked at the number of branches of the real estate agency. The number of branches of the real estate agent was more frequently mentioned by younger consumers (12% of 18-34-year-olds vs. 5% of over 54 year-olds).

In most countries, the largest proportion of respondents replied that they had selected a specific real estate agency based on their reputation and professionalism. In Hungary, Latvia and Poland, however, the size of the real estate agency's fees was mentioned by a similar – or even larger – proportion of respondents than the proportion referring to the real estate agency's reputation and professionalism.

Across the EU28, 2% of sellers/landlords reported that they had decided to work with a specific real estate agent because it was the only agent in their area. In most countries,

very few consumers are faced with such a lack of choice; in Cyprus, however, 12% referred to the fact that the real estate agent they had worked with was the only one in their area.

Figure 28: Reasons for choosing a specific real estate agent (finding a buyer/tenant) (EU28)



Question: Y4. What made you decide to use the real estate agent you selected?

Base: respondents who sold/rented out a property (or attempted to sell/rent out a property) (EU28: n=4,838)

Source: Main Task 2 Consumer survey

5.3 Consumer confidence in the real estate market

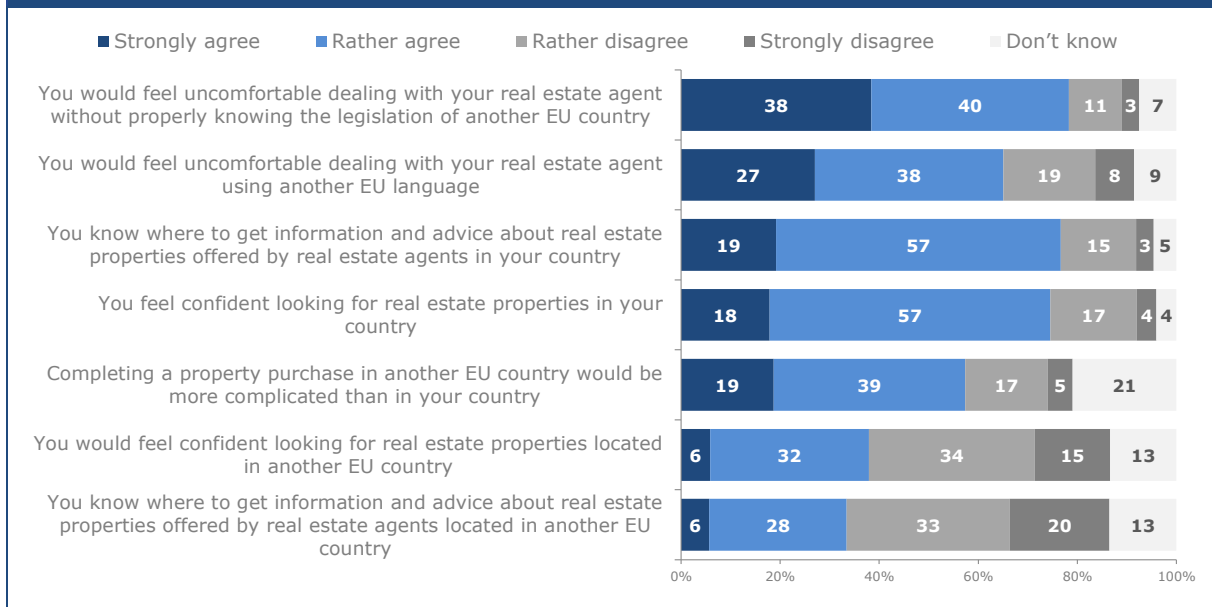
A majority of consumers surveyed across the EU (who have completed – or attempted to complete – a real estate transaction in the past seven years) replied that they felt confident looking for real estate properties in their country (18% strongly agreed and 57% rather agreed). Similarly, 19% strongly agreed and 57% rather agreed that they knew where to get information and advice about real estate properties offered in their country. Figure 29 (on the next page) illustrates that, although respondents tended to agree with the abovementioned statements, they were considerably less likely to report that they “strongly agreed” than to state that they “rather agreed”. One factor influencing consumer confidence is awareness of one’s rights during real estate transactions. In Section 8.6.1, it is reported that the majority of stakeholders interviewed thought that consumers are either not aware (12 respondents out of 33 or 36%) or quite aware (14 respondents out of 33 or 42%) of their rights; only a minority of stakeholders (3 out of 33 or 9%) answered that consumers are very aware of their rights.

A different picture emerged, however, when asking consumers about properties located in another EU country. Just 6% strongly agreed, and an additional 32% rather agreed, that they felt confident looking for properties located in other EU countries; the figures for the second statement – knowing where to get information and advice – were almost the same as for the first statement about properties in another EU country.

The remaining statements offer a partial explanation for this difference in views about properties in one’s own country compared to properties in other EU countries:

- 38% of respondents strongly agreed and 40% rather agreed that they would feel uncomfortable dealing with real estate agents without knowing the legislation of another EU country;
- 27% of respondents strongly agreed and 38% rather agreed that they would feel uncomfortable dealing with a real estate agent using another EU language;
- 19% strongly agreed and 39% rather agreed that it would be more complicated to complete a property purchase in another EU country.

Figure 29: Agreement with statements about real estate transactions in one's own country and in other EU countries



Question: C1. The following question is about real estate properties in [COUNTRY] and in other EU countries. Do you agree or disagree with each of the following statements?

Base: all respondents (EU28: n=14,670)

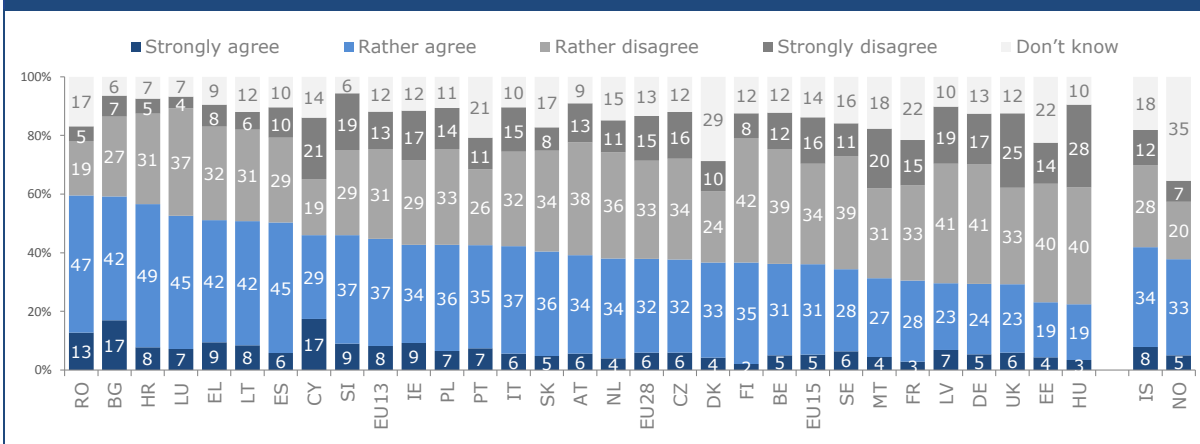
Source: Main Task 2 Consumer survey

An analysis by socio-demographic groups showed mainly minor differences in the levels of agreement for the statements about properties located in another EU country. As expected, language issues were less of a concern for younger and higher educated respondents. However, although higher educated respondents were somewhat more likely to agree that they knew where to get information and advice about real estate properties offered in their own country (77% for highly-educated vs. 71% for lower educated respondents); the level of agreement across educational groups was very similar for the statement about advice about properties located in another EU country (33% vs. 31%, respectively).

The charts on the following pages present the individual country results for the statements about **properties located in another EU country**.

Across all countries surveyed, consumers tend to feel uncomfortable looking for real estate properties located in another EU country and would not know where to get advice about this type of properties. The proportion of consumers strongly agreeing that they would feel comfortable remains below 10% for the first two statement, and this in almost all countries surveyed. Moreover, in just a handful of countries, respondents who express agreement outnumber those who disagree.

Figure 30: Agreement with statement: You would feel confident looking for real estate properties located in another EU country

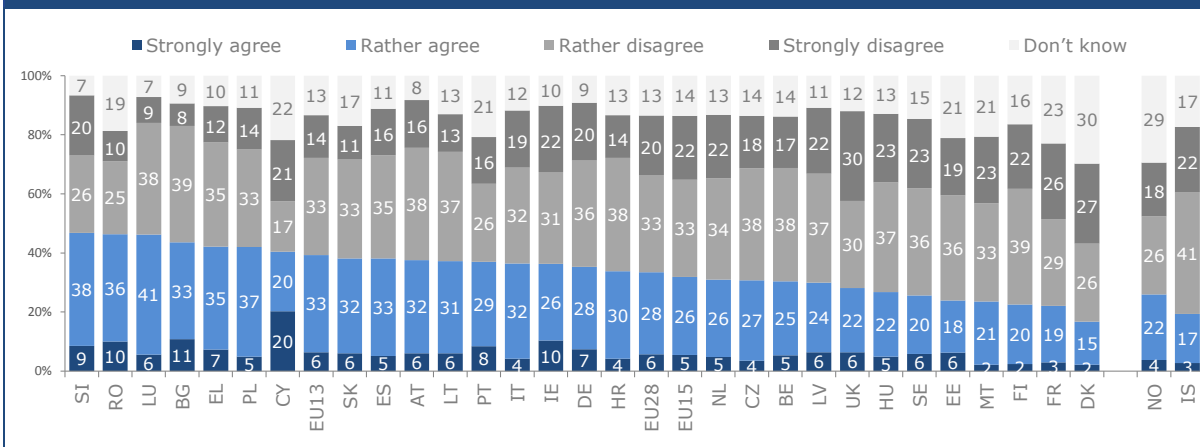


Question: C1. The following question is about real estate properties in [COUNTRY] and in other EU countries. Do you agree or disagree with each of the following statements? You would feel confident looking for real estate properties located in another EU country

Base: all respondents (EU28: n=14,670)

Source: Main Task 2 Consumer survey

Figure 31: Agreement with statement: You know where to get information and advice about real estate properties offered by real estate agents located in another EU country



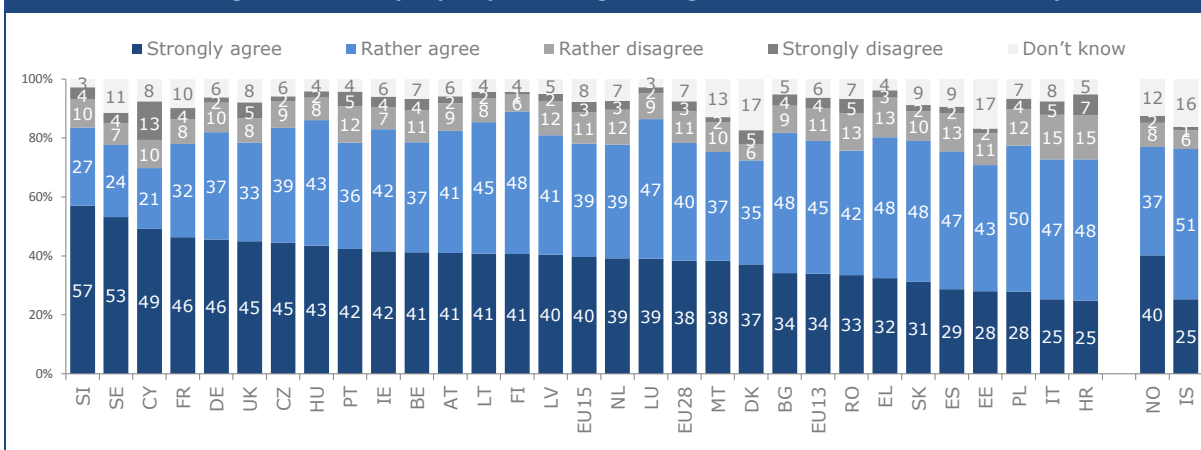
Question: C1. The following question is about real estate properties in [COUNTRY] and in other EU countries. Do you agree or disagree with each of the following statements? You know where to get information and advice about real estate properties offered by real estate agents located in another EU country

Base: all respondents (EU28: n=14,670)

Source: Main Task 2 Consumer survey

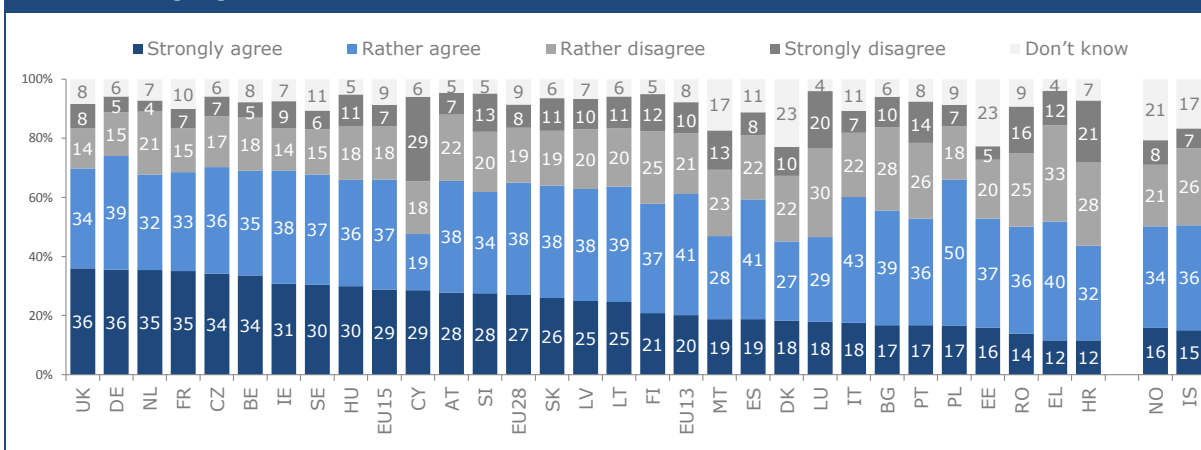
A second observation that can be made is that, across all countries, **not knowing the legislation in another EU country** seems to be the main concern of consumers. The level of strong agreement for the statement that they would feel uncomfortable dealing with real estate agents without properly knowing the legislation of another EU country ranged from 25% in Italy, Croatia and Iceland to 57% in Slovenia. Across all countries, consumers strongly agreeing with this statement outnumber those strongly agreeing that they would feel uncomfortable due to using **another EU language**. The level of strong agreement for the latter statement ranges from 12% in Croatia and Greece to 36% in Germany and the UK.

Figure 32: Agreement with statement: You would feel uncomfortable dealing with your real estate agent without properly knowing the legislation of another EU country



Question: C1. The following question is about real estate properties in [COUNTRY] and in other EU countries. Do you agree or disagree with each of the following statements? You would feel uncomfortable dealing with your real estate agent without properly knowing the legislation of another EU country
 Base: all respondents (EU28: n=14,670)
 Source: Main Task 2 Consumer survey

Figure 33: You would feel uncomfortable dealing with your real estate agent using another EU language

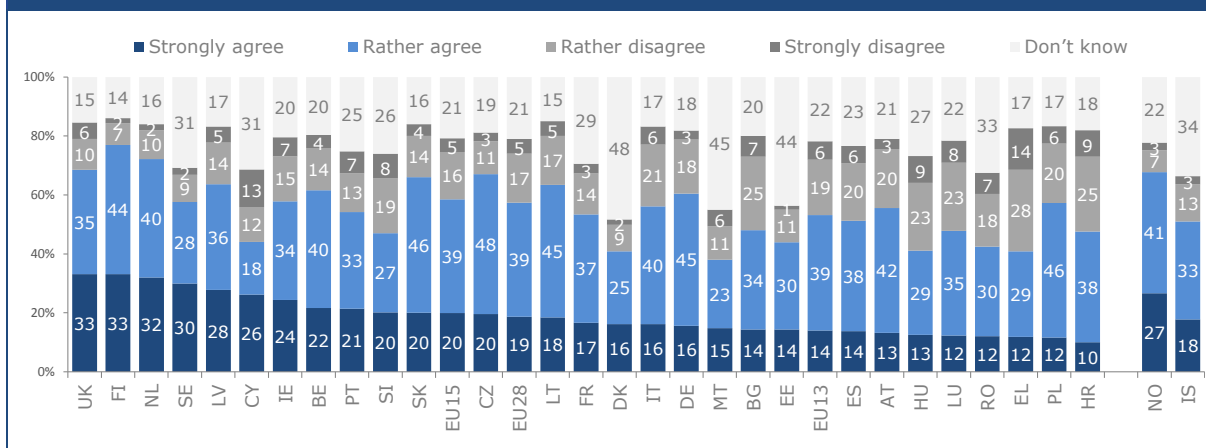


Question: C1. The following question is about real estate properties in [COUNTRY] and in other EU countries. Do you agree or disagree with each of the following statements? You would feel uncomfortable dealing with your real estate agent using another EU language
 Base: all respondents (EU28: n=14,670)
 Source: Main Task 2 Consumer survey

The proportion of consumers who selected the “don’t know” response was the highest for the statement whether completing a property purchase in another EU country would be more complicated than in one’s own country (from 14% in Finland to 48% in Denmark). This should not come as a surprise, since most consumers did not have actual experience with buying a property in another EU country.

Among consumers who expressed a view about this process, those who thought that buying a property abroad would be more complicated than buying a property in one’s own country outnumbered those who thought the opposite was true. One country stands out in this regard: in Greece, as many respondents thought that buying a property in Greece would in fact be more complicated than buying a property in another EU country (42% and 41%, respectively).

Figure 34: Completing a property purchase in another EU country would be more complicated than in [COUNTRY]



Question: C1. The following question is about real estate properties in [COUNTRY] and in other EU countries. Do you agree or disagree with each of the following statements? Completing a property purchase in another EU country would be more complicated than in [COUNTRY]

Base: all respondents (EU28: n=14,670)

Source: Main Task 2 Consumer survey

5.4 Consumer satisfaction with the quality of real estate services

According to the 2016 edition of the '**Consumer markets scoreboard**', the percentage of consumers having experienced problems in the real estate market is high¹⁷⁶. Moreover, based on the results presented in the report 'Monitoring consumer markets in the European Union 2015', the real estate market ranked in the last position among the 29 services markets assessed. As the lowest performing services market, the real estate market was the one exhibiting the 'higher proportion of problems' and the 'higher level of detriment'¹⁷⁷. Given this background, the question whether consumers are generally satisfied with the quality of services provided by real estate agents was included in the survey of CPAs, HOAs and TAs.

Results show that, according to **half of the stakeholders surveyed** (11 out of 22 or 50%), **consumers are generally satisfied with the services provided by real estate agents**, while five stakeholders (**23%**) **thought that consumers are not satisfied**. These results may seem to contradict the findings presented in the 'Consumer markets scoreboard' (mentioned in the previous paragraph); however, in this regard, it is important to note that stakeholders (CPAs, HOAs and TAs respondents) may have different views about the level of consumer satisfaction than consumers themselves (who are interviewed as part of the 'Consumer markets scoreboard'); for example, (real) consumers might feel in difficulty when dealing with this matter per se, due to the fact that most real estate transactions have a substantial economic impact on the life of an individual. In fact, when investigating the point of view of consumers in this study, different results emerged. For example, the results from the focus group held in Amsterdam were informative in this regard. Consumers were asked to evaluate their satisfaction with the following services:

- Delivery of mandatory information;
- Guidance to consumers for real estate transactions;
- Guidance to consumers for legal aspects; and
- Amount of costs and fees for the service provided.

In the evaluation of the **delivery of mandatory information**, most participants raised problems about the **lack of a personalised approach**. This means that real estate agents discuss legal matters via phone or e-mail and rarely in a personalised way. This gives

¹⁷⁶ European Commission, (2016). "Consumer Market Monitoring Survey". Available at: http://ec.europa.eu/consumers/evidence/consumer_scoreboards/market_monitoring/index_en.htm

¹⁷⁷ Idem

consumers the feeling they are not sufficiently accompanied during the process. More details about minimum standard for information provision are discussed in Section 4.1.

Consumers shared a similar view in relation to the **guidance received during real estate transactions** from real estate agents. Information is difficult to find, **unclear** and difficult to understand. Participants had the feeling that real estate agents do not offer clear guidance in helping to understand the information they need to make a good decision. On the top of that, consumers reported cases where real estate agents put pressure on them to take a decision regarding buying/selling or renting a property. Detailed findings about consumer problems are discussed in Chapter 8.

The **guidance on legal aspects** was perceived as **low and difficult to understand**. The fact that consumers are not aware of legal aspects can lead to big losses. For example, one seller was not aware of a tax regulation, leading to a loss of €15,000 in the process. One real estate agent, in charge of buying properties for his clients, mentioned that he had difficulties to find information on the cross-border regulatory framework. Although real estate agents have access to this kind of information and should guide consumers on legal aspects, practice shows that improvements need to be sought.

With regard to the **costs and fees for the services real estate agents deliver**, according to focus group participants, the costs and fees are comparable among the agents. However, **consumers' satisfaction with the services delivered varies**. Further, consumers find it difficult to find a real estate agent.

6. Mandate contracts between consumers and real estate agents

This chapter considers contract types offered by real estate agents. Section 6.1 and 6.2 look specifically at mandate contracts concluded between consumers and real estate agents.

Box 4: Summary of findings – Mandate contracts

- Across the EU28, when selling or letting a property through a real estate agent, **simple mandate contracts** were more common than **exclusive mandate contracts**. In a small number of countries (Belgium, the UK, Sweden and Iceland), exclusive mandates were more regularly used than simple mandates.
- Although consumers appear satisfied with the information provided to them by the real estate agent about conditions and obligations attached to the real estate agency contract, few consumers said to be *very satisfied* with the information provided.

6.1 Mandate contracts between consumers and real estate agents

6.1.1 Choice and negotiations on mandate contracts for consumers buying or renting

A slim majority (56%) of respondents to the consumer survey who had hired a real estate agent to find them a property, had signed a contract with one real estate agent, and 8% had signed a contract with more than one agent; the remaining 36% had not signed a contract with the real estate agent they had hired.

Among the respondents who had signed a contract with a real estate agent, 35% reported that they were offered a choice between different types of contract. Additionally, 38% had been able to negotiate the agent's fee and 27% the type of fee to be paid (e.g. fixed fee vs. % of final price/rent), 25% had been able to choose the duration of contract and 14% the level of compensation if the contract was broken. Just under 4 in 10 (37%) consumers who had signed a contract with a real estate agent indicated that they had not been able to negotiate any of the conditions of this contract with the real estate agent.

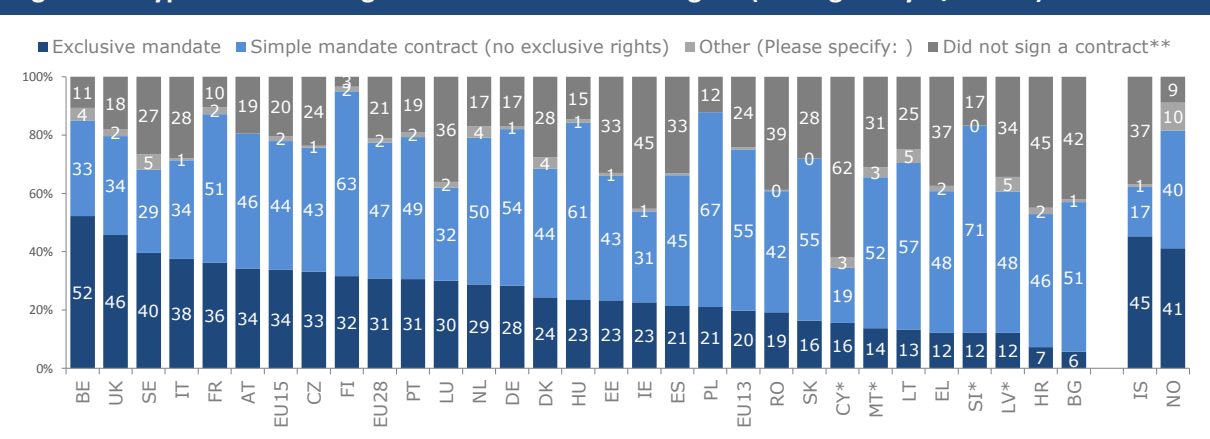
6.1.2 Choice and negotiations on mandate contracts for consumers selling or letting

As per the consumer survey, across the EU28, 79% of consumers who had sold/let (or attempted to sell/let) a property through a real estate agent, had also signed a contract with this real estate agent. The majority of these respondents had signed a contract with one real estate agent, compared to 19% who had signed a contract with more than one real estate agent.

Consumers who had sold (or attempted to sell) a property via a real estate agent were more likely to state that they had signed a contract with this real estate agent (82% vs. 72% among consumers who had sold/attempted to sell a property), and they were also more likely to have signed a contract with more than one agent (23% vs. 12%).

The results in Figure 35 show that, across the EU28, simple mandate contracts were more common than exclusive mandate contracts (47% vs. 31%). In a small number of countries, however, exclusive mandates were more regularly used than simple mandates: Belgium (52% 'exclusive' vs. 33% 'simple'), the UK (46% vs. 34%), Sweden (40% vs. 29%) and Iceland (45% vs. 17%).

Figure 35: Type of contract signed with the real estate agent (finding a buyer/tenant)



Question: Y7. Did you sign a contract with the real estate agent, and if yes, what type of contract?

Base: respondents who sold/rented out a property (EU28: n=4,186)

Note: * n < 100; ** In Iceland, the "did not sign a contract" category includes "don't know" responses

Source: Main Task 2 Consumer survey

In the business operator survey, out of six respondents, three business operators (50%) indicated that consumers do not have a choice between different mandate contract types. Two business operators (33%) answered affirmative to the question.

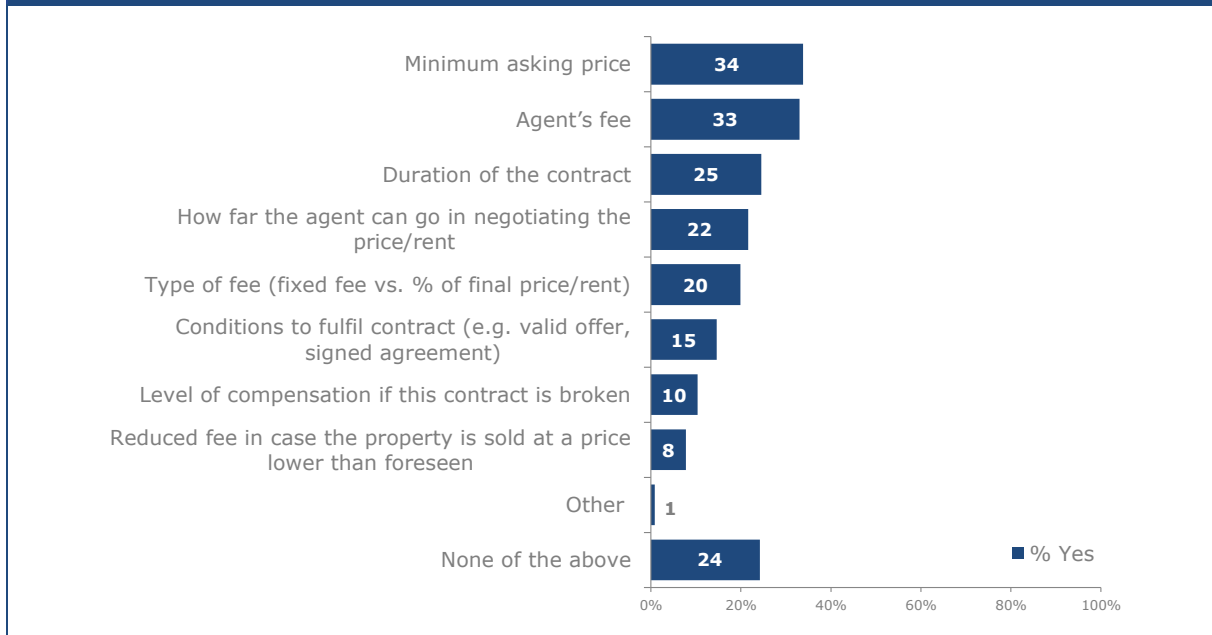
When enquiring about the type of contracts offered by the real estate agency, 42% of mystery shoppers looking to sell their property and 44% of shoppers looking to find a tenant were spontaneously offered the option to sign a non-exclusive contract (allowing them to use more than one agent) and/or an "open" contract (allowing them to sell/let by themselves in case they find their own buyer/tenant). When specifically enquiring about the types of contract offered by the real estate agent, 34% of shoppers in the 'selling' scenario, compared to 42% in the 'letting' scenario, were explained that there was a choice between exclusive and non-exclusive contracts.

In the consumer survey, roughly 4 in 10 (38%) consumers who had sold/let a property through a real estate agent, reported that they had not been offered a choice between different types of contracts, and 24% replied that they had not been able to negotiate any of the conditions of the contract.

The most common contract conditions that could be negotiated were the agent's fee (33%), duration of the contract (25%) and the type of fee (20%). One in three respondents (34%) had included in their contract with the real estate agent instructions about the minimum asking price and 22% had specified how far the agent could go in negotiating the price/rent.

In line with the findings from the consumer survey, across both scenarios in the mystery shopping, roughly 3 in 10 shoppers (28%-31%) were told that they can vary the duration of the contract. The option to select a specific package of services (e.g. scale of advertising, organising viewings or not, etc.) was more frequently offered to shoppers in the 'selling' scenario than to shoppers in the 'letting' scenario (37% vs. 27%, respectively).

Figure 36: Negotiating contract conditions (finding a buyer/tenant)



Question: Y10. Were you able to negotiate any of the following conditions of your contract?

Base: respondents who signed a contract with a real estate agent to help them find a buyer/tenant (EU28: n=3,132)

Source: Main Task 2 Consumer survey

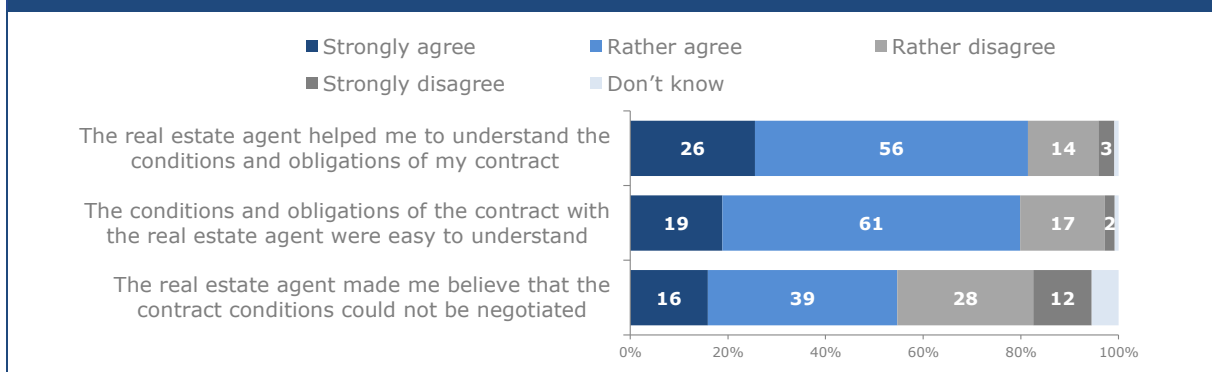
6.2 Awareness/understanding of mandate contract conditions

6.2.1 Awareness and understanding of contract conditions for searching a property

In the consumer survey, respondents who had signed a contract with a real estate agent for either buying or renting a property were asked whether they agreed with three statements about contract provisions:

- 26% strongly agreed, and 56% rather agreed, that the real estate agent had helped them to understand the conditions and obligations of the contract;
- 19% strongly agreed, and an additional 61% rather agreed, that the conditions and obligations of the contract with the real estate agent were easy to understand;
- 16% strongly agreed, and 39% rather agreed, that the real estate agent had made them believe that the contract conditions could not be negotiated.

Figure 37: Agreement with statements about real estate agency contracts (finding a property to buy/rent)



Question: Q16. To what extent do you agree or disagree with the following statements?

Base: respondents who signed a contract with a real estate agent to find them a property (EU28: n=1,215)

Source: Main Task 2 Consumer survey

It is worth noting that it is especially more vulnerable consumer groups that were more likely to agree that the real estate agent made them believe that the contract conditions could not be negotiated. For example, 61% of consumers in an easy financial situation agreed with this statement, compared to 74% of consumers in a more precarious financial situation. Similar, 55% of higher educated respondents, compared to 60% of lower educated respondent, agreed that the real estate agent made them believe a discussion about contract conditions was not possible.

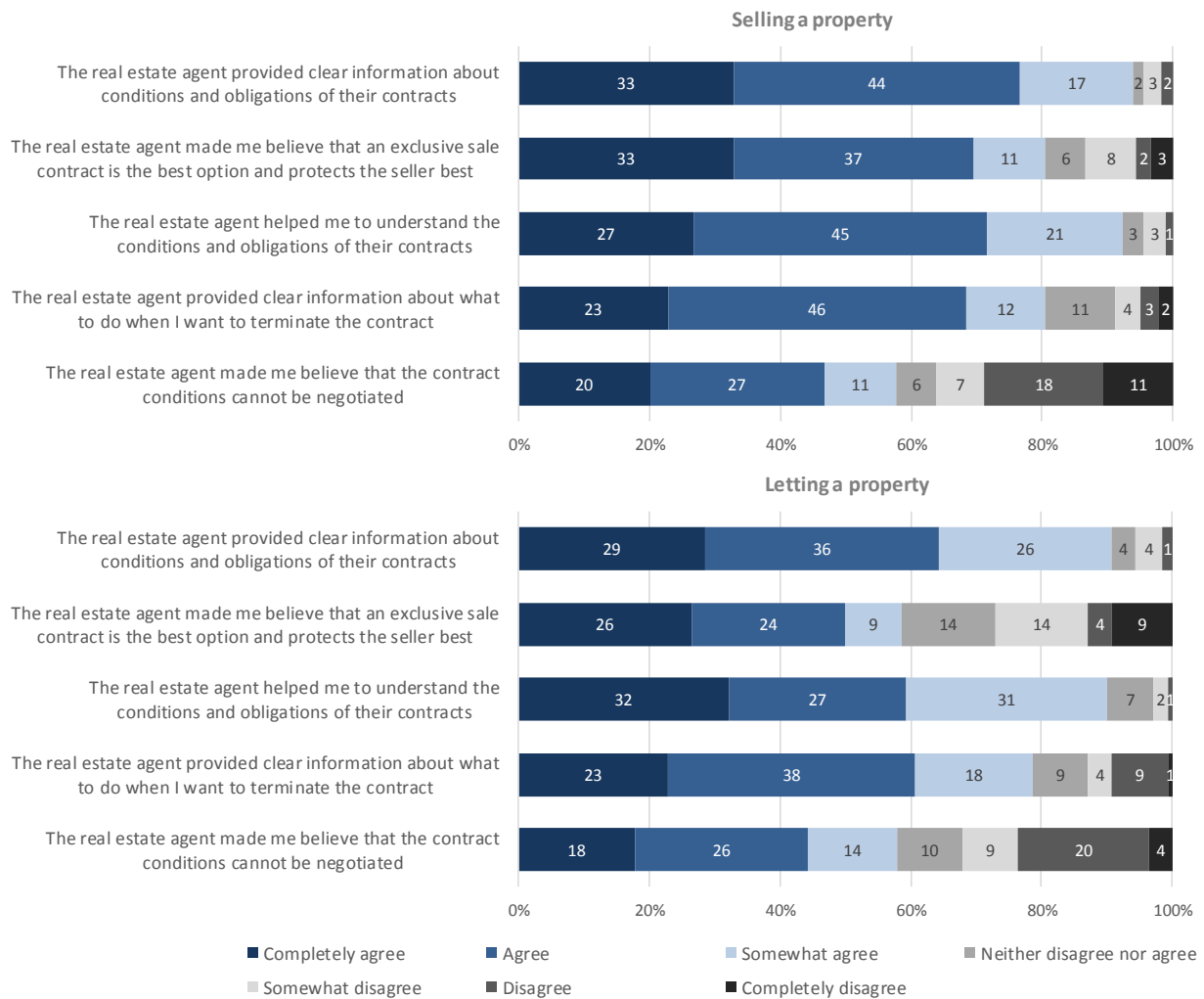
6.2.2 Awareness and understanding of contract conditions for selling/letting a property

The mystery shoppers in this study tended to be satisfied with the information that was provided by the real estate agent about conditions and obligations of real estate agency contracts. Only a handful of shoppers across both scenarios disagreed when asked whether the real estate agent had provided clear information about conditions and obligations of their contract and a large majority agreed that the real estate agent had helped them to understand these conditions and obligations. Eight out of 10 shoppers agreed that the real estate agent had provided clear information about contract termination (in the 'selling' scenario, 23% completely agreed, 46% agreed and 12% somewhat agreed; the 'letting' scenario, 23% completely agreed, 38% agreed and 18% somewhat agreed).

Interpreting the findings from the mystery shopper exercise, it should be kept in mind that mystery shoppers tend to be better informed about consumer-related issues than consumers in general. In this specific exercise, shoppers had to prepare for their visit by familiarising themselves with the most common contract types etc. and had to memorise a set of 10 questions that they were instructed to ask the real estate agent during their visit; this preparation allowed mystery to probe real estate agents to provide specific details about the type of contracts they offered to potential clients, and consequently might have led to a more positive evaluation in terms of the amount of information provided.

Figure 38: Agreement with various statements about information provision about contracts

Information provided (on the overview page) about/for:



Base: 180 real estate agencies in the 'selling' scenario and 140 in the 'letting' scenario (all countries)

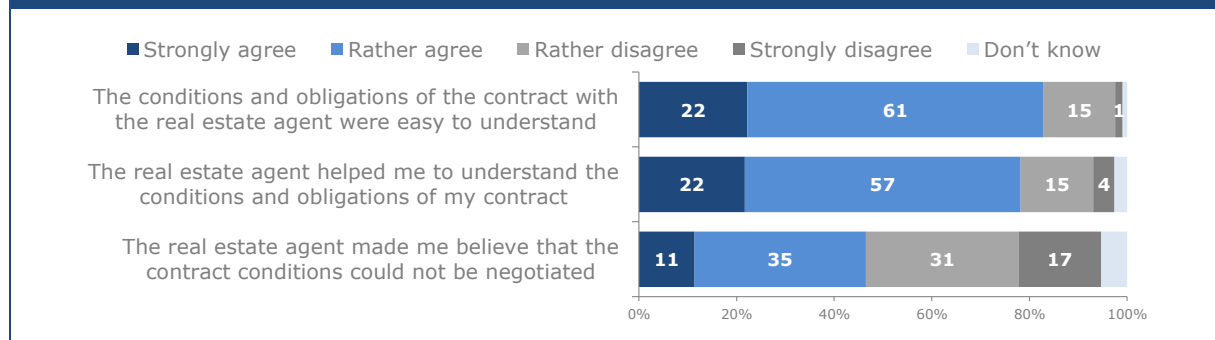
Question: Please indicate how much you agree or disagree with the following statements

Source: Main Task 4 Mystery shopping

Consumers who had signed a contract with a real estate agent for either selling or letting were also asked whether they agreed with three statements:

- 22% strongly agreed, and an additional 61% rather agreed, that the conditions and obligations of the contract with the real estate agent were easy to understand;
- 22% strongly agreed, and 57% rather agreed, that the real estate agent helped them to understand the conditions and obligations of the contract;
- 11% strongly agreed, and 35% rather agreed, that the real estate agent had made them believe that the contract conditions could not be negotiated.

Figure 39: Agreement with statements about real estate agency contracts (finding a buyer/tenant)



Question: Y11. To what extent do you agree or disagree with the following statements?

Base: respondents who signed a contract with a real estate agent to help them find a buyer/tenant (EU28: n=3,132)

Source: Consumer survey

Younger landlords and sellers were more likely than their older counterparts to agree that the real estate agent made them believe that the contract conditions could not be negotiated (59% among 18-34-year-olds vs. 40% among 54+ year-olds). A similar difference was also observed when comparing consumers with financial difficulties and those who were financially better off.

7. Real estate agency fees and other costs

An important study question refers to fees and other costs charged to consumers by real estate agents and other professionals during real estate transactions. Chapter 7 addresses this question by investigating:

- Fees paid to real estate agents (Section 7.1);
- Information provided about real estate agency fees (Section 7.2);
- Other fees and charges for real estate transactions (Section 7.3); and
- Time spent by consumers dealing with real estate agents (Section 7.4).

Box 5: Summary of findings – Real estate agency fees and other costs

- The arrangements for real estate fee-paying vary widely across the countries in scope, but on average across the EU these fees are paid by the consumers. The most common are the administrative fees as well as those related to the contract. Buyers paid on average over 3% of the sale price, whereas tenants most frequently paid a function of the monthly rent, with occasionally fees being paid as a lump-sum of over 6% of yearly fees for tenants, 9% for landlords.
- Information on real estate agent fees and costs is not easily conveyed. A quarter of surveyed consumers considered it rather difficult to obtain information on the real estate agent fees, and a further 14% found it very difficult to obtain. This is remarkable in light that for one in five of the respondents who hired a real estate agent to find them a property to rent or buy the size of the fees was relevant in the decision of the selected real estate agent.
- Other applicable fees for conveyancing transactions included legal advice, land register, mortgages, stamp taxes and insurance. Hidden costs identified by consumers covered VAT, bank fees, additional certificates or disbursements. In rentals these included the deposit, a registration tax or a stamp tax.
- Time elapsed between consumers and agents' first contact and the actual transaction taking place varied from one to three months for buying processes, but ranged between one month for landlords, and up to two weeks for tenants.

7.1 Fees paid to real estate agents

This section refers to fees paid to real estate agents and is structured around the following topics:

- Party bearing the costs of fees;
- The amount of fees paid to real estate agents;
- The types of fees charged by the real estate agent.

Results are based on data collected through the input provided by national experts and the consumer survey.

Party bearing the costs of fees

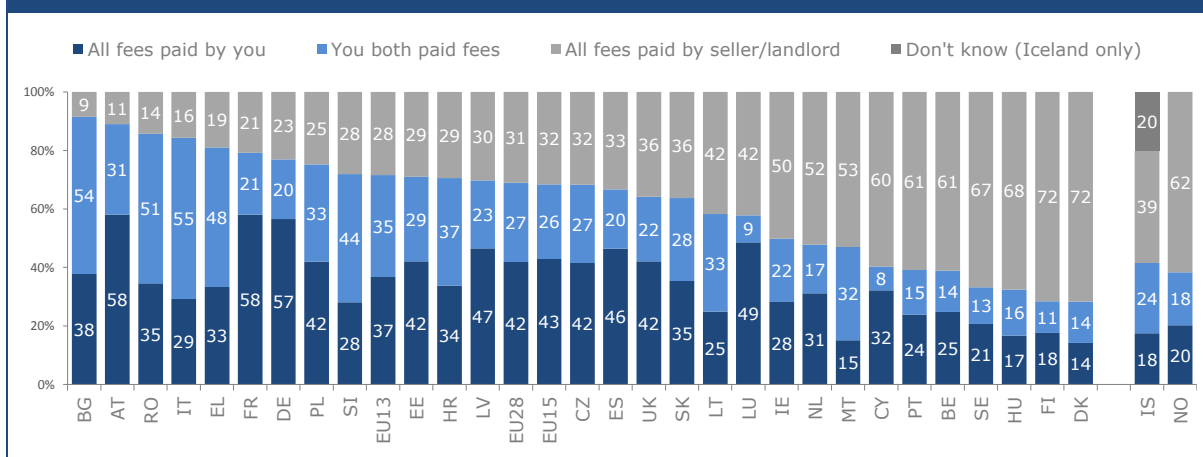
When considering the party bearing the costs of fees during the conveyancing process (buyer/seller) or during the renting process (tenant/landlord), across the EU, Norway and Iceland, the following general scenarios are observed:

- In some countries, it is usually the party who hired the real estate agent that bears the cost of fees (for example in Bulgaria, Croatia, Estonia, Hungary, Lithuania, Sweden, Slovenia, Iceland);
- In other countries, it is more usual that both parties share the fees (for example in Austria, Greece, Italy);
- In France, the party bearing the cost of fees is determined by the contract;
- According to the study findings, in some countries the seller usually bears the cost of fees (for example in Belgium, Cyprus, Denmark, Spain, Finland, Ireland, Luxembourg, Malta, Portugal, Slovakia, the UK, Norway) while the buyer usually bears the costs in the Czech Republic, the Netherlands and Poland;

The consumer survey shows that, across the EU28, 42% of consumers who had bought or rented a property marketed by a real estate agent replied that all fees charged by the real estate agent had been paid by them, and 31% answered that all fees had been paid by the seller or landlord. The remaining 27% answered that both they and the seller or landlord had been charged fees by the real estate agent of the seller or landlord. Figure 40 presents the individual country results; the proportion of consumers who had bought or rented a property and paid fees to the real estate agent of the seller or landlord varied between 28% in Denmark and 92% in Bulgaria.

A similar question was also asked to landlords and sellers: 39% reported having paid all fees themselves, 30% had shared the fees with the buyer/tenant and 31% had not paid fees (i.e. all fees were paid by the buyer/tenant).

Figure 40: Party in charge of paying the fees charged by the real estate agent of the seller/landlord



Question: Q9. Who was in charge of paying the fees charged by the real estate agent of the seller/landlord?
Base: Respondents who bought/rented a property marketed by a real estate agent (EU28: n=7,102)
Source: Main Task 2 Consumer survey

Amount of fees paid to real estate agents¹⁷⁸

This section presents an analysis of the amount of fees paid to real estate agents both during the conveyancing and the renting/letting process. When analysing the amount of fees paid by consumers to the real estate agent, this study attempted to investigate whether there exists a possible correlation between the amount of fees (expressed as a percentage of the purchase price) borne by consumers and the spectrum of services provided by the real estate agent. This exercise was performed based on data collected through the country fiches. In particular, the list of professionals involved in the different steps of the conveyancing and the renting/letting process (as indicated in Section 3.1) was considered.

Firstly, for the conveyancing process, the 13 countries displaying a value of fees higher than the 30-country average value were identified. This group of countries includes, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Italy, Malta, Portugal, Slovakia, Slovenia, and Spain. In the majority of the 13 countries, it was noted that **the real estate agent does not generally provide services that go beyond the usual range of services delivered by the professional**. Even in Denmark and Finland, where real estate agents provide additional services as compared to other countries due to the Nordic tradition of conveyancing, a substantially higher average amount of fees compared to other countries was not identified.

Similarly, no correlation could be established for the renting process. In this case, fees generally correspond to 1-month rent across the countries in scope and only a few exceptions (which are detailed in this section) were identified.

Overall, **the data did not reveal a strong correlation between the amount of fees paid by consumers to the real estate agent and the range of services offered by the real estate professional** (as outlined in Section 3.3.1). This holds true **both for the conveyancing and the renting/letting process**.

When considering the different types of fees, the most common type of fees charged by the real estate agent of the seller or landlord were administrative fees (64%), followed by fees for drawing up the sale or lease agreement (45%); the average amount for all fees charged to the buyer or tenant by the real estate agent of the seller or landlord was equal to €3,000 for buyers and €450 for tenants. It should be noted that consumers buying a

¹⁷⁸ When considering the amount of fees paid by consumers to real estate agents, it is important to recall that the scope of real estate agents' activities differs across the countries in scope by the study.

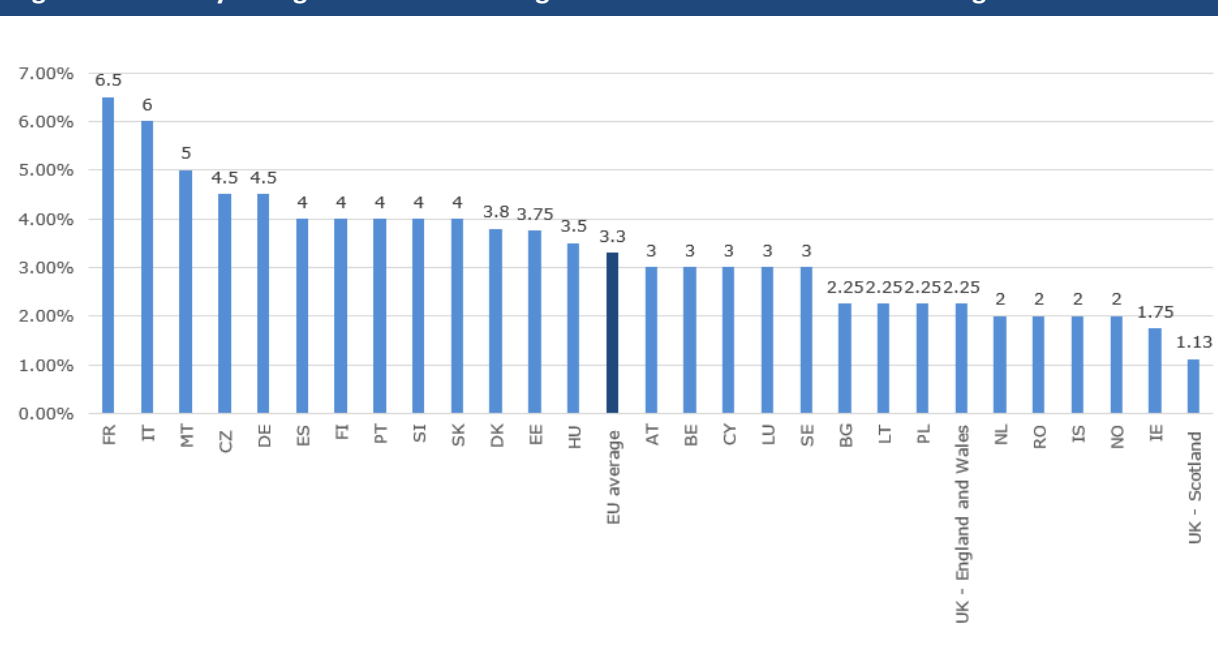
property are not only charged higher fees by real estate agents, they will also be paying various other fees and taxes (such as, lawyer, notary or conveyancing fees – mentioned by 75% of buyers across the EU28) – the average amount of such fees and taxes across the EU28 equals €4,368.

Conveyancing process

National legal experts were asked to indicate in the country fiches the amount of fees for real estate agent services borne by consumers during the conveyancing process. The amount is generally **expressed as a percentage of the purchase price**. When analysing fees for estate agents' services in the conveyancing process, the value of intermediation fees ranges from 1.13% (UK – Scotland) to 6.5% of the sale price (France). The average of the countries considered corresponds to 3.3% of the sale price.

The Figure below excludes 3 of the 30 countries in scope, namely Greece, Croatia and Latvia. This is due to the fact that in these countries, fees for real estate agents were indicated by national experts as freely negotiable. Besides, it is important to note that the amount of fees indicated for France and Sweden also include VAT and other taxes.

Figure 41: Conveyancing – Fees for estate agent services or alternative matching devices



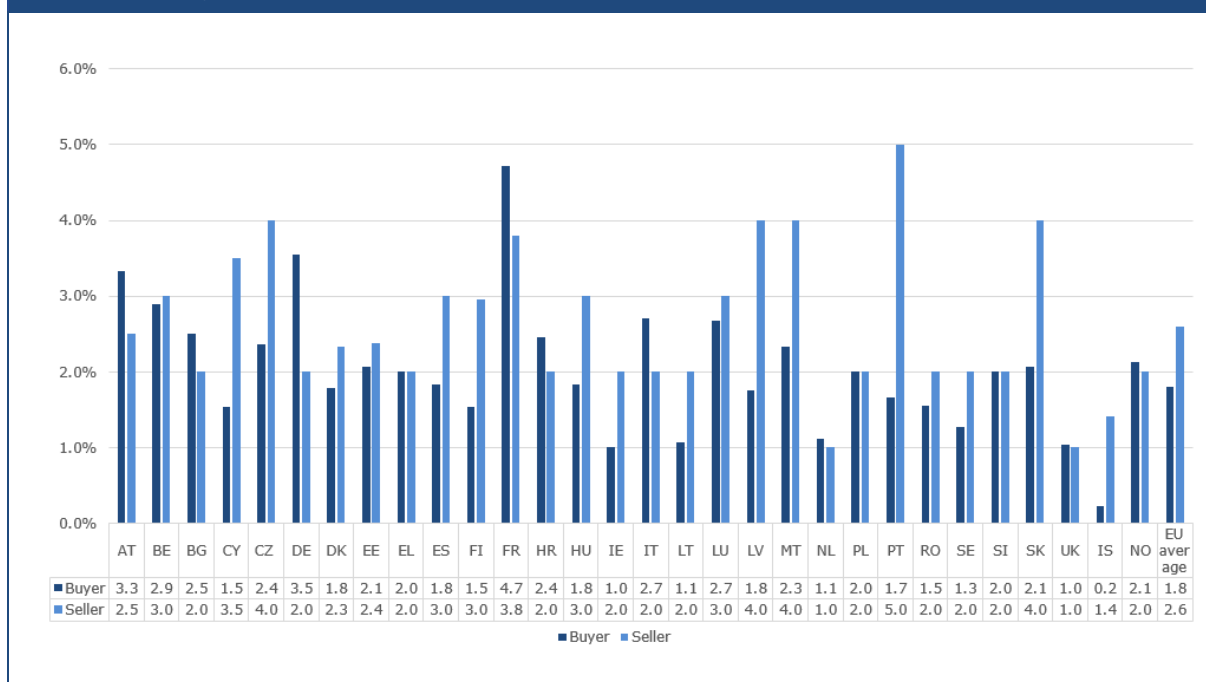
Note: Fees expressed as a percentage of the sale value

Source: Main Task 1 Country fiches

By referring to data gathered through the consumer survey for the 30 countries in scope, the analysis has been performed in relation to the amount of fees expressed as a percentage of the sale value paid by the buyer and/or the seller. In specific, for each of the 30 countries, the median value derived from consumers' responses was considered to perform the analysis.

Considering first the **buyer's perspective**, emerging findings show that the range of fees that buyers in the EU pay to the real estate agent of the seller range from 0.2% (Iceland) to 4.7% of the sale price (France). The EU average corresponds to 1.8% of the sale price while the median is equal to 2%. Turning to the **seller's perspective**, it can be observed that the value of fees paid to the real estate agent ranges from 1% (Netherlands, and UK – England and Wales) to 5% of the sale price (Portugal). The EU average corresponds to 2.6% while the median value is equal to 2.15%.

Figure 42: Buying/selling – Amount of fees paid to the real estate agent by the seller (% of sale value)



Note: Consumer survey, Question Y13c: How much was the fee that you agreed to pay your real estate agent? The chart shows for each country the amount of fees paid to the real estate agent of the seller expressed as a percentage of the sale value

Source: Main Task 2 Consumer survey

With a view to **investigate the amount of fees in EUR (absolute amount) paid by buyers and sellers to the real estate agent** the median values derived from consumers' responses have been taken into account. These figures, however, need to be read with caution since they do not take into account the Purchasing Power Parity (PPP). Besides, despite the fact that median values have been taken into account, it is important to recall that fees paid to the real estate agent are generally expressed as a percentage of the value of the property. Therefore, in one single country, fees for the real estate agent may vary depending on the size and the location of the property.

Based on consumers' responses, only in a minority of countries buyers paid a higher amount of fees (absolute terms) to the real estate agent as compared to the seller (Austria, Bulgaria, Germany, France, Croatia, Italy, Slovenia). In other four countries, the total amount of fees paid by buyers to the real estate agent is equal to the total amount of fees paid by the seller (Estonia, Lithuania and Romania). In the remaining countries, i.e. in more than two thirds of the surveyed countries (20 out of 30), **sellers paid a higher amount of fees to the real estate agent.**

Table 30: Amount of fees paid to the real estate agent by buyers/sellers (median value, in EUR)		
	Buyer	Seller
AT	€ 5,000	€ 3,600
BE	€ 5,000	€ 5,800
BG	€ 771	€ 514
CY	€ 2,750	€ 5,250
CZ	€ 1,153	€ 1,738
DE	€ 5,000	€ 2,700
DK	€ 2,217	€ 6,449
EE	€ 1,000	€ 1,000
EL	€ 1,500	€ 1,700
ES	€ 2,000	€ 3,600
FI	€ 1,900	€ 3,465
FR	€ 8,000	€ 7,280
HR	€ 1,215	€ 904
HU	€ 654	€ 980
IE	€ 2,000	€ 3,000
IT	€ 4,000	€ 2,375
LT	€ 500	€ 500
LU	€ 10,000	€ 10,800
LV	€ 300	€ 618
MT	€ 3,000	€ 5,500
NL	€ 2,000	€ 2,700
PL	€ 702	€ 889
PT	€ 1,500	€ 5,000
RO	€ 435	€ 435
SE	€ 1,107	€ 4,216
SI	€ 1,860	€ 1,200
SK	€ 1,400	€ 1,500
UK	€ 2,184	€ 2,271
IS	€ 563	€ 4,020
NO	€ 2,163	€ 5,408
EU average	€ 2,396	€ 3,180

Note: Consumer survey, Question Q10b and Y13c: What was the total amount of fees that you paid to the real estate agent of the seller/landlord? The table shows the absolute amount of fees paid to the real estate agent by buyers/sellers

Source: Main Task 2 Consumer survey

Renting process

A similar exercise as for the conveyancing process has been performed in relation to **the renting process** for which it was observed that **fees for estate agents for finding and matching parties** can be expressed in different forms:

- As n-month rent;
- As freely negotiable fees; or
- As a fixed amount.

For the vast majority of the country in scope (27 out of 31), fees for real estate agents for finding and matching parties are **expressed as n-month rent**. In Denmark, fees correspond to 3-month rent. This is followed by Austria, Greece and Germany where fees correspond to 2-month rent. In Bulgaria and in Spain, fees are equivalent respectively to

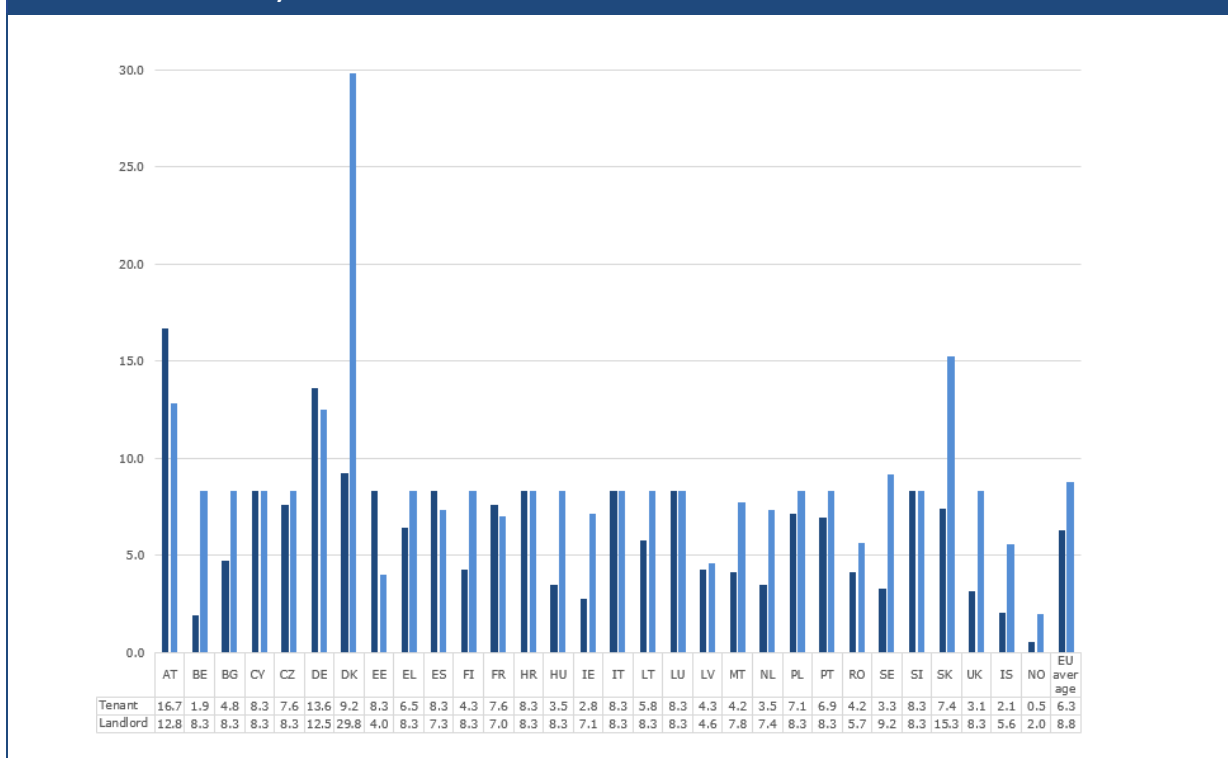
50% and to 10% of a monthly rent. In the remaining countries, the amount of fees for real estate agents is equal to 1-month rent. One can derive, therefore, that in the majority of the countries (21 out of 31), fees for the real estate agent for finding and matching parties during the renting process correspond to 1-month rent.

Fees for the real estate agent seems to be freely negotiated in France and in the Netherlands. Fees are expressed as a fixed amount in Lithuania (€700) and in Sweden (€308).

When considering results from the consumer survey, data reported by tenants for the 30 countries shows on average, that the fees paid by **tenants** to the real estate agent of the landlord correspond to **6.3% of the annual rent while the median value is equal to 6.7% of the annual rent**. The minimum value is observed in Norway where tenants pay 0.5% of the annual rent price, while the maximum value is observed in Austria and corresponds to 16.7% of the annual rent price.

The **average amount of fees that landlords pay to real estate agents is equal to 8.8% of the annual rent**. The minimum is equal to 2% of the annual rent (Norway) and the maximum value is equal to 29.8% of the annual rent (Denmark). A wide disparity between the minimum and the maximum value is, therefore, observed and corresponds to 27.8 percentage points (difference between 2% and 29.8%).

Figure 43: Renting/letting – Amount of fees paid to the real estate agent by the landlord (% of annual rent)



Note: Consumer survey, Question Y13c: How much was the fee that you agreed to pay your real estate agent? The chart shows for each country the amount of fees paid to the real estate agent of the landlord expressed as a percentage of the annual rent

Source: Main Task 2 Consumer survey

When analysing the amount of fees in EUR (absolute terms) paid by tenants and landlords to the real estate agent of the landlord the median value estimated based on consumers' responses to the survey has been taken into account. This study shows that in 9 countries, tenants paid higher fees to the real estate agent (in absolute terms) as compared to the counterpart (Austria, Croatia, the Czech Republic, Germany, France, Italy, Luxembourg, Slovenia and Spain). In the remaining countries, i.e. in more two thirds of the countries in scope (21 out of 30), the amount of fees paid by the landlord to the real estate agent exceeded the amount of fees born by tenants.

Table 31: Amount of fees paid to the real estate agent by tenants/landlords (median value, in EUR)

	Tenant	Landlord
AT	€1,150	€750
BE	€250	€755
BG	€114	€154
CY	€350	€450
CZ	€307	€277
DE	€900	€600
DK	€1,023	€2,654
EE	€250	€575
EL	€200	€300
ES	€500	€350
FI	€250	€690
FR	€600	€450
HR	€270	€241
HU	€82	€235
IE	€250	€750
IT	€550	€450
LT	€150	€250
LU	€1,250	€1,080
LV	€100	€150
MT	€300	€500
NL	€323	€680
PL	€158	€178
PT	€300	€400
RO	€109	€130
SE	€211	€543
SI	€360	€300
SK	€275	€320
UK	€273	€655
IS	€121	€804
NO	€108	€273
EU average	€369	€531

Note: Consumer survey, Question Q10b and Y13c: What was the total amount of fees that you paid to the real estate agent of the seller/landlord? The table shows the absolute amount of fees paid to the real estate agent by tenants/landlords

Source: Main Task 2 Consumer survey

Types of fees charged by the real estate agent

The question related to the different types of fees charged by the buyer to the real estate agent of the seller was included in the consumer survey. Respondents (buyers) had the possibility to indicate whether they were charged the following **types of fees**:

- Administrative fees;
- Fees for credit reference check;
- Check-in/inventory fees;
- Fees for survey;
- Fees for drawing up the sale agreement.

Overall, when comparing the different typologies of fees, buyers mainly indicated **'administrative fees'** and **'fees for drawing up the sale agreement'** as the types of fees generally charged by the real estate agent of the seller. **'Fees for surveys'** was the second most selected option in two countries, Ireland and the UK. The remaining answer options, **'fees for credit reference check'** and **'check-in/inventory fees'**, were selected in all the surveyed countries by less than half of the respondents. These two options seem, therefore, to have less weight as compared especially to administrative fees and to fees for drawing up the sale agreement.

The figure below graphically shows the most selected typologies of fees (highlighted in dark blue) for the 30 countries in scope. Each typology of fees is subsequently analysed separately in a comparative perspective.

Figure 44: Fees charged by the real estate agent of the seller (% of respondents)

COUNTRY	Administrative fees	Fee for credit reference check	Check-in/inventory fee	Fee for surveys (e.g. pre-sale survey, homebuyer survey or building)	Fee for drawing up lease/sale agreement	Other
AT	55%	15%	24%	13%	40%	27%
BE	74%	15%	27%	26%	34%	10%
BG	69%	32%	28%	41%	68%	10%
CY	50%	13%	13%	25%	50%	13%
CZ	64%	16%	16%	23%	51%	11%
DE	60%	19%	18%	17%	23%	24%
DK	58%	13%	37%	41%	39%	17%
EE	25%	9%	20%	40%	51%	13%
EL	50%	15%	19%	35%	44%	15%
ES	67%	24%	15%	18%	47%	3%
FI	52%	14%	12%	19%	47%	12%
FR	68%	8%	18%	18%	43%	12%
HR	53%	23%	13%	31%	65%	12%
HU	83%	20%	3%	18%	45%	3%
IE	76%	20%	17%	45%	34%	8%
IT	55%	16%	11%	22%	49%	7%
LT	50%	17%	42%	21%	48%	5%
LU	68%	9%	6%	9%	30%	17%
LV	46%	16%	20%	28%	49%	10%
MT	64%	12%	10%	12%	29%	19%
NL	64%	19%	24%	41%	50%	15%
PL	53%	14%	11%	17%	52%	11%
PT	71%	25%	6%	21%	44%	6%
RO	43%	11%	5%	20%	64%	9%
SE	60%	13%	7%	26%	36%	11%
SI	74%	10%	10%	12%	75%	8%
SK	63%	18%	15%	33%	56%	11%
UK	84%	27%	15%	55%	36%	4%
IS	60%	22%	14%	5%	68%	4%
NO	67%	20%	7%	29%	31%	19%

Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord?

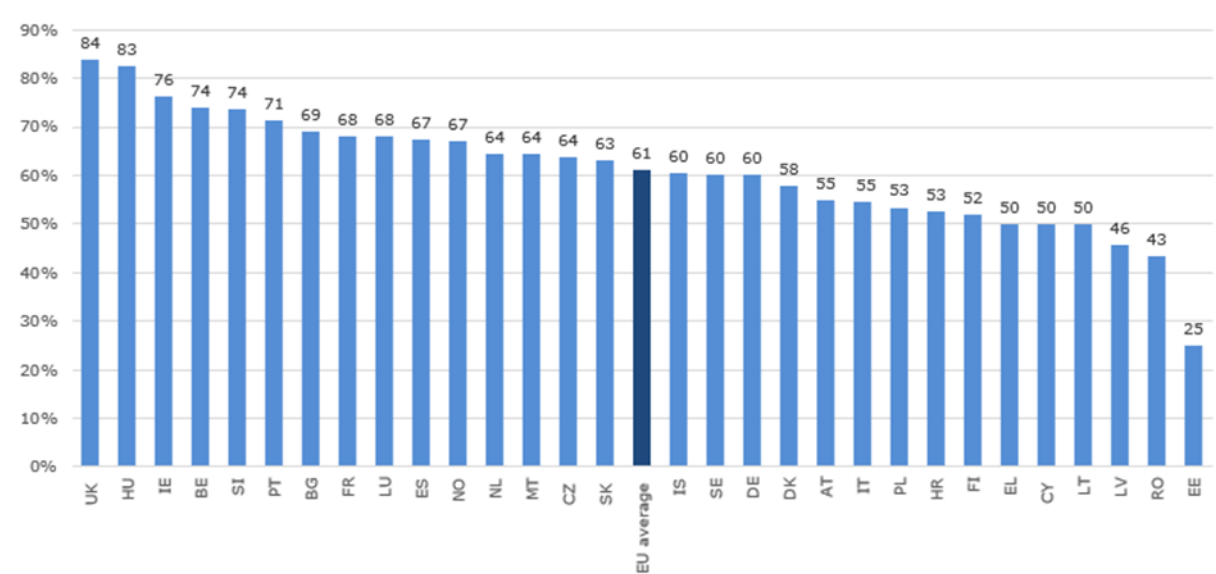
Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

Firstly, the option **'administrative fees'** was indicated by more than half of the respondents in 27 countries. The highest percentage of respondents was recorded in the UK (84%) and in Hungary (83%). In the remaining 3 countries, Estonia, Latvia and Romania, this option was selected respectively by 25%, 46% and 43% of the respondents. This given, only in Estonia, a relatively low percentage of buyers (corresponding to one

quarter of the respondents) selected this option. At the aggregate level, the average percentage of respondents that indicated this option corresponds to 61%.

Figure 45: Administrative fees (% of respondents)

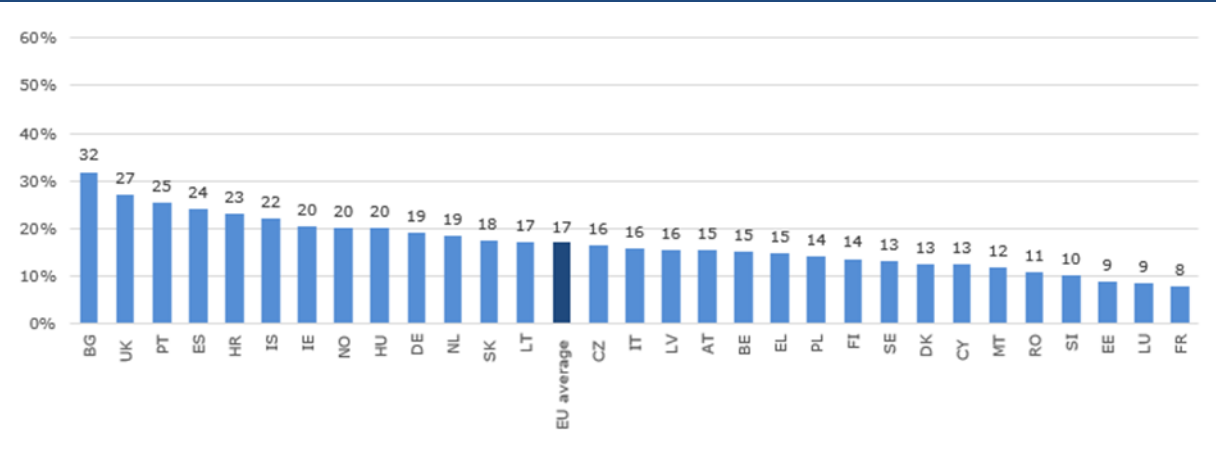


Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged administrative fees by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

Secondly, **'fees for credit and reference check'** were selected by a minority of respondents in all the countries in scope. Fees for credit and reference check can be defined as fees charged by the real estate agent to perform a credit check of the potential buyer/tenant. The highest percentage of buyers indicating this option was observed in Bulgaria and corresponds to 32% of the respondents. This figure is followed by the UK (27% of the respondents) and Portugal (25%). In three countries, less than 10% of the respondents selected this option: Estonia and Luxembourg (9%), and France (8%). At the aggregate level, the average of surveyed buyers indicating this option is equal to 17% of the respondents.

Figure 46: Fees for credit reference check (% of respondents)



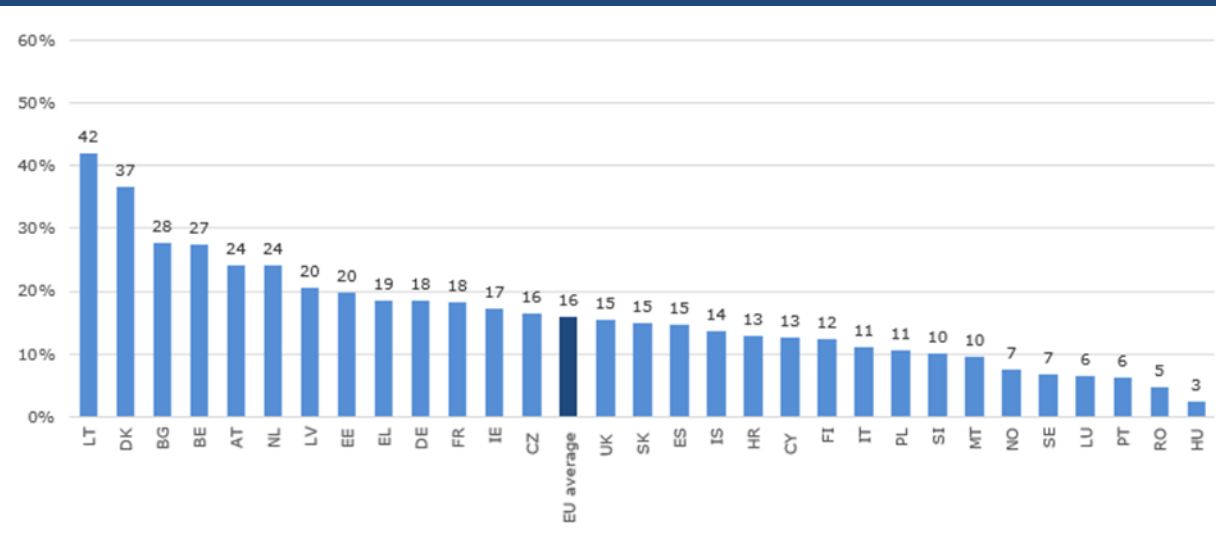
Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for credit reference check by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

The option **'check-in/inventory fees'** was also selected by a minority of respondents in most of the surveyed countries. Check-in/inventory fees are defined as fees charged by the real estate agent to perform an inventory check/create an inventory report documenting the property's contents and conditions. In 28 out of 30 countries, the

percentage of respondents does not exceed 28%. The highest values were recorded in Lithuania (42% of the respondents) and in Denmark (37% of the respondents) while the lowest value was observed in Hungary (3%). The average at the aggregate level is equivalent to 16%.

Figure 47: Fees for check-in/inventory fees (% of respondents)

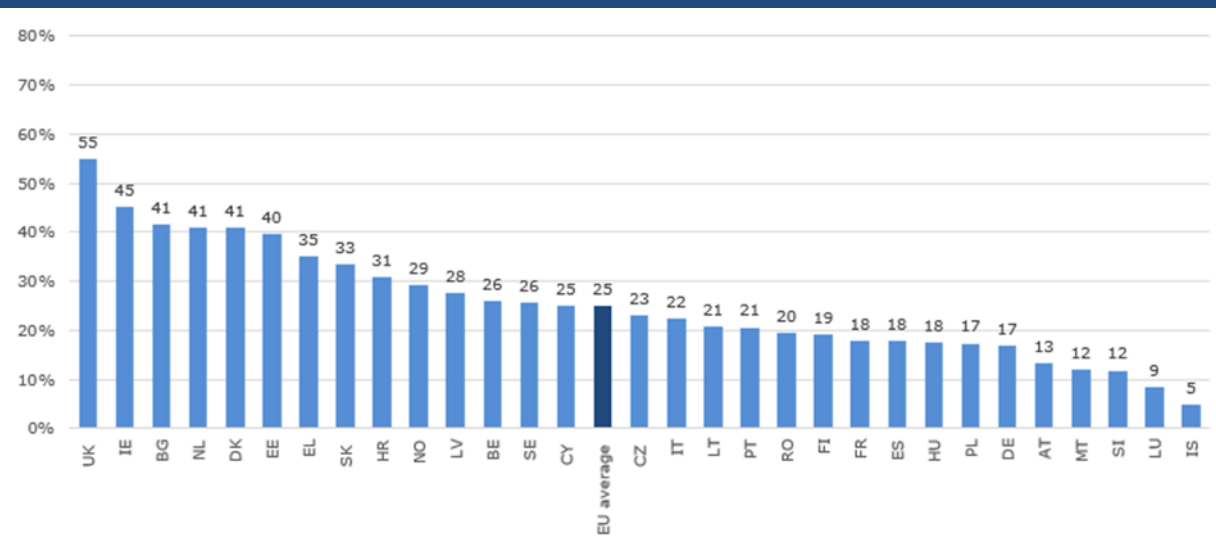


Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for check-in/inventory by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

'Fees for surveys' was the second most selected option in two countries, Ireland and the UK. The percentage of buyers selecting this option corresponds respectively to 45% in Ireland and to 55% in the UK. In Bulgaria, the Netherlands and Denmark, this option was selected by 41% of the respondents. The lowest value was observed in Iceland and is equal to 5% of the respondents.

Figure 48: Fees for surveys(% of respondents)

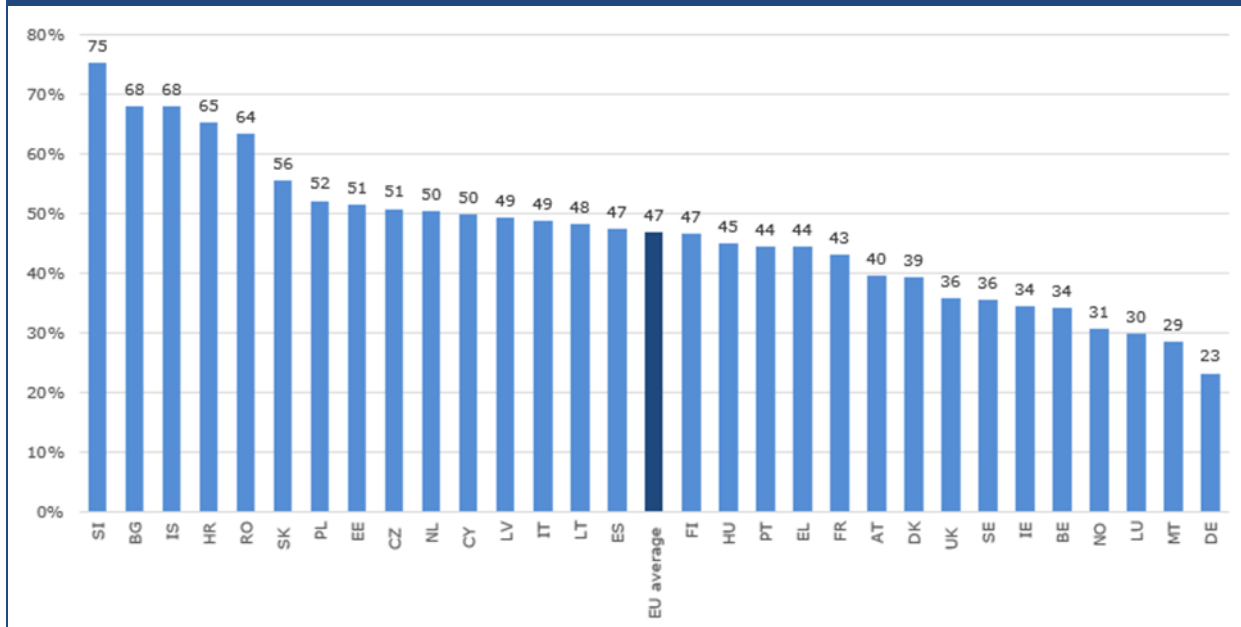


Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for survey by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

The answer option **'fees for drawing up the sale agreement'** was selected by more than half of the respondents in 11 countries. In six countries, 'fees for drawing up the sale agreement' was the most selected option while in 19 countries, this was the second most selected option. Values range from 23% (Denmark) to 75% (Slovenia). The average at the aggregate level is equal to 47%.

Figure 49: Fees for drawing up sale agreement (% of respondents)



Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for drawing up the sale agreement by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

Renting and letting process

As it was the case for the conveyancing process, tenants were asked in the consumer survey to indicate the types of fees they were charged by the real estate agent of the landlord. Respondents had the opportunity to select the following typologies of fees (multiple choice):

- Administrative fees;
- Fees for credit reference check;
- Check-in/inventory fees;
- Fees for survey;
- Fees for drawing up the lease agreement.

On a general note, **'administrative fees'** and **'fees for drawing up the lease agreement'** were the most selected options. The former was the most selected option in 22 out of the 30 countries in scope while the latter was the second most selected option in 7 countries. The latter was the most selected option in 10 of the countries in scope and the second most selected option in 15 countries. In Latvia, the same percentage of respondents (46%) selected the options 'administrative fees and fees for drawing up the lease agreement'. In Iceland, 50% of the respondents indicated the options 'administrative fees', 'check-in/inventory fees' and 'fees for drawing up the lease agreement'.

'Fees for credit reference check' was the second most selected option in Ireland, the UK and Norway. **'Check in/inventory fee'** was the first most selected option in Iceland (together with 'administrative fees' and 'fees for sale agreement'), and the second most selected option in Belgium, Hungary and Norway. Finally, **'fees for survey'** was the second most selected option in Cyprus, Hungary and Latvia.

The figure below provides an exhaustive overview of consumers' responses for each typology of fees and for each of the surveyed countries. Subsequently, the analysis of data per typology of fee is reported in the remainder of this section.

Figure 50: Fees charged by the real estate agent of the landlord (% of respondents)

COUNTRY	Administrative fees	Fee for credit reference check	Check-in/inventory fee	Fee for surveys	Fee for drawing up lease/sale agreement	Other
AT	67%	15%	13%	5%	60%	18%
BE	69%	11%	66%	11%	37%	0%
BG	40%	4%	29%	18%	62%	17%
CY	4%	4%	7%	11%	48%	33%
CZ	56%	10%	8%	8%	54%	17%
DE	63%	23%	25%	13%	37%	17%
DK	80%	0%	0%	20%	40%	20%
EE	20%	9%	16%	11%	69%	13%
EL	26%	7%	6%	4%	51%	20%
ES	62%	6%	5%	5%	59%	14%
FI	47%	12%	24%	6%	29%	18%
FR	67%	9%	60%	8%	70%	6%
HR	56%	22%	22%	22%	50%	11%
HU	72%	17%	33%	33%	28%	0%
IE	67%	27%	4%	0%	24%	2%
IT	47%	11%	6%	11%	53%	19%
LT	64%	14%	14%	11%	61%	4%
LU	71%	3%	26%	9%	50%	12%
LV	46%	7%	7%	25%	46%	7%
MT	75%	0%	5%	0%	30%	5%
NL	67%	11%	11%	6%	33%	11%
PL	53%	16%	13%	11%	67%	2%
PT	62%	10%	3%	14%	48%	3%
RO	34%	4%	5%	9%	73%	3%
SE	63%	13%	6%	19%	25%	25%
SI	64%	21%	32%	14%	57%	11%
SK	66%	21%	21%	21%	59%	14%
UK	88%	60%	40%	8%	30%	2%
IS	50%	0%	50%	0%	50%	0%
NO	75%	25%	25%	0%	0%	0%

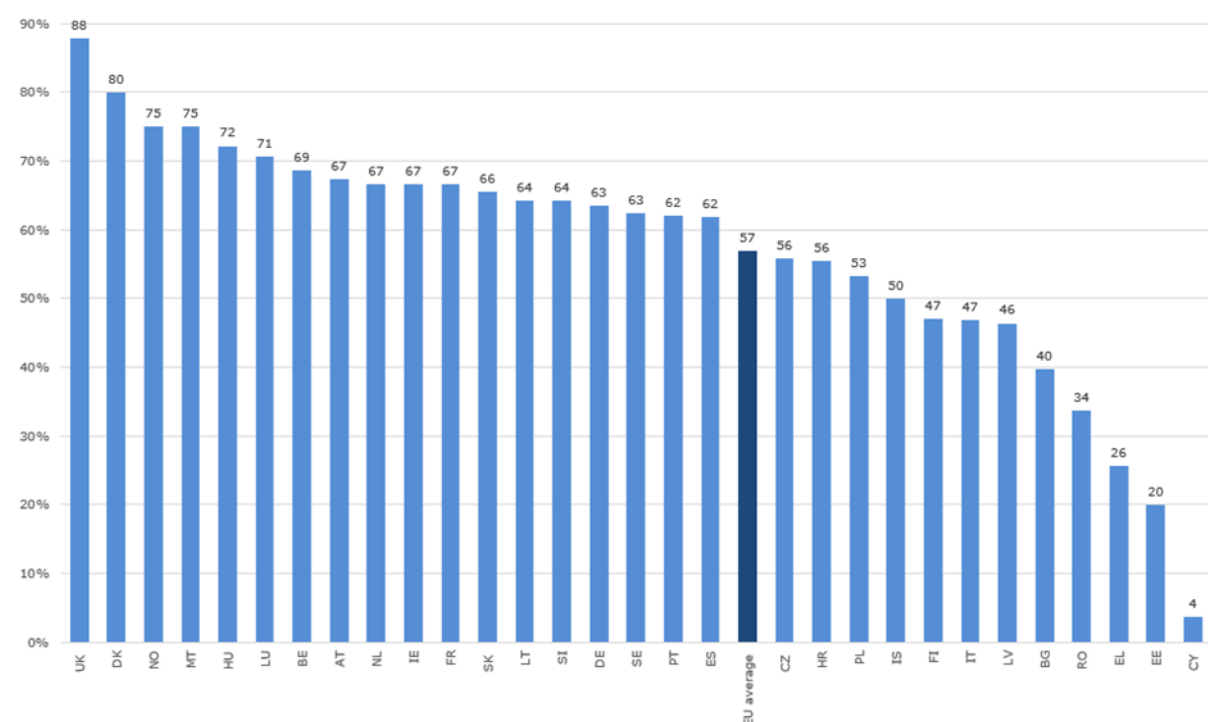
Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

Considering first '**administrative fees**', more than half of the respondents in 22 countries indicated that they were charged with this type of fees by the real estate agent of the landlord. The highest percentages of respondents were recorded in the UK (88%) and in Denmark (80%), followed by Norway and Malta (75%). The lowest values were observed in Greece (26%), Estonia (20%) and Cyprus (4%). At the aggregate level, the average percentage of respondents for this typology of fees is equal to 57%.

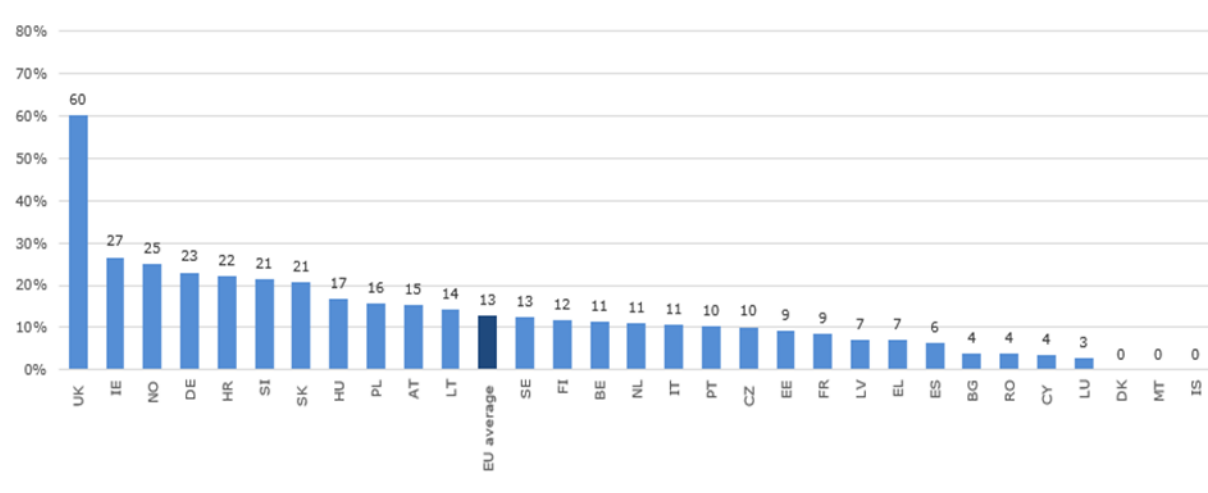
Figure 51: Administrative fees (% of respondents)



Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged administrative fees by the real estate agent of the seller/landlord
Source: Main Task 2 Consumer survey

Turning to '**fees for credit reference check**', 60% of the respondents in the UK explained that they were charged with this type of fees by the real estate agent of the landlord. The case of the UK seems to be an outlier since, in the remaining countries, the percentage of respondents that selected this option ranges from 0% (Denmark, Malta and Iceland) to 27% (Ireland). The average is equivalent to 13%.

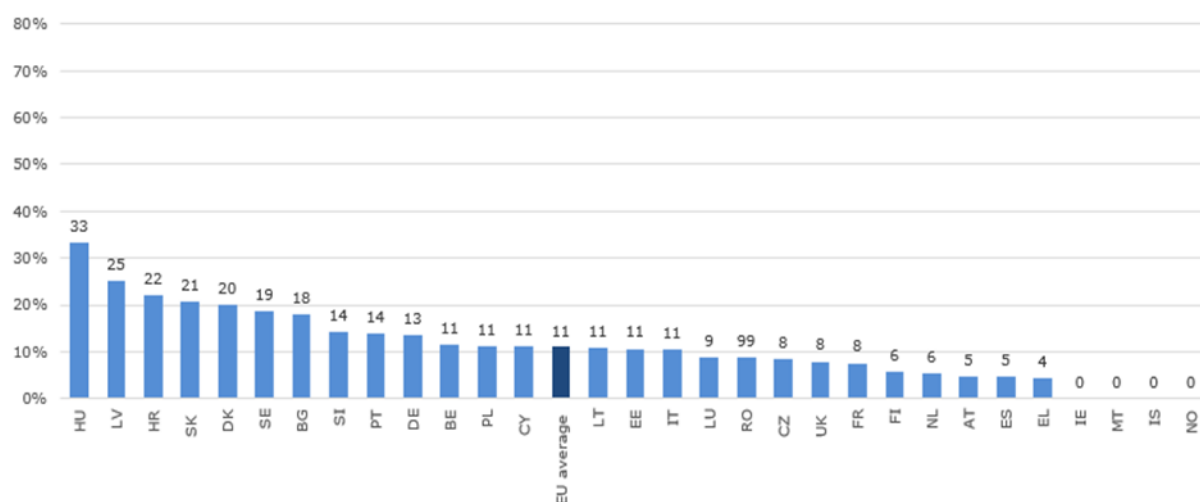
Figure 52: Fees for credit reference check (% of respondents)



Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for credit reference check by the real estate agent of the seller/landlord
Source: Main Task 2 Consumer survey

When analysing '**check-in/inventory fees**', 40% or more of the respondents selected this option in the UK (40%), in Iceland (50%), in France (60%) and in Belgium (66%). In the remaining countries, between 0% of the respondents (Denmark) and 33% of the respondents indicated this option. At the aggregate level, the average percentage of respondents corresponds to 19%.

Figure 53: Check-in/inventory fee (% of respondents)

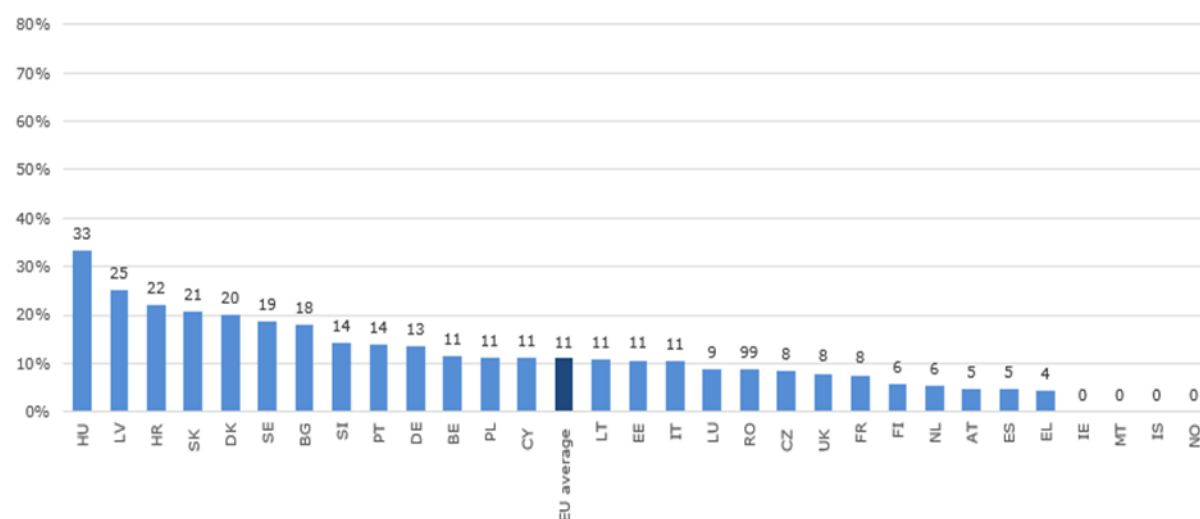


Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for check-in/inventory by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

'Fees for survey' was selected by a minority of respondents (maximum one third) in all the countries in scope. The highest percentage of respondents was observed in Hungary (33%) followed by Latvia (25%). In four countries (Ireland, Malta, Iceland and Norway), none of the respondents selected this option. The average at the aggregate level related to this figure is equal to 11% of the respondents.

Figure 54: Fees for survey (% of respondents)

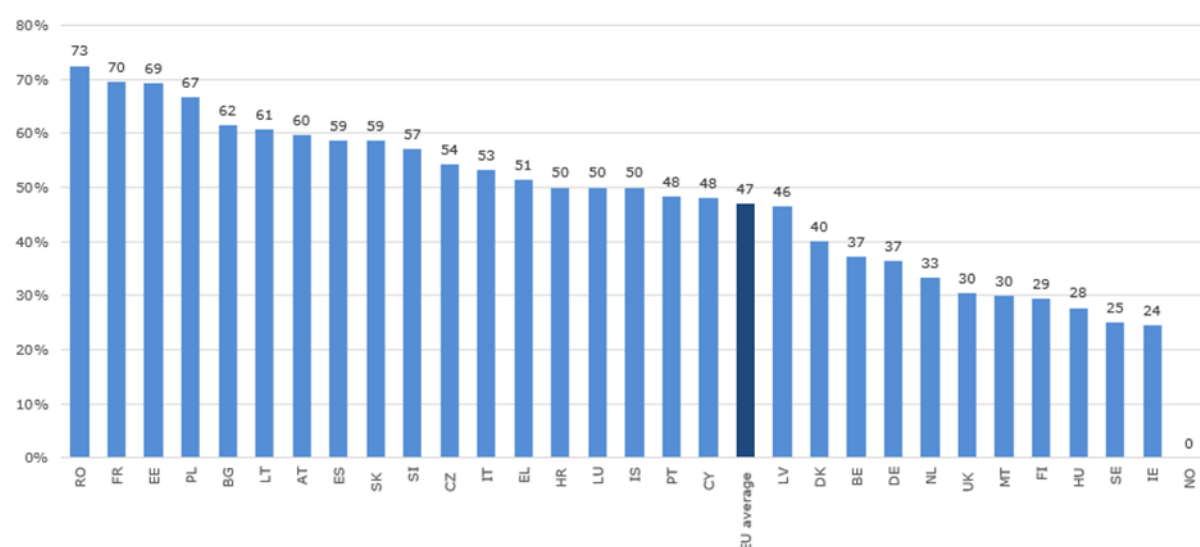


Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for survey by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

As previously indicated, the option **'fees for drawing up the lease agreement'** was selected by 40% or more of the respondents in the majority of the countries (20 out of 30). The highest values were observed in Romania and in France where respectively 73% and 70% of the respondents selected this option. In Ireland and in Sweden, about a quarter of respondents indicated that they had to pay fees for drawing up the lease agreement while in Norway none of the respondents selected this option. At the aggregate level, the average corresponds to 47% of the respondents.

Figure 55: Fees for drawing up lease agreement (% of respondents)



Note: Consumer survey, Question Q10a: What fees were you charged by the real estate agent of the seller/landlord? The chart shows for each country the percentage of respondents indicating they were charged fees for drawing up the lease agreement by the real estate agent of the seller/landlord

Source: Main Task 2 Consumer survey

7.2 Information provided about real estate agency fees

7.2.1 Information provided on buying and renting fees

One in four survey respondents who had bought or rented a property in the past seven years (or who had attempted to buy or rent a property) found it rather difficult (25%) to obtain the information on the real estate agent fees (and a further 14% found it very difficult to obtain). This is remarkable in light that for one in five of the respondents who hired a real estate agent to find them a property to rent or buy the size of the fees was relevant in the decision of the selected real estate agent.

It is important to add that 9% of survey respondents who had bought or rented a property and paid fees to the real estate agent of the seller/landlord said they had not been made aware of these fees before they decided to buy/rent the property. This figure represents the average of surveyed countries, which masks wide disparities. In Belgium or the Netherlands, for instance more than a quarter (26%) of the respondents who bought/rented a property were unaware that they had to pay fees to the real estate agent of the seller or landlord.

Older consumers were more likely to state that they had been fully aware about the amount of fees they would be charged by the real estate agent of the seller/landlord, while young consumer were more likely to admit that they had only been aware "to some extent".

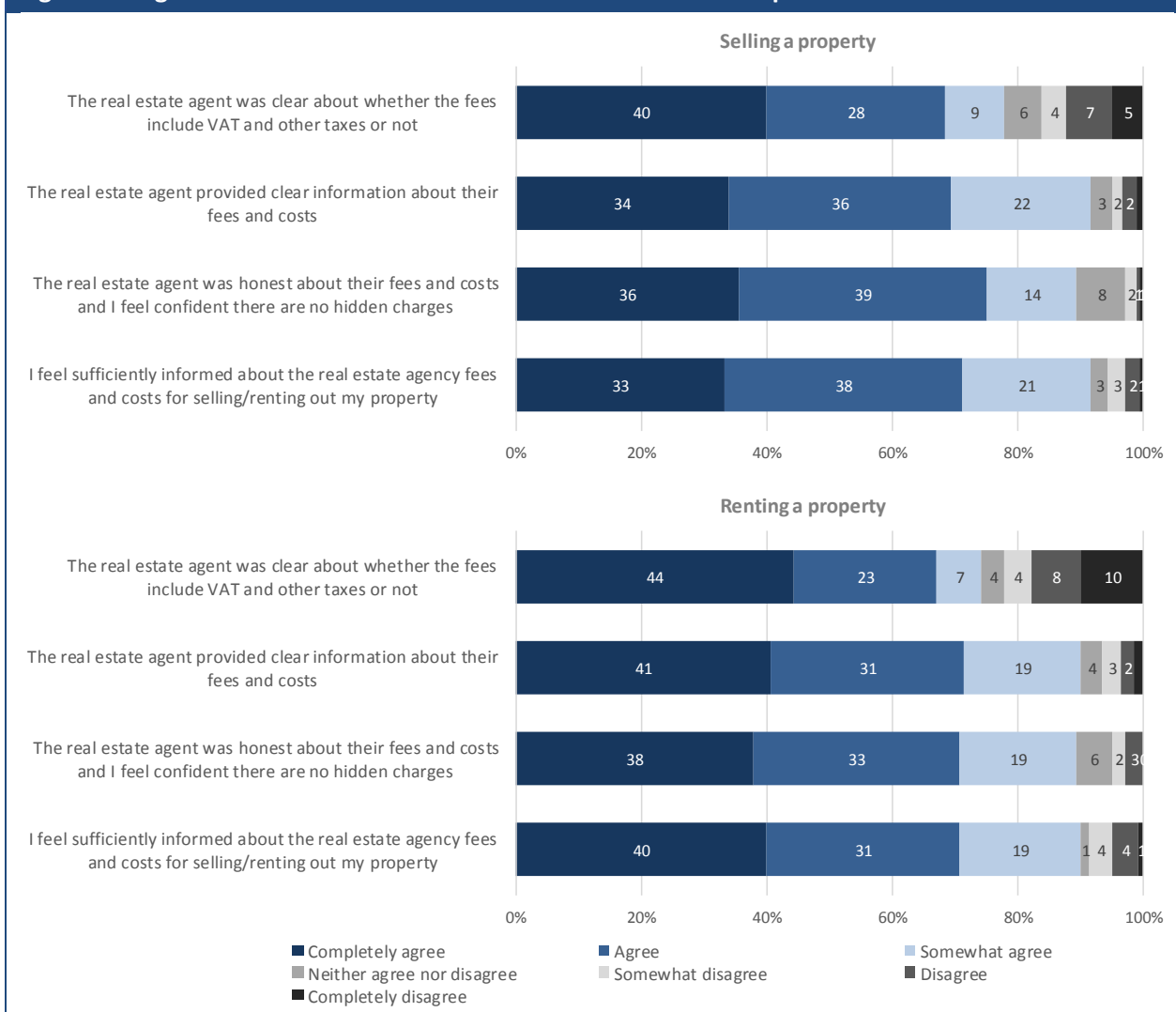
The mystery shopping showed that, 75% of shoppers in the 'buying' scenario and 80% of those in the 'renting' scenario had not found any **information about real estate agency fees on the real estate website** they had evaluated. The proportion of shoppers who could not find any information about real estate agency fees was the same for websites of independent agencies, agencies with multiple branches and comparison websites; the figure for the websites of individual real estate agent (not working in a firm) was a few percentage points higher. On average, across the two types of properties, the proportion of shoppers who had not found any information about real estate agency fees varied between 43% in Slovenia and 95% in the UK.

7.2.2 Information on selling and letting fees

Few mystery shoppers (who visited a real estate agent) disagreed when asked whether the real estate agent had provided them with clear information about their fees and costs. At the end of their visit, 41% of shoppers in the 'letting' scenario completely agreed, 31% agreed and 19% somewhat agreed that they felt sufficiently informed about the real estate agency fees and costs for selling/let their property. The shoppers in the 'selling' scenario, however, were somewhat less likely to express strong agreement: 34% completely agreed, 36% agreed and 22% who somewhat agreed.

During the discussion about fees for selling a property, 37% of shoppers were told that it would be possible to negotiate the amount of the agent's fee, and 21% were told the same about the type of fee (fixed fee vs. % of final price). In sharp contrast, when looking to hire a real estate agent to find a tenant, just 11% of shoppers were informed that they could negotiate the amount of the agent's fee and 8% would be able to decide on the type of fee to be paid.

Figure 56: Agreement with various statements about information provision about fees



Base: 180 real estate agencies in the 'selling' scenario and 140 in the 'letting' scenario (all countries)

Question: Please indicate how much you agree or disagree with the following statements

Source: Mystery shopping

A slim majority of shoppers across both scenarios (53%-55%) were explained whether fees included VAT and other taxes. In line with this observation, 40% of shoppers in the 'selling scenario' and 44% in the 'letting' scenario completely agreed that the real estate agent was clear about whether the fees include VAT and other taxes.

In the 'selling' scenario, 29% of shoppers reported that the real estate agent presented them with a breakdown of the different components of their fees and 26% were informed about the cost when the property would be taken off market without a sale. The corresponding figures for the 'letting' scenario was 38% for a breakdown of the components of the fees and 19% for the cost when no tenant is found. A large number of shoppers felt that the real estate agent was honest about their fees and costs and agreed that they felt comfortable that there would be no hidden charges (in the 'selling' scenario, 36% completely agreed, 39% agreed and 14% somewhat agreed; in the 'letting' scenario, 38% completely agreed, 33% agreed and 19% somewhat agreed).

7.3 Other fees and charges for real estate transactions

This section aims at presenting for both the conveyancing and the renting/letting process fees and charges that go beyond the costs for real estate agents' services and that are born by consumers.

Conveyancing process

During the conveyancing process, other typologies of fees that were identified during the study and that are borne by consumers include:

- Fees for legal advice or counselling;
- Fees for the drafting of the sale contract/deed of conveyance;
- Fees for registration in the land register and other device;
- Fees for the conclusion of credit and mortgage agreement, and
- Stamp tax.

Fees for legal advice/counselling

When considering the ways in which fees for legal advice/counselling are expressed in the countries in scope, it shall be noted that different legal traditions and national specificities impact the way in which fees for legal professionals are structured. This aspect makes it complex to provide a thorough comparative analysis of fees for legal advice/counselling. In general, fees for legal advice/counselling can be:

- Included in the overall commission for the real estate transaction;
- Included in the fees for the drafting of the sale contract;
- Borne by consumers as a separate typology of fees.

In some countries (for example in Austria, Bulgaria, Finland, Sweden and the UK – Scotland), fees for legal advice are generally **included in the overall commission** charged for the real estate transaction by the acting professional (notary in Austria, solicitor in the UK and estate agent in Scandinavia). In other countries (including, for example, France, the Netherlands and Hungary), fees for the provision of legal advice are **included in the fees for drafting the sale contract by the notary**. In this case, legal professionals provide advice and counselling at the stage of drafting of the sale contract.

In case fees for legal advice/counselling are borne by consumers as a separate typology of fees, differences across countries can also be noted in terms of price arrangements. Fees for legal advice/counselling can be:

- Freely **determined** and depending on agreement between professionals and parties in a transaction;
- Expressed as a **fixed amount** (as a defined amount, e.g. €300, regardless of the price of the property);
- Expressed as a **percentage of the value of the property**;
- Charged based on the **time spent by professionals** to provide legal advice.

To provide an example, Lithuania, Latvia, and Spain, fees charged by legal professionals are usually established **in agreement with consumers** asking for the service.

In other countries (e.g. in the Czech Republic and the UK – England and Wales), a fixed range is set for the amount of fees charged for legal services. In the Czech Republic, for example, fees generally correspond to approximately €390 per each contract signed while in the UK (England and Wales) legal fees are typically between £850 and £1.500 (about €955 to €1,685).

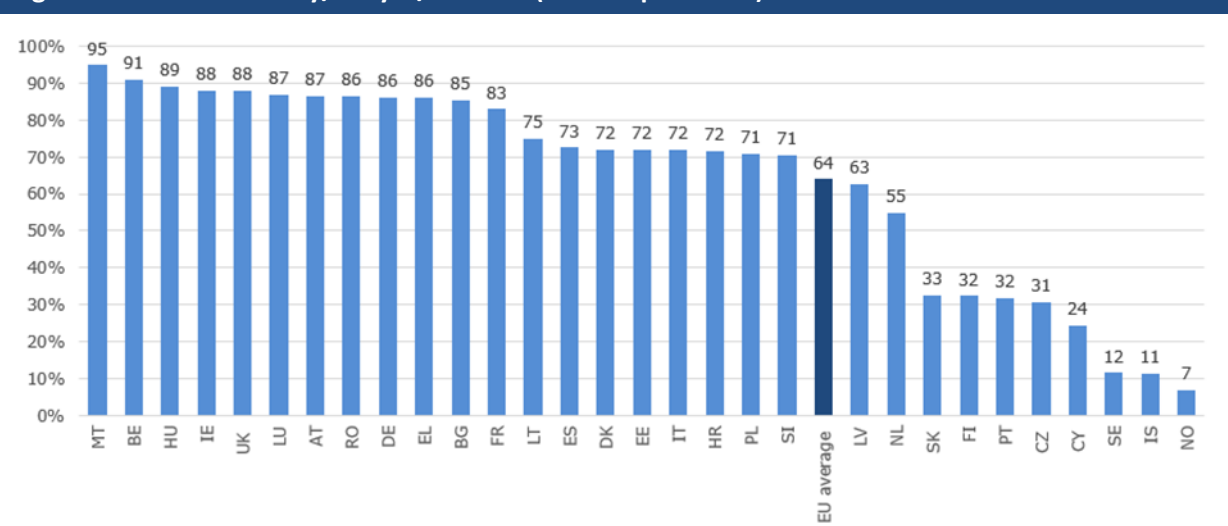
In Ireland, fees for legal advice are **expressed as a percentage of the property value**. In Ireland, the amount of fees for legal advice ranges between 0.25% and 0.75% of the property value.

Finally, fees for the provision of legal advice can be based on the **time spent by legal professionals** when providing the service. This is the case in Croatia, Estonia, Malta, Latvia, Portugal, Romania in some cases, Slovenia and Iceland.

In almost all countries, fees for legal advice/counselling, in particular notarial fees, are defined by the national regulation. To provide an example, in Cyprus, the fees for lawyers are regulated by the minimum standards of fees of Advocates (extrajudicial cases) Regulations 1985-2008 (K.D.P. 118/2008). In Croatia, fees for legal advice/counselling are defined by the Tariff for Lawyers' fee. Only in deregulated notary systems as in the Netherlands, fees are freely negotiated between consumers and the professional involved.

Results stemming from the consumer survey show that in 22 countries, more than half of the respondents indicated that they were charged fees for legal services provided by a lawyer/solicitor or by a notary. The highest percentage of respondents is recorded in Malta (95%) followed by Belgium (91%). It is interesting noting that in Nordic countries (Norway, Iceland, Sweden and Finland) a low percentage of respondents ranging from 7% to 32% indicated this option. One possible reason for this is that fees that are generally charged by legal professionals (notaries, lawyers or solicitors) may, in some countries, be charged by real estate agents. As it was already noted (see Section 3.2.1), in countries with a Nordic tradition, the intervention of the real estate agent generally occurs during the whole process of conveyancing, and includes the provision of legal services. This may explain the low percentage observed for Nordic countries.

Figure 57: Fees for notary/lawyer/solicitor (% of respondents)



Note: Consumer survey, Question Q11a: Thinking about the last property you bought, what (other) costs did you incur during the purchase of this property? The chart shows for each country the percentage of respondents indicating they incurred fees for notary, lawyer or solicitor

Source: Main Task 2 Consumer survey

Fees for the drafting of the sale contract/deed of conveyance

Depending on the legal tradition, different professionals, namely real estate agents, lawyers/advocates/solicitors or licensed conveyancers and notaries, are responsible for drafting the sale contract/deed of conveyance (see Section 3.1). This given, fees borne by consumers for the drafting of the sale contract/deed of conveyance are addressed to different professionals depending on the country. Based on data collected through the country fiches, fees for the drafting of the sale contract/deed of conveyance can be expressed as in the Table below:

Table 32: Fees for the drafting the sale contract/deed of conveyance	
Professional	Fees expressed as
Real estate agent	<ul style="list-style-type: none">• Included in the overall fee• Fixed fees• Percentage of the purchase price
Lawyer/attorney/solicitor	<ul style="list-style-type: none">• Included in the overall fee• Mostly range of fees (e.g.• Sometimes freely negotiable• Based on the value of the property• Depending on several conditions (e.g. complexity of the case, requested certificates, time spent, experience of the professional)
Notary	<ul style="list-style-type: none">• Included in the overall fees• Fixed fees (except the Netherlands)• Range of fees (e.g. between €80 and €300)• Proportional emoluments• Freely negotiable• Based on the value of the property• 50% of the amount of fees for the performance of the notarial act

Disparate scenarios are observed when considering whether fees for the drafting of the sale contract/deed of conveyance are established by the national legislation or deregulated. In all continental countries, except the Netherlands, **fees borne by consumers for the services provided by lawyers or notaries are defined by law**. This is the case, for example, of Belgium where fees are established by the Royal Decree of 16 December 1950 on notary fees. In France as well, proportional emoluments are fixed by decree (Arrêté du 26 février 2016, fixant les tarifs réglementés des notaires, JORF n. 0050 du 28 février 2016). In Cyprus, fees for lawyers are regulated by 'The minimum standards of fees of Advocates (extrajudicial cases) Regulations 1985-2008 (K.D.P. 118/2008). In Slovenia both the fees for notaries and attorneys are established by the legislation (The Attorney Tariff Act – Tar. No 34; The Notary Tariff Act – Tar. No 1).

In some cases, the amount of fees is generally agreed between consumers and the professional involved. To provide an example, in Spain and Hungary the amount of fees borne by consumers for the drafting of the sale contract can be agreed freely between the parties and the lawyer/attorney involved in the transaction. This is also the case in the Netherlands as regards notary fees.

Land register fees

As it was the case for the fees charged for legal advice, also **land register fees can be expressed in different manners** depending on the country. Land register fees can be expressed:

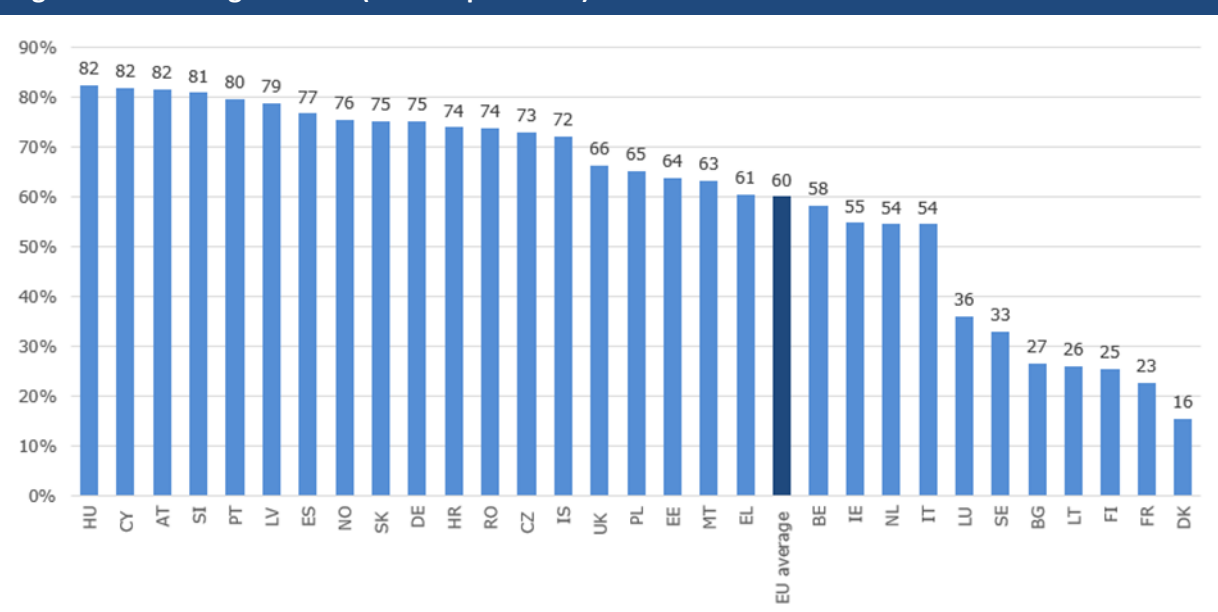
- As a **percentage of the value of the property or as a fixed amount depending on the sale value** (Austria, Bulgaria, Germany, Greece, Lithuania, Luxembourg, Malta, Romania, Slovenia, Spain, and the UK – England and Wales);
- As a **fixed amount** regardless of the value of the property (this is the case for the majority of the countries in scope including Belgium, Croatia, Estonia in one specific situation, Finland, France, Hungary, Ireland, the Netherlands, Poland, Portugal, Sweden, Slovakia, and Iceland).

In some countries, land register fees are **included in the overall commission**. This is the case in the Czech Republic, in the UK – Scotland, in Iceland if a real estate agent is involved in the transaction, and in Norway.

Finally, in Cyprus, in Denmark and in Italy, the amount of land register fees may **vary depending on several conditions** (e.g. depending on the type of property or in case a transaction is concluded between private consumers).

When considering findings derived from the consumer survey, in most of the countries in scope (23 out of 30) a majority of respondents indicated that they had to bear the cost for land register fees. At the aggregate level, 60% of the respondents selected this option. About one third of buyers explained that they had to bear land register fees in the following countries: Denmark, France, Finland, Lithuania, Bulgaria, Sweden and Luxembourg. For these countries, the percentage of respondents ranges from 16% to 36%.

Figure 58: Land register fees (% of respondents)



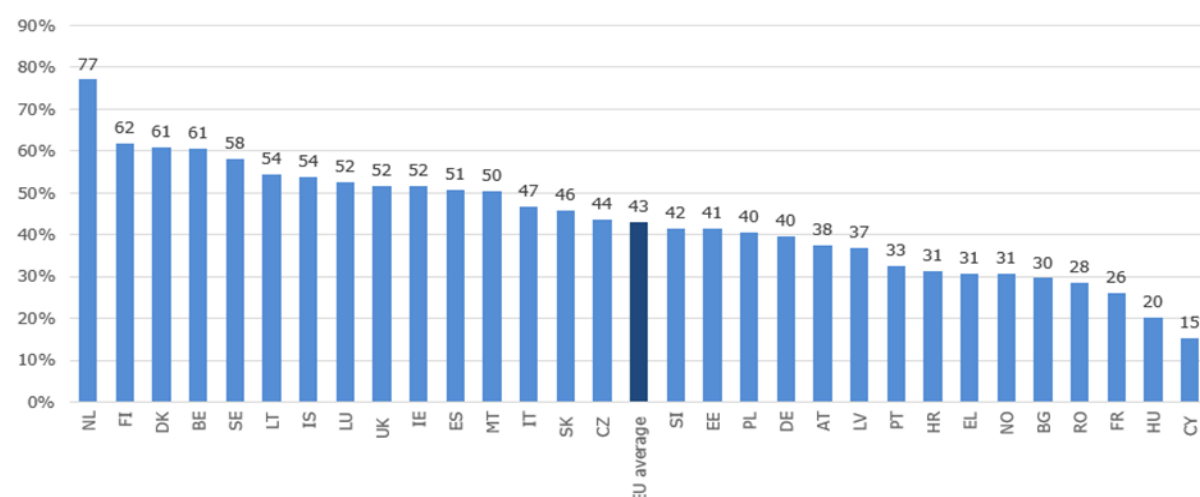
Note: Consumer survey, Question Q11a: Thinking about the last property you bought, what (other) costs did you incur during the purchase of this property? The chart shows for each country the percentage of respondents indicating they incurred land register fees

Source: Main Task 2 Consumer survey

Mortgage fees

Mortgage fees may apply in case potential buyers request a mortgage in view of purchasing a property. As regards the fees for the mortgage charged to buyers, 43% of the respondents to the consumer survey indicated that they had to bear this type of fees at the aggregate level. In a minority of countries (12 out of 30), more than half of the respondents indicated that they had to bear mortgage fees.

Figure 59: Fees for mortgage (% of respondents)



Note: Consumer survey, Question Q11a: Thinking about the last property you bought, what (other) costs did you incur during the purchase of this property? The chart shows for each country the percentage of respondents indicating they incurred fees for the mortgage

Source: Main Task 2 Consumer survey

Stamp tax

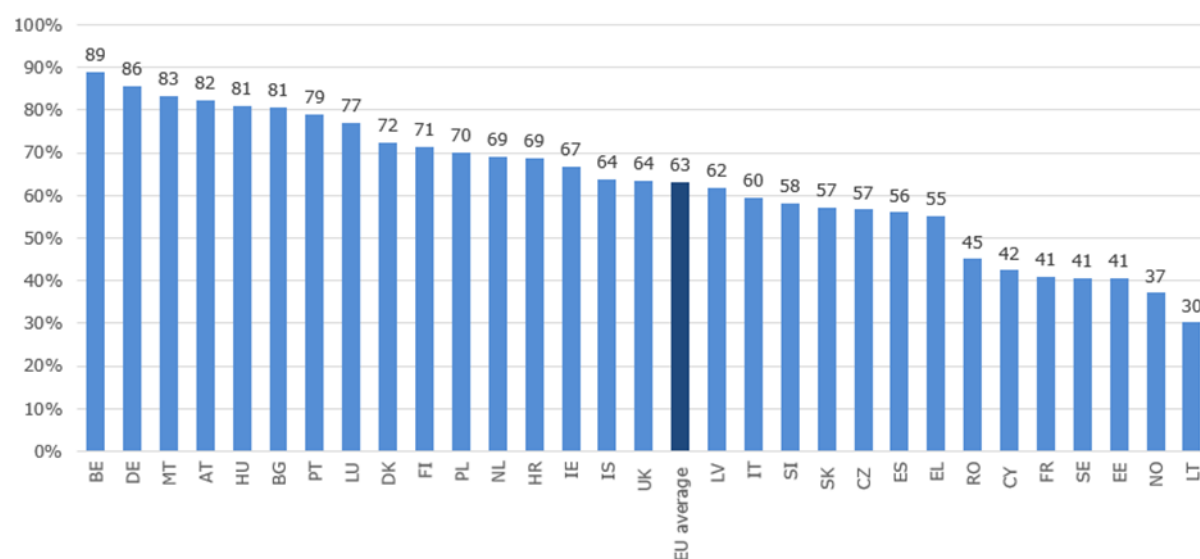
The stamp tax is applied only **in a minority of the countries in scope**. The stamp tax can be expressed:

- As a **fixed amount** (Belgium, Italy);
- As a **fixed amount depending on the contract value** (Cyprus);
- As a **fixed amount depending on the value of the transaction** (Denmark);
- As a **percentage of the value of the object** (Greece, Ireland, Malta, Portugal, Sweden, Slovenia, UK – England and Wales, Iceland and Norway).

In all the remaining countries, i.e. in the majority of the countries, the stamp tax is not applied.

When considering results from the consumer survey, also in this case a majority of respondents indicated this option in 23 out of the 30 countries in scope. At the aggregate level, the percentage of respondents is equivalent to 63%.

Figure 60: Tax/stamp duty (% of respondents)



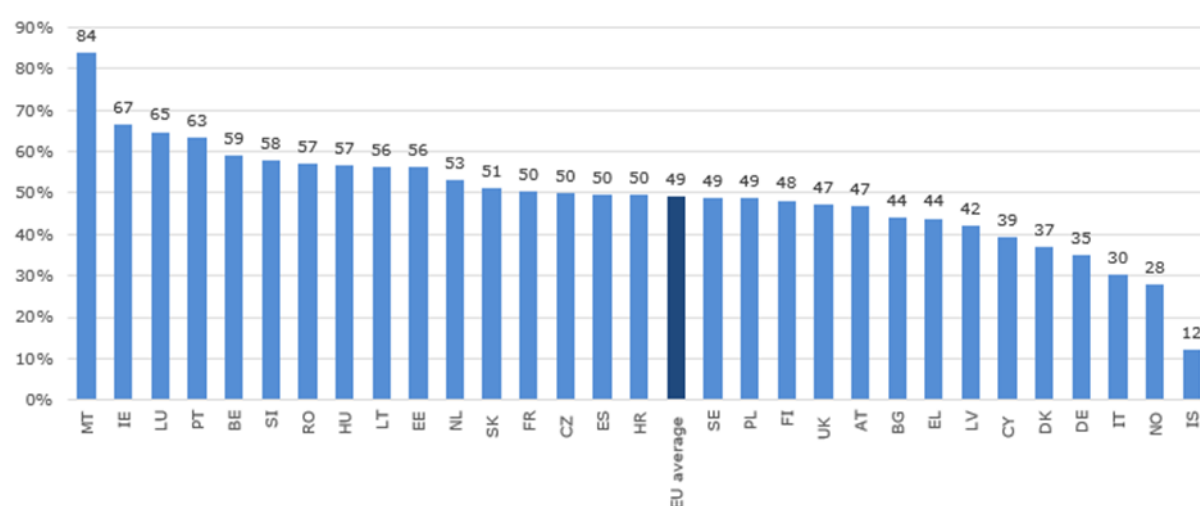
Note: Consumer survey, Question Q11a: Thinking about the last property you bought, what (other) costs did you incur during the purchase of this property? The chart shows for each country the percentage of respondents indicating they had to pay for the stamp duty

Source: Main Task 2 Consumer survey

Insurance fees

When considering insurance fees faced by buyers during the conveyancing process, it is interesting noting that, at the aggregate level, less than half of the respondents to the consumer survey (49%) indicated this option. The highest percentage of respondents was observed in Malta (84%) followed by Ireland (67%).

Figure 61: Insurance fees (% of respondents)



Note: Consumer survey, Question Q11a: Thinking about the last property you bought, what (other) costs did you incur during the purchase of this property? The chart shows for each country the percentage of respondents indicating they had to pay for insurance fees

Source: Main Task 2 Consumer survey

Hidden costs

The analysis of hidden costs that consumers (buyers and sellers) may face during the conveyancing process stems from the country fiches and is based on the input provided by national experts. As a general finding, the following typologies of costs have been indicated by legal experts as possible hidden costs:

- The Value Added Tax (VAT);
- Bank transfer fees;
- Additional certificates, and
- Disbursements.

Renting and letting process

In this section, the analysis for fees and charges borne by consumers during the renting/letting process is structured around the following typologies of fees:

- Conclusion of the rent contract;
- Rent deposit;
- Registration tax;
- Stamp tax.

Conclusion of the rent contract

As it was the case for the amount of fees borne by consumers for the drafting of the sale contract/deed of conveyance (see above, Section 7.3), **fees for the conclusion of the rent contract can be addressed to different professionals, namely to real estate agents, lawyers/attorneys/solicitors or licenced conveyancers and notaries.** Different scenarios are observed across countries. In general, fees for the conclusion of the rent contract can be:

- Included in the overall fee;
- Expressed as a monthly rent;
- Freely negotiable between consumers and the professional in charge;
- Expressed as a range depending on the value of the property;
- Based on the value of the yearly rent.

It seems that **only in a minority of cases, fees for the conclusion of the rent contract are defined in the national legislation.** This is the case, for example, in France where the fees for real estate agents for the conclusion of the rent contract are strictly regulated and depend on the geographical situation. In Croatia, in case a lawyer is responsible for the drafting the rent contract, the Tariff for Lawyers' fee applies while in Hungary notary fees should be in line with the relevant decree.

Rent deposit

Considering the rent deposit, the latter is generally expressed as X-month rent. In this case, the maximum amount of rent deposit seems **not to exceed 6-month rent across the 30 countries in scope.** Most often, the amount of the deposit ranges between 1 to 2-month rent.

In Belgium and in Cyprus, the amount of the rent deposit can be **freely determined** based on input by the national expert. On the contrary, in other countries, the maximum amount of rent deposit is established by law.

Registration tax

As regards the registration tax, **in the vast majority of the countries (26 out of 30), the registration tax does not apply.** The four countries in which the registration tax is applicable are Belgium, Cyprus, Greece and Italy.

In Belgium, the tax is expressed as a percentage of the rent in case of rent of fixed duration. In Cyprus, calculated based on the market value of the property. Several conditions such as the presence of sublease or the lease to relatives, need to be taken into account when performing the calculation. In Greece, the registration tax applies if the rent contract has a duration of up to 9 years. In Italy, the registration tax corresponds to 2% of the yearly rent for urban properties for each year of the duration of the contract.

Stamp tax

As for the registration tax, the stamp tax for the renting process is only applied in a minority of countries, namely Belgium, Cyprus, Italy, Portugal and Spain.

In specific, the stamp tax is expressed as a fixed amount in Belgium (corresponding to €50). In Cyprus, different calculation methods for the stamp tax are applied depending on whether the rent is agreed for a fixed time or for an unlimited time. In Italy, the tax corresponds to €16 for every four pages of the contract and in Portugal, the tax corresponds to 10% of a month rent. In Spain, differences within the country in the application of the tax were observed. Autonomous regions applies specific scales for the tax and some exceptions to the tax can also be made.

For the sake of completeness, it shall be noted that in Greece, the stamp tax is charged only for commercial real estate and not for residential real estate.

7.4 Time spent by consumers dealing with real estate agents

The analysis of the time spent by consumers dealing with the real estate agent during the purchase or rent of a property leveraged on findings emerging from the consumer survey. For this specific aspect, data has been gathered in relation to the **time between consumers' first contact with the real estate agent and the conclusion of the transaction**¹⁷⁹ as well as to the **average time spent by buyers/tenants and sellers/landlords dealing with real estate agents**¹⁸⁰.

When performing the analysis of time spent by consumers, it is important to distinguish between consumer typologies since one may expect buyers and sellers to spend more time than tenants and landlords when dealing with real estate transactions. The time elapsed between buyers'/sellers' first contact with the real estate agent and the conclusion of the real estate transaction generally corresponds to **one to three months**. Both buyers and sellers generally spend **two to three hours** dealing with the real estate agent.

During the renting/letting process, it seems that the time elapsed between the first contact with the real estate agent and the conclusion of the renting transaction is longer for landlords (generally one month) as compared to tenants (generally less than a week up to two weeks). However, in terms of hours spent dealing with the real estate agent, both tenants and landlords spend normally between **two to three hours**. Interestingly, the same result was shown for buyers and tenants.

¹⁷⁹ The time between a consumer's first contact with the real estate agent and the conclusion of the transaction covers the period between the moment at which a consumer decides to purchase/rent a property and the conclusion of the real estate transaction.

¹⁸⁰ The average time spent covers the time spent by consumers dealing with the real estate agent to request and collect information about the property and to carry out negotiations with a view to conclude the real estate transaction.

Conveyancing process

In this section, results are reported about i) the time elapsed between the first contact with the real estate agent and the actual buying/selling of the property, and ii) the hours spent by buyers and sellers when dealing with the real estate agent. Results stem from the consumer survey and, in specific, the perspective of buyers and sellers in highlighted in this section.

On a general note, it seems that the time elapsed between the first contact with the real estate agent and the moment of purchase/selling of a property ranges **between one month and three months for both buyers and sellers**. However, the highest percentage of surveyed buyers indicated the answer option 'one month' in 20 out of 30 countries while the highest percentage of surveyed sellers indicated the answer option 'two to three months' in 16 countries. Results show that only in Iceland (26%) and in Norway (24%), a relatively high percentage of buyers indicated that less than a week elapsed between the first contact with the real estate agent and the conclusion of the transaction. In the majority of the surveyed countries (i.e. 20 out of 30 surveyed countries) the answer option '**about one month**' displayed the highest percentage of responses ranging from 12% in Malta to 46% in Lithuania. In six countries, the most selected option is **two to three months**. It is interesting noting that the answer option **seven months to one year** was selected by a percentage of respondents which does not exceed 12% (Ireland) while the option **more than one year** was indicated by a percentage of respondents which does not exceed 9% (Malta).

Figure 62: Time elapsed between the first contact with the real estate agent and the conclusion of the transaction – buyers (% of respondents)

Country	< 1 week	1-2 weeks	1 month	2-3 months	4-6 months	7 months - 1 year	> 1 year	Don't know
AT	6.9%	20.6%	36.3%	17.6%	7.8%	5.9%	1.0%	3.9%
BE	9.7%	15.3%	20.9%	26.0%	18.9%	2.6%	0.5%	6.1%
BG	6.6%	18.9%	40.6%	19.8%	3.8%	5.7%	1.9%	2.8%
CY	5.0%	10.0%	40.0%	35.0%	5.0%	0.0%	5.0%	0.0%
CZ	7.7%	19.4%	30.6%	24.0%	7.1%	4.1%	3.1%	4.1%
DE	2.8%	15.9%	31.0%	29.0%	15.9%	2.1%	1.4%	2.1%
DK	9.7%	27.5%	34.1%	19.4%	3.9%	1.2%	0.8%	3.5%
EE	7.9%	23.7%	44.2%	14.9%	5.6%	1.4%	0.9%	1.4%
EL	8.6%	12.9%	35.7%	24.3%	10.0%	1.4%	5.7%	1.4%
ES	7.3%	15.3%	36.0%	25.3%	11.3%	1.3%	2.0%	1.3%
FI	8.4%	28.4%	38.3%	17.6%	3.8%	1.5%	0.4%	1.5%
FR	4.6%	13.2%	15.8%	36.4%	22.1%	5.4%	1.4%	1.1%
HR	9.5%	11.4%	31.4%	21.0%	16.2%	4.8%	4.8%	1.0%
HU	9.7%	21.5%	34.0%	18.8%	9.7%	3.5%	2.1%	0.7%
IE	1.7%	7.3%	17.9%	30.7%	25.7%	12.8%	1.1%	2.8%
IT	2.7%	4.4%	20.9%	29.1%	22.5%	11.0%	4.4%	4.9%
LT	8.2%	17.9%	45.6%	15.9%	4.1%	1.5%	3.1%	3.6%
LU	12.9%	14.9%	27.7%	32.7%	7.9%	2.0%	1.0%	1.0%
LV	14.2%	18.3%	30.0%	23.3%	5.0%	3.3%	4.2%	1.7%
MT	6.5%	12.1%	12.1%	19.6%	26.2%	11.2%	9.3%	2.8%
NL	5.3%	19.4%	33.8%	27.4%	7.6%	2.7%	0.4%	3.4%
PL	10.6%	15.1%	33.9%	22.0%	9.6%	1.8%	3.7%	3.2%
PT	7.2%	12.3%	34.1%	26.1%	12.3%	4.3%	2.9%	0.7%
RO	16.6%	18.9%	29.1%	19.4%	5.1%	4.6%	3.4%	2.9%
SE	17.2%	35.1%	25.6%	12.3%	2.8%	1.8%	0.4%	4.9%
SI	5.4%	15.0%	31.7%	30.5%	7.2%	6.0%	3.0%	1.2%
SK	6.3%	27.6%	35.1%	19.0%	5.7%	1.7%	2.3%	2.3%
UK	2.9%	4.9%	15.2%	39.9%	25.3%	5.7%	1.1%	4.9%
IS	26.0%	31.3%	20.8%	13.5%	3.1%	0.5%	1.0%	3.6%
NO	23.6%	33.6%	24.2%	8.5%	2.3%	1.4%	1.1%	5.1%

Note: Consumer survey, Question Q7a: How much time elapsed between your first contact with the real estate agent marketing the property and actually buying the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

Consumers were also asked to indicate the hours spent in total when dealing with the real estate agent. Also the amount of hours spent by buyers and sellers with the real estate agent seems to coincide for the two counterparts and corresponds to **'two to three hours'**. In fact, the highest percentage of surveyed buyers indicated this option in 19 countries while the highest percentage of surveyed sellers indicated this option in 17 countries.

In more than half of the surveyed countries (19 out of 30), the highest percentage of responses was recorded for the answer options **'two to three hours'** and ranges from 20% (Malta and the UK) to 43% (Sweden). The second most selected option across the 30 countries corresponds to **'four to five hours'** for which the highest percentage of responses was recorded in seven countries. In Bulgaria, Cyprus and Slovenia, buyers mainly indicated that they spent between **'six and ten hours'** (respectively, 25%, 35%, and 31% of respondents). In Cyprus, the same percentage of respondents (35%) explained that they spent between eleven and twenty hours when dealing with the real estate agent.

Figure 63: Hours spent, in total, when dealing with the real estate agent – buyers (% of respondents)

Country	1 hour	2-3 hours	4-5 hours	6-10 hours	11-20 hours	21-40 hours	>40 hours	Don't know
AT	7.8%	33.3%	23.5%	14.7%	8.8%	0.0%	2.9%	8.8%
BE	21.4%	32.7%	16.8%	14.3%	4.6%	1.5%	0.5%	8.2%
BG	8.5%	15.1%	23.6%	24.5%	11.3%	6.6%	4.7%	5.7%
CY	5.0%	5.0%	10.0%	35.0%	35.0%	0.0%	5.0%	5.0%
CZ	4.1%	28.1%	30.6%	17.9%	7.1%	3.6%	1.0%	7.7%
DE	6.9%	22.8%	31.7%	20.7%	7.6%	2.8%	0.7%	6.9%
DK	11.6%	40.3%	21.7%	14.0%	2.7%	1.2%	0.4%	8.1%
EE	9.8%	36.7%	20.5%	15.8%	3.3%	3.7%	2.3%	7.9%
EL	10.0%	24.3%	21.4%	22.9%	8.6%	5.7%	4.3%	2.9%
ES	5.3%	17.3%	29.3%	21.3%	12.7%	4.0%	3.3%	6.7%
FI	15.3%	42.5%	23.0%	10.0%	1.9%	0.4%	1.1%	5.7%
FR	28.4%	32.1%	16.0%	8.9%	2.9%	0.9%	1.4%	9.5%
HR	11.4%	32.4%	15.2%	17.1%	8.6%	2.9%	3.8%	8.6%
HU	18.8%	38.9%	18.8%	9.7%	8.3%	0.0%	1.4%	4.2%
IE	6.7%	16.2%	21.2%	21.8%	11.7%	8.9%	5.0%	8.4%
IT	2.7%	11.0%	26.9%	25.3%	13.2%	6.0%	4.9%	9.9%
LT	21.0%	31.8%	16.4%	8.2%	4.6%	3.1%	4.6%	10.3%
LU	33.7%	38.6%	13.9%	8.9%	2.0%	0.0%	0.0%	3.0%
LV	7.5%	26.7%	28.3%	16.7%	5.0%	5.0%	3.3%	7.5%
MT	7.5%	19.6%	14.0%	18.7%	13.1%	12.1%	7.5%	7.5%
NL	11.4%	36.9%	21.7%	12.9%	5.3%	0.8%	1.5%	9.5%
PL	4.6%	21.1%	30.7%	20.6%	7.3%	3.7%	2.8%	9.2%
PT	15.2%	33.3%	17.4%	18.8%	6.5%	2.2%	1.4%	5.1%
RO	7.4%	19.4%	22.3%	21.1%	12.0%	8.0%	5.1%	4.6%
SE	11.2%	43.2%	22.8%	7.7%	3.9%	0.0%	1.1%	10.2%
SI	7.2%	14.4%	21.0%	31.1%	8.4%	4.8%	5.4%	7.8%
SK	7.5%	28.2%	25.9%	19.0%	6.9%	2.3%	1.7%	8.6%
UK	10.1%	19.6%	18.6%	17.7%	10.1%	3.6%	4.4%	16.0%
IS	25.0%	26.0%	9.9%	5.7%	4.7%	6.3%	4.2%	18.2%
NO	34.2%	42.2%	12.5%	3.7%	0.0%	0.0%	0.0%	7.4%

Note: Consumer survey, Question Q7b: How many hours, in total, did you spend dealing with the real estate agent buying/renting you the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

Turning to the perspective of sellers in relation to the time elapsed between the first contact with the real estate agent and the conclusion of the transaction, in more than half of the surveyed countries (16 out of 30), the highest number of respondent indicated the answer option **'two to three months'** (values range from 20% of respondents in Romania to 33% of respondents in Greece). In other seven countries, the highest percentage of respondents indicated that **'one month'** elapsed between the first contact with the real estate agent and the selling of the property. In Austria, France and Italy, the most selected option is **'four to six months'**. In Cyprus and in Denmark, sellers mainly indicated the option **'seven months to one year'** (respectively 43% of respondents in Cyprus and 21% of respondents in Denmark). In Malta, the Netherlands, and Portugal, the time elapsed between the first contact with the real estate agent and the selling of the property

corresponds to more than one year based on consumers' views (respectively 19%, 24% and 24% of respondents).

Figure 64: Time elapsed between the first contact with the real estate agent and the conclusion of the transaction – sellers (% of respondents)

Country	< 1 week	1-2 weeks	1 month	2-3 months	4-6 months	7 months - 1 year	> 1 year	Don't know
AT	3.3%	3.3%	23.3%	25.0%	25.0%	13.3%	5.0%	1.7%
BE	5.4%	14.9%	18.9%	24.3%	14.9%	9.5%	9.5%	2.7%
BG	7.7%	15.4%	26.9%	17.9%	10.3%	10.3%	9.0%	2.6%
CY	0.0%	0.0%	0.0%	0.0%	28.6%	42.9%	28.6%	0.0%
CZ	6.5%	15.2%	23.9%	22.8%	13.0%	10.9%	5.4%	2.2%
DE	0.0%	5.7%	22.9%	25.7%	22.9%	10.0%	10.0%	2.9%
DK	3.6%	4.1%	16.6%	18.9%	16.6%	20.7%	18.3%	1.2%
EE	7.0%	9.9%	33.8%	19.7%	15.5%	5.6%	7.0%	1.4%
EL	0.0%	5.0%	25.0%	32.5%	22.5%	10.0%	5.0%	0.0%
ES	0.0%	9.4%	20.8%	28.3%	13.2%	15.1%	11.3%	1.9%
FI	9.4%	14.8%	22.7%	23.4%	15.6%	7.0%	6.3%	0.8%
FR	9.8%	12.8%	17.1%	18.3%	19.5%	13.4%	7.3%	1.8%
HR	6.3%	6.3%	18.8%	29.2%	12.5%	8.3%	18.8%	0.0%
HU	5.3%	9.6%	19.1%	23.4%	13.8%	11.7%	13.8%	3.2%
IE	4.8%	6.5%	16.1%	27.4%	22.6%	8.1%	11.3%	3.2%
IT	2.4%	7.2%	7.2%	18.1%	25.3%	18.1%	20.5%	1.2%
LT	8.1%	13.5%	24.3%	21.6%	10.8%	5.4%	10.8%	5.4%
LU	0.0%	9.1%	14.5%	29.1%	21.8%	10.9%	14.5%	0.0%
LV	10.0%	12.5%	20.0%	30.0%	10.0%	10.0%	5.0%	2.5%
MT	11.5%	15.4%	7.7%	15.4%	15.4%	15.4%	19.2%	0.0%
NL	6.1%	11.6%	14.6%	18.3%	11.0%	12.2%	24.4%	1.8%
PL	6.9%	8.3%	29.2%	31.9%	11.1%	4.2%	8.3%	0.0%
PT	2.9%	10.0%	17.1%	15.7%	17.1%	12.9%	24.3%	0.0%
RO	10.5%	19.8%	14.0%	19.8%	12.8%	7.0%	16.3%	0.0%
SE	3.6%	17.5%	32.5%	26.8%	7.7%	4.1%	6.2%	1.5%
SI	0.0%	7.8%	19.6%	31.4%	17.6%	9.8%	13.7%	0.0%
SK	6.0%	10.8%	20.5%	21.7%	14.5%	12.0%	10.8%	3.6%
UK	6.8%	6.0%	14.2%	26.3%	21.4%	12.5%	8.9%	3.9%
IS	14.9%	16.8%	24.8%	20.8%	7.9%	1.0%	10.9%	3.0%
NO	2.5%	9.6%	31.7%	29.2%	12.9%	4.6%	4.2%	5.4%

Note: Consumer survey, Question Y2a: How much time elapsed between your first contact with the real estate agent marketing the property and actually buying the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

When considering the hours spent by sellers when dealing with the real estate agent, the highest percentage of respondents indicated the answer options **'two to three hours'** in more than half of the surveyed countries (17 out of 30). This is followed by the time frame **'four to five hours'** that was selected by the highest percentage of respondents in 10 countries. In two countries, namely in Latvia and in Poland, the same percentage of responses was recorded for the options 'two to three hours' and 'four to five hours'. Similarly, in Cyprus and in France, the same percentage of responses was observed for the options 'one hour' and 'two to three hours', and corresponds respectively to 25% and 29.6% of the respondents.

Figure 65: Hours spent, in total, when dealing with the real estate agent – sellers (% of respondents)

Country	1 hour	2-3 hours	4-5 hours	6-10 hours	11-20 hours	21-40 hours	>40 hours	Don't know
AT	7.9%	19.7%	28.9%	11.8%	13.2%	6.6%	6.6%	5.3%
BE	18.6%	31.4%	17.4%	14.0%	7.0%	1.2%	2.3%	8.1%
BG	7.6%	19.3%	21.0%	17.6%	14.3%	1.7%	9.2%	9.2%
CY	25.0%	25.0%	0.0%	12.5%	12.5%	0.0%	25.0%	0.0%
CZ	11.5%	30.1%	17.7%	20.4%	4.4%	6.2%	1.8%	8.0%
DE	1.3%	14.3%	27.3%	20.8%	10.4%	7.8%	6.5%	11.7%
DK	3.4%	21.2%	31.3%	14.5%	8.4%	8.4%	3.9%	8.9%
EE	9.6%	25.3%	14.5%	18.1%	8.4%	3.6%	6.0%	14.5%
EL	12.7%	36.4%	12.7%	10.9%	7.3%	7.3%	9.1%	3.6%
ES	8.7%	10.1%	18.8%	27.5%	5.8%	4.3%	4.3%	20.3%
FI	6.7%	30.6%	28.4%	14.2%	7.5%	3.0%	1.5%	8.2%
FR	29.6%	29.6%	15.5%	8.3%	1.9%	1.0%	1.9%	12.1%
HR	13.6%	24.7%	19.8%	21.0%	9.9%	1.2%	1.2%	8.6%
HU	18.2%	28.8%	16.7%	15.2%	5.3%	7.6%	2.3%	6.1%
IE	1.4%	14.5%	26.1%	23.2%	13.0%	5.8%	4.3%	11.6%
IT	5.7%	14.2%	26.4%	20.8%	9.4%	5.7%	9.4%	8.5%
LT	26.4%	39.6%	9.4%	7.5%	0.0%	3.8%	5.7%	7.5%
LU	31.7%	26.7%	13.3%	15.0%	3.3%	1.7%	0.0%	8.3%
LV	11.9%	23.7%	23.7%	15.3%	13.6%	3.4%	0.0%	8.5%
MT	24.3%	13.5%	10.8%	18.9%	5.4%	2.7%	16.2%	8.1%
NL	4.1%	17.8%	24.3%	23.7%	8.9%	5.9%	4.7%	10.7%
PL	10.3%	28.9%	28.9%	10.3%	10.3%	4.1%	2.1%	5.2%
PT	20.3%	22.8%	17.7%	13.9%	6.3%	3.8%	10.1%	5.1%
RO	17.0%	19.6%	17.0%	10.5%	15.7%	5.9%	3.9%	10.5%
SE	5.1%	25.4%	28.4%	18.8%	6.6%	2.5%	4.1%	9.1%
SI	4.2%	15.5%	21.1%	22.5%	12.7%	8.5%	4.2%	11.3%
SK	10.6%	23.1%	22.1%	19.2%	7.7%	4.8%	1.0%	11.5%
UK	3.1%	19.6%	17.2%	15.1%	14.1%	7.6%	6.9%	16.5%
IS	32.7%	27.9%	8.7%	4.8%	5.8%	2.9%	1.0%	16.3%
NO	5.0%	33.5%	28.5%	13.2%	5.0%	2.5%	1.2%	11.2%

Note: Consumer survey, Question Q7b: How many hours, in total, did you spend dealing with the real estate agent selling/renting out you the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

Renting and letting process

As it was the case for the conveyancing process, this section reports results stemming from the consumers survey on i) the time elapsed between the first contact with the real estate agent and the actual renting/letting of the property, and ii) the hours spent by tenants and landlords when dealing with the real estate agent. This section focuses, therefore, on the perspective of tenants and landlords.

Overall, when considering the 30 countries in scope, it can be noticed that less time elapsed between tenants' first contact with the real estate agent and the signing of the lease agreement as compared to time elapsed between landlords' first contact with the real estate agent and the renting out of the property. On the one hand, the highest percentage of the **surveyed tenants in 19 out of the 30 countries indicated that 'one to two weeks'** elapsed before the signature of the lease agreement. On the other hand, in 22 countries, the highest percentage of **surveyed landlords indicated the answer option 'one month'**. As per the time spent by consumers dealing with the real estate agent, it seems that 'two to three hours' are generally spent by both tenants and landlords. The highest percentage of surveyed tenants selected this option in 23 countries and the highest percentage of surveyed landlords selected this option in 24 countries.

Considering first the time elapsed between tenants' first contact with the real estate agent and the signing of the lease agreement, the highest percentage of responses was recorded for the answer option **'one to two weeks'** in 19 out of the 30 countries in scope. Values range from 28% of respondents in the Czech Republic to 43% of respondents in Cyprus and in Portugal. In eight countries, the most selected option is **'less than a week'** while in three countries (France, Italy and Lithuania), the most selected option was **'one month'**.

In Ireland, the same percentage of tenants (35%) indicated the options 'less than a week' and 'one to two weeks'.

Figure 66: Time elapsed between the first contact with the real estate agent and the conclusion of the transaction – tenants (% of respondents)

Country	< 1 week	1-2 weeks	1 month	2-3 months	4-6 months	7 months - 1 year	> 1 year	Don't know
AT	19.7%	38.5%	26.5%	9.4%	1.7%	1.7%	1.7%	0.9%
BE	17.1%	36.6%	26.8%	11.0%	2.4%	0.0%	1.2%	4.9%
BG	35.4%	29.3%	22.0%	6.1%	0.0%	2.4%	3.7%	1.2%
CY	40.3%	43.3%	7.5%	6.0%	0.0%	1.5%	1.5%	0.0%
CZ	21.7%	27.5%	24.6%	5.8%	7.2%	1.4%	4.3%	7.2%
DE	15.3%	35.3%	30.6%	12.9%	3.5%	0.0%	1.2%	1.2%
DK	30.0%	20.0%	20.0%	0.0%	0.0%	0.0%	20.0%	10.0%
EE	37.8%	28.0%	9.8%	7.3%	2.4%	2.4%	1.2%	11.0%
EL	39.8%	20.5%	21.7%	12.0%	2.4%	1.2%	1.2%	1.2%
ES	24.1%	41.4%	29.9%	2.3%	0.0%	0.0%	0.0%	2.3%
FI	23.2%	28.6%	19.6%	12.5%	3.6%	3.6%	0.0%	8.9%
FR	15.6%	24.2%	35.9%	13.3%	6.3%	2.3%	0.8%	1.6%
HR	16.1%	25.8%	22.6%	16.1%	9.7%	0.0%	6.5%	3.2%
HU	28.6%	40.0%	17.1%	8.6%	2.9%	0.0%	0.0%	2.9%
IE	34.7%	34.7%	13.3%	10.2%	1.0%	1.0%	1.0%	4.1%
IT	25.0%	25.0%	37.5%	12.5%	0.0%	0.0%	0.0%	0.0%
LT	9.3%	18.5%	29.6%	24.1%	9.3%	3.7%	1.9%	3.7%
LU	35.7%	21.4%	16.7%	9.5%	4.8%	2.4%	4.8%	4.8%
LV	28.2%	30.8%	25.6%	15.4%	0.0%	0.0%	0.0%	0.0%
MT	23.1%	28.2%	15.4%	15.4%	5.1%	5.1%	5.1%	2.6%
NL	24.0%	28.0%	24.0%	8.0%	4.0%	8.0%	4.0%	0.0%
PL	13.3%	40.0%	28.9%	13.3%	0.0%	2.2%	0.0%	2.2%
PT	44.4%	22.2%	11.1%	11.1%	0.0%	0.0%	0.0%	11.1%
RO	21.4%	28.6%	25.0%	17.9%	5.4%	0.0%	1.8%	0.0%
SE	17.5%	43.3%	25.8%	10.3%	0.0%	0.0%	0.0%	3.1%
SI	42.9%	16.5%	11.0%	8.8%	1.1%	8.8%	9.9%	1.1%
SK	2.9%	38.2%	20.6%	11.8%	5.9%	0.0%	0.0%	20.6%
UK	16.7%	30.6%	19.4%	13.9%	8.3%	5.6%	5.6%	0.0%
IS	26.8%	36.6%	14.6%	9.8%	9.8%	0.0%	2.4%	0.0%
NO	13.1%	38.9%	29.1%	8.2%	1.6%	1.2%	0.4%	7.4%

Note: Consumer survey, Question Q7a: How much time elapsed between your first contact with the real estate agent marketing the property and actually buying the property/signing the lease agreement for the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

In terms of the hours spent by tenants when dealing with the real estate agent, in 23 countries out of 30, the highest percentage of respondents indicated the answer option **'two to three hours'** with the lowest value recorded in Poland (27%) and the highest value in Slovakia (51%). In eight countries, the most selected option was **'one hour'**. In Lithuania, the same percentage of respondents (31%) indicated the option 'one hour' and 'two to three hours'.

Figure 67: Hours spent, in total, when dealing with the real estate agent – tenants (% of respondents)

Country	1 hour	2-3 hours	4-5 hours	6-10 hours	11-20 hours	21-40 hours	>40 hours	Don't know
AT	29.1%	40.2%	22.2%	1.7%	0.9%	0.0%	0.0%	6.0%
BE	32.9%	50.0%	11.0%	1.2%	0.0%	1.2%	0.0%	3.7%
BG	17.1%	36.6%	14.6%	14.6%	8.5%	1.2%	1.2%	6.1%
CY	26.9%	35.8%	23.9%	1.5%	3.0%	1.5%	1.5%	6.0%
CZ	23.2%	43.5%	17.4%	7.2%	0.0%	0.0%	0.0%	8.7%
DE	31.8%	34.1%	20.0%	9.4%	1.2%	1.2%	0.0%	2.4%
DK	40.0%	0.0%	20.0%	0.0%	10.0%	0.0%	0.0%	30.0%
EE	18.3%	39.0%	14.6%	6.1%	8.5%	2.4%	1.2%	9.8%
EL	27.7%	33.7%	21.7%	8.4%	2.4%	2.4%	2.4%	1.2%
ES	17.2%	35.6%	29.9%	10.3%	4.6%	0.0%	0.0%	2.3%
FI	46.4%	32.1%	5.4%	7.1%	0.0%	0.0%	0.0%	8.9%
FR	25.8%	41.4%	9.4%	7.8%	2.3%	0.0%	0.0%	13.3%
HR	29.0%	19.4%	25.8%	12.9%	3.2%	3.2%	6.5%	0.0%
HU	34.3%	28.6%	20.0%	8.6%	5.7%	0.0%	0.0%	2.9%
IE	24.5%	38.8%	13.3%	10.2%	4.1%	2.0%	0.0%	7.1%
IT	7.4%	29.6%	24.1%	20.4%	11.1%	0.0%	0.0%	7.4%
LT	31.0%	31.0%	14.3%	9.5%	0.0%	4.8%	0.0%	9.5%
LU	53.8%	30.8%	7.7%	2.6%	0.0%	0.0%	0.0%	5.1%
LV	20.5%	38.5%	12.8%	17.9%	2.6%	2.6%	0.0%	5.1%
MT	16.0%	36.0%	16.0%	24.0%	0.0%	4.0%	0.0%	4.0%
NL	17.8%	35.6%	24.4%	8.9%	6.7%	2.2%	0.0%	4.4%
PL	17.9%	26.8%	19.6%	12.5%	7.1%	7.1%	3.6%	5.4%
PT	22.7%	32.0%	18.6%	11.3%	4.1%	3.1%	1.0%	7.2%
RO	26.4%	33.0%	15.4%	8.8%	4.4%	3.3%	4.4%	4.4%
SE	26.5%	29.4%	20.6%	2.9%	2.9%	0.0%	0.0%	17.6%
SI	19.4%	30.6%	11.1%	16.7%	13.9%	5.6%	0.0%	2.8%
SK	22.0%	51.2%	7.3%	7.3%	7.3%	2.4%	2.4%	0.0%
UK	15.2%	40.6%	23.8%	7.8%	2.5%	0.8%	0.8%	8.6%
IS	62.5%	0.0%	12.5%	12.5%	0.0%	0.0%	0.0%	12.5%
NO	55.6%	11.1%	0.0%	11.1%	0.0%	0.0%	0.0%	22.2%

Note: Consumer survey, Question Q7b: How many hours, in total, did you spend dealing with the real estate agent selling/renting you the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

When investigating the time elapsed between landlords' first contact with the real estate agent and the actual renting out of the property, results are less homogeneous as compared to the answers provided by tenants. In the majority of the surveyed countries (i.e. 22 out of 30), the answer option **'one month'** displayed the highest percentage of responses ranging from 27% in Cyprus to 60% in the Netherlands. This is followed by the time range **'one to two weeks'** that was indicated by the highest percentage of respondents in six countries. Results are heterogeneous in the Czech Republic where the same percentage of respondents (21%) indicated the options 'less than a week', 'one to two weeks', and 'two to three months'. Similarly, in Denmark half of the respondents indicated the option 'less than a week' and the other half selected the time range 'two to three months'. In Iceland, both respondents selected the option 'one to two weeks'.

Figure 68: Time elapsed between the first contact with the real estate agent and the conclusion of the transaction - landlords (% of respondents)

Country	< 1 week	1-2 weeks	1 month	2-3 months	4-6 months	7 months - 1 year	> 1 year	Don't know
AT	5.3%	10.5%	52.6%	26.3%	0.0%	5.3%	0.0%	0.0%
BE	4.3%	17.4%	21.7%	47.8%	4.3%	4.3%	0.0%	0.0%
BG	17.3%	19.2%	36.5%	23.1%	1.9%	0.0%	1.9%	0.0%
CY	20.0%	20.0%	26.7%	8.9%	13.3%	2.2%	2.2%	6.7%
CZ	21.1%	21.1%	15.8%	21.1%	15.8%	0.0%	0.0%	5.3%
DE	4.5%	27.3%	54.5%	9.1%	4.5%	0.0%	0.0%	0.0%
DK	50.0%	0.0%	0.0%	50.0%	0.0%	0.0%	0.0%	0.0%
EE	13.3%	33.3%	26.7%	20.0%	0.0%	0.0%	6.7%	0.0%
EL	9.1%	21.2%	40.9%	7.6%	9.1%	4.5%	1.5%	6.1%
ES	10.0%	6.0%	44.0%	16.0%	10.0%	6.0%	4.0%	4.0%
FI	9.3%	39.5%	27.9%	18.6%	2.3%	0.0%	0.0%	2.3%
FR	10.7%	13.3%	34.7%	22.7%	8.0%	4.0%	1.3%	5.3%
HR	20.0%	13.3%	46.7%	13.3%	0.0%	0.0%	0.0%	6.7%
HU	7.1%	28.6%	50.0%	7.1%	0.0%	7.1%	0.0%	0.0%
IE	6.3%	31.3%	46.9%	6.3%	3.1%	0.0%	0.0%	6.3%
IT	7.5%	7.5%	30.0%	30.0%	17.5%	5.0%	2.5%	0.0%
LT	14.3%	28.6%	31.4%	8.6%	2.9%	2.9%	5.7%	5.7%
LU	10.3%	17.9%	38.5%	28.2%	2.6%	0.0%	0.0%	2.6%
LV	7.4%	55.6%	22.2%	11.1%	3.7%	0.0%	0.0%	0.0%
MT	16.7%	27.8%	33.3%	5.6%	16.7%	0.0%	0.0%	0.0%
NL	20.0%	0.0%	60.0%	0.0%	20.0%	0.0%	0.0%	0.0%
PL	7.1%	17.9%	46.4%	14.3%	3.6%	3.6%	7.1%	0.0%
PT	0.0%	21.2%	42.4%	18.2%	9.1%	0.0%	6.1%	3.0%
RO	24.5%	26.5%	24.5%	8.2%	2.0%	0.0%	14.3%	0.0%
SE	16.7%	16.7%	50.0%	16.7%	0.0%	0.0%	0.0%	0.0%
SI	14.3%	14.3%	28.6%	14.3%	7.1%	7.1%	7.1%	7.1%
SK	8.3%	25.0%	50.0%	8.3%	0.0%	0.0%	8.3%	0.0%
UK	6.4%	26.9%	39.7%	16.7%	1.3%	2.6%	0.0%	6.4%
IS	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
NO	0.0%	14.3%	57.1%	14.3%	0.0%	0.0%	0.0%	14.3%

Note: Consumer survey, Question Q7a: How much time elapsed between your first contact with the real estate agent marketing the property and actually selling/renting out the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

Turning to the hours spent by landlords dealing with the real estate agent renting out the property, landlords indicated overall that they spend between one hour and five hours. In the majority of the countries (24), the highest percentage of surveyed landlords indicated the answer option **'two to three hours'**. In six countries, the most selected option was **'one hour'** and in other six countries the most selected option was **'four to five hours'**. In Cyprus, Lithuania, and Malta, the same percentage of respondents (respectively 32%, 25%, and 33%) selected the options 'one hour' and 'two to three hours'. In Denmark and Hungary, the same percentage of respondents (respectively 50% and 27%) selected the options 'two to three hours' and 'four to five hours'.

Figure 69: Hours spent, in total, when dealing with the real estate agent – landlords (% of respondents)

Country	1 hour	2-3 hours	4-5 hours	6-10 hours	11-20 hours	21-40 hours	>40 hours	Don't know
AT	12.5%	21.9%	28.1%	15.6%	9.4%	0.0%	6.3%	6.3%
BE	25.9%	40.7%	11.1%	11.1%	0.0%	0.0%	0.0%	11.1%
BG	20.3%	31.1%	18.9%	12.2%	8.1%	2.7%	2.7%	4.1%
CY	32.0%	32.0%	12.0%	4.0%	8.0%	2.0%	0.0%	10.0%
CZ	17.1%	28.6%	31.4%	14.3%	0.0%	0.0%	0.0%	8.6%
DE	20.7%	27.6%	20.7%	17.2%	0.0%	0.0%	3.4%	10.3%
DK	0.0%	50.0%	50.0%	0.0%	0.0%	0.0%	0.0%	0.0%
EE	20.0%	25.0%	15.0%	20.0%	5.0%	5.0%	5.0%	5.0%
EL	25.9%	36.1%	17.6%	5.6%	7.4%	0.9%	1.9%	4.6%
ES	13.4%	25.4%	20.9%	11.9%	4.5%	7.5%	3.0%	13.4%
FI	32.6%	34.8%	23.9%	2.2%	2.2%	0.0%	0.0%	4.3%
FR	44.6%	27.7%	14.5%	0.0%	0.0%	2.4%	0.0%	10.8%
HR	17.5%	38.6%	21.1%	5.3%	5.3%	7.0%	1.8%	3.5%
HU	19.2%	26.9%	26.9%	11.5%	7.7%	0.0%	0.0%	7.7%
IE	13.5%	35.1%	21.6%	5.4%	5.4%	2.7%	0.0%	16.2%
IT	5.9%	13.7%	39.2%	15.7%	13.7%	3.9%	0.0%	7.8%
LT	25.0%	25.0%	15.4%	11.5%	11.5%	1.9%	1.9%	7.7%
LU	50.0%	30.0%	12.5%	2.5%	0.0%	0.0%	0.0%	5.0%
LV	15.0%	32.5%	17.5%	22.5%	5.0%	2.5%	0.0%	5.0%
MT	33.3%	33.3%	9.5%	9.5%	4.8%	4.8%	0.0%	4.8%
NL	25.0%	37.5%	25.0%	0.0%	0.0%	12.5%	0.0%	0.0%
PL	5.0%	30.0%	28.3%	15.0%	3.3%	6.7%	1.7%	10.0%
PT	19.0%	40.5%	11.9%	9.5%	4.8%	0.0%	4.8%	9.5%
RO	32.4%	29.6%	16.9%	12.7%	2.8%	2.8%	1.4%	1.4%
SE	20.0%	30.0%	10.0%	10.0%	10.0%	0.0%	0.0%	20.0%
SI	10.5%	26.3%	15.8%	26.3%	10.5%	5.3%	0.0%	5.3%
SK	20.8%	45.8%	20.8%	8.3%	4.2%	0.0%	0.0%	0.0%
UK	9.8%	41.3%	22.8%	8.7%	4.3%	5.4%	2.2%	5.4%
IS	100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
NO	25.0%	0.0%	62.5%	0.0%	0.0%	0.0%	0.0%	12.5%

Note: Consumer survey, Question Y2b: How many hours, in total, did you spend dealing with the real estate agent selling/renting out the property?

Legend: The highest values are highlighted in dark blue

Source: Main Task 2 Consumer survey

8. Consumer experience: problems, remedies and redress

The consumer experience in the real estate market has proven to be rather unsatisfactory. In the European Commission's 'Consumer Market Scoreboard 2016 edition'¹⁸¹ real estate services appeared to have the worst performance of all markets surveyed. Specifically, the real estate market has consistently displayed symptoms of malfunctioning with regard to consumer protection. Moreover, an analysis by country shows a 19-point difference in the Market Performance Indicator (MPI) between the country where this market performs best (Malta) and the one where it performs worst (Croatia). The market scores relatively better in Western and Northern Europe, while it scores less than average in the Southern and Eastern European countries. The worst performance was noted in the composite indicator that includes aspects such as consumer trust, consumer problems, choice and comparability of offers and the extent to which consumer expectations are met. It is also worth noting that the 2013 edition displayed a similar situation¹⁸².

This chapter addresses first the (problems of the) consumer experience, as expressed by consumers on both ends of the market. The 'Consumer Market Scoreboard 2016 edition'¹⁸³ showed that 15% of consumers surveyed had experienced a problem with a real estate or letting agent (where they thought you had a legitimate cause for complaint). This study did not attempt to replicate this figure, but instead attempted to study the type of problems that occur most frequently in the real estate services market. This chapter then looks further into the problems by combining the consumer survey findings with those of the stakeholder survey; it continues by looking at the data of the formally raised complaints in the sector. The next section discusses consumer protection and mechanisms in place for consumers to address these problems. Last, this chapter considers remedies and redress.

Box 6: Summary of findings – Consumer experience: problems, remedies and redress

- The consumer experience has proven to be unsatisfactory. The demand side of the market seems more prone to problems, as only a third of buying and renting consumers experienced no problems with the process, in contrast to two thirds of sellers and landlords.
- Most frequent problems were in relation to the process, and included hidden costs, terms and conditions that were too complex or unclear, missing information on property damages, misleading information about energy standards and false and untruthful information about charges for utilities.
- Several mechanisms exist for consumers to formally raise a complaint, including consumers' interest associations, or ADR bodies such as Ombudsman, the European Consumer Centre Network (ECC-Net), local or national administrations, or even the Supreme Court. Still, a quarter of consumers that experienced problems did not know who to complain to. It is also worth noting that only a minority of respondents consider that consumers are very aware of their rights.

¹⁸¹ European Commission, (2016). "Consumer Markets Scoreboard. Making markets work for consumers". Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_markets_scoreboard_2016_en.pdf

¹⁸² Idem

¹⁸³ Idem, see page 67

8.1 The consumer experience

This section summarises the problems that consumers revealed to face in the consumer survey. It first discusses those experienced by consumers who either bought or rented a property and then those expressed by consumers who either sold or let a property.

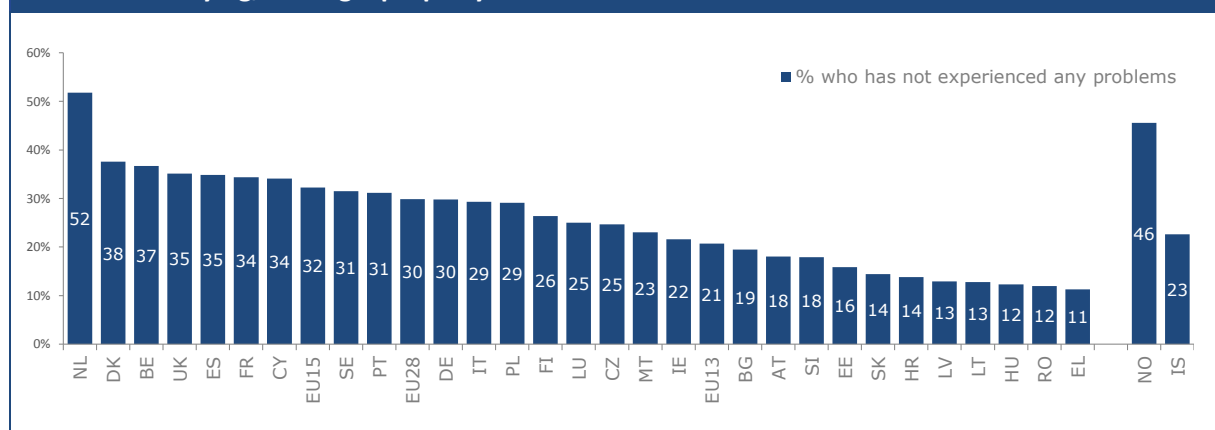
8.1.1 Problems when buying and renting

Problems during the process

Across the EU28, 30% of consumers who had recently bought/rented a property (or who had attempted to do so), had not experienced any problems during this process. The Netherlands stands out with 52% of respondents who had not experienced any problems, while in the countries at the bottom of the country ranking, less than one in six respondents had not experienced any problems (e.g. 11% in Greece and 12% in Romania and Hungary).

The following groups of consumers were the most likely NOT to have experienced any problems during the buying/renting process: consumers who bought a property (33% did not experience problems, compared to 24% for those renting a property), consumers older than 54 years-of-age (37% vs. 25% for 18-34 year-olds), lower educated consumers (34% vs. 28% of highly educated), consumers with a "very easy" financial situation (40% vs. 19% for those who reported that making ends meet is not easy at all).

Figure 70: Proportion of consumers who had NOT experienced any problems during the process of buying/renting a property



Question: Q20. Still thinking about the last property you bought/rented (or attempted to buy/rent), have you experienced any of the following problems?

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

Source: Main Task 2 Consumer survey

Across the EU28, 32% of consumers who had recently bought/rented a property (or who had attempted to do so), had encountered difficulties due to **increasing prices/rent for properties on the market** and 29% had experienced problems due to the **lack of affordable housing**. This type of problems was more frequently mentioned by younger consumers; for example, 24% of over 54 year-olds had experienced problems due to the lack of affordable housing, compared to 33% of 18-34 year-olds.

Problems related to the scarcity of available properties compared to the demand for property were also raised by focus group participants in both Germany and the Netherlands. It appears that these issues are generally observed in urban areas, including capital cities.

The scarce supply of properties may result in several consequences for consumers. Firstly, it seems that **power hierarchy and power distribution** particularly impact buyers and tenants. Secondly, especially in large cities, it appears that there is a lot of **competition to visit properties** and consequently, to be selected to purchase or rent a property. Finally, the fact that housing in big cities, such as Amsterdam, **is extremely expensive**

makes it very difficult for first-time buyers to purchase a property. As a consequence, first-time buyers who cannot afford to buy a property often **have to enter the renting market**.

Table 33: Type of problems experienced during the process of buying/renting a property

	Increasing prices/ rent of properties in the market	Lack of affordable dwellings	Expensive to deal with real estate agents	Missing information about damages to the property	Hidden costs when renting/ buying property	Missing/ misleading information on energy standards	Too complex and unclear terms and conditions	False and untruthful information about charges for utilities	Health problems resulting from poor quality of the property	Other
AT	51%	41%	46%	26%	31%	21%	16%	18%	6%	4%
BE	27%	25%	12%	21%	17%	14%	8%	8%	3%	3%
BG	50%	24%	48%	33%	31%	26%	21%	18%	7%	1%
CY	41%	48%	17%	14%	14%	15%	7%	6%	5%	2%
CZ	42%	29%	29%	24%	20%	19%	20%	12%	5%	3%
DE	42%	34%	36%	24%	19%	15%	12%	14%	5%	2%
DK	20%	22%	24%	21%	12%	13%	9%	6%	6%	4%
EE	38%	53%	39%	30%	26%	21%	11%	16%	6%	3%
EL	38%	58%	42%	46%	24%	25%	16%	18%	8%	1%
ES	26%	20%	21%	22%	19%	20%	14%	12%	8%	2%
FI	31%	42%	17%	28%	13%	13%	9%	10%	8%	7%
FR	22%	25%	36%	19%	19%	18%	10%	9%	3%	4%
HR	42%	54%	39%	43%	39%	25%	23%	27%	5%	2%
HU	53%	49%	42%	37%	33%	19%	20%	16%	9%	2%
IE	48%	38%	22%	23%	27%	19%	14%	9%	9%	5%
IT	24%	26%	24%	14%	16%	20%	18%	11%	3%	1%
LT	57%	47%	33%	23%	22%	16%	14%	14%	5%	1%
LU	54%	44%	16%	21%	23%	13%	10%	8%	5%	5%
LV	39%	51%	22%	29%	31%	13%	13%	16%	6%	0%
MT	49%	38%	26%	26%	31%	19%	19%	9%	5%	5%
NL	16%	22%	8%	10%	8%	7%	8%	5%	2%	7%
PL	19%	20%	30%	20%	20%	15%	15%	15%	4%	2%
PT	47%	22%	10%	22%	12%	12%	13%	6%	4%	1%
RO	47%	48%	40%	35%	28%	26%	14%	23%	7%	1%
SE	39%	35%	23%	21%	13%	9%	10%	4%	5%	3%
SI	30%	57%	31%	26%	32%	24%	21%	18%	6%	2%
SK	47%	49%	30%	30%	26%	24%	17%	15%	7%	2%
UK	31%	24%	25%	21%	25%	12%	14%	8%	6%	3%
EU28	32%	29%	29%	22%	20%	17%	14%	12%	5%	3%
EU15	31%	28%	28%	21%	19%	16%	13%	11%	5%	3%
EU13	36%	35%	34%	28%	25%	20%	16%	17%	6%	2%
IS	52%	53%	27%	21%	18%	18%	14%	6%	3%	3%
NO	23%	21%	19%	17%	8%	5%	8%	4%	3%	5%

Question: Q20. Still thinking about the last property you bought/rented (or attempted to buy/rent), have you experienced any of the following problems?

Base: respondents who bought/rented a property (or attempted to buy/rent a property) (EU28: n=12,121)

Source: Main Task 2 Consumer survey

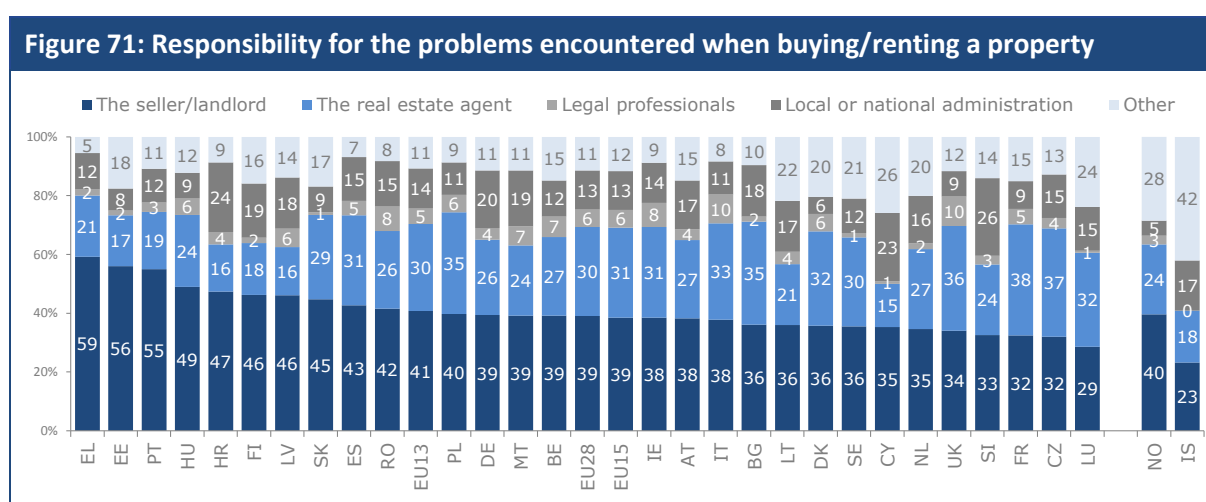
The consumer survey also observed that one in five respondents had been faced with **hidden costs when renting/buying a property** and 14% reported that the terms and conditions had been too complex and unclear. This type of problems was more frequently reported by higher educated respondents than by lower educated respondents. For

example, 22% of highly educated respondents replied that they had been faced with hidden costs, compared to 14% of respondents with a low level of education.

About one in five (22%) respondents, across the EU28, mentioned problems with **missing information** about damage to the property, 17% referred to missing or misleading information about energy standards and 12% to false and untruthful information about charges for utilities. One in 20 (5%) respondents had developed health problems resulting from poor quality of the property; this figure, however, increases to 11% among respondents in a precarious financial situation.

Finally, 29% of EU28 consumers had encountered difficulties due to high real estate agency fees; Table 33 (above) shows that this figure varied between 8% in the Netherlands and 48% in Bulgaria. Countries close to Bulgaria in the country ranking included Austria (46%), Greece and Hungary (both 42%).

Across the EU28, 39% of respondents (who had experienced at least one problem) replied that the seller/landlord was mainly responsible for the problem(s) they had experienced and 30% identified the real estate agent as being responsible. The latter figure varied between 15% in Cyprus and Croatia and 38% in France.



Question: Q22. Who would you say is mainly responsible for the problems that you encountered?

Base: respondents who encountered at least one problem when they bought/rented (or attempting to buy/rent) (EU28: n=9,073)

Note: * In Iceland, the "other" category includes "don't know" responses

Source: Main Task 2 Consumer survey

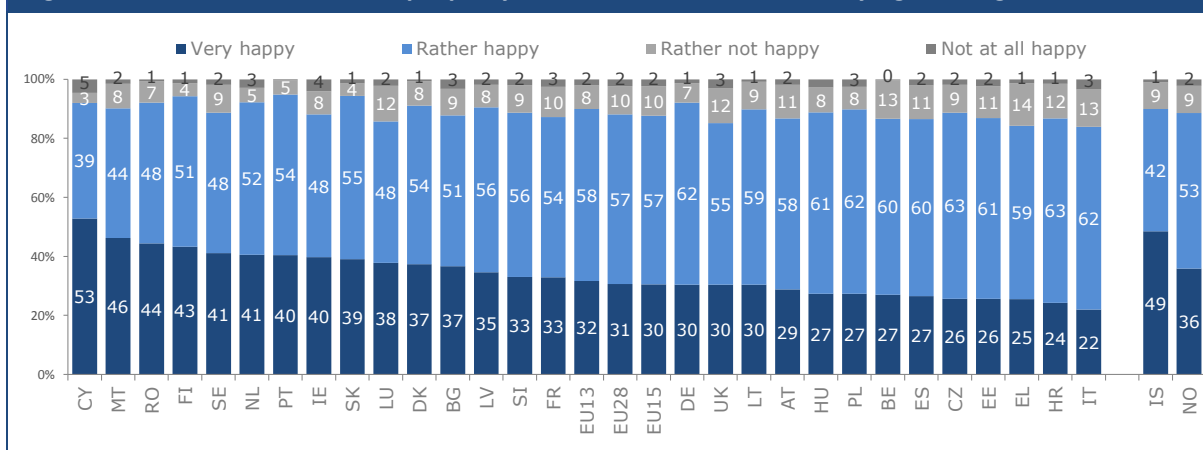
Problems with the property as it revealed to be

Consumers who successfully bought or rented a property in the past seven years were asked whether they were happy with the property as it revealed to be after buying/renting it, in relation to their expectations stemming from the information received through the real estate agent of the seller/landlord. Across the EU28, 31% of respondents replied that they were very happy with the property as it revealed to be after buying/renting it, and an additional 57% reported that they were rather happy with the property.

An analysis of the results by socio-demographic groups shows a large difference in terms of financial situation. While 49% of consumers that are financially well off replied that they were very happy with the property as it revealed to be after buying/renting it, this figure dropped to 22% for consumers in a precarious financial situation.

Across most countries, a large majority of respondents replied that they were either "very happy" or "rather happy" with the property. About 1 in 10 respondents, across all countries, stated that they were "rather not happy" or even "not at all happy" with the property; in other words, their expectations about the property, based on the information received through the real estate agent, were not met.

Figure 72: Satisfaction with the property as it revealed to be after buying/renting it



Question: Q21. Are you happy with the property as it revealed to be after buying/renting it, in relation to your expectations stemming from the information you received through the real estate agent?

Base: respondents who bought/rented a property (EU28: n=7,102)

Note: * n < 100 respondents

Source: Main Task 2 Consumer survey

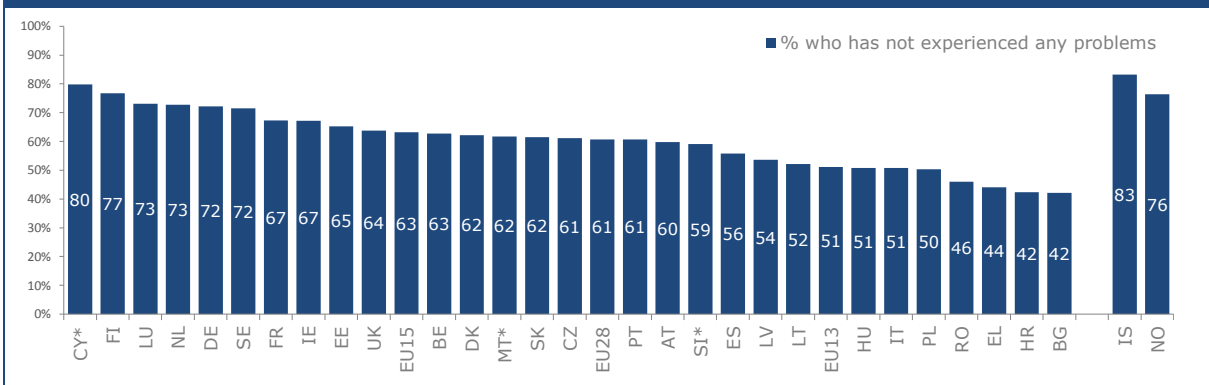
8.1.2 Problems when selling or letting

Overall, 61% of consumers in the EU28 who had sold/let (or attempted to sell/let) a property had not experienced any of the problems listed in the survey when working with their real estate agent; this figure varied between 42% in Bulgaria and Croatia and 83% in Iceland.

No difference was observed in the likelihood to have experienced any problems with the real estate agent when selling vs. letting a property. Younger consumers and those with financial difficulties were more likely to state that they had experienced at least one problem with their real estate agent.

It is important to note here that, although it may appear that consumers who had sold/let a property were less likely than consumers who had recently bought/rented a property to have experienced a problem, the former type of consumers were presented with a different list of problems. The list of problems presented to sellers and landlords focussed solely on problems that were directly linked to working with a real estate agent (e.g. errors of real estate agent when handling queries and negotiations), while buyers and renters were presented with a broader list of problems that included problems not directly associated with services provided by a real estate agent (e.g. lack of affordable dwellings).

Figure 73: Proportion of consumers who had NOT experienced any problems with their real estate agent (finding a buyer/tenant)



Question: Y16. And have you encountered any of the following problems with your real estate agent?

Base: respondents who sold/rented out a property (or attempted to sell/rent out a property) (EU28: n=4,838)

Note: * n < 100

Source: Main Task 2 Consumer survey

Across the EU28, almost one in six (16%) of consumers who had sold/let (or attempted to sell/let) a property, answered that the real estate agent had put little effort in advertising the property, 7% said that the real estate only put in an effort at the end of the contract and another 7% was faced with delays in the completion of the sale/lease as stated. A tenth of respondents reported that the real estate agent had made errors when handling queries and negotiations and 7% replied that the property had not been correctly advertised. Finally, 10% of consumers had felt pressure to advertise the sell property at a price lower than average and 14% to sell or let the property at a price lower than average. The most typical problems for consumers who are selling a property and those who are letting a property appear to be very similar. Similarly, as can be observed in Table 34, all problems listed in the survey appear to occur to some extent in all countries surveyed, but no specific distinctive pattern is observed across countries.

It was noted above that younger consumers and those with financial difficulties were more likely to state that they had experienced at least one problem with their real estate agent. However, when looking at the type of problems experienced, no real differences are observed in the relative frequency that problems occur.

Table 34: Type of problems experienced when selling/letting a property via a real estate agent

	Little effort to advertise	Pressure to sell/let the property at a price lower than average	Errors of real estate agent when handling queries and negotiations	Pressure to advertise the property at a price lower than average	Delays in the completion of the sale/lease as stated	Property not advertised as stated	Real estate agent only put in an effort at the end of the contract	Hidden fees charged by the real estate agent	Other
AT	13%	13%	7%	10%	11%	10%	3%	5%	2%
BE	9%	10%	8%	10%	7%	3%	5%	0%	2%
BG	31%	12%	7%	22%	5%	15%	18%	4%	0%
CY*	6%	3%	7%	4%	9%	1%	3%	1%	0%
CZ	14%	16%	10%	12%	4%	6%	6%	7%	1%
DE	10%	12%	10%	4%	4%	3%	5%	0%	1%
DK	14%	11%	12%	5%	4%	4%	10%	3%	4%
EE	24%	10%	6%	4%	6%	7%	11%	0%	0%
EL	20%	13%	11%	21%	16%	13%	9%	4%	0%
ES	19%	12%	16%	11%	7%	7%	10%	2%	2%
FI	7%	6%	7%	5%	5%	5%	4%	2%	3%
FR	17%	9%	9%	5%	6%	5%	6%	3%	3%
HR	31%	21%	19%	21%	15%	12%	15%	15%	0%
HU	33%	16%	11%	12%	6%	13%	11%	3%	3%
IE	9%	15%	9%	15%	2%	5%	8%	6%	1%
IT	19%	24%	8%	10%	8%	7%	3%	1%	1%
LT	23%	23%	8%	10%	12%	16%	7%	2%	0%
LU	10%	6%	8%	9%	2%	6%	6%	3%	4%
LV	21%	10%	9%	11%	7%	11%	8%	3%	0%
MT*	12%	22%	9%	12%	6%	3%	7%	0%	1%
NL	13%	14%	5%	4%	3%	3%	3%	2%	4%
PL	18%	14%	8%	16%	8%	12%	8%	4%	1%
PT	10%	15%	6%	17%	9%	4%	9%	1%	1%
RO	24%	16%	10%	21%	14%	14%	12%	4%	1%
SE	9%	7%	4%	7%	6%	5%	7%	0%	2%
SI*	27%	17%	5%	13%	5%	4%	10%	5%	0%
SK	10%	17%	8%	8%	8%	7%	6%	2%	1%
UK	14%	10%	12%	11%	11%	6%	7%	3%	2%
EU28	16%	14%	10%	10%	7%	7%	7%	2%	2%
EU15	14%	13%	10%	8%	7%	5%	6%	2%	2%
EU13	22%	15%	9%	16%	9%	12%	10%	4%	1%
IS	4%	4%	9%	4%	7%	3%	7%	3%	0%
NO	10%	7%	7%	7%	6%	4%	6%	5%	3%

Question: Y16. And have you encountered any of the following problems with your real estate agent?

Base: respondents who sold/rented out a property (or attempted to sell/rent out a property) (EU28: n=4,838)

Note: * n < 100

Source: Main Task 2 Consumer survey

In line with the findings for tenants and buyers, 42% of sellers and landlords included in the survey replied that, based on their own experience, the real estate agent had acted equally in favour of both them (as seller/landlord) and the buyer/tenant; 32% replied that the real estate agent had mainly acted in favour of them (as seller/landlord), while 11% stated the opposite – i.e. that the agent had mainly acted in favour of the buyer/tenant.

Mystery shoppers in this study used 10 questions to structure their conversation with the real estate agent (Question 9 asks shoppers to mention to the real estate agent that they read an online forum that talked about problems people had experienced with different real estate agents, and then to ask the agent whether he/she is aware of any problems

that are common in the real estate services market). Table 35 presents the type of problems that were mentioned by real estate agents when being asked this question.

First of all, it should be noted that 42% of real estate agents who were evaluated in the 'selling' scenario and 44% of those in the 'letting' scenario did not mention any potential problems. Secondly, when responding to this question, roughly one in four real estate agents said that other agents might put little effort in advertising the property and one in five said that properties are sometimes not advertised as stated. It is also interesting to note that roughly 1 in 10 shoppers were told that real estate agents sometimes put pressure to advertise a property at a price lower than average and one in seven were explained that some real estate agents put pressure to sell or rent out at a price lower than average.

Table 35: Potential problems when working with real estate agents				
	'Selling' scenario		'Letting' scenario	
	Number of agencies	% of agencies	Number of agencies	% of agencies
No problems mentioned	76	42%	61	44%
Little effort to advertise	41	23%	33	24%
Property not advertised as stated	37	21%	28	20%
Errors of real estate agent when handling queries and negotiations	31	17%	24	17%
Pressure to sell/rent out the property at a price lower than average	24	13%	21	15%
Delays in the completion of the sale/lease as stated	30	17%	13	9%
Hidden fees charged by the real estate agent	26	14%	17	12%
Pressure to advertise the property at a price lower than average	22	12%	12	9%
Real estate agent only put in an effort at the end of the contract	13	7%	14	10%
Other	9	5%	7	5%

Base: 180 real estate agencies in the 'selling' scenario and 140 in the 'letting' scenario (all countries)

Question: When asking the real estate agent what could be potential problems when working with another real estate agent, were any of the following problems mentioned?

Source: Main Task 4 Mystery shopping

8.1.3 Most frequent problems reported in the stakeholder consultation

The stakeholder consultation collected further insights on the different kinds of problems experienced by consumers. It evidenced that **buyers and tenants complain about process related practices** more frequently than sellers and landlords. Only a minority of **sellers** indicated frequent complaints about specific practices, and only occasionally complain about the lack of information or payment delays. Instead, **landlords** frequently complain about payment and transaction delays.

For **buyers and tenants**, the most frequent issues mainly refer to missing or misleading information (buyers), hidden costs and lack of affordable dwellings (both buyers and tenants), buying/renting under pressure (both buyers and tenants) and low quality of the service provided (both buyers and tenants).

Complaints regarding **market practices** were also common. **Buyers** most frequently (5 out of 10, 50%) complain of hidden costs, buying under pressure, and too complex and unclear terms and conditions. Fewer (four respondents, 40%) complain about errors of real estate agents or low quality of the service delivered, the amount of fees for real estate agents, or missing information about damages to the property. Complaints occasionally included missing or misleading information on energy standards and health problems resulting from poor quality of the property. On the other hand, **tenants' complaints on market practices** frequently included (5 out of 10, or 50%) the lack of affordable dwelling, the low quality of the service delivered, renting under pressure, and to a lesser extent (four respondents, 40%) a deposit that is not returned. Occasionally, these complaints included increasing price of rent during tenancy; hidden costs when renting the property; expensive

renting process; missing/misleading information about energy standards, and missing information about damages to the property.

Complaints raised by sellers regarding market practices included (two respondents, 20%) an expensive conveyancing process, the amount of fees for the real estate agent and pressure to sell the property at a price lower than average. Finally, **considering landlords' complaints**, it is interesting to note that according to two respondents only (20%), landlords frequently complain about a) payment delays, and b) transaction delays. Occasionally, landlords complain about the lack of information on the ongoing letting process (6 respondents or 60%), or about transaction failures and the low quality of the service delivered (5 respondents or 50%).

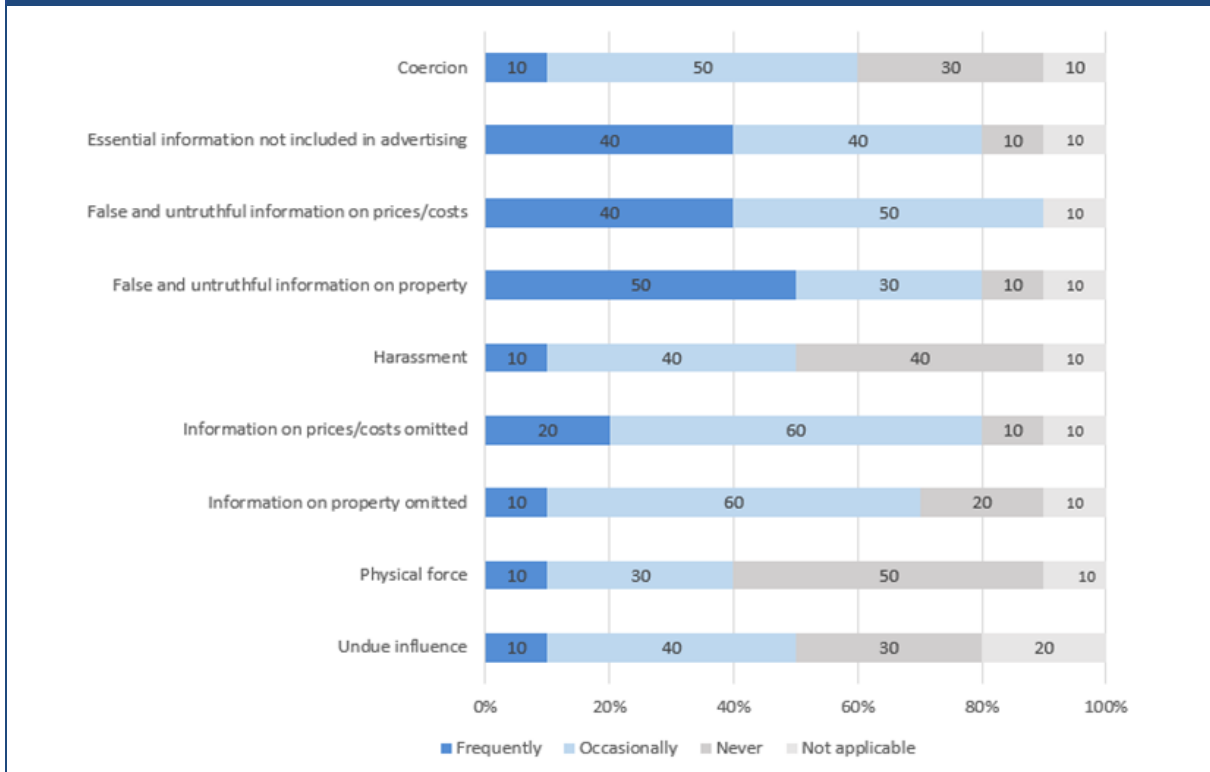
8.2 Unfair commercial practices

According to the Directive 2005/29/EC¹⁸⁴, unfair commercial practices can be distinguished between (i) **misleading commercial practices** which comprehend misleading actions (false and untruthful information likely to deceive the average consumer) and misleading omission (material information needed by the average consumer are omitted); and (ii) **aggressive commercial practices** which relates to harassment, coercion, physical force, or undue influence.

CPA representatives were asked to indicate, based on their knowledge, which unfair commercial practices are experienced by buyers/tenants and sellers/landlords in the real estate market (Figure 74). Half of the respondents (5 out of 10 or 50%) indicated that false and untruthful information is frequently delivered to consumers in the real estate market (see also the results of the consumer survey on misleading information, reported in the previous section), and fewer (4 respondents, 40%) illustrated that consumers frequently experience a) essential information not included in advertising, and b) false and untruthful information on prices and costs. Other unfair commercial practices are detailed in the figure below.

¹⁸⁴ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Text with EEA relevance). Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32005L0029>

Figure 74: Unfair commercial practices experienced by consumers (CPA survey)



Note: Survey of CPA, Q.25: To your knowledge, which of the following unfair commercial practices are experienced by buyers/tenants and sellers/landlords in the real estate market? Please rate the frequency of the complaints for each practice. Multiple-choice question.

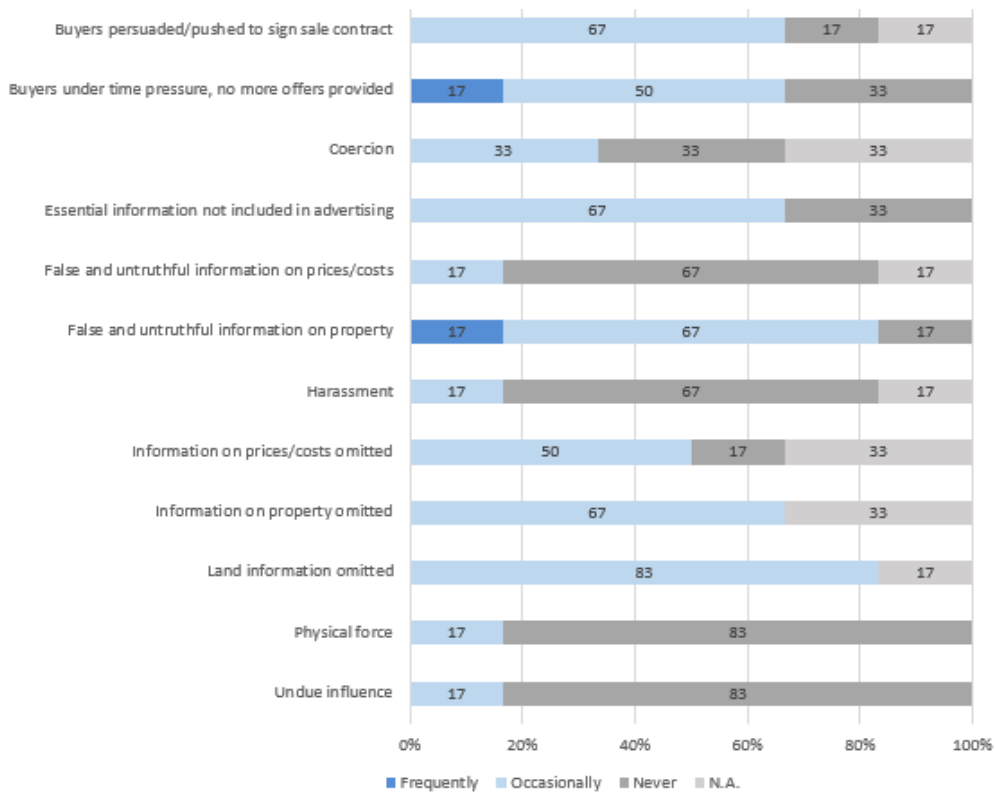
Number of respondents: CPA: 10.

Source: Main Task 1 Survey of Consumer protection authorities

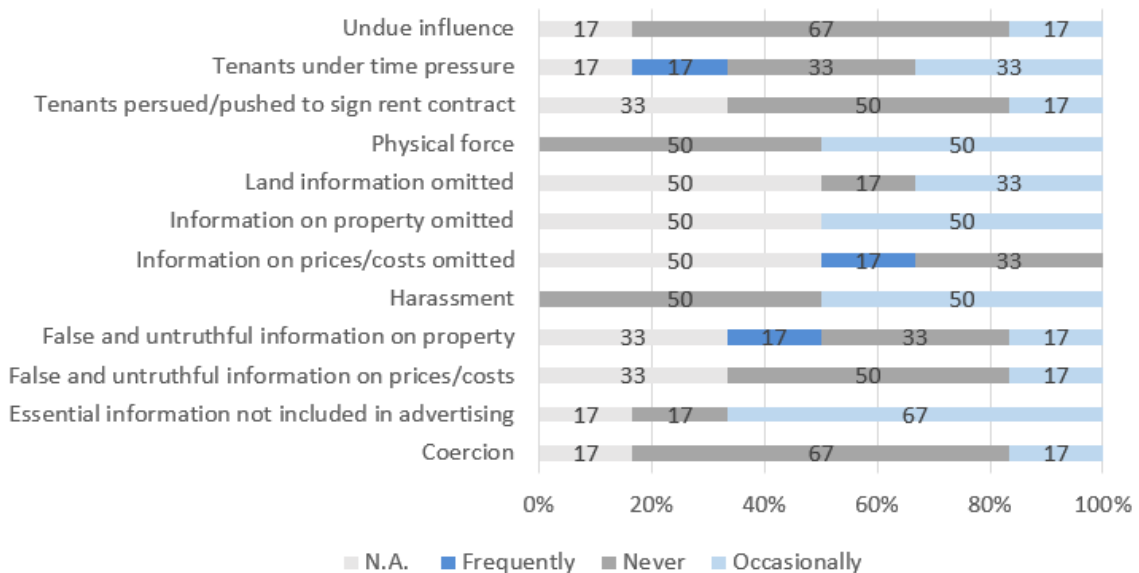
A similar question was included in the survey of HOA and TA (Figure 75). Stakeholders were asked to indicate the frequency with which unfair commercial practices are experienced respectively by buyers or tenants in the real estate market. Results emerging from the HOA survey show that buyers occasionally experience the **omission of land information** (5 out of 6 respondents or 83%). A similar trend is observed in the survey of TA. In both surveys, only one out of 6 respondents (17%) indicated that tenants **frequently experience false and untruthful information** about the property and about time pressure because no more offers are provided. Overall, essential information not included in advertising as well as false and untruthful information on the property and on the land seem to be the most frequent complaints raised by both buyers and tenants.

Figure 75: Unfair commercial practices experienced by buyers or tenants (HOA and TA survey)

HOA Survey



TA Survey



Note: Survey of HOA, Q.14; Survey of TA, Q.24: To your knowledge, which of the following unfair commercial practices are experienced by buyers/tenants in the real estate market? Multiple-choice question.

Number of respondents: HOA: 6; TA: 6.

Source: Main Task 1 Stakeholder surveys

Representatives of consumer associations provided examples on the **misleading information that is provided to consumers**. These include the surface of the property, the presence of a nearby park or the presence of infrastructures for children in the neighbourhood. However, these are not included in the contract as they do not reflect the reality in terms of property characteristics and features of the neighbourhood. False advertising of this kind has also been observed on YouTube.

In the consumer survey, a minority of consumers who had sold/let (or attempted to sell/let) a property, answered that they had been faced with hidden fees charged by the real estate agent. National experts in Belgium and in France reported that **real estate agents do not communicate information transparently about their title/licence or about fees and other costs applied for their services**. In Belgium, for example, the Professional Institute for Real Estate Agents conducts very strict control on who bears the name of real estate agent. Every year, the Institute identifies various practitioners that use this name illegally. This practice represents a potential danger for consumers. In the first three semesters of 2017 alone, the Institute obtained 27 judicial decisions which resulted in the removal of such illegal practitioners from the market.

In France, **misinformation conveyed by real estate agents about fees and other costs** was also registered. A 2016 study by the National Institute of Consumption (Institut National de la Consommation) reported that only 20% of the surveyed real estate agencies display their card number on the window or in the agency's office; none of the controlled agencies displays the name of the real estate agent holding the professional card and the employees authorized by the real estate agent to exercise the profession; and 'unlimited' imagination of advanced titles to justify the quality of the service provider to consumers¹⁸⁵. Besides non-complaint practices related to the card/license, in 2016 some real estate agents did not respect the **obligation to display their fees on the window**. As a result, a new text was adopted reinforcing this obligation¹⁸⁶.

When **considering aggressive commercial practices**, in areas in which the demand for properties exceeds the supply, consumers feel compelled to decide quickly and there is little time for negotiations. In Estonia, unfair contract terms were included in sale contracts. In specific, non-complaint practices refer to the inclusion of a contractual penalty in the sale contract aiming at **putting pressure on the consumer to conclude the real estate transaction (undue influence)**. In this respect, the Consumer Disputes Committee in Estonia pointed out that the inclusion of the contractual penalty in the sale contract was not only an unfair contract term but also as an unfair market practice.

After having completed their visit to the real estate agent, mystery shoppers in this study were asked to respond to a set of questions about their experiences with respect to **sale tactics of the real estate agent** they evaluated. A large majority of shoppers reported that the real estate agent they evaluated had not used any sales tactics that can be qualified as 'misleading' or 'aggressive'. Nonetheless, three shoppers in the 'selling' scenario and three shoppers in the 'letting' scenario answered that the real estate agent had created the impression that they must decide/could not leave the premises until a contract was signed. Additionally, 17 shoppers in the 'selling' scenario and 6 in the 'letting' scenario answered that the real estate agent had made persistent and unwanted solicitations to, for example, visit the property.

In sum, there is evidence that consumers experience unfair commercial practices mainly due to misleading or omitted information. Regarding aggressive commercial practices, undue influence seems to be experienced by consumers, especially in areas in which supply shortages are observed.

¹⁸⁵ Institut National de la Consommation (2016) Enquête AFOC : Quid du respect des textes en matière d'affichage et de compétence professionnelle des agents immobiliers? Available at : <https://www.conso.net/content/enquete-afoc-quid-du-respect-des-textes-en-matiere-daffichage-et-de-compete>

¹⁸⁶ Arrêté du 10 janvier 2017 relatif à l'information des consommateurs par les professionnels intervenant dans une transaction immobilière

8.3 Detriment to consumers

8.3.1 Financial detriment and time lost

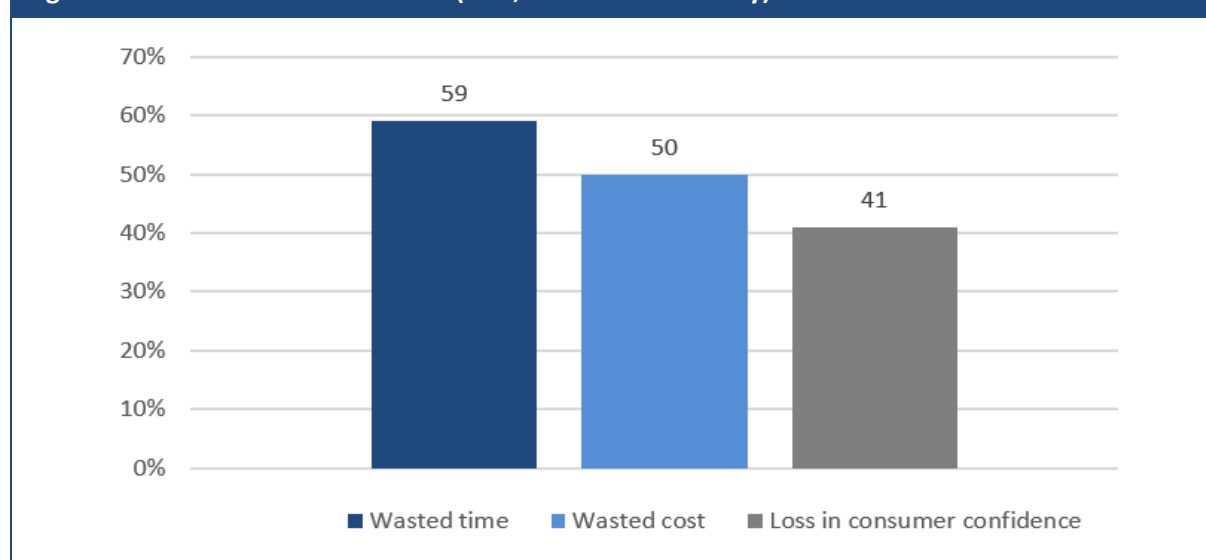
Consumer detriment can be defined as the proportion of consumers who experienced problems in the market and the degree to which those problems cause damage to consumers (including, but not limited to financial loss)¹⁸⁷. Consumer detriment can apply to both **time** wasted and **financial costs**. Beyond wasted time and wasted costs, detriment to consumers may occur in the form of a **loss in consumers' confidence**.

Representatives of CPA, HOA and TA have been asked to indicate whether they consider that consumers may experience any detriment when buying, selling, renting or letting a property. Interestingly, the three listed typologies of detriment were selected by a similar number of respondents. This suggests that, in the view of CPA, HOA and TA representatives, wasted time, wasted costs and loss in confidence can be equally experienced by consumers.

At the aggregate level, **wasted time is the most recurrent detriment** (by 13 out of 22 respondents or 59%). Nonetheless, the difference in percentage points between wasted time and **wasted costs** is limited, as 11 out of 22 respondents (50%) indicated that consumers may waste costs when dealing with real estate transactions. As per the loss in consumer confidence, this option was selected by 9 out of 22 respondents (41%).

The problem of wasted time, which can result in consumers' detriment, was also highlighted during the focus group in Amsterdam. The process of renting and buying is deemed to be **time-consuming** in the Netherlands. In addition, consumers expressed to be under **time pressure**, particularly due to the high demand for buying and renting. Further details about the time spent by consumers dealing with real estate agents, and completing real estate transactions, are presented in Section 7.4.

Figure 76: Detriment to consumers (CPA, HOA and TA survey)



Note: Survey of CPA, Q.27; Survey of HOA, Q.16; Survey of TA, Q.26: Do you consider that consumers may potentially experience any of the below kinds of detriment when buying, selling, renting or letting in the market? 1) Wasted time; 2) Wasted cost; 3) Loss in consumer confidence.

Number of respondents: Grouped responses: 22; CPA: 10; HOA: 6; TA: 6.

Source: Main Task 1 Stakeholder surveys

¹⁸⁷ European Commission, (2016). "Consumer Markets Scoreboard. Making markets work for consumers". Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_market_s_scoreboard_2016_en.pdf

In the 'Consumer Market Scoreboard 2016 edition', a new question was added to the survey and asks to what extent the consumer suffered **financial loss or other detriment** as a result of experiencing a problem. In the real estate services market, more than a third of respondents (36%) reported that they had suffered "high" detriment as a result of a problem, compared to a quarter (26%) who reported having experienced "low" detriment¹⁸⁸. The Scoreboard concluded that financial loss or other detriment suffered is higher for the real estate services market than for many other markets.

The consumer survey conducted as part of this study highlighted that many consumers have experienced one or more problems during the renting/buying process, but also showed that a large majority (80%) of these consumers were not able to estimate the financial loss they had experienced due to the problems. This could be an indication that detriment should indeed be defined not only in terms of financial loss, but also in terms of other sources of detriment (e.g. time wasted), as highlighted by the stakeholders interviewed in the context of this study (and in line with the definition applied by the 'Consumer Market Scoreboard 2016 edition'). For those consumers in this study who did estimate the financial loss, the median value of this loss was roughly 1,100 euro. A large difference was seen in the financial loss of those who rented a property vs. those who bought a property (400 euro vs. 2,000 euro).

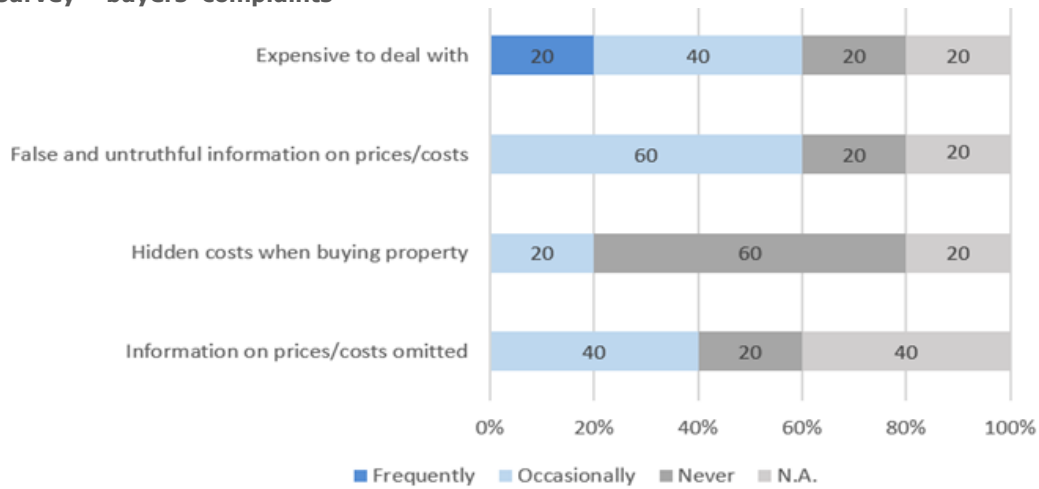
A similar result was also observed for respondents in the consumer survey who had experienced one or more problems with their real estate agent during the selling/letting process. A majority (71%) of these respondents were also not able to estimate the financial loss they had experienced due to the problems. One in six respondents replied that there had not been a financial loss for them due to the problems. For those who did face a financial loss (and were able to estimate the loss), the median value of this loss was roughly €1,000. A large difference was seen in the financial loss of those who sold a property vs. those who let a property (€2,184 vs. €200).

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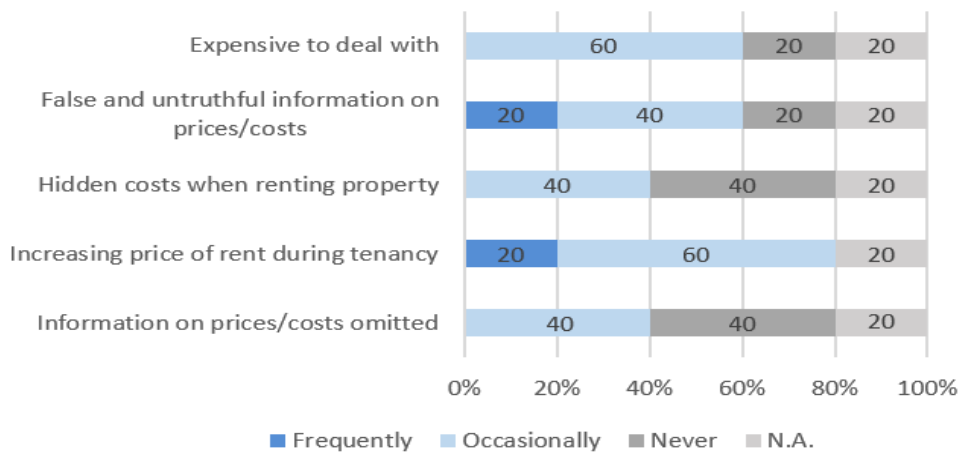
¹⁸⁸ European Commission, (2016). "Consumer Markets Scoreboard. Making markets work for consumers". Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_markets_scoreboard_2016_en.pdf (see page 69)

Figure 77: Complaints about practices resulting in financial detriment (NCA survey)

NCA survey – buyers' complaints



NCA survey – tenants' complaints



Note: Survey of NCA, Q.25 and Q.26: To your knowledge, about which of the following practices resulting in financial detriment do buyers/tenants complain? Please rate the frequency of the complaints for each practice. Multiple listed practices.

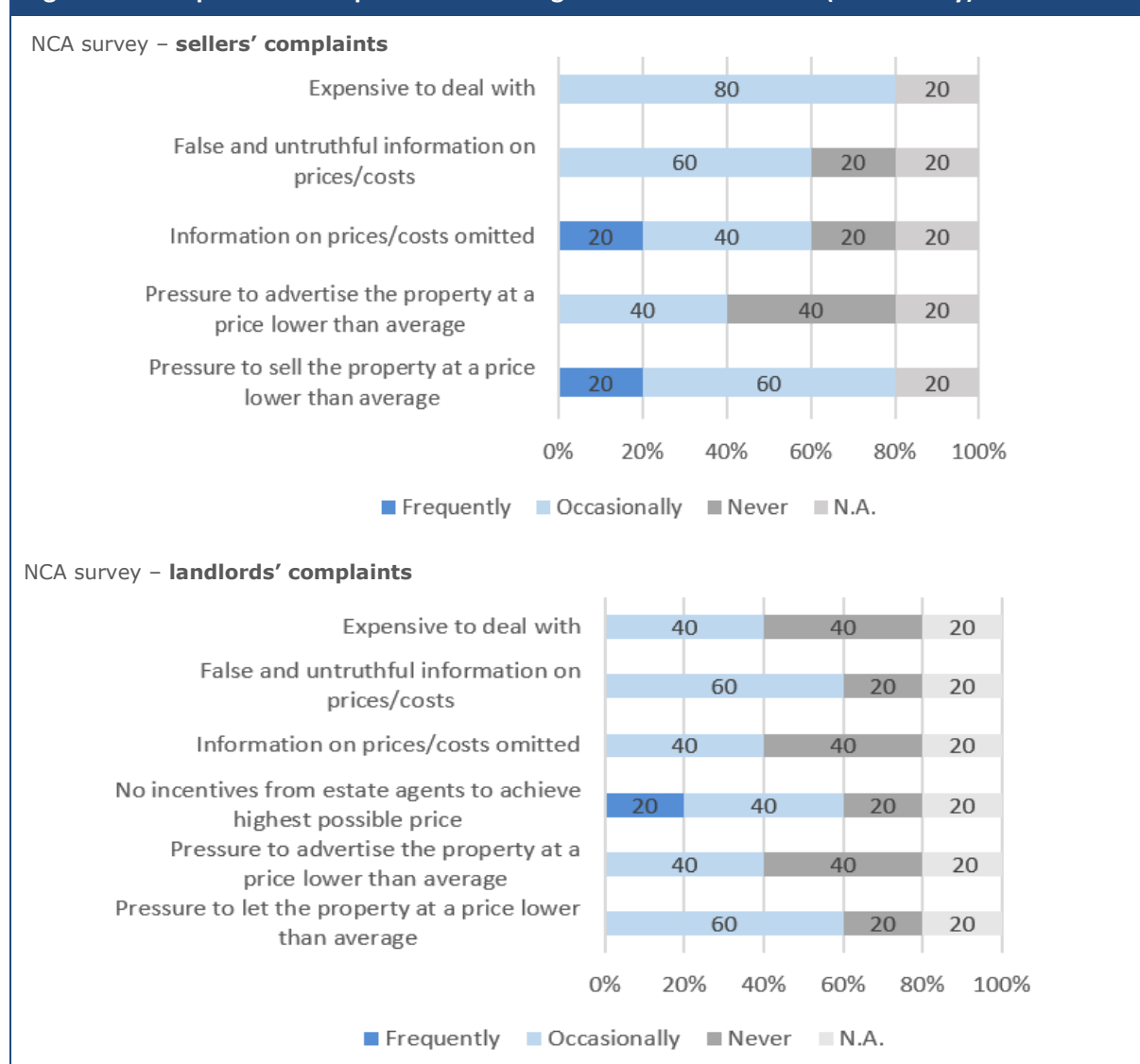
Number of respondents: NCA (Q.25): 5; NCA (Q.26): 5.

Source: Main Task 1 Survey of National Competent Authorities

When asked about the practices resulting in financial detriment about which **sellers complain**, one respondent in the NCA survey (20%) replied that sellers frequently complain about the pressure to sell the property at a price lower than average or about omitted information on prices and costs. Finally, with respect to **landlords**, only one NCA respondent (20%) indicated that landlords frequently complain about the absence of incentives from estate agents to achieve the highest possible price.

This is in line with the consumer survey findings. Across the EU28, 46% of survey respondents who had attempted to sell/let a property, answered that their real estate agent had recommended to reduce the asking price/rent of their property during the time the property was on the market with them; 39% replied that the real estate agent had encouraged them to accept an offer claiming that no other offers were likely and 20% thought that one or more offers from a potential buyer/tenant had not been passed on by the real estate agent. The first two types of problems were more frequently reported by consumers who sold a property via a real estate agent (48% vs. 41% for reducing the asking price and 42% vs. 32% for accepting an offer because no other offers were likely).

Figure 78: Complaints about practices resulting in financial detriment (NCA survey)



Note: Survey of NCA, Q.27 and Q.28: To your knowledge, about which of the following practices resulting in financial detriment do sellers/landlords complain? Please rate the frequency of the complaints for each practice. Multiple listed practices.

Number of respondents: NCA (Q.27): 5; NCA (Q.28): 5.

Source: Main Task 2 Survey of National Competent Authorities

Additional examples of cases in which consumers experienced detriment in terms of wasted time and wasted costs have been reported by representatives of CPA. Especially in relation to time, **problems may arise for buyers in case of new-build properties that are not finished in time.** If this situation occurs, it may be arduous for buyers to speed up the procedure for completion of the property.

Business operators were also asked to indicate whether they are aware of any financial losses incurred by consumers in their country **due to unfair contract terms or due to not concluded contracts.** Out of 6 respondents, 4 (or 67%) answered positively to the questions while 2 respondents (33%) were not aware of any financial losses incurred by consumers.

In addition, one respondent from Malta explained “there is no consumer protection here in Malta. All markets in property are unregulated. Any dispute can take years or decades to resolve. Clients will accept losses as to contest is almost impossible”. Another respondent pointed out that “there are still agents in every country who are not working on a fair base”.

8.3.2 Asymmetry of information

Widely covered in the scientific literature since the 1970s, experts have collected evidence proving the presence of information asymmetry in the real estate market. Information asymmetry implies that the sellers or owners of property and their experts –real estate agents and brokers – retain or have access to more information than they share with consumers¹⁸⁹.

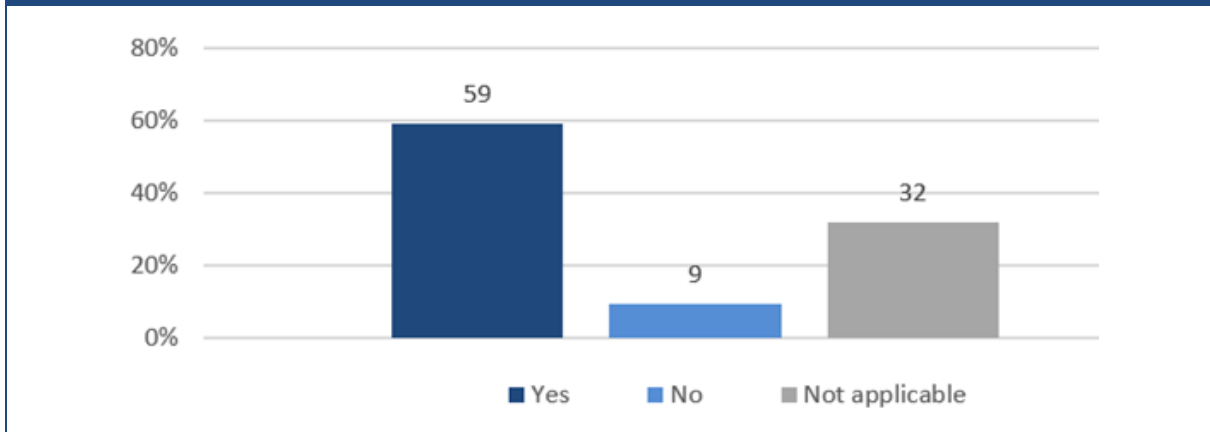
Overall, there are ongoing improvements with relation to information asymmetry. **The internet has made consumers better informed, especially about property prices.** This is partly because of the increased ease of search and comparison of properties, but also because other sources of information about property prices (e.g. price information from Land Registry, price indices from lenders) are easily accessible online. Both buyers and sellers now have easier access to objective information on property prices, which reduces their dependence on traditional real estate agents. However, in the end, despite the ability to analyse a property successfully, a buyer remains subject to information asymmetry because he or she “cannot monitor all of a seller’s actions”¹⁹⁰.

The question whether imbalance of power/information and asymmetry of information can be observed between real estate agents and consumers was included in the Survey of CPA, HOA and TA and results are presented in Figure 79. At the aggregate level, **a clear majority of respondents considers that consumer detriment may result from the imbalance of power/information** between the consumer and the real estate agent: 13 out of 22 respondents (59%) answered affirmative to the question. Only 2 respondents (9%) answered negatively to the question. Based on the results described, it seems that the imbalance of power/information plays a role during the conveyancing or renting process. As a result, consumers may be negatively affected by asymmetry of information.

¹⁸⁹ Garmaise, M.J. & Moskowitz, T.J., (2004). “Confronting information asymmetries: evidence from real estate markets. *The Review of Financial Studies*, 17(2), 405-37

¹⁹⁰ P. R. Nayyar, & P. L. Templeton, (1994). “Seller beware: information asymmetry and the choice of generic competitive strategies for service business”. Available at: <http://www.stern.nyu.edu/om/faculty/nayyar/Seller.pdf> p. 99

Figure 79: Asymmetry of information (CPA, HOA and TA survey)



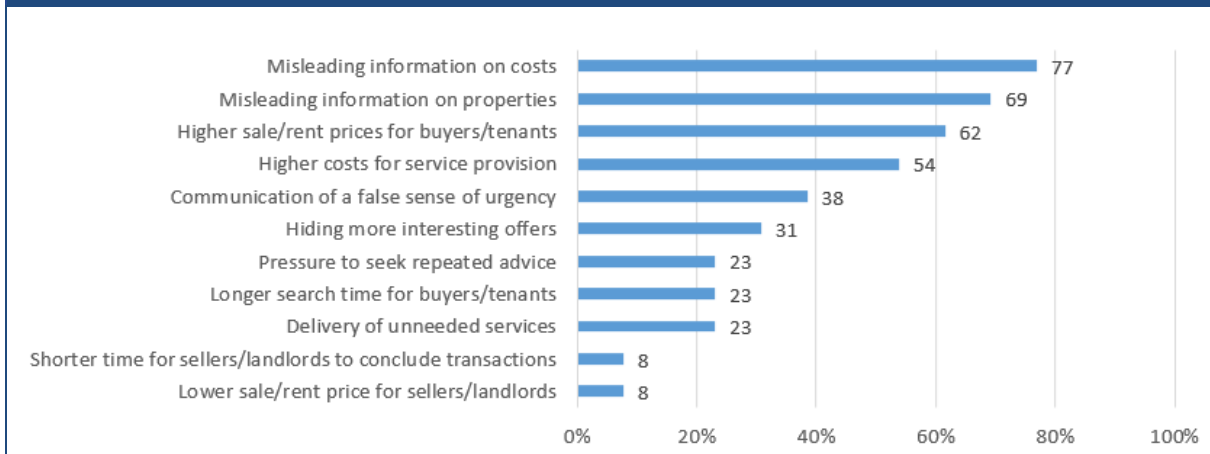
Note: Survey of CPA, Q.28; Survey of HOA, Q.17; Survey of TA, Q.27: To your knowledge, can consumers' detriment result from imbalance of power/information between real estate agents and consumers? 1) Yes; 2) No; 3) Not applicable.

Number of respondents: Grouped responses: 22; CPA: 10; HOA: 6; TA: 6.

Source: Main Task 1 Stakeholder surveys

In addition, stakeholders (CPA, HOA and TA) indicated ways in which the imbalance of power/information (asymmetry of information) may affect the consumer, and findings are detailed in Figure 80. The question was asked in the form of multiple choice: stakeholders were given the opportunity to select all applicable options among those listed in the survey. **Misleading information on costs** and **misleading information on the property** were the most selected options, respectively by 10 (77%) and by 9 (69%) respondents out of 13. These answer options are followed by **higher sale/rent price for buyers/tenants** and by **higher costs for service provision**. These choices were selected respectively by 8 (62%) and 7 (54%) respondents. All findings are presented below, and suggest that misleading information on costs and on the property, as well as higher costs and prices are the main problems faced by consumers arising from asymmetry of information.

Figure 80: Impact of asymmetry of information on consumers (CPA, HOA and TA survey)



Note: Survey of CPA, Q.29; Survey of HOA, Q.18; Survey of TA, Q.28: How does imbalance of power/information affect the consumer? Multiple-choice question.

Number of respondents: Grouped responses: 13; CPA: 7; HOA: 3; TA: 3

Source: Main Task 1 Stakeholder surveys

Findings from the stakeholders' consultation are supported by emerging results from the focus group discussions. In Cologne, a clear **asymmetry of information and power** between the different types of actors of the German real estate market became apparent while conducting the focus group. Participants that deal frequently with real estate transactions are very well informed about the market and rights they enjoy. People, which are frequently active in the real estate market, like landlords or real estate agents, know best practices, processes and procedures as well as potential risks of fraud. In contrast, people who do interact more rarely with the real estate market, e.g. a tenant or a 1-time

seller of an inherited housing, are generally more uninformed about their rights, applicable procedures, and best practices.

Although this is a common feature of many markets, the **asymmetry of information in the real estate market is of relevance** due to the importance of appropriate housing for the well-being of people as well as due to the amount of financial resources at stake.

8.4 Problems related to cross-border transactions

Consumers in the real estate market can experience unfair commercial practices in cross-border transactions. Examples illustrating such experiences have been reported by ECC-Net representatives, which specifically deal with consumers' problems on this front. In this regard, the typologies of unfair and aggressive practices are shared with those consumers in local transactions, and they include:

- Omitted information about the property;
- Misleading information regarding the property;
- Misleading information regarding prices and fees;
- Aggressive commercial practices, namely undue influence.

Still, specific issues may be faced by buyers/tenants involved in cross-border transactions, such as those arising from a different language; a different applicable legal system; the provision of loans, and timeshare and holiday products.

In fact, one interviewed representative of the ECC-Net explained that aggressive commercial practices, namely high pressure to sell and undue influence, can be more detrimental for consumers that are in holidays abroad, as they tend to be more relaxed and more vulnerable. Based on the experience of ECC-Net representatives, there are more chances for consumers to experience unfair commercial practices while on holiday.

Problems related to a different language

Problems related to a different language of communication are a major aspect in the consideration of cross-border real estate transactions. The language gap may be regarded as a "predominant barrier in cross-border transactions"¹⁹¹. To overcome this problem, one possible solution is the provision of translation services by real estate agencies/agents to a foreign buyer/tenant. Even if these services do not seem to be the rule, the interviewed cross-border real estate agencies provided examples on the ways translation services may eventually be provided to consumers.

The extent to which a different language can hinder consumers' understanding of contract provisions as well as of the transaction process varies depending on the country. Based on findings from the stakeholders' consultation, it seems that the linguistic aspect can be less problematic in countries such as Luxembourg (where consumers can communicate in French and in German if they wish to purchase a property in Belgium, in France or in Germany) and the UK (where consumers from abroad wishing to buy or rent a property in the UK can generally communicate in English). The linguistic barriers do not seem to be a problem also in case consumers from the UK wish to purchase or to rent a property in a foreign country. In this case, real estate agents or sellers abroad generally can handle the negotiation process in English.

Problems related to a different applicable legal system

The legislation related to real estate transactions varies across Member States potentially creating problems for consumers involved in cross-border transactions. It is in the interest of a buyer/tenant from abroad to receive legal information and advice on the legislation

¹⁹¹ European Parliament (2016), "Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens". Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU\(2016\)556936_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556936/IPOL_STU(2016)556936_EN.pdf)

governing the conveyancing process in the country in which the property is located. However, depending on the legal tradition of the country, the provision of detailed legal advice does not fall under the responsibilities of a real estate agent. Nonetheless, real estate agents may help consumers to liaise with an appropriate legal expert.

Given this background, the general finding is that the level of legal assistance provided to consumers involved in cross-border transactions **does not go beyond the legal services generally delivered to consumers involved in local transactions**. Only two out of the 14 interviewed real estate agencies, indicated that they provide forms of legal support to consumers. The remaining 12 contacted real estate agencies **do not provide specific legal assistance to consumers in relation to cross-border transactions** (see Section 3.3.2).

The provision of loans

As compared to the provision of loans during real estate transactions occurring at the local level, it seems to be **more difficult for a potential buyer** interested in purchasing a property abroad (i.e. in a country where s/he does not permanently live) **to request and obtain a loan**. This holds true in case the potential buyer from the UK that wishes to purchase a property in France contacts a bank based in the UK to ask for a loan. A cross-border transaction may imply a high credit risk as there is little guarantee for the bank providing the loan. This is mainly due to the fact that the property is located abroad and that the property itself generally represents the only asset that the lender has access to in the foreign country.

In case the potential buyer faces difficulties in obtaining a loan to purchase a property abroad, there are two alternatives for the consumer. As a first option, the buyer may purchase the property with savings from his/her UK properties. This procedure is generally followed in case the sale price of the property abroad is accessible to the buyer¹⁹². Alternatively, the buyer may request a loan in the country where the property is located. This option is possible especially if the real estate market abroad is well established (e.g. in France, Spain, Italy, Portugal). The potential buyer has also the possibility to request a loan in the newer developing markets (e.g. Bulgaria, Greece, Poland)¹⁹³. However, the potential buyer may face disadvantages in the newer developing markets, for example i) a restricted choice of mortgage provider, ii) higher interest rates, and iii) stricter borrowing terms¹⁹⁴.

Timesharing arrangements and holiday products

One interesting finding emerging from the consultation of ECC-Net representatives refers to problems that may be experienced by consumers in relation to **fractional ownership**. The latter is different from timesharing and allows consumers to purchase a fraction of a property (e.g. a room of a hotel already built or to be built) thus becoming co-owner of the property. Subsequently, consumers can live in the property but, more often, the property is rented out by a real estate agent or by the hotel on behalf of the consumer. The main problem related to fractional ownership seems to be a **lack of specific definitions of fractional ownership including a lack of clear rules on contractual obligations and on the way consumers can rescind the contract**.

Another interesting case refers to the presence of criminals pretending to be travel agents or the representatives of a company that approach people in the streets or in hotels and offer them sketch cards¹⁹⁵. People are then informed that thanks to the sketch card they can win a prize (e.g. a bottle of wine or a trip) and that they need to attend a presentation to claim the prize. Subsequently, during the presentation that may last several hours, people are induced to purchase a property against their willingness and to sign a contract

¹⁹² Warwick-Ching, L. (2014) "Guide to overseas mortgages", Financial Times.

¹⁹³ Idem.

¹⁹⁴ Idem.

¹⁹⁵ Especially in hotels, consumers seem to be more vulnerable since they believe to be approached by the hotel personnel and not by so-called travel agents or representatives of a company.

even if they do not dispose of financial resources to purchase the property. Consumers are also informed that the contract cannot be rescind and is, therefore, perpetual thus falling on their heirs. These practices have been reported as occurring in Spain, where especially UK consumers seem to be targeted, or in the UK where criminals approach tourists. It is self-evident that similar practices are detrimental to consumers not only in terms of **wasted time and costs but also as regards a loss in consumers' confidence.**

8.5 Consumer problems and complaints

8.5.1 Consumer complaints

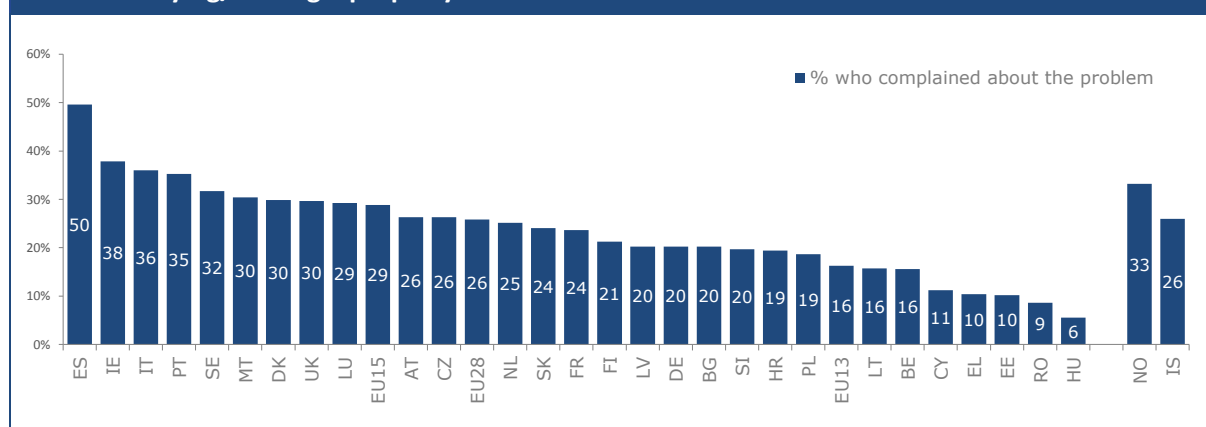
Results of the consumer survey

Although consumer problems were frequent, across the EU28, just 26% of survey respondents had complained about the problem they had encountered when **buying/renting a property**. Respondents who had bought a property were less likely to complain than those who had rented a property (24% vs. 30%).

The individual country results show that the proportion of those who complained about the problem they had encountered varied between 6% in Hungary and 50% in Spain. In Portugal, Italy and Ireland, between 35% and 38% of consumers had complained about the problem they had encountered.

Among consumers who decided not to complain about the problem they had encountered, 53% thought it was not worth it, 25% did not know who to complain to, 21% stated that they had always expected that there would be problems and 14% said they had not realised that there was a cause for complaint until long after. Younger consumers and those with financial difficulties were more likely than their counterparts to state that they did not know who to complain to.

Figure 81: Proportion of consumers who complained about problems encountered when buying/renting a property



Question: Q23. Did you complain to anyone about the problems(s) you encountered?

Base: respondents who encountered at least one problem when they bought/rented (or attempting to buy/rent) (EU28: n=9,073)

Source: Main Task 2 Consumer survey

Similarly, among respondents who had experienced a problem with their real estate agent when **selling or letting a property**, 25% submitted a complaint about this problem. Among these respondents who decided not to complain about the problem they had encountered with their real estate agent, 56% thought the problem was not worth complaining about, 24% did not know who to complain to, 22% stated that they had always expected that there would be problems and 13% said they had not realised that there was a cause for complaint until long after.

Results from the country fiches

This section presents the information obtained through the country fiches. A distinction is made between complaints raised by buyers and sellers and those of tenants and landlords. Complaints raised against service providers are investigated separately.

In doing so it is important to highlight that in several countries, there is no official statistics about the total number of cases or, more generally, about the frequency of the complaints raised by consumers. Possible reasons behind this data absence include:

- Complaints and eventual judicial processes may not be frequent in countries in which the intervention of a notary is needed during real estate transactions;
- Complaints may not reach a formal stage and be solved informally;
- Complaints may fall under the category of complaints related to civil matter and may therefore not be distinguishable for identification purposes;
- Complaints may not be formally raised against the profession if it is not regulated in the first place; and
- In the case of the renting and letting process, the absence of a central body giving the opportunity to tenants and landlords to complain.

Conflicts between tenants and landlords seem to be more frequent. As per the information obtained in the country fiches, conflicts often impact the *landlord* and most frequently arise due to:

- Delays in payment or non-payment of the monthly rent;
- Former tenants refusing to leave the real estate;
- Tenants damaging the real estate or not fulfilling their duty to take care of the property;
- Tenants terminating the rent agreement without legal justification for the termination;
- Failure of the tenant to pay for utilities;
- Tenants sub-renting the property;
- Tenants conducting business in the property.

However, there are also problems affecting the *tenant* arising from:

- Invalid contract because of the lack of a written form;
- Landlords terminating the rent agreement without legal justification for the termination;
- Failure of the landlord to return the deposit;
- Last, very few cases seem to refer to problems related to an increase or a decrease in the amount of monthly rent.

To provide an **illustration about the volume of complaints** related to these matters, the example of the Czech Republic is elucidating. In 2015, 23.165 cases were recorded in the country, namely cases related to:

- The rent and other payments (17,.158);
- The eviction of the tenant (4,.644);
- Determination of the rent (657);
- Invalid notice (481);
- Sublease (138);
- The creation and the duration of the lease (87).

Across all countries, other complaints that seem to be frequently raised relate to the **unreturned deposit and to the failure of the tenant to pay the monthly rent**. The latter was indicated as the most common cause of dispute in Finland. In the UK as well, most disputes probably relate to deposits. It is interesting to note that, before the compulsory protection scheme was introduced in the UK, roughly half of tenants thought there had been unfair withholding or deductions. Following the introduction of the Tenancy

Deposit Scheme in 2007, 172,000 disputes related to unreturned deposit have been resolved.

In some countries, **thousands of complaints are dealt with annually** in relation to problems arising between landlords and tenants. In Finland, district courts deal with around 25,000 residential-tenancy claims annually: 20,000-22,000 claims concern arrears of rent.

Conflicts between buyers and sellers, according to the information obtained through the country fiches, generally occur in relation to the following aspects:

- Missing information about the property including information about building permits;
- Misleading information about the property;
- Hidden defects of the property;
- Delays in payment or non-payment by the buyer;
- Missing information related to mortgage terms;
- Sellers refusing to appear before a notary at the moment of conclusion of the real estate transaction (due to the fact that the seller found a second buyer willing to pay a higher price); and
- Housing construction and renovation.

In addition, buyers and sellers also raised complaints related to the land register, namely:

- Delays with registration because of inaccurate entries in land register; and
- Absence of registration by the seller in the cadastre.

It is worth noting that **conflicts related to real estate transactions may be solved informally**. For example, data from the UK (England and Wales) explaining that out of the 1,300 complaints received in 2011 (Housing Ombudsmen), 46% were resolved informally. In other countries **complaints are formally reported**. For instance, in Finland, The Consumer Disputes Board receives 400-500 complaints annually regarding sales of apartments (from business to consumer or between private parties) and estate agents while district courts deal with 500-1,000 disputes relating to real estate annually. In Lithuania, in 2015, the State Consumer Rights Protection Authority had registered 232 complaints about housing construction and renovation services while in 2016, 156 complaints were registered.

Complaints against a professional service provider in the real estate market can relate to notaries, lawyers and real estate agents. Of these, complaints towards real estate agents seem to be the most frequent, whereas complaints against notaries (in the countries in which they intervene) seem to be very rare, as evidenced in Germany, Greece and Italy.

Complaints raised against real estate agents do outnumber complaints against legal professionals, but do not seem to be very frequent. For example, in Estonia there were only 4 complaints concerning brokerage contracts altogether in the Consumer Disputes Committee in 2016, including 2 complaints about unfair contract terms. In 2015, only 2 complaints were recorded, one about misleading information and one about unfair contract term. In Sweden, with almost 7,000 real estate agents in the country, the Estate Agents' Inspectorate received 416 complaints against real estate agents. Only 67 professionals received disciplinary sanctions (10 reminders, 53 warnings, and 4 revocations) in 2016. In Denmark, in 2016, the Disciplinary Board of Real Estate Agents has completed 54 complaints. A decision has been made in the form of a fine in 9 cases and a warning in 7 cases.

The **problems against real estate agents** include:

- Service provision (missing information on the dwelling, poorly prepared documents);
- The use of unfair standard clauses (e.g. on exclusive mandates which according to standing case law do not prevent the seller to sell to friends or family);

- The bidding process (buyers who believe that the real estate agent is not truthful);
- The advertising price (believed to be set unrealistically low so as to lure more prospective buyers to bid on the property in the belief that they can afford it);
- Non-disclosure of important facts;
- Retention of monies by the service providers; and
- Operating without a license.

Other issues refer to real estate agents' fees and outlays, ethical conduct and to the failure to have in place a letter of engagement or a property service agreement and advertising.

For example, in Ireland the Property Services Regulatory Authority is responsible for dealing with complaints against property service providers. In 2015, the Authority received 283 complaints against service providers, as compared to 362 complaints received in 2014. The most common source of dispute related to service provision (30%), retention of monies by service providers (16%), operating without a licence (15%).

In the case of **complaints against lawyers** there is little evidence in terms of the frequency and nature of consumers' complaints. The Danish expert explained that in Denmark, complaints about lawyers' advice and assistance in connection with the purchase of real estate are not recorded separately. In 2016, the Board of Appeal received 1,169 complaints about lawyers. The nature of these complaints refers to:

- Lawyers' behaviour (648);
- Lawyers' fee (199);
- Both lawyers' behaviour and fees (151).

In sum, complaints against service providers are not frequent. Overall, complaints against real estate agents are more numerous than those against legal professionals. Last, complaints against notaries appear to be very rare.

8.5.2 Raising a complaint

When problems arise, consumers can refer to a wide range of associations and authorities to formally raise a complaint regarding a transaction or against the service provided by real estate professionals.

As a first option, consumers can raise complaints to **consumers' interest associations, or ADR bodies including Ombudsman**, which may be either national or regional. Ombudsman may take different forms, for example in Belgium, an independent Ombudsman structure was approved and recognised by the Ministry of Economy, or in Latvia different associations were established under the Association of Latvian Commercial Banks Ombudsman and of Alternative Financial Services of Latvia Ombudsman. Consumer protection services instead may be attached to the national government and operate under the supervision of Ministries. Besides, consumers can also take their complaints to consumer associations, which are widespread in the 30 countries in scope and generally function on a volunteering basis. Their main goal is to both educate and inform consumers as well as safeguard their rights.

A specific role is played by the **European Consumer Centre Network (ECC-Net)**. Offices of the ECC-Net are located in the 28 Member States, and in Norway and Iceland. The Network promotes the understanding of EU consumers' rights and assists in resolving complaints about purchases made in another country. For this reason, ECC-Net offices can receive complaints related to cross-border purchases of a property as well as to timesharing and holiday clubs.

Consumers can also raise a complaint to **local or national administrations**. In the Czech Republic, consumers can refer to The Public Defender of Rights for issues related to discrimination. In Finland, a consumer may complain to one of the six Regional State Administrative Agencies. Consumers in Luxembourg can raise a complaint to the Court of Peace (Justice de Paix) of the municipality where the rented dwelling is located, or bring

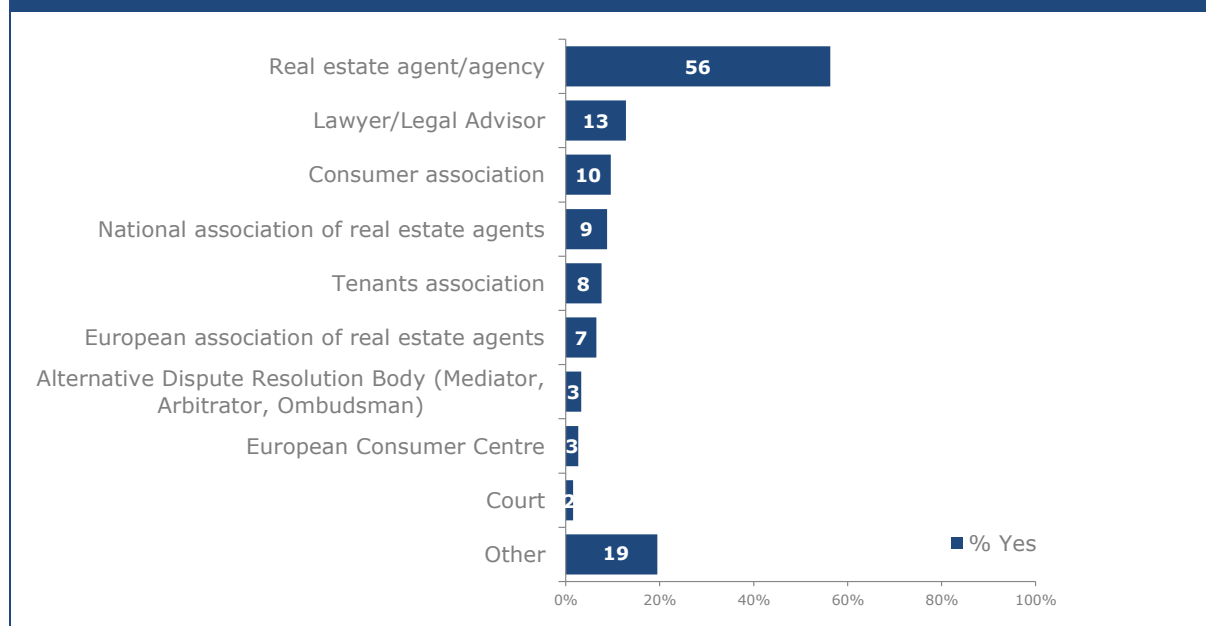
disputes about the amount of the rent before the Rents Commission (Commission des Loyers) of the municipality where the dwelling is located.

Although consumers may refer to a wide range of associations and authorities to formally raise a complaint, the consumer survey showed that consumers tend to address problems with the real estate agent. This results is in line with observations made in the context of the latest **'Consumer Market Scoreboard 2016 edition'**¹⁹⁶. According to the Scoreboard, among consumers who had experienced a problem with a real estate agent (where they thought they had a legitimate cause for complaint), 53% had complained to the real estate agent, compared to just 13% to a third party.

For example, a slim majority (56%) of buyers/renters in the consumer survey who had complained about the problem(s) encountered, had addressed the problem with the real estate agent. All other types of organisations were less frequently contacted; for example, just 9% of consumers who had complained about the problem they had encountered, had contacted a national association of real estate agents. The same also applies to sellers and landlords: a majority of these respondents (69%) had complained to the real estate agency.

It is also worth adding that just 10% of buyers/renters who had issued a complaint were very satisfied, and 36% were fairly satisfied, with the outcome of their complaint; this compared to 28% who were not very satisfied and 21% who were not at all satisfied. For 5% of consumers, the matter was still pending. Looking at the satisfaction level with problem handling among sellers/landlords, about equal shares of respondents tended to be satisfied (45%) and dissatisfied (50%) with the way their complaint had been dealt with; 5% of respondents reported that the problem had not yet been resolved.

Figure 82: Type of organisation that consumers complained to about problems encountered when buying/renting a property



Question: Q24b. Who did you complain to?

Base: respondents who encountered at least one problem when they bought/rented (or attempting to buy/rent) and who complained to someone about this problem (EU28: n=2,045)

Source: Main Task 2 Consumer survey

¹⁹⁶ European Commission, (2016). "Consumer Markets Scoreboard. Making markets work for consumers". Available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_markets_scoreboard_2016_en.pdf

8.6 Remedies and redress

8.6.1 Consumers' awareness of their rights

Consumers' awareness of their rights as regards real estate transactions is of paramount importance. This is due to the fact that consumers' awareness does not only allow buyers/sellers and tenants/landlords to prevent problems arising during real estate transactions (e.g. the seller/landlord is not the owner, invalid contract) but it also enables consumers to consult the competent authorities in case of problems related to real estate transactions.

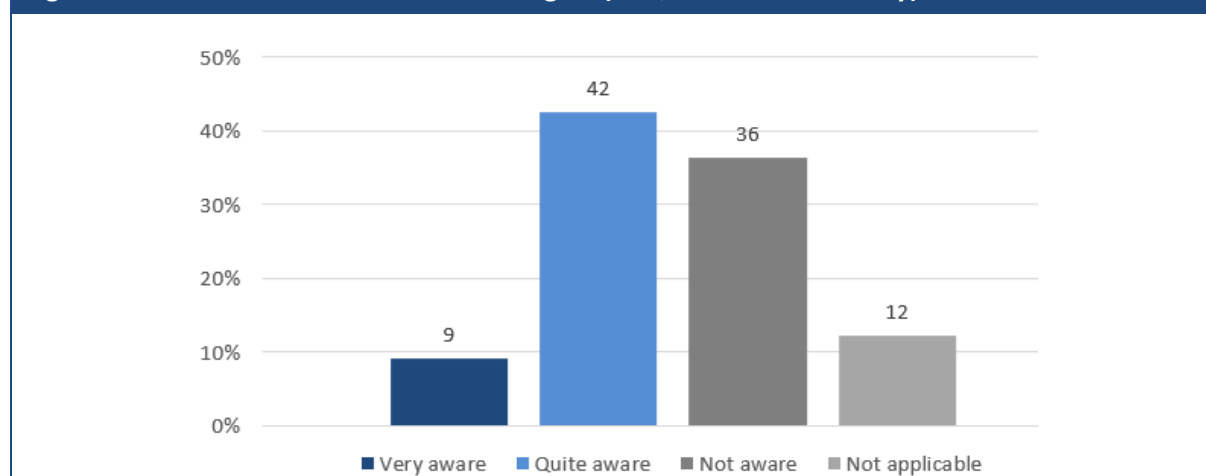
The question whether consumers are aware of their rights with regard to real estate transactions was addressed to CPA, HOA and TA representatives (Figure 83). Overall, according to the majority of respondents, consumers are **either quite aware** (14 respondents out of 33 or 42%) **or not aware** (12 respondents out of 33 or 36%) of their rights with reference to real estate transactions. It is worth noting that only a minority of respondents (3 out of 33 or 9%) retains that consumers are very aware of their rights.

When analysing results separately for each of the three groups, the following scenario emerges. The majority of respondents to the HOA survey (5 out of 9 or 56%) believes buyers are quite aware of their rights as regards the buying process while only 1 respondent stated that buyers are very aware. Similarly, 5 out of 9 respondents (56%) to the TA survey indicated that tenants are quite aware of their rights in relation to the renting and letting process and 2 respondents stated that tenants are very aware of their rights.

However, when considering responses to the CPA survey, a large part (7 out of 15 or 47%) of CPA representatives believes that consumers are not aware of their rights with respect to real estate transactions. Four out of 15 respondents (27%) selected the option 'quite aware' and another 4 respondents (27%) ticked the option 'not applicable'.

It is interesting to compare responses of the HOA and TA surveys on the one hand (consumers' perspective) and responses of CPA representatives (authorities' perspective) on the other hand. According to HOAs and TAs, consumers are generally quite aware of their rights (56% of respondents selected this option respectively in the HOA and in the TA survey). Nonetheless, almost half of the CPA respondents (47%) maintains that consumers are not aware of their rights.

Figure 83: Consumers awareness of their rights (CPA, HOA and TA survey)



Note: Survey of CPA, Q.7; Survey of HOA, Q.3; Survey of TA, Q.3: To what extent are consumers aware of their rights with regard to real estate transactions?

Number of respondents: Grouped responses: 33; CPA: 15; HOA: 9; TA: 9.

Source: Main Task 1 Stakeholder surveys

Related to the inquiry about consumers' awareness of their rights is the question about the means through which rights are communicated to consumers (Figure 84). This question was also included in the surveys to CPAs, HOAs and TAs, namely 'what are the most important and effective means of communication' and 'how is information provided to consumers'. Results are shown at the aggregate level as well as separately for each survey.

By looking at Figure 84, it is evident that, based on the responses of stakeholders, **information provided by websites** is the most common means available to communicate rights to consumers as regards real estate transactions. At the aggregate level, 19 out of 34 respondents (56%) selected this option. When considering surveys separately, the answer option 'information on an existing website' was selected by 8 out of 16 (50%) CPA respondents, by 4 out of 9 (44%) HOA respondents and by 7 out of 9 (78%) TA respondents.

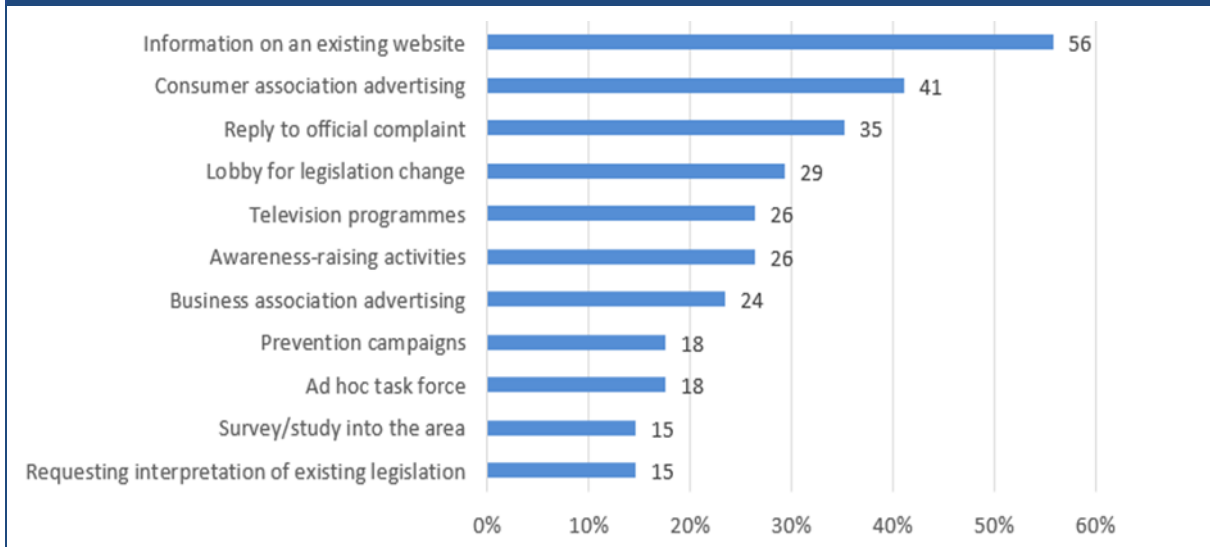
A large majority (88%-91%) of mystery shoppers in this study, however, had not found any information on the **website of the real estate agency** about what to do if they have a complaint about the real estate agent, and how their complaint would be handled. Contact details of a consumer association (or the ECC), tenants/homeowner association or an ADR body were found by 15% of shoppers (this figure was the same for 'letting' and 'buying' scenarios).

Another frequently selected communication means both at the aggregate level and per single surveys is **consumer association advertising**. Overall, 14 respondents out of 34 (41%) selected this option. Similarly, consumer association advertising figures in the second position of the CPA survey (7 out of 16 respondents or 44%), in the second position of the HOA survey (3 out of 9 respondents or 33%) and in the fifth position of the TA survey (4 out of 9 respondents or 44%).

Replies to official complaints and **lobbying for legislation change** were indicated, at the aggregate level, respectively by 12 (35%) and 10 (29%) respondents out of 34. Replies to official complaints also figure among the most common communication means selected by CPA respondents (5 out of 16 or 31%), and both options were especially indicated by TA respondents (5 out of 9 or 56%).

Among the least selected options are **requests for interpretation of existing legislation** and **ad hoc task forces**. These answer options were selected respectively, at the aggregate level, by 5 out of 34 respondents (15%) and by 6 out of 34 respondents (18%). The same trend is observed when considering surveys separately. The only exception is represented by the HOA survey for which 3 out of 9 respondents (33%) selected the option 'request for interpretation of existing legislation' and by the CPA survey for which 4 out of 16 respondents (25%) indicated ad hoc taskforce.

Figure 84: Communication of rights to consumers (CPA, HOA and TA survey)



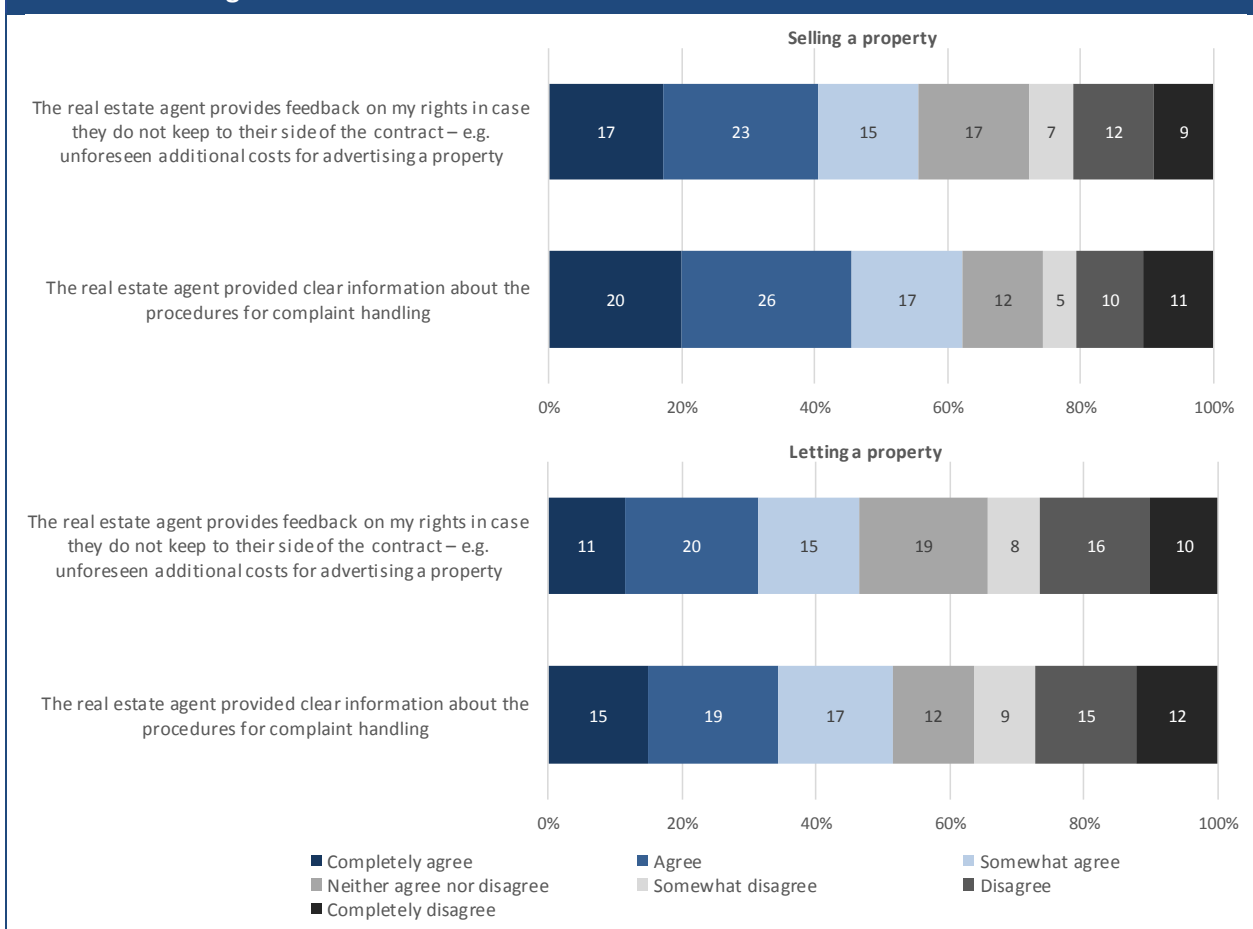
Note: Survey of CPA, Q.8; Survey of HOA, Q.4; Survey of TA, Q.4: By which means are these rights communicated to consumers?

Number of respondents: Grouped responses: 34; CPA: 16; HOA: 9; TA: 9.

Source: Main Task 2 Stakeholder surveys

At the end of the conversation with the real estate agent, shoppers asked the agent what they could do if they would be faced with a problem and who they could complain to. On this aspect of their visit, shoppers tended not to be very satisfied; moreover, the level of dissatisfaction was highest among the shoppers in the 'letting' scenario. Just 11% of shoppers in the 'letting' scenario completely agreed and 20% agreed, compared to 10% who completely disagreed and 16% who disagreed, that the **real estate agent had provided them with feedback about their rights** in case they do not keep to their side of the contract. Similarly, just 15% of shoppers in the 'letting' scenario completely agreed and 19% agreed, compared to 12% who completely disagreed and 15% who disagreed, that the real estate agent provided clear information the procedures for complaint handling.

Figure 85: Agreement with various statements about information provision about complaint handling



Base: 180 real estate agencies in the 'selling' scenario and 140 in the 'letting' scenario (all countries)
 Question: Please indicate how much you agree or disagree with the following statements.
 Source: Main Task 4 Mystery shopping

As previously noted, based on the stakeholders' consultation consumers are generally quite aware of their rights (42% of respondents) or not aware (36% of respondents). The communication of rights to consumers is a possible solution enabling consumers to prevent problems and complaints related to real estate transactions or to allow consumers addressing problems in an efficient way. This given, the internet or consumer association advertising seem to be the most effective means to inform consumers about their rights.

8.6.2 Regulation and levels of consumer protection

According to a majority of stakeholders consulted, there would be a direct correlation of the regulation of the real estate market as well as of the profession of real estate agent with both the quality of the service provided as well as the levels of consumer protection; however, this position is not fully confirmed by all sources consulted. As one of the main objectives of the study is to assess the way in which the existing regulatory framework affects consumers' protection, a series of questions concerning regulations with respect to the real estate market and real estate professionals have been addressed in the stakeholders' consultation. All the four stakeholders' groups were asked to indicate whether they believe there is a need to further regulate market practices with the ultimate goal to protect the consumer against unfair commercial practices.

Emerging results show, at the aggregate level, that more than half of the respondents (14 out of 26 or 54%) thinks **there is a need to foster regulation with the goal to improve levels of consumer protection against unfair commercial practices**. Eight respondents (31%) answered negatively to the question.

When considering responses to this question per stakeholder group, the majority of CPA respondents (6 out of 10 or 60%) believes there is a need to further regulate market practices to improve levels of consumers' protection as regards unfair commercial practices. Out of 4 NCA respondents, 2 (50%) NCA representatives answered positively to the question.

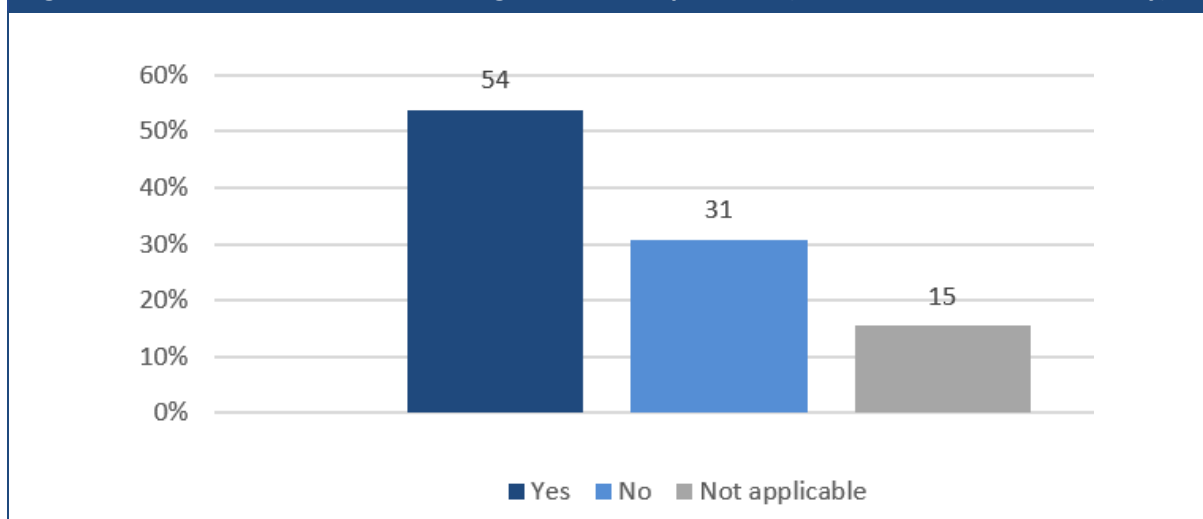
In Belgium, according to one CPA respondent, one can observe "uniform legislation/regulation across the internal market. In Belgium, the protection of consumers and the balance of power between consumers and real estate agencies is satisfactory. The consumer trust is fairly large. However, when Belgian consumers buy real estate property abroad, the same protection as in Belgium may not apply". One CPA respondent from Slovakia explained that in his/her view, "horizontal consumer legislation is not sufficient to protect consumers from unfair commercial practices of real estate agents". One NCA respondent from Cyprus illustrated that it would be relevant "to specify the services offered by the real estate agents and fix the cost for each service".

In the view of 2 out of 6 HOA respondents (33%), there is a need to foster levels of regulation, however, 3 other respondents (50%) do not agree and answered negatively to the question. Turning to the TA survey, 4 out of 6 respondents (67%) agree that there is a need to further regulate market practices.

According to one TA respondent from Cyprus, there is not only a need for more legislation but also for the establishment of a specific body responsible for supervising the enforcement of the legislation.

In a comparative perspective, when comparing responses across surveys, **it seems that all groups of stakeholders are generally in favour of more regulation of market practices in view of increasing levels of consumer protection with respect to unfair commercial practices.** Only in the HOA survey, the number of respondents that are not in favour of more regulation exceeds the number of respondents that positively answered the question.

Figure 86: Perceived need to further regulate market practices (CPA, NCA, HOA and TA survey)



Note: Survey of CPA, Q.36; Survey of NCA, Q.39; Survey of HOA, Q.31; Survey of TA, Q.39: Is there a need to further regulate market practices to protect the consumer against unfair commercial practices? 1) Yes; 2) No; 3) Not applicable

Number of respondents: Grouped responses: 26; CPA: 10; NCA: 4; HOA: 6; TA: 6.

Source: Main Task 1 Stakeholder surveys

Business operators were also asked to indicate, based on their experience, the ways in which the current **regulation of the estate agent profession** impacts the i) market functioning as well as ii) levels of consumer protection. There is a certain consensus about the fact that **the existing regulation positively impacts levels of consumer protection** (5 out of 6 respondents or 83%); only one respondent disagrees. On the contrary, there is a certain heterogeneity of responses regarding the way in which

regulation of the profession of estate agent affects levels of competition and innovation in the market as well as the quality of services provided. According to 2 out of 6 respondents (33%), the existing regulatory framework positively impacts levels of innovation, competition and quality of the services. However, 2 other respondents disagree and indicated that, based on their experience, the current regulation negatively impacts levels of innovation, competition and quality of the services provided.

When asked about the perceived need to **further regulate** the profession of real estate agent, 5 out of 6 respondents (83%) indicated there is a need to further regulate the profession with the main purpose of protecting consumers against unfair commercial practices. Only one respondent disagreed.

Overall, based on the stakeholders' consultation, it seems that more regulation of the real estate market is thought to be beneficial for consumers. Business operators surveyed in the context of this study seem to agree that further regulation of the profession of real estate agent may improve consumers' protection against unfair commercial practices. Nonetheless, it should be noted that regulation of the real estate market and of the profession of real estate agent encompasses several elements and there might be disadvantages for consumers deriving from increasing levels of regulation.

Considering the levels of regulation as regards the real estate market, depending on the regulatory aspect that is investigated, consumers may display a more or less positive consideration of the regulation at stake. As an example, all focus group participants in Germany stated that **the German real estate market is generally overregulated** thus resulting in bureaucratic hurdles and the provision of irrelevant information that is not correctly understood by consumers. The example of the need to show the passport at the beginning of the transaction process was provided. Participants were aware of the importance to verify the identity of a potential buyer/tenant but the obligation to store a copy of the passport (i.e. making a copy of it) was perceived as unnecessary. At the same time, participants indicated that the German real estate market is too **little regulated with respect to foreign investors**. The above-mentioned examples show that, despite the fact that regulation is generally perceived as positive, some regulatory aspects are regarded by consumers as an administrative burden rendering real estate transactions more complex and lengthy.

Both in Germany and the Netherlands, focus group participants mentioned one specific regulatory aspect, namely the **regulation of the rent price**. In Germany, regulation about the cap on rent increases ('Mietpreisbremse') came into force in 2015 and was supposed to regulate rent increases to protect tenants, especially in urban areas. When the cap on rent increases came into force, landlords increased their prices – also in rural areas. Participants explained the change in landlords'/sellers' view that this regulation brought on the market. Before the regulation, landlords had to ask themselves: "How much (monthly rent) am I able to take in order to attract/receive good tenants?" After the regulation, landlords ask themselves: "How high can I go with my rent within the boundaries set by the regulation?" Generally, participants had the impression that the cap on rent led to an increase in rents. This is apparently due to the strong rise in rents that was applied shortly before the cap on rent increases came into force. Furthermore, there are also possibilities to avoid the application for the cap on rent increases. If the flat is furnished, the cap does not apply.

In contrast to Germany, in the Netherlands focus group participants explained that there is currently no real regulation on the maximum prices for renting properties. Interviewed participants suggested as an example more regulation as regards the rent price, so that apartments are rented for a monthly fee ranging from €700 to €1,000. At the same time, people who are living in social apartments could enter the private market. The gap between the social market and the private market results in long waiting lists, because tenants cannot move from a €400 apartment to a €1,400 studio in once.

In conclusion, the findings suggest that it is **difficult to establish a clear and systematic correlation between the level of regulation of real estate transactions/real estate professions and the level of consumers' satisfaction with the real estate services market**. As shown by the case of the regulation of the rent price, consumers may positively

regard the introduction of new regulation but subsequently complain about the effects of the regulation once the latter is implemented.

9. Summary and conclusions

Real estate services is the worst performing market of the 42 markets studied in the European Commission's Consumer Market Scoreboard (2016 edition).¹⁹⁷ Moreover, large differences in market performance are observed across Member States. The market for real estate services is complex and largely regulated at the national level. The complexity of the market is caused by:

- **Number of steps involved** in both the conveyancing and renting/letting process;
- **Number of different market agents** active during the conveyancing and renting/letting process and interacting with consumers;
- Real estate transactions are **infrequent for the average consumer** (especially for buyers and sellers).

Moreover, in a comparative perspective, this study observed **cross-country differences** with regard to:

- Legislation governing the conveyancing and renting/letting process;
- Regulation of the profession of real estate agent; and
- Actors involved in real estate transactions and the extent of service provision.

Overall, one of the main problems behind consumers' dissatisfaction with the real estate services market seems to be related to discrepancies in the **levels of supply and demand for properties**. Across the EU28, 32% of respondents surveyed as part of this study, who had recently bought/rented a property (or who had attempted to do so), had encountered difficulties due to increasing prices/rent for properties and 29% had experienced problems due to the lack of affordable housing. This type of problem was more frequently mentioned by younger consumers; for example, 24% of over 54 year-olds had experienced problems due to the lack of affordable housing, compared to 33% of 18-34 year-olds. Issues arising from a shortage in supply, however, go beyond the question of high market prices and can result in a power hierarchy and discrimination. Professionals in the real estate market could potentially take advantage of this type of situation and exercise undue influence on consumers (e.g. put pressure on consumers to quickly conclude a transaction).

This consumer market study identified **aspects of the real estate services market that are most likely to be problematic for consumers**; and, in these areas, actions should be undertaken to foster consumer awareness and consumer protection:

- Level of regulation on conveyancing/renting;
- Policy measures, including the establishment of a minimum set of qualitative standard requirements, to improve the quality of real estate services
- Information provision on real estate properties;
- Cross-border transactions;
- Choice in the market for real estate services;
- Real estate agency fees and information provision about such fees;
- Consumer problems and complaints.

The market activities covered under the study are:

- Intermediation in buying, selling and rental of real estate on a fee or contract basis;
- Advisory activities and appraisal services in connection to buying, selling and rental of real estate, on a fee or contract basis.

¹⁹⁷ https://ec.europa.eu/info/sites/info/files/consumer_markets_scoreboard_2016_en.pdf

9.1 Level of regulation on conveyancing/renting

Conveyancing and residential tenancies are largely regulated by autonomous national law showing a very high degree of diversity across the 30 countries in scope of the study. In all EU Member States (and Iceland and Norway) the *lex rei sitae* rule applies, whereby transactions are governed by the law of the state in which the property is located. Similarly, according to Art. 4 para. 1 lit. c Rome I-Regulation, tenancy contracts are governed by the law of the place of location of the immovable; nonetheless, choice of law is possible even in residential tenancy contracts.

It is difficult to establish a clear and systematic correlation between the level of regulation and the level of consumer satisfaction with the real estate services market; moreover, regulation of the real estate market encompasses several elements (related to the conveyancing process, to the renting and letting process as well as to cross-border real estate transactions) and increasing levels of regulation can lead to both advantages and disadvantages for consumers. More than half of stakeholders surveyed as part of this study (14 out of 26 or 54%) think there is a need to **reinforce rules on market practices with the goal to improve levels of consumer protection against unfair commercial practices**.

Study conclusions on regulation on the conveyancing and renting/letting processes:

- Further research should be undertaken to identify, across the EU, the best legal and regulatory practices for real estate transactions, and in particular, those aimed at fostering consumer protection in the real estate market.
- This type of further research can then be the basis for promoting a minimum level of harmonisation of rules on conveyancing and renting at EU level at least for those aspects relevant to fostering consumer protection, e.g. aspects related to the form of the sale/rent contract.

9.2 Policy responses, including the establishment of a minimum set of qualitative standard requirements, to improve the quality of real estate services

A debate on the policy measures necessary to ensure qualitative real estate services, is ongoing in several Member States and includes questions as to the need for a minimum set of qualitative standard requirements for real estate services, stronger consumer protection laws, or regulation of the profession. Those who favour more regulation argue that strict regulatory measures would improve the quality of services delivered. Moreover, based on the insights provided by legal experts in the country fiches, the absence of regulation may result in uncertainty on the market. Advocates of less restrictive regulation argue in turn that a high level of regulation may be **detrimental to the level of competition in the market and may not necessarily result in better quality of services**.

In this context, the position of the sector organisation European Association of Real Estate Professions (CEPI) is worth mentioning. CEPI does 'not want to see deregulation' of the profession of real estate agent, and maintains that there 'remains a lack of common rules in the real estate sector' and that 'there is a general need to raise the standards in the sector'.¹⁹⁸

¹⁹⁸ CEPI Position Paper on the Implementation of Directive 2005/36/EC as Regards Regulation and the Need for Reform in Professional Services. Available at: <http://www.cepi.eu/index.php?mact=Profile,cntnt01,downloadfile,0&cntnt01returnid=400&cntnt01uid=59e5ec12c777e&cntnt01showtemplate=false&hl=en>

CEPI also looked at **cross-border mobility** in the real estate sector and highlighted that such mobility can be fostered, for example, through the use of the **European Professional Card (EPC)**.

Aspects of the regulation of the profession of real estate agent include, for example, qualification requirements, license requirements, or the need for a compulsory insurance. This market study shows that **qualification requirements, in particular, vary widely across countries**; in some instances, the profession is easily accessible, where in others, access is governed by a strict framework.

However, a general consideration on certain divergent results of the analysis (e.g. the apparently high level of satisfaction in Malta, i.e. a country where real estate is not regulated, or the heterogeneous outcome of the investigation in de-regulated countries) might suggest a more cautious approach than calling for a direct regulation of the profession of real estate agent. In front of the clear demand by consumers of effective rules ensuring that the services they receive are of adequate quality, the introduction of qualitative standard requirements for the services provided by real estate agents would likely be better supported by the bulk of the results of this research than a regulation of the profession.

Therefore, policy makers should thoroughly investigate the precise problems that consumers face in the different national real estate markets and propose proportionate and effective measures targeted at the specific problems identified such as increased transparency requirements, targeted performance and quality standards for specific real estate services, etc.

The Study conclusions on the regulation of the profession of real estate agent or the establishment of a minimum set of qualitative standard requirements for the services provided by real estate agents to foster consumer protection are therefore:

- At the national level, an assessment could be made of the appropriate policy response to the specific problems in terms of consumer protection. If general consumer protection laws, liability rules and transparency requirements are deemed insufficient and more specific regulation is considered necessary and proportionate, the different types of regulation and their costs and benefits should be carefully considered. Hence, the assessment could involve looking at the need to establish or revise the qualitative standard requirements for the services provided by real estate agents. Likewise, it could involve reconsidering the regulatory requirements for access to the profession of real estate agent taking into account the recommendations for this profession published by the European Commission in the 'Communication from the Commission to the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services'¹⁹⁹;
- Consideration could be given to the possibility of promoting a minimum level of harmonisation of transparency requirements as well as of other quality standards of the services provided by the real estate agents across Member States for those aspects deemed relevant to foster consumer protection.
- In addition, further research could be promoted to improve certain specific aspects of the real estate profession, for example:
 - How to best guarantee that real estate agents have the competencies, knowledge and motivation necessary to provide qualitative real estate services;
 - If it could be useful to promote a self-regulation by the operators of this sector; and

¹⁹⁹ European Commission (2017) 'Communication from the Commission to the European Economic and Social Committee and the Committee of the Regions on reform recommendations for regulation in professional services'. Available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/COM-2016-820-F1-EN-MAIN-PART-1.PDF>

- If it could be useful to promote voluntary certification schemes.
- While investigating the various options mentioned above, solid proportionality assessments should be made and additional costs for consumers should be considered.

9.3 Information provision about properties placed on the market

In the following paragraphs, the main study findings with respect to the following aspects are reported:

- Information channels and amount of information provided;
- Clarity and comparability of information;
- Information on the energy performance certificate; and
- Omitted and misleading information about real estate properties.

Information channels and amount of information provided

Consumers in the real estate market mainly refer to **online ads, property websites and websites of real estate agencies to look for information about properties**. The consumer survey showed that, among respondents who had bought or rented a property in the past seven years (or who had attempted to buy or rent a property), 63% had looked at real estate agencies' websites, 54% had visited property websites (not linked to a specific real estate agent) and 33% had searched for advertisements on the internet.

The **information provided about properties on websites** was analysed by mystery shoppers in a two-step approach: first, the information offered for a comparative overview of properties, and then the specific details made available for one particular property. Almost all websites contain pictures, details about the asking price/monthly rent and the location of the property. Other common pieces of information are the surface of the property, the number of rooms in the property and a list of key features.

Mystery shoppers tended to be satisfied with the amount of information provided on overview pages about the size of the properties and the total cost for renting/buying, but tended to think that information was insufficient regarding the amenities and features of the properties, and energy performance. Individual property pages scored better than overview pages, but also showed issues with information provision about energy performance. For example, 67% of shoppers answered that the property page did not contain enough information about the energy performance of the property (more study findings about energy performance certificates are presented further below).

The **behavioural experiment** conducted in **France and the UK** systematically varied the amount of information provided and found that both **performance on objective questions** and respondents' appreciation of real estate advertisements meaningfully **improved when key information was provided**. When evaluating properties' key features/amenities best results were achieved when this information was provided using **a consistent list of icons**, which allowed easy comparison across different properties. The mystery shopping exercise, however, showed that icons which indicate whether certain features are present or not were used on less than one in five websites.

Clarity and comparability of information

A majority of respondents in the consumer survey answered that clear and reliable information about the characteristics of the property, selling price/monthly rent and information about who sells the property had been *very* or *rather easy* to find. A different picture emerged when respondents were asked about real estate agency fees for the property, energy performance of the property and expected charges for (common) utilities. For example, looking at the findings for real estate agency fees, 47% of respondents answered that reliable information had been easy to find, compared to 39% who stated the opposite.

In line with the findings in the consumer survey, most respondents in the behavioural experiment claimed that they found it easy to understand the real estate advertisements that were shown to them. Yet, a significant share of respondents was unable to provide correct answers to objective comprehension questions regarding the advertisements. Most importantly, respondents often failed to appreciate when they were not given enough information to answer questions. This type of unawareness, i.e. **perceiving that information is 'easy to assess' while in fact the objective ability to understand the information might be low**, could be an indicator of vulnerability in the market.²⁰⁰ The experiment furthermore found evidence that roughly one in four consumers tends to be **overconfident in their ability to assess real estate advertisements**. Overconfidence could lead to numerous problems in the real estate market – consumers may misunderstand information, yet feel confident that they correctly understood the information presented. This could lead consumers to continue a process of buying/renting a property that might in fact be unsuitable for them.

Comprehension of real estate advertisements in the behavioural experiment was significantly increased by targeted remedies that were designed to increase transparency or comparability of the information provided (e.g. the share of correct answers given to comprehension questions was higher in remedy conditions that consistently showed, respectively, property size, EPC ratings and key amenities via icons, compared to the other experimental conditions; furthermore self-rated ease of understanding equally improved). It thus seems that consumers could significantly benefit if information disclosure was clearer, more transparent and comparable.

This finding is corroborated by data collected through the focus groups, showing that it is generally difficult for consumers to:

- Understand which pieces of information on properties **would be relevant**, and
- Assess the **completeness and usefulness of information** they receive.

This is maybe due to the fact that consumers do not generally know where to find specific information related to a property of interest. In this regard, it is important to highlight that a standardised list of pieces of information would be beneficial for consumers since it would:

- Improve consumers' understating of the information they should be aware of, and
- Deliver a defined and comprehensive set of pieces of information on the property of interest.

ESIS (see Section 3.1.1 for more details) is an example of a **standardised template of information** that should be provided by the financing bank to the loan taker. Through ESIS, consumers that request a mortgage have a better understanding of the basic features of a loan such as the interest rate or the frequency and number of payments. However, it is important to note that ESIS provides a limited set of information to consumers, namely information that relates to the loan. Besides, information included in ESIS is provided to consumers only in the case of a mortgage request.

Study conclusions on information provision about properties on the market:

- Information campaigns could increase consumers' awareness of the information that are important when making a decision to buy/rent a property. Taking into account the importance of the internet as a channel for information provision about real estate properties, awareness can be raised through efficient use of campaigns via the internet and social media.
- Policy measures should focus on 'best practices' with regard to developing minimum and common standard qualitative information requirements to help consumers at the overview and property pages on real estate websites. Icons and symbols could be used to show property features to consumers as they increase consumers'

²⁰⁰ European Commission (2017) 'Consumer vulnerability across key markets in the European Union'.

understanding of key property features, provided that the icons/symbols are clear and used consistently across all properties on a given website.

- With a view to improve transparency of information, policy measures could be proposed aiming at developing a standardised list of pieces of information to be delivered to consumers by service providers (a proposed list of pieces of information is provided on the next page).

Information on energy performance of properties

The level of transparency regarding information on **energy performance** scored rather poorly. As noted above, a majority of mystery shoppers thought that information provided about energy performance was insufficient; moreover, more than a third of shoppers reported that it was difficult to compare properties in terms of their energy performance. Although findings from the behavioural experiment show that **respondents are aware that energy performance certificates for properties exist**, and that they aim to provide information about the properties' energy efficiency, the experiment suggests that consumers find it **difficult to use energy performance certificates to compare properties**, and this effect may be particularly significant in older consumers.

In the evaluation of real estate websites, the mystery shoppers accessed websites with properties for sale both in their home country but also abroad. It is therefore possible to compare whether the availability and quality of information to the potential buyer is consistent across cross-border transactions. The results from the mystery shopper task reveal that this is not the case. For 52% of the properties based abroad, mystery shoppers considered it difficult to obtain comparable information in terms of the energy performance of the properties. Instead, comparable information on energy efficiency was difficult to retrieve in 40% of domestic properties.

Study conclusions on Energy Performance Certificates:

- More work is required to help consumers to better understand the meaning of the information provided in energy performance certificates. Real estate agents can contribute to this objective by providing information and assistance to consumers.
- EPCs might benefit from standardisation across EU countries to facilitate cross-border transactions.

Table 36: Standardised list of pieces of information

	List of relevant pieces of information
Factual circumstances	Type of property
	Size of the land and size of the property
	Year of construction
	Name of construction company (in case of non-existing objects)
	Construction and building materials
	Location and area spatial planning
	Building parameters
	Number and description of rooms
	Energy performance certificate
	Market valuation
	Price of the property and taxes
	Renovations and list of works undertaken in the past years
	List of work and budget planned for the next 5 – 10 years
	Eventual improvements to be performed/defects
	Transportation and local services in the neighbourhood
	External area (e.g. private garden)
	Lift access
	Parking spaces (external/internal; common or private garage)
	Presence of a common/private laundry room
Legal circumstances	Rights in rem and title
	Servitude and shared land use
	Encumbrances
	Land register extract, cadastral and urbanism file
	Ownership and liens regarding share
	Mortgage
	Foreclosure and burdens
	Limitation of use
	Insurance certificate and policy

Missing and misleading information about properties

About one in five (22%) survey respondents, across the EU28, who had recently bought/rented a property (or who had attempted to do so), mentioned problems with missing information about damages to the property, 17% referred to missing or misleading information about energy standards and 12% to false and untruthful information about charges for utilities. The behavioural experiment has found robust **evidence on the extent to which consumers might be harmed by misleading/omitted information**. Respondents in the behavioural experiment were often unaware of the type of information they were missing which lead them to rely on other, potentially misleading information instead. For example, respondents who did not realise that they were not given information on property size often estimated the size of a property using pictures, or indications on the number of rooms in the property. The behavioural experiment also found that respondents appreciated and performed better on the comprehension questions when property advertisements contained more comprehensive information compared to more simplistic formats. These two findings show that the provision of comprehensive information about the property is important for consumers. However, while the experiment did not identify when too much information leads a deterioration in consumers understanding, it is important to keep in mind that information overload can lead to problems in consumer decision-making due to cognitive limitations.

9.4 Cross-border transactions

Real estate transactions generally occur at the local level and this study shows that real estate agencies do not generally distinguish between real estate transactions at the local and cross-border level both in terms of accounting and service provision. Thus, based on this study's findings, the level of complexity of real estate transactions increases when consumers want to buy or rent a property abroad (i.e. in a country where they do not permanently live). Across all countries surveyed, respondents in the consumer survey tended to feel uncomfortable looking for real estate properties located in another EU country and would not know where to get advice about this type of properties.

Consumer problems in cross-border real estate transactions can be caused by having to use a **different language of communication**: 65% of survey respondents agreed that they would feel uncomfortable dealing with a real estate agent using another EU language. In addition, **not knowing the legislation in another EU country** seems to be a major concern for consumers. In this respect, 78% of survey respondents agreed that they would feel uncomfortable dealing with real estate agents without knowing the legislation of another EU country. This is a challenge because this study showed that the level of legal assistance provided to consumers involved in cross-border transactions generally does not go beyond the legal services delivered to consumers involved in local transactions.

In behavioural experiment respondent comprehension was significantly higher in cross-border scenarios. The experimental setup however did not test language differences, but was set in a 'best practice' environment where all information was provided in the consumers' home country's language. It is likely that respondents were more suspicious/uncertain, and more concentrated in the cross-border scenarios. This could have made them thus less reliant on experience or intuition and more focussed on the information provided.

Study conclusions on cross-border transactions:²⁰¹

- Further research should be undertaken to analyse aspects related to cross-border real estate transactions (e.g. to investigate the frequency of cross-border transactions and the processes of cross-border transactions).
- Information campaigns can increase consumers' awareness on the public law rule that applies in other EU countries and that may impact consumers' decision to conclude a real estate transaction in another EU country.
- Reducing language barriers could significantly increase consumer engagement in cross-border transactions.

9.5 Choice in the market for real estate services (selling and letting properties)

In the following paragraphs, the study's findings with respect to two aspects of consumer choice are discussed:

- Choice between real estate agents; and
- Choice between contract types offered by real estate agents.

Choosing a real estate agent

Very few respondents in the consumer survey reported that they had decided to work with a specific real estate agent because it was the only agent in their area. **In most countries, consumers are not faced with such a lack of choice**; nonetheless, **less than half (44%)** of survey respondents who had recently sold or let a property via a real estate agent, had **compared real estate agents before making their eventual choice**.

When asked what had made consumers decide to use the real estate agent they had selected, 39% referred to the real estate agent's reputation and professionalism, 21% said that the real estate agent had been recommended by an acquaintance and 17% had used the agent before. One in five respondents (21%) explained that they had chosen the real estate agent based on their valuation of the property, while 22% had considered the size of the real estate agency's fees. One in four respondents (27%) referred to the location of the real estate agent.

Contract types and sale tactics

The consumer survey showed that, across the EU28, when selling or letting a property through a real estate agent, **simple mandate contract** were more common than **exclusive mandate contracts** (46% vs. 31%). In a small number of countries (Belgium, the UK, Sweden and Iceland), exclusive mandates were more regularly used than simple mandates. In the consumer survey, roughly 4 in 10 (38%) consumers who had sold/let a

²⁰¹ Recommendations aiming at allowing consumers involved in cross-border transactions to better understand the conveyancing/renting process were put forward by the study "Cross Border Acquisitions of Residential Property in the EU: Problems Encountered by Citizens" (European Parliament, 2016): Cross border purchasers should be given at the outset of a transaction a complete breakdown of costs on a form designed to overcome language barriers. This should include: i) Details of deposit payments, any stage payments and the balance; ii) Warnings where appropriate about currency fluctuations; iii) Information about payments; iv) Conveyancing costs; v) Any other professional fees eg for agents or surveyors; vi) Land transaction taxes and any VAT; vii) Registration fees; and viii) Details of running costs such as: utilities; local taxes; Service charges; and costs of positive obligations. Clear and precise information is also needed about the times that particular payments will be required. Besides, the study suggested the following recommendations: 'A notary or other conveyancer accepting instructions to act for a cross border purchaser should be required to provide comprehensive advice on all aspects of the transactions as established in Practice Rules, including public law matters affecting the value of the property and any personal obligations'; 'A scheme of accreditation of cross border conveyancers should be established, so that the cross border buyer is enabled to exercise his right to representation independent of the seller or developer'; 'Consumer protection of a cross border purchaser could be withdrawn where independent legal advice is provided before any obligation is undertaken by the purchaser'; 'An EU citizen buying in another EU state will feel much more comfortable with a transaction as it progresses if the process is clearly mapped out in his or her own EU language. We therefore recommend that the whole process should be wrapped up into a single Cross Border Conveyancing Protocol which would guide the parties and their advisers through the process in an organised manner'.

property through a real estate agent, reported that they had **not been offered a choice between different types of contracts**, and 24% replied that they had not been able to negotiate any of the conditions of the contract.

A large majority of survey respondents agreed that the **real estate agent had helped them to understand the conditions and obligations of the contract**. Similarly, only a handful of shoppers across both scenarios disagreed when asked whether the real estate agent had provided clear information about conditions and obligations of their contract and a large majority agreed that the real estate agent had helped them to understand these conditions and obligations.

Shoppers were also asked to respond a set of questions about their experiences with respect to **sale tactics of the real estate agent** they evaluated. A large majority of shoppers reported that the real estate agent they evaluated had not used any sales tactics that can be qualified as 'misleading' or 'aggressive'. Nonetheless, a handful of shoppers answered that the real estate agent had created the impression that they must decide/could not leave the premises until a contract was signed. Additionally, a few shoppers answered that the real estate agent had made persistent and unwanted solicitations to, for example, visit the property.

Study conclusions on mandate contract types and real estate agents' sale tactics:

- Information campaigns should inform consumers about the choice between different real estate mandate contract types.
- Actions should be set up to ensure that real estate agencies do not push consumers to sign exclusive mandate contracts, but offer them a choice between simple and exclusive mandate contracts.

9.6 Real estate agency fees and other costs

Arrangements for real estate agency fee-paying vary widely across the countries in scope, with fees being paid by seller/landlord (who hired the real estate agent), by the buyer/tenant or both parties. In the following paragraphs, the main study findings with respect to real estate agency fees and other costs are reported, focussing on areas most likely to lead to consumer problems:

- High real estate agency fees;
- Hidden costs associated with real estate transactions; and
- Difficulties obtaining information on real estate agent fees when buying/renting.

Real estate agent intermediation fees for conveyancing range from 1.13% of the sale price (in Scotland) to 6.5% of the sale price (in France – where fees include VAT and other taxes); in Greece, Croatia and Latvia, fees for real estate agents are freely negotiable.

In 25 out of 30 countries in scope, fees of real estate agents for finding and matching landlords and tenants are expressed as *n* months' rent; in the remaining countries, fees are expressed as a fixed amount (Lithuania and Sweden) or are freely negotiable (France and the Netherlands). In 22 countries fees are equal to one month's rent (or less). In Denmark, fees correspond to three months' rent; in Austria, Greece and Germany, fees correspond to two months' rent.

Mystery shoppers in this study tended to agree that real estate agents provide clear information about their fees and costs when hiring them to sell or let a property. A different picture emerged when looking at the transparency of **real estate agency fees when buying or renting a property**: 39% of survey respondents found it difficult to obtain information on real estate agent fees for buying or renting a property. Moreover, 9% of survey respondents had **not been made aware of the amount of fees they would be charged by the real estate agent** of the seller/landlord before deciding to buy/rent the property, and 35% said they had only been aware "to some extent" of the amount of fees.

Among respondents who had bought or rented a property in the past seven years (or who had attempted to buy or rent a property), 29% had encountered difficulties due to high real estate agency fees; this figure varied between 8% in the Netherlands and 49% in Bulgaria. Countries close to Bulgaria included Austria (46%), Greece and Hungary (both 42%). One in five respondents had been faced with hidden costs when renting/buying (e.g. VAT, bank transfer fees, cost for additional certificates etc.).

The behavioural experiment tested the impact of different framing of cost information. As long as price features (e.g. residential taxes or stamp duty) were consistently displayed across all properties, framing the information differently (e.g. by displaying tax amounts separately, or showing prices inclusive of all taxes) had no effect on consumer comprehension of the information.

Study conclusions on real estate agency fees and other costs:

- Policy measures should be undertaken, at the national level, to improve the transparency of real estate agency fees and other costs, especially for fees charged to consumers buying or renting a property. This could be achieved by introducing regulation at the national level, or through the development of best practices for the delivery of information about fees and costs.
- More transparency of fees and costs can also be achieved by requiring real estate agencies to inform consumers upfront of all costs and fees involved in conveyancing and renting/letting transactions. At the time of the study, many real estate agents were falling short in providing this type of information for the renting and buying process. Comparison tools could develop ways of displaying this type of information consistently across different properties and providers.

9.7 Consumer problems and complaints

Asymmetric information in the real estate services market remains a source of market inefficiencies and of consumer dissatisfaction. During the focus group conducted in Germany, a clear asymmetry of information and power between the different types of actors in the real estate market became apparent. On the one hand, participants that deal frequently with real estate transactions are very well informed about the market and rights they enjoy. This was the case for landlords or real estate agents that know best practices, processes and procedures. On the other hand, consumers who do interact more rarely with the real estate market are generally more uninformed about their rights, applicable procedures, and best practices.

A majority of participants in the stakeholder consultation reported that **consumer detriment may result from this imbalance of power/information between the consumer and the real estate agent**. As noted above, 22% of survey respondents, who had recently bought/rented a property, had experienced problems with **missing information** about damages to the property and 17% with missing or misleading information about energy standards.

Problems were also reported by respondents who had sold or let a property; in the consumer survey, these respondents were asked to focus on **problems they had experienced with their real estate agent**. Roughly one in six (16%) of these respondents answered that the real estate agent had put little effort in advertising the property, 7% said that the real estate agent only put in an effort at the end of the contract and another 7% was faced with delays in the completion of the sale/lease as stated. A tenth of respondents reported that the real estate agent had made errors when handling queries and negotiations and 7% replied that the property had not been correctly advertised. Finally, 10% of consumers had felt pressure to advertise the sell property at a price lower than average and 7% to sell or let the property at a price lower than average.

Although consumer problems were frequent, **just one in four respondents who had experienced a problem, submitted a complaint about this problem**. A majority of these respondents had complained to the real estate agency; all other types of

organisations were less frequently contacted. Looking at the satisfaction level with problem handling, about equal shares of respondents tended to be satisfied and dissatisfied with the way their complaint had been dealt with.

Study conclusions on information provision about consumer complaints:

- Although many consumers were dissatisfied with complaint handling by their real estate agent, very few had contacted a third party – e.g. a consumer organisation or ombudsman. Information campaigns can raise consumers' awareness of the responsible authorities and bodies to whom consumers can report a complaint when confronted with a problem related to real estate transactions.
- In order to help consumers who have a complaint, more detailed information about complaint handling procedures should be provided by real estate agents – on their websites and when visited by potential customers.

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