



Appraisal of Directive 98/6/EC on consumer protection in the indication of unit prices of products offered to consumers

Final report

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The following abbreviations are used in this report:

AT	Austria	IE	Ireland
BE	Belgium	IT	Italy
DK	Denmark	LU	Luxembourg
DE	Germany	NL	Netherlands
EL	Greece	PT	Portugal
ES	Spain	SE	Sweden
FR	France	UK	United Kingdom
FI	Finland	EU	European Union (15)

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Executive summary

In December 2003 the European Commission's Directorate General for Health and Consumer Protection commissioned EIM Business & Policy Research to carry out a Study on the application of Directive 98/6/EC 'the Directive', OJ No 80, 18.3.1998, p.27 on consumer protection by the indication of unit prices of products offered to consumers. This Study, which is confined to the pre 1 May 2004 fifteen Member States¹, focuses on the implementation of the Directive and its impact on consumers and (small) retailers. The Directive sets out guidelines for unit pricing of food and non-food products. The purpose of the Directive (and the unit price indication) is to improve consumer information and to facilitate price comparisons.

This appraisal involves assessing the use of the Directive (*legal implementation*); the use of the derogation in Article 6 for small retail businesses (*use of derogation*); the impact of the use of the derogation for consumers and for business in general and small retail business in particular (*impact*). National experts have collected data by means of desk research and expert interviews with national stakeholders including consumer and retail organisations as well as government representatives. Further, interviews were conducted with European consumer and retail organisations. A Survey was undertaken with 750 small retailers (fewer than 20 employees) in the (old) fifteen Member States.

Retail sector

Whilst the Directive is not targeted at specific business sectors, it mainly affects retail trade. Across all fifteen Member States the retail sector is dominated numerically by (very) small enterprises: 97% of the enterprises have less than 10 employees. Despite the dominance of small enterprises in the retail sector, 40% of turnover is generated by larger enterprises. The retail sector in the north of Europe is much more concentrated than in the south although concentration is increasing in all Member States. Further concentration in the retail sector involves a decline of the number of small retailers as well as a decline in their market share. Consumer behaviour is changing. Consumers increasingly tend to buy their daily groceries in one trip in order to save time. The availability of a large number of cheap products is key in this process, sold by flexible and efficient retail outlets. Small retailers may only be able to survive in niche and local markets.

¹ However, see annex IV 'Outlook on the situation in the New Member States'.

Implementation of the Directive

Legislation implementing the Directive exists in all fifteen Member States. However, the majority of Member States did not implement the Directive on time (i.e. by 18 March 2000). Transposition was only completed in all Member States in March 2003. For most Member States the implementation of the Directive was a continuation of past policies.

Exemptions under Article 3.2

Article 3.2 of the Directive provides Member States with the possibility to exempt 'products supplied in the course of the provision of a service' and 'sales by auction and sales of works of art and antiques'. Almost every Member State has used this possibility to exempt one of these categories. A number of countries have used both options (Austria, Denmark, Greece, Spain, Ireland, The Netherlands, Portugal, United Kingdom). Reasons advanced for exempting these products are that a unit price indication would be difficult or nearly impossible; that a unit price indication would not be relevant since these goods are not sold frequently; and that there is no perceived benefit, or practical purpose, in unit pricing these products. No future changes are expected with respect to the use of Article 3.2. The Member States have not shown much interest in exempting additional sectors.

Extension to services

Although this was outside the scope of the Study, some information on the possibility of extending unit pricing to services has been collected. The definition of what would constitute a *unit* of service leads to much confusion and debate amongst stakeholders. In many Member States there has so far been little or no discussion about extension of the legislation on unit pricing to services (Belgium, The Netherlands, Germany, Greece, Spain, Ireland, Italy, United Kingdom, Austria). However, three Member States have already introduced legislation on unit pricing for services or are planning to introduce this kind of legislation (Portugal, Luxembourg, Sweden). A survey from the European Commission shows that European consumers favour competition, but want guarantees on services of general interest. Price is the consumers' main source of dissatisfaction. Consumers want clearer information on tariffs and prices to enable them to compare prices. Whilst it may be unclear, on the basis of current research, to what extent *unit* pricing would provide this price transparency *it is recommended that the question of extending unit pricing to services be kept under review.*

Extent of introduced limitations (Article 4.1)

Article 4.1 states that 'the selling price and the unit price must be unambiguous, easily identifiable and clearly legible'. These display requirements were transposed properly by all Member States. Most Member States enacted even more stringent display provisions in order to

improve consumer information. The Survey indicates that small retailers are positive about the visibility of the unit price; 65% agree that the print of the unit price is generally large enough to be easily read.

Article 4.1 also states that 'Member States may provide that the maximum number of prices to be indicated be limited'. The Belgian, Finnish and Swedish transpositions make no specific mention of the option of limiting the maximum number of prices to be displayed. Only three Member States (France, Italy, Luxembourg) have actually used the possibility of limiting the number of prices specifically during the period when the euro was introduced. Germany, The Netherlands, Portugal, Belgium and Finland applied a voluntary system of dual pricing during the transition period of the introduction of the euro. In Austria, Greece and Spain there was an obligation to indicate the unit price both in the national currency and in euros during the transitional period. This approach could still be relevant in the future when current non-euro countries or new Member States, introduce the euro.

From a consumer perspective it is legitimate to limit the number of prices indicated. The display of too many prices can be misleading and does not contribute to readability. On the other hand however, there should be as much information as possible available to consumers. A number of Member States and consumer organisations are of the opinion that maximum information provides maximum protection.

It can be concluded that a common regulation at European level is not necessary, especially in the case of the size of the price indication. A number of Member States already have applied more stringent applications in their national legislation. The option of limiting the number of maximum prices may still be relevant for Member States that may introduce the euro in the future.

Products for which the obligation is waived (Article 5)

Article 5.1 provides each Member State with the possibility of deciding which products may be exempted (negative list) from the requirements to indicate unit prices. This is normally on the basis that such an indication would not be useful or would be liable to create confusion. Article 5.2 affords Member States the possibility of specifying *non-food* products for which the obligation to indicate the unit price (positive list) remains.

With respect to Article 5 the following approaches were adopted by Member States:

- A first group of Member States has adopted only negative lists for food- and non-food products for which the requirement to indicate

unit price does not apply (Belgium, Denmark, Greece, Spain, Ireland, Italy, The Netherlands, Portugal).

- A second group has adopted negative lists for food products as above, but in addition positive lists for non-food products for which the requirement to indicate the unit price remains applicable (Austria, Luxembourg, United Kingdom).
- One country has adopted negative lists for food products and both negative and positive lists for non-food products (Finland).
- One country has adopted only positive lists for food and non-food products (France).
- Finally, two countries have no lists at all (Germany, Sweden).

Thus, most Member States have adopted negative lists containing product categories for which the obligation to indicate the unit price is waived. The lists used are often a continuation of previously used lists.

The main reason for selecting certain food and non-food products to be exempted is that unit pricing would not be useful or would be liable to create confusion. Other additional motives for exempting products include that unit pricing would be unworkable or impossible for particular products or that products are sold for direct consumption (e.g. individual ice-creams). Products are sometimes exempted because of a specific national peculiarity or tradition.

Member States do not seek any changes with respect to Article 5. The flexibility of the current Directive is highly valued, as it allows individual Member States to exempt products in line with specific national circumstances. A measure applying to all Member States (e.g. by identifying products in more detail in the Directive) is regarded as unnecessary and difficult to apply, because of differences in national characteristics. Such a list would probably be out of date quickly.

Due to specific national characteristics of the retail sector, product ranges and consumers' buying behaviour, no general list of exempted or included products seems to be feasible.,

Assessment of the use of the Article 6 derogation

The Directive provides a derogation (Article 6) that allows Member States to exempt small retail business from the obligation to indicate the unit price. At the moment eight Member States (Austria, Germany,

Greece, France¹, Ireland, Luxembourg, The Netherlands, United Kingdom) use the derogation.

A number of Member States (Belgium, Spain, Italy, Portugal) initially made use of the derogation (when the Directive was introduced), but they abolished it once the transitional period provided for in the Directive was over. Denmark, Finland and Sweden have never made use of the derogation. They believe it leads to more simple and transparent legislation, which is in the interest of consumers.

Most Member States do not foresee any changes in their current policy. Those that currently use the derogation intend to maintain it. In these Member States the exemption is regarded as useful. Almost every Member State that used the derogation in the past, but then abolished it, does not intend to re-introduce the derogation. Only Belgium is considering reintroducing the derogation for sales areas of no more than 150-200 m². Member States that have not used the derogation in the past, have no intention to introduce such a derogation in the future.

The use of the derogation is justified from a business perspective (administrative burdens, investments in time, costs) and/or from a consumer perspective (price and price per unit is not an important sales criteria for consumers that buy items in the exempted shops; rather other factors -e.g. price, appearance, brand, taste, quality, packaging- are important buying criteria; small retail shops only have a limited number of products making price comparison less relevant). Thus, the belief is that for the small retailer it would be a heavy burden to abide by the obligation, while the advantages for the consumer would be minimal. The contrary view may also be put in that consumers in small shops that do not apply unit pricing are disadvantaged.

The derogation for small retailers appears to be fair and especially useful for certain shops or micro-enterprises. This is because imposing a requirement to unit price in those establishments could impose an excessive administrative burden, while not necessarily benefiting consumers. This view is shared by most consumer and retail organisations. Expenditure for additional, administrative and support staff is not something small businesses can afford. These tasks inevitably fall upon the owner/manager to undertake when not servicing customer demand, thereby extending the hours worked. Nonetheless, some consumer organisations oppose the relatively long period of exemption for small retail business and are not in favour of a permanent exemption.

¹ France makes no formal use of the derogation; an administrative tolerance is in place, which allows small retail business to be exempted from the obligation to indicate the unit price.

Definition of small retail business

Member States that make use, or made use, of the derogation in the past have applied various definitions for small retail business. In seven Member States (Austria, Belgium, Greece, France, Italy, Luxembourg, United Kingdom) small retail business is defined on the basis of the sales area; in two Member States (Austria, The Netherlands) a definition based on the level of employment applies. In Ireland access to technology is the qualifying criterion, which means that (small) retailers are only exempt when they do not have the appropriate equipment for printing shelf edge labels or scanning products. Furthermore, some specific forms of trade are exempted in Ireland.

The existing flexibility of the Directive allowing individual Member States to apply their own definitions of small retail business is highly valued by most stakeholders. In view of the specific national characteristics of retail trade a common European definition of *small* retailers seems to be impractical. A uniform definition might be advantageous for retailers and consumers that operate across national borders or that are located in border regions. It is argued by some consumer organisations that the current lack of a common definition of a *small* retail business might lead to a situation in which the concept of *small* is expanded to encompass enterprises that do have the capacities to indicate the unit price. All stakeholders agree that only the very small or 'micro' retail businesses for which unit pricing would indeed pose an excessive burden should be exempted.

However, what the precise definition of *small* should be remains unclear. It is not evident what would be a good qualifying criterion for a uniform definition. A definition based on sales area (used by the majority of countries) has the advantage of being based on a fixed criterion as compared to a definition based on the number of employees, which is a more variable factor. A definition based on the number of people employed has the advantage of being used as a criterion to distinguish enterprises according to size class in other information sources (e.g. databases, statistical information). The scope and extent of retailers covered by the derogation should be taken into account to guarantee sufficient consumer protection.

A common definition of small retailer is not absolutely necessary. However, it should be ensured that only the smaller retail businesses for which unit pricing poses a real burden are exempted.

Compliance with the Directive

Some stakeholders (consumer and retail organisations) reported that active monitoring of (unit) price indications in small shops does not always occur. The (unit) price indication is also not always displayed correctly. A

number of studies were conducted (in Belgium and Spain) into the compliance of retailers and the correctness of price indication. These revealed a high number of incorrect unit price indications, especially for non-food products. Our Survey reveals, however, that there is in general good compliance with the obligations of the Directive. It appears that most enterprises that are obliged by law to indicate the unit price actually do indicate the unit price.

Impact on small retailers

The three main motives for exempting small retailers are:

- The pricing methods used by small retailers make unit pricing very cumbersome.
- Technological developments however, could make unit pricing easier for small retailers.
- Due to their size and the pricing methods used, unit pricing would constitute an excessive administrative burden on small retailers.

The use of pricing methods varies greatly amongst shops, sectors and Member States. Despite technological developments in the retail sector, the classic distinction between pricing methods applied by (very) small retailers and larger retailers remains.

Smaller retailers use price guns or handwritten labels, compared to computerised systems used by larger retailers. Small retailers label prices on individual items, whereas large retailers indicate the selling and the unit price on the shelf. The unit price of products is normally indicated on the shelf.

In general, small retailers calculate the prices on the basis of the 'cost carrying capacity' of the product, i.e. an estimation of what the consumer would be willing to pay. Small retailers have hardly any possibility of influencing the pricing of standard articles which are also offered by large retailers (who generally are able to calculate a smaller mark-up). It was found that in most cases small retailers calculate the (unit) selling price themselves.

The Survey showed that about half (47%) of European small retailers use special software to control purchases, assortment and stocks. The costs of the new pricing systems available are and will remain prohibitively expensive for small retailers.

Although for most Member States it was reported that the introduction of unit pricing led to additional labelling and an additional investment in software (e.g. Austria, Denmark, The Netherlands, Luxembourg, Sweden), almost no specific information or research on the extent of this burden is available.

The initial investment costs vary depending on the technology used, the sales frequency of the retail business, the type/form of the retailer, the types of products measured, the bargaining power etc. No specific information on the initial additional investment costs to indicate the *unit price* has been found.

Nonetheless, in the Survey unit pricing is regarded as an additional burden by a minority of the retailers (in terms of additional time, additional personnel costs and additional investments). Since unit pricing forms part of a larger pricing effort, it is impossible to isolate the additional costs associated with unit pricing. Although the burden on micro retailers (1-2 employees) is larger than on small retailers (6-20 employees) it cannot be determined on the available data whether the burden is excessive.

Unit pricing is found to be a logical part of the pricing process by three-quarters of the small retailers. A lower number (61%) finds unit pricing important for their business. On average 38% of European small retailers indicated that small business should not be obliged to indicate the unit price. In Germany (61%), Austria (62%) and United Kingdom (65%) especially an exemption for small retailers is favoured. Although no differences between size classes were found, slightly more retailers that do not indicate the unit price favoured the exemption.

Although there is only limited information available, unit pricing poses an additional burden on the smallest retailers. This is mainly a result of the pricing methods used by these retailers. It seems that the 'excessive administrative burden' concern has been addressed effectively by the derogation in Article 6 of the Directive.

Impact on consumers

The Flash Eurobarometer 113 (2001) showed that 68% of European consumers indicate an interest in the display of the unit price. However, different groups in society demonstrate different levels of awareness and use. The use and helpfulness of unit pricing depends upon the product in question. Consumer awareness of unit pricing differs among various groups of consumers based on sex, age, education, profession and locality type. Women seem to be more interested in the unit price than men and the use of the unit price is thought to rise when the level of education increases. For other consumer characteristics it is not clear what the exact relationship with the use of the unit price is.

There is an acknowledgement that unit pricing may be of use to consumers when switching brands but overall, consumers making familiar choices do not use unit pricing. Four main reasons for not using unit pricing have been identified:

- 1 Consumers lack the cognitive ability to make use of unit pricing.
- 2 The effort required to make comparisons is not considered worthwhile.
- 3 Consumers are not willing to spend time comparing unit pricing.
- 4 Other less-demanding strategies for determining best-value are used.

The consultations with national consumer and retail organisations and the results of the Survey suggest that there is considerable consumer awareness and use of the unit price. This is acknowledged by retail businesses. According to the Survey 59% of small retailers strongly agree that consumers use unit prices in their buying choices and behaviour. Only a minority (35%) were of the opinion that consumers do not bother to look at the unit price. Furthermore, the importance of unit pricing for consumers is widely acknowledged among small retailers. Almost three quarters (72%) of small retailers strongly agree that the unit price enables consumers to make clear price comparisons and 64% strongly agree that the unit price provides consumers with essential knowledge for making a good buying decision. Possible negative side effects of unit pricing (its indication creates confusion for consumers and results in an information overload) was accepted by a minority of small retailers (respectively 34% identifies the creation of confusion and 38% perceives an information overload).

The results of the Survey show that opinions are divided over the question of whether the unit price is of special importance to persons that are restricted in some way (such as older people or people with disabilities). About half (51%) of small retailers acknowledge a special importance of the unit price for these groups, whereas 43% do not agree with this. About two fifths of the retailers are of the opinion that the unit price is too difficult to use for older people. A larger proportion of the small retailers (almost half of them) does not agree with this.

It can be concluded that both consumers and retail businesses recognise the usefulness of unit pricing for consumers.

To Harmonise or not?

As long as no market distortions are created, no discrimination on nationality follows from the use of different national measures of transposition in each Member State. Furthermore, the objective of the Directive seems to have been achieved (protecting consumers' rights). In view of the limited amount of cross-border shopping (especially for daily groceries) and the fact that those retailers that operate across borders are generally too large to be exempted in any case, no distortion of the internal market is perceived. In view of these considerations, no further harmonization on a European level seems to be warranted.

Open Dialogue

In most Member States, the transposition of the Directive into national legislation has taken place following an open dialogue (or consultation) of the various stakeholders (consumer and retail representatives with public policy makers). Their participation in the decision making process of formulating the derogation and other exemptions ensures that the policy is supported by the various stakeholders. This facilitates the implementation process. It should also be noted that the implementation of the Directive in most Member States has only occurred very recently. Changing the Directive would not be opportune at this time. No national evaluation studies of the Directive have been conducted because it is felt that the experience in practice with the new Directive is still too limited.

1 Introduction

1.1 Background

The European Commission Consumer Policy Strategy 2002-2006, OJ no 137, 8.6. 2002 p.2, establishes three mid-term policy objectives. These are 'a high common level of consumer protection across the EU', 'effective enforcement of consumer protection rules' and 'involvement of consumer organisations in EU policies'.

The Rolling Programme of the Strategy includes an indicative list of actions to be taken. Under the first objective, i.e. 'effective enforcement of consumer protection rules', a report on the application of Directive 98/6/EC 'the Directive', OJ No 80, 18.3.1998, p.27 on consumer protection by the indication of unit prices of products offered to consumers, is required.

The Directive prescribes how prices and specifically unit prices should be displayed in shops and in advertising media. The unit price is the price for a standard unit of measurement, usually litre or kilogram. The unit price allows consumers to compare prices of similar products that are sold in different sizes and packages. The result for consumers is precise and transparent information on retail prices. In this way consumers are able to judge real 'value for money' when they choose between two or more products. The Directive has to be implemented for food and non-food products.

The Directive provides for a derogation (Article 6) that gives the Member States the possibility to exempt small retail businesses from the obligation to implement unit pricing. This is based on a belief that unit pricing might be an excessive burden for these retailers, because of the number of products on sale, the sales area or the nature of the place of sale. The definition of 'certain small retail businesses' has to be decided by each Member State separately. This has resulted in differences in legislation amongst Member States in the implementation from the derogation from Article 6.

In the Directive, an appraisal of the application of the Directive by the Member States is foreseen in Article 12. This Study forms part of the appraisal foreseen in the Directive.

Article 12

'The Commission shall, not later than three years after the date referred to in Article 11(1), submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular on the application of Article 6, accompanied by a proposal.

The European Parliament and the Council shall, on this basis, re-examine the provisions of Article 6 and shall act, in accordance with the Treaty, within three years of the presentation by the Commission of the proposal referred to in the first paragraph.'

1.2 Purpose of the Appraisal

The purpose of the Appraisal, which is the subject matter of this Study, is to support the Commission's work regarding the Directive in general and more particularly in the context of Article 12. It is confined to the situation in the (pre 1 May 2004) fifteen Member States. 'Member States' in this Study means EU15.

On 1 May 2004, 10 new Member States joined the European Union. Coverage of these countries was outside the terms of reference for this Study. Nevertheless, some brief information on the situation pertaining to the Directive on pricing policy and the general situation of the retail sector in these countries has been collected. However, since the available information was very limited, the situation in the new Member States is addressed in a separate annex (see annex IV).

This appraisal involves assessing:

- 1 The application of the Directive in the Member States (*legal implementation*).
- 2 The use of the derogation for small retailers (Article 6) by the Member States (*use of derogation*).
- 3 The impact of the use of the derogation for consumers and for business in general and small retail business in particular (*impact*).
- 4 And drawing conclusions regarding the use of the Directive and to express opinions on possible amendments for the Directive (*future policy*), in particular with regard to Article 6.

The main emphasis in collecting the information has not been on the factual description of the situation, but on the motives, impact and reasoning behind the various choices made by Member States (especially with regard to the motives for the (non)-use of the derogation in Article 6). Nonetheless, a factual overview of the current situation in the Member States has been included in this Study as well.

A number of more specific research questions have been generated to meet the Appraisal aims.

The legal implementation

The first part of the appraisal contains detailed information on:

- How the Directive has been transposed into national legislation?
- To which extent do Member States make use of (or do not make use of) the exemptions provided for in Article 3 (2)?
- To which extent have Member States introduced limitations on the maximum number of prices indicated (Article 4 (1)), particularly in relation to the introduction of the euro?

The use of the derogation in Article 6 of the Directive

The second part of the appraisal provides details on how countries have dealt with the derogations mentioned in Article 6 and the effects of their policies regarding Article 6.

- Have Member States made use of the derogation in Article 6 and if so, in which way?
- Do Member States, which made use of the derogation, plan to maintain the derogation? If they intend to maintain the derogation: What are the reasons for this? In what way will the derogation remain in place (envisaged scope) and for what period?
- Do Member States, which made use of the derogation, plan to end the derogation? If they intend to end the derogation what are the reasons for this, to what extent will the derogation be ended (envisaged scope), and when will these plans become active?

The impact of the Directive

The third part of the appraisal assesses the consequences of the implementation, in particular the use of the Article 6 derogation, for consumer behaviour and for (small) retail business.

- What is the impact of the options chosen on business in general and in particular on small retail businesses (e.g. making offers cross border and compliance cost)?
- Which are the possible developments (economic, technological or other) that make it easier for small retail business to comply with the obligations of the Directive?
- Which are the consequences of the options exercised for consumers, particularly elderly and/or disabled persons who might be restricted in shop choice?

1.3 Methodology and scope

In addition to centrally available (statistical) sources, for each individual Member State data was gathered by national experts¹ through desk re-

¹ See annex for a complete overview of the partners.

search and expert interviews with over 50 relevant national stakeholders (government, consumer and retail organisations). In order to assure a common research approach in all countries, a general guideline for the collection of data and description of the impact of the Directive was developed by EIM. In addition to the national information, a Survey amongst 750 European small retailers (<20 employees) was conducted.¹

Use has also been made of a survey amongst national governments conducted by DG Health and Consumer Affairs. The Commission sent questionnaires to the Member States in July 2002 to enquire about the intention of the Member States to maintain the derogation in favour of small retail business. The questionnaire also asked the Member States to evaluate the Directive and provide suggestions for a future proposal.

The analysis and findings of the national information and survey data have been verified through a number of expert interviews with relevant European consumer and retail umbrella organisations. Throughout the Study attention is paid to the consumer and the retail perspective. In relation to the topic of unit pricing the retail sector is more organised and focused than consumer organisations. Retail organisations represent the interest of a clearly defined group of enterprises. In contrast, consumer organisations represent the general interest of consumers and therefore set priorities amongst the topics they can address. This has resulted in a lower information level from (national) consumer organisations. However, in the Study the strength of argument has been the decisive factor, rather than the number of times an argument was voiced.

Scope of the research

The Study focuses on the implementation and impact of the Directive on pricing policy. Although the Directive covers food and non-food products in general, the sector most affected by the Directive is the retail sector (Nace² 52.1, 52.2, 52.3). For the retail sector a number of other Directives are relevant:

- Directive on standard package size (relating to the making-up by volume of certain pre-packaged liquids³ and relating to the ranges of

¹ For a more detailed description of the Survey, see annex II.

² Nace is the statistical classification of economic activities in the European Community.

³ Council Directive 75/106/EEC of 19 December 1974, Official Journal L 042, 15/02/1975.

nominal quantities and nominal capacities permitted for certain pre-packaged products¹).

- Directive on food labelling (relating to the labelling, presentation and advertising of foodstuffs)².
- Directive on food safety (laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety)³.

Since these Directives fall outside the scope of the current Study, they will only be touched upon marginally. In some cases, consultation processes on the above-mentioned Directives were started in 2003. Existing EU pre-packaging legislation on standard sizes is currently being reviewed. A new proposal may be adopted by the Commission in 2004. Furthermore, a proposal for a Directive on Services in the Internal Market⁴ is being prepared and a consultation process with stakeholders has started. A link can be made with the provision in Article 3.2. of the Directive on pricing policy and the Directive on Services. This article gives Member States the opportunity to exempt unit price indication for products sold in the course of delivery of a service. Although the analysis in no way seeks to cover the Directive on Services as a whole, relevant information obtained in the research will be presented.

1.4 Report outline

Chapter 2 contains general background information concerning the retail sector. This information will be used to characterise some national differences in the retail sector that might be relevant for the assessment of the Directive. Subsequently, in chapter 3, the transposition of the Directive in general, and of Articles 3, 4 and 5 in particular, will be reviewed. Chapter 4 is devoted to the use of the derogation for small retailers (Article 6). Particular attention will be paid to the motives for the

¹ Council Directive 80/232/EEC of 15 January 1980, Official Journal L 51, 25/2/1980. Amended by: Council Directive 86/96/EEC of 18 March 1986, Official Journal L 80 55 25.3.1986; Council Directive 87/356/EEC of 25 June 1987, Official Journal L 192 48 11.7.1987.

² Council Directive 2000/13/EC Of The European Parliament And Of The Council of 20 March 2000, Official Journal L 109, 06/05/2000 and COMMISSION DIRECTIVE 2001/101/EC, of 26 November 2001, Official Journal L 310, 28/11/2001.

³ Regulation (EC) No 178/2002 Of The European Parliament And Of The Council of 28 January 2002, Official Journal L 031, 01/02/2002.

⁴ COM/2004/2/FINAL; OJ C/2004/98/35.

use or non-use of the derogation, definitions applied and general compliance.

The motives provided by the Member States in chapter 3 and 4 will be assessed more in detail in chapters 5 and 6. The impact on small retailers is the subject of chapter 5, whereas the impact on consumers is the centrepiece of chapter 6. Finally, chapter 7 provides a synthesis and analysis of the findings on the Directive, as well as a number of concluding remarks.

2 The retail sector in Europe

2.1 Introduction

Although the Directive is not specifically targeted at particular business sectors, the retail trade (Nace code 52) will be mainly affected by it. Therefore it is important to have a better understanding of the general structure and trends in this sector. Consumer characteristics influence buying behaviour and will influence the general use and understanding of unit pricing.

First the retail structure in the 15 EU Member States are described. The size class structure, turnover, employment and consumer expenditure are reviewed. Second, the major consumer trends are discussed. Finally, country specific developments in the retail trade and consumer behaviour are reviewed.

2.2 Some figures on retail trade

Table 1 gives the **number of enterprises** in retail trade by country and size class¹. In all Member States, the majority of enterprises active in retail have less than 10 employees (micro firms). This indicates that the sector is dominated numerically by (very) small enterprises. On average of the 3,0 million enterprises in the retail trade in Europe in 2000, 96% have less than 10 employees.

There are large differences in the level of concentration (percentage of small retailers) in the Member States. A North-South divide can be discerned. The retail sector in the North of Europe is much more concentrated than in the Southern European countries.

¹ Micro enterprises have 0-9 employees; small 10-49; medium-sized 50-249; and large enterprises 250+ employees.

table 1 Number of enterprises by size class, retail trade (NACE 52), 2000 (x 1,000)

	<i>Micro</i>	<i>Small</i>	<i>Medium-sized</i>	<i>SME</i>	<i>Large</i>	<i>Total</i>
AT	34.7	2.9	0.2	37.9	0.1	38.0
BE	75.6	1.0	0.2	76.8	0.1	76.9
DK	22.3	3.0	0.3	25.6	0.1	25.6
FI	23.4	1.4	0.1	24.9	0.0	25.0
FR	377.0	13.7	1.6	392.3	0.3	392.6
DE	281.8	29.8	2.1	313.7	0.6	314.3
EL	328.1	0.9	0.1	329.1	0.0	329.2
IE	13.6	1.7	0.1	15.4	0.0	15.5
IT	740.5	9.6	0.7	750.8	0.2	751.0
LU	1.5	0.1	0.0	1.7	0.0	1.7
NL	85.1	4.1	0.4	89.6	0.2	89.8
PT	187.7	3.2	0.2	191.1	0.0	191.2
ES	529.9	10.1	0.8	540.8	0.1	541.0
SE	57.1	2.7	0.2	60.0	0.1	60.1
UK	213.5	19.9	1.3	234.7	0.6	235.3
EU (15)	2,972.0	104.1	8.4	3,084.5	2.4	3,086.9

Source: SME Database, Observatory for European SMEs.

Although the retail sector is dominated numerically by small enterprises, a large proportion of the **turnover** is generated by the larger enterprises (see table 2). Retail enterprises with more than 250 employees generate 39% of turnover, whereas the corresponding figure for enterprises with less than 10 employees is 41%.

table 2 Turnover by size class, retail trade, 2000 (million Euro)

	<i>Micro</i>	<i>Small</i>	<i>Medium-sized</i>	<i>SME</i>	<i>Large</i>	<i>Total</i>
AT	15,985	6,667	6,410	29,061	21,680	50,742
BE	28,994	9,189	2,849	41,033	16,606	57,639
DK	12,958	6,697	5,283	24,938	9,781	34,720
FI	11,142	5,494	2,283	18,919	9,994	28,913
FR	137,622	54,817	37,046	229,486	124,701	354,187
DE	119,824	53,290	24,702	197,817	169,222	367,039
EL	64,161	3,434	2,568	70,163	11,196	81,359
IE	3,068	3,143	2,019	8,230	1,097	9,327
IT	142,330	32,563	16,762	191,655	44,336	235,991
LU	634	588	166	1,388	345	1,733
NL	34,612	11,340	5,799	51,751	28,429	80,180
PT	19,656	4,886	1,690	26,233	6,482	32,715
ES	89,242	20,108	8,626	117,975	43,500	161,475
SE	22,092	9,997	5,072	37,161	17,307	54,468
UK	92,200	29,730	14,918	136,848	249,852	386,699
EU (15)	794,520	251,943	136,194	1,182,657	754,529	1,937,186

Source: SME Database, Observatory for European SMEs.

Table 3 gives an indication of the **employment** created by these enterprises. The smallest retail businesses (0-9) provide 49% of the employment in the sector, whereas enterprises with more than 250 employees contribute 32% of employment in the sector.

table 3 Employment by size class, retail trade, 2000 (x 1,000)

	<i>Micro</i>	<i>Small</i>	<i>Medium-sized</i>	<i>SME</i>	<i>Large</i>	<i>Total</i>
AT	135.8	49.5	24.5	209.8	110.6	320.3
BE	192.7	50.4	15.0	258.1	73.6	331.7
DK	103.3	53.7	23.8	180.7	77.9	258.7
FI	61.3	25.5	11.0	97.8	46.8	144.6
FR	914.8	280.0	156.8	1,351.6	529.3	1,880.9
DE	1,250.2	505.7	199.3	1,955.2	1,105.2	3,060.4
EL	392.7	15.5	9.1	417.3	60.4	477.7
IE	46.1	27.4	13.9	87.4	12.8	100.3
IT	1,374.7	162.6	70.5	1,607.8	192.1	1,799.9
LU	4.3	3.0	1.4	8.6	1.0	9.7
NL	352.7	136.4	59.3	548.4	307.4	855.8
PT	293.2	54.2	17.7	365.1	33.4	398.5
ES	1,137.2	196.0	75.1	1,408.2	295.6	1,703.8
SE	146.1	48.3	21.9	216.2	76.8	293.0
UK	985.4	315.2	133.5	1,434.0	1,931.0	3,365.0
EU (15)	7,390.4	1,923.4	832.6	1,0146.3	4,854.0	15,000.3

Source: SME Database, Observatory for European SMEs.

Concentration on the supply side

An increase in shop scale (e.g. through the establishment of hypermarkets) has taken place - in particular in food retail - in all European countries). This trend has led to a decline in the number of small retailers as well as a decline in their market share. This trend is likely to continue in most countries, but the situation may have already stabilised in countries such as Finland, Sweden and the UK.

Despite this development to large-scale shops, Europe in general still has a very large number of small-scale retail outlets.

GDP and Consumer expenditure

Gross Domestic Product (GDP) per capita gives an indication of the welfare of a country. As table 4 shows, the Gross Domestic Product (GDP) per capita varies greatly among the various EU-countries. Greece has the lowest level of GDP per capita, followed by Portugal and Spain. Luxembourg, by far, has the highest level of GDP of all EU-countries. Other countries with relatively high levels of GDP are Denmark, Ireland, Austria, the Netherlands and Sweden. The North-South division between retailer size class structures is repeated in the consumer expenditure levels between countries.

table 4 GDP, Total Population, 2000

	<i>GDP per capita in pps Index: EU = 100</i>	<i>Total population</i>	<i>Consumer expenditure, 2001¹, € bn</i>	<i>Consumer expenditure per capita, 2001, € '000</i>
AT	114.4	8,089,187	117.7	14.5
BE	106.4	10,223,128	138.0	13.4
DK	115.5	5,332,247	84.5	15.8
FI	102.0	5,172,569	67.6	13.0
FR	103.8	59,198,595	796.0	13.4
DE	102.0	82,138,397	1,178.0	14.3
EL	66.0	10,542,404	90.0	8.5
IE	115.1	3,775,974	55.7	14.5
IT	101.3	57,588,170	720.0	12.4
LU	198.7	434,254	8.4	19.0
NL	110.7	15,859,184	265.7	16.6
PT	70.4	10,002,463	73.0	7.0
ES	83.4	39,432,336	383.0	9.5
SE	109.1	8,861,628	116.7	13.1
UK	103.9	59,520,998	1,075.1	18.0
EU-15	100	376,171,534		

Source: Eurostat, Yearbook 2003, statistics website.

In summary, small retailers are large in number (96% have less than 10 employees), have a lower share of employment (49%) and an even lower share of turnover (41%) in Europe. Large retailers (>250 employees) account for 40% of the total turnover of the retail trade sector, 32% of the jobs but only 0,1% of the number of enterprises in Europe-15.

2.3 Consumer trends²

Increasing time pressures have affected the way shopping takes place. Paid labour force participation of women has increased. Many double-

¹ Source: Mintel Retail Intelligence, 2002.

² The information on consumer trends is based on: Snijders, J.A.H. and T.J. van der Velden, Food Retailing in the Netherlands - Large-scale supermarkets are coming up! in: The European Retail Digest, Oxford Institute of Retail Management, June 2002, Oxford, combined with information collected by the national experts.

income families spend much time working and commuting. Time left has to be used as efficiently as possible. Many consumers prefer to carry out their main weekly shopping in one trip, and for many of them this is not one of their favourite activities. They therefore prefer large supermarkets, which are within easy reach, with large parking facilities. In addition, time spent at these markets should be minimised. Large supermarkets provide not only food products, but also financial services and a variety of non- food products (e.g., books, CDs, towels, computers and bicycles). In addition, these shops have additional facilities such as broader checkout lanes, a crèche, lavatories, a dry cleaner and a post office.

Electronic shopping could in the future be a way to order weekly groceries. However, electronic shopping is still at an early stage. On the one hand, the number of consumers using this medium is still very limited. On the other hand, this facility is not yet available throughout all regions of the EU . The main problems for providers are the high cost of collecting the orders and scheduling of home delivery of the products. For the time being, most European consumers do not see electronic shopping as a purchasing channel that will replace supermarkets.

Due to, amongst other things, this restriction in time available, the increase in double-income families and a general increase in income, supermarkets are competing more and more with the restaurant and catering sector. Supermarkets adapt to these changes by extending opening hours and by changing their product range: more fresh meals e.g. pizzas, ready to eat and frozen meals. An additional advantage is that the margins on these products are relatively high.

However, there are also developments in consumers' behaviour taking place. Consumers want to purchase products and services at the place where they are at a certain moment. An increasing number of facilities, for example, at hospitals, railway stations and football stadiums respond to these preferences of consumers. Small retail shops at petrol stations and railway stations and many convenience shops meet these needs. These small-scale outlets profit from the large number of passers by at their location. They have two functions: first, doing the shopping which has been forgotten and secondly, buying 'ready-to-eat' products. At the moment, the first function seems to be more important for the consumer than the second one. These general trends in consumer behaviour differ amongst countries and groups of consumers.

In terms of consumer characteristics, age plays a role. One may assume that older people prefer to deal with the (very) small retailers near their house. Younger people prefer large retailers since they offer a wider range of products and it is possible to buy products needed during (almost) the whole week.

Two trends are visible with respect to ageing:

- People live longer. Life expectancy has risen since 1970 by 5.5 years for women and almost 5 years for men and continues to rise. In 2000, average life expectancy for women born in that year was 81.1 and for men 74.7. Eurostat has estimated that in 2050 it will be 85.1 for women and 79.7 for men.
- There are more elderly people (older than 65) as a share of the total population in Europe and this is set to increase. In 2000 16.1% of the total European population was aged over 65 and by 2025 this will be 22% and 2050 27.5%. The share of people over 80 years is expected to rise to 6% by 2025 and 10% by 2050 (as compared to 3.6% in 2000).

These trends do not affect different countries of the EU in the same way. The total population of the majority of the EU countries will stagnate or decline before 2015¹. By 2015 the 0-24 age group will have declined to an average of 27%. In some regions in Germany, Italy, Spain and France this age group of young people will probably be below 25%. There will be a significant increase of the share of people aged 65%; but this increase will also be distributed unevenly among European regions. The group of people aged over 80, the very old, will see the largest increase. In some regions in France, Italy and Spain the share of very old people will be between 7% and 9% by 2015.

In Denmark, northern France, Ireland and the Netherlands regions can be found with a low percentage of elderly people. In the southwest of France, northern Italy, northern Spain and Sweden high percentages of elderly people can be found.

These developments in consumer characteristics are of importance to the retail sector since different buying preferences exist amongst groups of consumers.

2.4 Developments by Member State

Differences in consumer behaviour will be reflected in trends in the retail sector in the various Member States. Below a general description of the most important national trends per country is provided. The information is based on the interviews with national stakeholders (consumer organisations, retail experts and government officials) conducted by the national experts and information from Euromonitor².

¹ European Commission, DG Employment (1999), *Towards a society for all ages*.

² www.euromonitor.com.

The **Austrian** retail sector is characterised by structural change and a continuing concentration process resulting in a decreasing number of enterprises (and small retailers in particular) and a growing importance of large companies with a large number of chain stores. Chain stores are increasingly owned by foreign (often German) investors and benefit from being able to offer both a comprehensive range of goods, often at lower prices. Price competition in the retail sector is extremely aggressive and retailer concentration in many retail subsectors is increasing. This latter trend is escalating as the giant retailer groups attempt to expand and win market share through the acquisition of small and medium-sized retailers. Austria is gradually turning into a modern, consumer-orientated, market-driven retail environment with consumers favouring large retail outlets and specialist chain stores. The highly protected and regulated retail environment that supported a large number of small shops and boutiques is slowly changing. This is proving to be a painful process for many small independent retailers.

Franchise systems are - with the exception of fashion stores selling clothes and shoes - not very widespread in Austria. Small retailers often form cooperatives in order to improve their purchasing conditions and/or market appearance.

The relationships between wholesaler and retailer depend strongly on the retailers' size. Large retailers have a higher negotiation power than small ones, often resulting in more favourable trading conditions. Furthermore, some of the large retail companies are also active in the field of wholesaling. Small retailers take advantage of cooperatives to benefit from better conditions.

Small retailers will remain in the field of specialist shops and/or niche sellers offering specific types of products, which are not financially rewarding for larger enterprises. This is particularly true for retailers in the field of food and perfumery, whereas other retailing industries will continue to be characterised by micro and small companies (e.g. tobacconists).

Austrian customers can be described as 'hybrid' in terms of 'buying everywhere' and not sticking to a particular company or outlet. However, younger customers prefer self-service shops, which are mainly provided by larger companies. Chain stores which are particularly used by younger persons often have longer opening hours than small retailers. It might be assumed that larger companies have a higher share of younger clients than small retailers.

There are a number of large retail groups in the **Belgian** market, and many international chains are present. However, independents in both food and non-food retail are also prevalent. There has been little change in the number of businesses and outlets in Belgium, as it is a mature market. There is some change in ownership, with small independents changing owners and possibly formats, but using the same shop space, as well as changes in ownership with takeovers among the large retail

groups. There is little change in the total size of sales area. Employment has been growing slowly in retail, however.

Slow growth has been experienced in the sector in accordance with slow economic conditions. Growth did continue, showing the strength of the retail sector despite the poor economic conditions, and given the non-essential nature of some retail expenditure. The greatest share of retail sales is taken by supermarkets and hypermarkets. Belgians often tend to shop with partners or as families on Saturdays. Some shopping is undertaken in work breaks during the week or by housewives. High Street formats continue to dominate the Belgian market but shopping complexes are becoming more popular and out of town clusters of stores are also becoming more prevalent. There are many large supermarkets as well as small convenience stores, and local corner stores and specialist stores such as bakeries and butchers are highly popular.

The non-food retailing sector in **Denmark** is still highly fragmented although shopping malls are getting bigger and more common. Niche type of stores, like Internet trade and wholesalers selling directly to consumers, are increasing.

Two big players dominate the household commodity sector in Denmark as they share 66% of the market. Both companies have a collection of different store types ranging from small discount shops to mega-markets. After the two giants the next two enterprises only control less than 4% of the market. The rest of the market, about 27 percent, is shared by a lot of smaller independent companies. Within the last five years, these small companies have been squeezed by the competition and have lost six percent market share. There is a trend, among the independent retailers, of increasing in sizes and numbers. They are joining forces in wholesale societies but are still independently owned.

The **German** retail landscape has changed dramatically since the early 1960s, when the first supermarkets opened. Since then, entire sectors of retailing have disappeared from inner city areas. At the end of the 1970s, over 75% of retail outlets in cities were small independent specialist retailers. Currently this figure stands at less than 25%. Traditional outlet formats have been replaced by new forms of retailing, such as supermarkets, hypermarkets and discounters, and, particularly in the non-food sector, by specialist stores. The future for German small-sized businesses is not easy and a constant decline has to be expected, but many independent retailers are associated with voluntary chains or buying groups and thus have a chance to maintain their market position. Shopping complexes in both out-of-town locations and inner cities have grown in popularity since German unification. To make inner city areas more attractive to consumers and to retain purchasing power in the cities, city planners are focusing on shopping centres as the best solution. Germany has a well-developed and well-established retail sector, which shows a high degree of saturation. German consumers have a prefer-

ence for larger retail outlet formats, with a broader product assortment. This can be seen in the expansion of hypermarkets, specialist retail chains and shopping complexes that contain around 200 outlets. The expansion of specialist retail chains and their low price strategies, the difficult macroeconomic environment, and changing consumer consumption habits and lifestyles have changed the face of retailing in Germany.

Retail sales have also been affected by changes in the demographic structure and in the consumption habits of the population. The population is ageing, and the child and youth populations are shrinking. People are living longer and possess high disposable incomes. Single households are increasing in number due to rising divorce rates, and many couples are deciding to remain childless or have only one child. The population is also highly mobile and sophisticated, and both health and environmentally conscious.

With a gradually improving economy and a shifting market structure, the business landscape of **Greece** is being transformed. One of its basic characteristics is the multitude of small- and mid-size companies, most of which are individually owned enterprises.

With the emergence of new international chains and mergers of existing companies, the Greek retail sector (especially food, clothing and household equipment sectors) is changing rapidly. Small retail outlets and traditional markets have to compete with the lower prices and varied services and products that the new retailing chains can provide. Supermarkets and smaller chain stores are replacing more traditional small stores in many areas, especially in the big cities. Discount chains are also reshaping the market. There is a shift from independent, anonymous small outlets, to brand-named franchises. Small retail outlets are reducing in favour of larger retail stores.

Greek lifestyles and mentalities as well as consumer behaviours continue to be based on the traditional shopping habit that includes personal contact with the product or the seller, without significantly being concerned with time saving.

The typical retail marketplace in Greek towns is concentrated in a few neighbourhood streets. In larger cities like Athens and Thessalonica, most of the suburbs have local shopping areas that include food and non-food retail outlets and chains. In addition, open-air markets operate once a week in most neighbourhoods.

The fastest growing outlet types have been discounters and hypermarkets. Within these two retail channels there has been significant penetration by multinationals.

The total number of retail businesses in **Finland** has declined over the 1996-2001 period, as a result of ongoing concentration in the retail trade. Multiple chains increased their presence in retailing and consequently, independent outlets declined. This trend was most apparent in

food retailing, although it was also evident in clothing and DIY (Do It Yourself).

Online sales are growing year on year. The most common products purchased via the Internet tend to be non-food, such as music, books, computer software and equipment and clothing.

Between 1996 and 2001, the share of total sales through supermarkets and hypermarkets of non-food products increased. This development is likely to continue as non-food products contribute to higher sales and often have higher margins than food products. Personal care, household cleaning products and pet food were the most common non-food products.

Within food retailing, hypermarkets and supermarkets saw the most significant sales rises between 1996 and 2001. Growth was underpinned by more hypermarkets being opened and by general trends towards one-stop shopping. There is thus a general trend towards larger stores.

It is expected that the split between food and non-food will see a continuing move in favour of non-food. Out-of-town developments (of very large retail stores) are not expected to grow at the same pace as they did over the 1996-2001 period, owing to regulations restricting outlet size and location.

In **France** the retail trade sector is characterised by the increasing importance of supermarkets and hypermarkets and the decline of small retail trade. Supermarkets and hypermarkets accounted for 44% of the total turnover of the retail trade sector (excluding automobile trade and repair), 26% of the jobs and 1,6% of the number of enterprises in 2002. The French retail market is broadly divided into two different types of outlets, large stores retailing food products or specialist non-food goods, often located on the outskirts of towns and cities and smaller, traditional inner-city outlets. The former is dominated by major supermarket and hypermarket chains, as well as large specialist chains retailing a variety of goods from clothing to home improvement via leisure and culture goods.

Legislation limiting the opening of new large area stores (the Raffarin law) and pricing below cost (the Galland law), has slowed the development of retail chains. Despite this, smaller retailers continue to be displaced, unable to compete with their larger competitors on price and convenience.

Whereas specialised food trade and craft seems to have stopped the decline, small supermarkets ('superettes') and groceries have suffered very much from the competition of large retail shops. The number of groceries has reduced six-fold during the last 30 years.

Another feature is the geographical concentration of retail shops in France. 25 % of shops are located in only 45 municipalities (8% for Paris alone), whereas one municipality out of two has no shop at all.

Optimistic consumer expenditure has supported the French economy in recent years when the industrial sector has been struggling. As a result, retail sales have continued to grow healthily. However, the current global economic slowdown has begun to take its toll on consumer confidence, causing growth in both consumer expenditure and retail sales to slow significantly in 2002 and 2003.

A survey conducted in 1999 showed that 90% of French households go to a supermarket or a hypermarket to do their shopping once a week. Although 30% of households continue to buy in (open air) markets and 65% to buy their bread at a craft baker, 75% of food sales are made in supermarkets and hypermarkets.

The **Irish** retail market is relatively small. The market is very fragmented; indeed, the defining trait of the Irish retail infrastructure is the low levels of market consolidation. Although many foreign companies are particularly active in the grocery market, there is a significant presence throughout the retail sector of domestic independent retailers served by a large network of wholesalers. The demographics and population density of the country lends itself to a high level of independents. Although in recent years national chains have developed, many small town retailers are maintaining a level of independence by aligning themselves under a buying/marketing group banner.

Small supermarkets, convenience stores and local stores are thriving as changing consumer lifestyles prompt more demand for convenience shopping. Expansion of stores selling luxury items reflects more sophisticated consumerism.

Planning legislation introduced in 1998 limits the size of stores throughout Ireland and has to an extent prevented the expansion of large dominant companies already operating in the country and discouraged some foreign companies from entering the market. Unless changes to legislation occur, large store development is likely to remain limited. Legislation prohibiting below cost selling is in place and has been extensively referred to in examinations of grocery pricing.

It is considered inevitable that foreign companies will continue to enter the market and market consolidation will occur further in the future. Demographic influences remain favourable. Ireland has a relatively young population, which is increasing fast.

In **Italy** there are more small retailers in small towns than in the urban areas, where the number of small retailers is continuing to decline. The survival of small retailers is important in the historic centre of the main Italian cities in order to safeguard the position of, in particular, old people and persons with problems of mobility (not only for physical reasons, but also for those linked to the means of transport). The Bersani legislative reforms liberalised licensing for new retail outlets and made the procurement of licences easier for outlets under 250 sq m (150 sq m in villages with fewer than 10,000 inhabitants).

Italians are finding it increasingly convenient to make many food and non-food purchases in one store, rather than visiting several small, specialised shops. Thus very large retailers, such as supermarkets and hypermarkets, are becoming more and more popular. Age plays a role in consumers' behaviour since older persons prefer to deal with the (very) small retailers near their home with the aim of getting better value. Younger persons prefer the large retailers since they offer a wider range of products and it is possible to buy goods required throughout the whole week.

Because of the competition with large retailers (supermarkets), the number of small grocers, butchers and bakeries is reducing. However, some small retailers are resisting this competition thanks to their decision to sell niche products such as local and regional goods of high quality (e.g. cheese, salami) and/or to provide services such as delivery at the customer's house.

Large retailers in **Luxembourg** are generally situated at the periphery of the agglomerations and offer a large variety of products. However, for this very reason, they can become inaccessible for older people, and those without access to private transport.

During the last decades, a downward trend of small retailers situated in central places was observable, but it has now stabilised. Even if many local food shops have disappeared, at the same time, this function has been replaced by the food shops at service stations. During the last thirty years, in the food sector, the number of small retailers with a sales area between 200 m² and 400 m² remained stable, whereas the number of retailers with a sales area from 400 m² to 1000 m² doubled and the number of retailers with a sales area above 1000 m² tripled. Thus there is a trend towards more hypermarkets offering a large variety of food and also non-food products.

Despite the trend towards large-scale shops, the **Netherlands** still has a relatively small-scale food retail sector. In the Netherlands, hypermarkets have a market share of around 7%, larger supermarkets (1,000-2,500 m²) of 34%, smaller supermarkets (up to 1,000 m²) of around 59%. This latter share includes also the very small supermarkets (up to 400 m²) that are losing market share very rapidly.

After the liberalisation of opening hours in 1996, consumers made more and more use of the extended shopping hours at larger supermarkets. Retailing activities in the Netherlands are direct reflections of consumer sentiment and economic conditions. The consumer confidence index hit a record low in 2001 but continued to decline further even towards the end of 2003. Most believed that the Dutch economy would only begin to recover from this downturn towards the end of 2004 at the earliest. This was reflected in all aspects of retailing in the country.

Although relatively affluent, Dutch consumers tend to be prudent and value-conscious. This translates into judicious consumption activities,

even during economic booms, and obviously suppressed spending during more difficult periods. In general, the Dutch retail industry has always faced the challenge from the dynamic and critical buying criteria of an increasingly sophisticated and well-informed buying public. This challenge intensified further when consumption was suppressed by difficult economic conditions. The severe impact of the suppressed retail performance caused major retailers to respond rather dramatically. Most striking was the 'price war' among the major grocery stores, initiated by leader A-Hold, and which received much public attention.

The traditional Dutch demographic profile is changing. The three major changes are the continued ageing of the population, an increase in the number of single- and double-income households, and a rise in the number of residents of foreign origin. As a result of these changes in demographic profiles there have emerged greater varieties of consumer groups, each with its own lifestyles, habits and preferences. For the retail industry, meeting the needs, desires, lifestyles and preferences of target customers is key to maximising sales. Many consumers carry out their weekly shopping in one trip, for which they prefer large supermarkets, which are within easy reach and with large parking facilities.

The development of large retail operations occurred relatively late in **Portugal**, but has experienced a rapid acceleration in the last two decades. Currently, large multi-product retailer stores are losing ground (sales per square metre and market share) to the fast growing specialised sector of convenience stores and (hard) discounters (competing on very low prices). These changes are occurring within the 'modern distribution sector' which, as whole, uses international standards and business practices.

Major supermarket and hypermarket chains are beginning to have an increasingly dominant role in Portuguese retailing and have been a major source of consolidation in the industry. Many independent food specialists have been unable to compete with the low prices and convenience that they offer. Discounters have also proven a popular retail format in Portugal and have helped drive average prices down across the retail industry, making the industry as a whole more competitive.

Portuguese consumers are rather diversified in their preferences for the optimum shopping place. In general, traditional trade stores are preferred for non-food products and fresh food items and 'modern distribution' stores for other food products and hygiene and cleaning articles. Young consumers tend to prefer hypermarkets and shopping centres, whereas the elderly prefer the traditional retailers, municipal markets and supermarkets. In large metropolitan areas the 'modern distribution shops' (such as super and hypermarkets) tend to be preferred, except for fresh food items, for which municipal markets are favoured; in rural areas the traditional trade is preferred, though super and hypermarkets remain high in the preference list of consumers living in medium and small cities.

The **Spanish** retail structure is marked by a large number of smaller retailers, 92% has between one and four employees. In terms of turnover 39% comes from enterprises with more than 49 employees. The smallest companies, probably due their large number, have 37% of total turnover. Half of the employment is found in enterprises with less than five employees. While the Spanish retail sector has a lower rate of salaried work than the overall economy, permanent contracts are more frequent. The monthly total salary cost for retail workers was considerably lower than the average for the overall economy.

The number of retail businesses declined over recent years. Retail chains with significant financial backing, competitive pricing, developed merchandising, attractive brands and effective advertising gained share at the expense of smaller independent retailers, many of whom went out of business. Retail sales through food-led non-specialists, including hypermarkets and supermarkets increased and benefited from the growing range of products, including non-food items, available through increasingly large leading outlets. Price competition among food retailers eased somewhat, as increased incomes enabled Spanish consumers to become more discerning, demanding quality and value-for-time as well as value-for-money.

The rate of membership of professional associations among Spanish retailers was 32%, being particularly high among pharmacy and perfumery retailers, which reported a membership rate of 53%.

Overall retail sales benefited from favourable economic conditions, which resulted in growing household disposable incomes. Changes in shopping habits in Spain were increasingly driven by socio-demographic and lifestyle developments, including the evolution of an 'out-of-hours' culture, growth in the number of working women and falling average household size. These key developments led to greater demand for extended opening hours in which to undertake time-saving, one-stop shopping at conveniently located retail outlets of larger-than-average size.

Spain's relatively fragmented retail market is expected to become more concentrated. Retail chains will expand at the expense of the traditional small and independent outlets. Better merchandising, larger product ranges and promoted brands will work to the benefit of chains and lead to increased competition. Three main trends are forecast to shape the future structure of Spain's retail market:

- retail concentration and Spanish retail chains expending their operations to other countries and foreign retailers moving into Spain;
- modernisation and expansion;
- quality over price.

The total number of retail businesses and outlets in **Sweden** decreased from 1996-2001. The main reason was that small businesses in rural and less populated areas declined. Increased competition from larger,

chain stores also contributed to the decline of small stores. Non-food stores increased their share of the total number of stores and accounted for over 80% in 2001. Shop density fell while total sales area increased. Hypermarkets and discounters were the two growing types of food outlets from 1996-2001. Both increased sales and number of outlets while supermarkets, small and independent ones in particular, declined. Food retailing in Sweden is very concentrated and is dominated by three large players. The period from 1996-2001 saw several large mergers and acquisitions. The larger chains are incorporating independent retailers and smaller chains, while facing increasing competition from international chains. Common among all retail sectors in Sweden is an increasing inter-Scandinavian cooperation. Recent laws have facilitated cross-border trade and the larger retail chains are taking advantage of the synergies of international retailing.

Retailing is one of the major economic sectors of the **United Kingdom**. Within the sector there is a scale polarisation at both the business and the store level. The leading retailers are huge, multinational businesses that dominate the sector. They operate a range of stores from major hypermarkets and superstores through to small convenience stores. Other types of retailers, co-operatives and small retailers are reducing in number although contractual franchises are increasing. In general, the trend in UK retailing is towards concentration and convenience. The concentration of retailing is occurring in most retail sectors in the United Kingdom. Large multiple retailers are becoming more dominant, operating both large and small units. Independent retailers are numerically dominant but economically more marginal. Associations and co-operative working are reactions to this development and many independent retailers are members of trade associations. In addition to its economic importance, retailing is also significant in the UK in a social dimension. Whilst economically retailing bridges production and consumption, in social terms it affects most of the population every day. For some, retailers offer their major social intercourse of the day or week and act as a social network, setting or centre. The British Retail Consortium estimate that over one third of all consumer spending goes through shops. The quality of UK retailing and its locations thus has both an economic and social bearing on the perceptions of the country. What is termed in the UK as 'retailing' is changing, both in horizontal and vertical terms. Traditional product boundaries have altered and strict lines of business have dissolved. Retailers have also extended their tasks to encompass the supply chain. Intermediaries and suppliers are effectively managed and controlled by the retailers who have a dominant position on the market. Larger operators are becoming less specialised. Supermarkets are the obvious example of this, offering a wide range of non-food products and services. Non-food operators are increasingly following their lead.

It had been thought that because supermarkets and hypermarkets require a certain level of consumer density, independent operators in rural or remote urban areas would be protected. While this is true to a certain extent, the proliferation of car ownership and the attraction of the one-stop shop has meant consumers still generally choose to shop at supermarkets.

Large food retailers are continuing to offer more non-food items. This is partly because the margins on these products are generally higher, but also because of consumer demand for convenience. If a supermarket can provide everything under one roof, consumers are far less likely to 'stray'. As a result, large supermarkets offer foodservice, financial services, clothes, books, music and electrical goods. While they cannot offer the same degree of specialisation, they tend to offer familiar brands that are attractive to consumers and very competitively priced. Convenience stores also continued to thrive in 2001, as longer working hours and a rise in dual-income households meant consumers put greater emphasis on convenience and accessibility.

3 Assessment of the legal implementation

3.1 Introduction

Purpose of the Directive is (Article 1): '(..) to stipulate indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices.'

The first EU-Directive on unit pricing (79/581/EC) dates from 1979 and set out guidelines for unit pricing for food. Some changes were applied to this Directive in 1988 and a new EU-Directive (88/314) on unit pricing for non-food was adopted. This legislation, however, resulted in a very complex system of exemptions. Therefore, these Directives were replaced by a new Directive (98/6/EC)¹ on unit pricing. The Directive outlines the easiest way to enable consumers to evaluate and compare the price of products in an optimum manner and to make informed choices on the basis of simple comparisons. This chapter assesses how this Directive has been transposed into national legislation and what exemptions are included.

3.2 Transposition by Member States

Table 5 gives an overview of how the Directive has been transposed into national legislation by the Member States. It includes an indication of how far the transposition has meant a continuation of, or change from previous legislation in an individual Member State.

table 5 Transposition of Directive by Member States

	<i>Title of national legislation</i>	<i>Date of implementation</i>	<i>Change to previous legislation?</i>
AT	Bundesgesetzblatt (Federal Law Gazette) 55/2000 of July 11, 2000 changed both the Preisauszeichnungsgesetz and the Bundesgesetz gegen den unlauteren Wettbewerb von 1984 (Federal Law Against Unfair Competition of 1984).	July 12, 2000	Minor change. Introduction of a <i>general</i> unit price indication.

¹ OJ L No 80, 18.3.1998 p. 27.

	<i>Title of national legislation</i>	<i>Date of implementation</i>	<i>Change to previous legislation?</i>
BE	Royal decree of the 7th of February 2000 concerning the indication of prices of products and services and the order form. Published in the Belgian Bulletin of Acts, Orders and Decrees on the 22nd of February 2000.	March 18, 2000	Minor change. In previous legislation unit prices only had to be indicated for loose products and pre-packed products in variable quantities.
DK	Bekendtgørelse nr. 866, 18 september 2000 om oplysning om salgspris og enhedspris for forbrugsvarer.	September 18, 2000	Minor change. The main difference is that previously more product categories were exempted from having to indicate a unit price.
DE	Verordnung vom 28 July 2000 zur Änderung der Preisangaben- und der Fertig-packungsverordnung. Adjustment of regulation on Pricing (BGBl nr 37. 10/08/2000).	September 1, 2000	Minor change.
EL	Decision Z1-404/14.6.2001 of the Ministry of Development, General Secretariat for Consumer Affairs. Published in the Official Government Gazette (Vol:, No: 827) on 28-6-2001 and since that day.	June, 14, 2001	Major change. The transposition of the Directive resulted in an introduction of unit pricing in Greece. Before, traders were only obliged to indicate the selling price.
ES	The Royal Decree (RD) 3423/2000 of 15.11.2000, published on 28 December 2000 in the Spanish Journal of the Official Gazette (BOE (Boletín Oficial del Estado) 311).	December, 28, 2000	Minor change. The main difference is that the range of products affected by the new legislation is considerably greater than before.
FR	« Arrêté du 16.11.99 relatif à la publicité à l'égard du consommateur des prix de vente à l'unité de mesure de certains produits préemballés » (JO de la République Française n° 17413 du 24 novembre 1999).	November 1999	Minor change.

	<i>Title of national legislation</i>	<i>Date of implementation</i>	<i>Change to previous legislation?</i>
FI	Implemented by a regulation, on the indication of the prices in the marketing of consumer goods (Decree n° 1359/1999), in application to the provisions of chapter 2, section 6, of the Consumer Protection Act (38/1978).	December 30, 1999	Minor change.
IE	European Communities (Requirements to Indicate Product Prices) Regulations 2002 (S.I. 639/2002) implementing Directive 98/6/EC in Ireland, dated 20 December 2002.	March 1, 2003.	Minor change.
IT	Decreto Legislativo, 25 February 2000, n. 84. Attuazione della direttiva 98/6EC alla protezione dei consumatori in materia di indicazione dei prezzi offerti ai medesimi (G.U.R.I. No. 85, 11/4/2000).	February 25, 2000	Minor change.
LU	The Directive has been transposed into national legislation by the « Règlement grand-ducal du 07/09/2001 relatif à l'indication des prix des produits et service » (Mémorial A n° 121 du 03/10/2001, page 2514).	3rd October 2001	Minor change. The obligation to indicate the unit price was extended to non-food products and advertisements.
NL	The Directive has been implemented by way of a modification on the Decree on Price Indications on Goods (1980) as can be found in the Decree of March 21st 2000 (Staatsblad nr. 132/2000).	March 21, 2000	Minor change. New legislation meant that more products are exempted.
PT	Decree-Law 162/99, published on the 13th of May 1999)	14 th of May 1999	Minor change. Only a new exemption was introduced (when 'the unit price is identical to the sales price') and a number of other exemptions were revoked.
SE	Lag om ändring Prisinformationslagen, 30/03/2000. (Svensk Författningssamling 2000/128, 11/4/2000).	March 30, 2000	Minor change.

	<i>Title of national legislation</i>	<i>Date of implementation</i>	<i>Change to previous legislation?</i>
UK	Price Marking Order 1999 (S.I. 3042/1999) implementing Directive 98/6/EC in Scotland, England and Wales is dated 10 November 1999. In Northern Ireland, Price Marking Order (Northern Ireland) 2000 (S.I. 63/2000) is dated 8 March 2000.	Scotland, England and Wales: March 18, 2000, except for Article 2(i) which came into force December 4, 1999. Northern Ireland: April 7, 2000	Minor change.

Source: EIM, 2004.

Member States were required to implement the provisions of the directive into their national legal systems not later than 18 March 2000. However, only seven Member States¹ implemented on time. Most Member States already had legislation on unit pricing before the Directive was adopted. The transposition of the Directive, therefore, did not bring major changes in overall legislative approaches. A number of countries (AT, BE, DK, LU, NL, PT) indicate that the major change has been that under the new legislation the obligation to indicate the unit price has been extended to more product categories than before. For Greece, however, the transposition of the Directive resulted in a major change with respect to previous legislation. Before, traders were obliged to indicate the selling price only. With the transposition of the Directive the obligation to indicate the unit price was introduced for some product categories.

3.3 Extent of available exemptions (Article 3.2)

In Article 3 it is specified that: 'The selling price and the unit price shall be indicated for all products referred to in Article 1, the indication of the unit price being subject to the provisions of Article 5. The unit price need not be indicated if it is identical to the sales price.'

Article 3.2 states that: 'Member States may decide not to apply paragraph 1 to:

- products supplied in the course of the provision of a service,
- sales by auction and sales of works of art and antiques.'

¹ Belgium, Finland, France, Italy, the Netherlands, Portugal and the United Kingdom.

Table 6 provides an overview of how the exemptions under Article 3.2 were implemented by the Member States.

table 6 Use of exemptions under Article 3.2

	<i>Products supplied in the course of the provision of a service</i>	<i>Sales by auction and sales of works of art and antiques.</i>
AT	Yes	Yes
BE	Yes (pre-packaged products delivered because of a service)	No
DK	Yes (services are exempted)	Yes
DE	Yes	Yes
EL	Yes	Yes
ES	Yes	Yes
FR	No	Yes
FI	No	No
IE	Yes	Yes
IT	No	No
LU	No	Yes (only works of art and antiques; a pricelist with all the works must be available inside the store).
NL	Yes	Yes
PT	Yes	Yes
SE	No	Yes (sale on auction)
UK	Yes	Yes

Source: EIM, 2004.

A few Member States have used the possibility of exempting the products to which Article 3.2 refers. Finland has not used the possibility to exempt products in line with Article 3.2. The reason for this is that there has been no active lobbying for making exemptions regarding specific sectors or products. Also, it is in line with the policy stance of Finland that the Directive should be as simple and broad as possible, with minimum exemptions, in order to promote transparency. In Belgium the transposition measure does not mention sales by auction and sales of works of art and antiques. It is not possible to indicate for every country whether these categories were also exempted in previous legislation.

Most countries have used the possibility to exempt categories in line with Article 3.2. Some of these countries have made full use of the exemption possibilities. For Denmark the use of these exemptions meant a continuation of past policy. Portugal kept all exemptions from the previous legislation of 1990 as there were no developments in the country (such as claims from consumer organisations, lobbying from trade organisations, etc.) that called for changes. In Austria and the Netherlands products supplied in the course of the provision of a service were not

exempted before the transposition of the Directive. However, as these countries have a policy of making maximum use of the exemption-possibilities given in the Directive, the introduction of an exemption for these products was part of the transposition measure. In Spain the Directive has been literally transposed in the Spanish legal framework. The Spanish national government generally transposes European Directives literally when the responsible public administration bodies in a particular field are regional governments, as is the case with the transposition of this Directive.

The following additional motivations were given for exempting products supplied in the course of the provision of a service and/or sales by auction and sales of works of art and antiques from the obligation to indicate the unit price:

- it would be difficult or nearly impossible to indicate unit prices for these type of products (ES, IE);
- it is not relevant to indicate unit prices for products that are not sold frequently/daily (BE, EL);
- there is no urgent need for consumers to compare prices of different components of goods issued by a service (DE);
- there is no perceived benefit or practical purpose in unit pricing these products, since these types of goods are not readily comparable and prices for these goods are often reached through negotiations (UK, IE);
- in Luxembourg the exemptions for works of art and antiques were established for security reasons. The previous regulations stipulated that jewellery objects above 4,000 EUR were exempted from price indication.

Expected future policy regarding the use of exemptions of Article 3.2

The majority of Member States have not planned nor expect any future policy changes regarding the use of exemptions that apply to Art 3.2. In Austria the exemption regarding not having to display the unit price of products supplied in the course of the provision of a service was, and is, highly criticised (see also below). An often-stated example in this discussion refers to the fact that if one buys shampoo at a drugstore the unit price has to be indicated, whereas there is no obligation to do so for a hairdresser that sells shampoo. As this leads to an unreasonable distinction it is expected that this exemption will be abolished in the future in Austria.

In Denmark a committee has been appointed to revise the Danish price indication legislation. Mid 2004, there still was no feedback from this committee and, therefore, it is not yet clear what will be the future policy regarding the use of exemptions. In Finland the general policy of no exemptions is expected to be continued as this is seen as providing for

the most transparent system, and as there have been no protests from stakeholders.

Should additional specific sectors be excluded from the scope of the directive in the same way as sales by auction and sales of works of art and antiques (Article 3.2)?

In general, there are no demands by national stakeholders (consumer and retail organisations) to exempt additional sectors from the scope of the Directive. However, in Portugal some trade organisations have been suggesting that a range of expensive consumer products (such as jewels and watches), bearing prices above a certain threshold (Euro 3,000, has been suggested) should be treated similarly as works-of-arts and antiques. The Commission has received a request from Portugal to exclude specifically from the obligation to indicate the unit price these kind of products within the jewellery/clock-making sector. It was argued that the obligation to indicate the unit price is neither particularly useful nor relevant for the limited clientele of those products and, given the high value of these products, the indication of the price may constitute an inducement to crime.

Application of unit pricing to services

In January 2004 a proposal for a Directive of the European Parliament and of the Council on services in the internal market¹ was presented. A consultation process with stakeholders has been started (SEC(2004)21). The possible application of unit pricing to services should be placed in the context of this debate. However, there is confusion in the terminology. Services could imply the selling of products in the course of delivering a service (e.g. shampoo at a hairdresser) or the unit price of services in general (e.g. costs of man-labour per hour). Although this was outside the scope of the original research proposal, some information has been collected on national viewpoints with regard to unit pricing and services.

In many countries there has so far been no discussion about extension of the legislation on unit pricing to services (BE, NL, DE, EL, ES, IE, IT, UK, AT). Also, no research has been conducted in the Member States into the framework conditions for the extension of the legislation concerning the indication of unit prices to services, or the consequences.

The following arguments are given against extension of legislation to services:

- difficult to apply legislation to services since services are not easy to 'measure' in quantities/complicated to quantify/difficult to standard-

¹ COM/2004/2/FINAL; OJ C/2004/98/35.

ise the services sector (BE, ES); difficult to obtain clear, harmonised information enabling specific legislation on unit pricing in services (NL);

- the indication of unit pricing in the case of services could be confusing to consumers as no objective price comparability is possible (NL);
- in order to achieve price transparency other means are more useful than the unit price, e.g. price offers and bill specifications (NL);
- there is no demand or pressure to extend legislation to services (UK);

Some countries have already introduced legislation on unit pricing for services or are planning to introduce this kind of legislation (LU, FR, PT, SE). Portuguese legislation contains an obligation to indicate the price for services (e.g. per hour, percent etc.). Portugal would like the Directive to cover the provision of services to consumers. In Luxembourg the extension of the legislation to the service sector has already been implemented. Business organisations have objected to this since an extension of legislation to services was not foreseen in the Directive. In Sweden, legislation has been proposed to include services, e.g. electricity and mobile telecommunication. Both trade and consumer organisations are of the opinion that it would be a positive development to extend the Directive to services. The unit pricing policy is very developed for services in France. In each type of service where it is possible, man-hour rates must be indicated (for example repair services, construction services, maintenance services, etc.). It is also the case for phone services (price per minute must be indicated clearly).

Arguments in favour of extending legislation to services are that this is/would be:

- consumer-friendly (AT, PT)
- relevant in some limited areas (e.g. a fee per hour for phone calls) (FI)

A survey from the European Commission¹ shows that European consumers favour competition, but want guarantees on services of general interest. Price is the consumers' main source of dissatisfaction. Consumers want clearer information on tariffs and prices, to enable them to compare prices. It is, however, unclear whether *unit* pricing would provide this price transparency.

¹ See press release: EU consumers favour competition but want guarantees on public services, Brussels June 28, 2004. Reference: IP/04/807.

3.4 Extent of limitations used (Article 4.1)

Article 4.1: 'The selling price and the unit price must be unambiguous, easily identifiable and clearly legible. Member States may provide that the maximum number of prices to be indicated be limited.'

3.4.1 *Display requirements*

All Member States have transposed correctly the display requirements of the Directive. A number of countries have even enacted more stringent provisions to improve consumer information in the sense that some national laws include that both prices should be displayed:

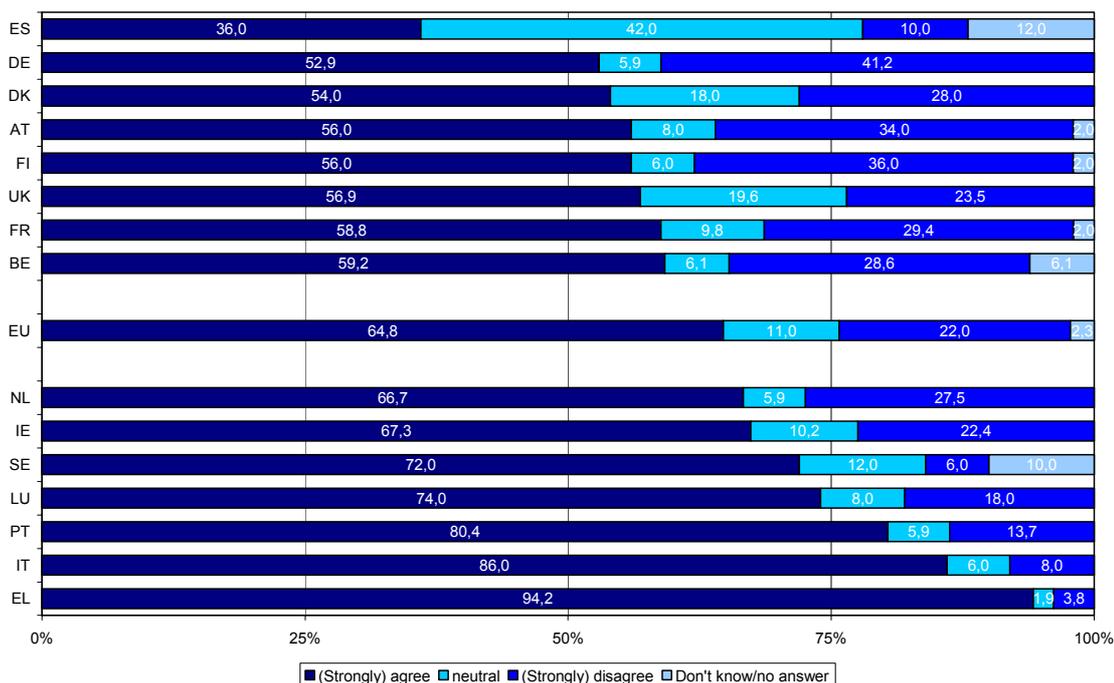
- 'to ensure that there can be no doubt about the goods to which the details refer' (DK);
- 'so that the consumer can easily see and understand them; so clear and distinctive that they attract particular attention to ensure that there is no risk of mistaking products or packets' (FI);
- 'whatever the kind of selling points, either on the product itself or near it in a way that no uncertainty exists about what product the price concerns. It must indicate all taxes included and perfectly readable for consumers. For goods to which the obligation applies, the unit price must also be indicated as well as the mention of the unit used' (FR).
- 'by means of tags or labels suspended from or stuck to the shelves for groups of products or the packages themselves, and the information elements (e.g. price per litre) indicating the unit price shall be the same size as the retail sale information elements (price etc.) of the pre-packaged item involved' (EL);
- 'respecting the measures applicable to special or promotional offers' (AT, NL, UK);
- 'indicating the inclusive price (*service compris*) in restaurants, bars and all establishments serving food and beverages' (LU);
- 'in digits in a visible, unambiguous, easy and clearly legible fashion, by using labels, tickets or lists (definitions of which are provided in the legislation), in order to ensure the best possible information to consumers' (PT);
- 'so that the selling price and the unit price are placed in the same visual field; they should be visible enough to the consumer so that he/she does not need to ask for the information' (ES);
- 'in writing if the consumer cannot obtain information on them in another equivalent way. When goods are offered for sale in sale premises, in a display window or display case or in the immediate vicinity of the point of sale, the price of the goods shall be indicated on the goods or their packaging, or in the immediate vicinity of the goods, on a shelf label or sign, in such a way that there is no risk of confusion with prices of other goods' (SE);

- 'placed in proximity to the products to which they relate; and so placed as to be available to consumers without the need for them to seek assistance in order to ascertain it' (UK, IE).

Readability of the unit price

In the Survey¹ small retailers were asked whether the print of the unit price is generally large enough to be easily read. The results are presented in figure 1.

figure 1 The print of the unit price is generally large enough to be easily read, by country



Source: EIM, 2004.

As can be seen from the figure, for the EU as a whole, 65% of small retailers are of the opinion that the print of the unit price is generally large enough to be easily read. In every country, except Spain, at least more than half of the surveyed retailers stated that the print is large enough. In Spain only 36% agree with this statement. However, in Spain the proportion of retailers that profess to be neutral is disproportionate (42%, as compared to 11% for EU-15).

In Greece retailers are most positive as 94% indicate that the print of the unit price is large enough. Other countries with a relatively high score are Portugal (86%) and Italy (80%).

¹ See annex II for a more detailed description of the set-up and structure of the survey.

For the EU as a whole, enterprises that do indicate the unit price are more positive about the print size of the unit price than enterprises that do not indicate the unit price. Of the enterprises that do indicate the unit price 70% (strongly) agree that the indication of the unit price is large enough, whereas this is 50% for enterprises that currently do not indicate the unit price.

3.4.2 *Introduction of limitations on the maximum number of prices indicated (Article 4.1)*

Transposition

The Directive allows Member States to limit the maximum number of prices to be indicated. The Belgian, Finnish and Swedish legislation make no specific mention limiting the maximum number of prices to be displayed. The Finnish and Swedish legislation states that it shall be clearly specified if charges or other extra costs may be added.

The majority of Member States, which have legislation that mention the possibility of limiting the number of prices, have not used the possibility to actually limit the number of prices (AT, DE, DK, EL, ES, NL, PT, UK, IE). Some of these countries have explained why they have not set limitations on the maximum number of prices indicated:

- As maximum information is in the interest of the consumer (i.e. as long as this does not lead to misunderstanding and confusion) (AT);
- As the number of prices is not seen as a problem by any of the stakeholders (DK);
- As no limitations on the maximum number of prices indicated were set in previous legislation (PT).

The limitation allowed by Article 4.1 can have a facilitating role considering the different units of measurement (standard and traditional) that Member States may use. This was particularly relevant throughout the transitional period for the introduction of the euro, since the obligation to indicate the price for each unit, in euro and the national currency, could lead to a long list of prices which could cause confusion for consumers.

Three Member States introduced limitations on the maximum number of prices to be indicated. This applied only to the transitional period when the euro was introduced (FR, IT, LU):

- In France, the unit price had to be indicated in one currency only (French Franc until 31 December 2001 and Euro from 1st January 2002) whereas the selling price was to be in both currencies. In practice, the maximum number of prices was up to 3 during this period.
- In Italy limitations on the maximum number of prices indicated were introduced during the transitional period (linked to the double circulation Lira/euro) with reference to small retailers.

- In Luxembourg a limitation was introduced in order to facilitate the introduction of the euro. In order to avoid a quadruple indication of prices (selling and unit prices in both Luxembourg francs and euro), the provision was adopted to impose the national currency until 31st December 2001 and the euro from 1st January 2002.

In some cases when the euro was introduced, the practice of dual pricing did cause some problems for Member States that did not restrict the number of prices to be indicated. A distinction can be made between countries that had an obligatory, and countries that had a voluntary, system of dual pricing.

- 1 In some countries there was an obligation to indicate the unit price of products both in the national currency and in euro during the transitional period (AT, EL, ES):
 - The Austrian legal situation envisaged the obligation to indicate the unit price of products both in the national and uniform currency in euro. This placed an additional burden on companies.
 - In Greece during the transposition period (1/1/2001 - 28/2/2002) traders were obliged to indicate the selling price of their products in both currencies (euro and drachma). Small companies (companies which occupy less than 10 employees) were exempted from that obligation until 1/3/2001 (thus, the obligation for the indication of selling price in both currencies for that size of small companies applied from 1/3/2001 - 28/2/2002). Since 28/2/2002 prices have been indicated in euro only.
 - In Spain prices had to be indicated in both currency units when the euro was introduced. Some problems in complying with the Directive arose during the transition period. Problems stemmed from computer systems and were overburdened because sales prices had to be indicated in both currency units. Some retail sub-sectors working with thousands of products, such as hardware stores opted for indicating prices in both currency units along with the discount percentage. But there was also a physical space problem, since there was not enough room in the price tags to show all the prices. Once the transition period came to an end and prices were indicated in euros alone, these problems disappeared.
- 2 In a number of Member States there was a voluntary system of dual pricing during the transition period (DE, NL, PT, BE, FI):
 - In Germany there was no obligation to indicate the unit price of both the euro and D-mark, but dual pricing was welcomed on the part of the Federal Government as far as the extra data on a price label did not confuse the consumer. From 1 January 2002, the obligation to indicate the unit price in euro was established. Considering the amount of dual labelling yet to be implemented, there would have been too much work to do on the eve of this date. In order to avoid this burden for the German retail indus-

try, the Federal Government and the States responsible for the execution of the legislation (PangV) declared it acceptable that in this case the unit price could be introduced gradually into euros. However this gradual exchange should be complemented by 28 February 2002.

- In the Netherlands there was a voluntary system of dual pricing in guilders and euro for the six months preceding the introduction of the euro and for a period following its introduction.
- In Portugal the introduction of the Euro has not posed significant problems in complying with the obligations of the Directive. A number of retail establishments practiced double pricing (euro and Escudo) during the transition period.
- In Belgium the introduction of the euro has not influenced the obligation to indicate unit pricing.
- In Finland the changeover to the euro did not necessitate a change in the existing rules on price indication.

Some problems were reported with respect to dual pricing, which represented an additional burden on companies, especially small retail business. The burden was heavier in those countries with a long transitional period and some problems complying with the obligations of the Directive have arisen.

Future policy and relevance of the faculty of limiting the maximum number of prices

There are conflicting views amongst countries or stakeholders within Member States over whether the Directive should maintain the faculty of limiting the maximum number of prices. Some parties argue that the faculty to introduce limitations regarding a maximum number of prices should be maintained. The following reasons are given for maintaining the faculty:

- a high number of prices could be misleading or confusing for consumers, e.g. because it would be difficult then to understand what is the actual price (AT, IT);
- the principle of readability is still relevant (FR);
- the faculty should be maintained as long as the minimum obligation for the indication of the selling and the unit price remains (which both are the most important information a consumer can get in relation to the price of a product) (EL);
- the current systems is thought to work well and, therefore, it is not relevant to introduce changes regarding the use of introduced limitations (ES, NL, DE);
- because too many prices can be a problem, particularly in border areas (SE).

On the other hand, a number of countries or stakeholders within countries are of the opinion that the facility of limiting the number of prices should not be maintained:

- A Danish consumer organisation thinks that it is positive to have the opportunity to indicate a large number of prices and that there should be no limitations, since maximum information is in the interest of consumers.
- Germany and Luxembourg, two countries that introduced limitations on the number of prices to be indicated during the transition period, indicate that this facility is no longer relevant and there is no need to maintain it.
- In Finland the general position of the Finnish government and consumer organisation is that the Directive should be as simple and broad as possible, with minimum exemptions, in order to promote transparency.
- In Italy, a country that also used this facility during the transition period, there is some argument that the facility is not relevant anymore and the Directive should not maintain it.
- Portuguese stakeholders, in general, feel that there are no problems arising from not having any limitations concerning the maximum number of prices and that such limitations should not be allowed in the future.

At the moment none of the countries uses the possibility of setting limits on the maximum number of prices to be indicated and there are no plans to do this in the future. Countries have only used the possibility to set limitations on the number of prices in relation to the introduction of the euro. For the three non-euro Member States (Denmark, Sweden and the United Kingdom) as well as for the ten new Member States (and possible future Member States), the introduction of the euro might be a complicating factor in relation to the indication of the unit price in the future and, therefore, the facility of limiting the number of prices may still be relevant.

3.5 Products for which the obligation is waived (Article 5.1); non-food products (Article 5.2)

Article 5.1: 'Member States may waive the obligation to indicate the unit price of products for which such indication would not be useful because of the products' nature or purpose or would be liable to create confusion.'

Article 5.2: 'With a view to implementing paragraph 1, Member States may, in the case of non-food products, establish a list of the products or product categories to which the obligation to indicate the unit price shall remain applicable.'

In a number of countries (AT, DK, DE, IT, NL, SE¹, UK), the transposition measures stipulate that those products where specifying the unit price is liable to create confusion or would not serve any useful purpose because of the nature of those goods or because of a number of reasons marking the unit price would not make much sense, may be exempted from the general obligation to indicate the unit price. Article 5.1 affords Member States the possibility to decide themselves which products may be exempted (negative list) from the requirements to indicate unit prices. Article 5.2 provides Member States with the possibility to specify which non-food products for which it remains obligatory to indicate the unit price (positive list). Some Member States have enacted specific provisions for foodstuffs and for non-food products, while in Ireland and Sweden² the transposition measures do not make a distinction between food and non-food products and rules apply for all products. The result is that Member States have adopted different standards:

- A first group of Member States has adopted only negative lists for food- and non-food products for which the requirement to indicate unit price does not apply (BE, DK, EL, ES, IE, IT, NL, PT);
- A second group has adopted negative lists for food products as above, but in addition positive lists for non-food products for which the requirement to indicate the unit price remains applicable (AT, LU, UK);
- One country has adopted negative lists for food products and both negative and positive lists for non-food products (FI);
- One country has adopted only positive lists for food and non-food products (FR);
- Finally, two countries have no lists at all (DE, SE). In Germany the products for which the obligation to indicate the unit price is waived is specified in § 9 (4) and (5) PangV. In Sweden, negative list products are specified in a document separate from the law (based on an agreement made between the governmental 'Swedish Consumer Agency' and a coalition of retail organisations).

¹ The Government, or such authority as it may designate, may issue more detailed legal provisions on the obligation to indicate the unit price and the basis of calculation, which must also be provided.

² There are specific provisions when household commodities are marketed by means of self-service arrangements.

Table 7 five provides an overview of the application of Article 5.1 and 5.2 in the various Member States.

table 7 Products for which the unit price indication is waived (Article 5.1 and 5.2)

	<i>Application of Article 5.1</i>	<i>Application of Article 5.2</i>	<i>Remarks</i>
AT	negative list	positive list	
BE	negative list	negative list	
DK	negative list	negative list	
DE	negative	negative	No lists are adopted
EL	negative list	negative list	
ES	negative list	negative list	
FR	positive list	positive list	
FI	negative list	positive and negative list	
IE	negative list	negative list	
IT	negative list	negative list	
LU	negative list	positive list	
NL	negative list	negative list	
PT	negative list	negative list	
SE	negative list specified in a document separate from the law	negative list specified in a document separate from the law	No lists are adopted
UK	negative list	positive list	

Source: EIM, 2004.

On the basis of Article 5.1 countries have the possibility to specify products that are exempted from the obligation to indicate the unit price (negative lists). This has been implemented correctly by all Member States, except France, which has adopted a positive list for food products. On the other hand, on the basis of Article 5.2 Member States have the possibility to specify non-food products for which the obligation remains applicable (positive lists). However, as can be seen in the table, the majority of the Member States have specified non-food products for which the obligation to indicate the unit price does not apply (negative lists). This means that transposition is not always in line with the text of Article 5.

Negative product lists

Most countries have adopted negative lists containing product categories for which the obligation to indicate the unit price is waived. These negative lists include¹:

- Product requirements (weight quantity);
- Requirements for selling methods;
- Specific product categories for food (fruits and vegetables, meat and meat products, fish, pastry and bakery products, drinks, meals);
- Specific product categories for non-food (tobacco, cosmetics and perfumes, jewellery, paint).

Positive product lists

France is the only Member State that has an a positive list of food and non-food products, to which the obligation to indicate unit price applies. The positive French list for food product applies to packaged food-stuffs whatever their presentation, including:

All fishes and other sea food; All meats and meat products; Cooked dishes; Fruits and vegetables, including dry vegetables, mushrooms, potatoes and potatoes based preparations; All bread, bread products and biscuits; All cereals and cereal products; All kind of products such as peanuts and salted biscuits; Vinegar, seasoning, mustard; Oils and fats; Milk and milk products; Desserts and creams; Ice creams (except ice cream sold per units); Fruit preserves, jams, jelly, marmalade; Honey; Chocolate and chocolate products; Sugar; Other sweetening products; Confectionery products; Coffee, tea; All diet, baby and sportsmen foodstuffs; Alcohol, wine, beer (except vins de pays et eaux de vie with a trade name); Non alcoholic beverages, fruit and vegetable juices, sodas etc; Water (except 30 cl and 50 cl bottles when sold per unit); Food for pet

For non-food products, the indication of the unit price is generally not relevant. It is for example not opportune to define the unit price of a television, a car or for clothing. In order to avoid establishing a long negative list indicating all the non-food products exempted from the double indication, a positive list can be adopted under the provisions of Article 5.2 indicating all the non-food products which are submitted to the double indication.

Besides France, a few other Member States have adopted a positive list for non-food products (AT, FI (also negative list) LU, UK). Positive lists for non-food products include²:

- household products (e.g. products for cleaning the floor, washing dishes, washing clothes);
- shower and bath products;
- sun products;

¹ See annex III for a complete overview of the waived products.

² See annex III for a complete overview of the waived products.

- paints, glosses;
- products for maintenance of cars (e.g. oil);
- products for home gardening;
- products for do-it-yourself/construction (e.g. plaster, cement).

Motivations for selecting food and non-food products to be waived from the obligation to indicate the unit price

The main reason for selecting certain food and non-food products to be exempted is based on the consideration already given in the Directive (Article 5.1): unit pricing would not be useful or would be liable to create confusion. In addition to this primary motivation, some additional motives for exempting the selected food and non-food products are:

- Unit pricing would be unworkable or impossible for these products (IE, UK, ES, EL). For example: A situation where the selling price of products sold other than in bulk, would not be calculable until the consumer identified the quantity required is an unworkable circumstance. Another example is that in case of an assortment of different products sold in a single package it is not possible or does not make sense to indicate the unit price or such indication is complex or useless;
- Double price indication would not be significant or relevant to consumers (IT, ES, FI);
- Sometimes products are exempted as a result of a specific national peculiarity or tradition (FI, EL). For example, in Finland vegetables sold in bundles are exempted because of a national tradition of selling vegetables like this on market squares/fairs. In Greece it is customary for farmers in rural areas to sell their products directly to consumers as a result of the Greek agricultural economic structure;
- Control of the price indication is impossible by State mechanisms (e.g. products that are sold between two private individuals) (EL);
- They are sold for direct consumption, e.g. individual ice-creams (ES).

In most cases reasons apply to food as well as non-food products.

Debates concerning the nature of products that should be exempted under Article 5.1. and 5.2.

For some countries (BE, NL, IT, PT) the list of exempted categories was mainly based on the already existing list/previous legislation and only limited changes were made to the already existing list. Therefore, when transposing the Directive not much consideration was given to the motivation behind the selection of products and selling methods. There were no demands from stakeholders to introduce any modifications, nor was there a public debate on that matter.

In most countries there has not been much debate concerning the nature of products that should be exempted under Article 5.1. and Article 5.2. France, Greece, Ireland and the Netherlands indicate that the lists were established in consultation with stakeholders.

Some Member States indicate that there was some discussion in their country concerning the nature of food and/or non-food products that should be exempted:

- In Austria consumers' representatives consider that the exemptions are not consumer friendly as far as they concern limitations on products' size or weight. For example, spices do not have to be labelled with unit prices as they are sold at minimal weight. However, it is also argued that in this case price comparisons would be advantageous for consumers. Limitations for unit pricing are only seen to be justified with regard to a large variety of products being sold as one product. Furthermore, in Austria there has been a debate regarding the sale of farm products directly by the farm ('Ab-Hof-Verkauf'). Although many people feared this would be a burden for farmers the 'Ab-Hof-Verkauf' is obliged to indicate prices as this is advantageous for consumers.
- The Belgium government is of the opinion that the list is not up to date (it dates from 30 years ago). This is also the case in Italy, which intends to update its lists of exempted products.
- In Denmark, there is a continuous discussion between trade organisations and consumer organisations about which products should be exempted from the requirement to indicate unit prices and how the unit price should be indicated on different product categories. Traders are of the opinion that most of the time unit prices are unnecessary and too big of a burden for retailers. Consumers think that unit prices are positive and usable in most instances. Within a retail organisation there was a long debate about which products should be exempted. The organisation felt that there should be more flexibility, that more products should be exempted, and that the rules should be clearer.
- According to a Swedish trade organisation, there was some debate, especially about non-food products such as paint. The Swedish consumer organisation indicates that it has not been part of this kind of debate. Furthermore, there was some debate about the non-food products that should be exempted, which was due to the fact that these products had not been included in previous legislation.
- In Italy the main issue of the debate concerning the nature of products that should be exempted under Article 5.2 was the difficulty of finding specific categories of products to exempt.

Scope of the products for which the unit pricing is waived under Article 5.1.

Generally, there is no data available on the scope of the products for which the unit price is waived under Article 5.1. For some countries, however, experts provided an estimation of the scope of exempted products:

- A minority of products (BE);

- Less than 5 percent of the turnover for both food- and non-food products (DK);
- About 30% in terms of total percentage of turnover of non-food products are exempted from the obligation to indicate the unit price. The majority of food products is not exempted from the obligation to indicate the unit price (about 15% in terms of total percentage of turnover of the food sector) (EL);
- Less than 5 per cent of the total turnover of food products (FI);
- 2% of the market in terms of retail turnover (IT);
- At around 10 % of the products (LU);
- Not more than 5 percent of retail turnover (PT).

Although reliable statistics are not available, indications from experts lead to the conclusion that the exempted products represent a low percentage of the total number of products.

Should the Directive identify in more detail those products for which the requirements to indicate unit pricing does not apply under Article 5.1?

The general feeling seems to be that the Directive should not be changed on this point. It is regarded as positive that the current Directive provides the flexibility to exempt products in line with specific national circumstances. Most stakeholders (consumer and retail organisations) agree that because of different characteristics of every Member States (e.g. cultural and economic differences, such as particularities in terms of buying behaviour and habits, product uses, supply characteristics, types of consumers and traders, market structure) the products exempted under Article 5.1 cannot uniformly be addressed by the European Union and at the same time be effective in all Member States. Furthermore, lists of this kind are likely to be soon out of date. Only a few parties (e.g. the Finnish consumer organisation and a Swedish retail organisation) expressed themselves to be in favour of more details in this regard.

3.6 Concluding remarks

Extent of possible exemptions (Article 3.2)

Article 3.2 gives Member States the possibility to exempt 'products supplied in the course of the provision of a service' and 'sales by auction and sales of works of art and antiques'. Almost every Member State makes use of the possibility to exempt one of these categories; some countries make full use of the exemption possibilities (AT, DK, EL, ES, IE, NL, PT, UK).

The use of the exemption possibilities of Article 3.2 was sometimes simply a continuation of past policy (DK, PT). Some countries (AT, NL) have a policy of making maximum use of the exemption-possibilities provided for in the Directive. Therefore it was logical to make full use of the possibilities offered in Article 3.2. Motivations for exempting products from the obligation to indicate the unit price are that indicating the unit price would be difficult or nearly impossible; would not be relevant since these products are not sold frequently; there is no urgent need for consumers to compare prices for these products; there is no perceived benefit or practical purpose in unit pricing these products. The opposite is true for Finland, where it is a policy to make minimal use of the exemption-possibilities. Therefore, Finland did not use the possibility to exempt products to which Article 3.2 refers.

Most Member States do not intend or expect future changes with respect to the use or non-use of exemptions under Article 3.2. In Austria, however, it is expected that the exemption for products supplied in the course of the provision of a service will be removed in the future.

There is no need to exempt additional specific sectors from the obligation to indicate the unit price. Only Portugal has requested that a range of expensive consumer products within the jewellery/clock-making sector should be treated similarly to works-of-art and antiques.

Extent of used introduced limitations (Article 4.1)

Article 4.1 states that 'The selling price and the unit price must be unambiguous, easily identifiable and clearly legible...'. With respect to this display requirement a number of Member States have enacted more stringent provisions to improve consumer information (e.g. with regard to promotional offers, ways of displaying information, extra costs).

For the EU as a whole, small retailers are positive about the visibility of the unit price as 65% agree that the print of the unit price is generally large enough to be easily read. Enterprises that indicate the unit price are relatively more positive (70%) in comparison to enterprises that do not indicate the unit price (50%).

Article 4.1 also provides Member States with the possibility of limiting the number of prices to be indicated. With respect to limiting the maximum number of prices different groups of Member States can be identified:

- Member States for which the transposition text does not mention the facility of limiting the number of prices (BE, FI, SE);
- Member States that did not introduce limitations (AT, DE, DK, EL, ES, NL, PT, UK, IE);

- Member States that have introduced limitations during the transitional period (FR, IT, LU).

Throughout the transitional period of the introduction of the euro, double pricing was practiced, which represented an additional burden on companies, especially small retail business. However once the transitional period was over these problems disappeared. During such a transitional period limitations on the maximum number of prices to be indicated can be relevant, because too much information could be confusing for consumers or because the indication of many prices could imply a heavy burden on retailers.

Based on information from expert interviews with national consumer and retail stakeholders it could be discerned that from a consumer perspective it is both defensible to limit the number of prices to be indicated (because otherwise this can be misleading to consumers and it does not contribute to readability) but also to have the possibility to indicate a large number of prices (provide as much information as possible). From a business perspective it could mean a heavy burden for retailers when many prices have to be indicated. The extent to which consumers are actually aware of and use unit pricing is discussed in chapter 6.

The facility of limiting the number of prices might still be relevant in the future when new or non-euro Member States will introduce the euro.

Products for which the obligation is waived (Article 5.1);
non-food products (Article 5.2)

The transposition of Article 5.1 and 5.2 concerning (non-)food products for which the unit price obligation is waived, has led to different approaches and lists of products. This may constitute an obstacle to the improvement of consumer information, namely in connection to cross-border transactions and to electronic commerce. However, the amount of daily shopping via electronic commerce is still rather limited.

Legal specificities of Article 5.1 provide Member States with the possibility of identifying negative lists for food and non-food products. Article 5.2 allows Member States to establish positive lists for non-food products. In practice, however, one Member State has adopted a positive list for food products and almost every country has adopted negative lists for non-food products. Thus, transposition is not always in line with Article 5.

Lists of exemptions (negative list or positive lists) are intended to clarify the definition which is already included in the Directive (i.e. unit pricing should not lead to confusion). Moreover, in some cases (e.g. perfume or

spices) the price indication for unit prices (e.g. kilo) would be too high, making comparison useless. The lists used often are a result of the previously used lists. Not much discussion has taken place on which products should or should not be included in the lists. The lists include in general much the same products. However, some specific national products are included.

Negative lists are based on: product requirements (weight, quantity); requirements for selling methods; specific product categories for food (fruits and vegetables, meat and meat products, fish, pastry and bakery products, drinks, meals); specific product categories for non-food (tobacco, cosmetics and perfumes, jewellery, paint).

Also, within Member States the specificity of the items included on the lists might give rise to some problems. Both for retailers and consumers it will not be always clear which products do or do not require unit pricing.

4 Assessment of the use of Article 6 derogations

4.1 Introduction

Chapter 4 focuses on the actual implementation of Article 6 in the Directive. Chapters 5 and 6 focus on an assessment of the impact of the derogation.

Article 6 provides a derogation that gives Member States the possibility to exempt small retail businesses from the obligation to implement unit pricing. It is based on the assumption that unit pricing might be an excessive burden for these retailers.

Article 6

'If the obligation to indicate the unit price were to constitute an excessive burden for certain small retail businesses because of the number of products on sale, the sales area, the nature of the place of sale, specific conditions of sale where the product is not directly accessible for the consumer or certain forms of business, such as certain types of itinerant trade, Member States may, for a transitional period following the date referred to in Article 11 (1), provide that the obligation to indicate the unit price of products other than those sold in bulk, which are sold in the said businesses, shall not apply, subject to Article 12.'

4.2 Past and Current situation

Table 8 provides an overview of the use of the derogation of Article 6 by the Member States. As can be seen in the table, when the Directive was introduced, eleven Member States (AT, BE, DE, EL, ES, IE, IT, LU, NL, PT, UK) used the derogation. Only four Member States did not make use of the possibility to exempt small retail businesses from the obligation to indicate unit prices. Germany and the United Kingdom already had a derogation for small retail business before the introduction of the Directive.

France has an exceptional position, since no formal use of the derogation has been made, but an administrative tolerance is in place, which allows small retail business to be exempted from the obligation to indicate the unit price. The administrative tolerance in previous legislation was reaffirmed when the Directive was transposed. The obligation to indicate the unit price does not apply to those products sold over the counter (customers need the help of the trader who acts as an adviser) and sold in retail shops with a sales area below 120 m². The French administrative tolerance means that the Ministry of Economy, Finance and

Industry indicates to its control units at nuts-III¹ region level (DDCCRF) that they have to allow such shops not to apply the regulation. In Spain the implementation of the legislation is delegated to the regions. Regions had the possibility to introduce a derogation during a transitional period that ended on 30 June 2002.

table 8 Implementation of derogation for small retail business (Article 6), by country

<i>Country</i>	<i>Used derogation at implementation of Directive</i>	<i>Derogation in the past, before the introduction of the Directive?</i>	<i>Used derogation after transitional period</i>	<i>Future intentions</i>	<i>Remarks</i>
AT	Yes	No	Yes	No change	Evaluation intended end 2003.
BE	Yes	No	No (since 1 July 2002)	Possibly reintroduction of derogation	
DK	No	No	No	No change	The public authorities have appointed a committee to revise the Danish price indication legislation.
DE	Yes	Yes	Yes	No change	
EL	Yes	No	Yes	No change	
ES	Yes	No	No (since 30 June 2002)	No change (was abolished)	Legislation delegated to regional territories.
FR	No*	No**	No*	No change	
FI	No	No	No	No change	
IE	Yes	No	Yes	No change	It should be noted that the Irish definition does not pertain to <i>small</i> retailers, but is based on availability of technology, see section 4.4.
IT	Yes	No	No (since 1 March 2002)	No change (was abolished)	
LU	Yes	No	Yes	No change	
NL	Yes	No	Yes	No change	
PT	Yes**	No	No	No change (was abolished)	
SE	No	No	No	No change	
UK	Yes	Yes	Yes	No change	Further review in 2007.

* *In France an administrative tolerance is in place.*

** *In Portugal only itinerant traders are exempted, no size class exemption.*

Source: EIM, 2004.

¹ Tertiary Administrative Units of the European Community.

A number of Member States (BE, ES, IT, PT) abolished the derogation after the transitional period. As a consequence, at the moment eight Member States (AT, DE, EL, FR¹, IE, LU, NL, UK) currently use the derogation.

4.2.1 *Motivations for not introducing the derogation*

For countries that do not have a derogation and never have used a derogation (DK, FI, SE) the motivation for the non-use of the derogation (Article 6) is that it makes for more simple and transparent legislation, which is in the interest of consumers. Furthermore, a derogation for small retailers is regarded as unnecessary since it is not seen as a problem for those shops to indicate both prices. Therefore the same demands can be placed on all retailers, big and small.

Some Member States (BE, ES, IT, PT) used the derogation but abolished it once the transitional period was over. Spain and Italy used a transitional period, in order to facilitate activities of small retailers, since it would be more difficult for small retailers to adapt to the new legislation (e.g. because of their lack of human and financial resources). In general, the Spanish government avoids modifying EU Directives in those areas that fall under the jurisdiction of regional governments. In Portugal only itinerant traders were exempted during the transitional period. The 3-year derogation was viewed as a temporary extension of the existing de facto situation. The exemption for itinerant traders was automatically abolished in May 2002. For Belgium the reason for abolishing the derogation on the 1st of July 2002 was the fact that the derogation was formally only allowed until that date.

Countries that have used the derogation and currently use it (including France), mainly did so from a business perspective. In these countries the derogation has been used because it was/is felt that the obligation to indicate the unit price would mean an additional or excessive burden for small retailers due to their specific characteristics, such as limited financial and staff resources and the lack of (accessibility to) technology.

France and Greece add a consumer perspective for exempting small retailers. From a consumer perspective it is argued that it would be unnecessary for these shops to indicate the unit price. In view of the limited number of products displayed, a price comparison based on the unit price would not be relevant. Also, the relationship of trust between a local small retailer and the consumer is seen to provide sufficient safeguards for fair and clear price information. Besides, the (unit) price is not an important aspect for consumers that frequent these shops; instead

¹ Administrative tolerance.

proximity, accessibility and freshness are the important criteria. In France the motivation for administrative tolerance for exempting small retailers is related to the social role of smaller businesses (also in rural areas). It is argued that, in view of their ongoing decline, these shops should not be unnecessarily burdened. In Greece, on the contrary, there is an abundance of small retail shops. It is argued that they should be exempted because they lack the appropriate infrastructure.

Countries that did not have a derogation for small retailers in the past indicate that before the introduction of the Directive there was no widespread obligation to indicate the unit price (IT, LU, NL). Unit prices were only rarely indicated and, therefore, a derogation for small retailers was not relevant in the past. The situation in the Netherlands before the introduction of the Directive was based on self-regulation. A problem was foreseen, if it became obligatory for small retailers to comply with the Directive, in terms of costs (e.g. investments in Information and Communication Technology - ICT) and administrative burdens. As a consequence, the derogation was introduced.

4.3 Future intentions

Intention to maintain or amend the derogation

Most countries do not foresee any changes in their current policy. Countries that use the derogation intend to maintain it. In these countries the exemption is regarded as useful and it is not expected that the application and importance of the exemption will significantly decrease in the (near) future. There is also no urgent demand or desire on the part of stakeholders to abolish the derogation.

Various arguments are made in favour of maintaining the derogation. These arguments are in general the same as those that were given for introducing the derogation.

First of all, maintenance of the derogation is justified because the introduction of unit pricing would imply a heavy financial and personnel burden for small retailers. The cost of introducing technological solutions would lead to extra problems for small shops. Small shops are characterized by low staff numbers and a requirement to unit price would add significantly to an already heavy workload. These extra costs would ultimately probably be charged to the consumer. In the Netherlands the government stresses that it intends to reduce regulations (and hence administrative burdens) for small enterprises. From this perspective the abolition of the derogation is undesirable because that would result in an extension of regulations that apply to small businesses.

Second, it is argued that these kind of shops need some sort of protection. The number of small retailers continues to decrease in many countries¹, because they are facing competition from larger retailers, which have the advantage of greater economies of scale. They face competition through aggressive price strategies, based on the importance of the price to the consumer. Small shops provide an important shopping resource for consumers unable to reach more distant larger premises.

Thirdly, various reasons are given for maintaining the derogation based on the relevance of unit prices to small shops, e.g. because they, in comparison to supermarkets, carry a much smaller product range, so that price comparisons plays a smaller role between homogenous goods in different packaging sizes. Small retailers do not have more than one or two brands in a product category. In that case the possibility to compare prices is limited or even impossible. Also, because of the presence of someone serving and informing consumers, the indication of the unit price would not be relevant or necessary. Finally, consumers that acquire products in these small retail shops do not usually select these goods according to the cheapest offer, but attach importance to other criteria such as freshness, purity or regional specialty. Prices of products do not have primary importance for the consumer that shops in small retail business.

Consumer organisations do not always agree on the usefulness of maintaining the derogation. In Austria consumers would like a stricter standardisation of unit pricing in order to being able to compare all products' prices. In Germany consumer organisations have accepted the existing exemption. This might be related to the fact that in Germany only a marginal part of retail business is exempted.

Intention to (re-)introduce the derogation

Most countries that currently do not make use of the derogation, but have used it in the past do not intend to (re-) introduce the derogation, as the transitional period is considered to have been long enough and there are no demands for further periods.

In Belgium, the derogation was abolished as an automatic result of the time limit set in the Directive. Belgium, however, is considering the re-introduction of the derogation for sales areas of no more than 150-200 m². The possible reintroduction of the derogation is the subject of debate between consumer and retail representatives and the government.

¹ See chapter 2 on trends in the retail sector.

Countries that have not used the derogation in the past, do not intend to introduce such a derogation in the future.

4.4 Definition of small retail business

Table 9 indicates for each country that uses the derogation in Article 6, which type of businesses are exempted and, if applicable, how small retail businesses are defined.

table 9 Implementation of derogation for small retail business (Article 6), countries that had availed of derogation

<i>Country</i>	<i>Definition of small retail business</i>	<i>Additional types of trade exempted</i>	<i>Remarks</i>
AT	Employees (≤ 9 fte or ≤ 50 fte for operation business (Bedienungsgeschäft) or sales area (<250 m ²) combined with less than 10 branches	Itinerant traders	
BE	Sales area (<400 m ²) (With reintroduction: Sales area ($<150/200$ m ²))	Itinerant traders	
DE	Not defined ¹	Small direct marketers Small retail businesses, which issue goods predominantly by service (not part of a marketing system)	The derogation applies to goods offered in finished packaging, open packages or as sales units without casing.
EL	Sales area (<50 m ²)	Over-the-counter formula Haberdashery Street kiosks Stands (outdoor shops)	The derogation applies to pre-packaged products (e.g. not those sold in bulk)

¹ In the interest of higher judicial security, stakeholders of the German retail business and Federal State authorities submitted a proposal to explain the exemption more closely. In particular, they suggested - in analogy to corresponding regulations in other Member States - to define the permissible size of a 'small retail business' e.g. by means of the sales area. The Federal Government is examining these suggestions and is open to making modifications of the exemption if necessary.

<i>Country</i>	<i>Definition of small retail business</i>	<i>Additional types of trade exempted</i>	<i>Remarks</i>
ES	Over-the-counter formula, where customers are served personally and directly by the shop assistant.	Itinerant traders	The derogation applies to pre-packaged products in fixed quantity
FR*	Sales area (<120 m ² and which are non self-service shops)		(mainly groceries)
IE	The term 'small retailer' is not used in Ireland's transposition measures. Access to technology is the relevant exemption criterion.	Pricing method (does not make use of equipment for printing shelf edge labels or for point of sale scanning) Itinerant trade	The derogation applies to products sold other than in bulk.
IT	Sales area (<150 m ² in cities <10,000 inhabitants) Sales area (<250 m ² in cities >10,000 inhabitants)	Itinerant traders Neighbourhood shops (very small shops, no self-service formula) Retail activities like bars (and takeaway in general)	
LU	Sales area (<400 m ²)	Itinerant trade	Products sold other than in bulk. The derogation does not apply when more shops are held by the same company and when the sales area of one of these shops exceeds 400m ² .
NL	Employees (≤ 5 fte for self-service stores)	Over-the-counter formula	Pre-packaged goods or goods weighted/measured in presence of customer
PT		Itinerant trade	
UK	Sales area (≤ 280 m ²)	Itinerant traders, vending machines	Pre-packaged products in fixed quantity

* In France an administrative tolerance is in place.

Note: fte stands for full-time equivalent.

Source: EIM, 2004.

Motivations for applying specific definitions

With the exception of the Netherlands, no research has been conducted in the various Member States for determining the definition applied. In the Netherlands, EIM (1998) conducted a study to determine a manageable definition of small retail business. An analysis of various criteria that

can be used for measuring the size of a company (degree of automation, assortment, number of persons employed, turnover, phase of life-cycle and sales area) resulted in the selection of the number of persons employed as the most suitable criterion for determining the company size for use with the Directive. The choice of this criterion has been made on the basis of three requirements: (1) univocal measurability, (2) reliability and controllability and (3) sufficient distinguishing capacity.

In most Member States small retail business is defined on the basis of sales area. This is in some cases motivated by the fact that the same criterion was also used in other or previous legislation (BE, IT, LU). This is not the case for the UK. In the UK previous legislation also provided a derogation for smaller businesses, but the qualifying criterion was different (based on levels of employment and hours of work). The exact reason for the change in definition is unclear. However it is suggested by retail experts that the new definition, based on sales area, offers greater clarity for retailers as they now qualify for exemption based on fixed criterion rather than on changeable factors. Employment levels often fluctuate within small companies. The new definition is considered a more practical definition and furthermore, it can be more readily enforced. In Greece the selected definition is the outcome of long consultations of public policy makers of the Ministry of Development with small retailers' representatives and consumer organizations.

In Austria and the Netherlands small retailers are defined on the basis of the number of persons employed. In the Netherlands the criterion of 'number of people employed' was considered as most useful¹ as this criterion is frequently used in various laws and regulations, and since it is easy to measure and control, including by the retailer. In Austria small business companies with less than 10 employees are excluded from the duty to indicate the unit price. Certain forms of trade (Bedienungsgeschäft) where the product is not directly accessible for the consumer are also exempted, with an additional criterion, the number of the persons employed in the entire organisation (<50 persons). Small businesses are defined as companies, which employ less than 50 people, fol-

¹ Vree, R. de, et al., 1998, Onderbouwing van (tijdelijke) uitzondering van kleine detailhandelszaken in Nederland, zoals bedoeld in Art. 6 van de Europese Richtlijn 98/6/EG inzake prijsaanduiding van aan de consument aangeboden producten (Underpinning of the (temporary) derogation for small retail business in the Netherlands, as meant in Art. 6 of the European Directive 98/6/EC concerning price indication of goods that are offered to consumers), 1998, EIM/HBD.

lowing the European Commission's definition of small businesses¹. Furthermore, in Austria a link is made between the sales area (<250 m²) and the number of branches (in total less than 10 branches).

In Ireland, access to technology is the defining factor for smaller businesses to qualify for an exemption. It proved difficult to apply a specific definition of small retail business since no definition of a small retailer existed in previous legislation and no comprehensive statistics were available on the size of retail premises in Ireland. It was also felt that the size of the business would not take into account the increasing impact of technology throughout the retail sector. It is believed that access to the technology for the printing of shelf edge labels and the use of point of sale scanning equipment can significantly reduce the time and other staff costs associated with pricing and recording. It was agreed, therefore, that access to technology would be the defining factor for small businesses to qualify as exempt.

In Germany there is no specific definition for small retail business. The Federal Government will examine suggestions to further define the permissible size of a small retail business.

Scope of the definition applied

In general little or no information is available on the number of businesses and the percentage of total retail turnover that fall under the derogation of Article 6. This is due to the fact that definitions used in legislation to define small retail businesses cannot be linked to available statistical sources that use different definitions. Nonetheless, based on interviews and available information the following qualitative indications can be given:

- In France there are 14 000 enterprises with 16 000 selling points (shops) to which the administrative tolerance applies. They account for around 16% of the total number of selling points and for less than 2% of the total turnover of the sector to which the regulation on unit prices applies.
- In Germany the 30 largest food companies have a market share of over 95%, so the proportion of business that is exempted is marginal.

¹ On 6 May 2003 the Commission adopted a new Recommendation 2003/361/EC regarding the SME definition which will replace Recommendation 96/280/EC as from 1 January 2005. SMEs are defined as follows:

Enterprise category	Headcount	Turnover	or Balance sheet total
Medium-sized	< 250	≤ € 50 million	≤ € 43 million
Small	< 50	≤ € 10 million	≤ € 10 million
Micro	< 10	≤ € 2 million	≤ € 2 million

- In Greece, the number of small retailers is large, meaning that probably many shops have a sales area of less than 50m². It should be noted, however, that the total retail turnover for these small retailers is disproportional to their size (e.g. there are many small retail shops which in total sell much less than large retailers).
- In Ireland the number of small shops with no scanning facilities is thought to account for a very small percentage of sales. Few businesses are thought to fall into this category although exact numbers are not known. The number of itinerant traders exempt as a result of this derogation is not known.
- For Luxembourg it is estimated that around 10 % of the SMEs in terms of total retail turnover are exempted from the indication of the unit price.
- In the United Kingdom there is no exact information available regarding the number of small businesses and itinerant businesses qualifying under the derogation criteria. However, research conducted for the Department of Trade and Industry indicates that 130,000 businesses operate in premises with a sales area of less than 280 square metres (and thus defined by current legislation as a 'small shop'). It is estimated that there are about 358,000 vending machines in use across the UK in 1999 although the number of operators is unknown.
- In the Netherlands the definition applied has a very broad scope as three-quarter (76%) of the establishments in the branches that have to deal with unit pricing are exempted as a result of the derogation.¹

Should a single definition of small retail business be given in the Directive?

Most stakeholders (policymakers, consumer organisations and retailers) within countries that currently or in the past made use of the derogation are of the opinion that a single European definition of small retail business should not be given in the Directive. This is mainly motivated by the fact that the existence of widely varying retail structures² in the various Member States makes a uniform definition infeasible (DE, FR, UK, NL, LU). Greek stakeholders added that every Member State has different types of small retail businesses and that, therefore, it would be extremely difficult to uniformly define all the small retail businesses which are subject to derogation. For example, '*periptera*' (small kiosks that occupy a few square metres, sell an assortment of basic products and are placed on pavements) constitute a special form of a small retail shop,

¹ EIM, Addendum Prijzenwet Nulmeting Administratieve Lasten (Addendum Price Law Zero-measurement administrative burdens), 2003, Zoetermeer, the Netherlands.

² For an overview of the national retail structure, see section 2.2.

which can be found (in such form and density) only in Greece. It should be noted, however, that a European definition of small retailers based on number of employees or sales area would probably also cover these specific kind of businesses.

Another argument that is given against a uniform definition is that each Member State has different regulations for the commerce sector and these regulations are not harmonised (IT).

An argument heard from consumer organisations in favour of a uniform definition is that this would be advantageous for retailers operating across national borders (UK) and for retailers located in border regions (AT). A study on the volume of cross-border shopping (Eurobarometer) reveals that this type of shopping is still rather limited across Europe. Moreover, much of this shopping does not concern daily groceries. Dutch policy makers, are of the opinion that the definition of small business should not be given in the Directive, because the Directive does not involve a cross-border issue. Therefore, a specific definition that is applied in one country does not give any problem to enterprises in other countries.

Some stakeholders (e.g. Irish policymakers) indicate that it would depend on the suggested definition or specific boundary whether they are in favour of a harmonised definition. Others (e.g. Greece and retailers in Austria) indicate that if there is a need for a common definition, a general rather than a specific definition would be appropriate (such as sales area or number of employees). German Food Retailers indicate that they would prefer a definition of small retailers by sales area (all businesses up to 250 m²). The retail organisation in Italy considers that if a uniform definition should be given, the main parameter used should be turnover.

The existing flexibility of the Directive that allows individual Member States to apply their own definitions for small retail business is highly valued by most stakeholders. Furthermore, in view of the specific national characteristics of the retail trade a common European definition on small retailers seems to be impractical. A uniform definition might be advantageous for retailers and consumers that operate across national borders or that are located in border regions. It is argued by some consumer organisations that the current lack of a common definition of a small retail business might lead to a situation in which the concept of 'small' is expanded to encompass enterprises that do have the capacities to indicate the unit price. All stakeholders agree that only the smaller retail businesses for which unit pricing would indeed pose an excessive burden should be exempted.

However, what the precise definition of *small* should be remains unclear. It is not evident what would be a good qualifying criterion for a uniform definition. A definition based on sales area has the advantage

of being based on a fixed criterion as compared to a definition based on the number of employees, which is a more changeable factor. A definition based on number of people employed has the advantage of being used as a criterion to differentiate enterprises according to size class in other databases as well. The scope and extent of retailers covered by the derogation should also be taken into account to guarantee sufficient consumer protection.

4.5 Compliance with the obligation to indicate the unit price

Although this was not specifically asked, in a number of countries it was reported that no active control on unit prices in small retail shops is implemented. Due to the lack of control, (small) retailers do not always correctly comply with the Directive. In interviews with retail organisations, it was explained that retailers generally have no intention to use incorrect price indications nor benefit from incorrect price indications. Price transparency and preserving a good image with the consumer are found to be too important to structurally indicate incorrect prices. Nonetheless, pricing mistakes are inevitable in practice. In Belgium and Spain, more extensive studies into the compliance of retailers and the correctness of price indication have been conducted.

In Belgium research¹ conducted by the general 'Control and Arbitration' board indicates that smaller and itinerant traders experience difficulties with the obligation to indicate the price per unit of measurement: almost 62% of the retailers were not in compliance. With retailers having an area under 200 m², this rose to 78%. In particular, the non-food sector did not follow the rules: 90% of those retailers did not indicate the unit price. The main reason for not complying with the unit pricing legislation was a lack of awareness. Smaller enterprises (with a sales area below 200 m²) further mentioned that for them the obligation is not feasible in practice. (See also the section 5.3 on technological developments.)

In Spain a survey amongst large retailers² showed that unit price indication for food products (per kilo) was more often correct (approximately

¹ Board of Economic Inspection, Department of Organisation and Coordination, Office Legislation Instructions Documentation and Education. Note to the Minister. Research at 1352 retail companies concerning price per unit of measurement (Royal decree of the 7th of February 2000 to change the Royal decree of the 30th of June 1996 concerning the indication of prices of products and services en on the order form). Brussels, 21 October 2002.

² Conducted by OCU.

15% incorrect) than for non-food products (per unit) (approximately 35% incorrect). The main problems highlighted in the study were:

- Unit price is not indicated for all products. Thus, even if other products are correctly priced, comparisons among them are hindered as long as some of them are not properly priced.
- There are indication mistakes, such as the use of a different unit measure (i.e.: eggs, using units instead of dozens) and weight mistakes (net weight is indicated instead of net drained weight).
- When extra volumes are included for free (frequent in toilet paper, nappies and detergents), these additional amounts should be taken into account for unit price calculation purposes, but they rarely are.

The higher number of incorrect unit price indications for non-food products (measured per unit) was confirmed in another Spanish study¹. For non-food products incorrect unit price indications affected as much as 61% of all products required to indicate both selling and unit price (as opposed to 37% among food products). Price indication proved to be confusing in 8% of sampled food products, compared to 25% of non-food products. The extent of incorrect pricing decreased in 2002 compared to the previous year.

In Austria faults in unit pricing have been reported although no precise numbers are available. The mistakes in unit pricing mainly took place shortly after the implementation of the Directive, although errors continue to be made.

Difficulties in understanding the new legislation by small retailers were indicated in Denmark. Some small retailers might have bought new pricing equipment, but since control is lacking, presumably most very small Danish retailers do not use unit pricing. Danish consumer organisations demand a stricter control of the implementation of the Directive. The authorities in charge do not have the required resources to control implementation. Hence, the Directive is not being enforced.

As explained earlier, France has an administrative tolerance for small retailers. The intention is to avoid controls in small shops. The French control authorities (DGCCRF) note few infringements in this field. It can be noted that most infringements concern do-it-yourself (DIY) products

¹ Instituto Nacional del Consumo, 'Memoria de actividades de control y disciplina de mercado realizadas por las administraciones de consumo durante 2002' (Annual report on control and market discipline activities carried out by Public Administration bodies in the field of consumption in 2002), Madrid, 2003. Available at: www.consumo-inc.es/informes/interior/control/frame/documentos/PDF/MemControl02.pdf

sold by specialised large retailers (the indication of unit price is not well respected as regards products displayed outside the shops).

In Italy it was confirmed that the application of the Directive is easier for food products than for non-food products. In Italy no information on the number of violations of the law are available. There were some initial difficulties to adapt to the new standards. No further information on compliance levels is available.

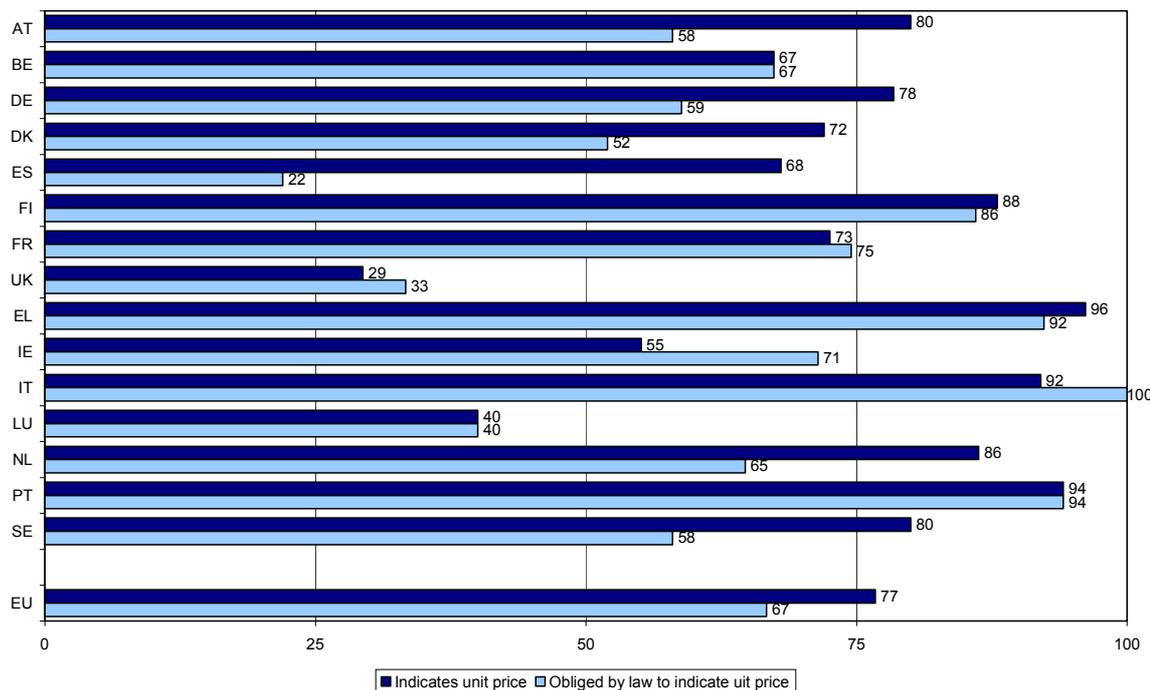
Retail organisations in the Netherlands had requested a longer transition period and to postpone controls. Formally the controls were not postponed, but in practice no control has taken place. During the current price war in the retail sector, Dutch retailers have not been able to keep their prices up-to-date. Changes in price-offers are implemented in the various shops or within a shop (between the shelf and the check-out) with some delay. If prices remain highly variable in the future, the regulation for pricing per unit might form an obstacle for free market operations as it puts a limit on the flexibility. Despite the aforementioned difficulties compliance with the legislation seems to be high.

In Sweden there are problems of controlling the implementation of the Directive, because the controlling agency has too few resources to carry out the task. Control is mainly carried out with regard to daily grocery products. In late 2002, the Swedish Consumers' Agency conducted an investigation¹ to test whether the unit pricing had been implemented in the stores. The conclusion was that the price information in general was good, but there were big regional and product differences. The unit price was especially lacking among the product categories that had formerly been exempted from having to indicate unit prices.

Consumer organisations in Luxembourg indicate that problems with regard to the daily use of the Directive are rare.

¹ Konsumentverket (The Swedish Consumer Agency), Uppfyller dagligvaruhandeln kravet på prisinformation? (Does the trade in convenience goods meet the demand for price information?) report no. 2002:12, 2002.

figure 2 Compliance with legal obligation to indicate unit price, by country



Source: EIM, 2004.

Figure 2 shows that most small retailers included in the Survey that are obliged by law to indicate the unit price actually do indicate the unit price. More interestingly, a relatively large percentage of small retailers indicate the unit price without a legal obligation. The only exception is Ireland where more enterprises indicate that they are obliged to indicate the unit price, than actually do indicate the unit price. It should be noted that in a number of Member States (BE, DK, ES, FI, IT, PT, SE) currently no exemption for small retailers exists. Therefore, in general all enterprises should indicate the unit price. However, the Survey did not contain sufficient detailed information to indicate whether the individual enterprise was correct in indicating that they are legally obliged to indicate the unit price. As discussed above legislation contains a variety of different exemption possibilities (e.g. type of product, type/size of retail business etc.) which cannot be linked to the available characteristics of enterprises in the Survey.

Enterprises that currently do not indicate the unit price were asked whether they intend to indicate the unit price in the near future. One quarter (28%) of the small retailers intend to indicate the unit price. There are no differences amongst size classes.

4.6 Concluding remarks

Application of the derogation for small retailers (Article 6)

At the moment eight Member States (AT, DE, EL, FR¹, IE, LU, NL, UK) use the derogation. A number of Member States (BE, ES, IT, PT) introduced the derogation initially, but abolished it after a transitional period.

Most countries (except Belgium) indicate that they currently do not intend to change the present situation. Belgium is considering reintroducing the derogation for sales areas less than 150-200 m².

Motives for (non-)use of the derogation

For Member States that do not use the derogation (DK, FI, SE), simplification of regulations in addition to consumer protection are key reasons. There is no need for an exemption as no problems are reported for small retailers in complying with the requirements to indicate the unit price.

Some Member States only used the derogation during a transitional period in order to ease some of the burden for small retailers with respect to the adaptation to new legislation (BE, ES and IT). In Portugal only itinerant trade was exempted during the transitional period, which was a continuation of previous legislation.

Countries that currently use the derogation do so mainly because it would be a heavy burden for small retailers (e.g. because of their lack of human and financial resources, and the lack of access to technology) to comply with the obligations of the Directive. The Dutch government states that the introduction of the Directive for small retailers would increase regulations for these companies, which is not in line with Dutch policy. Some countries (FR, EL) add that the indication of the unit price in these shops would be of no relevance for consumers, e.g. because of the limited number of products in these shops and because the (unit) price is not an important criterion for consumers in these shops. The belief is that for the small retailer it would be a heavy burden to abide by the obligation, while the advantages for the consumer would be minimal.

Most Member States did not have measures to exempt small retailers from the obligation to display unit prices before the introduction of the Directive as there was no widespread obligation to indicate the unit price. The introduction of the derogation only became relevant once the Directive was adopted.

¹ Administrative tolerance.

Definition of small retail business

Member States have applied various definitions of small retail business. In 7 Member States (AT, BE, EL, FR, IT, LU, UK) small retail business is, or was, defined on the basis of the sales area; in two Member States (AT, NL) the definition is based on the level of employment. Ireland has chosen a different definition. Small retailers are not automatically exempt, but are exempt when they do not have the equipment for printing shelf edge labels or scanning equipment. Thus, in Ireland access to technology is the qualifying criterion.

Definitions based on sales area, and definitions based on the number of persons employed both have their own advantages. A definition based on sales area has the advantage of being based on a fixed criterion as compared to a definition based on the number of employees, which is a more variable factor. A definition based on number of people employed has the advantage of frequently being used as a criterion to differentiate enterprises according to size class in statistical databases.

The existing flexibility of the Directive that allows individual Member States to apply their own definitions for small retail business is highly valued by Member States that use the derogation. For this reason, a uniform definition is not regarded as desirable. However, it is noted that a uniform definition might be advantageous for retailers that operate across national borders or for retailers that are located in border regions. It is argued by some consumer organisations that the current lack of a common definition of a *small* retail business might lead to a situation in which the concept of *small* is expanded to encompass enterprises that do have the capacities to indicate the unit price. All stakeholders agree that only the smaller retail businesses for which unit pricing would indeed pose an excessive burden should be exempted.

Compliance

Despite the fact that some countries reported that there is not always active control of (unit) price indications in small shops, the Survey shows that there is in general good compliance with the obligations of the Directive: most enterprises that are obliged by law to indicate the unit price actually do so. There also appears to be a relatively large percentage of small retailers that indicate the unit price, when they are not legally obliged to do so. One should however keep in mind that the (unit) price indication is not always displayed correctly. Incorrect unit price indication is reported more frequently for non-food than for food products.

Enterprises that currently do not indicate the unit price were asked whether they intend to indicate the unit price in the near future. One quarter (28%) of the small retailers intend to indicate the unit price. There are no differences amongst size classes.

5 Impact of unit pricing on small retailers

5.1 Introduction

In the previous chapters a number of reasons have been reported for the (non-)use of the exemptions in the Directive under Articles 3, 4, 5 and 6 (the derogation for small retailers). In order to assess the impact of the Directive on both small retailers and consumers (see chapter 6) the motives brought forward by various stakeholders (consumers, retailers and government) to exempt small retailers are reviewed systematically in this chapter.

The three main reasons, based on specific (business) characteristics, put forward by stakeholders to exempt small retailers are:

- The pricing methods used by small retailers make unit pricing very cumbersome;
- Technological developments would make unit pricing easier for small retailers;
- Due to their size and the pricing methods used, unit pricing would constitute an excessive administrative burden on small retailers.

The pricing methods used by (small) retailers are reviewed in section 5.1. The possible technological developments that would make unit pricing easier for smaller retailers are discussed in section 5.2. section 5.3, assesses the administrative burdens on small retailers. Finally, the viewpoint of small retailers themselves on the logic and relevance of unit pricing is assessed (section 5.5)

A number of other arguments from a consumer point of view that are reasons used to exempt small retailers (such as the social function of small retailers or that consumers use other arguments in their buying behaviour with regard to small retailers) are discussed in chapter 6.

Besides information obtained through expert interviews, information from the Survey has been used to substantiate the findings.¹ It should be noted that in some case the size class differences in the Survey are not as great as might be assumed from the information of the national experts. This is explained by the fact that only small retailers (<20 employees) are included in the Survey. Size class differences in the Survey data are based on the following definition: micro (1-2 employees), very small (3-5) and small (6-20) retail enterprises.

¹ See annex II for a description of the Survey.

The impact and perception of the Directive, and particularly Article 6, depends in part on the implementation in any given Member State. However, it was not possible to make a clear link between the (non-)use of the derogation for small retailers by Member States and characteristics of the small retailers in the Survey. Most Member States at one point used the derogation for small retailers. Although this derogation was recently abolished by a number of countries, no direct changes in the methods and behaviour of small retailers can be expected. The actual implementation of unit pricing by enterprises previously exempted takes time. Furthermore, since compliance by small retailers in a number of Member States seems not to be actively enforced, it is difficult to make a link between the actual implementation and the official use of the derogation. Finally, small retailers may opt to indicate the unit price even if a derogation exists.

5.2 Methods used for pricing products

Technological and economic (cost) developments in pricing instruments might reduce barriers for small retailers to indicate the unit price. In the retail trade a large variety of different price indication systems and technologies is used. These methods can be divided into three groups:

- 1 Manual price indication (written/pre-printed);
- 2 Mechanical (hand held price gun);
- 3 Computerised (scanner system).

In most of the manual or mechanical systems, price indication on products or the shelf enables the consumer to compare prices and provides price information for the cashier for correct billing. In computerised systems with barcode scanners, the written selling price indication on the package or on the shelf is only for the consumer's information. The encrypted barcode provides a link to pricing information through a computerised till.

The use of these systems varies considerably amongst shops, sectors and countries. Nonetheless, the pricing mechanisms used by retailers across the 15 Member States show a similar pattern. Very small retailers often use manual price indication, whereas small and medium sized retailers use mechanical marking guns to a much greater extent. In general, computerised price indication is only found among large retail businesses. Smaller retailers indicate prices on individual items, whereas larger retailers indicate prices on the shelves and use more advanced elec-

tronic systems.¹ The method used for pricing products typically differs according to the size of the retail store. This general difference between pricing methods was confirmed by experts from most Member States (AT, BE, DK, FI, FR, EL, IT, PT, SE, NL). No exact data on the degree of usage of the various price methods by size class is available from national or European wide sources or stakeholders.

In the Survey retailers were asked which methods they use for pricing products (see table 10). It should be noted that more than one answer was allowed. The analysis assessed which types of pricing methods are used in combination most often, and resulted in five groups²:

- 1 Only a manual system (26%);
- 2 Only a mechanical system (27%);
- 3 Primarily manual, but also mechanical and computerised systems (16%);
- 4 Primarily computerised, but also mechanical (25%);
- 5 Other systems (6%).

No large differences were found between retailers that do, or do not, indicate the unit price. The results by size class indicate that the micro retailers (1-2 employees) more often use only a manual (31%) or mechanical system (32%). The larger retailers (6-20 employees) use a computerised system in combination with another system most often (42%).

table 10 Methods used for pricing products, by size class

	<i>1-2 em- ployees</i>	<i>3-5 em- ployees</i>	<i>6-20 em- ployees</i>	<i>Total</i>
Only a manual system	31%	29%	18%	26%
Only a mechanical system	32%	33%	14%	27%
Primarily manual, but also mechanical and computerised systems	14%	13%	21%	16%
Primarily computerised, but also mechanical	14%	21%	42%	25%
Other systems	9%	4%	5%	6%

Source: EIM, 2004.

The enterprises that currently do not use a computerised system were asked whether they would consider changing to such a system. 19%

¹ See for instance Wilhelm Consulting GMBH, Study on the economic impact on small and medium-sized retail businesses of the European parliament and Council Directive on consumer protection in the indication of the prices of products offered to consumers. European Commission Directorate General XXIV, Regensburg, 1998.

² Percentages do not add up to 100% due to rounding.

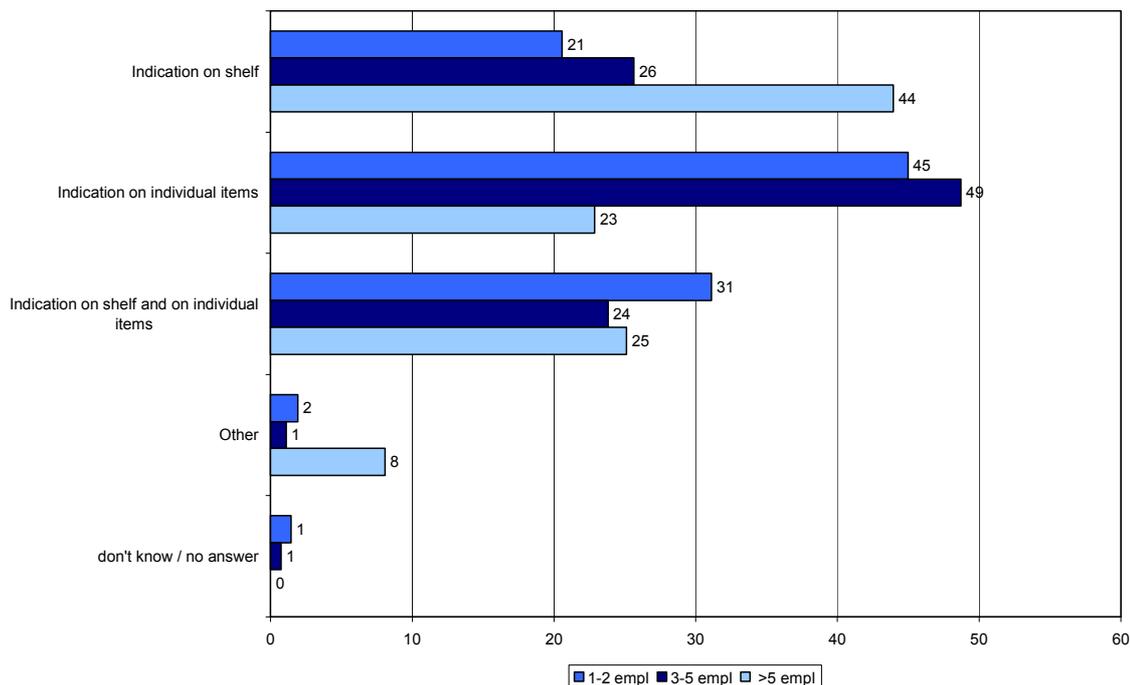
currently have plans to change to a computerised system. 12% did consider changing to a computerised system, but decided against implementing such a system. As many as 61% of the surveyed enterprises did not consider changing to a computerised scanner system. The reasons mentioned for not using a computerised scanner system are mainly that the costs of software are too high (21%), followed by the fact that the system is too complex (16%) and that there is not enough turnover in the store (13%). The category 'other' was mentioned in 23% of the cases. This indicates that there is no one clear barrier for small retailers to using a computerised system, but that a number of factors are involved.

Location of (unit) selling prices

Not only the pricing method differs between smaller and larger retailers. The location of the (unit) selling price differs. Large retailers indicate the selling price and the unit price by means of tags or labels suspended from, or stuck to, shelves for groups of similar products. Large retailers sell large quantities of many different products; therefore, it would be very costly to indicate both prices on the package of the products. Shelf-edge pricing is easier to change when the price changes and/or special offers are introduced. Large retailers in most cases have the appropriate space to display similar products and place only one tag or label to indicate the prices. On the other hand, there are cases where the manufacturer, or wholesaler, indicates both prices on the pre-packaged individual products (especially for packaged fresh food, whose selling price is calculated after the packaged product is weighed).

Small retailers usually do not have the appropriate space to display similar products and place tags or labels on the shelves. If the product is packaged, then in the majority of cases the selling price is indicated on the package (on the individual item). If the product is not packaged, then a label near the product indicates the selling price.

figure 3 Location of product prices, by size, in percentage of enterprises



Source: EIM, 2004.

The information from national sources is confirmed by the Survey. The small retailers were asked where they indicate the (unit) selling price. Figure 3 shows that 44% of the retailers with 6 to 20 employees indicate the selling price on the shelf. In contrast, the smallest retailers most often indicate prices on individual items. The differences in methods used by enterprises that do, or do not, indicate the unit price are limited.

When individual countries are considered, the selling price is more often indicated on the shelf in Austria (44%), Denmark (40%), Spain (40%) and Sweden (50%). Only 8% of enterprises in Luxemburg indicate the selling price on the shelf. In contrast, pricing of individual items is common in Luxemburg (64%) and Portugal (63%), whereas a mere 2% of enterprises in Finland price individual items. In Finland, indication on both the shelf and on individual items is used (62%). A similar practice is applied in Greece (52%).

It should be noted that, in case of shelf labels being used without any package labelling, there is no selling price information available on individual items for the cashier. Shelf labelling without any kind of informa-

tion system at the till will often depend on the existence of a fully electronic scanning system (including scanner tills)¹.

Calculation of (unit) selling price

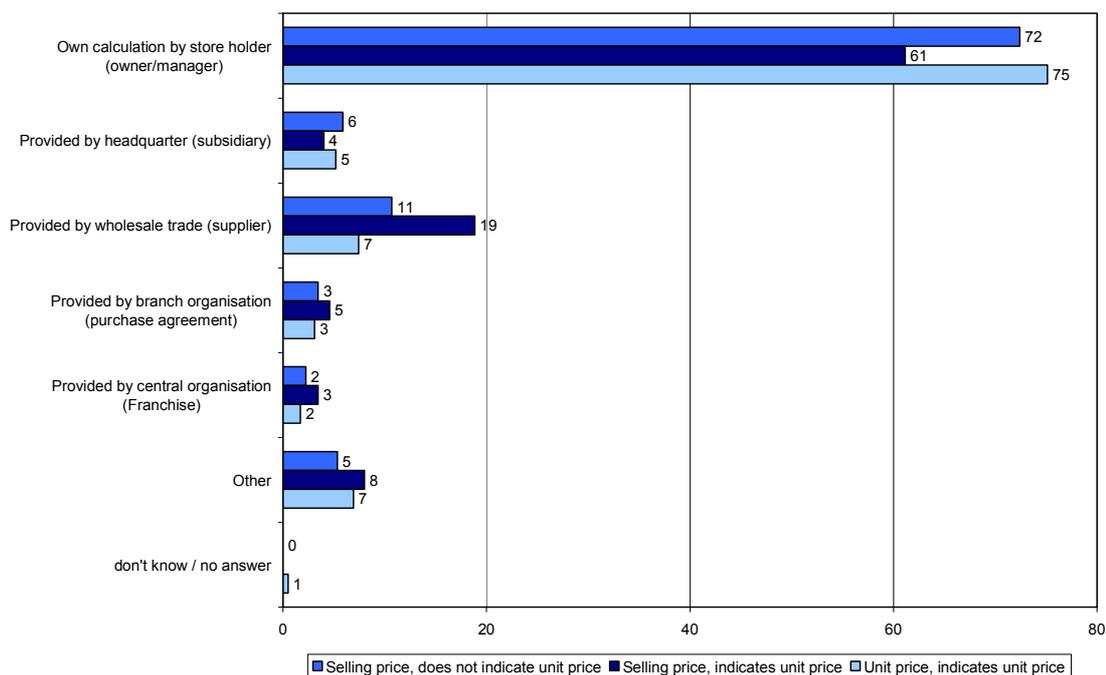
In general, small retailers calculate the prices on the basis of the 'cost carrying capacity' of the product, i.e. an estimation of what the consumer would be willing to pay. This system is also known as the mark-up system under which a percentage is added to the wholesale price. Small retailers generally can not influence the pricing of standard articles which are also offered by large retailers (who generally calculate a smaller mark-up). For speciality products, however, more flexible pricing methods can be applied. Both, small and large retailers apply mixed calculations, i.e. different margins for different products. Furthermore, larger and more sophisticated retailers might have a policy of regional pricing with different mark-ups according to the purchasing power of the average customer of each store of the chain.

Information from the national experts indicate that - depending on the retail formula- small retailers in general calculate the (unit) selling prices themselves. In larger enterprises prices are determined or provided by central organisations and less often calculated by the store holders themselves.

The method of price calculation depends on the nature of the product, the degree of automation and on whether an enterprise is part of a co-operation agreement or chain store. As can be seen from figure 4, the vast majority (72%) of retailers calculate the (unit) selling price themselves. For the 19% of enterprises that do not indicate the unit price, the selling price is provided by the wholesaler.

¹ Also indicated by Electronic Point Of Sales (EPOS) system.

figure 4 Determination/calculation of (unit) selling price, by indication of unit price, in percentage of enterprises



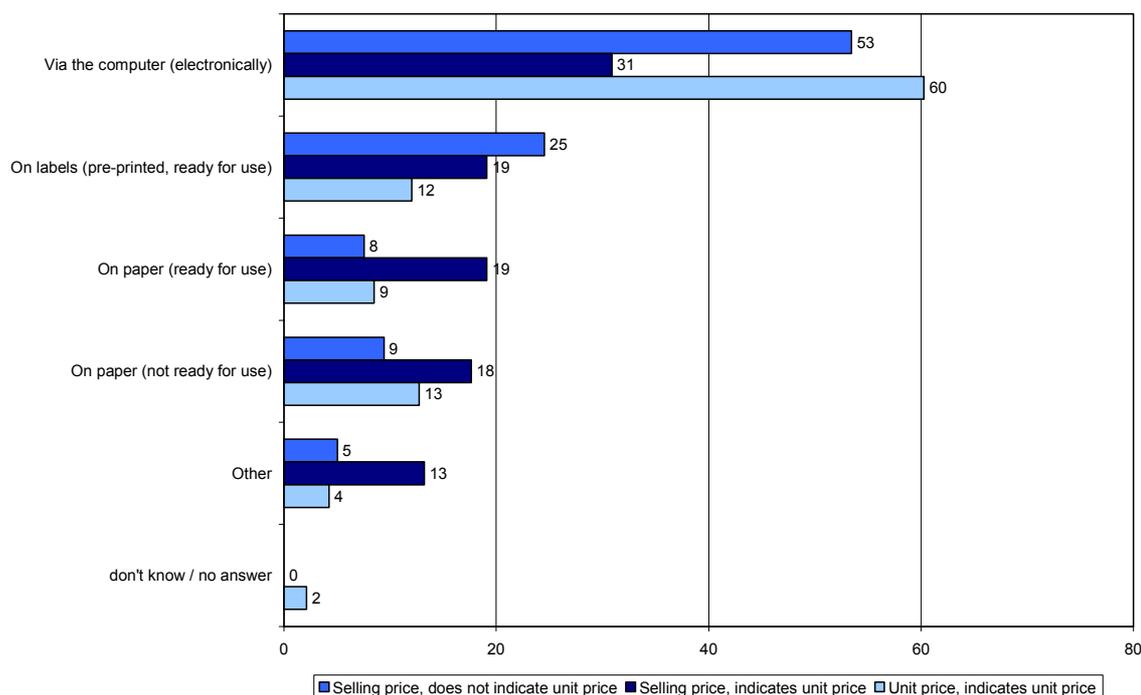
Source: EIM, 2004.

The calculation of the price by the store holder is most common in ES (80%), FR (78%), EL (79%) and PT (86%). In contrast, a relatively large proportion of small retailers in AT (24%), UK (24%), IE (31%) and LU (30%) receive the selling price from the wholesale trade (supplier). There are no large differences amongst size classes.

Unit price indication may have a knock-on effect by which not only retailers but also their suppliers can be affected. In some cases, the obligation to indicate unit prices may have been passed on to suppliers because retailers have relied on being provided with the unit price by suppliers, rather than calculating it themselves.

Enterprises that do not calculate the (unit) selling price themselves were asked how the prices are provided to them. Figure 5 demonstrates that the majority of small retailers that do not calculate prices themselves receive the (unit) prices electronically via computer. Compared to the micro retailers, the small retailers (6-20 employees) more often receive prices via the computer.

figure 5 Method for providing (unit) selling price to retailers, by indication of unit price, percentage of enterprises



Source: EIM, 2004.

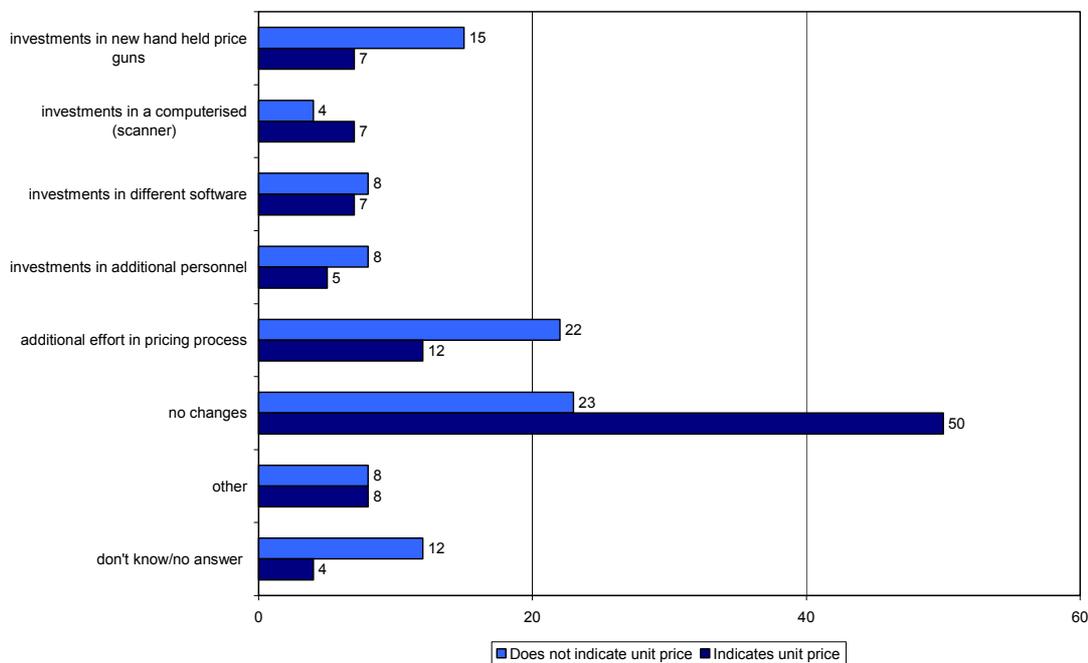
These results suggest that if required, the unit price could be provided by the wholesaler along with the selling price. This would alleviate the burden for small retailers. However, the prevailing retail structure and independence of especially the smallest retailers could be hampered by a price determination at an earlier stage in the distribution chain. Furthermore, the bargaining power of small retailers in relation to wholesalers is limited.

Required changes to pricing mechanism

Both enterprises that currently indicate the unit price, and those that do not, were asked what (anticipated) changes need to be made to their pricing method in order to indicate the unit price. As can be seen in figure 6, enterprises that currently do not indicate the unit price mainly think that an additional effort in the pricing process (22%) and investments in new hand held price guns (15%) are required. Half (50%) of those enterprises that currently indicate the unit price say that they had to make no changes to their pricing method as a result of the obligation to indicate the unit price. About one fifth (23%) of the enterprises that do not indicate the unit price anticipate no changes.

These results imply that prior to indicating the unit price, the anticipation of the changes required is higher than the actual changes experienced by enterprises that have implemented unit price.

figure 6 Required changes to pricing mechanism when introducing the unit price, by indication of unit price



Source: EIM, 2004.

The results indicate that there are considerable differences in the pricing methods used by retailers depending on their size. New technological developments are thought to alleviate the possible burden for small retailers. This presumption assessed in the following section.

5.3 Technological developments

The Directive and the collected national information indicate that the limited technological means of small retailers are an explanation why unit pricing would be an excessive burden for the small(est) retailers. Anticipated technological developments was one of the reasons for including a transitional period for the derogation for small retailers in the Directive. A computerised system could be used to:

- Control stocks;
- Optimise the ordering process;
- Optimise the buying process (contacts with wholesalers);
- Increase the accuracy of the cashing process (including -unit-pricing);
- Improvement of customer service etc.

In the last few years technological developments with regard to pricing in the widest sense have taken place in the retail sector (e.g. self-scanning checkouts or digital shelf pricing). However, these developments primarily constitute signs of innovation and technology leadership by large companies. Consumers do not yet accept or use the new innovations completely. Financially the newest innovations are not affordable for small retailers and will most likely never become viable given the size of these enterprises (these developments are also not fully applied by all shops of large companies as the costs are too high).

Scanning technology, which allows shelf edge labelling with unit prices to be automatically generated has been in existence since before the Directive was introduced. The existing technology appears to have been both improved and reduced in price. However, almost all countries report that it was - and remains - prohibitively expensive for many small shops to purchase (evidence from AT, BE, DK, FR, FI, DE, EL, IT, DK, LU, NL, UK). Moreover, large retailers from the UK report that technology costs are higher than envisaged and that available technology is not compatible with policy requirements, particularly for retailers operating across Member States where transposition is interpreted differently.

There is hardly any information available on the economic viability of the technological solutions. From Denmark it was reported that retailers should have a turnover of at least 10 million Dkr. (1.34 million euro) to make it feasible to invest in a technological solution. Experts from Sweden indicated that a store should at least have between 10 and 30 million Swedish Crowns (1,095 - 3,287 million euro) in revenue for it to be viable to invest in computerised pricing systems.

A study prepared for the Dutch retail organisation¹ states that the most important costs for retailers in indicating the unit price are costs for a system of price indications on shelves and costs for automatic check-outs. This implies that costs are directly related to the degree of automation.

¹ HBD Hoofd Bedrijfschap Detailhandel (Organisation of Retail trade, Toetsingskader voor vrijstelling van PPS (Reference framework for the exemption of unit pricing), the Hague, the Netherlands, 1998.

A study in Belgium¹, investigated if the compliance with the obligation of unit pricing was connected with the evolution of technology. Half of the enterprises state that technological evolution is fundamental to complying with the unit pricing obligation. However, 85% of itinerant traders indicated that there is no connection between compliance with unit pricing and technological developments. If the floor space of the company increases, the importance of the technological evolution increases too. The link between technological developments and compliance was found higher for the food sector than the non-food sector.

Ireland takes a different approach. It has taken account of the increasing impact of technology on the retail sector, which is reflected in its use of the derogation at Article 6 and the wording of its Regulations in this regard (see chapter 4). The availability of the technology has been made a prerequisite to the obligation to indicate the unit price. During preparation of the revised 2002 Regulations, The Department of Enterprise, Trade and Employment found that many retailers did not use scanning - examples of such companies include builders' yards, hardware stores, florists and small pharmacies - and are thus exempted.

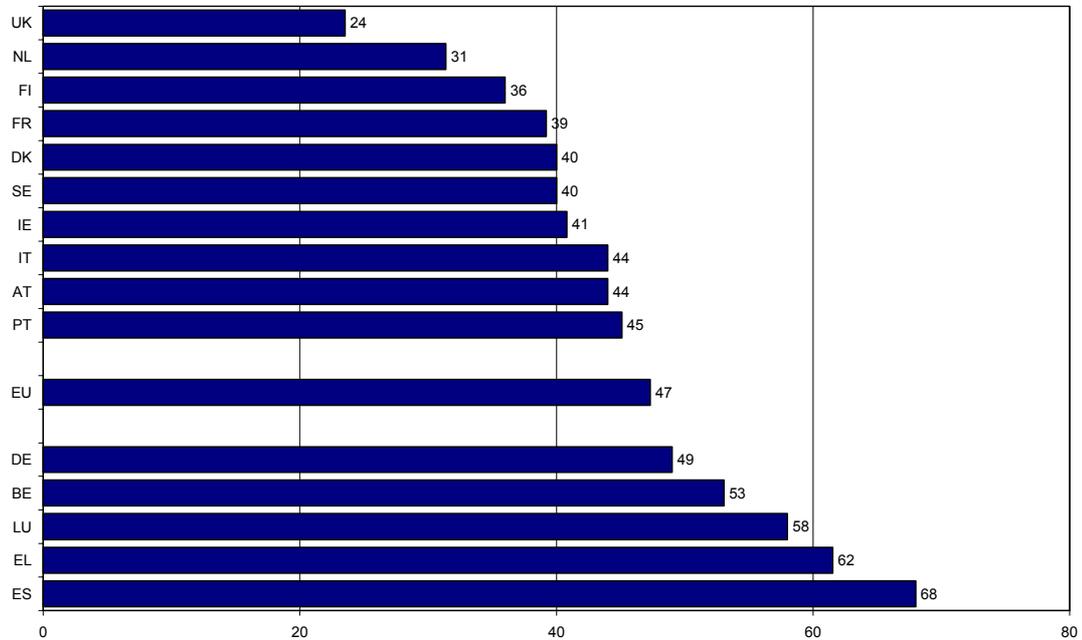
An important prerequisite for using an electronic system is the use of computers in store. The Survey shows that 62% of the enterprises use a computer in their store. There are no differences between enterprises that do, and do not, indicate the unit price. However, there are differences between size classes. Whereas 85% of the small retailers (6-20 employees) do use a computer, 61% of the micro retailers (1-2 employees) do not use a computer. The Survey shows some remarkable differences between Member States. UK, PT, NL, IT are at the low end of computer usage, whereas FI, EL, IS, DE are on the high end. These differences cannot be explained by differences in size class, nor whether retailers in the survey indicate unit prices or not.

About half (47%) of European small retailers use special software to control purchases, assortment and stocks. As can be seen from figure 7 there are some remarkable country differences. Whereas the UK (24%), NL (31%), FI (36%) are at the low end, usage of special software is particularly high in EL (62%) and ES (68%). On average about two thirds of the enterprises that use a computer, use special software. Of these enterprises 74% use the software to calculate (unit) selling prices.

¹ Board of Economic Inspection, Department of Organisation and Coordination, Office Legislation Instructions Documentation and Education. Note to the Minister. Research at 1352 retail companies concerning price per unit of measurement (Royal decree of the 7th of February 2000 to change the Royal decree of the 30th of June 1996 concerning the indication of prices of products and services en on the order form). Brussels, 21 October 2002.

Micro retailers use computers or special software considerably less often than small retailers.

figure 7 Small retailers that use special software to control purchases, assortment and stocks, by country, percentage of enterprises



Source: EIM, 2004.

Only 16% of the enterprises that currently do not use the software are planning to use it in the near future. Micro retailers are less likely to use the software in the future, than small retailers. A variety of barriers to using the software are mentioned: costs are too high (26%), there is not enough turnover in the store (17%) and the system is too complex (17%). There is no particular barrier that is clearly more important than the others. It seems that a variety of barriers are interacting to prevent usage of the software. These results indicate that there will not be a large increase of the use of the specific software in the near future.

5.4 Administrative burden of unit pricing

One of the main reasons for including the derogation (Article 6) in the Directive was that unit pricing would cause an excessive administrative burden on small retailers. The extent of the administrative burden depends on the pricing methods used, which in itself has a strong relationship to the size of the enterprise. Most of the larger retailers are running computer based systems, with daily updated databases for inventory management. They have the necessary information to print labels, tickets, lists and other materials. Unit prices can be printed together with

other information required for labelling or customary to trade, such as the barcodes. The indication of unit prices is a routine procedure that cannot be taken as a special burden to this type of retailers. By contrast, the smallest retailers mostly use manual or mechanical methods for pricing their products. The technological solutions available in the market are not feasible for these enterprises (see section 5.3).

Although it was reported that the introduction of unit pricing led to additional labelling and an additional investment in software (e.g. AT, DK, NL, LU, SE), almost no specific information or research on the extent of this burden is available. Results of research¹ in Germany from the 1980s pointed out that the costs for unit pricing would amount to 0,5 % of the sales for department-stores, and up to 4 % of the sales for small retailers. A report by EIM² states that administrative burdens arising from price laws are substantial, but *unit* pricing only requires little additional administrative actions.

This section explores in detail the potential burden of unit pricing on small retailers.

Initial investment costs

In order to upgrade the pricing mechanism to easily indicate unit pricing, initial investment costs in software and equipment is required. It can be assumed that no retailer will decide to upgrade his or her pricing mechanism solely based on the need to indicate the unit price. As indicated in section 5.2, many small retailers do not expect any change to the pricing method as a result of unit pricing. Furthermore, only 16% of small retailers are planning to change to a computerised system. This indicates that *unit* pricing per se will not induce major investments.

Both the information from the national experts and the Survey indicates that information on initial investment costs associated with the indication of the unit price barely exists and is difficult to estimate. According to a retail organisation in Denmark, small retailers would have to invest a minimum of 10,000 Dkr (1,340 euro) in new equipment in order to comply with pricing legislation. In the Survey, enterprises that do indicate the unit price were asked to give an indication of the total initial investments costs associated with the indication of the unit price (in addition to the selling price). Three-quarter of the small retailers were not able to provide an estimate of the initial investment costs. The estimates

¹ Document 180/00 of the German Federal Council from 27th of March 2000).

² EIM, Addendum Prijzenwet Nulmeting Administratieve Lasten (Addendum Price Law Zero-measurement administrative burdens), 2003, Zoetermeer, the Netherlands.

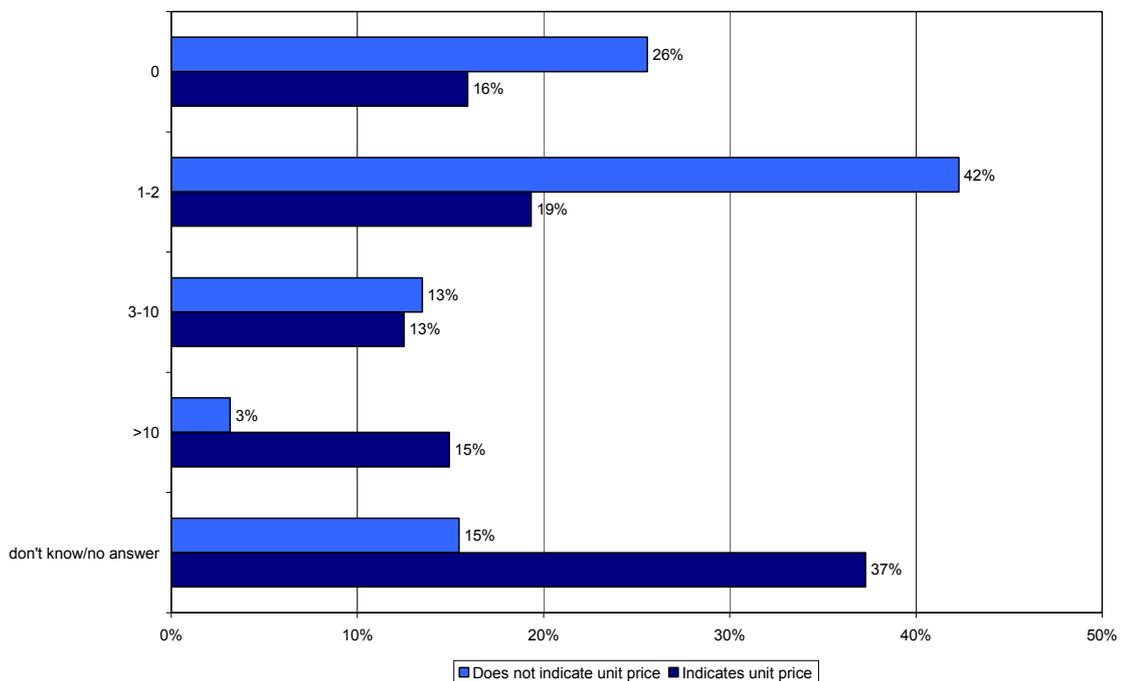
of enterprises that were able to give an indication of the initial investment costs were widely different. From these results it can be concluded that it is indeed very difficult for enterprises to distinguish and/or estimate the *additional* investment costs associated with unit pricing.

Additional time required

Additional effort in the pricing process was cited most often if changes were needed to the pricing mechanism in order to show unit prices. In the Survey, small retailers were asked how much extra time unit price indication would take. The results presented in figure 8 indicate that as many as 37% of the retailers that actually indicate the unit price do not know how much extra time this costs them. 16% indicate that unit pricing costs no extra time at all.

The retailers that do not indicate the unit price were asked to estimate how much extra time unit pricing would cost them. One-quarter (26%) indicated that unit pricing would cost them no extra time per week, whereas 42% estimated that it would cost them 1 to 2 hours per week. These enterprises anticipate that if they were obliged to indicate the unit price it would become an integral part of the pricing process.

figure 8 Required extra time to indicate unit price, hours per week, by indication of unit price



Source: EIM, 2004.

An analysis by size of enterprise showed that the extra time required per employee is higher for micro retailers than for small retailers. These re-

sults demonstrate that unit pricing is indeed a more important burden for the smallest retailers.

Perceived administrative burdens

For entrepreneurs it is not only the actual costs of administrative burdens imposed by unit pricing that are important. Most often the *perception* of burdens plays an even more important role. In order to better assess the perception of small retailers, respondents were confronted with a number of statements and asked whether they (strongly) agree or (strongly) disagree with the statements.¹ The following statements were only put to those retailers that actually indicate the unit price:

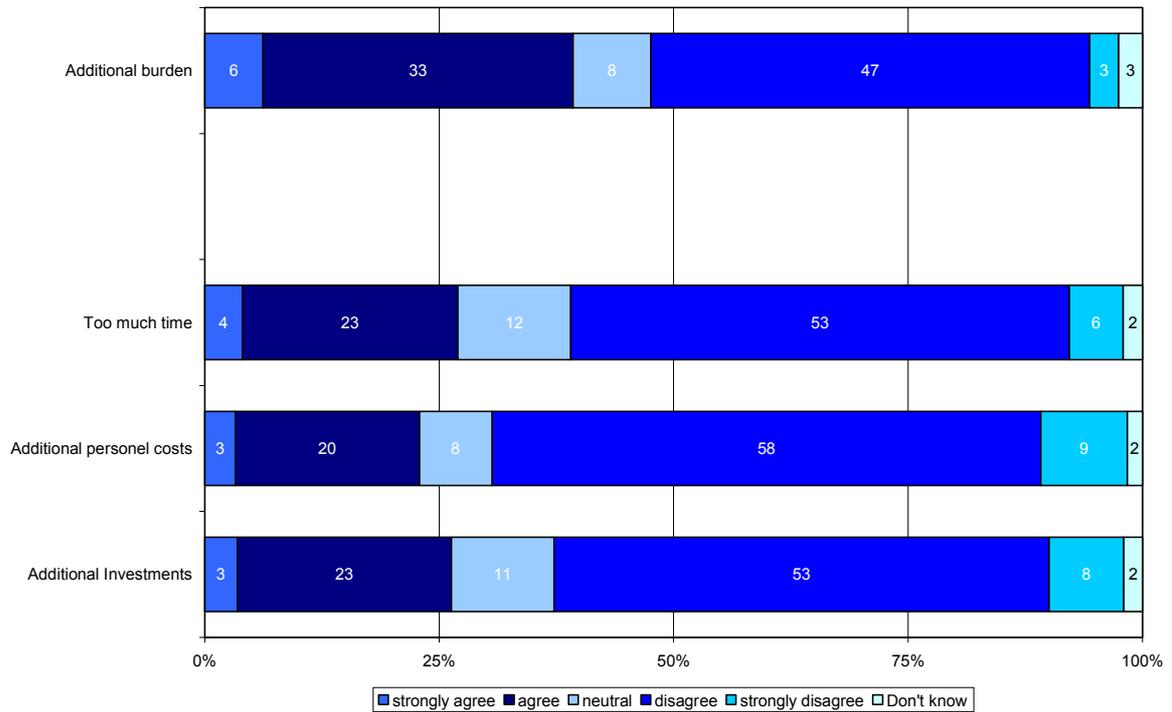
- Unit pricing means an additional burden on my business;
- It takes too much time to indicate the unit price;
- I am confronted with additional personnel costs because of the indication of the unit price;
- I am confronted with additional investment costs because of the indication of the unit price.

The general response at European level to these statements is presented in figure 9. As can be seen, a lower percentage of enterprises agree to the individual components that constitute the potential administrative burdens caused by unit pricing than do overall. It can be concluded that more than one third (39%) of the retailers that indicate the unit price indeed consider that unit pricing poses an additional burden on their business.

It may be concluded that unit pricing is regarded as an additional burden by a substantial minority of the retailers. Since unit pricing forms part of a larger pricing effort, it is impossible to isolate the additional costs associated with unit pricing. Although the burden on the micro retailers (1-2 employees) is larger than on small retailers (6-20 employees) it cannot be determined based on these figures whether the burden is excessive.

¹ The statements were randomised. See annex II for more information on the set-up and structure of the Survey.

figure 9 Does unit pricing cause administrative burdens*, retailers that indicate the unit price, EU average



* Four separate statements.

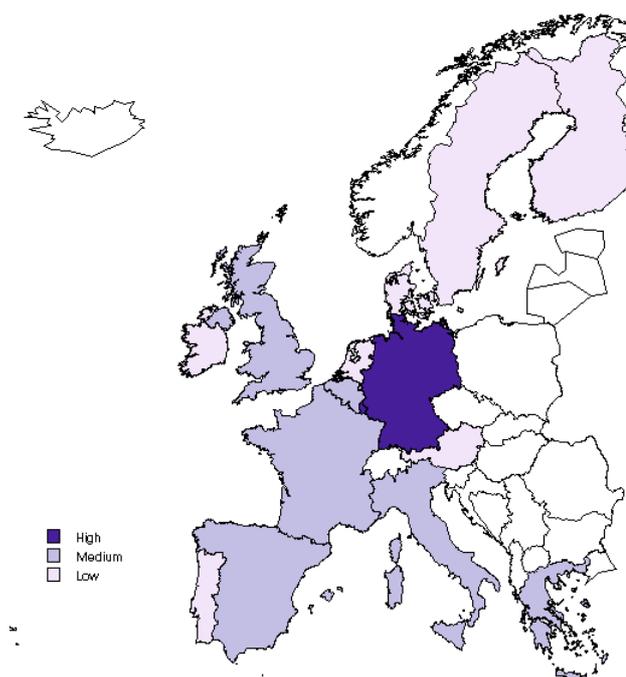
Source: EIM, 2004.

From an analysis¹ of the perception of administrative burdens the following groups of countries can be distinguished based on their ranking on the four statements (see figure 10):

- 1 Low perception of administrative burdens: SE, FI, PT, AT, NL, DK, IE;
- 2 Medium perception of administrative burdens: ES, UK, BE, IT, EL, FR;
- 3 High perception of administrative burdens: DE, LU.

¹ The ranking of each country based on their cumulative score on strongly agree and agree has been added for each statement, resulting in an overall ranking per country for the four statement.

figure 10 Perceived administrative burdens



Source: EIM, 2004.

No clear link could be established between the perception of administrative burdens by small retailers and whether the respective Member State has a derogation for small business or not.

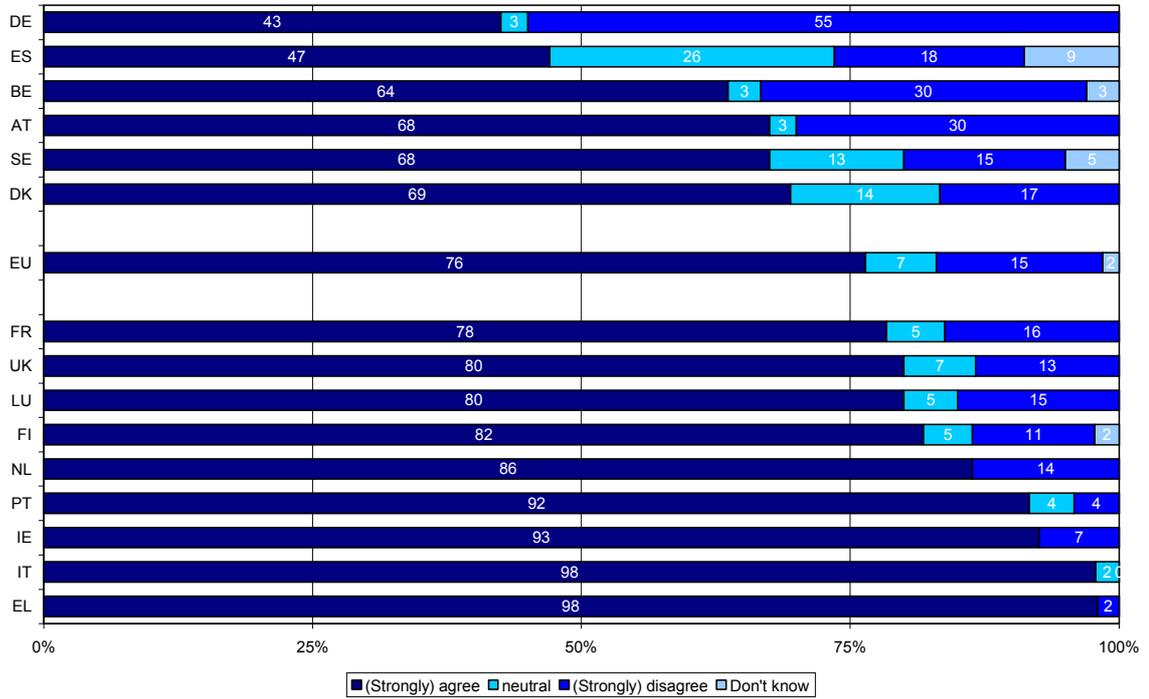
5.5 Acceptance of unit pricing by small retailers

Logical part of pricing process/import issue

When asked whether unit pricing is a logical part of the pricing process (see figure 11) or whether it is an important issue for their business (figure 12) three groups of countries can be distinguished. The first group consisting of EL, IE, IT, PT most often agree to these statements. A second group consisting of FI, FR, LU, NL and UK have an intermediate position. The third group of AT, DK, DE, BE, ES, SE least often agree to the statements.

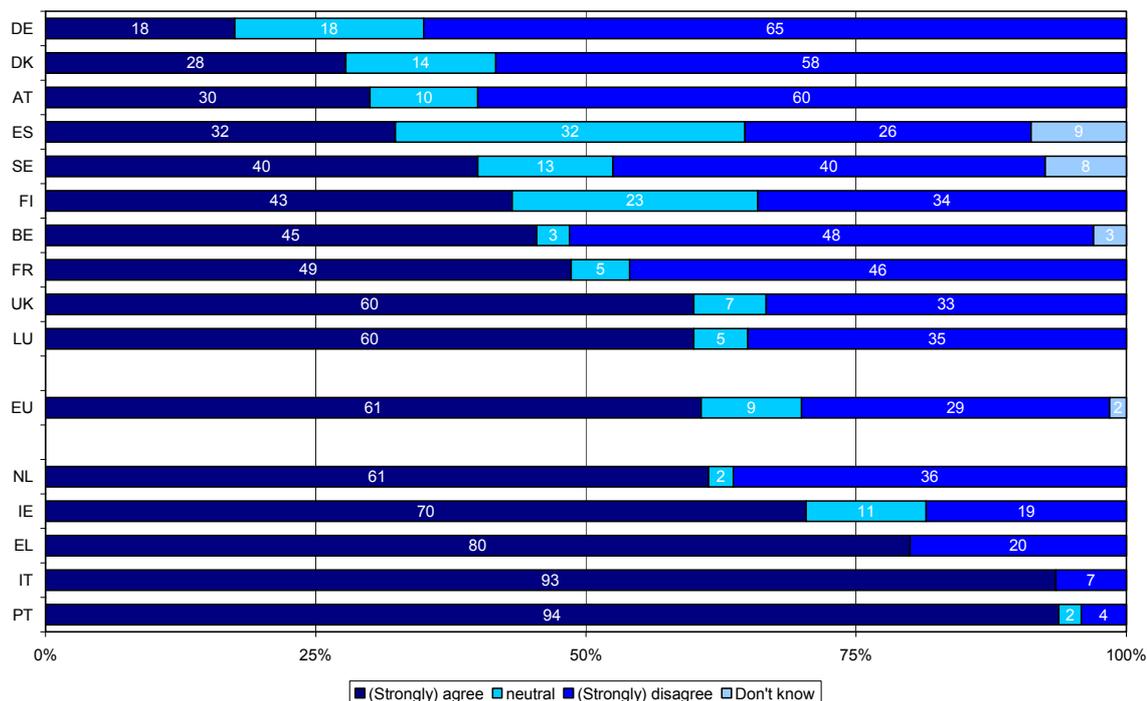
No clear link between the use of the derogation in the respective Member States and the acceptance of unit pricing by small retailers could be found. No size class differences could be established. The results indicate that unit pricing is found to be a logical part of the pricing process by three-quarters (76%) of the small retailers, whereas a lower number (60%) find unit pricing important for their business.

figure 11 Unit pricing is a logical part of my pricing process, retailers that indicate the unit price, by country



Note: only enterprises that indicate the unit price.
Source: EIM, 2004.

figure 12 Unit pricing is an important issue for my business, retailers that indicate the unit price, by country

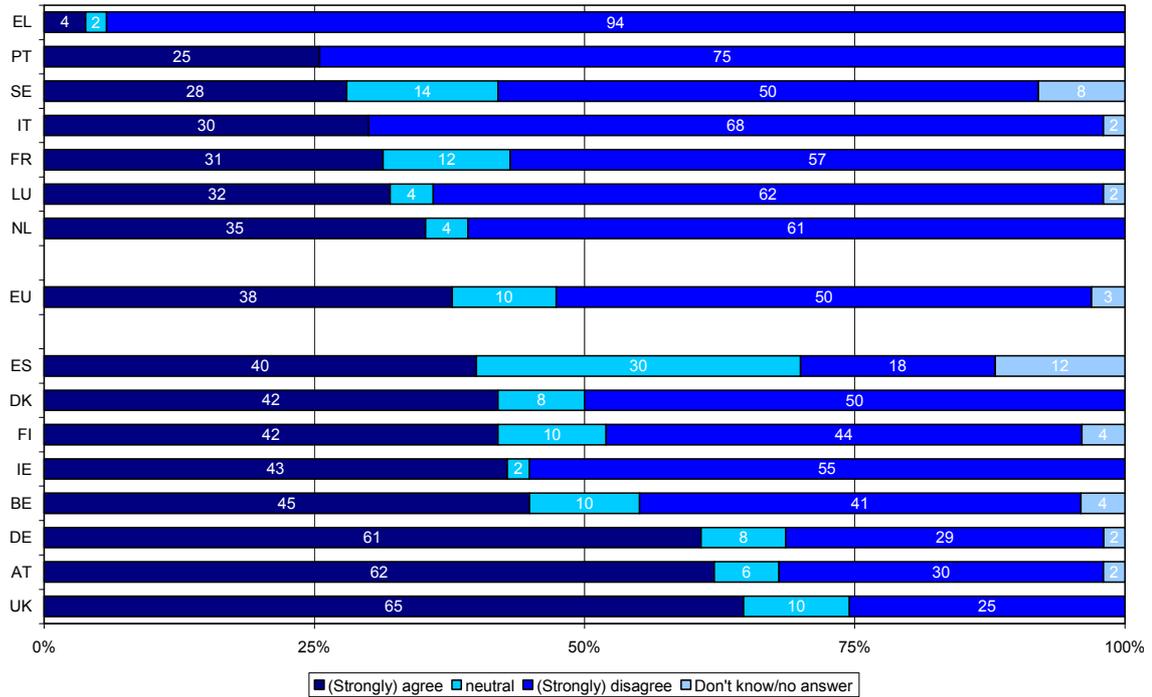


Source: EIM, 2004.

In order to assess how small retailers would perceive a possible change in the derogation (Article 6), they were asked whether all retail stores should indicate the unit price for their products. On average 67% of European small retailers agree with a unit price indication for all retail stores. There are large country differences. At the low end are ES (38%), DE (39%) and the UK (43%). In contrast almost all of the surveyed retailers in IT, PT and EL (strongly) agree with the statement. Retailers that currently do indicate the unit price more often (74%) would like to have a unit price indication for all retailers, than enterprises that do not indicate the unit price (45%). This difference might explain part of the country differences. No link could be established between country results and the current use of the derogation for small retailers in the respective countries.

More specifically, retailers were asked if small retail business should be exempted from indicating the unit price (see figure 13). On average, 38% of European small retailers indicated that small business should not be obliged to indicate the unit price. In DE (61%), AT (62%) and UK (65%) an exemption for small retailers is particularly favoured. Although no differences between size classes were found, slightly more retailers that do not indicate the unit price favoured the exemption.

figure 13 Small retail business should not be obliged to indicate the unit price, retailers that indicate the unit price, by country



Source: EIM, 2004.

5.6 Concluding remarks

Retailers face extra costs in order to indicate the unit price. They have to calculate the unit price by acquiring the appropriate equipment, training and employing personnel and maintaining the equipment. The initial investment costs vary depending on the technology used, the sales frequency, the type/form of the retailer (e.g. franchises can acquire the necessary mechanical or computerised system at better prices because of bulk purchases and special agreements), the types and number of products on sale, and the size of the retailer (e.g. large multinational supermarket chains have more buying power than small retail shops) etc.

Despite technological developments in the retail sector, the classic distinction between the pricing methods applied by (very) small retailers and larger retailers remains.

Smaller enterprises use price guns or handwritten labels, compared to computerised systems used by larger enterprises. Small retailers label prices on individual items, whereas large retailers indicate the selling and the unit price on the shelf. The unit price of products is generally indicated on the shelf. The vast majority of small retailers (72%) calculate the (unit) selling price themselves. Prior to indicating the unit price,

small retailers anticipate more changes to their pricing mechanism than have actually been experienced by retailers that have implemented unit pricing.

On average 67% of small retailers in Europe-15 agree with an unit price indication for all retail stores regardless of their size. Retailers that currently do indicate the unit price more often (74%) would like to have unit pricing obligatory for all retailers than enterprises that do not indicate the unit price (45%).

Unit pricing is regarded as an additional burden by a minority (39%) of the small retailers. Since unit pricing forms part of a larger pricing effort, it is impossible to isolate the additional costs associated with unit pricing. Although the burden on the micro retailers (1-2 employees) is larger than on small retailers (6-20 employees) it cannot be determined based on the available data whether the burden is excessive for these retailers.

No clear link between the use of the derogation in the respective countries and the acceptance of unit pricing could be found. However, the results do indicate that unit pricing is found to be a logical part of the pricing process by three-quarters (76%) of the small retailers, whereas a lower number (60%) regard unit pricing as important for their business.

Micro retailers (1-2 employees) use computers or special software to control purchases, assortment and stocks considerably less often than small retailers (6-20 employees). Due to a number of barriers such as high cost, insufficient turnover and complexity of the system, it is unlikely that there will be a large increase in the use of this specific software by small retailers in the future.

On average 38% of European small retailers indicated that small business should not be obliged to indicate the unit price. In DE (61%), AT (62%) and UK (65%) an exemption for small retailers is particularly favoured. Although no differences between size classes were found, slightly more retailers that do not indicate the unit price favoured the exemption.

6 Impact on consumers

6.1 Introduction

The Directive was introduced for the benefit of consumers, in order to guarantee a high level of consumer protection. The obligation to indicate the unit price is regarded as contributing substantially to the improvement of consumer information, 'as this is the easiest way to enable consumers to evaluate and compare the price of products in an optimum manner and hence to make informed choices on the basis of simple comparisons' (see recital 6 of the Directive).

In a report by the Nordic Council of Ministers¹ it was stated that unit price information has become increasingly important for household economies e.g. as a result of the fact that oral information from shop personnel to consumers on goods and prices has become rarer. In this respect the unit price is regarded by the Council as an instrument that helps consumers to inform themselves about goods and prices in stores and provides them with the ability to make well-informed and price-conscious choices. For this reason it was argued that unit pricing should have a place within the field of consumer protection.

In the complex process of buying behaviour of consumers, unit pricing is only one factor in the equation. Other aspects that play a role are price, appearance, brand, taste, quality, packaging etc. The information needs of consumers differ depending on the type of store and product. Therefore, the role of the unit price in the overall buying process should not be overestimated.

This chapter focuses on the impact of the (unit) price on consumers. A number of different sources have been used to assess the impact on consumers:

- Academic research on consumer behaviour;
- A Flash Eurobarometer 113 amongst 3613 consumers in the 15 Member States;
- Expert interviews with representatives of national and European consumer and retail organisations.

Additionally, small retailers were asked in the Survey about their perception of consumer behaviour. In order to get a clearer picture on the opinion of retailers regarding the use and usefulness of the unit price

¹ Nordic Council of Ministers, Unit Price - a Modern Method for Consumer Price Information, TemaNord, 1994: 623.

indication, retailers were confronted with a number of statements in the Survey. These statements were randomised, with some formulated in a positive and other in a negative way in order to avoid bias. Although small retailers might seem to be a biased information source on consumer behaviour, retailers are indeed very much aware of the buying behaviour of their customers. In fact, small retailers were very positive about consumer awareness, use and appreciation of unit pricing.

6.2 Consumer awareness and usage of unit pricing

6.2.1 *Previous research on consumer awareness of the unit price*

Research on consumer awareness of and opinion towards unit pricing is rather limited. Before the introduction of the Directive one study was carried out in the Netherlands¹ and two in the UK². The results of these studies will be discussed briefly in the following sections.

In 1993 a study on unit pricing was conducted in the Netherlands³. Its purpose was to measure acquaintance as well as use of unit pricing by consumers at that time and intentions for future use of unit prices. It was found that the majority of consumers (56%) were not aware of the existence of the unit price. A small proportion was aware of and actually made use of the unit price (27%). Of the non-users, one in three indicated they were interested in the unit price. This study indicates that consumer awareness and use of the unit price was rather limited. However, it should be noted that at the time the study was conducted unit pricing was a relatively new phenomenon in the Netherlands.

Two studies have been carried out in the UK. Although the studies were limited to consumers in the UK, the set-up of the studies warrants an extrapolation of the results to consumers in general. Mitchell et al⁴ for instance used three methods in their research among 1000 consumers: accompanied shopping, self-completed questionnaires and simulated tasks. Thus self-reported attitudinal and behavioural data were comple-

¹ Unit pricing existed in the Netherlands before the introduction of the Directive, but at the time the research was conducted (1993) its use was still rather limited.

² Unit pricing existed in the UK before the introduction of the Directive.

³ Eldik, I.M.C. van, *Rapport PPS - Prijs Per Standaardhoeveelheid (Report PPS - Price Per Standardunit)*, Project 00305 Bureau Inter/View (EZ 056577), 1993.

⁴ Mitchell, V., Lennard, D. and McGoldrick, P., *Consumer Awareness, Understanding and Usage of Unit Pricing in British Journal of Management*, Vol. 14, pp. 173-187, 2003.

mented by more objective tests of what unit-price information and decision-making short cuts shoppers use, how perceptive or vigilant they can be and how accurately they process value-for-money information.

A study by the Central Office of Information¹ (with primary research carried out in March 1996) was aimed at ascertaining the extent and ease of making value-for-money comparisons when buying pre-packaged groceries, the extent of awareness of unit pricing in supermarkets and the contribution this unit pricing makes to value-for-money comparisons. Basically, the study aimed to find out whether UK consumers are aware of unit pricing, if they make use of unit pricing and if they value unit pricing as a means of product selection.

Findings suggest that whilst the majority of shoppers had noticed unit pricing, this awareness varied greatly amongst different groups. Consumers in the lowest social groups (least affluent), and older consumers are the least likely to be aware of unit pricing. As regards the use and helpfulness of unit pricing when comparing products, it appears to depend upon the product. The majority of supermarket consumers simply select the products they usually buy and thus do not consciously use unit pricing or any other value-for-money comparisons in the selection process. This habitual purchase pattern appears to be followed not only when consumers are buying higher priced or less frequently bought goods. The study concludes that the use of unit pricing and the perceived helpfulness of unit pricing is therefore risk related; it is valued when the cost of error is considered high. There is an acknowledgement that unit pricing may be of use to consumers when switching brands but overall, consumers making familiar choices do not use unit pricing.

The study² carried out by Mitchell et. al. (fieldwork in March and April of 1998) had similar aims but provides a more comprehensive analysis of unit pricing awareness, understanding and usage. The study found similar themes - that unit pricing was known to exist by the majority of consumers although different groups in society demonstrate different levels of awareness and use, and that the use and helpfulness of unit pricing depends upon the product being bought. Of added interest however is this study's aim to understand and explain why consumers do not use unit pricing.

¹ Central Office of Information, Price comparisons: consumer awareness of unit pricing Research Division, Central Office of Information: London, 1996.

² Mitchell, V., Lennard, D. and McGoldrick, P., Consumer Awareness, Understanding and Usage of Unit Pricing in *British Journal of Management*, Vol. 14, pp. 173-187, 2003.

The study found four main reasons for not using unit pricing:

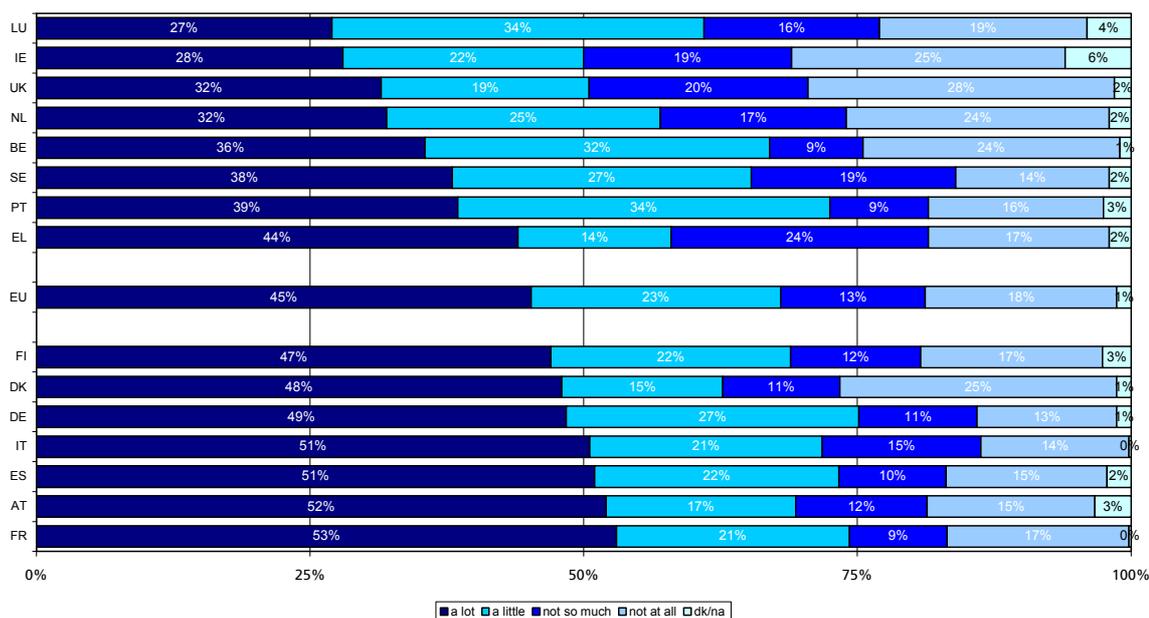
- 1 Consumers lack the cognitive ability to make use of unit pricing - they simply do not have the arithmetic ability to calculate prices, were confused by the complexity of product information or fail to include all potential product choices;
- 2 The effort required to make comparisons is not considered worthwhile - they simply could not be bothered working out the optimal prices for products (especially low priced products) or were indifferent to the process;
- 3 Consumers are not willing to spend time comparing unit prices - the time to compare is an inhibitor to its use and consumers seem not to care about using unit pricing due to time, boredom or fatigue;
- 4 Other less-demanding strategies for determining best-value are used - consumers, due to the aforementioned reasons, prefer to use other methods to save money such as looking for sales promotions, visual packaging or opting for brands as a means of determining value.

6.2.2 *Results of Flash Eurobarometer*

In 2001 a Flash Eurobarometer among 3613 European citizens was carried out on behalf of the European Commission¹. This survey focused on household opinions on product packages and product labelling. The survey provides an indication of consumer awareness of unit pricing, since in one of the questions consumers were asked whether they are personally interested in the display of the unit price. The replies to this question are presented in figure 14.

¹ Flash Eurobarometer 113 (2001), *Les Emballages et les ménages*, European Commission.

figure 14 Consumer interest in unit price, by country



Source: Flash Eurobarometer 113, 2001.

The results reveal that there is an interest in unit pricing across Europe, as 68% of European consumers are somewhat interested in the display of the unit price.¹

The results from the Flash Eurobarometer underline that awareness of unit pricing varies amongst different groups of consumers (e.g. based on gender, income, education level):

- Gender; it seems that unit pricing is a little more important for women than for men. This indication was confirmed in consultations among national stakeholders (IT, EL, AT). Women's higher interest can be explained by the fact that women often do the family shopping and, therefore, regularly buy large quantities of different products. As a result they are more price-conscious.
- Age; younger (people aged between 15-24) as well as older people (aged 55+) are least interested in the unit price. People aged between 25-54 are most interested in the unit price. The idea that young people are less susceptible to the unit price was also suggested in the consultations among national stakeholders (EL, IT, LU,

¹ It should be noted that the formulation of the question may have resulted in a tendency for consumers to answer this question with a positive response. The exact formulation of the question was: 'In some shops, unit prices by the kilo or by the litre are displayed in addition to the price to pay for the pack, can, or bottle. This gives you a better opportunity to compare competing products. Does this double display interest you personally: ...'.

AT). However, with respect to older people the results were unclear. Some parties are of the opinion that older people are more sensitive to unit pricing (e.g. consumer organisations in LU, EL, SE) (this was also found in one of the UK studies¹), for example because they generally have more time than people aged between 25-54. Some expect, on the other hand, that older people are more superficial in the buying process (IT), e.g. because the unit price may be confusing for them.

- Education; the use of the unit price increases when the level of education is higher and is especially high among highest educated people. This effect was also noticed by some national stakeholders.
- Profession; little differences are identified amongst people in various professions. Employees and manual workers are a little more interested in the unit price than people without professional activity. Self-employed are least interested in the unit price. No indication of different appreciation of unit pricing by type of employment was found in the national consultations. However, it was noted that the use of the unit price may be related to one's income, but it is not clear what the exact relationship is. While some assume that the use will be higher when income increases and that people with a low income are more influenced by the selling price than by the unit price (IT), others argue that people with a high income are less price sensitive and susceptible to the unit price than market segments with low income (LU, EL)
- Locality type; consumers living in (large) cities, were more often interested in unit prices than consumers in rural areas. Different shopping habits, and the availability of more or larger shops to compare prices in (large) cities might explain this difference.

6.2.3 *Results from national consultations and the Survey*

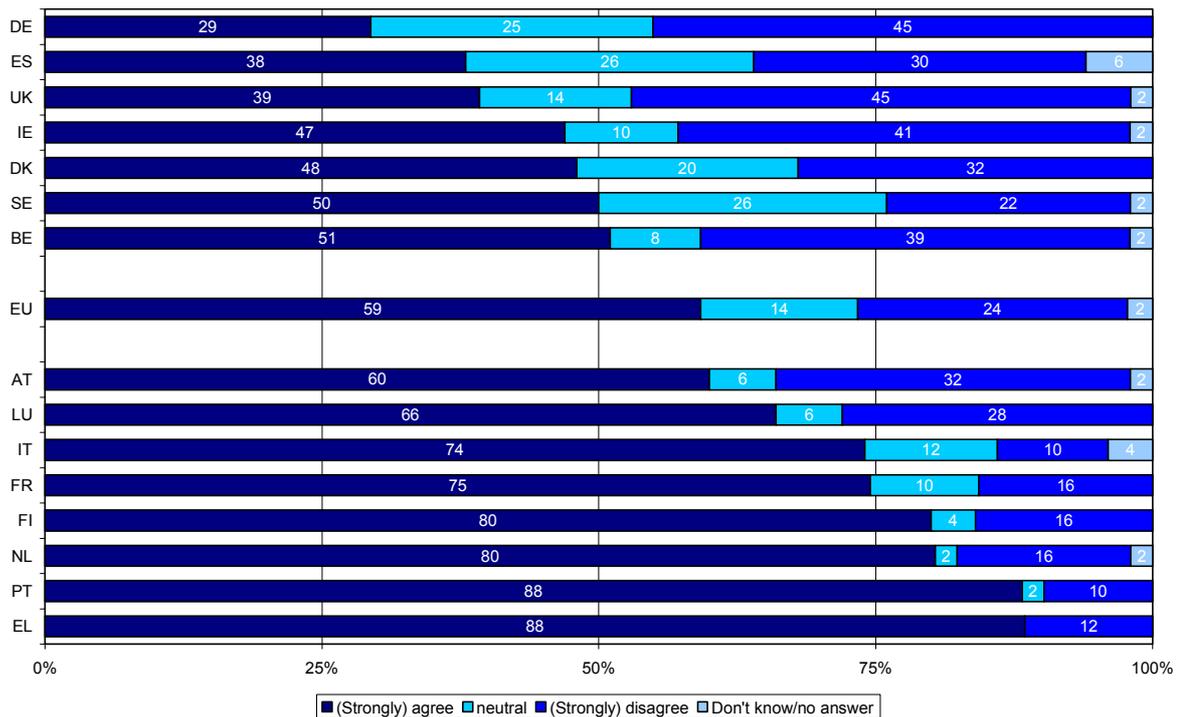
Consultations with national stakeholders (i.e. consumer organisations, retail representatives and government) in the various Member States revealed that the majority of the parties indicated that there is reasonable consumer awareness of unit pricing and that the (unit) price plays an important role in the buying process (BE, FR, FI, AT, DE, IE, IT, ES, SE, UK). In general, national consumer organisations assume a higher use of the unit price than retail organisations. Some remarks by various stakeholders were made with respect to the use of the unit price:

- The (unit) price is especially important for daily products (AT, DE);
- The unit price is more used inside one shop to compare prices of similar products than to compare prices of similar products between two different shops (FR);
- Consumers do not always have the time to use the unit price (IE).

¹ Central Office of Information, Price comparisons: consumer awareness of unit pricing Research Division, Central Office of Information: London, 1996.

The opinions voiced by national consumer and retail organisations have been considered along with academic research and findings from the Flash Eurobarometer above. These opinions have also been tested amongst small retailers by asking them a series of statements. One of the statements was whether small retailers are of the opinion that consumers use unit prices in their buying choices and behaviour. The results are presented in figure 15.

figure 15 Consumers use unit prices in their buying choices and behaviour, by country



Source: EIM, 2004.

Figure 15 shows that 59% of the retailers (strongly) agree that consumers use unit prices in their buying choices and behaviour. The results vary greatly among the various Member States. DE (29%), ES (38%), and the UK (39%) have the lowest scores. On the other hand, a large proportion of the retailers in FI (80%), NL (80%), PT (88%) and EL (89%) assume that consumers use the unit price when making purchases.

Retailers that indicate unit prices for their products are a lot more positive about the use of the unit price by consumers than retailers that have no unit price indication. Of the retailers that currently indicate unit prices for their products 65% (strongly) agrees that consumers use unit prices, as compared to 39% for retailers that do not indicate the unit price. No clear differences by size class were found.

In the consultations with national stakeholders it was argued by some stakeholders (some consumer organisations, but mainly retail representatives) that consumers do not always consider the unit price. In the study that was conducted by Mitchell et al¹ among the reasons identified for the non-use of the unit price were that consumers could not be bothered to use the unit price and that they are not willing to spend time comparing unit prices. This idea was tested in the Survey by presenting retailers with the statement: 'Consumers do not bother to look at the unit price'. It appears that on average a substantial minority (35%) (strongly) agrees with this statement but that more than half of the retailers (51%) (strongly) disagree. Again, there are large differences amongst individual countries, varying from 92% of retailers that (strongly) disagree for EL to only 12% for ES.

Of the retailers that currently display the unit price in their stores 55% (strongly) disagree that consumers do not bother to look at the unit price. This percentage is somewhat lower for retailers that do not indicate unit prices (37%). Thus, retailers that indicate unit prices are more positive about consumer awareness of unit pricing than retailers that do not have unit prices in their stores. There appears to be no difference according to size class.

In the consultations with national consumer and retail representatives it was noted that even when there is a group that does not make an effort to look at the unit price, it is still regarded positively that the attentive consumer has the potential to use the unit price.

6.3 Importance of unit pricing

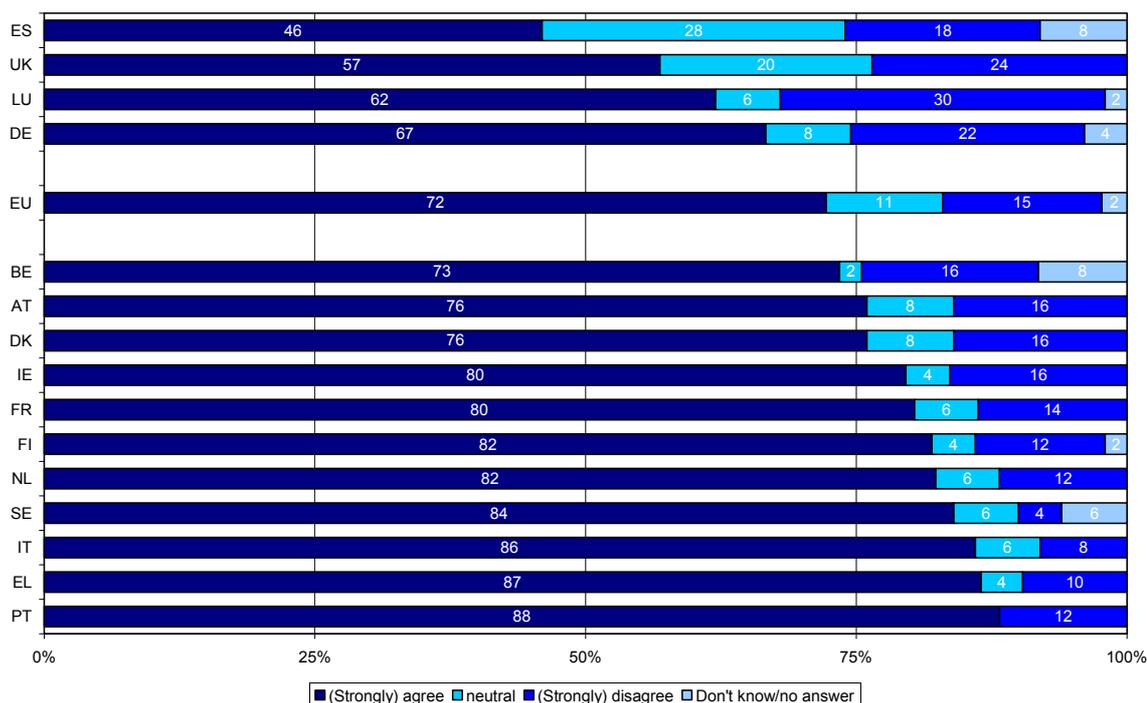
In the previous section consumers' awareness and usage of unit pricing was tested. The following sections concentrate on the importance of unit pricing for consumers. As became clear in the consultations with national stakeholders the importance of the unit price for consumers is not always evident. It can be argued that the unit price is an instrument that facilitates optimum price comparisons, as is suggested in the text of the Directive, and that it provides consumers with essential knowledge for making buying decisions. On the other hand it is sometimes suggested that its indication creates confusion or results in an information overload. A number of statements were tested in the Survey in order to get a more complete idea of the importance of unit pricing for consumers.

¹ Mitchell, V., Lennard, D. and McGoldrick, P., Consumer Awareness, Understanding and Usage of Unit Pricing in *British Journal of Management*, Vol. 14, pp. 173-187, 2003.

6.3.1 Unit pricing as a positive instrument

In the consultations with national stakeholders (both consumer and retailer organisations) indications were given that the unit price (if applied in a correct way) is an important aid for comparing product prices and increasing price transparency (AT, BE, IE, FR, SE, LU). In the Survey small retailers were asked whether they agree that the indication of the unit price enables consumers to make clear price comparisons. The results are presented in figure 16.

figure 16 The indication of the unit price enables consumers to make clear price comparisons, by country



Source: EIM, 2004.

For the EU as a whole 72% of retailers (strongly) agree that the unit price enables consumers to make clear price comparisons. Spain is an exception with a low score of 46%. Considerable differences are found between retailers that display unit prices and retailers without unit price indication. Of the retailers that indicate unit prices 77% (strongly) agree that unit pricing facilitates price comparisons, as compared to only 57% for retailers that do not display the unit price. No clear differences by class size can be reported.

In the national consultations, there was agreement among various stakeholders that the (unit) price plays an important role in the buying process (BE, FR, FI, DE, IE, IT, LU, SE). However, some stakeholders indicate that consumers make their buying choices on the basis of motives

other than the unit price (NL) or that consumers do not always have sufficient time to use unit pricing (IE). In the Survey retailers were asked whether they are of the opinion that the unit price provides consumers with essential knowledge for making a good buying decision. For the EU-15 64% (strongly) agree with this statement.

Retailers that currently indicate the unit price are more positive about the usefulness of unit pricing in the buying process. For this group 69% (strongly) agree that the unit price provides consumers with essential knowledge, whereas this is 50% for retailers without unit prices. Again, there are no clear differences by size class.

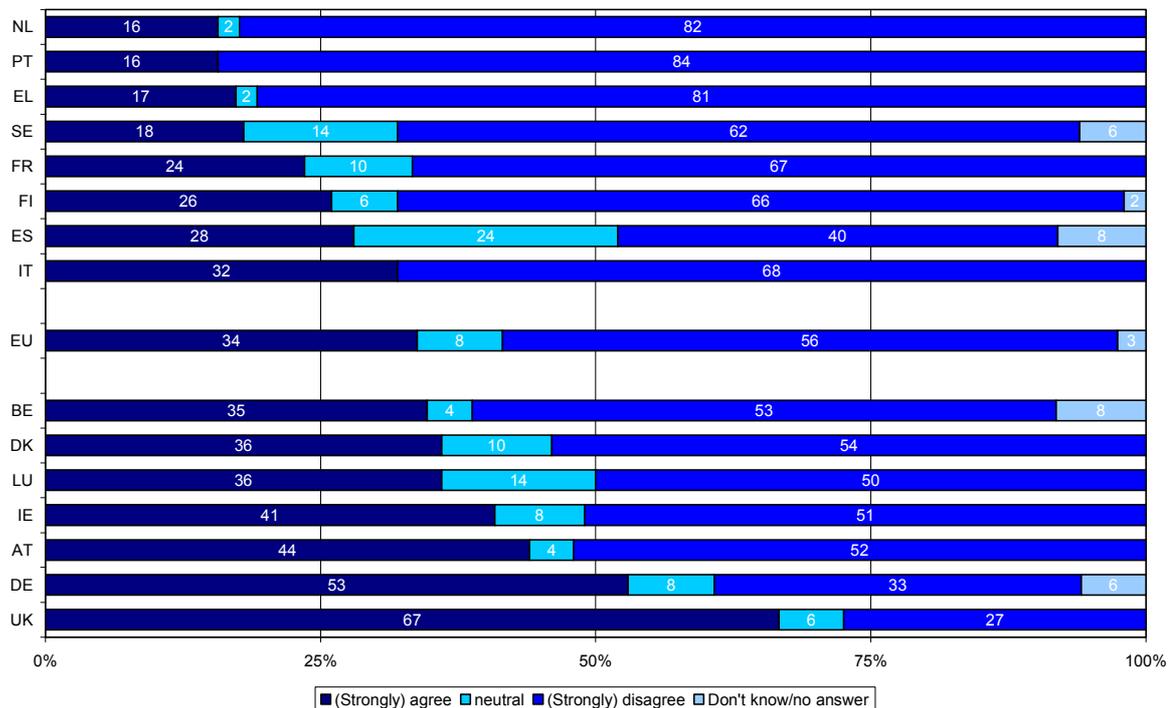
Although it is evident that the unit price enables consumers to make clear price comparisons, the unit price is not necessarily regarded as essential knowledge for making buying choices. This suggests that criteria other than the unit price play a role in the buying process. This is confirmed in the Mitchell et al study¹ which found that consumers do not always use the unit price, because they prefer to use other methods to save money, such as looking for sales promotions, visual packaging or opting for brands as a means of determining value.

6.3.2 *Possible negative side effects of unit pricing*

It is sometimes argued (mainly by retail organisations) that the unit price indication may create confusion for consumers rather than provide consumers with clear information. This can particularly be the case when the unit price indication is done incorrectly (see section 4.5 on compliance). The Survey tested whether the indication of the unit price creates confusion for consumers. The results are displayed in figure 17.

¹ Mitchell, V., Lennard, D. and McGoldrick, P., Consumer Awareness, Understanding and Usage of Unit Pricing in British Journal of Management, Vol. 14, pp. 173-187, 2003.

figure 17 The indication of the unit price creates confusion for consumers, by country



Source: EIM, 2004.

For the EU-15 34% of small retailers think that the unit price is confusing for consumers whereas the majority (56%) does not agree with this. Retailers that indicate unit prices for their products are less inclined to regard unit pricing as confusing (30% (strongly) agree that the unit price creates confusion) than retailers without unit price indication (47%). On the basis of size class no clear differences were noted.

In Austria a survey ('Konsumentenbarometer' - consumers' barometer) was conducted among 2,000 Austrians aged 15+ shortly after the introduction of the new legislation in 2002.¹ It appeared that about 30 % of consumers found price comparisons to be very simple on the basis of indication of the unit price for products. Smaller problems emerged in the case of various non-food products, for which no exact units of measurement are determined (e.g. for lacquers both the calculation in litres and kilos is common in Austria; wallpapers are often indicated

¹ Resulting in the issue being rather topical in the media. Therefore the findings need to be treated with caution.

both in metres and in rolls).¹ Approximately one third of Austrian consumers were rather, or very, satisfied with pricing, with the additional information being highly appreciated. People living in large cities were much more satisfied than inhabitants of rural regions.

The Federal Government and States in Germany state that there is little consumer reaction with respect to the unit price and that this can be explained partly by the fact that the price labels at the sales shelves are overloaded with data and numbers. The possible information overload for consumers was also noted by a Dutch representative of retail business.

In the Survey retailers were asked whether they are of the opinion that the indication of unit prices results in an information overload for consumers. For the EU as a whole 38% (strongly) agree with this statement and 52% (strongly) disagree. IE, DE and the UK score highest on information overload, whereas the lowest scores were found in FI and PT. Retailers that do not display unit prices are a little more inclined to think that unit pricing results in an information overload (49%) than retailers that indicate unit prices for their products (38%). No clear distinctions amongst the surveyed retailers by size class were apparent.

It can be concluded that small retailers that currently indicate the unit price are less pessimistic about the potential negative impact of the unit price (in the sense that its indication creates confusion or results in an information overload) than retailers that do not display the unit price.

6.3.3 *Ranking of countries*

The Survey results provide an indication of the attitude of small retailers with respect to consumer awareness of unit pricing and usefulness of unit pricing. The following six statements were presented to them (results per statement are discussed above):

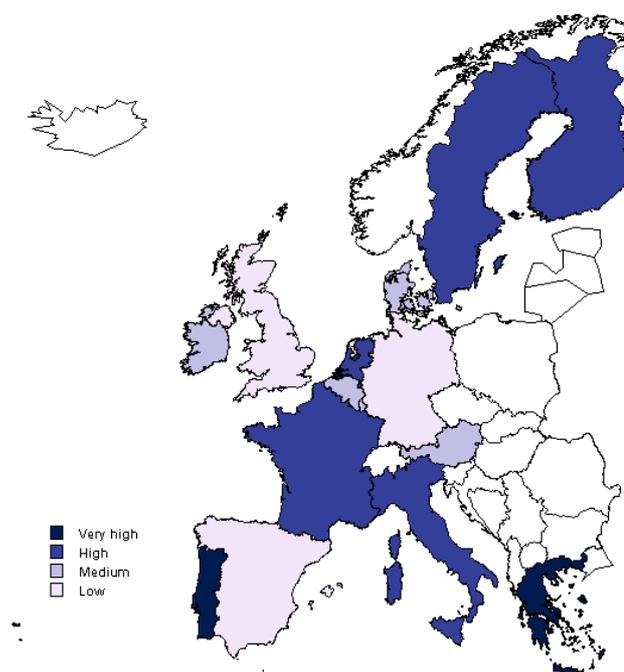
- 1 Consumers use unit prices in their buying choices and behaviour;
- 2 Consumers do not bother to look at the unit price;
- 3 The unit price provides consumers with essential knowledge for making a good buying decision;
- 4 The indication of the unit price creates confusion for consumers;
- 5 The indication of the unit price enables consumers to make clear price comparisons;
- 6 The indication of unit prices results in an information overload for consumers.

¹ Enthofer-Stoisser, R. and Karl, R. (ed.), *Sind die Preise ausgezeichnet? Das Preisauszeichnungsgesetz 2000 in Theorie und Praxis (Are prices labelled? The Pricing Law 2000 in Theory and Practice)*. Vienna: Verlag Österreich, 2002.

Based on their ranking on the six statements¹ the following groups of countries can be distinguished (see figure 18):

- 1 Lowest scores means that enterprises in these countries score lowest on consumer awareness and usefulness of the unit price: DE, UK, ES;
- 2 Slightly higher scores: these countries are a little more positive about unit pricing: IE, AT, DK, LU, BE;
- 3 A group that scores above average and is rather positive about the unit price: FR, IT, SE, FI, NL;
- 4 Highest score: most positive about consumer awareness and usefulness of unit pricing: EL, PT.

figure 18 Small retailer's perception of consumer awareness and usefulness of unit pricing



Source: EIM, 2004.

The perception of small retailers concerning consumer awareness and usage of unit pricing can in part be compared with opinions from consumers themselves (presented in figure 14). However, due to differences in methodology and phrasing of the questions the potential for comparison is rather limited. Indeed consumer interest per country based on the Flash Eurobarometer 113 show different results than the perception by small retailers. Therefore, on a country-by-country comparison no clear conclusions can be drawn. However, it is clear that consumers do

¹ The ranking of each country based on their cumulative score on strongly agree and agree has been added for each statement, resulting in an overall ranking per country for the four statements.

have an interest in and use unit pricing, which is confirmed by small retailers.

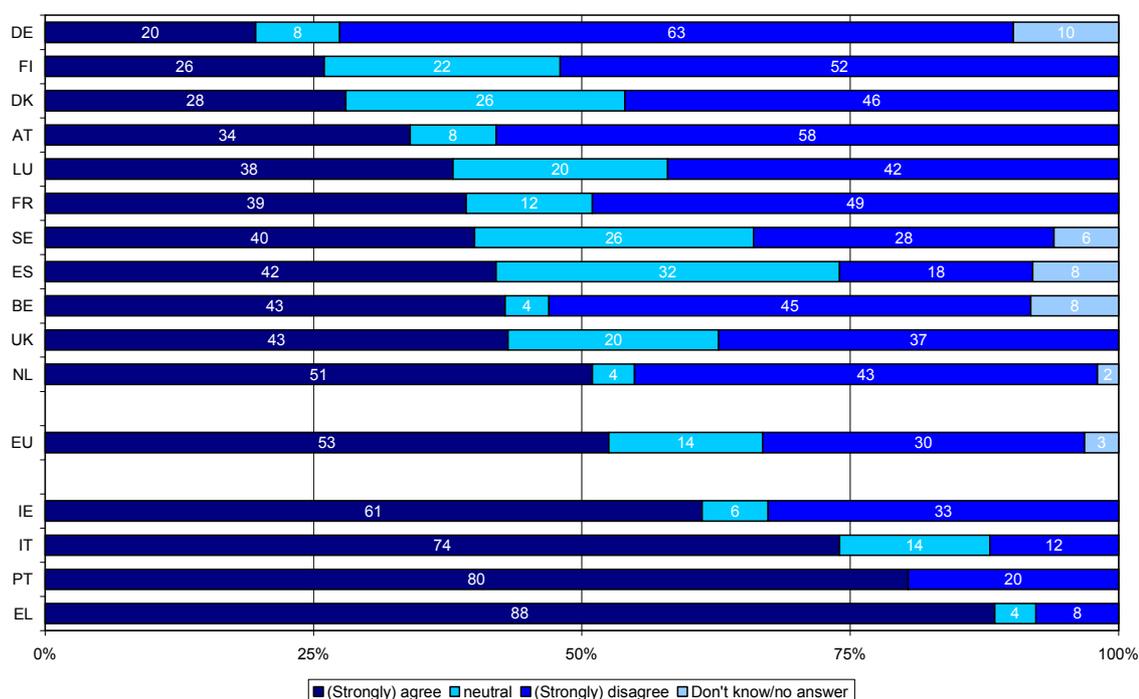
6.4 Importance of unit pricing for restricted consumers

There is a group of consumers who may be restricted to shopping in small (local) retail business. These include the elderly, the ill and infirm of all ages, those without access to private transport and those with handicaps. Two main arguments can be discerned from the interviews with national consumer and retail stakeholders. With respect to the importance of unit pricing for this special group of consumers The first is that the unit price is thought to be of special importance for these consumers, for example because older people and disabled persons are more likely to have a low income and/or probably use more time shopping, which makes them more susceptible to unit pricing. Another explanation may be that for this group mobility problems increase the importance of unit price indication, because the unit price offers additional information during their geographically limited market search. In this sense the unit price provides further protection for this group.

An alternative view is that unit pricing could instead be confusing or misleading to restricted consumers. In one study it was pointed out that elderly consumers in some case lack the cognitive abilities to properly use unit pricing.¹

¹ Mitchell, V., Lennard, D. and McGoldrick, P., Consumer Awareness, Understanding and Usage of Unit Pricing in *British Journal of Management*, Vol. 14, pp. 173-187, 2003.

figure 19 Unit pricing is very important for persons that are bound to a specific area (such as older consumers or people with disabilities), by country



Source: EIM, 2004.

More than half (53%) of the surveyed retailers (strongly) agree that the unit price is very important to persons that are restricted to a specific area. However, for most countries the score varies between 20% (DE) and 43% (UK). PT (80%) and EL (89%) are most positive about the importance of the unit price for restricted consumers. Retailers that currently indicate the unit price are a little more positive (56%) than retailers that do not indicate the unit price (39%). There are no clear differences between retailers with respect to the size of their stores.

As stated before, it is sometimes argued that the unit price can be problematic for older people e.g. because they possibly lack the cognitive ability to use the unit price. In the Survey retailers were asked whether they agree that unit pricing is too difficult to use for older consumers. For the EU as a whole 37% of the retailers (strongly) agree and 46% (strongly) disagree. In IT (16%) and SE (20%) a relatively small proportion of the retailers thinks that older people have problems with the unit price. In DE (53%), AT (58%) and the UK (59%) the largest proportion of retailers assume that unit pricing is too difficult to use for older consumers. Retailers that display unit prices are less pessimistic about the difficulty of using the unit price for older people (33% is of the opinion that unit pricing is too difficult for the elderly) than retailers that do not indicate unit prices (52%). Size class of enterprises is no factor in deter-

mining opinions of retailers with respect to the difficulty of unit pricing for older people.

It should be noted that restricted consumers purchase products in the geographically nearest shop, which might, in countries that avail themselves of the use of the derogation, be exempted from the obligation to indicate price per unit due to its size class. Based on the available information from interviews and the Survey no clear conclusion on the benefits of unit pricing for restricted consumers can be drawn.

6.5 Concluding remarks

Little research has been done in the various Member States with respect to the use and impact of unit pricing in the buying process except for the Flash Eurobarometer 113 and a limited number of country specific reports. The 1993 study in the Netherlands showed that at that time knowledge and use of unit pricing was very limited. Subsequent surveys indicate that the interest in unit pricing has increased. The consultations with national stakeholders and the results of the Survey suggest that there is considerable consumer awareness and use of the unit price.

The indications are that consumer awareness of unit pricing differs among various groups of consumers based on gender, age, education, profession and locality type. The exact relationship between the different consumer characteristics and the use of the unit price is not always clear. There seems to be agreement, however, that women are more interested in the unit price and that the use of the unit price increases when the level of education increases.

The use and helpfulness of unit pricing when comparing products, appears to depend upon the product. The majority of supermarket consumers simply select the products they usually buy and thus do not consciously use unit pricing or any other value-for-money comparisons in the selection process. This habitual purchase pattern appears not to be followed only when consumers are buying higher priced or less frequently bought goods. The study concludes that the use of unit pricing and the perceived helpfulness of unit pricing is therefore risk related; it is valued when the cost of error is considered high. There is an acknowledgement that unit pricing may be of use to consumers when switching brands but overall, consumers making familiar choices do not use unit pricing. The main reasons for not using unit pricing are:

- 1 Consumers lack the cognitive ability to make use of unit pricing;
- 2 The effort required to make comparisons is not considered worthwhile;
- 3 Consumers are not willing to spend time comparing unit pricing;

4 Other less-demanding strategies for determining best-value are used.

Retailers are very positive about the usefulness of the indication of the unit price in enabling consumers to make clear price comparisons. Most retailers agree that the unit price provides consumers with essential knowledge for making a good purchasing buying decision. Nonetheless, it should be noted that other factors play an important role in consumers' buying behaviour. The importance of unit pricing for consumers is widely acknowledged by small retailers. For the EU-15, only a minority of the retailers is of the opinion that the indication of the unit price is confusing for consumers and that its indication results in an information overload.

The results of the Survey show that the unit price is, in general, not regarded as being of special importance to people that are bound to a specific area, such as older people or people with disabilities. About two fifths of the retailers are of the opinion that the unit price is too difficult to use for older people. A larger proportion of the retailers (almost half of them) does not agree with this.

As expected, retailers that currently indicate the unit price for their goods are more positive about consumer awareness and importance of the unit price for consumers than retailers that do not indicate the unit price. One possible explanation is that the latter lack experience with unit price indications. Retailers without unit price indications have no actual experience of the potential benefits of unit pricing for consumers in their daily business practice. It is also possible that enterprises that currently do not display unit prices are a little more negative about the use and usefulness of unit pricing, because the unit price indication would be of no relevance for their particular products.

No clear differences were found between retailer's appraisal of unit pricing on the basis of the size of their stores.

Greece and Portugal are most positive about consumer awareness and usefulness of unit pricing. Germany, the United Kingdom and Spain, on the contrary, are most negative.

7 Conclusions

7.1 Main findings

This Study has set out to appraise the use and impact of Directive 98/6/EC OJ No 80, 18.3.1998 p. 27, on consumer protection by the indication of unit prices of products offered to consumers. In the Directive, an appraisal of the application of the Directive by the Member States is foreseen in Article 12. This Study, which is confined to the pre 1 May 2004 fifteen Member States, forms part of this appraisal foreseen in the Directive. Below, an overview of the main findings and conclusions are provided.

Background information

The *European retail sector* is marked by a large number of small retailers. However, large retail business (more than 250 employees) account for 40% of turnover and have extensive bargaining power. Large enterprises have extended their market share and further concentration is expected in the future. Consumers tend to increasingly buy their daily groceries in one trip in order to save time. The availability of a large number of cheap products is key in this process, available through effort and flexible large retailers and shops. It seems that small retailers will only survive in niche and local markets.

Implementation of the Directive

All fifteen Member States indicate that the *Directive has been implemented without major problems*. However, the majority of Member States did not implement the Directive on time (i.e. by 18 March 2000) and transposition was only completed in all Member States in March 2003. For most Member States the implementation of the Directive was mainly a continuation of past policies. The Directive was a simplification of the previous price indication systems and provides consumers with possibilities to evaluate and compare prices of products. Despite the general satisfaction with implementation, disagreement between the consumer and retail stakeholders on some specific issues (such as the exemption for small retailers, extension of the legislation to the service sector and the presumed positive effects for consumers) remains.

Exemptions under Article 3.2

Article 3.2 gives Member States the ability to exempt 'products supplied in the course of the provision of a service' and 'sales by auction and sales of works of art and antiques'. Almost every country makes use of the possibility to exempt one of these categories; some countries make full use of the available exemptions (AT, DK, EL, ES, IE, NL, PT, UK).

The use of the exemption-possibilities of Article 3.2 was sometimes a continuation of past policy (DK, PT). Some countries (AT, NL) have a policy of making maximum use of the exemption-possibilities given in the Directive and for them it was logical to make full use of the possibilities offered in Article 3.2. Reasons advanced by the various stakeholders for exempting these products are that unit pricing would be difficult or nearly impossible; would not be relevant since these goods are not sold frequently; and there is no perceived benefit, or practical purpose, in unit pricing these products.

Most Member States do not intend or expect future changes with respect to the use or non-use of exemptions under Article 3.2.

In general, there is no need to exempt additional specific sectors in the same way as 'sales by auction and sales of works of art and antiques'. Only Portugal has requested that a range of expensive consumer products within the jewellery/clock-making sector should be exempted as is the case of works-of-art and antiques.

Extension to services

Although this was outside the scope of the Study, some information on the possibility of extending unit pricing to services has been collected. The definition of what would constitute a *unit* of service leads to much confusion and debate amongst stakeholders. In many Member States there has so far been little or no discussion about extension of the legislation on unit pricing to services (Belgium, The Netherlands, Germany, Greece, Spain, Ireland, Italy, United Kingdom, Austria). However, three Member States have already introduced legislation on unit pricing for services or are planning to introduce this kind of legislation (Portugal, Luxembourg, Sweden). A survey from the European Commission shows that European consumers favour competition, but want guarantees on services of general interest. Price is consumers' main source of dissatisfaction. Consumers want clearer information on tariffs and prices, especially to enable them to compare prices. While it may be unclear, on the basis of current research as to what extent *unit* pricing would provide this price transparency *it is recommended that the question of extending unit pricing to services be kept under review.*

Extent of introduced limitations (Article 4.1)

Article 4.1 states 'The selling price and the unit price must be unambiguous, easily identifiable and clearly legible'. Most Member States have enacted more stringent provisions to improve consumer information (e.g. promotional offers, ways of displaying information, extra costs). For the EU as a whole, small retailers are positive about the visibility of the unit price as 65% agree that the print of the unit price is generally large enough to be easily read.

Article 4.1 also provides Member States with the possibility of limiting the number of prices indicated. With respect to limiting the maximum number of prices different groups of Member States can be identified:

- Member States for which the transposition legislation does not mention the option of limiting the number of prices (BE, FI, SE);
- Member States that did not introduce limitations (AT, DE, DK, EL, ES, NL, PT, UK, IE);
- Member States that introduced limitations during the transition period (FR, IT, LU).

From a consumer perspective it is legitimate to limit the number of prices indicated. Too many prices can be misleading to consumers and therefore do not contribute to readability. On the other hand, there should be as much information as possible and therefore the possibility of exemptions of products should be limited. A number of Member States and consumer organisations are of the opinion that maximum information provides maximum protection.

A common regulation at European level is not necessary, especially regarding the size of the price indication. A number of Member States already have applied more stringent measures in their national legislation. The option of limiting the number of maximum prices would still be relevant for new or non-euro Member States that may introduce the euro in the future.

Products for which the obligation is waived, Article 5

Article 5.1 provides each Member States with the possibility to identify negative product lists i.e. those that are exempt from unit pricing. Article 5.2 allows Member States to establish positive lists for non-food products i.e. those that need to be unit priced. Lists with exemptions (negative list or positive lists) are intended to clarify the definition already included in the Directive that unit pricing should not lead to confusion. The transposition has led to different approaches and lists of products. This may constitute an obstacle to improving consumer information, particularly in connection with cross-border shopping. The lists often used are a result of previously used lists. Not much discussion has taken place on which products should, or should not, be included in the lists. The lists include in general the same products. However, some specific national products are included.

With respect to Article 5 the following approaches were adopted by Member States:

- A first group of Member States has adopted only negative lists for food- and non-food products for which the requirement to indicate unit price does not apply (BE, DK, EL, ES, IE, IT, NL, PT);

- A second group has adopted negative lists for food products as above, but in addition positive lists for non-food products for which the requirement to indicate the unit price remains applicable (AT, LU, UK);
- One country has adopted negative lists for food products and both negative and positive lists for non-food products (FI);
- One country has adopted only positive lists for food and non-food products (FR);
- Finally, two countries have no lists at all (DE, SE).

The main reason for exempting identified food and non-food products is based on the reasoning contained in Article 5, i.e. that unit pricing would not be useful or would be liable to create confusion. Other additional motives for exempting products were that unit pricing would be unworkable or impossible for these products and that products are sold for direct consumption (e.g. individual ice-creams). Products are sometimes exempted because of a specific national peculiarity or tradition.

National experts indicated that the exempted products only represent a low percentage of the total number of products. There are, however, no reliable statistics on this matter.

Member States do not seek any changes with respect to Article 5. The flexibility of the current Directive is highly valued, as it allows individual Member States to exempt products in line with specific national circumstances. A similar measure for all Member States (e.g. by identifying products in more detail in the Directive which would uniformly apply to all Member States) is regarded as unnecessary and difficult to apply, e.g. because of differences in national characteristics.

Article 6 - derogation for small retail business

The Directive provides a derogation (Article 6) that allows Member States to exempt small retail business from the obligation to indicate the unit price. Eight Member States (AT, DE, EL, FR¹, IE, LU, NL, UK) use the derogation. A number of Member States (BE, ES, IT, PT) initially made use of the derogation (when the Directive was introduced), but they abolished it once the transitional period for introducing the euro was over. The Nordic countries DK, FI and SE have never made use of the derogation.

¹ France makes no formal use of the derogation; an administrative tolerance is in place, which allows small retail business to be exempted from the obligation to indicate the unit price.

Most Member States do not foresee any changes in their current policy. Those that currently use the derogation intend to maintain it. Almost every Member State that used the derogation in the past, but abolished it, does not intend to re-introduce the derogation. Only Belgium is considering re-introducing the derogation for sales areas of no more than 150-200 m².

The use of the derogation is justified both from a business perspective (administrative burdens, investments in time, costs) and/or from a consumer perspective (price and price per unit is not an important sales criteria for consumers that buy items in the exempted shops; rather other factors -e.g. price, appearance, brand, taste, quality, packaging- are important buying criteria; and small retail shops only have a limited number of products making price comparison less relevant). The belief is that for the small retailer it would be a heavy burden to abide by the obligation, while the advantages for the consumer would be minimal. Alternative viewpoints are also stated that consumers in small shops that do not apply unit pricing are disadvantaged.

The motivation not to use the derogation (Article 6) is that to do so leads to a more simple and transparent legislation, which is in the interest of consumers. There is also a view that if the Directive is, as claimed, intended as a benefit to consumers, then there is no logic in denying customers information simply because they are in a small shop.

An important reason in favour of the derogation however is the social role of small retail shops and when they are located in rural areas. In view of their ongoing decline, these shops should not be unnecessarily burdened. The relationship of trust between a local small retailer and the consumer provides sufficient safeguard for a fair and clear price information.

In Austria and the United Kingdom, Member States that use the derogation, conflicting views exist about the usefulness of the derogation. In Austria, retailer organisations consider the derogation for small business to be very useful and opt for maintaining this exception. Consumers, by contrast, think the derogation is unhelpful. They would prefer more standardised and uniform pricing policies. This also applies to pricing among different countries and in particular where this could pose a problem for consumers living in border regions. In the United Kingdom it is the view of some stakeholders that the derogation is not simply considered useful, but for reasons of competition, sustainability and viability, it is a necessity. There is a view within the retail community however that whilst the derogation is undoubtedly useful to businesses operating entirely from small premises, it is not quite so useful for companies or chains that operate with both small and large shops and therefore make use of same price display systems.

In Spain there are also conflicting views about the usefulness of the transitional period. On the one hand, small retailers believe it was positive and stress that the period itself was long enough to carry out all the adjustments needed. On the other hand, large retailers point out that the adoption of the new regulation among small retailers has not been very widespread, mainly because inspection has concentrated on large retailers. Consumer organisations note that the transitional period may have proven to be less useful than expected since small retailers do not seem to have made use of the period to adapt to the new regulation. Instead, it appears to have been regarded by small retailers as a mere deferment of the actual enforcement date of the new legislation. It is suggested that, for the sake of consumer protection alone, all retailers irrespective of their size, should have been obliged to abide by the law at the same time and pace.

Should the derogation be maintained? If so, permanently or on a temporary basis?

Most Member States that make use of the derogation believe that it should be maintained, mainly because the obligation to indicate unit pricing would mean an additional burden as companies do not have the necessary degree of automation/technological equipment. No request is made for any time-limit to the derogation.

However, in a limited number of cases, from consumers' viewpoint it is argued that the derogation should be abolished (AT, BE), because this would ensure better comparability of prices. An alternative view is that consumers make a decision to go to smaller shops not on the basis of transparency of the price indication, but for reasons of proximity, accessibility etc. and that therefore the derogation should be maintained.

Some countries are of the opinion that a derogation for small retail business is not relevant (anymore) and should, therefore, be deleted from the Directive (PT, FI).

The derogation for small retailers appears to be fair and especially useful for certain smaller retailers. Imposing a requirement to unit price on those establishments could constitute an excessive administrative burden. This view is shared by both (most) consumer and retail organisations. However, some consumer organisations oppose the relatively long period of exemption for small retailers and are not in favour of a permanent exemption. The majority of opinion supports the maintenance of the derogation in its current form, for the time being. Nevertheless, the question of the value of the derogation should be kept under review.

Definitions of small retail business

Member States that make use, or made use, of the derogation in the past have applied various definitions for small retail business. In seven Member States (AT, BE, EL, FR, IT, LU, UK) small retail business is defined on the basis of the sales area; in two Member States (AT, NL) a definition based on the level of employment applies. In Ireland access to technology is the qualifying criterion, which means that (small) retailers are only exempt when they do not have the appropriate equipment for printing shelf edge labels or scanning products.

The existing flexibility of the Directive which allows individual Member States to apply their own definitions of small retail business is highly valued by most stakeholders. Because of the specific national characteristics of the retail trade, a common European definition for *small* retailers seems to be impractical. A uniform definition might be advantageous for retailers and consumers that operate across national borders or that are located in border regions. It is argued by some consumer organisations that the current lack of a common definition might lead to a situation in which the concept of 'small' is expanded to encompass enterprises that do have the capacities to indicate the unit price. All stakeholders agree that only the smaller retail businesses, for which unit pricing would indeed pose an excessive burden, should be exempted.

However, the appropriate precise definition of 'small' remains unclear. A definition based on sales area has the advantage of being based on a fixed criterion as compared to a definition based on the number of employees, which is a more variable factor. A definition based on the number of people employed has the advantage of being used as a criterion to distinguish enterprises according to size class in other information sources (e.g. databases, statistical information).

A common definition of small retailers is not absolutely necessary. It should be the case however that only the smaller retail businesses for which unit pricing poses a real burden are exempted by the Directive.

Compliance with the Directive

Although not specifically asked for, a number of countries reported that the monitoring of unit pricing in small retail shops does not seem to be very active. Studies in Belgium and Spain reveal that a large proportion of the indicated unit prices in larger retail stores was not correct. These mistakes in indicating the unit price could lead to even more confusion for consumers. The Survey reveals, however, that there is in general good compliance with the obligations of the Directive as it appears that most enterprises that are obliged by law to indicate the unit price actually do indicate the unit price.

General impact of the Directive

So far no formal evaluation of the Directive has been carried out in Member States. Most Member States consider that the Directive has not been implemented long enough to warrant a full-scale evaluation of the impact. However, previous price indication legislation has been assessed in a few Member States. In implementing the Directive, most Member States have conducted public consultations seeking input from various stakeholders.

The aim of the Directive is to ensure information for consumers through the promotion of price transparency in order to encourage competition amongst goods offered to consumers. The Directive meets this objective. An extension of the obligation to indicate the unit price automatically leads to improved price transparency. However, it still remains to be seen to what extent the Directive leads to an overall improvement in consumer protection.

Impact on small retailers

Three important reasons for exempting small retailers are:

- The pricing methods used by small retailers make unit pricing very cumbersome;
- Technological developments would make unit pricing easier for small retailers; (Anticipated technological developments were a reason for a temporary derogation in the current Directive.)
- Due to their size and the pricing methods used, unit pricing would constitute an excessive administrative burden on small retailers.

The research has shown that despite technological developments in the retail sector, the classic distinction between the pricing methods applied by (very) small retailers and larger retailers remains. Smaller enterprises use price guns or handwritten labels, compared to computerised systems by larger enterprises. Small retailers label prices on individual items, whereas large retailers indicate the selling and the unit price on the shelf. In general, small retailers calculate the prices themselves on the basis of the 'cost carrying capacity' of the product, i.e. an estimation of what the consumer would be willing to pay. *The costs of the new pricing systems available are and will remain prohibitively expensive for small retailers.*

Although for most Member States it was reported that the introduction of unit pricing led to additional labelling and an additional investment in software (e.g. AT, DK, NL, LU, SE), almost no specific information on the extent of this burden is available. In the Survey unit pricing is regarded as an additional burden by a substantial minority (39%) of the retailers (both in terms of additional time, additional personnel costs and additional investments). Since unit pricing forms part of a larger pricing ef-

fort, it is impossible to isolate the additional costs associated with unit pricing. Although the burden on micro retailers (1-2 employees) is larger than on small retailers (6-20 employees) it cannot be determined whether the burden is excessive.

Although there is only limited information available, it is clear that unit pricing is an additional burden for the smallest retailers. This is mainly a result of the pricing methods used by these retailers. Nevertheless, it seems that the 'excessive administrative burden' concern has been addressed effectively by the derogation in Article 6 of the Directive.

Impact on consumers

The Flash Eurobarometer 113 (2001) showed that 68% of European consumers indicate an interest in the display of the unit price. However, different groups in society demonstrate different levels of awareness and use, and the use and helpfulness of unit pricing depends upon the product in question. Consumer awareness of unit pricing differs among various groups of consumers based on gender, age, education, profession and locality type. Women seem to be more interested in the unit price than men. The use of the unit price is thought to rise when the level of education increases. For other consumer characteristics it is not clear what the exact relationship with the use of the unit price is.

There is an acknowledgement that unit pricing may be of use to consumers when switching brands but overall, consumers making familiar choices do not use unit pricing. Four main reasons for not using unit pricing have been identified:

- 1 Consumers lack the cognitive ability to make use of unit pricing;
- 2 The effort required to make comparisons is not considered worthwhile;
- 3 Consumers are not willing to spend time comparing unit pricing;
- 4 Other less-demanding strategies for determining best-value are used.

Consultations with national stakeholders and the results of the survey suggest that there is considerable consumer awareness and use of the unit price. According to the Survey, 59% of small retailers (strongly) agree that consumers use unit prices in their buying choices and behaviour. Only a minority (35%) is of the opinion that consumers do not bother to look at the unit price. The importance of unit pricing for consumers is widely acknowledged among small retailers. Possible negative side effects of unit pricing (the sense that its indication creates confusion for consumers and results in an information overload) are recognized only by a minority of small retailers.

The results of the Survey show that opinions are divided over the question of whether the unit price is of special importance to persons that are restricted to a specific area (such as older people or people with disabilities). About half (51%) of small retailers acknowledge special importance for the unit price for this group of people. 43% do not agree with this. About two fifths (40%) of the retailers are of the opinion that the unit price is too difficult to use for older people. Almost half do not agree with this.

On average, small retailers that indicate unit prices are more positive about its use and relevance than retailers that do not display unit prices. One possible explanation is that retailers that do not indicate unit prices have no possibility to actually experience the potential benefits of unit pricing for consumers in their daily business practice. It is also possible that enterprises that currently do not display unit prices are a little more negative about the use and usefulness of unit pricing, because the unit price indication would be of no relevance for their particular products.

It can be concluded that both consumers and retail businesses recognise the usefulness of unit pricing.

To Harmonise or not?

One principal question that needs to be answered before the scope of further harmonization can be discussed is whether unit pricing creates distortions to the internal market. No market distinctions follow from the use of different national measures of transposition in each Member State. In view of the limited amount of cross-border shopping (especially for daily groceries) and the fact that those retailers that operate across borders are generally too large to be exempted in any case, no distortion of the internal market is perceived.

Should exemptions be harmonised across the European Union?

National stakeholders are often divided over the question of whether exemptions should be harmonised across EU Member States. In the minimum harmonisation approach, the exemptions should be sufficiently wide to allow for specific national and cultural differences and particularities. In the maximum harmonisation approach the harmonization should be as strict as possible, allowing for a minimum number of exemptions.

Arguments against the harmonization of exemptions under Article 3.2 point out that harmonization will not be desirable because of existing Member State differences in national markets, cultural habits and trade structures. There does not seem a need to change the existing situation.

The existing Directive provides enough flexibility for the various countries to specify exemptions that apply to specific national circumstances. If harmonization is required, then this should provide the possibility to adapt the provisions to these country-specific situations e.g. with respect to different cultures, different national buying habits and different structures of the national markets. It should also facilitate the accommodation of specific situations that may be quite relevant in some countries and quite negligible in others, as far as consumer protection is concerned.

In contrast, a limited number of exemptions would make for the most transparent system. Arguments in favour of harmonization are that this would create uniformity and that this prevents specific national differences in legislation.

Given both that unit pricing creates no distortions to the internal market and the different characteristics of national markets, cultural habits and trade structures, a further harmonisation of exemptions is not required.

Open Dialogue

In most Member States, the implementation of the Directive has taken place following an open dialogue (or consultation) of the various stakeholders (retailer representatives and consumer organisations with public policy makers). Their participation in the decision making process of formulating the derogation and other exemptions ensures that the policy is supported by the various stakeholders. This facilitates the implementation process. It should also be noted that the implementation of the Directive in most Member States has only occurred very recently. Any changes now to the current manner in which the Directive is transposed would not occur at a reasonable time. No national evaluation studies of the Directive have been conducted, because it is felt that the experience in practice with the new Directive is too limited.

Information to consumers and retailers

In view of the compliance level by retailers and the general use consumers make of unit pricing, more information on the benefits of unit pricing could be provided to consumers and retailers. This would serve to remind both consumers and retailers of the existing legal framework and to remind consumers of the rights they are entitled to when it comes to price indication. Additional information to retailers on the benefits of unit pricing could mitigate part of the existing hesitation over unit pricing and therefore encourage even very small retailers to voluntarily indicate unit prices. The indication of the unit price would not be regarded as a problem by retailers if the added value for consumers is evident. Furthermore, consumers could be encouraged to use unit

pricing by pointing out the benefits to them and explaining how unit pricing should be used in practise.

Annex I Overview of research partners

<i>Country</i>	<i>National Expert</i>	<i>Institute</i>
Austria	Ms. Irene Mandl	KMU Forschung Austria
France	Ms. Arielle Feuillas	CITIA
Germany	Mr. Rolf Spannagel	FfH - Institut für Markt- und Wirtschaftsforschung
The Netherlands	Ms. Jolanda Hessels	EIM Business & Policy Research
Belgium	Prof. dr. Johan Lambrecht	Research Centre for Entrepreneurship, EHSAL - K.U. Brussels
Luxembourg	Mr. Christian Reding	Chambre des Metiers
Denmark*	Mr. Bjarne E. Jensen	Oxford Research, Denmark
Finland*	Mr. Bjarne E. Jensen	Oxford Research, Denmark
Sweden*	Mr. Bjarne E. Jensen	Oxford Research, Denmark
Greece	Ass. Prof. Angelos Anzoulatos	Research Centre of the University of Pireaus
Italy	Prof. Giuliano Mussati	CREA 'Furio Cicogna' Research Centre, Bocconi University
Spain	Iñigo Isusi	IKEI
Portugal	Mr. António Coimbra	Tecninvest 2, Lda
United Kingdom**	Prof. Leigh Sparks	Institute for Retail Studies, University of Stirling
Ireland**	Prof. Leigh Sparks	Institute for Retail Studies, University of Stirling

* Oxford Research covered all Scandinavian countries.

** The Institute for Retail Studies covered both the UK and Ireland.

Annex II Description of the enterprise Survey

Objective

As part of the research project a telephone interview with small and medium sized retailers in each Member State has been conducted, in order to assess:

- their experience with this regulation and system;
- their view on the influence of this information on consumer choices and behaviour;
- their initial investments in order to comply with the legal requirements;
- their daily activities and time used for the system;
- their daily problems and administrative burdens.

Basic description of research population

Approximately 50 retailers have been questioned per country. In total 755 interviews have been conducted using the instructions given in the questionnaire.

The draft questionnaire was prepared by EIM and the fieldwork was carried out by GDCC (Global Data Collecting Centre). Based on the approved English questionnaire (and a translation into Dutch) a number of interviews were conducted to test the questionnaire. It was not necessary to adapt the questionnaire after these test interviews. The survey company prepared the translation of the questionnaire, and the national experts have checked the accuracy of the translation

The target group

The respondents were small enterprises with less than 20 employees in the retail trade NACE Code 52.1; 52.2; 52.3.

A large part of the questionnaire was the same for all respondents. Those enterprises that do indicate unit prices and those that do not have been asked a number of different specific questions. A number of statements have been included to gather information on the opinion of the respondents, using categories on a 5-point scale (i.e. strongly agree, agree, neutral, disagree, strongly disagree). In order to prevent bias, statements as well as a number of pre-coded answer categories were randomised.

In order for the Survey results to be representative on an European level, the data has been weighted according to the number of retail businesses (Nace 52) per country.

Annex III Overview of products for which the unit price indication is waived (Article 5)

The following products are included in the product lists annexed to national legislation as a result of the possibility to waive the obligation to indicate the unit price under Article 5 of Directive 98/6.

Negative lists

Specific product requirements (food and non food products):

- Goods of which the nominal weight or the nominal volume does not exceed 20 grams or 20 millimetres (AT); food products sold in packages of less than 50 grams or 50 cubic centimetres or more than 10 kilograms or 10 litres; Goods with a volume of less than 10 g or 20 ml (DE); pre-packaged products with a net content of less than 50 grams or 50 millilitres (DK); products in quantities under 50 grams or 50 millilitres and above 10 kilograms or 10 litres (EL); products marketed in a quantity equal or less than 50 grams or 50 millilitres (ES); pre-packaged food-products or non-food products with a net content of less than 50 grams or 50 millilitres (FI); pre-packaged products with a content equal to or less than 50 grams or millilitres (IE); food products below 100 g/ml (LU); products that are usually sold in packages no larger than 15 gram or 15 millilitre (NL); pre-packed products with a content of less than 50 grams or 50 millilitres (UK); packages containing 50 grams or 50 millilitres or less (SE);
- The assortment of different items or goods sold in a single packet (AT, DK, EL, ES, IE, IT, NL, PT, UK);
- Goods offered for sale in fancy packaging or in fancy form for special occasions (NL), fancy products (IT);
- Products that are usually sold at a price per piece or offered pre-packed per number of pieces (NL); products sold by the piece (PT);
- Products when their selling price is identical to the unit price (PT);
- Commodities requiring addition of other products (DK);
- Products, the selling price of which is not related to the quantity of that product being offered for sale (IE);
- Products sold other than in bulk (IE);
- Goods sold from vending machines (ES, NL, EL, IE, IT, UK) vending or disposing machines (PT); products provided by automatic distributors, except for automated stores that offer different products of different kinds (BE);
- Products that are displayed in a shop window (NL);

For food products:

- Products with a selling price which has been reduced from the usual price at which it is sold on account of its damaged condition or the

danger of its deterioration (IE); Products sold at a reduced price due to product damage or deterioration (UK); Perishable food items when sold at a discount price on account of the danger of its deterioration (PT); Pre-packed products that ruin easy, when they are sold with a price reduction (BE);

- Pre-packaged foodstuffs or liquids which are sold and consumed in hotels, restaurants, taverns, canteens, hospitals and other similar companies/organisations, and (EL); products that are sold in hotels, restaurants, bars, hospitals, canteens and those kind of institutions and that are consumed on the spot (BE)
- Pre-packaged foodstuffs or liquids which are bought by the customer for commercial or professional activity (EL);
- Packages containing different foodstuffs (UK); Cooked or semi-cooked foodstuffs which are together packaged and sold (containing more than one type of food). (EL);
- Fancy food products (ES, PT); the range of (food)products offered in a fancy package, normally to be offered as a gift (BE).;
- Products that are sold directly from farmers to consumers (EL);
- Products that are sold between two private individuals (EL).

Selling methods or product requirements waived from the requirements for non-food products are:

- Only the unit price has to be indicated for unpacked (loose) sold products, weighed in front of the customer (AT);
- When 2 or more different non-food items designed to be mixed or combined to obtain another product are sold in the same package (PT); An assortment of products contained in a single packet, which intend to be mixed (EL);
- Products that are sold per item, excluding those, whose price differences depend on their weight or capacity (EL);
- The products that cannot be divided without losing its nature or its properties (IT, FI);
- Advertisements for a product (IE); any product which is offered by means of an advertisement that is purely aural, broadcast on television, radio or cinema is exempt from the need to unit price (UK).

Specific product categories for food products:

Fruits and vegetables

- Fruits sold per unit, or per crate or plate (BE);
- Vegetables sold per unit, bundle, plate, bag, bunch (BE);
- Fruits and vegetables sold a piece, in bundles or in pots (DK);
- Fruits, vegetables and spices sold in odd pieces or in units (LU);
- Early season vegetables sold in bunches and vegetables in pots (UK);
- Lettuce, herbs, and spices in pots (SE);
- Vegetables sold with tops (SE).

Meat and meat products

- Meat and meat products (BE);
- Poultry and game (BE).

Fish

- Shellfish, sold per unit (BE).

Diverse Goods

- Diverse goods (individual portions of tea, coffee, sugar and cookies, sold per unit);
- Single portions of ice cream (ES);
- Individual ice creams up to 200 grams (EL);
- Pre-packed candy, snacks and ice creams that are offered per piece in consideration of immediate and complete consumption (BE).

Pastry and bakery products

- Pastry and bakery products (BE);
- Bakery goods sold unpacked (DK);
- Products of bakeries other than bread sold in odd pieces (LU);
- Pastry, confectionery, chocolate eggs, and other sugar confectionery used for garnishing (UK).

Drinks

- Conditioned wine in bottles of 75 centilitres (BE);
- Wine with geographical indication and high-quality wines having the 'denominación de origen'¹ or 'appellation d'origine' label (ES);
- Spirits with geographical indication (ES);
- Drinks usually offered in only one filling-volume (DE).

Meals

- Ready-made and ready to make meals that are offered for sale in one single package (NL);
- Pre-cooked or ready to cook meals when sold in a single package (PT);
- Ready-prepared dishes; dishes for cooking, where the ingredients are packed in the same box (DK);
- Pre-packed complete meals (UK);
- Cooked meals (SE);

¹ 'Denominación de Origen' is a prestigious product classification which is awarded to food products such as wines, cheeses, sausages and hams that are produced in designated Spanish regions according to stringent production criteria. It serves as a guarantee of quality.

- Prepared dishes, sold per unit with the exemption of deep-frozen or canned dishes (BE).

Specific non-food product categories:

Tobacco

- Chewing- tobacco and snuff weighing less than 25 g (DE).

Cosmetics and perfumes

- Cosmetic products for the improvement of skin, hair or nails (DE);
- Perfumes with certain ingredients (DE);
- Cosmetics, perfumes and beauty-care products (EL).

Jewellery

- Faux bijoux, etc.) (EL).

Paint

- Colours, lacquers and inks (EL).

Positive lists

France is the only country that includes a positive list of food as well as non-food products, to which the obligation to indicate unit price applies (positive lists). Non-food packaged products for which the unit price has to be indicated in France are: Soaps, toothpastes, shower and bath products, shampoos, shaving products, perfumes (except eaux de parfums), sun products; Soap and all products for washing dishes or washing clothes; All products for house keeping; Paints, glosses; Products for current maintenance of cars (oil, etc); Products for home gardening; Products for 'do it yourself' (plaster, cement, etc)

In Luxemburg the following positive list is annexed to the transposition measures: Products of hygiene and beauty (soap, tooth paste, lotions, showering products, etc.)

- Household products (products for cleaning the floor, carpets, products for washing machines, etc.)
- Products for construction and gardening (cement, sand, stick, colours, cables, seeds, etc)
- Other products (lubricants, antifreezes, products for the maintenance of cars, etc.)

In Germany no negative list exists, but the obligation to indicate the unit price applies to pre-packaged products, products in open packages or as individual unpacked items on the basis of weight, volume, length or surface. Special provisions apply to some specific products as detergents, household laundry and detergents and cleaning agents.

Annex IV Outlook on the situation in the New Member States

Introduction

This annex contains information on the retail structure and the implementation of the Directive in the ten new EU Member States. As these new Member States were not included in the research project, being outside the terms of reference of the Study, information is rather limited. Statistical information in these countries is still underdeveloped and, as a result, is missing or incomplete in a number of cases. The provisional information on the implementation of the Directive has been provided by European Commission's Directorate General for Health and Consumer Protection, based on information furnished by the new Member States.

Some figures on retail trade

Table IV.1 gives the **number of enterprises** by country and size class¹. In the new Member States for which data is available it appears, just as is the case for the EU-15, that the retail sector is dominated numerically by (very) small enterprises.

Table IV.1 Number of enterprises by size class, retail trade (NACE 52), 2000

	<i>Micro</i>	<i>Small</i>	<i>Medium-sized</i>	<i>SME</i>	<i>Large</i>	<i>Total</i>
CZ	125,638	5,633	227	131,498	85	1,315,383
EE	4,674	555	59	5,288	7	5,295
HU*	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
LT*	20,705	1,405	183	22,293	13	22,306
LV*	9,881	1,292	158	11,331	17	11,348
PL*	473,499	4,684	1,125	479,308	0	479,308
SI	6,940	247	51	7,238	0	7,238
SK	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.

* Numbers refer to 1998.

Note: No data available for Cyprus and Malta.

Source: Eurostat, 2003; Observatory of European SMEs.

Nonetheless, there are considerable differences in the level of concentration (percentage of small retailers) amongst the new Member States.

¹ Micro enterprises have 0-9 employees; small 10-49; medium-sized 50-249; and large enterprises 250+ employees.

Although the retail sector is dominated numerically by small enterprises, in most cases a large proportion of the **turnover** is generated by the larger enterprises. Although some statistics are available from Eurostat, they are not consistent and therefore have not been presented here.

Only limited data is available on the **employment** created by enterprises in the retail sector. It is notable that in CZ and PL more than half of the employment in retail trade is created by enterprises with 1-9 employees. For the remaining new Member States a similar pattern as in the 15 old Member States can be found.

GDP and consumer expenditure

Table IV.2 shows that the Gross Domestic Product (GDP) per capita varies greatly among the new EU Member States. CY and CI have the highest GDP per capita, whereas LT and LV have the lowest.

Table IV.2 GDP, Total Population, 2000

	<i>GDP per capita in pps Index: EU-15 = 100</i>	<i>Total popula- tion (in 1,000)</i>	<i>Consumer expenditure, 2001¹, € bn</i>	<i>Consumer expenditure per capita, 2001, € '000</i>
CY	76.2	754,8		
CZ	56.6	10,278,1	33.5	21
EE	40.4	1,372,1	2.5	22
HU	50.1	10,221,6	3.6	19
LT	35.6	3,698,5	2.3	24
LV	31.1	2,379,9	2.3	25
MT		380,2		
PL	40.7	38,653,6	3.3	20
SI	70.8	1,987,8	5.6	18
SK	46.2	5,398,7	2.4	23

Source: Eurostat, *Statistical Yearbook on Candidate Countries 2003*, statistics website.

Consumer trends/Trends in the retail sector: developments by country

This section contains a general description of the most important national trends for some of the new EU Member States. As information is limited, only information for CZ, HU, PL and SI is presented. The infor-

¹ Source: Mintel Retail Intelligence, 2002.

mation is mainly based on the results of Euromonitor's market research reports.¹

In the **Czech Republic** the retail sector is characterized by concentration and foreign penetration of the market. The retail market is dominated by large enterprises. Only large companies are entering the market. Since 1998 hypermarkets, supermarkets and discounters have grown rapidly and large players are continuously increasing their market share. Independent retailers have not been pushed out of the market but have lost market share. Local co-operatives have joined forces and seem, thus far, able to keep their position in the market.

In particular food retail chains have expanded rapidly since the late 1990s. More recently large non-food retailers have emerged and are expanding. As a consequence of the renovation of Czech cities retail space available is increasing. The space is mainly filled by (domestic as well as foreign) non-food retailers.

The Shopping Monitor 2002/2003 reveals that most Czech consumers prefer 'to shop at hypermarkets, followed by discount stores, supermarkets and small self-service grocery stores'.

It is expected that the growth of supermarkets and hypermarkets will slow down. This is related to the fact that building areas in big cities have been filled and space is scarcer now. New discount stores are likely to emerge. Smaller food retailers will open up in smaller cities.

The structure of non-food retailing is changing as multinational non-food retailers are entering the market and expanding.

In **Hungary**, in the period 1999-2003 consumer prices have increased, but at a slower pace in line with reduced inflation. In the same period, growth in income resulted in an increase in consumer expenditure. The fast pace in growth in income in 2001 (7.2% in real terms) and 2002 (8.9%) slowed down in 2003 (2.9%).

Developments in density in retail outlets vary among different areas of the country. Density of retail outlets is lowest in the smallest villages with less than 2,000 inhabitants. In these areas the total number of retail outlets decreased by 3.6%. Growth was highest (4.3%) in towns with 10,000-50,000 inhabitants.

¹ See <http://www.euromonitor.com/Retailing>.

Over the period 1999-2003 total retail sales increased by around 51% in current terms. A recent trend is that consumers tend to spend more money on services than on retail sales. This is reflected in a slight fall in retail sales in 2003. Total retail sales are, however, still expected to grow by around 39% in the coming years, due to the expected positive development of the economy.

In **Poland** retail sales in 2003 increased by 7.9% with respect to 2002, despite fear of recession. For most large retailers (dominated by international players) this resulted in net profits in 2003, mostly for the first time since they started investing in this country.

The trend towards concentration also applies to Poland. Large retailers continuously increase their market share at the expense of smaller retailers. In comparison to other European countries, however, Poland has a large share of small independent retailers. One explanation for this is that a large part of the population (40%) lives in rural areas.

In the first half of 2004 a strong increase in retail sales was reported, resulting from consumer expectations that retail prices would rise after Poland's accession. This led to an increase in sales of some durable goods such as construction materials, housing and cars before the first of May 2004. Retail sales are expected to slow down in the second half of the year.

The retail sector in **Slovenia** is well developed. Slovenia is a small but lucrative market. There is overall growth in consumer expenditure and retail sales. This makes the market attractive to new entrants, often foreign companies.

One important trend in the retail market has involved the development of larger retail outlets, which results in the growing importance of and market power for these types of stores. Large retail outlets often involve foreign players. The number of large outlets is not expected to grow in the coming years. In Slovenia only few cities are big enough to support large retail stores. The increasing concentration of power and capital by large retail stores has led to some public and political discontent. As a result possibilities for the setting up of new stores or greenfield investments have diminished. There are mainly opportunities for smaller stores in smaller towns and villages. Another important trend is an increasing focus on the satisfaction of consumer needs. This has led to a shift away in power from manufacturers towards retailers and consumers.

The retail markets seem to be less mature in the new Member States. It is expected that entry of foreign large enterprises will change the structure of the retail market in the coming years. However, this development is most likely to take place in the larger urban centres first. A con-

sumer preference for large supermarkets and hypermarkets similar to that in the old Member States can be identified.

Transposition of the Directive by the new Member States
Table IV.3 gives a preliminary indication of how the Directive has been transposed by the new Member States.

Table IV.3 Transposition of Directive by new Member States

<i>Title of national legislation</i>	
CY	Indication of the prices of products offered to consumers Law: Law 112(I)/2000
CZ	Act NO. 124/2003 Coll. (Amendment to Act no. 526/1990 Coll. On Prices)
EE	1 General rules on operation of a shop and general rules on catering approved by government regulation No 165 of 04/04/1995 2 Draft Consumer Protection Act (approved by the Government in April 2003 and submitted to the Riigikogu).
HU	Decree 7/2001 (III.29) of the Minister of Economic Affairs on the indication of prices of products and services offered to consumers.
LT	1 Law on consumer protection of 2000 2 Regulations on Labelling and Indication of Prices of Articles (Goods) for Sale in Lithuania (15 May 2002) 3 Code of Administration Law Violations of 1984
LV	1 Consumer rights protection law (18 March 1999) 2 Regulations on the order of price indications for goods and services (18 May 1999)
MT	1 Consumer Affairs (Amendment) Act XXVI, 2000 2 Subsidiary legislation under the Consumer Affairs Act: Regulation on price indications (into force on 1 October 2002)
PL	1 Act of 5 July 2001 on prices 2 Regulation of 10 June 2002
SI	Rules on the method of marking the prices of goods and services (August 1999)
SK	Decree on indication of prices, August 2002.

Source: EIM, 2004 This is provisional information based on information provided by the new Member States.

The general obligation to indicate both the selling price and the unit price has been properly implemented in all countries, as well as the advertising provision to which Art. 3.4. of the Directive refers.

Extent of availing exemptions (Article 3.2)

EE, HU, LT, LV and SI have made use of the exemption of Art. 3.2 of the Directive (products supplied in the course of the provision of a service, sales by auction and sales of works of art and antiques). However, no additional information on reasons for this is available.

Introduction of limitations on the maximum number of prices indicated (Article 4.1)

The limitation allowed by Article 4.1 could have a facilitating role given the different units of measurement (standard and traditional) that Member States may use. For the EU-15 this was particularly relevant throughout the transitional period for the introduction of the euro, since the obligation to indicate the price for each unit, in euro and the national currency, could lead to a long list of prices which could cause confusion for consumers. For the new Member States the introduction of the euro might also be a complicating factor in relation to the indication of the unit price in the future. Therefore, the faculty of limiting the number of prices may be relevant for these Member States.

Products for which the obligation is waived (Article 5.1); non-food products (Article 5.2)

CY, HU, LT, LV and PL have adopted specific provisions exempting those products to which Art. 5.1 of the Directive refers.

CY, LT and PL have established lists of non-food products to which the obligation to indicate the unit price remains applicable.

Assessment of the use of derogations (Article 6)

CY, MT, PL and SK have made use of the derogation of Article 6 of the Directive. No information on the definition applied is available.