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**POLICY DEPARTMENT**  
ECONOMIC AND SCIENTIFIC POLICY **A**



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Consumer Protection

**A Pan-European Trustmark  
for E-Commerce:  
Possibilities and  
Opportunities**

STUDY





DIRECTORATE GENERAL FOR INTERNAL POLICIES  
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

# A Pan-European Trustmark for E-Commerce: Possibilities and Opportunities

STUDY

## Abstract

Possibilities and opportunities of creating a pan-EU trustmark for e-commerce are examined through analysis of existing trustmarks for e-commerce, the relevant EU legal framework and main policy options for introducing a pan-EU trustmark. The study addresses issues such as the advantages and disadvantages of a pan-EU trustmark, its scope and enforcement, its mandatory or voluntary use by the traders, and the need for legal changes, among others.

This document was requested by the European Parliament's Committee on Internal Market and Consumer Protection.

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## EXECUTIVE SUMMARY

### Background

- This study presents the results of research conducted by Civic Consulting between March and June 2012. Its purpose is to examine the possibilities and opportunities of creating a pan-European trustmark for e-commerce.

### Consumer trust in e-commerce

- Trust has been identified as an important factor in consumers' purchasing decisions and lack of trust has been repeatedly highlighted as one of the key impediments to e-commerce.
- In a 2011 consumer market study consumers were concerned, among other things, about returning products, wrong or damaged products being delivered, problems with replacement or repair of a faulty product, products not being delivered at all, personal data being misused and payment card details being stolen. When considering shopping online in another EU country, only 12% of consumers stated that they did not have any concerns.
- There are different possibilities for trust-building related to online shopping. Differences between smaller traders and those that have built their own widely known brands have to be noted. Big brands capitalize on their recognition and reputation and have less or no need to support their trustworthiness with additional cues such as trustmarks.

### Trustmarks for e-commerce

- Trustmarks for e-commerce are intended to be displayed on a website as electronic labels, and the purpose is to signal adherence to a set of rules (a code of conduct) to increase consumers' confidence in the online trader.
- One of the defining characteristics of a trustmark is the involvement of a third party which provides an assurance to consumers regarding the online trader. Third-party certification is at the heart of a credible trustmark. It entails a set of requirements and the assessment of an online trader's compliance with these requirements.
- There is significant diversity among existing trustmarks in the EU. Some points of distinction are: a formal accreditation of a trustmark, the nature of organisations which administer trustmarks, their sources of funding, involvement of stakeholders, geographical and substantive scope of coverage, monitoring traders' compliance and sanctioning non-compliance.
- Research findings concerning the actual effects of trustmarks are scarce and not consistent. Several studies have found that effects of trustmarks are mostly identifiable with people who generally consider online shopping as risky. A previous study has indicated awareness among consumers and businesses as one of critical success factors, thus a particular challenge is the low consumer awareness of trustmarks.
- There has been some progress in recent years with the consolidation and expansion of some of the existing trustmarks, as can be inferred from the increasing numbers of certified traders using trustmarks included in this study.

## Advantages and disadvantages of an EU trustmark for e-commerce

- Potential advantages and disadvantages of an EU trustmark are conditional upon its design.
- The main possible advantages identified through research for this report are: support for SMEs; enhanced cross-border co-ordination of trustmarks and exchange of best practices; overcoming language barriers; increased legal certainty; increased credibility of accredited trustmarks; broad recognition among consumers in different MS; increased trust in online shopping; enhanced cross-border trade.
- Possible disadvantages could be in the administrative burden for businesses; potential confusion among consumers; interference with existing trustmarks; difficulties with ensuring consistency across the EU; the cost of administering the trustmark; gaps in coverage in case of an accreditation scheme for existing trustmarks; and discrediting compliant traders and other trustmarks in case of lacking enforcement.

## Legal framework for e-commerce trustmarks

- There is no particular piece of EU legislation addressing only trustmarks, but some legislation touches upon several relevant aspects: The primary legislation regulating the use of trustmarks is that concerning commercial communication directed at consumers, including in particular the 2005 Unfair Commercial Practices Directive (UCPD). In addition, a number of other consumer protection directives are relevant in the context of drafting the requirements for the use of a trustmark.
- Generally, there is a comprehensive set of rules in EU legislation protecting consumers in e-commerce and any code of conduct underlying a possible EU trustmark for consumer protection in e-commerce must be understood in the context of already existing EU legislation.
- A trustmark is likely to be perceived as a guarantee by a consumer. This entails that trustmark must guarantee something that is not already prescribed by law. This principle is introduced into EU law in the UCPD Annex I, item 10, which states that it is a misleading commercial practice to present rights given to consumers in law as a distinctive feature of the trader's offer. However, it should be considered that for example certification, monitoring, enforcement, etc. by a third party intrinsically entails benefits for the consumer and is beyond what is merely prescribed by law.
- The trustmark may establish expectations, such as guarantees with consumers that the issuer may be liable for, to the extent consumers are disappointed with regard to their reasonable expectations. The trustmark operator is not likely to be liable for all breaches by a trader – unless the trustmark includes a guarantee that specifically covers this. Whether the trustmark operator may be liable will depend on the interpretation of national law, including whether the trustmark operator has failed to carry out controls of the trader in accordance with the reasonable expectations that consumers may form from the trustmark and its marketing.

## An EU trustmark for e-commerce

- There exists a broad spectrum of policy options on how to tackle and foster a pan-European trustmark for e-commerce. Five main strands of policy scenarios are: no intervention; encouraging self-regulation; co-regulation; establishing EU accreditation of trustmark providers; establishing a pan-EU trustmark for e-commerce.
- If EU policy makers decide to introduce a trustmark at EU level, this would basically be akin to establishing a privately operated trustmark in the sense that the desired scope can be freely chosen. It is advisable for an EU trustmark to provide for procedures for both initial and recurrent assessment as well as sanctions in case a violation of the code of conduct is identified.
- A consumer may reasonably infer that a trustmark is something earned (i.e. voluntary) rather than something required, as well as that the bearer of a trustmark performs above the requirements of legislation. The existence of certification requirements and procedures could be taken to exceed compliance with legislation and offer consumers an extra aspect of protection.
- If policy makers decided to introduce a mandatory EU trustmark for e-commerce, it would be necessary to introduce EU legislation imposing the requirement on traders and to examine potential conflicts with existing EU legal framework. From a political and economic perspective, a mandatory EU trustmark might come with a number of additional challenges.
- In general terms the choice of legal instrument follows the scale of the extent to which Member States are to carry out the intentions of the trustmark scheme. If an EU institution should award the trustmark, a regulation would be more fit for the purpose. If the approach was for the Member States to set up national institutions and ensure accreditation at national level, a directive would be suitable.
- When laying out the principles for certification of the EU trustmark, it would be important to note that compliance with some requirements is much easier to control than with others. In contrast to compliance with information requirements that are generally easy to assess, the adherence to requirements concerning commercial practices and the processing of personal data seems rather difficult.
- Challenges inherent in the setting-up of an EU accreditation scheme or an EU trustmark would include legal implications, proper enforcement and sustainable funding, among others. Awareness among consumers is considered a key factor for success. Analysis for this study has revealed that it typically takes a minimum of five years from the inception of a trustmark until considerable dissemination.
- Differences in substantive law that continue to exist must be considered. They can be overcome by adopting a code of conduct that satisfies requirements in all Member States (highest common denominator). Another approach to deal with differences in national consumer protection law is to fully harmonise the areas in question.

## 1. INTRODUCTION

### 1.1. Purpose of the study and research approach

#### 1.1.1. Purpose of the study

This study presents the results of research conducted by Civic Consulting between March and May 2012.<sup>1</sup> The Terms of reference (ToR) requested the focus to be on the following areas:

- Opportunities and possibilities of creating European trustmark for e-commerce;
- Advantages and disadvantages of creating the trustmark on European level;
- The scope of issues which should be covered by the trustmark, for instance: legality of traded goods, services and legality of content, compliance of advertisement, marketing, traffic measurement and traffic surveillance practices with legal requirements, safety of payments, compliance with personal data protection regulations, compliance with privacy regulations, appropriate functioning of consumer service, participation in ADR/ODR schemes, etc.;
- Legal character of the trustmark, i.e. to what extent it would be binding, should it be mandatory or voluntary, including a consideration of existing national trustmarks and to which extent experience could be gathered from them to build on the best practises;
- Conditions for effective introduction of the trustmark; in particular, how effectiveness of the trustmark depends on reforming legal framework concerning e-commerce;
- Legal framework within which the trustmark could operate on institutional and procedural level; for instance if the trustmark should be based on European legislation or European standards; how should it be awarded; what role would certification play in awarding the trustmark and verifying continuing compliance;
- A roadmap for introduction of the trustmark.

#### 1.1.2. Research approach

Research was focused on the situation in the European Union and on trustmarks for business-to-consumer e-commerce with a comprehensive substantive scope of application, i.e. those that encompass a broad range of aspects of consumer protection (rather than trustmarks with a narrow focus, such as payment security or data protection).

The report is prepared on the basis of desk research, a review of literature and legal frameworks as well as semi-structured interviews with representatives of European stakeholders, public authorities, existing trustmarks for e-commerce, a trustmark monitoring body, and online traders (with or without a trustmark at the time of research).

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<sup>1</sup> Some information obtained after the submission of the draft final report was taken into consideration as well, extending research into mid-June 2012.

## 1.2. Recent developments

The European Parliament has called on the Commission “to assess the possibilities for establishing a definition of conditions and a logo for a European trustmark in order to guarantee greater certainty in the area of cross-border e-commerce, and in this connection to ensure a general legal framework for voluntary trustmarks”.<sup>2</sup> In 2010, the EP endorsed the initiative for a sustainable European trustmark “with clear, transparent and supervised rules” to be established by the Commission.<sup>3</sup> In February 2011 an IMCO Working Group on E-commerce was mandated.<sup>4</sup> In its conclusions, the working group reiterated the need for a European trustmark.<sup>5</sup>

The European Commission's Communication of 11 January 2012 – ‘A coherent framework for building trust in the Digital Single Market for e-commerce and online services’ – highlighted the importance of trust for reaching the potential of Digital Single Market, and identified trustmarks as one of the ways to improve consumer information.<sup>6</sup> Previously, in ‘A Digital Agenda for Europe’<sup>7</sup> the EC envisaged pursuing the idea of building “confidence by creating EU online trustmarks for retail websites”, and committed to creating a corresponding stakeholder platform by 2012.<sup>8</sup> The main subsequent developments have been a workshop dedicated to trustmarks at the first Digital Agenda Assembly (held in June 2011) and the commissioning of a study (in progress) on online trustmarks in the EU by DG INFSO.

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<sup>2</sup> European Parliament resolution of 21 June 2007 on consumer confidence in the digital environment (2006/2048(INI)), point 19.

<sup>3</sup> European Parliament resolution of 21 September 2010 on completing the internal market for e-commerce (2010/2012(INI)).

<sup>4</sup> The working group held four meetings with stakeholders and policy-makers in the course of 2011 (see EP/IMCO, *Notice to members IMCO/CM/03/2011*, 2011).

<sup>5</sup> EP/IMCO, *Working document on the Conclusions of the Working Group on E-Commerce Committee on the Internal Market and Consumer Protection*, 2011.

<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. A coherent framework for building trust in the Digital Single Market for e-commerce and online services. COM(2011) 942, p. 9.

<sup>7</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Agenda for Europe, COM(2010) 245.

<sup>8</sup> *Ibid.*, p. 13.

## 2. CONSUMER TRUST IN E-COMMERCE

### KEY FINDINGS

- Trust has been identified as an important factor in consumers' purchasing decisions and lack of trust has been repeatedly highlighted as one of the key impediments to e-commerce.
- In a 2011 consumer market study consumers were concerned, among other things, about returning products, wrong or damaged products being delivered, problems with replacement or repair of a faulty product, products not being delivered at all, personal data being misused and payment card details being stolen. When considering shopping online in another EU country, only 12% of consumers stated that they did not have any concerns.
- There are different possibilities for trust-building related to online shopping. Differences between smaller traders and those that have built their own widely known brands have to be noted. Big brands capitalize on their recognition and reputation and have less or no need to support their trustworthiness with additional cues such as trustmarks.

### 2.1. The importance of trust in purchasing decisions

Trust in general has been examined from different perspectives.<sup>9</sup> It has been identified as an important factor in consumers' purchasing decisions. From a trader's perspective, "[c]ustomer trust is a sustainable advantage that companies will automatically seek out," as one of the interviewees said. In computer-mediated, online shopping environment, trust can be even more relevant than in traditional, brick-and-mortar stores.<sup>10</sup>

Computer-mediated environments are associated with new risks and new definitions of trust have been coined to reflect these "particular concerns about risk, reliability, privacy, security, and control of information".<sup>11</sup> From a consumers' perspective, risks in these new environments are additionally enhanced by the "time lag between buying the product and receiving it".<sup>12</sup>

<sup>9</sup> Trust is deemed to be highly complex and multi-dimensional (Ho, B. C. & Oh, K., 'An empirical study of the use of e-security seals in e-commerce', *Online Information Review*, Vol. 33, No 4, 2009, p. 656). It can be understood as "a partner's willingness to rely on an exchange partner in the face of risk" (Aiken, K. D. & Boush, D., 'Trustmarks, Objective-Source Ratings, and Implied Investments in Advertising: Investigating Online Trust and the Context-Specific Nature of Internet Signals', *Journal of the Academy of Marketing Science*, Vol. 34, 2006, p. 309). When trust is lacking, that typically leads to "a reduced willingness to behave in a risky way" (Kerkhof, P., Vahstal-Lapaix, N. & Calje, J. F., 'Store and advertiser reputation effects on consumer trust in an Internet store: results of an experimental study', in K. Bijlsma & R. Klein (eds.) *Trust under pressure: empirical investigations of trust and trust building in uncertain circumstances*, Cheltenham: Edward Elgar Publishers, 2005, p. 171).

<sup>10</sup> See for example Head, M. M. & Hassanein, K. 'Trust in e-Commerce: Evaluating the Impact of Third-Party Seals', *Quarterly Journal of Electronic Commerce*, Vol. 3, No. 3, 2002, pp. 307-325; Corbitt, B. J., Thanasankit, T. & Yi, H., 'Trust and e-commerce: a study of consumer perceptions', *Electronic Commerce Research and Applications*, Vol. 2, 2003, pp. 203-215; Kerkhof, Vahstal-Lapaix and Calje, 2005; Ho and Oh, 2009. It has to be noted, however, that in academic research, "[t]he correlations between trust and its hypothesized consequences are not always very high." (Kerkhof, Vahstal-Lapaix and Calje, 2005, p. 172).

<sup>11</sup> Aiken and Boush, 2006, p. 309.

<sup>12</sup> Kerkhof, Vahstal-Lapaix and Calje, 2005, p. 172.

As one study puts it, “[w]hen compared with traditional commerce, e-Commerce is more impersonal, more automated, provides fewer direct sensory cues, has less immediate gratification, entails more legal uncertainties, and presents more opportunities for fraud and abuse.”<sup>13</sup> Those constraints lead to a lack of trust which has been repeatedly highlighted as one of the key impediments to e-commerce.<sup>14</sup>

## 2.2. EU consumers’ trust in the digital environment

In the EU, a “general lack of trust in online business” has been noted, with concerns regarding the security of payments, privacy, receiving or returning goods and getting redress, and delivery among the main inhibiting factors.<sup>15</sup> In a 2011 consumer market study on the functioning of e-commerce only 18% of consumers indicated that they did not have any concerns about online shopping in their own country, whereas others were concerned, among other things, about returning products, wrong or damaged products being delivered, problems with replacement or repair of a faulty product, products not being delivered at all, personal data being misused and payment card details being stolen.<sup>16</sup> The same study showed that some of the concerns are even more prevalent when consumers consider shopping online in another EU country and in that regard an even smaller share (12%) of consumers stated that they did not have any concerns (see Figure 1).

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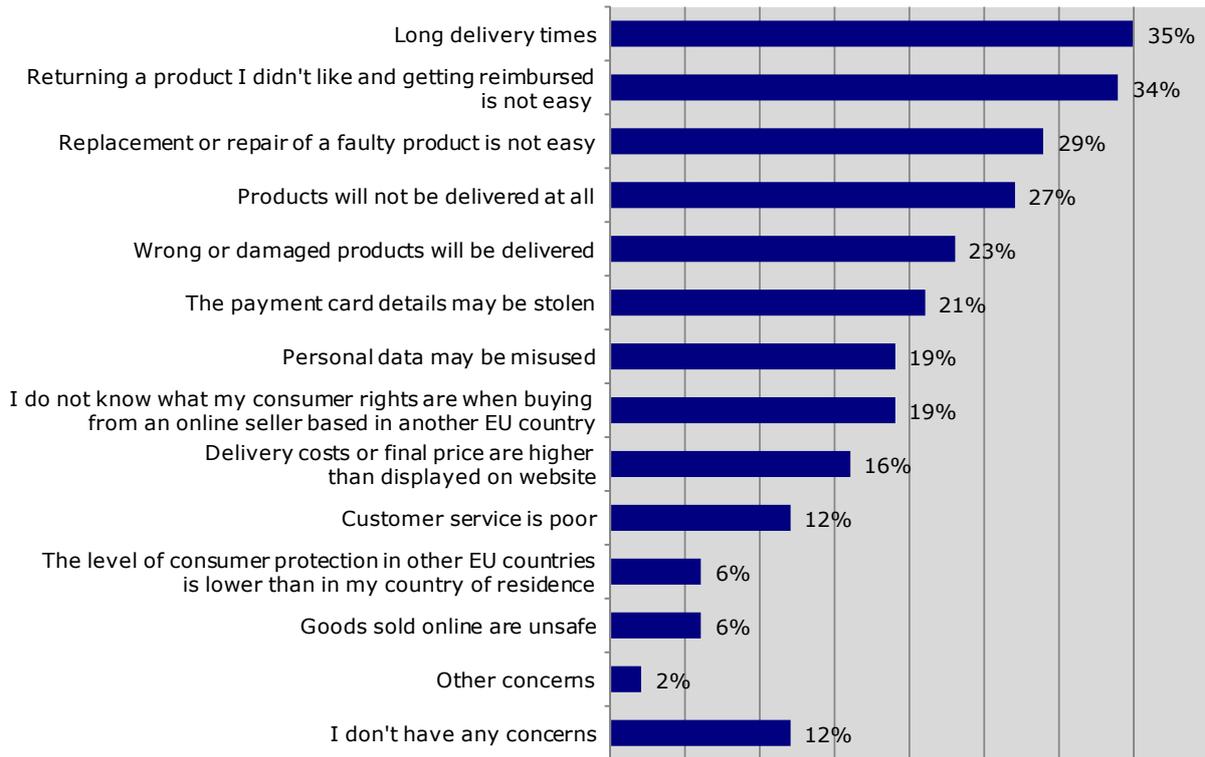
<sup>13</sup> Head and Hassanein, 2002, p. 3.

<sup>14</sup> See for example Guerra, G. A., Zizzo, D., Dutton, W. & Peltu, M., *Economics of Trust in the Information Economy: Issues of Identity, Privacy and Security*, OECD Information Security and Privacy Working Paper No. JT00142557, OII Research Report No. 1, 2003, p. 2; Office of Fair Trading, *Internet shopping: An OFT market study*, 2007, p. 96; Kerkhof, P. & van Noort, G., ‘Third party internet seals. Reviewing the effects on online consumer trust’, in I. Lee (ed.) *Encyclopedia of E-Business Development and Management in the Global Economy*, IGI Global, 2010.

<sup>15</sup> European Commission Staff Working Document, *Bringing e-commerce benefits to consumers*, SEC(2011) 1640 final, 11 January, 2012; accompanying Commission Communication, COM(2011) 942 final, 2012, p. 30.

<sup>16</sup> See Civic Consulting, *Consumer market study on the functioning of e-commerce and Internet marketing and selling techniques in the retail of goods*, 2011, pp. 129-132.

**Figure 1: Concerns about buying products online in another EU country**



**Source:** Civic Consulting, 2011, p. 134; based on all respondents (N=29010); three answers were possible

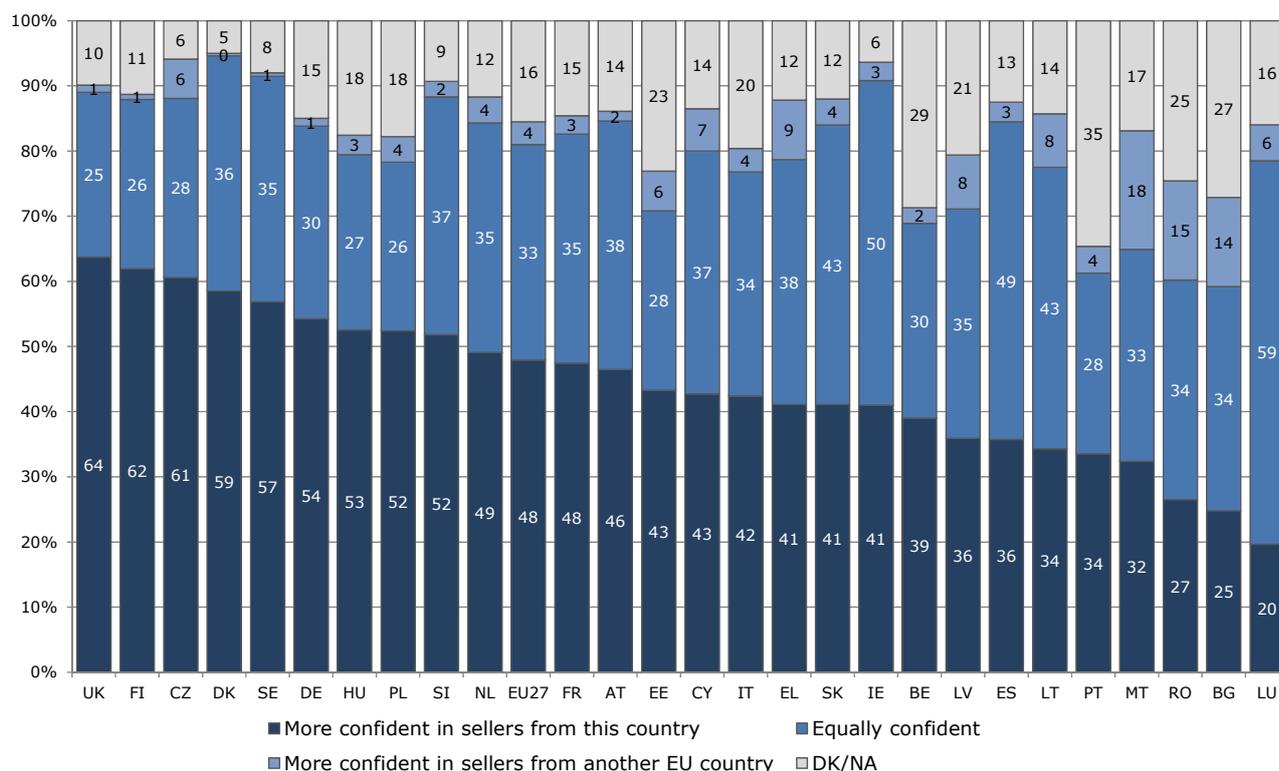
A 2011 Eurobarometer on cross-border trade and consumer protection also showed that EU consumers were typically more confident about ordering goods and services online from sellers or providers in their own country than in another EU country (see Figure 2). Only 4% of respondents said the opposite.<sup>17</sup>

When asked about intentions to conduct cross-border purchases, participants in the same Eurobarometer study confirmed a strong presence of perceived risks prohibiting the development of consumers' trust. Nearly 6 in 10 consumers (59%) said they were not interested in making a cross-border purchase because they were worried that they would fall victim to scams or frauds; 57% would not conduct such a purchase because of worries concerning a potential need to resolve problems, for example returning a faulty product; almost half (47%) of respondents were worried about the delivery of products.<sup>18</sup>

<sup>17</sup> *Consumer attitudes towards cross-border trade and consumer protection, Analytical report, Flash Eurobarometer 299, 2011, p. 25.*

<sup>18</sup> *Ibid, p. 30.*

**Figure 2: Levels of confidence when purchasing goods or services via the Internet**



Source: (Adapted from) Flash Eurobarometer 299

To overcome reservations and engage in online commercial transactions, consumers need assurances “that businesses are accurately representing themselves ... and that their transactions will be honored as agreed”.<sup>19</sup> The next section looks into some approaches to providing or signalling those assurances.

### 2.3. Trust-building in e-commerce

A study of consumer perceptions notes that, “[s]uccessful e-commerce web sites are those which could invoke consumers’ trust and lower consumers’ risk perception through marketing activities and technology improvements.”<sup>20</sup> Significant investments in advertising could overcome some of the reservations consumers have because of the low investment required to set up an online store, and objective-source ratings have been explored as another possibility to increase trust.<sup>21</sup> Effective risk-relieving tactics have been found to include positive word of mouth, brand image, money-back warranty and partnership with a well-known company.<sup>22</sup> Product selection, customer service and delivery

<sup>19</sup> Head et al.; in Head and Hassanein, 2002, p. 9.

<sup>20</sup> Corbitt, Thanasankit, Yi, 2003, p. 205; Repo and Nordquist (2005, p. 62) note that, ‘In e-commerce, trust has always been built in technically oriented ways.’ They provide examples of Secure Sockets Layer (SSL) protocol and Secure Electronic Transaction (SET).

<sup>21</sup> See Aiken and Boush, 2006.

<sup>22</sup> Corbitt, Thanasankit, Yi, 2003, p. 211.

or fulfilment have been identified as the “most common image components in the e-retail context”.<sup>23</sup>

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<sup>23</sup> Dennis et al., 2009, p. 5.

Image is closely related to reputation, and one of the most frequently cited earlier studies found that the perceived reputation of the store was the most crucial factor in determining the levels of trust. Unsurprisingly, levels of trust were much higher for stores that were associated with a good reputation than for those lacking it.<sup>24</sup>

In this regard, differences between smaller traders and those that have built their own widely known brands have to be noted. A recent study on consumer behaviour observes that, “[s]trong brands can build and exploit brand loyalty because consumers generally are more loyal to brands in the digital environment as a result of trust concerns.”<sup>25</sup> Big brands capitalize on their recognition and reputation and have less or no need to support their trustworthiness with additional cues<sup>26</sup> such as trustmarks (which are discussed in the next section). One of the business associations interviewed in 2011 (for the consumer market study on the functioning of e-commerce) noted that major brands are reluctant to consider trustmarks as their brand is considered a trustmark in itself.<sup>27</sup> A trader interviewed for this study made a similar observation: “We believe that our strength is our brand. Our good organization and good business which would create trust with our customers ...”<sup>28</sup>

In short, a strong brand associated with a good reputation may in itself relieve consumers of some of their concerns regarding shopping online. Such a brand can even be used as a third-party assurance of the trustworthiness of the associated traders, which is in line with the above-mentioned findings that partnership with a well-known company can be an effective risk-relieving tactic. An example is Amazon, which capitalizes on its well-recognised brand for its own sales but also for extending the positive image associated with it to the traders that it features.<sup>29</sup> This is particularly important for smaller traders (i.e. SMEs) without the possibility to appeal to consumers with their own strong brands. A successful trustmark would function in a similar way. One crucial precondition would be that the trustmark must itself be, first of all, recognised, and secondly, recognised as credible and relevant – so that it can extend its reputation and credibility to the traders using it.

Another example, albeit with a different business model, is eBay (itself not a trader but a third-party platform). It has built its own brand and reputation and it can now “vouch for the trustworthiness of certain sellers”, as the interviewee said. He described the “very sophisticated feedback system”, including different categories, such as price, condition of product, delivery and aftersales service. Consumers can rate sellers regarding all these aspects and can read comments from other consumers.

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<sup>24</sup> Jarvenpaa et al. (2000); in Kerkhof, Vahstal-Lapaix and Caljé, 2005, p. 171.

<sup>25</sup> EP/IMCO study on consumer behaviour in a digital environment, 2011, p. 42.

<sup>26</sup> According to signaling theory (applied to e-commerce), consumers typically “rely on online cues that provide information about website privacy and security and that can be processed in a relatively effortless manner”, rather than “study privacy regulations or the conditions of use” (Kerkhof and Van Noort, 2010, p. 2; see also Kerkhof, Vahstal-Lapaix and Caljé, 2005, p. 174-175).

<sup>27</sup> Civic Consulting, 2011, p. 165.

<sup>28</sup> The interviewee named the quality of products and services, transparency of prices, products and business practices, warranty, delivery, a state of the art logistical system and taking into account different demands that consumers have from a product (such as absence of child labour and low environmental footprint) as some of the prerequisites for building brand recognition and trust among consumers.

<sup>29</sup> Amazon has also been used as an example for the importance of factors other than trust in attracting consumers, specifically as a case of an e-retailer differentiating itself by emphasising convenience, which is ‘one of the most significant attractions of e-shopping’ (Dennis et al, 2009, p. 9). “For example, www.amazon.com allows regular customers to complete the purchase process with ‘one click’. Similarly, Amazon have allowed customers to review products, enhancing the quantity and quality of product information for potential customers, helping in the customer information search process to reduce search costs and time.” (ibid.)

"Only sellers who have received a high level of positive feedback over time (above 90%) make it to eBay 'top seller'," explained the interviewee. This is an example of the so-called reputation systems.<sup>30</sup>

The UK Office of Fair Trading has noted that feedback systems, such as user reviews and customer rating facilities, have a valuable role in raising consumer confidence, as a popular tool and "a feature of many established internet brands".<sup>31</sup> However, OFT also noted that these systems "alone do not provide a safety net for consumers that encounter problems ... nor do they provide a mechanism for monitoring or enforcing compliance with a set of standards or regulatory obligations or provide a clear signpost of the standards that a trader has promised to adhere to".<sup>32</sup>

As this non-exhaustive overview has indicated, there are different possibilities for trust-building related to online shopping.<sup>33</sup> Using trustmarks on an online trader's website is one of the possible approaches and will be at the centre of attention in the remainder of this report.

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<sup>30</sup> "A reputation system is an electronic system that enables users to rate products, services, sellers, suppliers and people based on their experience. These values are aggregated into reputation scores, which can be used by other users to evaluate the trustworthiness of the services or people who have been rated. Such systems are used by well-known web-sites, such as Amazon (product reviews) and eBay (seller and buyer feedback scores)." See Report on trust and reputation models, 2011, p. 7.

<sup>31</sup> OFT, 2007, p. 94.

<sup>32</sup> Ibid.

<sup>33</sup> Briefly returning to the conceptualizations of trust itself, it can be noted that different tactics respond to different aspects of consumers' concerns and build trust from different starting points. Trust in the other party (where reputation has a large role to play in trust-building) can be called *party trust*. Another kind that is important in e-commerce is *control trust*, which "refers to trust in the mechanisms that assure that you get what you have agreed upon with the other party, even if the other party is not able or willing to deliver" (Kerkhof, Vahstal-Lapaix and Caljé, 2005, p. 172). An example of a tactic to build control trust is a third-party money-back warranty (ibid.).

### 3. TRUSTMARKS FOR E-COMMERCE

#### KEY FINDINGS

- Trustmarks for e-commerce are intended to be displayed on a website as electronic labels, and the purpose is to signal adherence to a set of rules (a code of conduct) to increase consumers' confidence in the online trader.
- One of the defining characteristics of a trustmark is the involvement of a third party which provides an assurance to consumers regarding the online trader. Third-party certification is at the heart of a credible trustmark. It entails a set of requirements and the assessment of an online trader's compliance with these requirements.
- There is significant diversity among existing trustmarks in the EU. Some points of distinction are: a formal accreditation of a trustmark, the nature of organisations which administer trustmarks, their sources of funding, involvement of stakeholders, geographical and substantive scope of coverage, monitoring traders' compliance and sanctioning non-compliance.
- Research findings concerning the actual effects of trustmarks are scarce and not consistent. Several studies have found that effects of trustmarks are mostly identifiable with people who generally consider online shopping as risky. A previous study has indicated awareness among consumers and businesses as one of critical success factors, thus a particular challenge is the low consumer awareness of trustmarks.
- There has been some progress in recent years with the consolidation and expansion of some of the existing trustmarks, as can be inferred from the increasing numbers of certified traders using trustmarks included in this study.

#### 3.1. What is a trustmark?

Trustmarks for e-commerce have been proliferating since the late 1990s, primarily as a form of market self-regulation.<sup>34</sup> They are also known under other terms, such as e-security seal, seal of approval, trust certification or trust seal, third-party Internet seal, and web seal,<sup>35</sup> among others.

Trustmarks for e-commerce have been broadly defined as "any third-party mark, logo, picture, or symbol that is presented in an effort to dispel consumers' concerns about Internet security and privacy and, therefore, to increase firm-specific trust levels".<sup>36</sup> Along those lines, representatives of European businesses and consumers have jointly defined a trustmark as, "[a] label or visual representation showing participation in a trustmark scheme. A subscriber to a trustmark scheme can display a trustmark if he meets the trustmark requirements."<sup>37</sup>

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<sup>34</sup> See Balboni, 2008; Trzaskowski, 2006; Repo and Nordquist, 2005.

<sup>35</sup> See Ho and Oh, 2009; Head and Hassanein, 2002; Nordquist, Andersson and Dzepina, 2002; Kerkhof and Van Noort, 2010.

<sup>36</sup> Aiken, Osland, Liu, and Mackoy, 2003; in Aiken and Boush, 2006, p. 310.

<sup>37</sup> UNICE-BEUC e-confidence project, 2001 (Glossary).

A trustmark scheme was defined as, “[a]ny body providing a trustmark to B2C e-merchants after positive assessment on the basis of own criteria,” and trustmark requirements as, “[s]et of business practices that a trustmark scheme requires its subscribers to comply with. The trustmark requirements may be presented in the form of a code of practice, a code of conduct, a set of requirements or a list of criteria.”<sup>38</sup>

As is evident from these and other definitions,<sup>39</sup> one of the defining characteristics of a trustmark is the involvement of a third party which provides an assurance to consumers regarding the online trader. Trusted third parties “can serve as privacy, security or business credibility/reliability validators”.<sup>40</sup> Trustmarks function as “signals sent to consumers to inform them that the firm adheres to certain standards ... and that there would be adverse consequences of not adhering to these standards”.<sup>41</sup> Clicking on the trustmark leads the consumer to “the endorsing third-party’s web site”,<sup>42</sup> where the authenticity of the logo is verified and regulations or policies regarding the trustmark clarified. The purpose is “to support and build trust and reinforce consumer confidence,”<sup>43</sup> so that “an e-consumer will less likely question the integrity of the e-merchant in relation to the security, privacy or business practice”.<sup>44</sup> This is supposed to translate into actual online purchases, and a trustmark can also be considered as a form of advertising.<sup>45</sup>

In sum, trustmarks for e-commerce are intended to be displayed on a website as electronic labels, and the purpose is to signal adherence to a set of rules (hereafter referred to as a code of conduct) in order to increase the consumer’s confidence in the online trader.<sup>46</sup> As noted in the introduction, the focus of this study is on trustmarks for e-commerce encompassing a broad range of aspects of consumer protection rather than those with a narrow scope of application (such as privacy or payment security). Another starting point of this study is that a trustmark entails certification by a third party (see Section 3.5).

### 3.2. Effects and awareness of trustmarks

Research findings concerning the actual effects of trustmarks are scarce and not consistent.<sup>47</sup> A study which compared the effects of trustmarks, objective-source ratings and implied investments in advertising, found that among these the trustmark “was the most effective method for developing trust”.<sup>48</sup> Findings from a 2009 study focusing on e-security seals suggest that these seals “could increase trust between consumers and e-commerce web sites, which could increase future interactions”.<sup>49</sup> Several studies have found that effects are mostly identifiable with people who generally consider online shopping as risky, whereas some others “found no support for the trust enhancing effects of third party Internet seals”.<sup>50</sup>

<sup>38</sup> Ibid.

<sup>39</sup> See for example Ho and Oh, 2009.

<sup>40</sup> Greenstein and Feinman, 2000; in Head and Hassanein, 2002, p. 18.

<sup>41</sup> Kerkhof and Van Noort, 2010, p. 2.

<sup>42</sup> Ho and Oh, 2009, p. 658.

<sup>43</sup> Ibid.

<sup>44</sup> Balboni, 2008, p. 34.

<sup>45</sup> VeriSign, 2010, p. 1.

<sup>46</sup> See Jan Trzaskowski: E-Commerce Trustmarks in Europe - an overview and comparison of Trustmarks in the European Union, Iceland and Norway, Report, European Consumer Centre Denmark, 2006, p. 11.

<sup>47</sup> See Kerkhof and Van Noort, 2010.

<sup>48</sup> Aiken and Boush, 2006, p. 320; in the experimental design used for the quoted study, “[t]he trustmark was provided by a popular non-profit firm that licenses its online certification to firms that meet certain security and privacy standards.” (ibid., p. 314).

<sup>49</sup> Ho and Oh, 2009, p. 667.

<sup>50</sup> Kerkhof and Van Noort, 2010, p. 3.

In a recent consumer market study, only 4% of the online shoppers who participated in the consumer survey indicated that they selected a specific website for purchasing a good because there was a trustmark on the website and it was observed that public authorities and business and consumer organisations considered trustmarks more important than consumers themselves.<sup>51</sup>

A particular challenge in that regard is the low consumer awareness of trustmarks. In a previous study, trustmark schemes indicated that awareness with businesses and consumers is one of the critical factors for success of a trustmark.<sup>52</sup> On the other hand, almost 75% of participants in one of the studies which did not find effects of trustmarks on consumer trust “did not know that websites are sometimes endorsed by third parties”.<sup>53</sup> Only 10% of respondents in a 2003 Eurobarometer survey had heard of trustmarks at all, and in focus groups in 2007 “virtually none of the experienced Internet shopper-participants mentioned trustmarks spontaneously or had much prior knowledge of them; there was also confusion with other labels or symbols, such as security or payment methods”.<sup>54</sup> As one interviewee for this study put it, “[t]he best trustmark is of no use if people are not aware what it stands for.”

There may have been some progress in recent years with the consolidation and expansion of some of the existing trustmarks. For example, 78 per cent of Danish online shoppers considered it important in 2009 that the online seller has a trustmark.<sup>55</sup> Research conducted in Germany in 2010 showed that 59.5% of participating Internet users knew the trustmark Trusted Shops<sup>56</sup> (presented in Section 3.4.4.). The Dutch trustmark for e-commerce presented as a case study in this report (Section 3.4.2.) was recognised by 84% of participants in research among computer owners conducted in 2011.<sup>57</sup> An interviewee in this study reported having carried out a so-called AB test which showed (albeit on a small sample) that this trustmark had a sizeable positive effect in terms of increased sales, especially with new customers.<sup>58</sup> Increased conversions (from visits to purchases) following the use of a trustmark have also been noted in Sweden.<sup>59</sup>

Another aspect of the effects of trustmarks is traders’ performance, where the central question is whether or not traders comply with the requirements to carry the trustmark and outperform those without one. The Office of Fair Trading (UK) reported an observation from Denmark where “a web sweep of the 354 sites signed up to their ‘e-mark’ showed that members were more compliant with regulations than non-members”, but added that otherwise “evidence of the effectiveness of such schemes is lacking”.<sup>60</sup>

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<sup>51</sup> Civic Consulting, 2011, p. 54.

<sup>52</sup> ECP.NL and CRID, 2005, p. 11.

<sup>53</sup> Kim, Ferrin, and Rao, 2008; in Kerkhof and Van Noort, 2010, p. 3.

<sup>54</sup> Civic Consulting, 2007, p. 9.

<sup>55</sup> See ‘Befolkningens brug af internet’, <http://www.emaerket.dk/media/132320/danmarks%20statistik.pdf>

<sup>56</sup> Research was commissioned by Trusted Shops and conducted by GfK (see <http://www.trustedshops.de/shop-info/gfk-umfrage-2010-guetesiegel-trusted-shops-kennen-60-prozent/>).

<sup>57</sup> See ‘Thuiswinkel Trustmark Familiarity’, <http://www.thuiswinkel.org/english/aboutthuiswinkel/trustmarkfamiliarity>

<sup>58</sup> As an interviewee explained, “[e]very time someone comes to your site you would decide to serve them the version with the logo or the version without the logo. Then at the end of a test period you can see the average order value of site A, not displaying the logo, and the same for site B that was displaying the logo, and see if there’s a difference between the average order values on both.”

<sup>59</sup> See ‘E-handlarnas egna ord’, <http://www.trygqehandel.se/?sida=egnaord>

<sup>60</sup> OFT, 2007, p. 91.

A cross-border mystery shopping exercise conducted in 2011 by ECC-Net showed that traders carrying a trustmark did not perform significantly better than those without one in the observed areas,<sup>61</sup> and some did not even comply with minimum legal requirements. For example, “23 out of 44 traders that displayed a Trustmark did not provide a refund in accordance with the Distance Selling Directive”.<sup>62</sup> This may have been related to the significant variations in the quality of the existing trustmarks which were highlighted by many interviewees.

One trustmark representative said: “We are seeing a number of initiatives here and there, which I am also wary of because it has the potential to discredit the trustmark service as a whole.” A European association representative also pointed out that trustmarks “actually vary in quality and credibility. So if a consumer sees a trustmark on a certain website and it does not function according to the expectations of a consumer, it also brings down the credibility of the other trustmarks in the market.”<sup>63</sup> An online trader spoke about additional negative effects of traders’ non-compliance: “If a trustmark is based on trust and has to create its own reputation then if, for example, one company runs a bad business, this could ruin the reputation of the trustmark and potentially the reputation of other companies using it.”

### 3.3. E-commerce trustmarks in the EU

An up-to-date comprehensive overview of existing trustmarks for e-commerce in the EU is not readily available and would be outside of the scope of this study. A detailed mapping as well as a classification of trustmarks will be presented in the near future as an outcome of the already mentioned study commissioned by DG INFSO. A preliminary list of trustmarks identified in the mapping study is attached in Annex 3.<sup>64</sup>

In 2006, it was found that trustmarks were available in two thirds of examined countries (EU25 as well as Iceland and Norway).<sup>65</sup> Some new trustmarks have been identified since then. For example, no trustmarks were reported in 2006 in Sweden, but the Swedish Distance Sellers (Svensk Distanthandel) have since then launched the ‘Secure e-commerce’ trustmark, and certification of e-commerce providers (indicated with a trustmark) was launched in 2007 by the Council for E-commerce certification (Rådet för E-handelscertifiering).<sup>66</sup>

Another Member State where no trustmarks for e-commerce were identified in the 2006 study is Lithuania, where there is now a trustmark called eShops.<sup>67</sup> Nevertheless, trustmarks still do not appear to be available in all EU Members States.<sup>68</sup>

<sup>61</sup> “We found that 88% of these traders mentioned the cooling-off period in their terms and conditions, compared to 80% for the total number of traders. 84% of the traders with Trustmarks reimbursed the Mystery Shopper after the product was returned within the cooling-off period. This should be compared to 90% of the traders in total. However, 48% of the traders with Trustmarks did reimburse the Mystery Shopper the full amount (i.e. including delivery costs), compared to 43% in total.” (ECC-Net, 2011, p. 50).

<sup>62</sup> ECC-Net, 2011, p. 20.

<sup>63</sup> This could be seen as an argument for intervention in this area. Several trustmark representatives highlighted it as problematic that they operate without any supervision and/or formal accreditation which would ensure that trustmarks themselves comply with certain standards: “This is a big issue for us because we are spending a lot of money on this approval process and the control process and the quality of our seal of approval, and some of our competitors do not,” said the interviewee representing the Danish trustmark e-market.

<sup>64</sup> An interim report with preliminary results of the study has been published as a part of an online discussion paper (see <http://daa.ec.europa.eu/content/special/discussion-paper-trustmarks>).

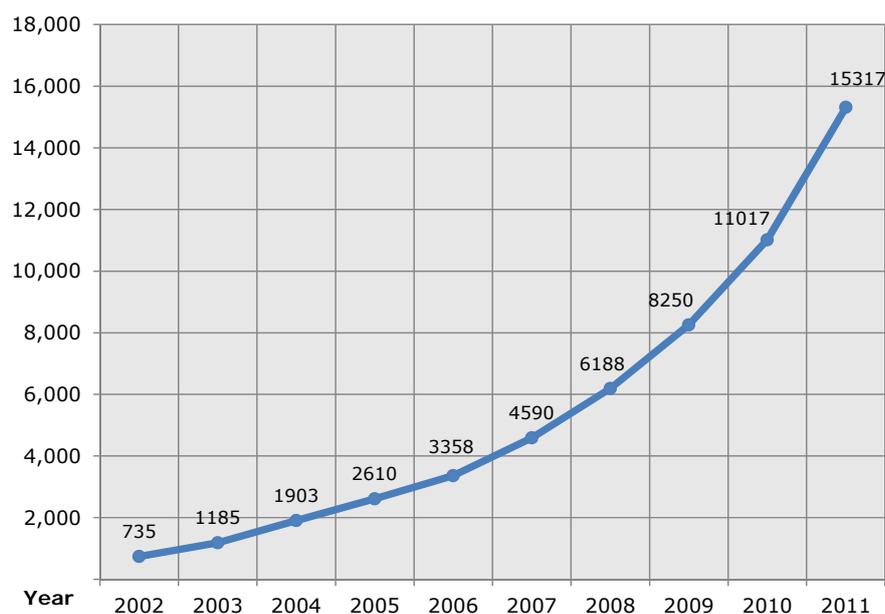
<sup>65</sup> Trzaskowski, 2006, p. 28

<sup>66</sup> See <http://www.trygghandel.se/> and <http://www.ehandelscertifiering.se/>

<sup>67</sup> See <http://www.eshops.lt/>. This trustmark is listed by the ECC-Net online assistant (see next footnote). It could not be verified that this is in fact a trustmark entailing a third-party review of traders’ practices, but the

Whereas some trustmarks do not achieve financial sustainability and are extinguished after a certain period, others have been strengthened and experiencing growth in terms of the numbers of participating traders, and in some cases also in terms of territorial coverage. That there is an interest in the use of trustmarks, and that it is growing can be inferred from the increasing numbers of traders using trustmarks included in this study (see Figure 3 below). Four of the case-study trustmarks reported to have been used by the total of 15,317 traders in 2011 compared to 2003 when the total for these four trustmarks was only 1,185. The number of actual websites using the trustmark is higher because the same trader may operate more than one website.

**Figure 3: Total number of traders using examined trustmarks (2002-2011)**



**Source:** Civic Consulting; based on information obtained from four trustmarks: Confianza Online, e-maerket, Thuiswinkel Waarborg, and Trusted Shops. Note that Confianza Online was not yet operational in 2002.

### 3.3.1. General features of identified trustmarks

Previous studies and research conducted for the purposes of this report point to significant diversity among existing trustmarks in the EU.<sup>68</sup> Some of the main features and variations of trustmarks are presented in Table 1 and discussed below.

website claims that the seal is only granted to online stores which comply with legal requirements (see <http://www.eshops.lt/infocentras/kas-yra-eshops-lt-narystes>).

<sup>68</sup> Trustmarks were identified through a web search (limited due to language barriers) and on the basis of the following sources: Trzaskowski, 2006; research interviews; listings provided by the ECC-Net (see e.g. 'Trustmarks', <http://ie.theshoppingassistant.com/index.php?id=22>), EMOTA, 'Trustmark schemes across Europe', <http://www.emota.eu/consumer-trust.html> and Initiative D21, <http://www.internet-quetesiegel.de/>. It should be noted that some of the online labels identified through these sources do not conform with the understanding of a trustmark in this report, as the labels used by traders either merely indicate their membership in certain associations, tied to the declaration of acceptance of a self-regulatory code of conduct (rather than a review of actual practices by a third party); or are based only on consumer reviews.

<sup>69</sup> A study dedicated to analysing the common characteristics of trustmarks in Europe evaluated a set of trustmark schemes and found that "there are as many differences ... as there are trustmark schemes" (ECP.NL and CRID, 2005, p. 8).

**Table 1: General features of e-commerce trustmarks**

Main features	Main variations
Formal approval by an accreditation scheme	Yes
	No
Organisation(s) administering the trustmark	Private – not-for-profit
	Private – for-profit / commercial
	Public
Formal stakeholder involvement in administering the trustmark	Supervisory board
	Advisory board
	None
Geographical scope of coverage	One national market
	Multiple national markets
Substantive scope of coverage	Broad / multiple areas of consumer protection
	Narrow / issue-based (e.g. data protection)
Funding	Private
	Public
Money-back guarantee for consumers	Yes
	No
Internal ADR/ODR procedures	Yes
	No
Requirement for traders to adhere to external ADR/ODR procedures	Yes
	No
Monitoring traders' compliance	Regular (typically annual) re-certification
	Continuous monitoring
	Sporadic reviews
Sanctions for traders' non-compliance with certification requirements	Warning
	Short-term withdrawal of the trustmark
	Long-term withdrawal of the trustmark
	Financial penalties

**Source:** Civic Consulting; note that the main variations indicated in the second column are not mutually exclusive for all of the main features indicated in the first column (combinations may be possible).

One point of distinction is a formal accreditation of a trustmark by public authorities (discussed in Section 3.5.2), which is, however, not available in all Member States. Another aspect in which trustmarks differ is the nature of organisations which administer them. Available information indicated that trustmarks are typically launched and administered by private actors. These can be commercial entities (i.e. profit-oriented) or not-for-profit. The latter group primarily consists of traders' associations but there have been examples of trustmarks administered by consumers' associations and by foundations which involve different stakeholders (such as the Danish trustmark e-maerket). Sometimes, however, public authorities are involved or even administer the trustmark as is the case in Malta where a trustmark (newly launched in 2011) is administered by the Communications Authority<sup>70</sup> and the government was previously associated with the cross-border trustmark scheme Euro-Label.<sup>71</sup>

As has been indicated, some trustmarks ensure the involvement of stakeholders which can be formalised to different degrees. In the case of a foundation established by organisations representing different stakeholders, their formal involvement is ensured through a supervisory board. In other cases they may be formally involved through an advisory board, whereas in yet other cases formal stakeholder involvement in administering the trustmark is not provided for. Nevertheless, even trustmarks without formal stakeholder involvement may closely co-operate with stakeholders at various stages of operation.

Another distinguishing feature of trustmarks is their geographical scope of coverage: trustmarks can focus on one national market or multiple national markets. The majority of the trustmark organisations analysed for the purpose of this study operate only on one national market and are available to traders based in other countries only if they set-up a website specifically targeting the national market served by the trustmark.<sup>72</sup> One trustmark is organised in the form of a network embracing several national trustmark providers granting the same label, which is graphically combined with the label of the national provider performing the certification, whereas one organisation administers its trustmark in 10 Member States.

In substantive terms, the coverage of trustmarks can either encompass multiple areas of consumer protection or focus on a specific issue, such as privacy or data protection. As has been mentioned, this study focused on trustmarks covering a broad range of aspects of consumer protection.

Another distinguishing feature of trustmarks is their source of funding, which can be public or private. Combinations of private and public funding have been identified as well, especially in the start-up phase<sup>73</sup> and in the first years after the launch of a trustmark when even commercial organisations administering trustmarks sometimes receive 'seed funding' from public sources.<sup>74</sup> Once a trustmark is operational, private funding typically means fees paid by the traders using the trustmark (which can be lumped under 'certification fees').

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<sup>70</sup> See <http://eshop.mca.org.mt/>.

<sup>71</sup> Haslinger, 2009, p. 2.

<sup>72</sup> This at the same time reflects and aggravates the fragmentation of the Single Market. As case studies showed, trustmarks largely base their certification requirements on national legislation.

<sup>73</sup> A previous study defined the start-up phase as "a period of time spent on preparatory work before trustmarks can actually be issued" (ECP.NL and CRID, 2005, p. 87).

<sup>74</sup> For example, Trusted Shops (presented in Section 3.4.4) received 1.4 million Euro from the eTEN program in the second year of its operations (see 'Consumer protection seal: Assurance and money-back guarantee' at [http://ec.europa.eu/information\\_society/activities/eten/cf/opdb/cf/project/index.cfm?mode=detail&project\\_ref=ETEN-26786](http://ec.europa.eu/information_society/activities/eten/cf/opdb/cf/project/index.cfm?mode=detail&project_ref=ETEN-26786)).

These are the main source of income not only for commercial but also for not-for-profit (or non-profit) organisations administering the trustmarks which were analysed in the scope of this study.

For instance, the Danish trustmark e-maerket, set up as a foundation, received public funding in the early years of its existence but now relies entirely on fees paid by the certified traders. As case studies will show, these fees are usually charged for the period of one year (sometimes in monthly instalments), and they can be called certification fees, membership fees, fees for the use of the trustmark, etc. Some trustmarks charge these fees in combinations (e.g. a one-time fee for the process of certification and an annual fee for the use of the trustmark) and in some cases one-time application fees are charged as well. It appears to be rare for the fees to be the same for all traders and more common for them to vary depending on the traders' annual turnover and in some cases on the number of employees.

Regarding their additional features, trustmarks can differ in whether or not they provide a money-back guarantee for consumers (most of the existing trustmarks do not provide for such a guarantee but it has been identified as an important success factor<sup>75</sup>). An important feature of trustmarks is alternative dispute resolution (which can be conducted as online dispute resolution). Here distinctions can be made on the basis of whether trustmarks provide internal ADR/ODR (i.e. they accept consumer complaints and attempt to resolve them with the traders), and on the basis of whether trustmarks require certified traders to adhere to external ADR procedures. In some other cases non-adherence of traders to external ADR can result in financial penalties and/or withdrawal of the trustmark.

Whether or not trustmarks impose financial penalties and what other sanctions they impose on traders that are found not to comply with their requirements is another important feature of trustmarks, as is the way the compliance of traders is monitored. More typical than financial penalties is the sanction of the withdrawal of the right to use the trustmark, which can be temporary/short-term or permanent/long-term.<sup>76</sup> In terms of monitoring the compliance of traders, regular re-certification appears to be common (typically conducted once a year), and in between trustmarks conduct monitoring in various ways, some continuously (e.g. through monitoring consumer reviews) and others sporadically (e.g. on the basis of consumer complaints or performing random checks, including in some cases with the use of mystery shopping).

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<sup>75</sup> In a survey conducted for a previous study, thirteen out of 18 respondents representing consumers indicated that money-back guarantee was "extremely important" (ECP.NL and CRID, 2005, p. 22), but it was also found that such a guarantee was typically not provided for (ibid., p. 88).

<sup>76</sup> It may be possible for a trader who lost the right to use the trustmark due to non-compliance to reapply after a certain period. For example, the Danish trustmark e-maerket specifies that the trader has to wait for 12 months before it is possible to apply for the trustmark again (see e-maerket guidelines, pt. 4.4.1.8).

### 3.4. Case studies of existing trustmark schemes

To reflect the diversity of the existing trustmark schemes in the EU and enable a better understanding of their practices, six trustmarks were examined in more detail and will be presented on the following pages. All of these trustmarks are listed by the ECC-Net's online shopping assistant<sup>77</sup> and were indicated as comparatively widespread in the 2006 study on trustmarks.<sup>78</sup> In addition, interviewees from other organisations explicitly identified some of these trustmarks as examples of good and successful practices. They all entail a comprehensive coverage of issues regarding consumer protection and a third-party review of traders' compliance with the requirements to carry the trustmark.

Four of the presented trustmarks are focused on their respective national markets (Confianza Online – Spain; e-maerket – Denmark; Internet Shopping is Safe (ISIS) – the UK; and Thuiswinkel Waarborg – the Netherlands).<sup>79</sup> One trustmark (Euro-Label) was launched as a cross-border umbrella encompassing different national trustmark providers, and one (Trusted Shops) was initially launched in one Member State (Germany) but has been steadily expanding to others.

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<sup>77</sup> See 'Trustmarks', <http://ie.theshoppingassistant.com/index.php?id=22>.

<sup>78</sup> See Trzaskowski, 2006, pp. 30-31.

<sup>79</sup> It should be noted that ISIS merged with Trusted Shops in the period between the research interview and submission of this report.

Table 2: Overview of case studies

EXAMINED TRUSTMARKS	ES	DK	NL	DE	UK	Multiple MS
	Confianza Online	e-maerket	Thuiswinkel Waarborg	Trusted Shops	Internet Shopping is Safe	Euro-Label
Launched	2003	2000	2001	2000	1997	2001
Certified traders	>1,500	>1000	~1,600	>12,000	~1,260	~600
Administering organisation(s)	Adigital & Autocontrol (non-profit)	e-handelsfonden (non-profit)	Thuiswinkel.org (non-profit)	Trusted Shops (commercial)	Internet Media in Retail Group (commercial)	Various (central mgmt at EHI Retail Institute)
Formal approval <sup>(a)</sup>	Yes (accreditation)	None available	Yes (accreditation)	Yes (stakeholder approval)	No (did not apply)	No
Formal stakeholder involvement in administering	No	Supervisory board	Supervisory board <sup>(b)</sup>	Advisory board	No	No
Geographical coverage	One national market	One national market	One national market	Multiple nat. markets	One national market	Multiple nat. markets
Substantive coverage	Broad	Broad	Broad	Broad	Broad	Broad
Code of conduct stipulated as ...	Ethical code on e-commerce and interactive advertising	Guidelines for the e-commerce foundation's labelling scheme	General terms and conditions and other documents	General membership terms and conditions and other documents	Code of practice for electronic commerce	European code of conduct (and criteria defined by the national providers)
Funding	Private & public	Private	Private	Private	Private	Private (in AT some public)
Basis for determining fees	Annual turnover	Number of employees	Annual turnover	Annual turnover	No differentiation	Annual turnover or number of employees
Money-back guarantee	No	No	No	Yes	No	No
Internal ADR and ODR	Yes	Yes	Yes	Yes	Yes	Yes
Mandatory external ADR	Yes	Yes	Yes	No <sup>(d)</sup>	No	Possible
Annual recertification	Yes	Yes	Yes	Yes	Yes	Yes
Monitoring compliance	Sporadic (e.g. through mystery shopping)	Continuous (monitoring consumer review, media reporting, etc.)	Sporadic (complaint-triggered) but continuous monitoring of solvency	Continuous (monitoring consumer reviews and ratings)	Sporadic (complaint-triggered)	Sporadic (complaint-triggered)
Sanctions for non-compliance	Temporary suspension or long-term withdrawal of the trustmark	Warning, temporary suspension of long-term withdrawal of the trustmark	Expulsion from the branch association and withdrawal of the trustmark <sup>(c)</sup>	Withdrawal of the trustmark and financial penalties (others case-by-case)	Temporary suspension or long-term withdrawal of the trustmark	Temporary suspension or long-term withdrawal (in some cases fin. penalties)
Withdrawals made public	Yes	Yes	Yes	Only in cases of fraud	Yes	No

**Source:** Civic Consulting. (a) 'Formal approval' could mean formal accreditation by public authorities or *de facto* accreditation, e.g. by a stakeholder platform. (b) The described composition of the board refers to the Thuiswinkel Waarborg Certification Foundation. (c) Expulsion is only carried through after the trader has been given multiple opportunities to get compliant. (d) Steps have been taken to connect the trustmark to external ADR schemes.

### 3.4.1. Confianza Online

The Spanish trustmark Confianza Online was launched in 2003 by two Spanish non-profit organisations: the predecessor of the digital economy association Adigital and the advertising self-regulatory organisation Autocontrol. At the time of reporting the trustmark is used by more than 1500 traders that altogether display it on over 2000 websites.<sup>80</sup> The trustmark can be awarded to any trader operating in Spain that becomes a member of Confianza Online, regardless of where the trader is formally established. There are, according to the interviewee, many companies using the trustmark that are established in France, Germany, the UK and some other countries.<sup>81</sup> Information on the official website of Confianza Online is available in Spanish and (to a limited extent) in English.

The trustmark has been formally endorsed by three public bodies: the Ministry of Industry, Trade and Tourism, the Spanish Data Protection Agency,<sup>82</sup> and the National Institute of Consumer Affairs. The latter accredited Confianza Online with the so-called 'public trustmark' (Distintivo Público de Confianza en Línea) in 2005,<sup>83</sup> and the Ministry of Industry, Trade and Tourism has joined the founding associations as one of the official promoters of the scheme.

The development of Confianza Online is closely linked to the adoption of the Directive on electronic commerce (Directive 2000/31/EC) and Spanish Law 34/2002 (Ley de Servicios de la Sociedad de la Información) implementing the Directive. Following these regulatory measures, the two founders of Confianza Online<sup>84</sup> decided to "establish a unique and stronger online standards code, in order to avoid the undesirable proliferation of spare codes and trustmarks that would create confusion among consumers and in the marketplace".<sup>85</sup> Thus, the Ethical Code on E-commerce and Interactive Advertising was developed, and that in consultation with all three of the above-mentioned public bodies that now oversee the compliance of Confianza Online with its commitments. The code of ethics of Confianza Online has also been approved by the Spanish Consumer Council.

Confianza Online entails a broad range of requirements that traders have to meet. "Our code tries to join all the different rules in the Spanish legal situation. And in some parts it sets higher protection of consumers," said the interviewee, and offered the examples of a stronger than legally required protection of minors, broader requirements regarding the transparency of traders, payment security, advertising and privacy, among other things.

<sup>80</sup> Data provided by the interviewee show rapid growth in the past few years: in 2009, the trustmark was used by 355 traders, in 2010 by 801, and in 2011 by 1,392.

<sup>81</sup> The interviewee said: "We do not distinguish [traders on the basis of their country of registration], because we do not think that is important for the consumers. We want them to trust and not have any differences between the companies."

<sup>82</sup> "Confianza Online's Code of Ethics has been registered in the General Register of the Spanish Data Protection Agency as a standard code regarding data protection in the field of the e-commerce." (Presentation of Confianza Online provided by the interviewee)

<sup>83</sup> The public trustmark was introduced on the basis of the Royal Decree 292/2004 dated 20 February 2004. "This Royal Decree builds upon the Spanish e-commerce law which makes it incumbent upon the Public Administration to foster voluntary codes of conduct, as well as ADR mechanisms to resolve whatever conflicts may arise between consumers and the e-commerce business community." (See 'E-commerce, arbitration and consumer trust. Spain to launch a new online trust seal', <http://adrresources.com/adr-news/171/spain-online-arbitration-trust-seal>).

<sup>84</sup> The associations had previously developed the Ethical Code of Advertising on the Internet (issued in 1999 by Autocontrol) and the Internet Data Protection Code (issued in 1998 by the predecessor of Adigital).

<sup>85</sup> The public trustmark was granted on the basis of compliance with consumer protection requirements specified in the Spanish Royal Decree 292/2004 (Presentation of Confianza Online provided by the interviewee).

Apart from the general introductory provisions and rules about the application of the Ethical Code on E-commerce and Interactive Advertising and cooperation with authorities, the document is divided into the following main sections: Advertising; E-commerce; Personal data protection; Protection of minors; and Accessibility and usability.

If consumers have complaints about breaches of the ethical code, they can submit them to Confianza Online, and traders carrying the trustmark must take part in ADR procedures (which are free of charge for consumers) and comply with final decisions without delay. ADR is performed by the Autocontrol's Complaints Committee (Jurado de la Publicidad) for all matters related to commercial communications, privacy, data protection and minor protection, and by the National Consumer Arbitration Council (Junta Arbitral Nacional de Consumo) for all disputes related to contractual aspects of e-commerce transactions which cannot be solved through mediation by Adigital's Mediation Committee.<sup>86</sup> Mediation is mandatory before the arbitration council accepts a complaint, and the decision of this body is legally binding for both parties. The outcomes of above-mentioned ADR procedures (including mediation) are published online.

To be granted the trustmark, the trader has to comply with the rules stipulated in the Ethical Code on E-commerce and Interactive Advertising. Upon a traders' application, Confianza Online performs an online check of the website in question on the basis of the code. Within two weeks, the applicant is provided with a compliance report, specifying any shortcomings which have to be addressed before the trustmark can be awarded. Compliance is reviewed annually and additional checks (for example through mystery shopping) may be performed at any time. Traders which are found not to comply with the requirements of Confianza Online are sanctioned with the withdrawal of the trustmark, whereby the duration of the withdrawal varies depending on the breach.

The operations of Confianza Online are funded primarily from the fees paid by those carrying the trustmark. Annual fees begin at 295 Euro (excl. VAT) for companies with a turnover of less than one million Euro and gradually increase to 3,500 Euro (excl. VAT) for companies with a turnover of more than 25 million Euro.<sup>87</sup> An additional source of funding are membership fees (between 3,000 and 120,000 Euro a year) paid by the three promoters of Confianza Online, namely Adigital, Autocontrol and the Ministry of Industry, Trade and Tourism.

The interviewee named the following main strengths of the trustmark: voluntary commitment of the traders to the underlying rules, the formal endorsement by public authorities, and the "quick, inexpensive and effective out-of-court tool for settling disputes".

### 3.4.2. e-maerket

The Danish trustmark e-maerket was launched in 2000 by the non-profit e-commerce Foundation (e-handelsfonden) which was established by key consumers' and business organisations in Denmark.<sup>88</sup> It is currently used by more than one thousand traders.<sup>89</sup>

<sup>86</sup> Both of these ADR schemes are notified to the European Commission (see 'ADR in your country' at [http://ec.europa.eu/consumers/redress\\_cons/schemes\\_en.htm](http://ec.europa.eu/consumers/redress_cons/schemes_en.htm)). The 'notification' of ADR schemes means that Member States and EEA countries consider a particular ADR scheme to conform with relevant EC recommendations.

<sup>87</sup> Companies with a turnover between 5,000,001 and 10,000,000 Euro pay 1,250 Euro (excl. VAT) and companies with a turnover between 10,000,001 and 25,000,000 Euro pay a fee of 2,400 Euro (excl. VAT).

<sup>88</sup> The founders are The Danish Consumer Council, The Danish Chamber of Commerce, The Danish Bankers' Association, The Confederation of Danish Industries, The Union of Commercial and Clerical Employees, ITEK, Danish IT Society, ITK, The Danish IT Industry Association and the Danish e-business Association.

The trustmark is available to traders operating in the Danish market and does not market itself in other countries. Non-Danish traders using the trustmark are mostly based in Germany, the UK, Sweden and Norway. Until recently the rule has been to only approve websites in Danish, but efforts have been made to enable the certification of websites in a limited number of other languages as well. Information on the website is available in Danish and (to a limited extent) in English.

The trustmark has not been formally accredited because there are no accreditation schemes in Denmark, and it does not operate under the supervision of an enforcement body. The interviewee said, "Everybody can make a trustmark, call themselves a trustmark, but there are no rules or regulations, or there are no public organisations that will hold any of us accountable for what we are saying." However, e-maerket does ensure compliance with relevant guidelines issued by the Danish Consumer Ombudsman (even though these are not legally enforceable).

Requirements of the trustmark scheme are mainly based on legal requirements, but they also contain some best practice guidelines.<sup>90</sup> An example of additional requirements is that every e-maerket approved website must state the times during which the trader can be contacted via phone, and what the answering time is for e-mails, as well as display the trustmark's consumer hotline/dispute resolution service. Requirements are formulated as ten guidelines (available in English) under the following (sub)headings: Prior to purchase; During purchase (subheadings: Newsletter; Competitions; Duty of disclosure prior to formation of contract; Payment; Children and juveniles (persons under the age of 18)); and After the purchase (subheadings: Order confirmation; and Delivery and after-sale service). Guidelines were developed in co-operation of consumer and business representatives which launched the trustmark and are updated "along with the consumers' change in behaviour", as the interviewee said.

An important feature of this trustmark is internal dispute resolution: "So if a consumer buys a product on one of our approved websites and they have a problem, they can call or email our lawyers and the lawyers ... will have a dialogue with the company and we will find a solution to the problem. And we will do it within two weeks," said the interviewee. He reported a track record of 99% of cases solved in that time-frame, and added that they persist until they find a solution. This functions entirely on case-to-case basis and will continue to even after some imminent changes are implemented: "We are currently trying to get a lot closer to the consumers, trying to find out, first of all, what's the problem, and what will they be satisfied with as a solution ... so that we can help the company and the consumer even better," said the interviewee, stating that the individualised approach is the key to their success in this area.

Traders wishing to use the trustmark have to undergo an approval process, in which lawyers examine the website on the basis of the guidelines and relevant legislation. Traders may be asked for supplementary information. If needed, applicants are notified of required changes and once these are implemented and verified, it takes about five days for the use of the trustmark to be approved.

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<sup>89</sup> According to the interviewee these traders represent around 60-70% of the Danish online turnover. The trustmark scheme is not "focused that much on numbers ... but on how available the products are", and the main goal is "that as a Danish consumer you must be able to buy a product at a reasonable, fair price on one of our websites".

<sup>90</sup> This is in line with the guideline issued by the Consumer Ombudsman that trustmarks should guarantee more than compliance with legal requirements.

The use of the trustmark is approved for one year. If traders wish to continue using it, they are rechecked after that period to ensure their continuous compliance with the guidelines, as well as with any changes in applicable legislation. However, according to the interviewee websites are in fact monitored on a daily basis: 'We will daily scan the internet for customer reviews, or feedback, we will look at the bad press ... and stuff like that, so that we can monitor and withdraw our seal of approval if a company doesn't comply either with the Danish law or our best practice guidelines.'<sup>91</sup>

Withdrawing the right to use the trustmark is the most drastic of the sanctions stipulated in the official guidelines. The trustmark scheme can also issue warnings, in which case the trader in question must change the problematic behaviour within a certain time-frame. In some cases 'the merchant is instructed to remove the e-mark from his/her website for three to six months, depending on the degree of violation'.<sup>92</sup> Suspensions and removals of the trustmark are published online. If the right to use the trustmark is withdrawn, the company cannot reapply for at least 12 months.

The trustmark was financially supported from the public budget<sup>93</sup> in its start-up phase, but now it is entirely financed from the fees paid by traders using the trustmark. These fees are based on the number of employees (also accounting for those on short-term contracts and in other atypical arrangements) rather than the company's turnover.<sup>94</sup> Traders pay an application fee and an annual fee. Application fees (excluding VAT) range from about 283 to 1,036 Euro (2,100 to 7,700 Danish krone),<sup>95</sup> and annual fees from about 646 to 2,046 Euro (4,800 to 15,200 Danish krone).<sup>96</sup>

The interviewee emphasized internal dispute resolution with its high rates of success as one of the main strengths of the trustmark scheme. Another important strength is deemed to be the fact that companies apply for the trustmark on voluntary basis. Other strengths according to the interviewee include the approval process and the system to monitor websites on a daily basis. In addition, the variety of organisations involved in administering the scheme is 'one of the key factors for the trust of consumers' and therefore considered a great strength of this trustmark: 'Also a bit of a challenge, sometimes, having a lot of organisations around the same table. But all in all it gives us a great deal of credibility,' said the interviewee.

<sup>91</sup> "We have built a large software system which is functioning as a CRM system, that is functioning like a big crawler that goes out on a daily basis on the internet, searching out bad reviews, on our websites, we are looking at bad press ... which is going on automatically ... if we are having these alerts coming to our system that a trader is having a bad press, or a lot of bad customer reviews, we will go look at the website and we will contact the shop owner."

<sup>92</sup> E-mark guidelines for the e-commerce foundations labelling scheme, 2011, Article 4.3.3

<sup>93</sup> By the Ministry of Science, Technology and Innovation.

<sup>94</sup> As the interviewee explained, there have been continuous considerations whether this should be changed but at present they still find it to be the best way since data about employees is readily available from the Danish public company registry.

<sup>95</sup> Application fees range as follows: 0-4 employees: DKK 2,100 (282.63 Euro); 5-24 employees: DKK 3,300 (444.13 Euro); 25-99 employees: DKK 4,700 (632.56 Euro); 100-249 employees: DKK 6,200 (834.42 Euro); > 250 employees: DKK 7,700 (1,036.30 Euro); all amounts listed excl. VAT and on the basis of ECB Euro foreign exchange reference rates as of 28 May 2012.

<sup>96</sup> Annual fees range as follows: 0-4 employees: DKK 4,800 (646 Euro); 5-24 employees: DKK 6,300 (847.88 Euro); 25-99 employees: DKK 8,700 (1,170.88 Euro); 100-249 employees: DKK 11,700 (1,574.63 Euro); >250 employees: DKK 15,200 (2,045.68 Euro); all amounts listed excl. VAT and on the basis of ECB Euro foreign exchange reference rates as of 28 May 2012.

### 3.4.3. Thuiswinkel Waarborg

The Dutch trustmark Thuiswinkel Waarborg is at the time of reporting used by around 1,600 traders.<sup>97</sup> It was launched in 2001 by Nederlandse Thuiswinkel Organisatie (Thuiswinkel.org), the Dutch branch association for businesses that sell products and services to consumers at a distance – via the internet, catalogues and/or post.<sup>98</sup> Membership in the branch association is a prerequisite for carrying the trustmark. The trustmark is primarily targeted at traders in the Netherlands. It is also available to traders based elsewhere, but only if they address Dutch consumers and become members of the association.<sup>99</sup> Currently the trustmark is displayed on the websites of traders based in Germany, France, UK and Belgium. Information about the trustmark is available on the website of Thuiswinkel.org in Dutch and (to a limited extent) in English.

In 2009, the trustmark was accredited by the Dutch Council for Accreditation (Raad voor Accreditatie) but there is no legal requirement to obtain such an accreditation: “We had it done because in the Netherlands we have the Consumer Authority and they only mention trustmarks on their website if they are accredited,” explained the interviewee. From the perspective of Thuiswinkel.org, the benefit of this accreditation is primarily in building the recognition and consumer awareness of the trustmark. Overall, there is no specific legal framework for trustmarks in the Netherlands and the interviewee reported that the Thuiswinkel Waarborg trustmark does not operate under the supervision of a regulator or enforcement body.

Key requirements for traders are related to the general terms and conditions which were approved by the Dutch consumers association (Consumentenbond). They must be used as the terms and conditions of sale by all online traders using the trustmark. These terms and conditions cover the following issues: Identity of the trader; Applicability; The offer; The contract; Right of withdrawal; Costs in case of withdrawal; Preclusion from right of withdrawal; The price; Conformity and guarantee; Supply and implementation; Extended duration transactions: duration, termination and prolongation; Payment; Complaints procedure; Disputes; Branch guarantee; Additional or different stipulations; Amendment to the general terms and conditions of Thuiswinkel.org. The regulations of Thuiswinkel.org stipulate requirements that traders have to fulfil regarding payment security (such as the use of protective software). The association offers all members a third-party security scan of their website once a year.

All traders carrying the Thuiswinkel Waarborg trustmark must participate in ADR procedures. As the interviewee explained, these take place at two levels. Firstly, a consumer can present the complaint to Thuiswinkel.org itself, which then requires the member in question to reply to the consumer in seven days. That happens in the vast majority of cases, but where it does not, Thuiswinkel.org tries to mediate between the parties. The second level is an external ADR scheme operating within the Foundation for Consumer Complaints Boards (De Geschillencommissie) which issues binding decisions and compliance with these decisions is guaranteed.<sup>100</sup>

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<sup>97</sup> That indicates significant growth in recent years: in 2007 the number of businesses reported to carry the trustmark was approximately 400.

<sup>98</sup> In 2010, members of this association represented “about 75% of the total turnover of the Dutch online web-shop market” (see ‘Landmark reached with 1,000th Thuiswinkel Trustmark certification, <http://www.thuiswinkel.org/cms/showpage.aspx?id=2103>).

<sup>99</sup> “So if a company in Germany says they have a website specific for the Dutch market, then it can apply for our trust mark. But it’s no use using our trust mark in Germany, or Spain, because it’s not known abroad.”

<sup>100</sup> The complaints boards issue ‘binding advice’ and the branch organisation of the trader involved in a dispute guarantees the execution of the decision of the complaints board. If the trader does not comply with the

Before it can become a member of Thuiswinkel.org, every applicant has to complete an extensive questionnaire. The interviewee explained that it includes a financial check, questions about legal affairs (checking whether the company abides by law and the branch association's regulations), about how easy it is to find the terms and conditions on the website, how the ordering process works, etc. After the applicant submits the answers, the association's external legal office checks the website and the questionnaire and provides feedback. In most cases some improvements are required and only after they have been implemented can the applicant become a member of the association and carry its trustmark.

Since April 2009, all members of Thuiswinkel.org have been required to be annually re-certified.<sup>101</sup> They are checked every year through a similar procedure as described above for the applicants. The Thuiswinkel Waarborg Certification Foundation was established in 2009 specifically for the purpose of certification, and an independent accounting firm monitors the process. In addition to the annual certification, traders are monitored on the basis of consumers' complaints, and the solvency of members is checked through a continuous financial monitoring system. Failure to comply with the association's requirements leads to expulsion from the association and the loss of the right to use the trustmark. The interviewee reported about 40 such cases in 2011.

The trustmark is funded only from the fees paid by the members of the branch association. Businesses carrying the trustmark have to cover two types of cost (all amounts are listed excluding VAT). One is an annual fee for membership in Thuiswinkel.org that starts at 150 Euro and increases depending on the turnover realised via distance sales to consumers in the Netherlands in previous year.<sup>102</sup> The second cost is the certification fee in the amount of 390 Euro per calendar year. Candidate-members pay 150 Euro for membership and 290 Euro for certification.<sup>103</sup> Applicants for membership also have to cover a one-time fee of 75 Euro "for administration costs for processing an application for membership".<sup>104</sup>

The fact that there is an independent ADR scheme accessible to consumers with complaints against businesses that carry the trustmark was highlighted as one of its main strengths. The second strength was cited as the fact that the general terms and conditions (i.e. the terms of sale used by online traders) have been agreed upon with the consumers' association.

#### 3.4.4. Trusted Shops

Trusted Shops was launched in early 2000 by a German business company (Trusted Shops GmbH). With over 12,000 certified traders (and more than 3,000 additional traders under review at the time of research) and a 136-member staff operating the scheme, it is the largest trustmark scheme for e-commerce in the EU. It is currently available in 10 Member States (Austria, Belgium, Denmark, France, Germany, the Netherlands, Poland, Spain, Sweden, and the UK) as well as in Switzerland.

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decision, the trade association compensates the consumer and passes the cost on to the reluctant entrepreneur (Civic Consulting, 2009, p. 483).

<sup>101</sup> See <http://www.thuiswinkel.org/english/members/certification>.

<sup>102</sup> "The turnovers that companies in a holding have achieved via distance selling to consumers are combined in order to determine the size of the holding's contribution." (<http://www.thuiswinkel.org/english/members/costs>)

<sup>103</sup> The association offers Candidate-membership for newly started companies which are as yet unable to provide a financial annual report. Such businesses may have started their activities no longer than two years earlier ... Candidate-membership can be held for a maximum of three years. See <http://www.thuiswinkel.org/become-a-member>.

<sup>104</sup> See <http://www.thuiswinkel.org/english/members/costs>.

Information on country-specific websites is available in six languages (French, German, English, Spanish, Dutch and Polish), and more will be added in the near future.

The trustmark has been approved by the trustmark monitoring board of the German public-private partnership organisation Initiative D21 (see Section 3.5.2). Trusted Shops itself is involved in this organisation, along with other stakeholders and representatives of the German government. However, such approval is not a formal requirement for trustmarks to operate, and the Initiative D21 is not an enforcement body.

Requirements that traders have to fulfil cover a broad range of issues. They are based on European law and adapted in accordance with the national legislation of each country in which Trusted Shops operates: "In each country you need to have specificity. Otherwise you might end up recommending something which is not legal in one or the other country," said the interviewee. In the case of the UK, the substantive requirements are clustered under the following headings: Supplier identification; Privacy and data security; Product description, sales and marketing limitations; Price transparency, shipping costs and additional expenses; Delivery information, availability and customer service; Payment; Right to cancel and compensation of the purchase price; General terms and conditions; Conclusion of the contract; Confirmation e-mail; and General.<sup>105</sup> The trustmark scheme does not monitor advertising and marketing of the certified traders. On the other hand, legality of traded goods was deemed by the interviewee to be a big issue.<sup>106</sup> Trusted Shops also sets requirements regarding traders' performance (as described below).

The trustmark provides an integrated ADR system focused on the resolution of non-delivery or non-refund issues. Trusted Shops mediates to a certain extent between customers and online traders, but it does not cover all issues and currently does not oblige traders to take part in external ADR: "Trusted Shops deals with what I call the performance issues of the retailer – non-delivery, return and refund issues – but there are other issues – such as warranty issues, or counterfeit or product issues – that would need to be dealt with by other organisations." Since early 2012, the trustmark has been cooperating with the European Consumer Center (ECC) in Kehl to link the service to an external ADR. There are plans to extend the cooperation to other European Consumer Centers. The above-mentioned mediation is encompassed in the money-back guarantee scheme provided by the trustmark.<sup>107</sup> "So each time a consumer buys with an accredited retailer he or she has the opportunity to register for the guarantee. Either the costs are borne by the retailer or by the consumer, but that does not change the process," said the interviewee. Registering is compulsory for the guarantee to be activated and it launches "a completely automated word-flow, which helps the consumers if there are non-delivery issues or non-refund issues in the event of contract withdrawal". In case paid for orders were not fulfilled in a satisfactory way, not even after an (automated) intervention of Trusted Shops with the trader, the trustmark refunds the purchase: "So we take the burden of this discussion and solve the issue on behalf of the consumers. Obviously, the risk is that the retailer is no longer available or is not able or not willing to pay. This is a risk Trusted Shops covers," explained the interviewee.

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<sup>105</sup> See <http://www.trustedshops.co.uk/seal-of-approval/quality-criteria.html>.

<sup>106</sup> The interviewee provided the example of electric cigarettes: "Within these cigarettes there is nicotine and ... in many EU states ... that needs to have some kind of approval. And these approvals did not exist, so ... they were selling goods that were no longer legal. This is one of the issues we were dealing with where we had to withdraw the seal of approval for all these retailers. So this is really a big part of our discussion."

<sup>107</sup> The guarantee is backed by an insurance company (see <http://www.trustedshops.co.uk/news/money-back-guarantee/>).

To mitigate such risks, all traders applying for the trustmark are first checked for their creditworthiness. If that is positive, they are audited by legal experts on the basis of over 70 (and in some countries over 100) nationally adapted criteria. Technical security of the website is checked as well. An audit report is prepared, with instructions regarding required changes. The trustmark is integrated into the website following the validation by experts that the required changes have been implemented. The interviewee reported that about 15% of applicants are rejected every year because they do not fulfil the requirements.

Certification is valid for one year. Apart from being annually re-certified, traders are checked on an on-going basis. An integral part of the system is a continuous monitoring of online retailers' performance, both by the trustmark scheme itself and through consumer feedback. Consumers are encouraged to provide reviews and rate the traders through assigning them stars on a one to five scale in terms of: customer service, delivery and products. Trusted Shops safeguards the authenticity and reliability of ratings which are combined into an overall rating of the online retailer, together with the so-called reliability index which reflects the share of positively rated orders over the past 12 months.

Sanctions for non-compliance with requirements of Trusted Shops entail the withdrawal of the trustmark as well as financial penalties (which go to consumer protection organisations) and some other sanctions defined on case-by-case-basis. "Each time our service department needs to take action there is a fee that the retailer has to pay," said the interviewee. He reported that the trustmark is withdrawn every year from about 15-20% of traders, for four main clusters of reasons: failure to comply with certification criteria (e.g. not dealing properly with consumers' personal information); poor performance reflected in the drop of the reliability index; diminished creditworthiness; and traders' own requests due to the discontinuation of their online operations.

The trustmark is financed from fees paid by the traders. Annual membership fees depend on their online turnover. They are paid in monthly instalments and range from 49 Euro per month (588 per year) for small retailers to 375 Euro (or in some cases more) per month (4,500 Euro per year) for larger ones.<sup>108</sup> Applicants also pay a one-time processing fee (in Germany 89 Euro). There are some charges depending on additional services provided to the accredited trader.<sup>109</sup>

The interviewee named the integrated service based on four pillars as the main strength of the trustmark, namely the audit required to obtain the trustmark; the money-back guarantee; the automatic ADR system for the resolution of performance-related disputes; and the integrated consumer feedback which enables an on-going monitoring of the quality of the retailer.

### 3.4.5. Internet Shopping is Safe

The trustmark Internet Shopping is Safe (ISIS) was launched in the UK in 1997 by the Interactive Media in Retail Group (IMRG).<sup>110</sup> As already mentioned, it merged with Trusted Shops (see Section 3.4.4) during the preparation of this report. At the time of the interview with the representative of the trustmark, ISIS was carried by about 1,260 traders.

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<sup>108</sup> In all countries except Germany, online traders can receive a full certification and test the service for six months for 249 Euro regardless of their turnover.

<sup>109</sup> See for example the price list for the UK [http://www.trustedshops.com/tsdocument/TS\\_PRICE\\_LIST\\_en.pdf](http://www.trustedshops.com/tsdocument/TS_PRICE_LIST_en.pdf).

<sup>110</sup> IMRG is the UK's industry association for e-retail and is registered in the UK as a company (IMRG Limited) (see <http://www.imrg.org>).

The trustmark was provided mainly in the UK, said the interviewee, adding that, "The way that the trustmark operates is that we have a couple of selected retailers that we allow to display it in other territories."<sup>111</sup> Information regarding the trustmark and underlying rules was available only in English.

ISIS was not formally accredited.<sup>112</sup> The interviewee reported that they worked in partnership with an enforcement body, namely the Trading Standards, but not under their supervision.

Expectations that had to be met for a trader to be entitled to the use of the trustmark were stipulated in the ISIS Code of Practice, which was first developed in 1997. It was being updated through the years and was last available in version 8.1. "The core of the trustmark says that you apply applicable law. And the rest of it is best practice," said the interviewee, and explained that best practice primarily refers to displaying certain parts of information about products and delivery information. In addition, traders were made aware of the disability rights, usability issues, and some of the data security requirements: "So we bring it together as part of the code of practice to ensure that the traders have looked at this and understood it. But we don't necessarily police it. Because something like data security is already regulated quite heavily," said the interviewee. The Code contained the following main sections: Product availability, description and price; Communication, notification, terms, cancellation, warranty, timing, site performance and disaster recovery; Acceptance of order, costs and payment; Delivery and returns; Consumer information – collection and use; Accessibility; Public interest; Legality; Honesty; Truthfulness; Suitability; Administration.

It should be noted that traders using the ISIS trustmark had the possibility to also apply, at no additional cost, for the "extension of ISIS that focuses on delivery", namely the Internet Delivery is Safe (IDIS) trustmark.<sup>113</sup> The interviewee explained that IDIS was developed to highlight delivery as an area where consumers were most concerned and industry needed to do a lot of work.

Traders displaying the ISIS trustmark were required to provide "an easy-to-use customer service and issue resolution process",<sup>114</sup> but when consumer complaints were nevertheless not resolved directly with the traders, consumers could contact ISIS which then mediated between the two parties. In case mediation failed, consumers were advised to seek further advice from Trading Standards. The interviewee could think of only three cases in the past eight years where ISIS was not able to sort out the problem.

Traders wishing to obtain the ISIS trustmark filled in an online form which requested key data about the trader (including physical address and a fixed landline telephone number), details about the types of products sold and the website addresses. The IMRG then carried out a multi-point audit of their site to check compliance with legal requirements and some of the best practice elements, such as customer service.

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<sup>111</sup> "So the couple that we do allow, they are big and well-known brands with whom we've had a relationship for many years. And we have an agreement with them that if there are any complaints they help us with any costs associated with handling the different languages etc. There are a couple of US websites that also display it but that's been a fairly ad hoc thing. I wouldn't say we have a presence in those territories. It is primarily a UK trustmark."

<sup>112</sup> The interviewee reported that they looked into going through the Consumer Codes Approval Scheme (run by OFT) but it was deemed not fit for purpose: "The criteria that they were expecting businesses to meet were frankly unsustainable ... It's not that the standards were too high, but they were inappropriate for the industry."

<sup>113</sup> ISIS & IDIS code of practice for electronic commerce, version 8, updated February 2008, p. 13.

<sup>114</sup> See ISIS code, p. 5.

"The biggest effort is put into auditing their terms and conditions. We also check things like how they display the cost of delivery and make sure that is clear," explained the interviewee. If a trader did not fulfil all requirements, IMRG highlighted problematic issues and worked with the trader to correct them. "If they decide not to correct those problems to our satisfaction then they'll get a percentage refund on the accreditation and they won't be accredited," said the interviewee. Traders' compliance was rechecked a few weeks later and the trustmark could be withdrawn if required changes had in the meantime been reversed.

In addition, traders were rechecked annually, and could also be audited at other times in case an increase in complaints was observed.

There were different levels of sanctions in cases of non-compliance with the requirements to use the trustmark. They depended on the gravity of the breach and reached from a suspension of the right to use the trustmark for an agreed period (during which traders were expected to improve on the problematic points) to a complete withdrawal of the trustmark with a 24-hour notice period and including the trader on the list of those who have entirely lost the right to use the trustmark. In cases of temporary suspensions the trustmark could not be displayed, but traders were not listed as those from whom the trustmark was withdrawn: "We take quite a pragmatic approach to this. We would much rather be in contact with the business ... than kick them out as 'withdrawn' and lose all contact with them. Because we're not helping customers that way," explained the interviewee.<sup>115</sup>

Traders using the trustmark paid an annual fee of about 156 Euro<sup>116</sup> (125 Pound; excl. VAT) regardless of their size and turnover. Traders could also obtain the so-called ISIS Premium Accreditation which cost about 500 Euro<sup>117</sup> (400 Pound; excl. VAT) and entitled them to additional publicity as safe traders and some other benefits. According to the interviewee the trustmark nearly covered itself from those fees.

In the opinion of the interviewee one of the main strengths of the trustmark lied in the involvement of some major brands, which increased the recognition of the trustmark itself. Another strength was deemed to be – despite the potential for conflicts of interest – that the trustmark was operated by the trade body for Internet retailers. "If there are issues we can pick up the phone and have a friendly chat," said the interviewee."

### 3.4.6. Euro-Label

Euro-Label "is the European co-operation of national suppliers of Internet trustmarks".<sup>118</sup> It was launched as a cross-border project conducted in 2001/2002 under the co-ordination of EuroCommerce (the retail, wholesale and international trade representation to the EU) and with financial support from the European Community.<sup>119</sup>

<sup>115</sup> "Let's take a data breach as an example. We might suspend them, depending on how co-operative they are and how forthcoming they are with information to us and to consumers. If we don't get a satisfactory response from them we can withdraw the accreditation. If it's simply a difference of opinion, so they're not necessarily breaking the law, they're not necessarily breaking the code of practice, but we don't believe that they're entering into the spirit of the code, we might withdraw them but not put them on the withdrawn list."

<sup>116</sup> Conversion based on ECB Euro foreign exchange reference rates as of 28 May 2012.

<sup>117</sup> Conversion based on ECB Euro foreign exchange reference rates as of 28 May 2012.

<sup>118</sup> See 'Shop securely in verified online shops with the Euro-Label', <http://www.Euro-label.com/en/about-us/index.html>

<sup>119</sup> The project was financed within the framework of eTEN, "a European Community programme providing funds to help make e-services available throughout the European Union" (see [http://ec.europa.eu/information\\_society/activities/eten/library/about/brochure/index\\_en.htm](http://ec.europa.eu/information_society/activities/eten/library/about/brochure/index_en.htm)).

Organisations participating in the project were from Germany, Italy, Spain, Austria and France.<sup>120</sup> The aim was to provide “an internationally interoperable European Trustmark ... likely to be used by a vast majority of e-traders”.<sup>121</sup> At present Euro-Label is used by around 600 traders, the vast majority of which are based in Austria and Germany.<sup>122</sup> The scheme has expanded to Poland (with 22 certified traders)<sup>123</sup> and is being set up in Romania and Latvia according to the interviewee from the central management of Euro-Label. On the other hand, operations in Italy, France and Spain have been scaled down or discontinued.<sup>124</sup> The trustmark is also available to traders in countries without a national member of Euro-Label. In such cases traders can apply for the trustmark through the central management of Euro-Label, which is based at EHI in Germany.

Euro-Label is not formally accredited at the cross-border level.<sup>125</sup>

The main requirements that traders have to fulfil are contained in the European Code of Conduct. This set of rules was one of the outcomes of the start-up project. It is reviewed every year<sup>126</sup> and “serves as a collective minimum standard for the cooperation of companies supplying Internet trustmarks”.<sup>127</sup> Participating national trustmarks may impose stricter rules than those contained in the European Code of Conduct. This Code contains the following main headings: Information concerning the company; Privacy; Pre-contractual information concerning the product(s) on sale; Procedure for the conclusion of online contracts; Performance of contract; Substitute products; Right of withdrawal; ‘Money-back guarantee’; Guarantees/After-sales service; Unsolicited commercial communication; Handling of complaints and out-of-court settlement of litigation; Logo; Children protection and human dignity respect. As the interviewee explained, “These principles, or criteria, which are quite loosely formulated at this level, have to be broken down into very concrete and detailed criteria. They may vary to a degree because of legislative or consumer-based differences.”

The European Code of Conduct requires that every trader responds to consumer complaints within 10 calendar days. The main Euro-Label website contains a section indicating that consumers could fill in and submit a complaint form to Euro-Label itself.

<sup>120</sup> EHI (Germany), Confcommercio Confederazione generale italiana del commercio, del turismo, dei servizi e delle PMI CONFCOMMERCIO (Italy), Confederación española de comercio CEC-CCC (Spain), Wirtschaftskammer Österreich WKO (Austria)<sup>120</sup> and Fédération des Entreprises de Ventes À Distance (France).

<sup>121</sup> See ‘Project Statement’ available at [http://ec.europa.eu/information\\_society/activities/eten/cf/opdb/cf/project/index.cfm?mode=desc&project\\_ref=ETEN-26797](http://ec.europa.eu/information_society/activities/eten/cf/opdb/cf/project/index.cfm?mode=desc&project_ref=ETEN-26797)

<sup>122</sup> According to the interviewee the trustmark is used in Germany by about 45% of the top 100 e-commerce traders.

<sup>123</sup> The Polish scheme became a part of Euro-Label in 2005 as E-Commerce ILiM Certyfikat. In 2010 it was renamed to Certyfikat bezpieczne zakupy (see <http://www.Euro-label.com.pl/index.php/o-certyfikacie>).

<sup>124</sup> “Those were countries which participated early on in the project and have reduced their activity in this Euro-Label project. We left them on [the main Euro-Label website] since they founded the initiative, but we marked them as inactive,” explained the interviewee. The registry of certified traders lists two traders in Italy, 32 in France and two in Spain (see <http://www.Euro-label.com/zertifizierte-shops/index.html>). Note that in May 2007, Euro-Label was also launched in Malta, but it has been discontinued there and was replaced last year with a different trustmark (eShop), which however retained, “All the rules which had been associated with Euro-Label,” according to the contact person at the Malta Communications Authority which administers the trustmark.

<sup>125</sup> The national trustmark operating within Euro-Label trustmark scheme in Germany (*EHI Geprüfter Online-Shop*) has been approved by the trustmark monitoring board of the public-private partnership organisation Initiative D21 (see Section 3.5.2). In Austria, the Chamber of commerce (Wirtschaftskammer Österreich) as representative for the Austrian enterprises, and the Federal chamber of labour (Arbeiterkammer) as representative for the Federal Ministry of Consumer Protection of Austria are in the board of the Euro-Label Austria and have a decisive role in awarding the trustmark (i.e. certification).

<sup>126</sup> Haslinger, F., 2009, *Euro-Label: The European trust mark*.

<sup>127</sup> See <http://www.Euro-label.com/en/code-of-conduct/index.html>

The interviewee indicated that Euro-Label would try to mediate between the trader and the consumer in case complaints are not directly resolved.

The European Code of Conduct stipulates that, “[s]hould the customer not be satisfied with the reply or the arrangement proposed by the company or by the certification body,<sup>128</sup> the customer is free to bring the complaint before the body indicated by the certification body, which is in charge of settling litigation out of court.” Such ADR bodies may not always be available.<sup>129</sup> The national Euro-Label trustmark that stands out regarding ADR is the Austrian one. As is explained on the website, “All companies certified with the Euro-Label are contractually bound to fulfill the problem solutions provided by our ADR-system named ‘Internet Ombudsmann’ ... If the company does not react to the solutions of the ADR-provider in time, it gets a second time limit to fulfill. After the second period without a solution, the Trust Mark will be revoked, the company’s name is made public on our website [www.guetezeichen.at](http://www.guetezeichen.at) and the company has to pay the agreed penalty.”<sup>130</sup>

The basic certification procedure for obtaining the trustmark is the same for all national providers of Euro-Label: traders applying for the trustmark conduct a self-test<sup>131</sup> on the basis of an extensive questionnaire provided by Euro-Label. The interviewee explained that this is about a 50-page long document which mainly contains mandatory requirements but also recommendations which do not necessarily have to be fulfilled for the trustmark to be awarded. Following a review of the questionnaire, the trader is provided with feedback regarding required changes. Once the implementation of these changes has been verified, the trader can start using the trustmark.

Certification is valid for one year and traders wishing to continue using the trustmark are rechecked after that period on the basis of the certification criteria (these are updated in accordance with relevant legal changes). In cases of complaints, additional monitoring of specific traders may be conducted. The right to use the trustmark is withdrawn from traders not complying with the Euro-Label requirements. In some cases, the right may be only temporarily suspended so as to allow “the e-shops to resolve their internal issues”, as the interviewee said. There may be other sanctions defined by the national providers of Euro-Label (as in the above-mentioned case of financial penalties in Austria).

The trustmark is funded from fees paid by the traders.<sup>132</sup> The way these are determined and their amounts differ among members of Euro-Label. For example, in Germany traders only pay a certification fee (annually), but not an annual fee for the use of the trustmark itself, and fees depend on the annual turnover, ranging from 750 to 2,800 Euro.<sup>133</sup> In comparison, in Austria, traders pay a one-time certification fee and a fee for the use of the trustmark, and these fees depend on the number of employees. The specified certification fees (paid only at the time of the first certification) range from 500 Euro to 1,200 Euro, and annual fees for using the trustmark from 500 Euro to 1,500 Euro (excl. VAT).<sup>134</sup>

<sup>128</sup> This refers to the national providers of Euro-Label trustmark.

<sup>129</sup> See *Study on the use of Alternative Dispute Resolution in the European Union* (2009) and *Cross-Border Alternative Dispute Resolution* (2011) by Civic Consulting.

<sup>130</sup> See <https://www.guetezeichen.at/english.html>.

<sup>131</sup> Haslinger, 2009, p. 8.

<sup>132</sup> In Austria, the national trustmark which is a part of Euro-Label, receives some financial support from the Federal Ministry of Economy, Family and Youth.

<sup>133</sup> Turnover up to 250,000 Euro: fee 750 Euro; up to 500,000 Euro: fee 850 Euro; up to 1,000,000 Euro: fee 950 Euro; up to 2,500,000: fee 1,200 Euro; up to 5,000,000 Euro: fee 1,800,000 Euro; up to 10,000,000 Euro: fee 2,200 Euro; above 10,000,000 Euro: fee 2,800 Euro (all amounts excl. VAT).

<sup>134</sup> Annual fees as follows (all amounts excl. VAT): 1-3 employees: 500 Euro; 4-10 employees: 600 Euro; 11-30 employees: 800 Euro; 31-100 employees: 1,000 Euro; >100 employees: 1,500 Euro.

Discussing the strengths of the trustmark, the interviewee noted the certification process and the emphasis on the quality of internal processes of certified traders.

### 3.5. Certification and accreditation practices

This section presents the main features of examined trustmarks from the perspective of certification as a point of reference for exploring the potential design of an EU trustmark for e-commerce. More specifically, the section looks into the scope of the underlying codes of conduct (i.e. the requirements as a basis for certification) and the process of certification. As a further point of reference, the section provides two examples of national practices for accreditation of trustmarks.

#### 3.5.1. Third-party certification

As the above case studies illustrate, third-party certification is at the heart of a credible trustmark. Certification entails a set of requirements (code of conduct) and the assessment of an online trader's compliance with these requirements. In principle, certification can be carried out either as self-assessment (see Section 6.4) or by an independent third party.<sup>135</sup> In the context of this study, certification by such an independent third party is considered to be a prerequisite for a trustmark.<sup>136</sup>

#### Certification requirements (code of conduct)

In terms of procedure and output, certification by a trustmark organisation is comparable to certification in the technical world. But in contrast to the technical world where certification typically means conformity assessment against national, European or even international technical standards, each trustmark organisation develops its own set of requirements in light of the substantive scope of coverage and the relevant legislation. Hence, the content and scope of the requirements might vary from trustmark to trustmark. For instance, a trustmark might focus on a single issue such as security of payment like VeriSign or encompass a variety of issues deemed essential for building consumer trust in e-commerce. As has been mentioned and evident from the case studies, this research study focused on trustmarks with a broad substantive scope of coverage, i.e. covering multiple areas of consumer protection.

Certification requirements laid down in a code of conduct are typically broken down into a standardised catalogue of detailed questions for the actual auditing of a trader's website. Interviewed representatives of trustmarks highlighted the importance of continuously reviewing and updating the requirements to keep up with the pace of change in the Internet environment and with modifications in the legal framework. The requirements need to be easily available to traders and consumers alike. Ideally, a click on the displayed trustmark would automatically send the browser to the respective website with the catalogue of requirements that the certified trader has committed to comply with.

Comparing the certification requirements of the six trustmarks examined in this study paints a rather homogenous picture regarding their substantive coverage. Their primary objective seems to be to ensure that certified traders comply with legal obligations.

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<sup>135</sup> The European Trustmark Requirements of 2001 define an independent party as: " independent so that no facts or circumstances appear, that an informed and reasonable person would question the Recognised Independent Third Party's ability to act objectively. It must be free from any interest in the results of the assessment." (UNICE-BEUC e-Confidence project (2001). BEUC/X/179/2000, p. 13).

<sup>136</sup> It could be argued whether trade associations indeed fulfil the criteria of independence of the third party certifying the traders if the trustmark is provided as a service to members.

However, some codes include additional issues or best practices, such as child protection, respect for human dignity and accessibility for people with disabilities.

From a consumer perspective, an important requirement of some trustmarks – that at the time of reporting is not stipulated by law – concerns alternative dispute resolution (ADR).<sup>137</sup> Three out of six trustmarks oblige the traders to undertake ADR. While the requirements in general are in line with privacy rules and principles of fair-trading, some of them might go beyond these aspects. Some differences between the requirements of examined trustmarks might also be rooted in differences in national legislation. For instance, for the time being, the timeline for the right of withdrawal still varies across EU Member States. In this particular aspect, differences will be eliminated once the 2011 Consumer Rights Directive is fully implemented.<sup>138</sup>

### Certification process and enforcement

Irrespective of the specific requirements, the certification process itself can be broken down into the following typical steps:<sup>139</sup>

- Application by the trader;
- Eligibility check (whether the trader is duly registered);
- Auditing (in-depth analysis of the trader's website on the basis of the code of conduct);
- Audit report (indicates the changes to be made by the retailer in order to qualify for the trustmark);
- Modification (trader modifies the website in line with the audit report to comply with the requirements of the trustmark);
- Verification (trustmark provider verifies whether required changes have been implemented);
- Awarding trustmark (typically for one year).

The certification process might last from several weeks up to several months. The actual duration of the entire process starting with the application of the trader and ending with the granting of the trustmark is determined to a large extent by the number of modifications the trader needs to make on the website in order to comply with the requirements of the trustmark. The auditing does not necessarily lead to the awarding of the trustmark. The German trustmark provider Trusted Shops for instance mentioned a rejection rate of approximately 15%.<sup>140</sup>

Interviews confirmed that the credibility of a trustmark for e-commerce does not depend only on the conformity assessment of a trader's performance with the trustmark requirements but also to a large extent on their effective enforcement. To this end, trustmark organisations monitor the performance of certified traders on a regular and typically annual basis and they also perform random checks (as discussed in Section 3.3.1). In case of non-compliance they have a hierarchy of sanctions at their disposal.

<sup>137</sup> ADR is understood as a dispute resolution procedure (for disputes between consumers and businesses) that takes place out of court through the use of a pre-established third-party mechanism, i.e. an ADR scheme, see: Civic Consulting (2009). Study on the use of Alternative Dispute Resolution in the EU. DG SANCO Final Report.

<sup>138</sup> According to Article 9, consumers have a *general right of withdrawal* and a period of 14 days to withdraw from a distance contract, without giving any reason (see also Annex 1).

<sup>139</sup> Based on interviews by Civic Consulting with six trustmark providers.

<sup>140</sup> Interview with Trusted Shops.

These range from warnings with specified time-frames for the traders to improve their performance to the temporary or long-term withdrawal of the trustmark, accompanied in some cases by the publication of said withdrawals on the website of the trustmark.

Euro-Label for instance (which has about 600 certified traders) reported that on average three trustmarks are revoked each year<sup>141</sup> and Thuiswinkel Waarborg in the Netherlands withdrew about 40 seals in 2011.<sup>142</sup>

### Stakeholder involvement

The concept of stakeholder participation, in particular in the elaboration of the requirements for certification (code of conduct), has been indicated as a crucial element in the successful launch of a credible trustmark.<sup>143</sup> Most of the interviewed trustmark providers mentioned that their code of conduct had been either developed in cooperation with or endorsed by the national consumer organisation.

Interviews also revealed that due to the very nature of the Internet, the consumer is not confined to a passive role and merely on the receiving end of the trustmark. Rather, the consumer plays an active role in enforcing and policing the trustmark by reporting back to the trustmark provider in case a particular trader falls short of the trustmark guarantees. Consumer feedback might be enabled through a systematic user rating system. Some organisations administering trustmarks institutionalise stakeholder involvement through a supervisory or advisory board.

#### 3.5.2. Accreditation: principles and models

Even though in everyday language certification and accreditation are often used as synonyms, accreditation actually adds an overarching layer to certification and its purpose is to ensure the supervision and quality of performance of certification bodies.

Like with certification, the concept of accreditation stems from the technical world and product safety. It plays an important role in building trust in cross-border trade at the EU level but also on a global scale. As such, accreditation is based on a set of rules laid down in form of an international and European standard.<sup>144</sup> More importantly, in 2008, the EU adopted a regulation on accreditation defining its accreditation policy and laying down rules on the operation of accreditation of certification bodies.<sup>145</sup> Accordingly, accreditation is governed by a number of principles: it is an activity to be carried out by public authorities to ensure impartiality and objectivity; each Member State is supposed to have only one accreditation body; and accreditation has no commercial purpose.

The notion of accreditation also exists in the world of trustmarks for e-commerce but not in a regulated manner. The commonality is that accreditation stands for approval by public authorities and impartiality. Two out of the six examined trustmarks had been formally accredited by public authorities and another two have been approved by a stakeholder platform that is endorsed by public authorities. One trustmark did not apply for formal accreditation even though it exists in the respective country while one country did not provide for formal accreditation of trustmarks for e-commerce (see Table 3 below).

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<sup>141</sup> Interview with Euro-Label.

<sup>142</sup> Interview with Thuiswinkel Waarborg.

<sup>143</sup> See for example ECP.NL and CRID, 2005.

<sup>144</sup> EN ISO/IEC 17011:2004 stipulates general requirements for accreditation bodies accrediting conformity assessment bodies in order to ensure the quality of certificates and test reports of a certification body at an international level and thus promote global trade (see <http://esearch.cen.eu/esearch/extendedsearch.aspx>).

<sup>145</sup> EU Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in: Official Journal of the EU, L 218/30ff, 13.08.2008.

**Table 3: Accreditation status of examined trustmarks for e-commerce**

Trustmark	Type of accreditation
<b>Confianza Online</b>	Formal accreditation by public authorities (National Consumer Institute)
<b>e-maerket</b>	No formal accreditation (it does not exist in Denmark)
<b>Thuiswinkel Waarborg</b>	Formal accreditation by public authorities (Dutch Council for Accreditation)
<b>Trusted Shops</b>	<i>De facto</i> accreditation, i.e. approval by Initiative D21, a German stakeholder platform with government endorsement
<b>ISIS</b>	No formal accreditation (it exists in the UK but ISIS did not apply)
<b>Euro-Label</b>	No formal accreditation at the cross-border level (but German member approved by Initiative D21 in Germany)

**Source:** Interviews conducted by Civic Consulting in April 2012

The following paragraphs provide for a more detailed description of two models of accreditation: 1) the formal accreditation in the UK; and 2) the stakeholder approval scheme established in Germany in the absence of formal accreditation. The latter might be categorized as *de facto* accreditation because it ensures impartiality and objectivity through participation of all relevant stakeholders. Both models might serve as points of reference for accreditation at EU level.

#### Office of Fair Trading - Consumer Codes Approval Scheme (UK)

The OFT is a non-ministerial government department and the consumer and competition authority in the UK. Its mission is to make markets work well for consumers and to provide guidance to businesses on how they can comply with particular legislation.<sup>146</sup> The OFT can intervene to protect consumers through enforcement action or alternatively use a range of diagnostic, preventive and advocacy tools. In addressing consumer problems, self-regulation and industry-led compliance form an important part of its toolkit and help it to take a balanced and proportionate approach to making markets work well. To this end, in 2001 OFT launched a Consumer Codes Approval Scheme (CCAS) setting out overarching requirements for voluntary business to consumer codes of practice administered by code sponsors. CCAS is a two stage process, as well as creating a code that meets the schemes requirements on paper, applicants must then demonstrate over a sustained monitoring period that their codes work in practice before approval is granted.

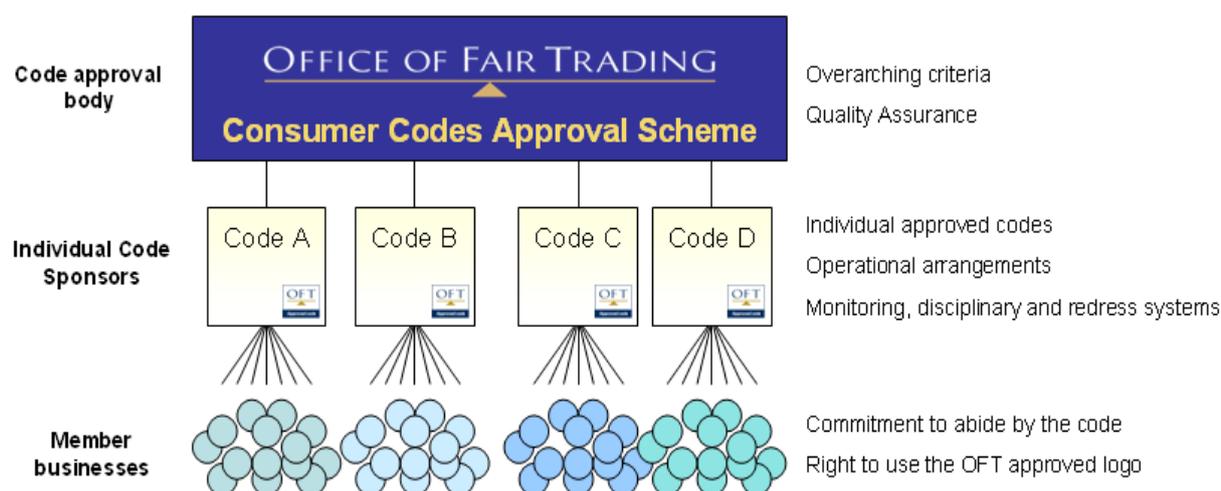
Although the OFT has not approved a code specifically for e-commerce many of the approved codes work with businesses that sell goods and services online.<sup>147</sup> CCAS approval entails the right to display the seal "OFT approved code".

<sup>146</sup> See <http://www.offt.gov.uk>

<sup>147</sup> Written response of OFT to interview questions (dated 27 April 2012).

The OFT stresses the importance of continuous monitoring, to demonstrate on-going adherence to the OFT requirements in order for the approval status to be maintained, and the application of appropriate sanctions for non-compliance in order to ensure the credibility of the scheme. The main features of this accreditation model are presented in Figure 3 below.

**Figure 4: Accreditation Model of the Office of Fair Trading**



Source: Office of Fair Trading<sup>148</sup>

Among others, CCAS addresses some organisational aspects, for instance a code sponsor should have a significant influence on the sector and sufficient resources to run the scheme effectively, as well as the provisions to facilitate stakeholder participation. Accordingly, the consultation of consumer organisations and enforcement bodies needs to be ensured throughout the preparation, operation and monitoring of the code.<sup>149</sup>

In terms of substantive scope of coverage, the requirements encompass a comprehensive list (which in some aspects exceeds legal requirements) and they include:

- Measures to remove consumer concerns and undesirable trade practices;
- Training for relevant staff to know about the terms of the code and legal responsibilities;
- Clear and truthful marketing and advertising;
- Clear and accessible pre-contractual information;
- Protection from high-pressure selling techniques;
- Clear terms and conditions of supply and fair contracts;
- Appropriate delivery and completion dates;
- Cancellation rights;
- Guarantees and warranties;

<sup>148</sup> Written response of OFT to interview questions (dated 27 April 2012).

<sup>149</sup> Office of Fair Trading. Consumer Codes Approval Scheme. Core criteria and guidance. March 2008.

- Protection of deposit or prepayments where the loss of deposits and/or prepayments would cause the consumer to suffer financial detriment or inconvenience (as determined by the OFT and identified by advisory bodies);
- Effective and appropriate customer service;
- Help for vulnerable consumers;
- Speedy, responsive, accessible and user friendly complaints procedures;
- Cooperation with local consumer advisers/intermediary acting on behalf of consumer;
- Conciliation services;
- Low-cost, speedy, responsive, accessible and user-friendly independent redress scheme (alternative dispute resolution) that should be binding;
- Performance indicators and independent compliance audits to measure effectiveness of the code;
- Publish results of monitoring procedures and satisfaction surveys;
- Annual written reports to the OFT on the operation of the code (including changes to the code, number and types of complaints, results of monitoring and satisfaction surveys);
- Regular review and update of the provisions of the code;
- Regular assessment of consumer satisfaction;
- Independent disciplinary procedures for handling non-compliance;
- Range of sanctions, e.g. warning letters, fines, termination of membership;
- Awareness raising measures;
- Copies of codes available free of charge to customers;
- Publication of OFT approval by using the CCAS logo in prescribed manner respecting the standard copyright licence.

It is important to note that the UK government recently decided to implement a number of major institutional changes concerning the provision of consumer information, advice, education, advocacy and enforcement. In this context the government also decided to invite the Trading Standards Institute to establish a successor to CCAS as of April 2013. It is proposed that the new scheme will operate on a self-funding basis.

### Initiative D21 (Germany)

Initiative D21 is a public-private partnership established in 1999 as a non-profit association with the mission to avoid a digital divide in Germany. To this end, the organisation funds non-profit projects primarily to foster education and confidence in information and communication technologies.<sup>150</sup> One of these projects is dedicated to trustmarks for online shopping and is an example of stakeholder approval substituting formal accreditation by public authorities. The project itself is run by the Trustmark Monitoring Board that gathers relevant stakeholders ranging from trustmark organisations, government representatives, and the national consumer organisation, to external experts in the field of certification and data protection.

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<sup>150</sup> Activities are based on an annual survey on the use or non-use of the internet, called '(N)ONLINER Atlas' with 30.000 interviews.

Trustmark organisations seeking membership on the Trustmark Monitoring Board and thus its approval have to sign up to a set of requirements as elaborated by the Board.

Once admitted the trustmark will be listed on the project's website which equals endorsement and recommendation by all organisations represented on the Trustmark Monitoring Board, including the government and the national consumer organisation. Currently, there are five trustmarks published on the project's website,<sup>151</sup> which are administered by four organisations. The application and membership of a new trustmark is pending.

The role of the Trustmark Monitoring Board is to watch over the performance of approved trustmarks. Non-compliance of a trustmark with the requirements would result in exclusion from the Board and withdrawal of its approval.

In terms of substantive scope of coverage, the requirements of Initiative D21 concerning e-commerce are based on national law, incorporating EU consumer protection and data protection rules, and they exceed legal requirements. They encompass the following subjects:<sup>152</sup>

- Identification of trader;
- Special information duties on commercial offers;
- Price information;
- Contract terms;
- Delivery of the service, including customer service, delivery dates and guarantees and warranties;
- Applicable law (German national law);
- Unambiguous process of ordering (user-friendly preparation, explicit approval of order, confirmation of order);
- Cancellation and returns, including reimbursement of payments;
- Data protection (according to European and national laws and international guidelines);
- Advertising using electronic communication tools;
- Data security (authenticity, integrity and confidentiality of data);
- Complaints management;
- Alternative Dispute Resolution.

This catalogue of requirements serves as a blueprint for the certification requirements of the four organisations that administer trustmarks and are members of the Trustmark Monitoring Board. In addition, the Board considers it to be of the utmost importance to constantly challenge and eventually update the requirements so as to keep up with the pace of change in the digital environment.<sup>153</sup> For instance, at the time of research for this report requirements are being reviewed to include new stipulations related to food products

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<sup>151</sup> See <http://www.initiatived21.de/portfolio/internet-gutesiegel> and <http://www.internet-guetesiegel.de/>.

<sup>152</sup> See 'Qualitätskriterien für Internet-Angebote vom 27.04.2007' at [http://www.foehlich.de/guetesiegel/docs/D21\\_Qualitaetskriterien\\_2007.pdf](http://www.foehlich.de/guetesiegel/docs/D21_Qualitaetskriterien_2007.pdf).

<sup>153</sup> Interview with Initiative D21.

sold online and to social plugins such as the Facebook 'Like' button that automatically collects user data and has raised major concerns with data protection authorities.<sup>154</sup>

To conclude, the analysis of the main features of national trustmarks has highlighted the importance of third-party certification and of a robust set of requirements. Their concrete content will depend on the chosen substantive scope of coverage of the trustmark (narrow/broad) and the relevant legislation. Stakeholder participation in the elaboration of the certification requirements (or their endorsement by consumer organisations) is deemed essential. The credibility of a trustmark, however, depends not only on the certification requirements and the independence of certification but to a large extent on effective enforcement through appropriate monitoring techniques and sanctions in case of non-compliance. Externally, credibility can be enhanced through a formal accreditation by public authorities or *de facto* accreditation by stakeholders (such as that provided by the German approval scheme, involving government representatives). Both models are supposed to add an overarching layer of supervision and quality assurance to the certification system.

### **3.6. Best practices**

Identified elements of best practices among examined trustmarks (presented as case studies in Section 3.4) as well as some others identified through desk research and literature review are summarised in Table 4 below.

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<sup>154</sup> See [http://www.lfd.niedersachsen.de/portal/live.php?navigation\\_id=28288&article\\_id=98353&psmand=48](http://www.lfd.niedersachsen.de/portal/live.php?navigation_id=28288&article_id=98353&psmand=48).

**Table 4: Overview of best practices**

<b>Best practice</b>	<b>Brief description</b>
<b>Transparency of the trustmark</b>	Requirements for traders easily available to consumers, certified traders listed on the website, withdrawals of the trustmark published
<b>Broad substantive coverage</b>	Trustmark covering all main issues of concern to consumers (thus avoiding the need for an online trader to use several issue-based trustmarks which may create confusion among consumers)
<b>Involvement of stakeholders</b>	Elaborating requirements for traders in co-operation with stakeholders and enabling their continuous involvement in administering the trustmark (e.g. through a supervisory or advisory board)
<b>Clarity of the code of conduct</b>	Requirements for traders structured and phrased in a way that can easily be understood by traders and consumers alike
<b>Updating the code of conduct</b>	Keeping requirements up-to-date with legislative framework as well as with the evolution of technology, business practices and consumer concerns
<b>Providing examples of best practice to online traders</b>	Providing examples of best practice in the areas covered by the requirements (e.g. model terms and conditions of sale) as well as raising awareness of additional relevant areas of consumer protection
<b>Rigorous certification</b>	A structured, thorough and documented procedure which ensures that traders are in fact compliant with the requirements (but balanced with the need not to create too much of an administrative burden)
<b>Monitoring traders' compliance</b>	Continuous monitoring (e.g. with the use of technological solutions) as well as random checks (e.g. through mystery shopping)
<b>Encouraging and acting upon consumers' feedback</b>	Providing consumers with user-friendly ways to provide information regarding the performance of certified traders (e.g. trustmark providing a hotline, integrating consumer reviews and/or rating systems) and acting upon that information (e.g. conducting an audit of the online trader in case of complaints)
<b>Regular re-certification</b>	Granting the trustmark for a limited period (e.g. one year) and re-certifying the traders after that period on the basis of (updated, if applicable) certification requirements
<b>Ensuring the uptake of the trustmark by large traders</b>	Reaching large traders/strong brands (because the use of a trustmark by these traders strengthens awareness of the trustmark among consumers/the trustmark brand itself and thus enhances its effect in terms of building trust in smaller online traders using the trustmark)
<b>Accessibility to SMEs</b>	Adapting the fees charged for the use of a trustmark to smaller traders (e.g. basing them on annual turnover and/or providing special offers for SMEs)
<b>Money-back guarantee for consumers</b>	Guaranteeing that consumers are refunded for the purchased goods or services when their claims are justified but traders do not provide the refund (if a trustmark is indeed only granted to trustworthy traders this should happen very rarely)
<b>ADR/ODR</b>	Obliging the traders using the trustmark to take part in internal and/or external ADR/ODR procedures in case a consumer complaint is not resolved at the company level
<b>Enforcement/imposing sanctions</b>	Clear and enforced sanctions (varying with the gravity of the breach) in cases of traders' non-compliance with the requirements to use the trustmark

**Source:** Civic Consulting (evaluation on the basis of interviews and literature review)

If looking for elements of best practice in the trustmarks examined in more detail for this study, some observations could entail the following:

The Spanish trustmark Confianza Online has been endorsed by public authorities as well as by consumer representatives and is tied to alternative dispute resolution which traders using the trustmark are obliged to undertake and then must comply with the final decisions. The Danish trustmark e-maerket was highlighted as a positive example in more than one interview –for, among other things, being not-for-profit and set up co-operatively by different stakeholders, as well as for monitoring compliance and enforcing sanctions. Its emphasis on assisting consumers with quick and efficient dispute resolution can also be commended. In addition, this trustmark provides very clear and concise guidelines, which one of the interviewed traders pointed out as a crucial factor for the success of a pan-European trustmark. The Trusted Shops trustmark has achieved the highest market penetration (in terms of trader take-up) and the broadest territorial coverage. It also stands out for its detailed certification requirements, the money-back guarantee and for integrating feedback systems. The now remodelled British trustmark ISIS could primarily be praised for its attempts to raise awareness of all relevant areas of consumer protection among business organisations. One of the particularly positive aspects of the examined Dutch trustmark Thuiswinkel Waarborg is the uniform general terms and conditions, which have to be used by all traders carrying the trustmark. That makes it easier for consumers to be familiar with their rights and obligations regarding individual online purchases. Moreover, these terms and conditions evolved in co-operation with consumers' representatives, and all traders carrying the trustmark are obliged to participate in external ADR procedures. Despite not having been as successful as was hoped at the time of its launch, Euro-Label can be considered best practice for bridging the fragmentation of national trustmarks with a cross-border code of conduct and for providing examples of best practice to online traders.

## 4. ADVANTAGES AND DISADVANTAGES OF AN EU TRUSTMARK FOR E-COMMERCE

### KEY FINDINGS

- Potential advantages and disadvantages of an EU trustmark are conditional upon its design.
- The main possible advantages identified through research for this report are: support for SMEs; enhanced cross-border co-ordination of trustmarks and exchange of best practices; overcoming language barriers; increased legal certainty; increased credibility of accredited trustmarks; broad recognition among consumers in different MS; increased trust in online shopping; enhanced cross-border trade.
- Possible disadvantages could be in the administrative burden for businesses; potential confusion among consumers; interference with existing trustmarks; difficulties with ensuring consistency across the EU; the cost of administering the trustmark; gaps in coverage in case of an accreditation scheme for existing trustmarks; and discrediting compliant traders and other trustmarks in case of lacking enforcement.

Potential advantages and disadvantages of an EU trustmark are conditional upon its design. In any scenario, a decisive factor for reaping possible benefits is enforcement, i.e. ensuring that certified traders do in fact comply with the requirements to carry the trustmark. Tables 5 and 6 below highlight the main possible advantages and disadvantages of a pan-European trustmark, along with some circumstances in which they could apply.

**Table 5: Possible advantages of an EU trustmark**

Possible advantage	Explanation
<b>Support for SMEs</b>	Depending on whether the trustmark is well recognised as a brand (so as to be a strong enough signal of the trustworthiness of smaller traders without strong brands of their own) and whether it is financially accessible to SMEs
<b>Enhanced cross-border co-ordination of trustmarks and exchange of best practices</b>	Depending on the design: an EU trustmark accreditation scheme involving existing trustmarks (e.g. through a supervisory or advisory board) could provide a platform for exchange and co-ordination
<b>Overcoming language barriers</b>	Depending on whether information (e.g. requirements for traders or for accredited trustmarks) is available in multiple languages and on the level of cross-border recognition of the EU trustmark (existing trustmarks have significant language limitations and their meaning is not clear to potential cross-border shoppers).
<b>Increased legal certainty</b>	Trustmarks greatly differ within individual countries and across borders and are currently primarily based on private initiative with some public endorsement. Defining/harmonising the substantive coverage across the EU would enable consumers to be familiar with and certain of their rights in cross-border situations.
<b>Increased credibility of accredited trustmarks</b>	If existing trustmarks were accredited at the European level according to a standard set of criteria, that could signal their credibility and distinguish them from non-accredited trustmarks
<b>Broad recognition among consumers in different MS</b>	Depending on the extent and success of marketing and brand building (and the budget made available for that purpose).
<b>Increased trust in online shopping and enhanced cross-border trade</b>	Depending on the market penetration of the trustmark, levels of awareness of the trustmark among consumers and on its credibility (e.g. effective enforcement)

Source: Civic Consulting

In the interviews, some business stakeholders pointed out that a European trustmark could decrease consumers' uncertainty concerning the criteria that apply with regard to a trustmark in another country, build a stronger brand than a national trustmark, and enhance the cross-border exchange of best practices. Several trustmark representatives expressed concerns because trustmarks that meet and set high standards currently cannot easily and clearly distinguish themselves from those that do not in fact provide appropriate levels of consumer protection and could in some cases even be considered misleading.<sup>155</sup> This could be overcome with a well-functioning European trustmark accreditation scheme.

<sup>155</sup> Urging the national enforcement body to tackle unreliable trustmarks, the director of Thuiswinkel wrote: "As long as there are all sorts of bad trustmarks for webshops, consumers lack clarity about who is and isn't reliable. There has been a veritable proliferation in trustmarks. Most trustmarks promise the earth, but actually do very little." (see <http://www.wijnandjongen.com/blog/now-lets-tackle-unreliable-trustmarks>).

Overall, the most commonly cited advantages of creating a pan-European trustmark for e-commerce were the possibility of a broad recognition of the trustmark by consumers in different Member States that would increase consumer trust in online traders and thus enhance online shopping, particularly cross-border.

A pan-European trustmark could address some other issues, such as the fact, noted in 2005, that most trustmarks were "characterised by a lack of 'European sensitivity'". This particularly refers to the scarcity of multilingual information as well as insufficient co-ordination between the different trustmark schemes and a lack of engagement in the existing EU initiatives regarding e-confidence and consumer protection.<sup>156</sup> The potential of a pan-European trustmark to bridge language barriers is quite important. The already mentioned ECC-Net cross-border mystery shopping exercise, for example, pointed out that "it was reported to the working group that it wasn't always clear if there was a trustmark displayed on a website, especially due to language barriers".<sup>157</sup>

**Box 1: Interviewees' opinions about the advantages and disadvantages of an EU trustmark**

The advantage could certainly be that it is the same everywhere. So when consumers shop cross-border they would recognise it. (*business representative*)

We find it very important that there would be some rules that we, as a trustmark scheme, would have to comply with, so that the customers and the companies can rely that what we are saying is actually what happens. (*trustmark representative*)

I think we would have a lot more possibilities to sell our products in other countries. I think people would know very quickly what the standards are, and if it is safe to [buy] at your shop. (*online trader*)

The main advantage would clearly be that it would give one, single recognition to all European consumers about whether a website is trustworthy. And therefore from a consumer perspective it would be easier to go online and recognise a trusted website. From a business perspective it would bring a much broader client range, because with one single trustmark you could attract more consumers from all over Europe. (*business representative*)

The disadvantage is how on earth do you keep the level of consistency when the legal framework itself is not harmonised across all EU 27? ... That is one of the challenges. It could also be hugely expensive. (*trustmark representative*)

If it is not designed in a consumer-friendly way and if there is no effective system ensuring compliance and enforcement that does not provide an added-value to the consumer. Then the risk is that the consumer actually might be misinformed and there might be an abuse of a trustmark. (*consumer representative*)

It would give some worries on administration: how complicated would it be to get the trustmark, and would it create more work and interference in the way we'd like to see our website. (*online trader*)

A potential disadvantage would be the possible additional burdens on business ... Because of the existence of an additional layer in the structure that would entail more costs than a simple national one. (*business representative*)

<sup>156</sup> ECP.NL and CRID, 2005.

<sup>157</sup> ECC-Net, 2011, p. 52.

Turning to potential disadvantages (overview provided in Table 6), the cost of maintaining the trustmark scheme and integrating it into business practices were of particular concern in the interviews. Specific issues in that regard are related to language barriers (i.e. the cost of offering services associated with a trustmark in multiple languages) and the cost of certification and periodical re-examination. Concerns were also raised regarding whether it would be a complicated process to obtain such a trustmark, as well as regarding monitoring and reviews of compliance, which could represent a significant administrative burden. "It is a difficult balance to strike," as one interviewee said. Another concern pointed out by an interviewee – in the context of the possible introduction of labels indicating participation by traders in out-of-court dispute resolution – could be that multiple labels might be confusing for consumers. Depending on the institutional design, a potential disadvantage with regard to requirements would be the fact that national legal frameworks in MS still differ, which would represent a significant obstacle in the elaboration of standards that can be applied across the EU.

**Table 6: Possible disadvantages of an EU trustmark**

Possible disadvantage	Explanation
<b>Administrative burden for businesses</b>	Depending upon the design of the trustmark and the scope of requirements.
<b>Cost of administering the trustmark</b>	Administering a European trustmark would create some financial burden for public budgets and/or businesses (and ultimately tax-payers and/or consumers).
<b>Confusion among consumers</b>	If a new 'stand-alone' trustmark (see Section 6.1.5) was created and used alongside other trustmarks and other labels, this could create confusion among consumers which would in turn reduce the effectiveness of the trustmark.
<b>Difficulties with ensuring consistency across the EU</b>	National legal frameworks / requirements for traders differ in MS and it would be a significant challenge to bridge those differences and ensure a consistent level of guarantees associated with the trustmark across the EU.
<b>Discrediting compliant traders and other trustmarks</b>	In case effective enforcement is not ensured, some traders using the trustmark could diminish consumers' trust in other traders with the same trustmark and in the credibility of trustmarks in general. <sup>158</sup>
<b>Interfering with existing trustmarks</b>	If a new trustmark was created, it would be competing with the existing ones; if a trustmark accreditation scheme was created, it could negatively affect the market position of trustmarks without accreditation.

Source: Civic Consulting

<sup>158</sup> While it can be argued that non-implementation is a challenge for every regulatory or policy measure, it can also be said that in this case non-implementation and/or poor enforcement would defeat the purpose of the undertaking (for more on enforcement, see Section 6.3), and this was pointed out by several interviewees. If consumers cannot be provided with sufficient guarantees that they can trust the trustmark (which entails that non-compliance is detected and consumers compensated appropriately), then no benefits can be envisaged of creating one.

## 5. LEGAL FRAMEWORK FOR E-COMMERCE TRUSTMARKS

### KEY FINDINGS

- There is no particular piece of EU legislation addressing only trustmarks, but some legislation touches upon several relevant aspects: The primary legislation regulating the use of trustmarks is that concerning commercial communication directed at consumers, including in particular the 2005 Unfair Commercial Practices Directive (UCPD). In addition, a number of other consumer protection directives are relevant in the context of drafting the requirements for the use of a trustmark.
- Generally, there is a comprehensive set of rules in EU legislation protecting consumers in e-commerce and any code of conduct underlying a possible EU trustmark for consumer protection in e-commerce must be understood in the context of already existing EU legislation.
- A trustmark is likely to be perceived as a guarantee by a consumer. This entails that trustmark must guarantee something that is not already prescribed by law. This principle is introduced into EU law in the UCPD Annex I, item 10, which states that it is a misleading commercial practice to present rights given to consumers in law as a distinctive feature of the trader's offer. However, it should be considered that for example certification, monitoring, enforcement, etc. by a third party intrinsically entails benefits for the consumer and is beyond what is merely prescribed by law.
- The trustmark may establish expectations, such as guarantees with consumers that the issuer may be liable for, to the extent consumers are disappointed with regard to their reasonable expectations. The trustmark operator is not likely to be liable for all breaches by a trader – unless the trustmark includes a guarantee that specifically covers this. Whether the trustmark operator may be liable will depend on the interpretation of national law, including whether the trustmark operator has failed to carry out controls of the trader in accordance with the reasonable expectations that consumers may form from the trustmark and its marketing.

This chapter provides a brief overview of the most relevant EU legislation (an extended overview is available in Annex 1), the requirements to the code of conduct underlying a trustmark (i.e. concerning the provision of a trustmark), the traders' use of a trustmark, and the related issues of liability.

### 5.1. Most relevant EU legislation

There is no particular piece of EU legislation addressing only trustmarks, but some legislation touches upon several relevant aspects:

- Legislation relevant to the use of the trustmark itself: Since trustmarks are in essence commercial market communication, the primary legislation regulating the use of trustmarks is that concerning commercial communication directed at consumers, including in particular the 2005 Unfair Commercial Practices Directive;<sup>159</sup>

<sup>159</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and

- Legislation relevant for the code of conduct for a trustmark: A number of other consumer protection directives are relevant in the context of drafting the requirements (code of conduct) for the use of a trustmark.

Article 16 of the 2000 E-Commerce Directive<sup>160</sup> provides that EU Member States and the Commission encourage the drawing up of codes of conduct at Community level, by trade, professional and consumer associations or organisations, designed to contribute to the proper implementation of the substantive articles of the Directive.

Generally, there is a comprehensive set of rules in EU legislation protecting consumers in e-commerce and any code of conduct underlying a possible EU trustmark for consumer protection in e-commerce must be understood in the context of already existing EU legislation. Annex 1 contains an introduction to the most important legislation in this context, as follows:

- The 2011 Consumer Rights Directive<sup>161</sup>
- The 2006 Services Directive<sup>162</sup>
- The 2005 Unfair Commercial Practices Directive<sup>163</sup>
- The 2002 E-Privacy Directive<sup>164</sup>
- The 2000 E-Commerce Directive<sup>165</sup>
- The 1999 Consumer Sales Directive<sup>166</sup>
- The 1995 Data Protection Directive<sup>167</sup>
- The 1993 Unfair Contract Terms Directive<sup>168</sup>

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Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

<sup>160</sup> European Parliament and Council, 'Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce),' in *Official Journal of the European Communities*, L 178/1, 17.7.2000.

<sup>161</sup> Directive 2011/83 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>162</sup> European Parliament and Council, 'Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the Internal Market,' in *Official Journal of the European Union*, L 376/36, 27.12.2006.

<sup>163</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

<sup>164</sup> European Parliament and Council, 'Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) as amended by directive 2009/136,' in *Official Journal of the European Communities*, L 201/37, 31.7.2002.

<sup>165</sup> European Parliament and Council, 'Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce),' in *Official Journal of the European Communities*, L 178/1, 17.7.2000.

<sup>166</sup> European Parliament and Council, 'Directive 99/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees,' in *Official Journal of the European Communities*, L 171/12, 7.7.1999

<sup>167</sup> European Parliament and Council, 'Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,' in *Official Journal of the European Communities*, L 281/31, 23.11.1995.

The provisions contained in the existing EU legislation are found in various forms in most existing trustmarks for e-commerce in Europe (often affected by the way the relevant directives are implemented into national legislation). All issues presented in the legislation (Annex 1) would be relevant to include in the code of conduct for a possible EU trustmark, but whether or not they would apply in practice would depend on the desired substantive scope of coverage of such a trustmark (further discussed in Section 6.2). Under a broad scope all issues would be addressed, whereas a trustmark with a narrow substantive scope of coverage (for example focused on privacy) would only address issues relevant to that theme.

## 5.2. Requirements for the trustmark and its code of conduct

Certain quality marks or labels may be regulated by law, such as the EU Ecolabel<sup>169</sup> or the CE-marking. However, there are so far no trustmarks for consumer protection in e-commerce regulated by EU law. It is in principle possible for anybody to establish a trustmark for e-commerce and design its code of conduct as they wish.

As mentioned above, a trustmark is likely to be perceived as a guarantee by a consumer. This entails that trustmark as a starting point must guarantee something that is not already prescribed by law. This principle is introduced into EU law in the 2005 Unfair Commercial Practices Directive Annex I, item 10, which states that it is regarded as a misleading commercial practice to present rights given to consumers in law as a distinctive feature of the trader's offer. As a starting point it could therefore be considered an unfair commercial practice to use and promote a trustmark with an underlying code of conduct that is only on par with legislative requirements. However, certification, monitoring, enforcement by a third party and other characteristics of comprehensively designed trustmarks intrinsically entail benefits for the consumer.<sup>170</sup> In other words, the 'something extra' to mere compliance with legislation could be the verification of compliance of traders using a trustmark with a specified set of requirements, even though consumers would likely expect more from a trustmark. This issue is further discussed below and would merit more comprehensive legal analysis.

It has also been discussed whether branding as such<sup>171</sup> is comprised in the scope of Unfair Commercial Practices Directive as the definition of commercial practices emphasises that the commercial practice must be "directly connected with the promotion, sale or supply of a product to consumers".<sup>172</sup>

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<sup>168</sup> European Council, 'Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts,' in *Official Journal of the European Communities*, L 095/29, 21.4.1993.

<sup>169</sup> Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel, in *Official Journal L 27/1*, 30.1.2010.

<sup>170</sup> Trzaskowski, *E-Commerce Trustmarks in Europe*, 2006, p. 21.

<sup>171</sup> A trustmark may be perceived as a marketing tool because it is used in the traders' commercial practices connected to selling their products. The 2005 Unfair Commercial Practices Directive covers commercial practices before, during and after a commercial transaction in relation to a product. Therefore, the traders' use of a trustmark is a commercial practice within the meaning of this directive.

<sup>172</sup> See Trzaskowski, J., 'Towards a Common European Marketing Law', pp. 35-48, in *New Challenges for the Assessment of Fairness in a Common Market*. EUI Working Papers, LAW 2010/21, 2010, p. 47. "By way of comparison 'commercial communication' is defined in article 2(1)(a) of the proposed regulation on sales promotions as 'any form of communication designed to promote, directly or indirectly, the goods, services or *image of a company*, organisation or person pursuing a commercial, industrial or craft activity or exercising a regulated profession...'. According to the misleading advertising directive, advertising is defined in article 2(a) as 'the making of a representation in any form in connection with a trade, *business*, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations'."

To the extent that commercial communication from the trustmark operator is directed at consumers, this commercial practice is, as a starting point, covered by the 2005 Unfair Commercial Practices Directives.

In instances where the trustmark operator provides services to the end consumer, such as guarantees, that will be considered a service in itself, and its marketing will be covered by the 2005 Unfair Commercial Practices Directive. The trader's use of the trustmark is also covered by the 2005 Unfair Commercial Practices Directive since such use must be regarded as a practice directly connected with the sale of products to consumers.

In the relationship between the trustmark operator and the trader, a trustmark is a service that is offered to the trader by a professional organisation. Such service is not covered by the 2005 Unfair Commercial Practices Directive but by the 2006 Misleading Advertising Directive, the purpose of which is to protect traders against misleading advertising.

It should be mentioned that Article 26 of the 2011 Consumer Rights Directive provides that Member States must, where appropriate, encourage traders and code owners to inform consumers of their codes of conduct. The legal implications of this provision are unclear.

### 5.3. The traders' use of a trustmark

The traders' use of a trustmark is covered by the 2005 Unfair Commercial Practices Directive, which prohibits the use of unfair commercial practices. A commercial practice is regarded as unfair if (a) it is contrary to the requirements of professional diligence, and (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer. Misleading practices are further defined in Article 6(1); a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer (even if the information is factually correct).<sup>173</sup> The deception can in particular be caused by information concerning "any statement or symbol in relation to ... approval of the trader or the product" (Article 6(1)(c)) or "the nature, attributes and rights of the trader or his agent, such as his ... approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions" (Article 6(1)(f)).

Annex I to the 2005 Unfair Commercial Practices Directive contains a list of commercial practices which are considered unfair in all circumstances. According to this list it is regarded as a misleading commercial practice to claim to be a signatory to a code of conduct when the trader is not (item 1) and to display a trust mark, quality mark or equivalent without having obtained the necessary authorisation (item 2). It is also considered misleading to claim that a code of conduct has an endorsement from a public or other body which it does not have (item 3) and to claim that traders (including their commercial practices) or products have been approved, endorsed or authorised by a public or private body when that is not the case. Another misleading practice is to be making such a claim without complying with the terms of the approval, endorsement or authorisation (item 4).

To the extent that a trustmark is considered a guarantee within the meaning of the 1999 Consumer Sales Directive, the trader must comply with the information requirements set out in Article 6 of that directive. In this case, the guarantee must a) state that the consumer has legal rights under applicable national legislation governing the sale of

<sup>173</sup> "...even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise ..."

consumer goods and make clear that those rights are not affected by the guarantee, and b) set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor.

As a guarantee is defined as “any undertaking ... to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising”, the inclusion depends upon the guarantee statement included in the trustmark’s code of conduct and the associated advertising.

It is established in the 2000 E-Commerce Directive, Article 10(2), that Member States must ensure that the service providers indicate any relevant codes of conduct to which they subscribe and information on how those codes can be consulted electronically. Normally, traders subscribing to a code of conduct, such as a trustmark, would use that in their marketing. However, for electronic commerce this provision requires the traders to both indicate that they subscribe to a trustmark and to link to the underlying code of conduct. Usually a trustmark for electronic commerce will consist of a mark which is linked to the trustmark operator’s website where the code of conduct can be easily found.

#### 5.4. Liability issues

In legal terms, a trustmark must be regarded as a branding service offered to traders by the issuer of the trustmark. The trustmark may, however, establish expectations, such as guarantees with consumers that the issuer may be liable for, to the extent consumers are disappointed with regard to their reasonable expectations. Traders may be liable to both consumers and the trustmark issuer if the trader fails to satisfy the requirements for using the particular trustmark.<sup>174</sup>

Everyone that operates in a market runs the risk of liability. In this part of the report, the focus is on the risk of civil liability in situations where the trustmark operator or the accreditation scheme operator (i.e. the organisation administering the trustmark or the accreditation scheme) may be liable when the trader or the accredited trustmark scheme does not comply with the code of conduct. The question is to what extent the involvement in trustmarks may lead to civil liability, for example for failing to identify breaches of the code of conduct or for failing to take action when breaches are identified.

Initially, it should be emphasised that legislation on tort liability is not harmonised in EU law,<sup>175</sup> and that possible liability is to be determined by the law in either the country of establishment of the operator or in the market where damage is done.<sup>176</sup> For liability in a contractual context, liability is, as a starting point, to be determined by the law of establishment of the operator unless the contracting parties have agreed otherwise.<sup>177</sup> However, in consumer contracts, the law of the country where the consumer has his or her habitual residence will apply in most instances.

A general requirement for most types of civil liability is that the tortfeasor has shown some degree of negligence in their behaviour inflicting a loss on the injured party. It falls outside

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<sup>174</sup> See in general: Spletter, C., *The significance of trustmarks in B2C e-commerce*, 2003.

<sup>175</sup> Some principles for ‘conformity’ in relation to the seller’s delivery of an obligation under a consumer contract is harmonised in the 1999 Consumer Sales Directive. However, without impinging on provisions and principles of national law relating to contractual and non-contractual liability. See recital 6.

<sup>176</sup> The questions of applicable law for non contractual-obligations are regulated in Regulation 864/2007 on the law applicable to non-contractual obligations (Rome II).

<sup>177</sup> The questions of applicable law for contractual obligations are regulated in Regulation 593/2008 on the law applicable to contractual obligations (Rome I).

of the scope of this study to provide a more comprehensive account of tort law which varies between Member States.

The possible liability will to a large degree depend on what the trustmark or accreditation scheme promises since liability is most likely in situations where the trader or operator fails to deliver what is promised, and thereby inflicts a loss.

There are no firm requirements as to what areas a trustmark must cover. There are trustmarks that deal with, for example, privacy (narrow substantive scope), or online shopping in general (broad substantive scope). Therefore in order to support transparency, it is important that the scope of application is communicated in a way that is easily comprehensible to consumers. A trustmark may in general be perceived as a guarantee in which the trustmark label will promise the consumer that the particular trader or website complies with those details laid out in the code of conduct.

An important part of a trustmark and a trustmark accreditation scheme is to carry out an assessment of either a trader's practices or of criteria set out in the code of conduct underlying a trustmark, respectively. Most assessments of legal requirements entail an analysis of a normative nature. In particular, information requirements may be relatively easy to assess, whereas requirements concerning commercial practices may be very difficult and in certain situations impossible for the assessor to assess properly (with reasonable certainty). Thus it may be more difficult to establish negligence in situations where there is a need for more normative assessments.

Another important issue is to what extent the trustmark promises compliance with the underlying code of conduct. Normally, the trustmark operator will carry out an investigation of the trader's website, and often recurrent checks may be carried out. However, this does not exclude the possibility that the trustmark operator will fail to identify breaches of the code of conduct or that breaches will occur between checks – not necessarily as a matter of intended business practice on the trader's side. The trustmark operator is not likely to be liable for all breaches – unless the trustmark includes a guarantee that specifically covers this. Whether the trustmark operator may be liable will depend on the interpretation of national law, including whether the trustmark operator has failed to carry out controls in accordance with the reasonable expectations that consumers may form from the trustmark and its marketing. In other words, in order to establish whether a trader, a trustmark operator, or an accreditation scheme operator has failed to fulfil their obligations, it is necessary to consider what expectations consumers may reasonably infer from the trustmark and its marketing. In that context insurance elements such as guarantees will, as a starting point, be treated as a means of strict liability, unless reservations are duly taken and communicated to consumers. For example, the Trusted Shops trustmark promises 'Buyer Protection', which applies to orders from a website with Trusted Shops GmbH certification, provided that the consumer registers for the Trusted Shops Guarantee as part of this process (see cases study, Section 3.4.4). According to the terms and conditions for the Trusted Shops Guarantee (11/11/2011), the following protections are guaranteed:

- a. Reimbursement of the purchase price of the goods ordered from the online shop in the event of non-delivery;
- b. Reimbursement of the purchase price following return postage of the product to the online shop;
- c. Reimbursement of travel costs in the event that the online travel agent fails to provide travel documents;
- d. Reimbursement of fees paid in the event that agreed services are not provided;
- e. Reimbursement of up to 50 Euro excess payment in the event of misuse of your

credit card in connection with your online order from an online shop or online travel agency.

In theory, there is enough legal ground to enforce third-party liability on trustmark operators. It has, however, been suggested that the liability system for trustmark operators is not adequate, and that a regulatory framework for third-party liability for trustmark operators should be introduced.<sup>178</sup> According to the cited study,<sup>179</sup> an adequate third-party liability system for trustmark operators would be a system that:

- a. Effectively protects what e-consumers value and the related expectations that e-consumers put into the trustmark;
- b. Takes into account the difficulties that trustmark operators face by operating in the context;
- c. Brings trustmark operators' practice up to the quality level which will give trustmarks the opportunity to extend their potential benefits to social, economic, and political levels.

However, substantial reluctance to harmonise civil liability must be foreseen – and it will be difficult to establish further clarity in this area as it would be necessary to describe clearly what reasonable expectations consumers may have and what reasonable obligations can be laid upon trustmark operators.

In the context of electronic signatures provisions for liability have been established in the 1999 Electronic Signatures Directive.<sup>180</sup> Article 6(1) provides that Member States, as a minimum, must ensure that by issuing qualified certificates to the public the certification-service-provider is liable for damage caused to any entity or legal or natural person who reasonably relies on that certificate in a number of situations, unless the certification-service-provider proves that it has not acted negligently. A similar scheme could be introduced in the context of trustmarks for e-commerce which could specify details on negligence.

It should also be mentioned that Article 23 of the 2006 Service Directive deals with professional liability insurance and guarantees. The provision allows Member States to ensure that providers whose services present a direct and particular risk to *inter alia* the financial security of the recipient, subscribe to professional liability insurance appropriate to the nature and extent of the risk, or provide a guarantee or similar arrangement which is equivalent or essentially comparable as regards its purpose. According to Article 22(1)(k), information about such insurance or guarantees must be made available to the recipient of the service.

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<sup>178</sup> Balboni, P., *Trustmarks: Third-party Liability of Trustmark Organisations in Europe*, 2008, Chapter 8. Chapter 9 elaborates on recommendations for a third-party liability system for trustmark operators.

<sup>179</sup> *Ibid.*, p. 234.

<sup>180</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

## 6. AN EU TRUSTMARK FOR E-COMMERCE

### KEY FINDINGS

- There exists a broad spectrum of policy options on how to tackle and foster a pan-European trustmark for e-commerce. Five main strands of policy scenarios are: no intervention; encouraging self-regulation; co-regulation; establishing EU accreditation of trustmark providers; establishing a pan-EU trustmark for e-commerce.
- If EU policy makers decide to introduce a trustmark at EU level, this would basically be akin to establishing a privately operated trustmark in the sense that the desired scope can be freely chosen. It is advisable for an EU trustmark to provide for procedures for both initial and recurrent assessment as well as sanctions in case a violation of the code of conduct is identified.
- A consumer may reasonably infer that a trustmark is something earned (i.e. voluntary) rather than something required, as well as that the bearer of a trustmark performs above the requirements of legislation. The existence of certification requirements and procedures could be taken to exceed compliance with legislation and offer consumers an extra aspect of protection.
- If policy makers decided to introduce a mandatory EU trustmark for e-commerce, it would be necessary to introduce EU legislation imposing the requirement on traders and to examine potential conflicts with existing EU legal framework. From a political and economic perspective, a mandatory EU trustmark might come with a number of additional challenges.
- In general terms the choice of legal instrument follows the scale of the extent to which Member States are to carry out the intentions of the trustmark scheme. If an EU institution should award the trustmark, a regulation would be more fit for the purpose. If the approach was for the Member States to set up national institutions and ensure accreditation at national level, a directive would be suitable.
- When laying out the principles for certification of the EU trustmark, it would be important to note that compliance with some requirements is much easier to control than with others. In contrast to compliance with information requirements that are generally easy to assess, the adherence to requirements concerning commercial practices and the processing of personal data seems rather difficult.
- Challenges inherent in the setting-up of an EU accreditation scheme or an EU trustmark would include legal implications, proper enforcement and sustainable funding, among others. Awareness among consumers is considered a key factor for success. Analysis for this study has revealed that it typically takes a minimum of five years from the inception of a trustmark until considerable dissemination.
- Differences in substantive law that continue to exist must be considered. They can be overcome by adopting a code of conduct that satisfies requirements in all Member States (highest common denominator). Another approach to deal with differences in national consumer protection law is to fully harmonise the areas in question.

This chapter provides an overview of the main policy options for introducing an EU trustmark for e-commerce and discusses some specific issues in that regard. To highlight the importance of legal considerations, Section 6.2 further elaborates on the legal framework in which the scope and content of an EU accreditation scheme and an EU trustmark would have to be defined. Equally important are appropriate procedures for enforcement as well as accompanying measures in terms of awareness-raising (discussed in Sections 6.3 and 6.6). Section 6.4 is dedicated to a consideration of whether an EU trustmark should be mandatory or voluntary while Section 6.5 looks into the potential need for modifications in the EU legal framework. The chapter concludes with a roadmap for the rollout of either policy option.

## 6.1. Policy options for introducing an EU trustmark for e-commerce

There exists a broad spectrum of policy options on how to tackle and foster a pan-European trustmark for e-commerce. At one end of this spectrum, the EU institutions would abstain from any intervention and leave it to market forces to develop a pan-European trustmark. At the other end, a trustmark would be launched and administered by the EU. In between these poles, other possibilities arise such as encouraging the elaboration of voluntary requirements, drawing-up recommendations or establishing an EU accreditation scheme. Numerous variations are possible, depending on the many decisions that would have to be made with regard to the institutional design, substantive and procedural requirements, budgetary commitments, etc. As will be explained in this chapter, any measure with a degree of EU participation would entail some impact on the public budget (where a whole range of combinations is possible regarding the shares that would come from national and EU budgets).<sup>181</sup> For the launching of a new, pan-European trustmark, decisions would have to be made regarding practically all of the main characteristics and variations presented in Table 1 (in Section 3.3.1), as well as many others, and every decision regarding any procedural and/or organisational feature of an EU trustmark would have budgetary and institutional implications and would affect the rest of outcomes.

Subsequent sections explore the following five main strands of policy scenarios and their main features in terms of organisational set-up, procedural aspects, and funding scheme:

- Option 1: No intervention
- Option 2: Encouraging self-regulation
- Option 3: Co-regulation
- Option 4: Establishing an EU trustmark accreditation scheme
- Option 5: Establishing an EU trustmark for e-commerce

The presentation of these options is concluded with an overview of their main advantages and disadvantages (see Table 8).

### 6.1.1. Option 1: No intervention

In principle, there is a free market for providing trustmarks – both at national and international level. Hence, a multitude of trustmarks for e-commerce have already developed. From a European perspective, the market has changed considerably.

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<sup>181</sup> This is not to argue that an EU trustmark would have to be entirely financed from public budgets and could not achieve sustainability, but to emphasize that such initiative will not unfold without budgetary commitments, at least during the start-up stage, and that the level of these commitments is at this point in time not clear.

The preliminary results of the forthcoming European Commission's study mapping EU online trustmarks (see Annex 3) confirm such observation for the past six years.<sup>182</sup> Compared to 2006, when the last EU-wide study<sup>183</sup> was carried out, a number of trustmarks have disappeared (mainly in Southern Europe) whereas many of the trustmarks well-established in 2006 have consolidated their position.

The majority of these trustmarks are national in the sense that they operate on one national market only. As was shown in the case studies (see Section 3.4), trustmarks can also be available to traders based in other countries provided that they target the national market served by the respective trustmark. In addition, there are trustmarks that go beyond national boundaries and operate across borders. Among the trustmarks included in this study, one is operating as an 'umbrella label' based on the co-operation of national entities that provide certification for the respective country on the basis of common requirements (with the possibility of higher levels of consumer protection being required by the participating national providers). Another cross-border trustmark operates as a commercial entity offering its trustmark services in several language versions to 10 EU Member States and Switzerland, with the underlying code of conduct adapted to the national legal specificities, and with aspirations to expand across the EU. This has recently been reaffirmed through a merger with another trustmark.<sup>184</sup> Among relevant recent developments, the establishment of a new European association for e-commerce can also be noted,<sup>185</sup> with examining the possibility for a European e-commerce trustmark foreseen as one of its future activities.<sup>186</sup>

Considering these developments, it seems possible that over time, the market itself might provide effective structures for trust in cross-border e-commerce. In terms of the financial and administrative burden for EU institutions, the benefit of this approach is obvious. This approach would also avoid the risk of interfering with existing trustmark-business. However, it runs the risk that the status quo is maintained as far as the lack of consumer trust and the failure to fulfil the potential of e-commerce are concerned.

Status quo in this area would, among other things, entail great variations among existing trustmarks and the level of guarantees they provide to consumers as well as a lack of 'European sensitivity'. That is partially reflected in significant language limitations of existing trustmarks (see Chapter 4) and the ensuing inability of (potential) cross-border shoppers to understand what many of the existing electronic labels stand for. Those national trustmarks which have managed to consolidate their position in the market and are successfully building consumer awareness could be credited with enhancing domestic online trade, but they do not in themselves enhance cross-border trade for the reasons just mentioned. On the basis of such findings it could be argued that the current practices of trustmarks for e-commerce which give them their "national" character (e.g. basing codes of conduct on national legislation, their availability in few languages apart from the official one(s) in their country of operations, etc.) contribute to the fragmentation of internal market. At the same time, it must be considered that there are many facets of market fragmentation that are beyond what could be ascribed to or tackled by trustmarks.

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<sup>182</sup> TNO/Intrasoft, 2012, *EU Online Trustmarks. Building Digital Confidence in Europe*. SMART 2011/0022. Draft Interim Report Task 1 & 2, p. 41-42.

<sup>183</sup> Trzaskowski, J., 2006, *E-Commerce Trustmarks in Europe - an overview and comparison of Trustmarks in the European Union, Iceland and Norway*.

<sup>184</sup> See for example 'Trusted Shops and IMRG combine to create single European trustmark' at <http://www.trustedshops.co.uk/news/trusted-shops-and-imrg-combine-to-create-single-european-trustmark/>.

<sup>185</sup> See <http://www.ecommerce-europe.eu/home>.

<sup>186</sup> This was pointed out by representatives of Thuiswinkel.org, which is one of the founding members of the new association.

As previous research has shown, “few online shops are prepared to serve foreign customers”<sup>187</sup> which points at other reasons for underperforming cross-border trade within the EU than merely the identified lack of consumer trust in e-commerce. For example, traders wishing to conduct cross-border online trade face significantly higher cost arising from the administrative burden of dealing with 27 different national legal environments, from having to set up a shop front in multiple languages and investing in making themselves known in multiple countries through signing up for being listed on price comparison websites and the overall advertising as well as other measures. In short, whereas existing trustmarks could be seen as contributing to the fragmentation of internal market and a cross-border, pan-European trustmark could contribute to bridging this fragmentation, it will take vastly more extensive and co-ordinated efforts to significantly enhance cross-border trade. Barriers are much higher than those represented by the existing national trustmarks. In fact – by strengthening the confidence of consumers in online purchases within their own country – existing trustmarks also contribute to enhancing confidence in online trade in general.

### 6.1.2. Option 2: Encouraging self-regulation

One possibility for encouraging self-regulation at EU level would be to facilitate and possibly co-fund collaboration among the relevant stakeholders and the establishment of a stakeholder forum with the view of developing common standards for trustmarks in e-commerce. Such an initiative could focus on both procedural aspects of trustmarks and substantive aspects of the underlying code of conduct. An important point of reference might be the European Trustmark Requirements (ETR).<sup>188</sup> These non-binding requirements evolved within the e-confidence initiative in 2001. They were jointly elaborated by the European Consumers’ Organisation BEUC and the Confederation of European Business BusinessEurope, at the time named UNICE, but apparently failed largely due to a lack of funding.<sup>189</sup> Even though ETR had been formulated more than a decade ago, the covered issues are still relevant for online consumers and traders alike (see Section 6.2).

Another possibility would be to encourage and endorse – both politically and financially – the establishment of a stakeholder forum that would have a supervisory function and approve trustmark providers (*de facto* accreditation). The forum could be composed of business representatives and non-industry stakeholders, such as consumer organisations and data protection experts, comparable to the Initiative D21 in Germany (see 3.5.2.). The stakeholder forum could cater for transparency and impartiality through the concept of consensus building among stakeholders. At the same time, its flexibility would allow for timely adaption to changes in the legal and technological environment. For the sake of credibility and acceptance of such stakeholder approval, it seems advisable that EU public authorities officially endorse the stakeholder forum and participate in it. Although it is assumed that the financial burden would be smaller than setting up an entirely new pan-European trustmark, the setting-up of a stakeholder approval scheme would nonetheless require funds for a team of experts in order to guarantee the clerical tasks for the approval of trustmark providers, including regular monitoring of compliance of approved trustmarks as well as for meetings of the stakeholder forum.

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<sup>187</sup> See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. *On Cross-Border Business to Consumer e-Commerce in the EU*, COM(2009) 557 final, 2009; p. 3.

<sup>188</sup> UNICE-BEUC e-Confidence project, 2001, BEUC/X/179/2000, p. 5.

<sup>189</sup> This was one of the key reasons mentioned in the EC Commission Staff Working Document (2004). *Consumer Confidence in E-Commerce: lessons learned from the e-confidence initiative*. SEC (2004) 1390, p. 8.

The feasibility of a stakeholder approval scheme as a vehicle of self-regulation would depend on substantial financial commitment from the business community. The participation of non-industry stakeholders would likely have to be ensured by public funding (as the examples of ETR and the Ecolabel show). By encouraging collaboration of national trustmarks at EU level and facilitating a self-regulatory model based on best practice, the EU would send a signal to the sector that it attaches importance to the issue and, in case that self-regulation does not deliver (which is an inherent risk), might consider further policy measures.

### 6.1.3. Option 3: Co-regulation

Going beyond self-regulation could imply co-regulation and the use of one of the following policy instruments: an EC Recommendation or a European Standard (EN). Recommendations issued by the European Commission would provide a set of voluntary requirements for trustmarks in e-commerce, comparable to the EC Recommendations adopted on alternative dispute resolution in 1998<sup>190</sup> and 2001.<sup>191</sup> As with the previous option (self-regulation), the EC Recommendation would preferably be built upon existing best practice and the ETR as drafted by BEUC and the predecessor of BusinessEurope in 2001 (see 6.2). At the time, the Commission Services “took the position that they would follow-up on this work, possibly with a Recommendation”.<sup>192</sup> In other words, the work to be done would be similar to what has been described under the option of encouraging self-regulation, while the degree of involvement by the European Commission would increase.

From a legal perspective, the 2006 Services Directive might serve as the legal basis for drawing up the EC Recommendation insofar as trustmark organisations offer services covered by this directive. Article 26 stipulates that Member States, in cooperation with the European Commission, must take accompanying measures to encourage service providers to take action on a voluntary basis in order to ensure the quality of service provision, in particular through use of one of the following methods: a) certification or assessment of their activities by independent or accredited bodies and b) drawing up their own quality charter or participation in quality charters or labels drawn up by professional bodies at Community level.<sup>193</sup>

While in the case of the EC recommendation the European Commission services would take the lead, ideally with input from all relevant stakeholders, in the case of a European Standard the European Standards Bodies would be in charge of the drafting process. Assuming that the European Commission would issue a corresponding standardisation request, i.e. a mandate, and the European Standards Bodies decide to accept the mandate,<sup>194</sup> a number of general principles would govern the drawing up of the standard, such as openness and consensus. Hence, the content of the standard, in this case the requirements for trustmark organisations, would be elaborated by interested parties ranging from industry to research, public authorities and civil society stakeholders, on a voluntary and consensus basis under the auspices of the European Standards Bodies.

<sup>190</sup> Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, OJ 115, 17.4.1998, p. 31.

<sup>191</sup> Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes, OJ 109, 19.4.2001, p. 56.

<sup>192</sup> EC Commission Staff Working Document (2004). Consumer Confidence in E-Commerce: lessons learned from the e-confidence initiative. SEC (2004) 1390, p. 7.

<sup>193</sup> Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market, in: Official Journal of the EU, L376/36ff, 27.12.2006, p. 63.

<sup>194</sup> The European Standards Bodies, which are independent organisations, have the right to refuse a mandate if they do not think that standards can be produced in the area being covered, see: [http://ec.europa.eu/enterprise/policies/european-standards/standardisation-requests/index\\_en.htm](http://ec.europa.eu/enterprise/policies/european-standards/standardisation-requests/index_en.htm)

Despite the differences between an EC Recommendation and a European Standard, both documents would have the advantage of providing common EU standards for trustmark providers in e-commerce and thus a benchmark for best practice for the entire sector. In both cases, the financial impact for the EU budget seems rather marginal. However, neither of the two policy instruments incorporates the flexibility to quickly adapt to changes in the technological and legal environment and therefore they run the risk of being overtaken by new developments. Another important consideration is that neither the EC Recommendation nor the European Standard would be binding and trustmark organisations would be free to deviate from the respective standards.

#### 6.1.4. Option 4: Establishing an EU trustmark accreditation scheme

As is explained in Section 3.5.2 accreditation in essence means certifying the certifier. The purpose of an EU accreditation scheme would be to provide supervision and ensure the quality of trustmark providers. This is what most interviewees described when asked about the possible design of an EU trustmark – what would in the terminology of this study correspond to a trustmark accreditation scheme rather than to a trustmark in its own right.

This option could directly correspond with the intention to create a pan-European trustmark, especially if the indication of an accreditation by an EU trustmark accreditation scheme took the form of a label added to the national trustmark. This could be accompanied with the publication on the respective website of the European Commission (preferably in a similar fashion as the existing trustmarks currently display traders' certificates, namely so as to enable the consumer to click on the visual mark and access the trader's certificate; in this case, the certificate would indicate its own underlying set of requirements and compliance of the barer of the certificate with these requirements).

The advantage of a label would be higher visibility of the EU dimension and possibly increased consumer awareness, but it would require administrative and technical solutions for the withdrawal of the label if an accredited national trustmark no longer abided by the requirements.

Creating an accreditation scheme which would formally endorse trustmarks meeting clearly specified and enforced criteria would signal a clear commitment of EU public authorities to enhance the performance of trustmark providers, and ultimately contribute to building consumer trust.

## Box 2: Interviewees on accreditation

Probably the best way to do it would be to make some kind of official approval concept that we as a national trustmark can apply to and get the seal of approval from the EU. *(trustmark representative)*

When the code ... is supported by the administration, it becomes more effective. *(trustmark representative)*

We feel that accreditation would be a good idea because it would help to distinguish between trustmarks with a very strong certification, strong criteria and established business routes versus trustmarks being more of a trust business. *(trustmark representative)*

Accredited governmentally? If you look at the European level, I think it would be an advantage for the consumer. *(online trader)*

It will be important in building a scheme that there is a single oversight body. *(regulator)*

The EU has already adopted an accreditation policy, namely in the sector of product safety, as laid down by Regulation (EC)765/2008.<sup>195</sup> Correspondingly, the EU has the possibility to define an accreditation policy for trustmarks in e-commerce. Assuming that the same principles apply as stipulated by the above-mentioned Regulation, EU accreditation would have to be carried out without a commercial purpose and by public authorities in order to ensure impartiality and objectivity (see also Section 3.5).

The accreditation scheme must have a robust set of requirements that the accredited trustmarks must comply with and that serve as a blueprint for the code of conduct of the accredited trustmarks. Content and scope of these requirements are discussed in Section 6.2. In order to safeguard its credibility, the EU accreditation system would also have to provide for effective measures of enforcement directed at accredited trustmarks, which is discussed in more detail in Section 6.3.

As a starting point, an EU accreditation scheme would be voluntary.<sup>196</sup> Trustmark providers would be free to choose whether to apply for accreditation and thus to adhere to its requirements. However, if a trustmark subscribes to the EU accreditation scheme and thus commits to comply with the requirements, it may benefit from official approval by public authorities.

It is important to note that the challenge of enforcement and monitoring of compliance would be the same, irrespective of the visual and/or formal indication of accreditation (see 6.3).

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<sup>195</sup> EU Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in: Official Journal of the EU, L 218/30ff, 13.08.2008.

<sup>196</sup> It is in principle possible to – through legislation – introduce a mandatory accreditation scheme with some of the same concerns expressed below under 6.4.

Such EU accreditation could be organised in a centralised manner<sup>197</sup> as an additional element to the existing national systems made up of national accreditation of trustmark organisations (where it exists) and certification of traders by trustmark organisations. In other words, trustmark organisations would apply for EU accreditation and commit to a set of common European requirements for their field of activity; there would be no direct interaction between the EU accreditation scheme and individual traders. National trustmark organisations would have the choice between no accreditation, national accreditation (if available) and EU accreditation. The trader in turn would be able to opt for a non-accredited trustmark, a nationally accredited trustmark or a trustmark accredited at EU level (with the last two possibly in combination).

### Organisational set-up and funding scheme

Considering the tasks at hand, namely the elaboration and updating of common EU requirements for trustmark providers and their effective enforcement in terms of supervision, an EU accreditation scheme would require an administrative body that would have to be an adequate EU agency or a competent body authorised by the EU institutions.

As far as the task of drawing up a set of common requirements is concerned, the importance of stakeholder participation was highlighted in the interviews. In order to accommodate stakeholder involvement, the EU Ecolabel scheme<sup>198</sup> and specifically the Ecolabelling Board (EUEB) might serve as a model.<sup>199</sup> Its task is to advise the European Commission and to participate in the definition and revision of the EU Ecolabel criteria for each product group. The EUEB gathers all relevant stakeholders ranging from certification bodies to representatives of consumers, environmental interests and business.<sup>200</sup>

Since accreditation by definition has no commercial purpose, it would have to be run as a non-profit activity.<sup>201</sup> Even if co-financed through fees from accredited trustmark organisations as proposed by some of the interviewees, it is doubtful that such income would cover the expenses. Moreover, promotional measures would be necessary so as to make EU accreditation known in all Member States. Hence, the establishment of an EU accreditation scheme would require considerable public funding. It would therefore be advisable to conduct a comprehensive market and cost-benefit-analysis before engaging in such an activity.

It should also be considered that creating a trustmark accreditation scheme would not by itself and immediately ensure pan-European coverage. If the European trustmark was entirely based on accrediting the existing trustmark providers, or if these were the bodies accredited for granting the EU trustmark, then the trustmark would not be readily available in all MS (because trustmarks which could be accredited do not exist everywhere).

<sup>197</sup> Accreditation related to products, however, is organised in a de-centralised manner and carried out by the national accreditation body in each Member State. EU Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in: Official Journal of the EU, L 218/30ff

<sup>198</sup> Regulation (EC) No. 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel, in: Official Journal L 27/1, 30.1.2010.

<sup>199</sup> EUEB was established by an European Commission Decision of 2010, which explicitly mentioned that, “[f]or the acceptance of the EU Ecolabel scheme by the general public, it is essential that organisations such as environmental non-governmental organisations and consumer organisations be members of the EUEB ...” (Commission Decision of 22 November 2010 establishing the European Union Ecolabelling Board, In: Official Journal of the EU, L 308/53, 24.11.2010).

<sup>200</sup> See ‘Who does what’ at <http://ec.europa.eu/environment/ecolabel/who-does-what.html>.

<sup>201</sup> See ‘Accreditation and market surveillance’ at [http://Europa.eu/legislation\\_summaries/consumers/consumer\\_safety/I33248\\_en.htm](http://Europa.eu/legislation_summaries/consumers/consumer_safety/I33248_en.htm)

Thus, this policy option would fulfil the purpose of creating a pan-European trustmark – in the sense of encompassing all EU Member States – only if it were designed with complementary options for certifying traders in Member States where currently no (suitable) trustmarks are in existence.

#### 6.1.5. Option 5: Establishing an EU trustmark for e-commerce

The most far-reaching solution from the perspective of European policy makers would be to set up a genuine EU trustmark (comparable to the EU Ecolabel scheme) which would be granted to traders. Hence, such an EU trustmark would compete with already existing trustmarks for e-commerce. The trustmark would be awarded following an audit based on the scope of coverage of the trustmark and a respective set of requirements (code of conduct).<sup>202</sup> Equally important – as the analysis of existing trustmarks shows – is to ensure a mechanism for stakeholder participation in the definition of these requirements and for their continuous review to keep pace with legal and technological changes.

A possible model for ensuring both aspects might be the Ecolabel Board as described in the previous section on EU accreditation. As was mentioned in the overview of the general features of trustmarks, there are examples of formalised participation of stakeholders in the administering of the trustmark and this was mentioned multiple times as a good practice. Stakeholders are at present included in the advisory structures (sometimes these have been constructed as a one-time measure, e.g. while developing the code of conduct) or in supervisory structures through which they can most directly affect the way a trustmark is administered, awarded and enforced.

The possible scope and requirements of an EU trustmark are discussed in detail in Section 6.2. The certification process itself would presumably have to follow the same logic and procedure as described in Section 3.5 (on the basis of existing trustmarks) and would require the elaboration of the respective tools such as a detailed questionnaire on the basis of the requirements and trained and competent staff.

#### Organisational set-up and funding scheme

The establishment of a new EU trustmark would certainly require an organisation equipped and competent to run the certification process. The type and ownership of the trustmark organisations at national level vary considerably ranging from foundations to trade associations (business) and private companies. Given that an EU trustmark would be the initiative of EU public authorities, it seems reasonable to assume that the competent body/bodies would have to be independent of vested interests as defined by the European Trustmark Requirements in 2001.<sup>203</sup> Hence, the EU trustmark could be anchored at a suitable EU agency or, as suggested by a previous study,<sup>204</sup> at the network of European Consumer Centres (ECC-Net), which are co-sponsored by the European Commission and national governments.<sup>205</sup>

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<sup>202</sup> Consistently with the rest of this report, code of conduct is understood in a broad sense, to mean the underlying rules/requirements for traders to carry the trustmark, regardless of the title(s) of the relevant document(s) and their substantive scope. It is assumed as a necessary component of a trustmark in a similar way as third-party certification. Namely, it would be essential for an EU trustmark – if it is to address the consumer and his or her concerns – that it offers a straightforward and linguistically accessible set of rules that are guaranteed (by virtue of certification and enforcement) to be complied with by the trader using the trustmark.

<sup>203</sup> UNICE-BEUC e-Confidence project (2001). BEUC/X/179/2000.

<sup>204</sup> Cortés, P., 'Developing Online Dispute Resolution for Consumers in the EU: A Proposal for the Regulation of Accredited Providers', *International Journal of Law and Information Technology*, Vol. 19, No 1, pp. 1-28.

<sup>205</sup> The network ("ECC-Net") serves EU consumers shopping for goods and services on the European market, providing them with advice on their EU consumer rights and helping them with their disputes with traders in

As an alternative, the EU trustmark could be run in the form of a network, comparable to the Euro-Label, which is an 'umbrella trustmark' operated by national entities that share common visual features (see also Section 3.4.6). Euro-Label was set up with financial support from the European Community. The original aim of Euro-Label was to have the scheme implemented in all EU Member States.<sup>206</sup> A common challenge for such co-branding supported by the EU is that a set of requirements must be provided either by the EU or the organisation/consortium that is financially supported while providing for appropriate tools to ensure stakeholder participation and endorsement.

Another possibility of a 'lighter' institutional approach than a centralized EU-level process of certification would be to organise the EU trustmark for e-commerce in a decentralised manner with two layers, as is the case of Ecolabel: the requirements of the EU trustmark (certification criteria) could be established and updated at EU level by a Board composed of relevant stakeholders, whereas the certification itself could be decentralised and provided for by competent bodies at national level. Member States could notify competent bodies, and these could also be the existing trustmark organisations, if deemed appropriate for the purpose.

In terms of funding, the challenge seems to be two-fold. On the one hand, the launch of an EU-wide trustmark would require a considerable financial investment. On the other hand, the question is how to ensure a sustainable business model that is economically viable beyond seed money from public sources. While existing trustmarks at the national level have proven that trustmarks can work on a commercial basis (in some cases following some initial financial support from governments), there is a lesson to be learned from the fate of the WebTrader scheme that had been launched a decade ago with financial support from the European Commission.

WebTrader was operated by consumer organisations in eight Member States and was free of charge for traders. The UK branch was the most developed and handled over 8,000 applications, certified 2,700 traders and resolved more than 2,000 disputes on behalf of consumers. Despite such considerable success, the scheme had to close down, apparently due to a lack of funding.<sup>207</sup> Similarly, the joint consumer and business e-confidence initiative (ETR developed by BEUC and UNICE in 2001) never took off largely due to a lack of funding.<sup>208</sup>

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other EU countries. There is a European Consumer Centre in every EU country as well as in Norway and Iceland ([http://ec.europa.eu/consumers/ecc/index\\_en.htm](http://ec.europa.eu/consumers/ecc/index_en.htm)).

<sup>206</sup> Experience of Euro-Label shows that it is not easy to launch a cross-border scheme and in particular to get it through the start-up stage and keep it operational. As was mentioned in the case study (see 3.4.6), two of the founding organisations no longer conduct audits and certify traders.

<sup>207</sup> See TNO and Intrasoft, 2012, p. 37; OFT, 2007.

<sup>208</sup> "Because both sides realised that the benefits of a European trustmark would be more trust for the consumer and more credibility for the trader who complies with it. But at the same time the question that will always be there is the funding. Who provides the money? And how do you enforce the trustmark? These are the two questions where even now, ten years later, when we raise the question of trustmarks with the national consumer organisations, these are the first questions that everybody asks. So, fine, trustmark yes, a good idea, but funding and enforcement?" said the interviewee from BEUC.

**Table 7: Costs and sources of revenue for a trustmark**

Phase	Costs	Revenue
<b>Start-up phase (typically 0-24 months)</b>	Getting initiative started and establishing organisation (50%) Elaborating a code of conduct/ criteria for certification (15%) Launching the brand (23%) Other (12%)	Sponsorship Project subsidy Permanent subsidy
<b>Operational phase</b>	Organisational Marketing Enforcement	Project subsidy Permanent subsidy Sponsorship User fees Polluter pays and other

Source: ECP.NL and CRID, 2005, pp. 88-92.

As shown by Table 7 above, a previous study analysing the commonalities of trustmarks and web seals differentiated between costs for the start-up phase and operational costs while matching them with potential sources of income. At the time, figures provided by trustmark organisations suggested that they split into two groups: one with costs amounting to 50,000 Euro for the start-up phase and an equal amount for annual operational costs; and the other group with start-up costs and annual expenses exceeding 200,000 Euro.<sup>209</sup> It is highly likely that the funds needed for establishing an EU trustmark operating across Member States would be considerably higher. At a 2006 conference on the topic, a member of the UN Legal Group and the e-Confidence Core Group of the EU made an estimate of about 26 million Euro per year for 25 Member States, a figure that included expenses for marketing and promotion expenses of 1 million Euro per country and an additional 1 million Euro for the actual operational costs.<sup>210</sup>

In general, when establishing a genuine pan-EU trustmark, the initiative would send a strong signal to consumers and traders alike. It would offer an opportunity to foster EU identity. While competing with existing trustmarks, the EU trustmark could nonetheless benefit from best practice of existing trustmarks and learn from previous initiatives such as the WebTrader scheme and ETR.

All possible advantages aside, there are a number of major challenges attached to this policy option.

The credibility of the EU trustmark would to a large extent depend on measures and procedures for proper enforcement of the underlying code of conduct (see 6.2 and 6.3). In comparison to the other policy options, a genuine EU trustmark would have the most far reaching financial impact on the EU budget. Furthermore, this study collected evidence that traders themselves might be reluctant to use an EU trustmark.

<sup>209</sup> ECP.NL and CRID, 2005, p. 91 and 94.

<sup>210</sup> European Consumer Centre Denmark, *E-Commerce trustmarks in Europe*, Conference Report, 2006, p. 16.

The reasons mentioned in the interviews range from a focus on one national market and no intention of selling across borders to concerns regarding the administrative burden and the reliance on own reputation and branding, in particular in the case of big traders.<sup>211</sup>

To conclude, each of the described policy options have their strengths and weaknesses, specific policy instruments and legal, institutional and financial implications that might come with them. Therefore it is advisable to conduct a comprehensive feasibility study, including a cost-benefit analysis before launching a new pan-European trustmark.

Some main advantages and disadvantages of each of the above-described policy options are presented in Table 8 on the following page.

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<sup>211</sup> Interviews conducted by Civic Consulting (see Annex 2).

**Table 8: Overview of advantages and disadvantages of policy options**

	<b>Policy options</b>	<b>Brief description</b>	<b>Advantages</b>	<b>Disadvantages</b>
1	<b>No intervention</b>	Reliance on market forces to provide effective structures for trust-building in cross-border e-commerce	No additional costs or administrative burden for EU No interference with existing trustmark market	Likelihood to maintain status quo
2	<b>Encouraging self-regulation</b>	Facilitating collaboration of national trustmark providers at EU level to develop a self-regulatory model, e.g. elaborating a <i>de facto</i> standard for trustmarks or providing an approval scheme ( <i>de facto</i> accreditation)	EU demonstrating concern for the issue Proliferation of best practices with potential to increase consumer trust Limited financial impact for EU No liability issues for EU	Risk of low impact due to lack of legal certainty
3	<b>Co-regulation</b>	Developing European requirements for trustmarks in e-commerce either in form of EC Recommendation or European Standard (EN)	EU making a declaratory statement and raising awareness of the issue Written benchmark for best practice potentially enhancing performance of trustmark providers No liability issues for EU Limited financial impact for EU	Neither EC Recommendation nor EN are binding Risk of low impact Risk of out-datedness due to limited ability to adapt quickly to changes in the legal and Internet environment
4	<b>Establishing an EU trustmark accreditation scheme</b>	Defining general principles for EU accreditation of trustmark providers, including scope and preferably a visual indication of accreditation No direct link with individual traders who continue to be certified by trustmark providers	Clear EU commitment Guidance and supervision for trustmark provider Incentive to enhance performance of trustmark providers Potential to increase consumer trust	Considerable long-term investment Potential liability issues Potential discrimination of non-accredited trustmarks Gaps in coverage
5	<b>Establishing an EU-wide trustmark</b>	Defining general principles for establishing a pan-EU trustmark, including scope and graphical design of the trustmark Direct link between individual traders and certification body/bodies granting EU trustmark	Strong EU commitment Potentially fostering EU identity Control by EU institutions Eventually coverage across EU Potential to increase consumer trust in EU certified traders	Considerable long-term investment Reluctance of business and competition with existing trustmarks Potential liability issues Challenge of enforcement to ensure credibility

Source: Civic Consulting

## 6.2. Scope of an EU trustmark

The implementation of option 5, i.e. to establish an EU-wide trustmark, requires the definition of the scope of issues to be covered. This section elaborates on the substantive scope of coverage of the trustmark and procedural aspects, in other words: the promise of a possible EU trustmark. This is also relevant for the elaboration of requirements for an EU accreditation of trustmarks (option 4).

Since there are no requirements as regards the scope of a trustmark for e-commerce, a trustmark provider may choose either a narrow or broad scope as long as the trustmark and its marketing do not mislead consumers. In other words, if EU policy makers decide to introduce a trustmark at EU level, this would basically be akin to establishing a privately operated trustmark in the sense that the desired scope can be freely chosen.

In order to ensure transparency in general and to comply with the Unfair Commercial Practices Directive in particular, it must be clear what an EU trustmark promises. To this end, a code of conduct should be established in order to allow consumers to understand what they may expect from the EU trustmark. Providing such code in all official languages of the EU would be a significant improvement compared to the currently existing language barriers a (potential) cross-border consumer can easily encounter.

As discussed in Section 5 (and in Annex 1), there exists a comprehensive set of rules in EU law protecting consumers in e-commerce. A code of conduct for an EU-wide trustmark must comply with these requirements and must thus be based on EU law and national law to the extent that minimum harmonisation is used. For an EU-wide trustmark minimum harmonisation entails that the code of conduct must be in compliance with the law in all Member States (highest common denominator). An EU-wide code of conduct as the basis for an EU trustmark may not be defined at the level of the lowest common denominator as such code would not even be on par with the law in all Member States. Finally, to adapt the requirements of the trustmark according to the national rules that are based on minimum harmonisation (the approach currently used by trustmarks operating in several Member States) would contradict the idea of a European trustmark that signals a similar level of protection wherever it is used.

At the same time, it is important to note that an EU trustmark would have to guarantee a feature that is not already stipulated by law. According to the 2005 Unfair Commercial Practices Directive (Annex I, item 10), it is regarded as a misleading commercial practice to present rights to which consumers are entitled by law as a distinctive feature of the trader's offer. Hence, using and promoting a trustmark whose underlying code of conduct is only on par with legislative requirements must be considered as unfair commercial practice. However, it should be noted that, for example, certification, monitoring, enforcement and dispute resolution provided by a third party intrinsically offer benefits to the consumer. Therefore even if the substantive scope of a trustmark and the issues covered do not go beyond legal requirements, a trustmark entailing these procedural features would likely not be considered as being misleading because certification, monitoring, etc., fulfil the requirements for the trustmark to contain additional features (compared to the legal framework). In other words, the EU trustmark should provide extra benefits for the consumer, which may either be part of the substantive requirements or provided for by guarantees or consist in organised control and enforcement (procedural requirements/aspects) of the EU trustmark (see Section 6.3). This issue merits further legal analysis.

Ideally, the EU trustmark should also protect the consumer in case the trader decides not to honour an ADR decision or in case of bankruptcy, etc.

The elaboration of the requirements may be based on existing good practice at national level and use it as a starting point. Equally interesting as a source of reference, and as mentioned under policy options 2 and 3, are the European Trustmark Requirements (see Box 3 below). These non-binding requirements, drafted in 2001 by the European Consumers' Organisation BEUC in collaboration with the Confederation of European Business (at the time called UNICE),<sup>212</sup> were meant to offer "a basis for good online practice",<sup>213</sup> and evolved on the basis of the draft 'General principles for generic codes of practice for the sale of goods and services to consumers on the Internet'. Principles were specified regarding fairness and equity; added value; transparency; openness and non-discrimination; global dimension; social responsibility; compliance; complaint handling and dispute resolution; security; and data protection.<sup>214</sup> They also included provisions on how to organise a monitoring and enforcement system.

**Box 3: Issue areas covered by the European Trustmark Requirements<sup>215</sup>**

- High standard, measurability and purpose of trustmark schemes
- Transparency of trustmark schemes for consumers and businesses
- Accessibility and visibility of trustmark schemes for consumers and businesses
- Scope and content of trustmark schemes
  - Language
  - Commercial communications and fair marketing practices
  - Children
  - Pre-contractual information
  - Confirmation process
  - Contractual performance
  - Payment
  - Security
  - Data protection
  - Internal complaints management and dispute settlement for consumer complaints
- Operation of trustmark schemes
- Assessment of applicants for trustmark schemes
- Monitoring system
- Enforcement system Technical security

In addition, and despite the extensive amount of consumer protection under EU law, an EU trustmark would need to reflect that trustmarks are an essential part of the Internet's evolution, and therefore must continue to evolve to provide the necessary trust in areas not yet resolved.<sup>216</sup> The EU trustmark would therefore also need to accommodate the regular updating of its code of conduct.

<sup>212</sup> In some areas no agreement was reached and the standpoints of both organisations were incorporated in the final document, see UNICE-BEUC, 2001.

<sup>213</sup> UNICE-BEUC, 2001, p. 5.

<sup>214</sup> ECP.NL and CRID, 2005, p. 12 (Annex).

<sup>215</sup> UNICE-BEUC, 2001.

<sup>216</sup> Grayson, T., 'Evolution of the online trust-mark', 2002.

Several interviewees stressed the importance of inbuilt flexibility in order to meet the challenge of the fast-moving Internet environment as well as changes in relevant legislation.

Maybe one of the most important and missing features in EU legislation in the context of e-commerce is the consumer's access to justice. It should, however, be mentioned that Article 17 of the 2000 E-Commerce Directive addresses out-of-court dispute settlement. In the event of disagreement between an information society service provider and the recipient of the service, legislation may not hamper the use of out-of-court schemes, available under national law, for dispute settlement, including appropriate electronic means. However, this provision only ensures that legal requirements do not hamper the use of such schemes, but not their availability.<sup>217</sup>

In general, consumer complaints are characterised by a relatively weak plaintiff in a case concerning a subject matter of relatively low value. There is generally good procedural consumer protection because consumers may sue in their home court under national law. However, it is very rare that the cost of litigation in general and international litigation in particular compares to the value of the subject matter and the relatively weak position of the consumer. The best option for consumers is to avoid dubious traders, and in this respect the EU trustmark may help the consumers to identify serious or reputable traders. Serious traders generally have an interest in avoiding and settling possible disputes in order to maintain and improve credibility in the market. In the light of easy access to communication, a disappointed consumer may easily 'vent frustrations', for example in rating systems or on blogs, and thereby do substantial harm to the trader's reputation. There are basically two ways to protect the consumer in the event of a dispute, i.e. either by a trustmark providing money-back guarantees or by adhering to awards granted through ADR.

Alternative dispute resolution is an alternative to traditional litigation where consumers and traders may settle disputes. Decisions from ADR are generally not binding to the parties, but it may be a requirement of a trustmark that the trader adheres to decisions made by the ADR body. Although many ADR bodies exist in the EU, ADR is not available in all Member States for all types of claims.<sup>218</sup>

However, the current legal situation in this area is about to change because on 29 November 2011, the Commission proposed new legislation<sup>219</sup> (more specifically a directive)<sup>220</sup> for effective, impartial and transparent ADR schemes for all kinds of consumer disputes. Another proposal was for a regulation on consumer ODR,<sup>221</sup> i.e. an online platform for resolving consumer disputes about online purchases in another EU country. The two proposals complement each other. If adopted, the implementation of the directive will make quality ADR entities available across the EU for all consumer complaints related to contractual disputes arising from the sale of goods or the provision of services.

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<sup>217</sup> In the same provision bodies responsible for the out-of-court settlement of, in particular, consumer disputes are encouraged to operate in a way, which provides adequate procedural guarantees for the parties concerned. Member States shall encourage bodies responsible for out-of-court dispute settlement to inform the Commission of the significant decisions they take regarding information society services and to transmit any other information on the practices, usages or customs relating to electronic commerce (Article 17(3)).

<sup>218</sup> See Civic Consulting, 2009, and Civic Consulting, 2011.

<sup>219</sup> See Communication on alternative dispute resolution for consumer disputes in the Single Market, COM(2011) 791, and [http://ec.europa.eu/consumers/redress\\_cons/adr\\_policy\\_work\\_en.htm](http://ec.europa.eu/consumers/redress_cons/adr_policy_work_en.htm) in general.

<sup>220</sup> Proposal for a directive on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), COM(2011) 793 final, 2011/0373 (COD).

<sup>221</sup> Proposal for a Regulation on online dispute resolution for consumer disputes (Regulation on consumer ODR), COM(2011) 794 final, 2011/0374 (COD).

This is a prerequisite for the functioning of the ODR platform, which will be set up by the regulation.<sup>222</sup> According to article 5 of the proposed directive on ADR, Member States must ensure that disputes covered by the directive can be submitted to an ADR entity compliant with the requirements set out in the directive. ADR entities must, among other things, have a website enabling the parties to submit a complaint online. According to the proposal on ODR, the Commission is to establish a European ODR platform, which shall be an interactive website accessible free of charge in all official languages of the EU – thus a single point of entry for consumers and traders seeking out-of court resolution of disputes covered by the regulation. It could be envisaged that an EU trustmark or the set of requirements underlying an EU accreditation scheme for trustmarks provides link to these initiatives.

### 6.3. Enforcement of an EU trustmark

There are no general requirements for control and enforcement but generally it is advisable for an EU trustmark to provide for procedures for both initial and recurrent assessment as well as sanctions in case a violation of the code of conduct is identified. To this end, the EU trustmark could incorporate good practice as used and tested by national trustmark organisations, such as regular monitoring measures, annual audits of the websites/re-certification of online traders and random checks or mystery shopping exercises, as well as a cascade of robust sanctions in case of non-compliance, including a withdrawal of the trustmark.

In principle the adherence to a trustmark, in other words certification, can be based on self-assessment and self-declaration. However, it has been argued that self-assessment is “obviously unsuitable for generating an increased trust in the trustmark owner”.<sup>223</sup> Another relevant argument has been that the body which conducts the examination should in any case be independent from the trustmark provider due to the risk of bias because the trustmark provider will have a financial interest in a high number of paying subscribers.<sup>224</sup> Although third-party certification is currently not a prerequisite for the legal operation of a trustmark, it is part of the definition of a trustmark as used in the context of this study.

When laying out the principles for certification of the EU trustmark, it would be important to note that compliance with some requirements is much easier to control than with others. In contrast to compliance with information requirements that are generally easy to assess, the adherence to requirements concerning commercial practices and the processing of personal data seems rather difficult because it is cumbersome to establish what the trader actually does and some activities may be carried out only occasionally.

As an additional approach to the verification of sound business practices, the EU trustmark may facilitate a rating scheme where consumers may express their satisfaction with the particular trader. Such ratings may be of significant value to other consumers. However, it is important to note that such rating schemes tend to express consumer satisfaction (which is indeed important for other consumers) rather than compliance with legal requirements. If sufficient security mechanisms are not in place such rating schemes can also be prone to false or manipulated statements that in turn are likely to mislead consumers.

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<sup>222</sup> Communication on alternative dispute resolution for consumer disputes in the Single Market, COM(2011) 791, p. 5 f.

<sup>223</sup> Spletter, C., *The significance of trustmarks in B2C e-commerce*, 2003.

<sup>224</sup> *Ibid.*, p. 36.

The whole reason behind an EU trustmark would be to signal trustworthiness to consumers. In order to meet these expectations an EU trustmark involving third-party certification should also enforce its requirements in the sense that if a trader does not comply with the requirements the trader is barred from using the trustmark. If a violation is established, it may be laid down in the code of conduct that the trader will lose the right to use the mark provided the error is not corrected within a particular time limit. The EU trustmark may also establish a body that in the event of a dispute may decide whether the code of conduct is violated. As mentioned above, it also follows from Annex I to the 2005 Unfair Commercial Practices Directive<sup>225</sup> that it is regarded as a misleading commercial practice to claim to be a signatory to a code of conduct when the trader is not (item 1) and also to display a trust mark, quality mark or equivalent without having obtained the necessary authorisation (item 2). As a means of verifying that a particular trader has been awarded the EU trustmark, it is advisable to establish a system where the consumer may click on the trustmark and thereby be directed to the EU trustmark's website where he or she can verify that the trader has in fact been granted the EU trustmark.

To conclude, effective verification of compliance with and proper enforcement of the requirements hold the key to a trustworthy EU trustmark. Sloppy control and enforcement run the risk that a few 'bad companies' and scandals could jeopardize the reputation of the entire trustmark and of all the traders connected with it.

The example of the CE marking might illustrate the challenges linked to enforcement of an EU-wide scheme. The CE marking<sup>226</sup> is a sign of conformity with EU safety, health and environmental protection requirements and mandatory for products falling under the New Approach.<sup>227</sup> The manufacturer must make a declaration that the product has been assessed and is safe, which includes affixing the CE marking. Despite bearing the CE marking, however, many products circulating in the Internal Market are unsafe as statistics of the EU Rapid Alert System for Non-food Consumer Products (RAPEX) show. For example, in December 2011 Member States notified 222 unsafe products with 190 posing a serious risk; 50 notifications (26%) concerned toys and 15 notifications concerned electrical appliances and equipment (8%), both product groups for which the CE marking is mandatory.<sup>228</sup>

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<sup>225</sup> It should be mentioned that it follows from Article 10 of the Unfair Commercial Practices Directive that the directive does not exclude the control, which Member States may encourage, of unfair commercial practices by code owners and recourse to such bodies by the persons or organisations if proceedings before such bodies are in addition to the court or administrative proceedings referred to in that Article.

<sup>226</sup> The general principles governing the CE marking are set out in EU Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in: Official Journal of the EU, L 218/30ff, 13.08.2008.

<sup>227</sup> In the mid 1980s, the European Commission introduced new concepts into European law-making in order to push for the completion of the Internal Market by 1992. One of the cornerstones of the 1992 Internal Market project was the New Approach to Technical Harmonisation. Directives adopted under the New Approach were limited to the adoption of mandatory essential requirements while the technical solutions for meeting the essential requirements are laid down in harmonised standards. Conformity with the latter grants presumption of conformity with the safety legislation. See Fabisch, G., *Consumer Representation in Standards Setting*, Brussels, 2003, p. 8.

<sup>228</sup> Rapex statistics (December 2011), Brussels 20 January 2012, page 3, [http://ec.europa.eu/consumers/safety/rapex/docs/stat\\_12-2011.pdf](http://ec.europa.eu/consumers/safety/rapex/docs/stat_12-2011.pdf)

## 6.4. A mandatory or voluntary EU trustmark?

Trustmarks in the context of e-commerce have been discussed for many years as a means of assuring trust.<sup>229</sup> Trustmarks have also been linked to a more general discussion on self-regulation where the regulatory burden and the enforcement obligation is lifted from the government and public authorities. Assuming that business has an inherent interest in a functioning market, it may influence market norms and avoid hard regulation by introducing self-regulation ('soft law').

The concept of a mandatory EU trustmark could be considered paradoxical but there are no legal obstacles to introducing an EU trustmark for e-commerce that is mandatory in the same way as for instance the CE marking. As previously mentioned, the CE marking has to be affixed by the manufacturer to certain products. By placing the CE marking on the product, the manufacturer declares sole responsibility for the product's compliance with all EU legal requirements. It is the manufacturer's responsibility to verify that the product complies with the relevant legislation or – if necessary – to have it examined by a notified conformity assessment body for that purpose.<sup>230</sup> While bearing in mind that for the past 20 years consumers have tended to misunderstand the CE marking (see 6.6.1) and that it does not qualify as a trustmark in the sense that it is used in this study, theoretically a similar self-declaration scheme could be envisaged where the trader declares compliance with EU legislation, including in particular consumer protection legislation.<sup>231</sup> Such a scheme would need to be introduced by legislation. However, there are some caveats to be mentioned with respect to a mandatory trustmark.

In some areas of consumer protection law it has been considered problematic if traders market themselves or their products by emphasising adherence to legal requirements. As mentioned above, it is regarded as misleading under the Unfair Commercial Practices Directive to present rights given to consumers in law as a distinctive feature of the trader's offer. This is in line with the general ban on misleading commercial practices where the reasonable expectations of the average consumer should be compared to the actual quality of the commercial practice. It could easily be argued that a trustmark as a starting point should be considered a quality mark, which implies benefit for the consumer. Similarly, it follows from article 6(1) of Directive 1999/44 on certain aspects of the sale of consumer goods and associated guarantees that "a guarantee shall be legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising".<sup>232</sup> It has not yet been determined to what extent a trustmark may constitute a guarantee and if so, what conditions the use of it may imply. However, it is a given that guarantees should not mislead the consumer.<sup>233</sup>

Bearing this in mind, an EU trustmark whose underlying code of conduct is only on par with legal requirements can be legal if it is imposed by law *or* if the scheme provides something in addition to compliance with formal legal requirements, for instance procedural requirements such as certification, monitoring or enforcement by a third party.<sup>234</sup> Under the assumption that an EU trustmark would entail such procedural aspects, it would not have to be imposed by law.

<sup>229</sup> See e.g. Trzaskowski, 2006, p. 11.

<sup>230</sup> [http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/about-ce-marking/index\\_en.htm](http://ec.europa.eu/enterprise/policies/single-market-goods/cemarking/about-ce-marking/index_en.htm).

<sup>231</sup> It should be noted that this is provided as an illustrative example, but in fact the principle of self-declaration would not be in line with the way a trustmark is understood in the rest of the report, i.e. entailing a third-party certification.

<sup>232</sup> These provisions are not affected by Directive 2011/83 on consumer rights.

<sup>233</sup> See recital 21 and the Unfair Commercial Practices Directive.

<sup>234</sup> See Trzaskowski, 2006, p. 21.

A mandatory trustmark, however, could not be introduced without a legislative intervention. In short, it is difficult to answer unambiguously the question of whether a trustmark should be binding or voluntary. This is basically a matter of policy choice.

A consumer may reasonably infer that a trustmark is something earned (i.e. voluntary) rather than something required.<sup>235</sup> Similarly, in the interviews conducted for this study, the prevailing understanding of a trustmark was associated with it being voluntary. The other main option for creating an EU trustmark would be to design mandatory certification for online traders. As has been pointed out, this would not be welcomed by either of the interviewed stakeholders. Reasons could be sought in a number of challenges associated with a mandatory EU trustmark from a political and economic perspective (see also Section 6.6). For instance, the costs for market entry would become more demanding. This would be particularly important for small traders because with presumably scarce resources they would be forced to invest in a trustmark before being allowed to offer their products and services online.

Big retailers or third-party platforms, as indicated by some of the interviewees, might feel 'trapped' in case a mandatory trustmark was introduced because they have established a reputation over the years and do not depend on third-party certification and a trustmark to induce consumer trust. In the same context, some of the interviewees expressed concerns about a mandatory trustmark being abused by free-riders, which could easily undermine the credibility of the entire trustmark scheme.<sup>236</sup>

From a legal perspective, the implications of introducing such a trustmark would be in the need for the adjustment of the legislative framework, so as to impose the requirement to undergo the certification process on all online traders. Such a requirement could be contrary to Article 4(1) of the E-commerce Directive providing that "Member States shall ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect". It could be argued that mandatory certification for electronic commerce would be such an authorisation scheme. Article 4(2) of the E-commerce Directive stipulates certain exceptions to this prohibition of authorisation.<sup>237</sup> "Authorisation may be required if this applies to the same services provided by other than electronic means ... For example, a license to sell alcohol is also required in an electronic environment. Naturally also allowed and explicitly mentioned is prior authorisation based on Directive 97/13/EC on telecommunication services."<sup>238</sup> In case the option of a mandatory trustmark was pursued, this list of exceptions foreseen in the E-Commerce Directive might have to be extended.<sup>239</sup>

<sup>235</sup> Another expectation consumers might reasonably have would be that the bearer of a trustmark performs above the requirements of legislation, but as has been repeatedly pointed out, the existence of certification requirements and procedures could be taken to exceed compliance with legislation and offer consumers an extra aspect of protection.

<sup>236</sup> Hence appropriate measures for enforcing the code of conduct of an EU trustmark and adequate sanctions in case of non-compliance of a trader are deemed critical factors for the trustworthiness of the entire trustmark (see also Section 6.3).

<sup>237</sup> Article 4(2): Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at information society services, or which are covered by Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services(28).

<sup>238</sup> Lodder, A. R., 'European Union E-Commerce Directive - Article by Article Comments', in Guide to European Union Law on E-Commerce, Vol. 4.

<sup>239</sup> The highlighted possible challenge contained in Article 4(1) was to illustrate that a mandatory trustmark would diverge from the policy established in the E-commerce Directive. Clearly, legal framework can be changed.

Potential other legal reservations regarding a mandatory trustmark as well as fundamental questions about its design (e.g. for whom it could be mandatory and how compatible it could be with international trade obligations of the EU) would need to be further analysed.

From an institutional perspective, there would clearly be need for an institutional framework which can support the certification process as well as subsequent monitoring and the overall enforcement of the requirements associated with using the trustmark. There are different possibilities, from a centralised EU body to a decentralized network of national bodies, with these again possibly diverging from public accreditation and/or certification bodies to privately run schemes complying with a set of cross-border requirements.

If an obligation was introduced for Member States to establish accreditation and/or certification schemes and the trustmark was mandatory, it would take off quickly but would run the risk of ruining more than it creates. Namely, at present (and in the scenario of a voluntary trustmark) traders can choose to adhere to a trustmark's code of conduct and thus send a distinguishing signal to the market that they are credible partners in commercial exchange. If a mandatory trustmark was introduced, the trustmark would lose the distinguishing element and traders will have to develop new ways to send easily recognisable signals of their exceptionality. It should also be noted that the cost of such a mandatory scheme would be imposed on the Member State and/or the trader (and in the final instance on the tax payer and consumer). In the latter situation, i.e. with those wishing to conduct trade online being obliged to obtain a trustmark and pay for it, this could be regarded akin to an extra tax on e-commerce. This is another legal issue which should be analysed further before policy measures and the scope of legal intervention are decided upon.

The difference between a mandatory trustmark scheme and regulating in law is primarily a matter of enforcement. It is expected that all traders comply with the law, and enforcement is carried out in relatively random checks. A mandatory trustmark scheme could encourage more systematic checks as all traders should participate. It would be relatively easy to control whether traders are in fact certified. It is illegal for traders to use the trustmark if they are not certified (see Section 5.2 and Annex 1), and they risk a fine if they are caught. Furthermore, if traders do not comply with the law, they risk to lose their right to use the trustmark – but since the scheme (in this imagined scenario) is mandatory, the trader also runs the risk of not being able to operate in the market at all, which would be a very harsh sanction for some of the potentially breached legal requirements.

Considering all of this and that all national trustmarks for e-commerce floating in the Internal Market are voluntary schemes, it might not come as a surprise that none of the interviewees supported the concept of a mandatory EU trustmark for e-commerce.

## **6.5. Need for legal changes to the existing EU legal framework**

The current legal framework for e-commerce does not hinder the use of trustmarks. An EU trustmark, however, would have to comply with legal requirements as described in section 5 and Annex 1. The EU Directive for Electronic Commerce encourages trade, professionals and consumer associations and organisations to draw up codes of conduct at community level designed to contribute to the proper implementation of the substantive articles of the directive.

In order to establish an EU-wide trustmark for e-commerce, the trustmark provider must consider differences in substantive law. Even though there is a trend in the EU towards full harmonisation of consumer protection,<sup>240</sup> differences in national law continue to exist. These differences stem from the tradition of regulating consumer protection in 'minimum directives'.

The differences in national legislation can be overcome by adopting a code of conduct that satisfies requirements in all Member States (highest common denominator). This approach would also comply with the general requirement that a trustmark must provide 'more' consumer protection than is already provided by law. Another approach to deal with differences in national consumer protection law is to fully harmonise the areas in question. The Consumer Rights Directive<sup>241</sup> is such an attempt to mitigate some of the negative consequences of various levels of consumer protection deriving from minimum harmonisation. During the decision-making process for this directive, four other directives were reviewed with the view of simplifying and updating applicable rules, removing inconsistencies and closing unwanted gaps in the rules. The review resulted in amending two directives<sup>242</sup> and in replacing two directives<sup>243</sup> with the Consumer Rights Directive. This Directive lays down standard rules for the common aspects of distance and off-premises contracts, moving away from the minimum harmonisation approach of former EU Directives while allowing Member States to maintain or adopt national rules in relation to certain aspects.

However, if policy makers decided to introduce a mandatory EU trustmark for e-commerce, it would be necessary to introduce EU legislation imposing the requirement on traders and to examine potential conflicts with existing EU legal framework. It would be necessary to consider the requirement in item 10 listed in Annex I of the Unfair Commercial Practices Directive, which states that it is misleading to present rights given to consumers in law as a distinctive feature of the trader's offer. As mentioned above using a trustmark with an underlying code of conduct that only meets legal requirements can be interpreted as unlawful unless the use of the mark is required by law. But, as also previously mentioned, certification and enforcement can be considered as fulfilling the requirement for providing more than mere compliance with legislation.

Concerning which instruments could be suited for individual policy options, a European standard and a European recommendation have been discussed so far (in connection with Option 3: Co-regulation; see Section 6.1.3), none of which has a binding force. Options 4 and 5, on the other hand, are both regulatory. In the scenario of creating a new pan-European trustmark, the relevant policy instruments would be a directive and a regulation. According to Article 288 of the Treaty on European Union and the Treaty on the Functioning of the European Union, a regulation has general application, is binding in its entirety and directly applicable in all Member States.

<sup>240</sup> Miclitz, H-W., 'Jack is out of the Box – the Efficient Consumer-shopper', *Tidskrift Utgiven av Juridiska Föreningen i Finland*, Nos 3-4, p. 424f, 2009; Miclitz, H-W., 'The Targeted Full Harmonisation Approach: Looking Behind the Curtain', in G. Howells and R. Schulze (eds.) *Modernising and Harmonising Consumer Contract Law*, European Law Publishers, p. 47ff, 2009; and Howells, G. G., Miclitz, H-W. & Wilhelmsson, T. *European Fair Trading Law – The Unfair Commercial Practices Directive*, Ashgate Publishing, 2006, p 27f.

<sup>241</sup> Directive 2011/83/EU on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>242</sup> Directive 93/13 on unfair terms in consumer contracts and Directive 99/44 on certain aspects of the sale of consumer goods and associated guarantees.

<sup>243</sup> Directive 85/577 to protect the consumer in respect of contracts negotiated away from business premises and Directive 97/7 on the protection of consumers in respect of distance contracts.

A directive is binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaves the choice of form and methods to the national authorities.

For setting up an EU trustmark for e-commerce that was operated by an EU institution, a regulation is a more suitable legal instrument. The case of Ecolabel could serve as a model for the regulation establishing the EU trustmark. Accordingly, in terms of content, the regulation establishing an EU trustmark could cover: scope of the EU trustmark;<sup>244</sup> definitions; board responsible for elaborating and updating the requirements of the EU trustmark (certification criteria); rules governing the elaboration and updating of the requirements; rules governing the certification process (either centralised by a European competent body or decentralised by national competent bodies); enforcement, market surveillance and control of the use of the EU trustmark; promotion of the EU trustmark; relationship with existing trustmarks for e-commerce. If, on the other hand, the choice were to facilitate cooperation between national trustmarks or to organise national institutions to run accreditation schemes, a directive could be the appropriate legal instrument.

In general terms the choice of legal instrument follows the scale of the extent to which Member States are to carry out the intentions of the scheme. If an EU institution should award the trustmark, a regulation would be more fit for the purpose. If the approach was for the Member States to set up national institutions and ensure accreditation at national level, a directive would be suitable. One of the necessary preliminary considerations will have to be to what extent the legal instrument lays out procedural aspects.

Some other points which might have to be addressed – depending on the design and the scope of the trustmark – have been previously highlighted in this study, along with need for further legal analyses.

## **6.6. Challenges on the way to an EU trustmark**

### **6.6.1. Business and consumer awareness**

In addition to the challenges inherent in the setting-up of an EU accreditation scheme or an EU trustmark such as legal implications, proper enforcement and sustainable funding, awareness among consumers is generally considered a key factor for success. This was one of the findings of a 2005 study on trustmarks in the EU<sup>245</sup> and was confirmed by almost all stakeholders interviewed for the purpose of this study, ranging from trustmark organisations to representatives of traders, consumers and public authorities.

Without being known or understood, a trustmark is likely to miss the point. Hence the launch of an EU trustmark or of an EU accreditation scheme for trustmark providers accompanied by a new EU label ought to be complemented by a pan-European information campaign in order to bring the trustmark/label and its meaning to the attention of consumers and traders alike.

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<sup>244</sup> The regulation would define the scope but not the requirements of the EU trustmark. This would be the role of the Board composed of relevant stakeholders.

<sup>245</sup> ECP.NL and CRID, 2005.

Again, the case of the CE marking might serve as an illustrative example.<sup>246</sup> As previously mentioned, the CE marking<sup>247</sup> is a sign of conformity with EU safety, health and environmental requirements. The conformity assessment behind the CE marking, however, is complex and varies from product to product involving several modules ranging from internal production control to conformity assessment by a third party.<sup>248</sup> The average consumer is hardly in a position to know about the complicated design of the scheme. More importantly, the CE marking is often misunderstood by European consumers and misinterpreted as a mark of origin while many products bearing the CE marking have in fact been manufactured in China. In 2008, the EU institutions acknowledged the need for clarification regarding the CE marking and called upon the European Commission to “launch an information campaign targeted primarily at economic operators, consumer and sectoral organisations and sales personnel, which are the most appropriate channels for conveying information to consumers”.<sup>249</sup>

### 6.6.2. Market penetration

The analysis of existing trustmarks for e-commerce in the context of this study has revealed that typically it takes a minimum of five years from the inception of a trustmark until considerable dissemination in the market place is achieved. This is an important factor to be taken into account when considering the establishment of an EU trustmark. According to statistics provided by the Spanish trustmark Confianza Online for instance, it certified 88 traders in its first year of operation. The period 2004-2009 brought a small but steady growth that resulted in 355 traders certified in 2009; 2010 marked the turning point when the number of certified traders reached 801, with another big leap in 2011 when the number of traders reached 1,392 (in total more than 1,800 websites).<sup>250</sup>

The EU Ecolabel scheme can be used to illustrate the slowness of the process of market penetration of an EU label across Member States. According to the official website of the voluntary European-wide environmental scheme and as illustrated by Figure 5 below, it took almost two decades to reach substantive use of the label. Ten years into its existence, in 2002, only 128 licences had been awarded (a licence gives a company the right to use the EU Ecolabel logo for a specific product group). By the end of 2011, two decades since the launch of the label, 1,357 licences had been awarded; this corresponds to approx. 17,000 products<sup>251</sup> bearing the Ecolabel.

<sup>246</sup> It should be noted that the CE marking is used as an illustration for its mandatory character, but as has been emphasized throughout the report: it is not a trustmark. Similarities with a trustmark are limited due to at least two important aspects: consumers cannot click on a CE marking to get more information on what it stands for, whereas a trustmark as envisaged here would entail a link to more information (therefore consumers' understanding of what the trustmark stands for could be improved more easily than for CE marking). Secondly, a trustmark discussed in this report would address different areas of concern for consumers, among them some which have been found to be particularly impeding for e-commerce, such as whether a trader exists and whether it can be relied upon to the extent possible to deliver the ordered product.

<sup>247</sup> The general principles governing the CE marking are set out in EU Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93, in: Official Journal of the EU, L 218/30ff, 13.08.2008.

<sup>248</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, in: Official Journal of the EU, L 218/82, 18.3.2008. This Decision sets out common definitions and common conformity assessment procedures while drawing upon the New Approach.

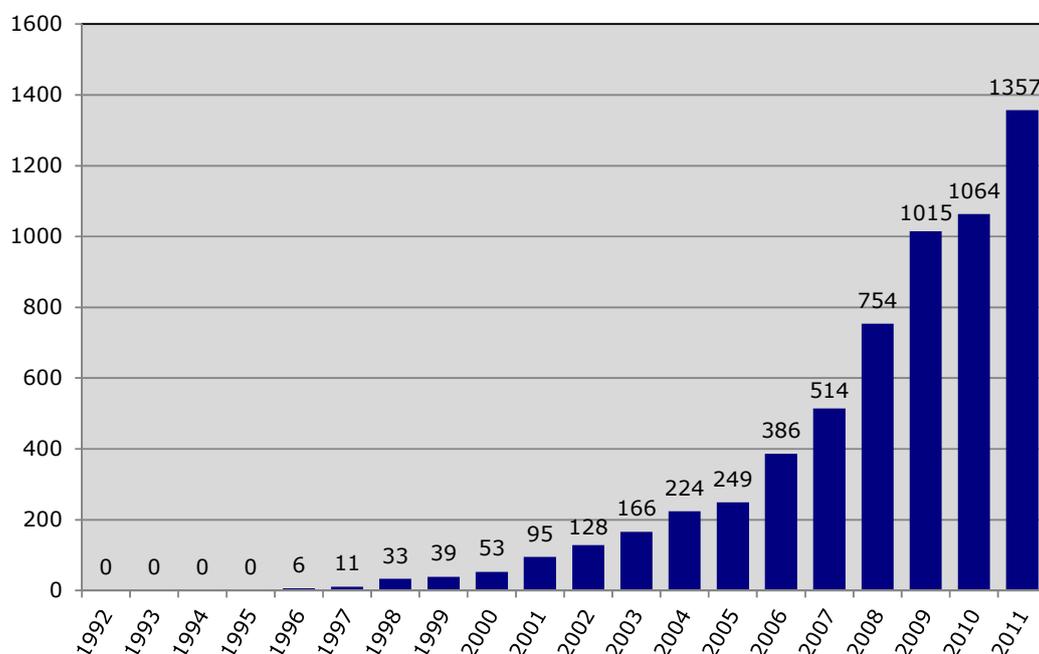
<sup>249</sup> Ibid., p. 85.

<sup>250</sup> Presentation provided by Confianza Online, p. 7.

<sup>251</sup> See <http://ec.europa.eu/environment/ecolabel/facts-and-figures.html>.

It is interesting to note that the EU Ecolabel is not equally distributed across Member States. According to official statistics for January 2012 published on the European Commission's website, Italy alone has issued more than 50% of the total number of granted EU Ecolabels, followed by France with 22% and the UK with 8%.

**Figure 5: Number of licences for the EU Ecolabel scheme 1992-2011**



Source: European Commission<sup>252</sup>

As previously discussed, imposing the trustmark as a prerequisite for online trading (i.e. making it mandatory for traders) would ensure that the trustmark takes off quickly. Traders already achieving a sizeable turnover online or with strong expectations that they would achieve it are in this scenario without another option but to obtain the trustmark (apart from exiting the online market which is not the primary option due to the online turnover). Thus, achieving market penetration would be significantly less doubtful in case of a mandatory trustmark than in the case of a voluntary one. However, this advantage would be coupled with a significant disadvantage – namely the increased cost of market entry would likely be prohibitive or at least deterrent for many SMEs. These are, as has been pointed out, precisely the market actors that might benefit from the use of a trustmark the most. In other words, the complete coverage of the online market (which is essentially what a mandatory pan-EU trustmark would be aimed at) would on the other hand diminish one of the main potential strengths/advantages of the trustmark.

Assuming a voluntary trustmark, market penetration could best be achieved by developing this policy measure with full sight of the complementary measures being pursued in the framework of the Digital Agenda (for example, possible synergies with the planned code of EU online rights<sup>253</sup> could be explored) as well as within other initiatives already on the EU agenda.

<sup>252</sup> See <http://ec.europa.eu/environment/ecolabel/facts-and-figures.html>.

<sup>253</sup> See 'Action 16: Code of EU online rights' at [http://ec.europa.eu/information\\_society/newsroom/cf/fiche-dae.cfm?action\\_id=174&pillar\\_id=43&action=Action%2016%3A%20Code%20of%20EU%20online%20rights](http://ec.europa.eu/information_society/newsroom/cf/fiche-dae.cfm?action_id=174&pillar_id=43&action=Action%2016%3A%20Code%20of%20EU%20online%20rights).

Imminent measures are anticipated with regard to ODR and ADR as well as in other areas. The higher the complementarity of all measures, the greater the likelihood of their efficiency and of achieving the desired impact.

## 6.7. Roadmap for an EU trustmark for e-commerce

In general, a roadmap can be defined as an implementation plan for a particular project or goal,<sup>254</sup> typically in the form of a table or chart listing work packages to be achieved before a set deadline. Building upon this concept, this section provides a description and an indicative overview of necessary steps and timelines (see Table 9 below) that need to be taken into account when considering the implementation of the policy options presented in this study. Whenever possible, estimates for timelines are based on statistics for the average duration of the activity in question while in some cases only a rough estimate is possible. In this respect, this roadmap diverges from a standard roadmap where the person in charge would set deadlines by which specific tasks or milestones have to be met in order to allow for a timely achievement of the overall objective.

The starting point for the possible roll-out of one of the policy options discussed in Section 6.1. is the policy decision on which of these options is to be implemented. Bearing in mind that in recent years the European Parliament repeatedly called upon the European Commission to launch an EU trustmark (see Section 1.2), the European Commission is in the process of exploring the current market situation and of identifying the next adequate steps. To this end, the European Commission has launched a number of activities, including:

- Analysis of the current situation and mapping of existing EU online trustmarks. A respective study was commissioned at the end of 2011 and the final report is expected in October 2012. Preliminary results for the tasks 1 & 2 of the assignment have been published on the European Commission's website;<sup>255</sup>
- Online invitation to comment on key features of a possible EU trustmark, for instance on accreditation, certification criteria and ADR;<sup>256</sup>
- The online contributions are to feed into a workshop dedicated to e-commerce held on 21 June 2012 in the framework of the Digital Agenda Assembly 2012;<sup>257</sup>
- Commitment to create a stakeholder platform by 2012 for EU online trustmarks, notably for retail websites.<sup>258</sup>

On the basis of the input and insight gained, the European Commission announced that it would make a policy decision by the end of 2012.<sup>259</sup> Even though the European Commission has already committed to establishing a stakeholder platform for EU online trustmarks, and hereby surpassed policy option 1, i.e. to do nothing and abstain from any intervention, the latter remains in principle a valid fall-back position.

<sup>254</sup> Oxford Online Dictionary.

<sup>255</sup> See <http://daa.ec.europa.eu/content/special/discussion-paper-trustmarks>.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A Digital Agenda for Europe. COM(2010) 245.

<sup>259</sup> [http://ec.europa.eu/information\\_society/newsroom/cf/fiche-dae.cfm?action\\_id=175](http://ec.europa.eu/information_society/newsroom/cf/fiche-dae.cfm?action_id=175).

However, in the event that the European Commission decides to use the envisaged stakeholder platform in order to deploy policy option 2, i.e. to encourage self-regulation, then the first logical step would be to ensure participation by all relevant stakeholders. It is highly likely that this would have to entail the provision of funding for the participation of non-industry stakeholders and probably 'seed money' for meetings, etc. Subsequent steps would depend on whether the aim is 1) to encourage the elaboration of a set of common requirements for trustmarks in terms of a *de facto* standard for the sector, or 2) to push for a stakeholder approval scheme for trustmark providers (*de facto* accreditation). In both cases the interest and commitment of business (also in financial terms), consumer organisations and other relevant non-industry stakeholder are a prerequisite and will influence the expected timeframe. As described in Section 6.1.2, a starting point for the elaboration of a robust set of requirements may be existing good practice at the national level as well as the European Trustmark Requirements elaborated in 2001. In case the ultimate goal is to establish a stakeholder approval scheme, it seems advisable to cater for the official endorsement and participation of the European Commission in order to enhance the credibility and acceptance of the scheme. Moreover, it would require the establishment of a secretariat for clerical tasks as discussed under 6.1.2. An optimistic estimate would be to achieve this within 12 months.

In case policy makers decide to embark on policy option 3, i.e. co-regulation, involvement of EU institutions in the process would become more demanding both in terms of administrative tasks and financial resources. This study explored two policy instruments that could be used to this end (see Section 6.1.3). While an EC Recommendation would be drawn up by the European Commission services, ideally based on best practice and stakeholder input, the European Standard would be elaborated by the European standards bodies – provided they accept a corresponding standardisation request by the European Commission (mandate) – and interested parties. It is assumed that the elaboration of an EC recommendation would take 12-24 months and the adoption of a European Standard possibly up to 36 months. The latter estimate is based on the fact that the European Standards Body CEN commits to elaborating a European Standard within three years.

In comparison, the decision for policy option 4 or 5, i.e. to regulate with the view of establishing either an EU accreditation scheme or a pan-EU trustmark based on EU legislation will be feasible only in the longer-term. A timeframe of approximately 4 years seems to be a realistic estimate for the entire process starting with the preparation of the Commission proposal and leading to the implementation of the adopted legislation. The European Commission has to follow certain procedures when preparing a legislative proposal, such as an impact assessment of the envisaged legislation including a public consultation (if required), all of which might easily take up to 1.5 years. On the basis of the proposal of the European Commission, the European Parliament together with the Council would define the scope of the EU trustmark and the principles for its implementation and enforcement as well as the implementing powers delegated to the European Commission (Art. 290 and 291 of the Treaty on the Functioning of the European Union). Once the legislation is adopted, the provisions for its implementation have to be elaborated, including a robust set of requirements, the institutional set-up and the establishment of an advisory body comprised of relevant stakeholders, which again might involve 1-2 years. In the case of option 5, i.e. the pan-EU trustmark, one would have to add another 5 years until sufficient market penetration of the new trustmark can be expected assuming the EU trustmark is designed as a voluntary scheme and sufficient marketing measures are taken.

To conclude, policy option 2 (encouraging self-regulation) might produce results in the short run, option 3 (co-regulation) rather in a mid-term perspective. However, both options seem feasible with reasonable administrative and financial implications for the EU budget. In contrast, options 4 and 5, i.e. legislation establishing an EU accreditation scheme for

trustmark providers or a pan-EU trustmark would require a comprehensive cost-benefit-analysis and, if adopted, considerable long-term planning and investment with a perspective of 4-9 years from the preparation of the respective legislation until dissemination and take-up in the market place. In both cases, the European Parliament and the Council as the co-legislators would play a significant role in defining the scope and principles for the EU accreditation scheme or the EU trustmark. However, enforcement of the requirements and awareness among consumers and traders alike are key factors for a credible and successful scheme. Stakeholder interest and participation as well as sustainable funding are paramount to the effective implementation of either of the policy options as it is to ensure the complementarity of policy measures and to therefore coordinate policy responses to the identified lack of consumer trust and the underperforming cross-border e-commerce.

**Table 9: Roadmap for introducing an EU trustmark for e-commerce**

Steps	Lead actor	Indicative timeline	Output	Explanatory note
<b>Option 1: NO INTERVENTION</b>				
N/A	N/A	N/A	N/A	Fall-back position
<b>Option 2: ENCOURAGING SELF-REGULATION</b>				
<b>Establishment of a stakeholder forum</b>	European Commission possibly with the endorsement of the European Parliament	Depends on interest and commitment of stakeholders		Not binding
<b>A Elaboration of common requirements</b> Several working meetings would likely be needed	Business and consumer organisations	Approx. 1 year	Common requirements agreed by business and consumer organisations ( <i>de facto</i> standard)	
<b>B Stakeholder approval of trustmarks</b> Several working meetings would likely be needed to elaborate the requirements for trustmarks and a secretariat set-up to administer the scheme	Business and consumer organisations with participation of EC	Approx. 1 year for establishment, thereafter a continuous activity	Approval scheme at EU level for trustmark providers run by stakeholders and endorsed by European Commission ( <i>de facto</i> accreditation)	

Steps	Lead actor	Indicative timeline	Output	Explanatory note	
<b>Option 1: NO INTERVENTION</b>					
<b>Option 3: CO-REGULATION</b>					
<b>A</b>	<b>EC Recommendation</b> <ul style="list-style-type: none"> <li>Organising input from stakeholders</li> <li>Drafting of the text</li> <li>Formal adoption according to the internal working procedure</li> </ul>	European Commission	Depends on work programme and internal decision-making; estimate: 1-2 years	EC Recommendation setting out requirements for trustmark providers based on best practice and stakeholder input	Declaratory instrument / not binding European Parliament might endorse the EC Recommendation
<b>B</b>	<b>European Standard (EN)</b> <ul style="list-style-type: none"> <li>EC submits mandate to European standards bodies</li> <li>European standard bodies decide whether to accept the mandate</li> <li>Elaboration and adoption according to internal rules of procedure of European standards bodies</li> </ul>	European standards bodies and interested parties (relevant stakeholders)	Up to 3 years <sup>260</sup>	EN, i.e. common European standards for trustmarks in e-commerce based on consensus among interested parties	EN is voluntary / not binding European Parliament might call upon trustmark organisations to use the EN

<sup>260</sup> The European Standards Body CEN commits itself to deliver a European Standard within 3 years: <http://www.cen.eu/boss>

Steps	Lead actor	Indicative timeline	Output	Explanatory note
<b>Option 1: NO INTERVENTION</b>				
<b>Options 4 and 5: ESTABLISHING AN EU TRUSTMARK ACCREDITATION SCHEME or AN EU TRUSTMARK</b>				
<b>Drafting and adoption of proposal by the EC, followed by a legislative procedure</b>	European Commission, European Parliament and the Council	Likely 2 years or more	Legislation establishing an EU trustmark accreditation scheme or an EU trustmark based on consensus between the European Parliament and the Council on the scope and principles for the EU trustmark or accreditation scheme	(If required) EC would conduct an impact assessment; adoption of legislation according to procedure laid down in the treaties and in line with the working procedures of EU institutions
<b>Implementation</b> <ul style="list-style-type: none"> <li>• Setting up an advisory board</li> <li>• Elaboration of requirements for EU accreditation / EU trustmark</li> <li>• Setting-up a competent body/competent bodies or entrusting an existing body/existing bodies with EU accreditation or administering the EU trustmark</li> <li>• Dissemination in the market</li> </ul>	European Commission, ideally in collaboration with an advisory body composed of all relevant stakeholders (preceded by the European Parliament and the Council delegating implementing powers to the European Commission)	Depending on the work programme and internal decision-making  Estimate: 1-2 years for the launch + 1-5 years for dissemination	Operational EU accreditation scheme or pan-EU trustmark	Accompanying measures required, such as a marketing/awareness-raising campaign  European Parliament and the Council could request reports on the progress of the implementation process

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## ANNEX 1: OVERVIEW OF THE MOST RELEVANT EU LEGISLATION

This annex contains a brief introduction to the most relevant EU legislation for the discussion on a possible EU trustmark. The directives are presented in chronological order (with the most recent piece of legislation listed first), focusing on the most important provisions in the context of this study.

### The 2011 Consumer Rights Directive<sup>261</sup>

The provisions of this Directive are particularly relevant for the customer rights provisions of any trustmark code of conduct. The purpose of this Directive is to harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders. The directive adopts a full harmonisation approach which entails that Member States may not maintain or introduce provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection. The Directive applies with some limitations to contracts concluded between a trader and a consumer, including contracts for the supply of water, gas, electricity, and district heating. However, if any provision conflicts with a provision of another Union act governing specific sectors, the provision of that other act is to prevail.

Chapter III deals with consumer information and right of withdrawal for distance and off-premises contracts, including in particular contracts concluded in the context of electronic commerce. Before the consumer is bound by a distance contract, the trader must provide the consumer with an extensive amount of information in a clear and comprehensible manner (Article 6(1)). This includes information about a) the main characteristics of the product, b) the identity of the trader, c) the geographical address at which the trader is established, e) the total price of the product, f) the cost of using the means of distance communication for the conclusion of the contract, g) the arrangements for payment, delivery, performance, h) details on right of withdrawal, l) a reminder of the existence of a legal guarantee of conformity for goods, m) conditions of after sale customer assistance, n) the existence of relevant codes of conduct, o) the duration of the contract, and t) available recourse to an out-of-court complaint and redress mechanism. The burden of proof regarding compliance with the information requirements is on the trader.

Article 8 of the Directive lays out rules concerning formal requirements for distance contracts. According to subsection 1, the trader must give the above-mentioned information or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. If a distance contract is to be concluded by electronic means and it places the consumer under an obligation to pay, the trader must make the consumer aware of some of this information before the consumer places an order. The trader must ensure that the consumer, when placing an order, explicitly acknowledges that the order implies an obligation to pay.<sup>262</sup> If the trader has not complied with this requirement, the consumer is not bound by the contract or order.

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<sup>261</sup> Directive 2011/83 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>262</sup> If placing an order entails activating a button or a similar function, the button or similar function shall be labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.

According to subsections 9 and 10 of Article 8, the Article is without prejudice to the provisions on the conclusion of e-contracts and the placing of e-orders set out in the 2000 E-Commerce Directive, and Member States may not impose any further formal pre-contractual information requirements for the fulfilment of the information obligations laid down in the 2011 Consumer Rights Directive.

If the contract is concluded through a means of distance communication which allows limited space or time to display the information, such as mobile commerce, the trader must provide, on that particular means prior to the conclusion of such a contract, at least the pre-contractual information regarding the main characteristics of the goods or services, the identity of the trader, the total price, the right of withdrawal, the duration of the contract and, if the contract is of indeterminate duration, and the conditions for terminating the contract.<sup>263</sup> According to Article 8(7) the trader is to provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the performance of the service begins. That confirmation shall include: a) all the information referred to in Article 6(1) unless the trader has already provided that information to the consumer on a durable medium prior to the conclusion of the distance contract; and b) where applicable, the confirmation of the consumer's prior express consent and acknowledgement.

Article 9 of the 2011 Consumer Rights Directive provides consumers with a general right of withdrawal. Consumer has a period of 14 days to withdraw from a distance contract, without giving any reason. The exercise of the right of withdrawal terminates the obligations of the parties to perform the contract or to conclude the contract, in cases where an offer was made by the consumer (Article 12). Member States may maintain existing national legislation prohibiting the trader from collecting the payment from the consumer during the given period after the conclusion of the contract. If the trader has not provided the consumer with the information on the right of withdrawal as required by Article 6(1), the withdrawal period will expire 12 months from the end of the initial withdrawal period or 14 days after the trader has provided the consumer with the information (Article 10). Annex I to the directive contains a model instruction on withdrawal and a model withdrawal form.

Chapter IV stipulates a number of other consumer rights concerning delivery (Article 18), fees for the use of means of payment (Article 19), and passing of risk (Article 20). Unless the parties have agreed otherwise on the time of delivery, the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract. Traders may not charge consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means. In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods passes to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods.<sup>264</sup>

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<sup>263</sup> Article 8(4). The other information referred to in Article 6(1) shall be provided by the trader to the consumer in an appropriate way in accordance with paragraph 1 of this Article.

<sup>264</sup> However, the risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.

## The 2006 Services Directive<sup>265</sup>

This Directive is particularly relevant for the information about the trader provisions, and available means of redress of any trustmark code. This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services. The Directive applies to services supplied by providers established in a Member State, but with some exceptions such as financial services, audiovisual services, and gambling activities. Even though the main focus of this directive is the trader's rights, Article 21 deals with assistance for recipients on points of single contact, where Member States must ensure that recipients can obtain a) general information on the requirements applicable in other Member States relating to access to, and exercise of, service activities, in particular those relating to consumer protection, b) general information on the means of redress available in the case of a dispute between a provider and a recipient, c) the contact details of associations or organisations, including the centres of the European Consumer Centres Network, from which providers or recipients may obtain practical assistance.

Article 22 of the directive deals with information on providers and their services. The service provider must make available extensive information to the recipient. This information includes a) the name of the provider, his legal status and form, the geographic address at which he is established and details enabling him to be contacted rapidly and communicated with directly and, as the case may be, by electronic means, b) name and registration number in trade or other similar public registers, c) information about relevant authorisation schemes, d) VAT number, f) general conditions and clauses used by the provider, h) the existence of after-sales guarantees that are not imposed by law, i) the price of the service, j) the main features of the service, and k) insurance or guarantees.<sup>266</sup> The information requirements laid down in the directive are in addition to requirements already provided for in Community law and do not prevent Member States from imposing additional information requirements applicable to providers established in their territory.

At the recipient's request, service providers must supply certain additional information to the recipient Article 22(3). This information include: a) the method for calculating the price where the price is not pre-determined by the provider for a given type of service, the price of the service or, if an exact price cannot be given, b) as regards the regulated professions, a reference to the professional rules applicable in the Member State of establishment and how to access them, c) information on their multidisciplinary activities and partnerships which are directly linked to the service in question, d) any codes of conduct to which the provider is subject and the address at which these codes may be consulted by electronic means, specifying the language version available; e) where a provider is subject to a code of conduct, or member of a trade association or professional body which provides for recourse to a non-judicial means of dispute settlement, information in this respect. The provider shall specify how to access detailed information on the characteristics of, and conditions for, the use of non-judicial means of dispute settlement.

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<sup>265</sup> Directive 2006/123 on services in the Internal Market.

<sup>266</sup> Member States shall ensure that the information referred to in paragraph 1, according to the provider's preference: a) is supplied by the provider on his own initiative; b) is easily accessible to the recipient at the place where the service is provided or the contract concluded; c) can be easily accessed by the recipient electronically by means of an address supplied by the provider; d) appears in any information documents supplied to the recipient by the provider which set out a detailed description of the service he provides.

## The 2005 Unfair Commercial Practices Directive<sup>267</sup>

Some of the provisions of this Directive are relevant both to the operation of the a trustmark and to adhering traders' codes of conduct. The purpose of this Directive is to harmonise the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' economic interests. The Unfair Commercial Practices Directive prohibits unfair business-to-consumer commercial practises in the European Union.<sup>268</sup> The principles for determining whether a commercial practise is unfair are laid down in Chapter 2 of the Directive. In article 5(5) the Directive refers to Annex I, which contains a list of 31 commercial practises that are regarded as unfair in all circumstances ("per se prohibitions"), i.e., without a case-by-case assessment under the provisions of articles 5 to 9 of the Directive.<sup>269</sup> To the extent that a particular commercial practise does not appear on this blacklist, it must be examined under the more general rules.

According to the general prohibition of the Directive (Article 5(2)), a commercial practise is unfair if it is (1) contrary to the requirements of professional diligence and (2) is likely to materially distort the economic behaviour of an average consumer. The ban on unfair commercial practises thus rests on two legs: "professional diligence" and "economic distortion". It falls within the purpose of advertising and marketing to influence the economic behaviour of consumers, and it follows from the wording of the article that it is legal to distort the economic behaviour as long as the distortion is not "material" or as long as the practise is not contrary to the requirements of "professional diligence".

Section 1 (articles 6 and 7) and 2 (articles 8 and 9) of Chapter 2 respectively define misleading and aggressive commercial practises. Annex I and the articles concerning misleading and aggressive commercial practises are *lex specialis* to the general prohibition. This entails that the general prohibition is to be applied only if the commercial practise is not mentioned in Annex I, and it is not found to be misleading or aggressive under the specific provisions. The vast majority of the practises which would be defined as unfair under the general prohibition are expected to fall within these two categories. Both specific bans incorporate the conditions of the general prohibition, which means that if a commercial practise is found to be either misleading or aggressive, it will automatically be unfair, without any further reference to the conditions contained in article 5. The "materiality" condition is captured by the requirement in articles 6 and 8 that the commercial practise "thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise".<sup>270</sup>

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<sup>267</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

<sup>268</sup> See in general Jan Trzaskowski, 'Towards a Common European Marketing Law'(2011) EUI Working Papers Series, Law 2010/21 and Jan Trzaskowski, 'Behavioural Economics, Neuroscience, and the Unfair Commercial Practices Directive' (2011) *Journal of Consumer Policy*, vol. 34, number 3.

<sup>269</sup> See also combined cases C-261/07 and C-299/07 (VTB-VAB NV v Total Belgium NV and Galatea BVBAV Sanoma Magazines Belgium NV, respectively), paragraph 56, and case C-304/08 (Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V. v Plus Warenhandelsgesellschaft GmbH), paragraph 45.

<sup>270</sup> Proposal for a Directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the Internal Market and amending Directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive), COM (2003) 356, 2003/0134/COD, see, e.g., paragraphs 52, 56, and 57.

As part of the ban on misleading commercial practices there is in Article 7 a provision on misleading omissions under which a commercial practice is regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision.<sup>271</sup> Information requirements established by Community law in relation to commercial communication including advertising or marketing are regarded as material (Article 7(5)). In this context there are certain requirements that apply to an "invitation to purchase".<sup>272</sup> In the case of an invitation to purchase, there are requirements to provide information to the extent it is not already apparent from the context. This requirement comprises informations about a) the main characteristics of the product, b) the geographical address and the identity of the trader, c) the price inclusive of taxes, d) the arrangements for payment, delivery, performance and the complaint handling policy ("if they depart from the requirements of professional diligence"), e) right of withdrawal.

It should be noted that the Unfair Commercial Practices Directive co-exists with the 2006 Misleading Advertising Directive.<sup>273</sup> The purpose of this directive is to protect traders against misleading advertising. Even though the primary aim is to protect consumers, some articles do also as a derivative effect protect consumers – and does under all circumstances add to the requirements imposed on traders. This is in particular true for the provisions on comparative advertising in Article 4 which lay down the conditions under which comparative advertising is permitted. There are eight requirements, including that such comparative advertising may not be misleading within the meaning of this directive and the relevant articles in the Unfair Commercial Practices Directive.

#### The 2002 E-Privacy Directive<sup>274</sup>

This Directive is particularly relevant with regard to the potential inclusion of the issue of spam in the code of conduct underlying a trustmark. The Directive harmonises provisions concerning the processing of personal data in the electronic communication sector. Of particular interest in this context is Article 13 concerning unsolicited communications. It provides that the use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) and electronic mail for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent. Unsolicited communications for purposes of direct marketing, in cases other than those are not allowed either 1) without the consent of the subscribers concerned or 2) in respect of subscribers who do not wish to receive these communications. The choice between these options to be determined by national legislation.

According to the directive, it is prohibited to send electronic mail for purposes of direct marketing when the identity of the sender is disguised or concealed. Such e-mails must also have a valid address to which the recipient may send a request that such communications cease.

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<sup>271</sup> "... and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise".

<sup>272</sup> Article 7(4). An invitation to purchase is defined as "a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase."

<sup>273</sup> Directive 2006/114 concerning misleading and comparative advertising (codified version).

<sup>274</sup> Directive 2002/58 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) as amended by directive 2009/136.

An important exception to the general ban on unsolicited electronic communication is found in Article 13(2) which states that where a natural or legal person obtains from its customers their electronic contact details for electronic mail, in the context of the sale of a product or a service, the same natural or legal person may use these electronic contact details for direct marketing of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details when they are collected and on the occasion of each message in case the customer has not initially refused such use.

### The 2000 E-Commerce Directive<sup>275</sup>

This Directive is particularly relevant for the provisions in the code of conduct underlying a trustmark concerning information requirements. It seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services (e.g. commercial websites) between the Member States. It approximates certain national provisions on information society services relating to the internal market. These topics include the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, codes of conduct, out-of-court dispute settlements, court actions and cooperation between Member States.

Article 5 requires some general information to be provided, in addition to other information requirements established by Community law, by the provider of an information society service. This information includes a) the name of the service provider, b) the geographic address at which the service provider is established, c) the details of the service provider, including his electronic mail address, d) details on registrations in a trade or similar public register, e) possible authorisation schemes, f) certain information for regulated professions, and g) VAT numbers. In addition to other information requirements established by Community law, providers of information society services must, when they refer to prices, ensure that these are indicated clearly and unambiguously and, in particular, must indicate whether they are inclusive of tax and delivery costs (Article 5(2)).

Section 2 of the directive deals with commercial communications, and provides that commercial communications which are part of, or constitute, an information society service comply at least with the following conditions: a) the commercial communication shall be clearly identifiable as such, b) the natural or legal person on whose behalf the commercial communication is made shall be clearly identifiable, c) promotional offers, such as discounts, premiums and gifts, must be clearly identifiable as such, and the conditions which are to be met to qualify for them shall be easily accessible and be presented clearly and unambiguously, and d) promotional competitions or games must be clearly identifiable as such, and the conditions for participation shall be easily accessible and be presented clearly and unambiguously.

Unsolicited commercial communication is primarily regulated in the 2002 E-Privacy Directive mentioned above, but Article 7 of the 2000 E-Commerce Directive provides that unsolicited commercial communication by electronic mail – to the extent it is legally sent – is to be identifiable clearly and unambiguously as such as soon as it is received by the recipient. Member States must further take measures to ensure that service providers undertaking unsolicited commercial communications by electronic mail consult regularly and respect the opt-out registers in which natural persons not wishing to receive such commercial communications can register themselves.

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<sup>275</sup> Directive 2000/31 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

The directive contains certain provisions relating to information that must be provided in the contracting process in electronic commerce.<sup>276</sup> It is provided in Article 10 that in addition to other information requirements established by Community law, certain information must be given by the service provider clearly, comprehensibly and unambiguously and prior to the order being placed by the recipient of the service. This information includes a) the different technical steps to follow to conclude the contract, b) whether or not the concluded contract will be filed by the service provider and whether it will be accessible, c) the technical means for identifying and correcting input errors prior to the placing of the order, d) the languages offered for the conclusion of the contract. Article 10(3) provides further that contract terms and general conditions provided to the recipient must be made available in a way that allows him to store and reproduce them.

Article 11 provides that in cases where the recipient of the service places his order through technological means, the service provider has to acknowledge the receipt of the recipient's order without undue delay and by electronic means. The service provider must also make available appropriate, effective and accessible technical means allowing the recipient of the service to identify and correct input errors, prior to the placing of the order.<sup>277</sup>

Out-of-court dispute settlement is dealt with in Article 17 which provides that Member States must ensure that, in the event of disagreement between an information society service provider and the recipient of the service, their legislation does not hamper the use of out-of-court schemes, available under national law, for dispute settlement, including appropriate electronic means. In addition Member States are to encourage bodies responsible for the out-of-court settlement of to operate in a way which provides adequate procedural guarantees for the parties concerned.

#### The 1999 Consumer Sales Directive<sup>278</sup>

The provisions of this Directive are particularly relevant for any guarantees provided by the trader and for the guarantees implied by the code of conduct underlying a trustmark. The purpose of this Directive is to harmonise laws, regulations and administrative provisions on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market. The directive establishes details for the main principles that the seller must deliver goods to the consumer which are in conformity with the contract of sale (Article 2(1)), and that the seller is liable to the consumer for any lack of conformity which exists at the time the goods were delivered (Article 3(1)). Member States may adopt or maintain more stringent provisions in the field covered by this Directive, in order to ensure a higher level of consumer protection (Article 8(2)).

Article 6 deals with guarantees associated with the sale of consumer goods. A guarantee is defined as "any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising".<sup>279</sup> A guarantee is legally binding on the offerer under the conditions laid down in the guarantee statement and the associated advertising.

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<sup>276</sup> This does not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

<sup>277</sup> This does not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

<sup>278</sup> Directive 99/44 on certain aspects of the sale of consumer goods and associated guarantees.

<sup>279</sup> Article 1(2)(e).

The guarantee must a) state that the consumer has legal rights under applicable national legislation governing the sale of consumer goods and make clear that those rights are not affected by the guarantee, and b) set out in plain intelligible language the contents of the guarantee and the essential particulars necessary for making claims under the guarantee, notably the duration and territorial scope of the guarantee as well as the name and address of the guarantor. On request by the consumer, the guarantee is to be made available in writing or feature in another durable medium available and accessible to him.

### The 1995 Data Protection Directive<sup>280</sup>

This directive is fundamental for provisions in the code of conduct related to the trader's processing of personal data. In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data. The directive sets out in Article 6 some general principles relating to data quality, including that data must be a) processed fairly and lawfully, b) collected for specified, explicit and legitimate purposes, c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed, d) accurate, and e) kept in a form which permits identification of data subjects for no longer than is necessary. Articles 7 and 8 establish criteria for legitimate processing of personal data and the processing of special categories of data, respectively. Personal data may inter alia be processed if the data subject has unambiguously given his consent or the processing is necessary for the performance of a contract to which the data subject is party. The directive also contains rules on the data subject's right of access to data (Section V), the data subject's right to object (Section VII), and confidentiality and security of processing personal data (Section VIII).

Similar to the e-commerce directive, there are provisions on codes of conduct in which the Member States and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper implementation of the national provisions adopted by the Member States pursuant to this Directive, taking account of the specific features of the various sectors (Article 27). Draft Community codes, and amendments or extensions to existing Community codes, may be submitted to the Working Party established pursuant to Article 29. This Working Party is to determine, among other things, whether the drafts submitted to it are in accordance with the national provisions adopted pursuant to this Directive.

For good measure it should be mentioned that the Commission on 25 January 2012 proposed reform of the 1995 data protection rules in particular to strengthen online privacy rights and boost Europe's digital economy.<sup>281</sup>

### The 1993 Unfair Contract Terms Directive<sup>282</sup>

This Directive is relevant for the provisions in the code of conduct relating to the trader's general contract terms. The purpose of the Directive is to harmonise the laws, regulations and administrative provisions of unfair terms in consumer contracts. This directive sets out rules for unfair contract terms that have not been individually negotiated. A term is always regarded as not individually negotiated where it has been drafted in advance and the consumer therefore has not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

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<sup>280</sup> Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

<sup>281</sup> See in general [http://ec.europa.eu/justice/newsroom/data-protection/news/120125\\_en.htm](http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm).

<sup>282</sup> Directive 93/13 on unfair terms in consumer contracts.

Such terms are regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer (Article 3(1)). The Annex to the directive contain an indicative and non-exhaustive list of terms which may be regarded as unfair. Member States may adopt or retain more stringent provisions in the area covered by this Directive, in order to ensure a maximum degree of protection for the consumer (Article 8).

## **ANNEX 2: LIST OF INTERVIEWS**

Interviews with the following organisations were conducted for the present study:

- BusinessEurope (13 April 2012)
- Confianza Online (12 April 2012)
- Danish Consumer Ombudsman (12 April 2012)
- DG INFSO (20 April 2012)
- eBay (4 May 2012)
- e-maerket (17 April 2012)
- EuroCommerce (3 May 2012)
- Euro-Label (12 April 2012)
- European Multi-channel and Online Trade Association (4 May 2012)
- Herrensokken (19 April 2012)
- Holland Holding (2 May 2012)
- IMRG (16 April 2012)
- Initiative D21 (23 April 2012)
- OFT (27 April 2012, written response)
- OTTO (15 May 2012)
- Tesco (4 May 2012)
- The European Consumers' Organisation (4 April 2012)
- Thuiswinkel.org (3 April 2012)
- Trusted Shops (12 April 2012)

## ANNEX 3: TRUSTMARKS IDENTIFIED IN 2006 AND 2012

The following table was compiled within an ongoing study commissioned by DG INFSO:<sup>283</sup>

Country	2006	2012	URL	Logo
Austria	Guetezeichen (Euro-label Austria)	Still active	<a href="https://www.guetezeichen.at/">https://www.guetezeichen.at/</a>	
	--	Sicher Einkaufen, set up in 2000	<a href="http://www.sicher-einkaufen.at/">http://www.sicher-einkaufen.at/</a>	
Belgium	BeCommerce	Still active	<a href="http://www.becommerce.be/nl">http://www.becommerce.be/nl</a>	
Bulgaria	Not included in study	--		
Czech Republic	Certified shops (APEK)	Still active	<a href="http://www.apek.cz/">http://www.apek.cz/</a>	
	SOAP	Still active	<a href="http://www.spotrebitele.info/sluzbypropodnikatele/saop.html">http://www.spotrebitele.info/sluzbypropodnikatele/saop.html</a>	
Cyprus	--	--		
Denmark	e-Mark	Still active	<a href="http://www.emaerket.dk/">http://www.emaerket.dk/</a>	
Estonia	--	--		
Finland	--	ASML's trustmark : Reilun Pelin Jäsen*	<a href="http://www.asml.fi/en/rules_and_regulations/">http://www.asml.fi/en/rules_and_regulations/</a>	
France	L@belsite	Not active anymore		
	Fia-net	Still active*	<a href="http://www.fia-net.com/">http://www.fia-net.com/</a>	

<sup>283</sup> TNO & Intrasoftware, *EU Online Trustmarks: Building Digital Confidence in Europe, SMART 2011/ 0022, Draft Interim Report, Task 1 & 2, 2012.*

	--	Fevad (Charte Qualité)*	<a href="http://www.fevad.com/reglementation/charte-de-qualite">http://www.fevad.com/reglementation/charte-de-qualite</a>	
Germany	TrustedShops	Still active	<a href="http://www.trustedshops.com/">http://www.trustedshops.com/</a>	
	Internet Privacy Standards	Renamed into EuroPrise	<a href="https://www.european-privacy-seal.eu/">https://www.european-privacy-seal.eu/</a>	
	Tuev Sued Safer Shopping	Still active	<a href="http://www.safer-shopping.de/">http://www.safer-shopping.de/</a>	
	EHI Geprüfter Online-Shop (Euro-label Germany)	Still active	<a href="http://www.shopinfo.net/">http://www.shopinfo.net/</a>	
	EHI bhv label	Merged with Euro-label		
Greece	Epam	Still active*	<a href="http://www.enepam.gr/">http://www.enepam.gr/</a>	
Hungary	eQ recommendation	Still active*	<a href="http://ivsz.hu/">http://ivsz.hu/</a>	
	--	Áruküldők *	<a href="http://www.arukuldok.hu/">http://www.arukuldok.hu/</a>	
Iceland	--	--		
Ireland	EIQA W-mark (certification body)	Still active, but it is not an eCommerce trustmark	<a href="http://www.eiqa.com/">http://www.eiqa.com/</a>	
	Segala trustmark	Still active	<a href="http://segala.com/">http://segala.com/</a>	
Italy	Euro-label Italy	Not active anymore		
Latvia	--	--		
Lithuania	--	eShops, set up in 2011	<a href="http://www.eshops.lt/">http://www.eshops.lt/</a>	
Luxembourg	E-commerce certified	Not active anymore		

Malta	Euro-label Malta	Replaced by eShops Malta in 2011	<a href="http://eshop.mca.org.mt/">http://eshop.mca.org.mt/</a>	
The Netherlands	Thuiswinkel Waarborg	Still active	<a href="http://www.thuiswinkel.org/leden">http://www.thuiswinkel.org/leden</a>	
	--	Qshops	<a href="https://www.qshops.org/">https://www.qshops.org/</a>	
	--	MKB OK (since 2005)	<a href="http://www.mkbok.org/index.htm">http://www.mkbok.org/index.htm</a>	
	--	Webshop Keurmerk (since 2001)	<a href="http://www.keurmerk.info/">http://www.keurmerk.info/</a>	
Norway	Nsafe	Not active anymore		
	EBtrust	Not active anymore		
	--	Trygg e-Handel, set up in 2011	<a href="http://www.tryggehandel.no/">http://www.tryggehandel.no/</a>	
Poland	E-Commerce ILim Certyfikat (Euro-label Poland)	Still active	<a href="http://www.ilim.poznan.pl/en/index.php">http://www.ilim.poznan.pl/en/index.php</a> <a href="http://www.euro-label.com/pl/">http://www.euro-label.com/pl/</a>	
	Trusted Store	Still active	<a href="http://www.sklepy24.pl/">http://www.sklepy24.pl/</a>	
Portugal	PACE	Not active anymore		
		Confianza Online, set up in 2009	<a href="http://www.acepi.pt/index.php">http://www.acepi.pt/index.php</a>	
Romania	Not included in study	Euro-label Romania	<a href="http://www.protectia-consumatorilor.ro/">http://www.protectia-consumatorilor.ro/</a>	
		Trusted.ro	<a href="http://www.trusted.ro/">http://www.trusted.ro/</a>	
Slovakia	--	--		
Slovenia	--	--		
Spain	Confianza Online	Still active	<a href="http://www.protectia-consumatorilor.ro/">http://www.protectia-consumatorilor.ro/</a>	
	AENOR	Not an eCommerce trustmark	<a href="http://www.en.aenor.es/aenor/inicio/home/home.asp">http://www.en.aenor.es/aenor/inicio/home/home.asp</a>	
	AGACE	Not active anymore		
	IQUA	Not active anymore		
	EWEB	Not active		

		anymore		
	Euro-label Spain	Not active anymore		
Sweden	--	Trygg eHandel, Set up in 2007	<a href="http://www.tryggehandel.se/">http://www.tryggehandel.se/</a>	
	--	Rådet för E-handelscertifiering, set up in 2008	<a href="http://www.ehandelscertifiering.se/">http://www.ehandelscertifiering.se/</a>	
UK	TrustMark	Still active, Not an e-commerce trustmark	<a href="http://www.trustmark.org.uk/">http://www.trustmark.org.uk/</a>	
	WebtraderUK	Not active anymore		
	TrustUK	Not active anymore		
	SafeBuy	Still active	<a href="http://www.safebuy.org.uk/">http://www.safebuy.org.uk/</a>	

\* Is not an eCommerce trustmark, but an association of Internet retailers that has a code of conduct



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