

EU online consumer policy: protection vs empowerment

Antonio Manganelli

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Agenda:

- Consumer policy in EU
- Digitalisation and consumers
- E-commerce
- Provisions for digital consumers
- Protection vs Empowerment



Questions & Answers

Consumers Policy in EU

Over the last years the EU has paid great attention to **consumer issues**. It has developed a comprehensive consumer policy

Under **Article 169 TFEU**, the Union is to contribute to the protection of consumers. Furthermore, **trustful, mobile and empowered consumers** are a condition for the substantial establishment of an **EU-wide single market without any internal obstacles** to the free movement of goods and services

Art 169 TFEU: "in order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests."

Consumers Policy in EU /2

The EU developed **cross-sectoral consumer legislation** and sectoral ones.

The main cross-sectoral acts comprise the **Directive on unfair contract terms**, adopted in 1993, the **Directive on unfair commercial practice**, adopted in 2005 , and **Consumer rights directive**, adopted in 2011, as amended in 2019 by the **Directive on better enforcement and modernisation of EU consumer protection**

The horizontal directives are considered central instruments to achieve fairness in the Internal Market, having a twofold purpose: (a) an **effective protection of consumers**, considered as the weaker party in the relationship with sellers or suppliers, and (b) the establishment of the Internal Market through an **harmonisation of national consumer protection rules**.

Consumers Policy in EU /3

The **Unfair Contract Terms Directive** (UCTD) is protecting consumers against **non-individually negotiated (standard) terms**. **Contrary to the requirements of 'good faith'**, these contractual provisions are likely to cause significant imbalance in the parties' rights and obligations to the detriment of the consumer.

The **Consumer Rights Directive** harmonises national consumer rules about certain aspects of contractual relationship (i.e., **pre-contractual information requirements, formal requirements for the conclusion of off-premises and distance contract, detailed rules regarding the consumer's right of withdrawal from the off-premises and distance contracts**).

Consumers Policy in EU /4

The objective of the EU **Directive on unfair commercial practices** (UCPD) is to boost consumer confidence. EU rules on unfair commercial practices enable national enforcers to curb a broad range of unfair business practices - i.e., **misleading action or omission, aggressive practice**, or in general **contrary to 'professional diligence'** - taking place before, during and after a transaction has been carried out.

Consumers Policy in EU /5

These directives are **horizontal** in nature, covering all markets, and have allowed EU consumer policy to achieve a high level of harmonisation. They are **principle-based** so that provisions can have a **wide scope and are sufficiently broad to catch the evolution** of services, sales methods, and companies. Nevertheless, they needed to be updated to address digital and technological developments,

First, consumer protection has been pivotal in the building of the internal market, and now of the **digital single market**. The **DSM strategy (2015)** aimed to **remove key differences between online and offline worlds**, by allowing individuals and business to access and engage in online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence

DSM Strategy's three pillars

1. Improving access to digital goods and services

Ensuring **better access for consumers and business to online goods and services across Europe**, for example by e.g., by facilitating **cross-border e-commerce**; by **limiting unjustified geo-blocking practices**; by **modernising the EU copyright framework** (cross border content access); **protecting on-line consumer rights**

2. An environment where digital networks and services can prosper

Creating the **right environment for digital networks and services** by providing **high-speed, secure and trustworthy infrastructures** and services supported by the right regulatory conditions. Key concerns include **cybersecurity, data protection/e-privacy**, and the **fairness and transparency of online platforms**.

3. Digital as a driver for growth

Maximising the **growth potential of the European Digital Economy**, so that every European can fully enjoy its benefits – notably by **enhancing digital skills**, which are essential for an inclusive digital society, by addressing the **barriers in the free flow of non-personal data in order to boost the data economy**; by focusing on **standards and interoperability**.

Digitalisation and consumer policy

In the EU consumer protection is a fundamental aspect of the digital internal market: only a **protected /empowered consumer is confident and trust a digital transaction**

Second, consumer protection legislation is the more complete legislation that has been applied to digital environment by public bodies, whereas many other aspects in the digital world are still left to the "private regulation".

Digitalisation and consumer policy /2

Digitalization is affecting the consumer market in many different ways.

Most of them are **positive**:

- increasing consumers' choices,
- comparability of products and services,
- smarter contractual process,
- content digitised readily available
- to possibility to connect c2c in the sharing /collaborative economy
- reduction of transaction costs
- Platforms "know you better": personalization of products and services

Digitalisation and consumer policy /3

Digitalization is affecting the consumer market in many different ways.

There are of course also impact on the digital consumers in a **potential negative** ways:

- Consumers feel less secure/lack of trust and confidence
- Enhanced asymmetric information
- Enhanced distance from how "markets" and digital tools works ...
- Platforms "know you better": personalization of prices
- Personal data

➔ Need to protect consumer in digital markets

Digitalisation and consumer policy /4

Markets and actors have been subject to an extraordinary change caused by digital transformation. In a sense, however, **consumers are still the same**. It is true it is changed their approach to market, transaction and consumption, but the problems and the disadvantage to which they could be subject are still the same.

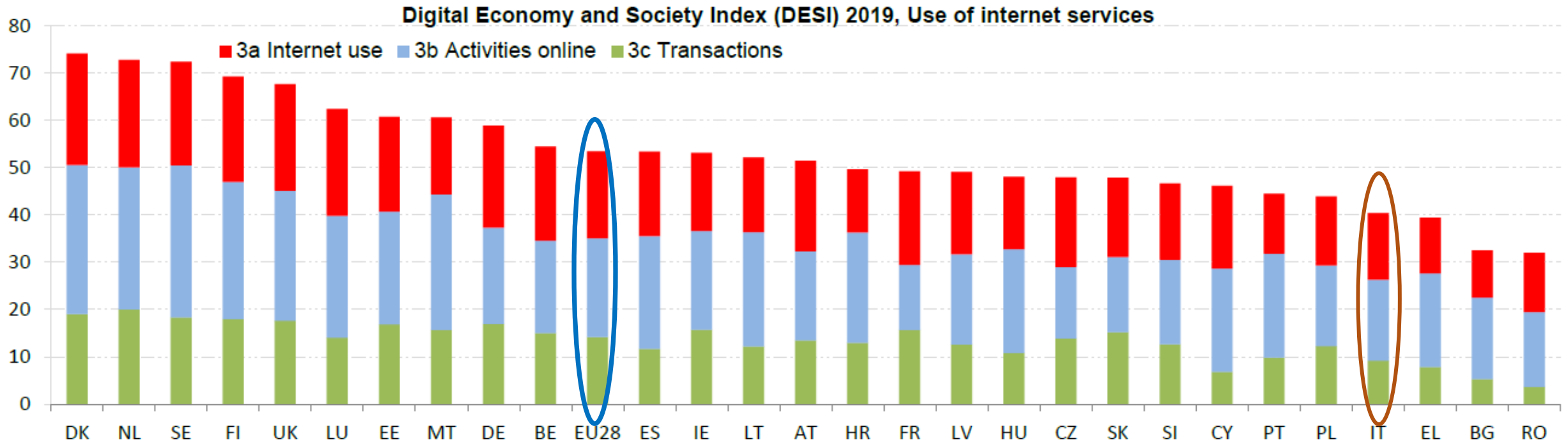
This imply that in a context in which consumer protection value should be preserved, the existing piece of legislation and above all their principles can be adapted to the digital world. This adaptation can be done by means of **judicial enforcement** or via a **legislative amendments** that can focus and for certain aspects extend the existing protection to online consumers.

E-commerce

The electronic commerce **has transformed the way in which business is done**: new products and markets have been developed, most of the traditional intermediary functions have been replaced, different relationships have been established between business and consumers.

Electronic commerce is the general definition for identifying exchanges on the Internet. Today e-commerce sellers and buyers mainly use the Web to define and finalize their transactions, but they can also use other Internet services such as e-mail, VoIP and traditional postal services. The cycle of transactions is highly dependent on what is exchanged, typically physical goods, services and digital content. Typical e-commerce transactions include the use of an electronic payment system.

DESI Index: Use of the Internet Services

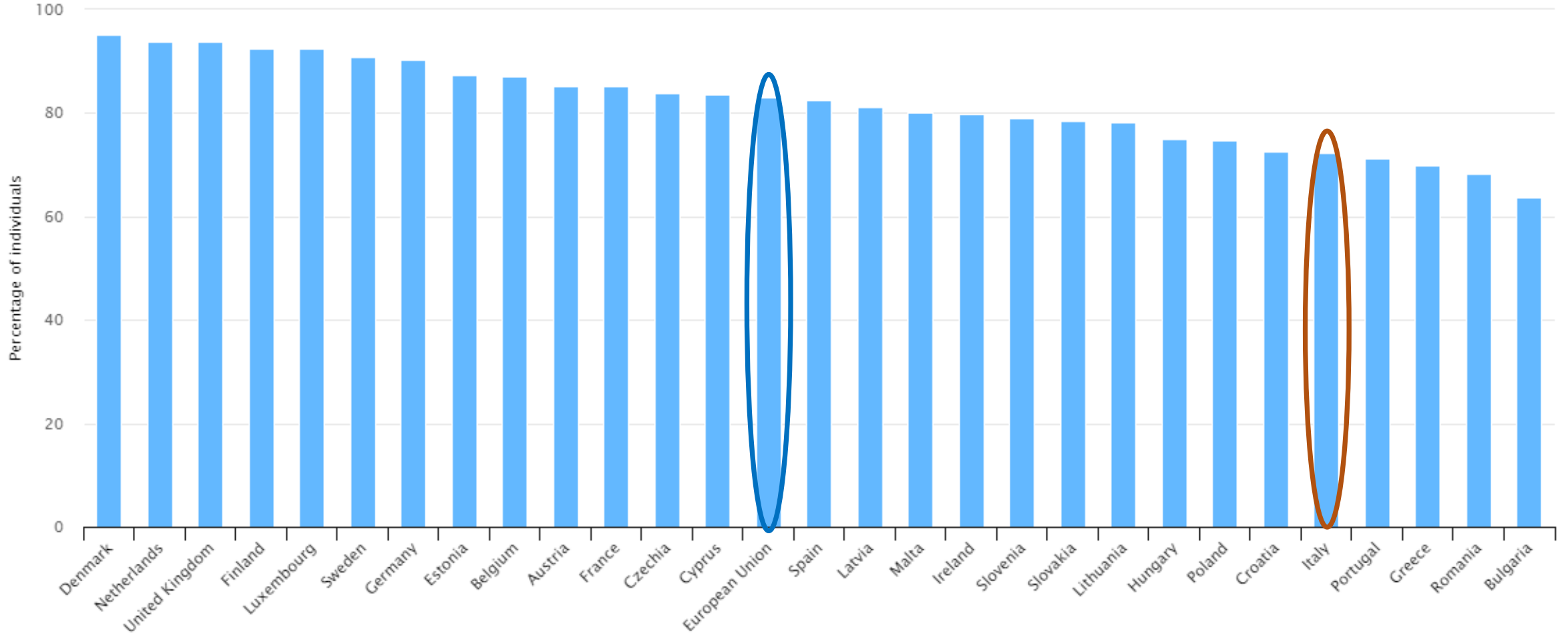


DESI Index: Use of the Internet Services

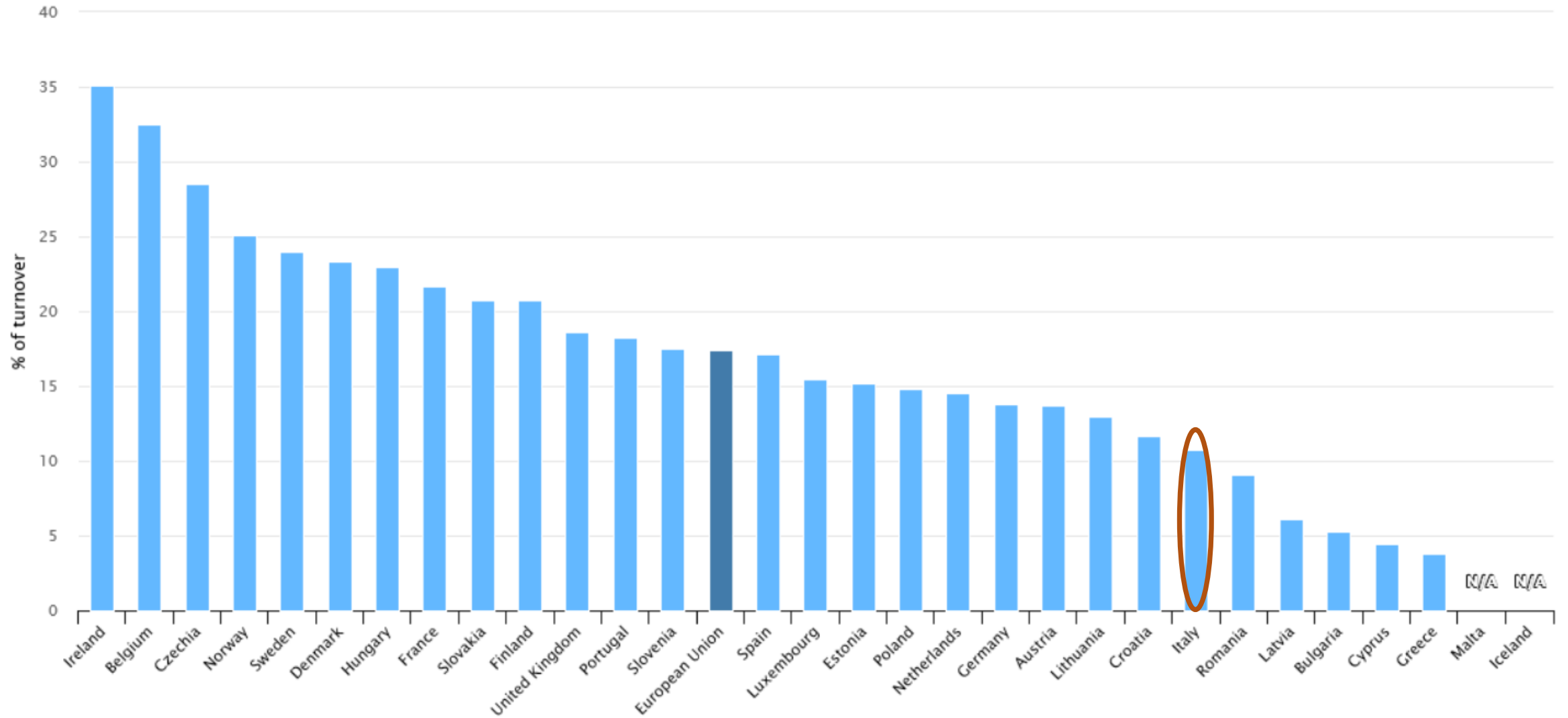
	DESI 2017	DESI 2018	DESI 2019		EU
	value	value	value	rank	DESI 2019
3a1 People who never used the internet % individuals	25% 2016	22% 2017	19% 2018	23	11% 2018
3a2 Internet users % individuals	67% 2016	69% 2017	72% 2018	24	83% 2018
3b1 News % internet users	60% 2016	56% 2017	56% 2017	28	72% 2017
3b2 Music, videos and games % internet users	79% 2016	79% 2016	79% 2018	19	81% 2018
3b3 Video on demand % internet users	15% 2016	15% 2016	23% 2018	15	31% 2018
3b4 Video calls % internet users	34% 2016	39% 2017	47% 2018	20	49% 2018
3b5 Social networks % internet users	60% 2016	61% 2017	63% 2018	24	65% 2018
3b6 Professional social networks % internet users	12% 2015	12% 2017	12% 2017	17	15% 2017
3b7 Doing an online course % internet users	7% 2016	8% 2017	8% 2017	11	9% 2017
3b8 Online consultations and voting % internet users	9% 2015	9% 2017	9% 2017	15	10% 2017
3c1 Banking % internet users	42% 2016	43% 2017	46% 2018	24	64% 2018
3c2 Shopping % internet users	41% 2016	44% 2017	47% 2018	25	69% 2018
3c3 Selling online % internet users	9% 2016	11% 2017	11% 2018	23	23% 2018

Individuals "regularly" using internet (2019)

3a2 Internet Users
All Individuals (aged 16-74)

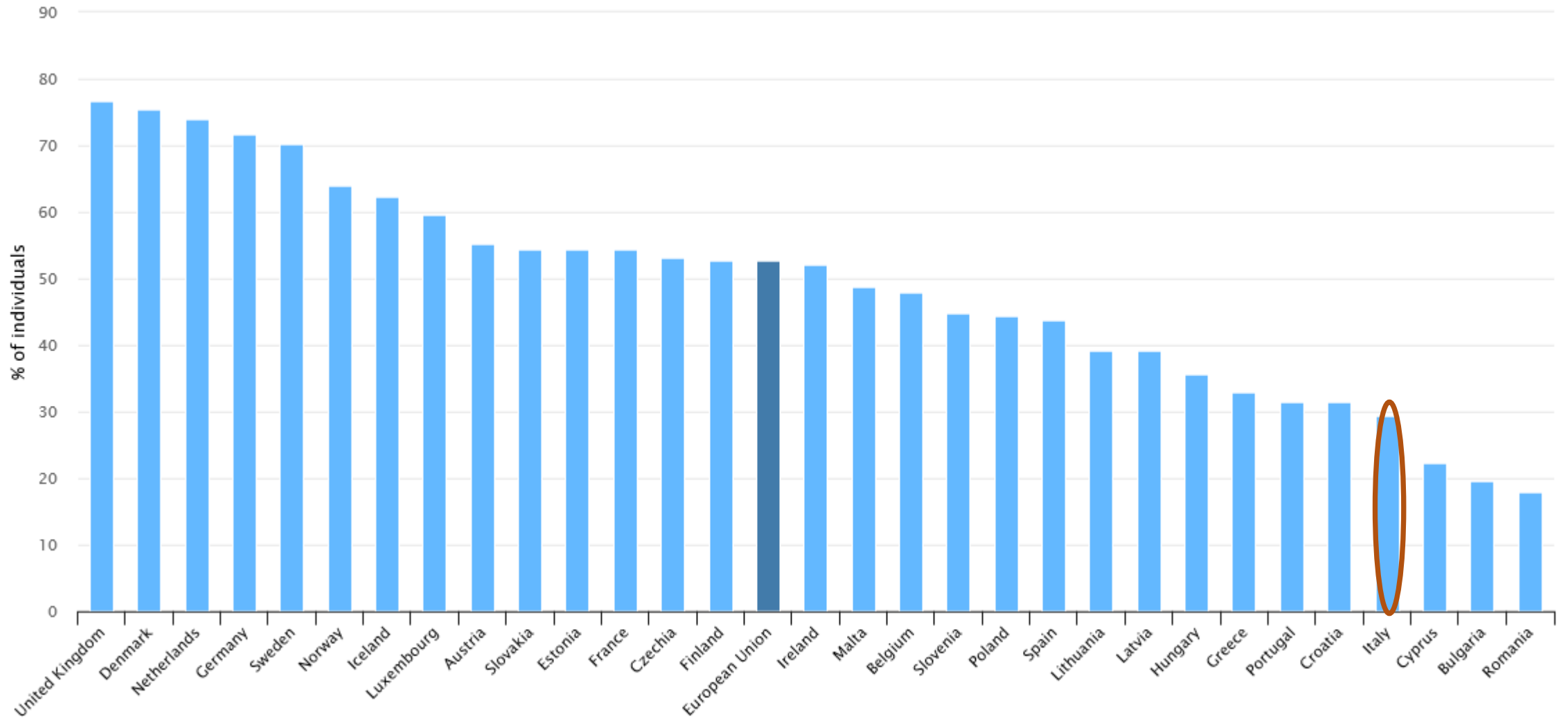


E-commerce turnover over total income (2018)



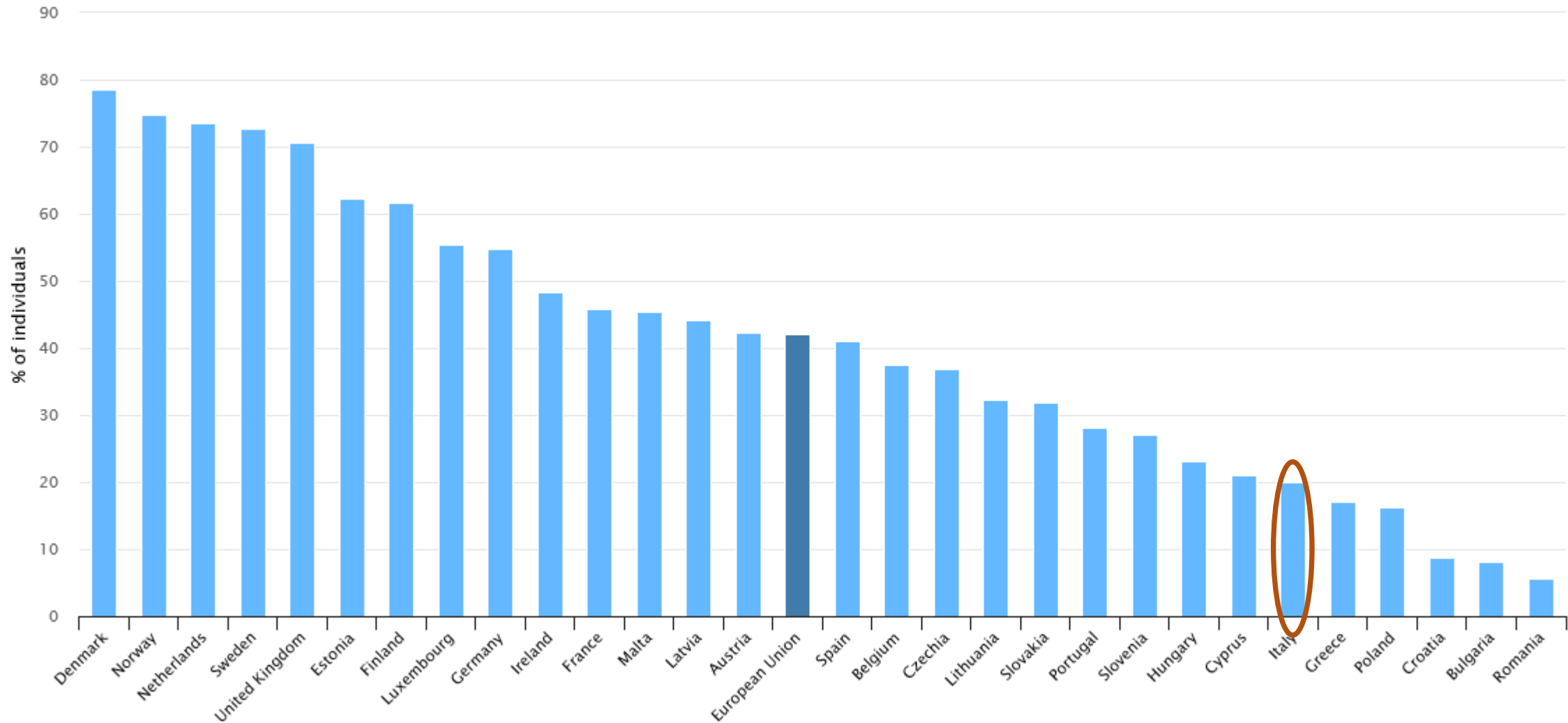
Fonte: Eu Commission - DESI

Individual buying goods online (2019)



Fonte: Eu Commission - DESI

Individuals buying online services (2019)

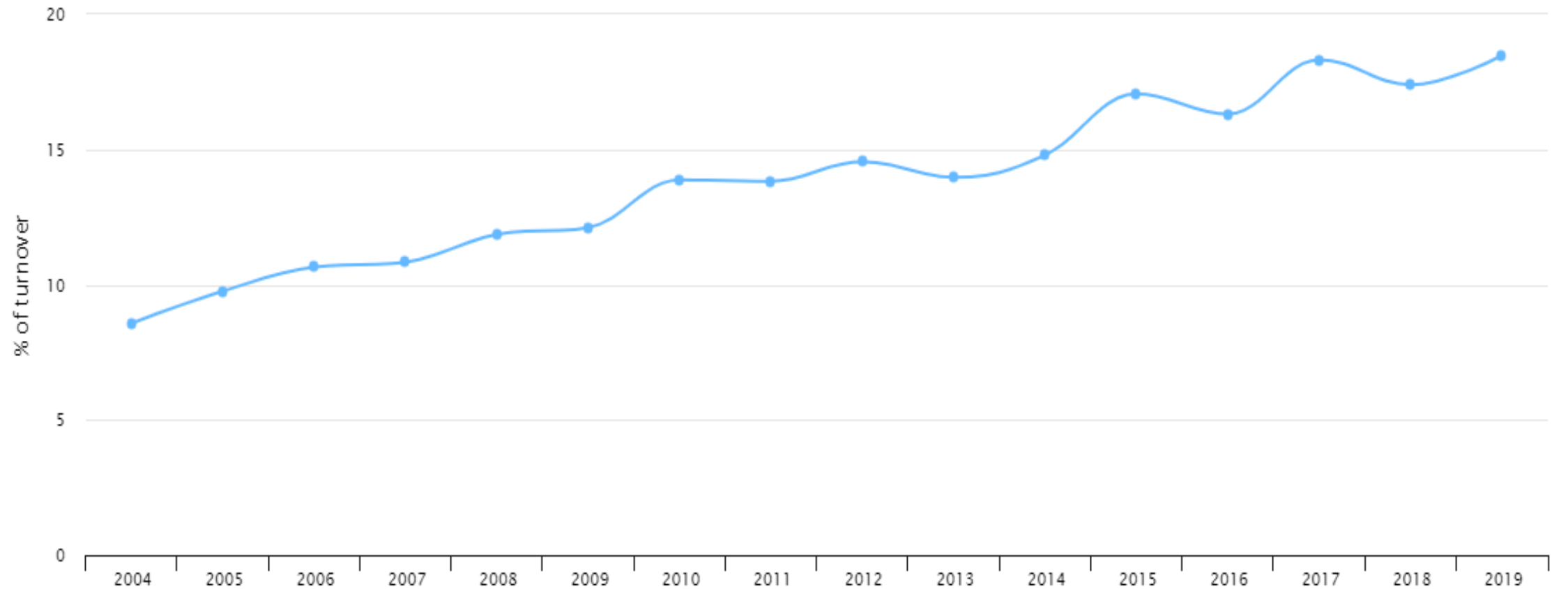


Fonte: Eu Commission - DESI

E-commerce by EU enterprises as % of total turnover (2019)

Total electronic sales by enterprises, as a % of their total turnover

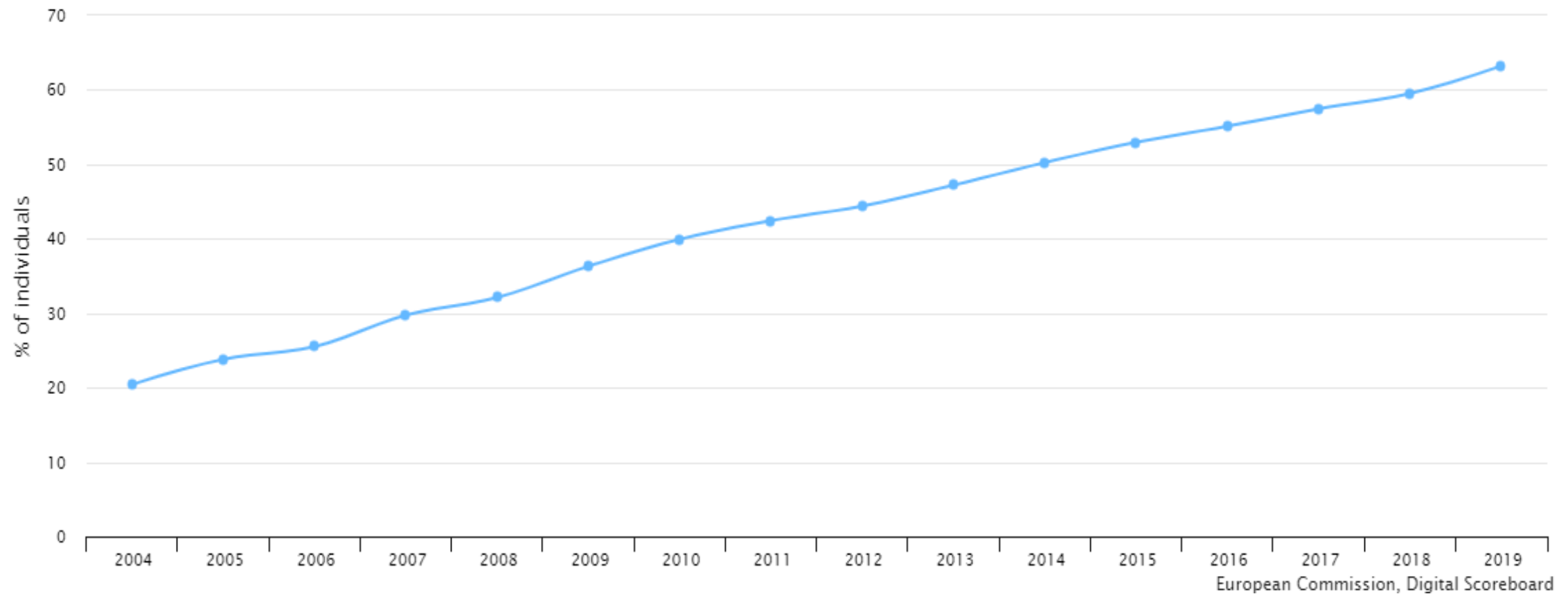
European Union



European Commission, Digital Scoreboard

Individuals ordering goods and service online (2019)

Individuals ordering goods or services online – All Individuals (aged 16–74)
European Union



E-commerce directive

The central EU legislation regulating **e-Commerce** is **Directive 2000/31/EC** the purpose of which is to remove obstacles in cross-border online services in the EU and provide legal certainty to businesses and citizens operating in the digital economy.

To **safeguard consumer protection** and strive a more trustworthy internet, the e-Commerce Directive also establishes harmonized rules in the following areas:

- 1) transparency and information requirements for online service providers (art. 5);
- 2) commercial communications (art. 6);
- 3) electronic contracts (art. 9 et seq.); and
- 4) limitations of liability of intermediary service providers (art. 12 et seq.).

New Deal for Consumers

This “digital “ revision of EU consumers policy was promoted by the Communication “**new Deal for Consumers**” (2018) and finally enacted in 2019 by the **Directive on better enforcement and modernisation of EU consumer protection**: Directive (EU) 2019/2161

Directives covered :

- Consumer Rights Directive
- Unfair Commercial Practices Directive
- Directive on unfair contract terms
- Directive on injunctions
- Price Indication Directive

Main amendments for Digital Consumers

Ranking of Consumers' Online Search Results

Traders are prohibited from “[p]roviding search results in response to a consumer’s online search query without clearly disclosing any paid advertisement or payment specifically for achieving higher ranking of products within the search results.”

(Directive art. 3, para. 7(a).) Traders—in this case the providers for the online search functionality—must clearly inform consumers of such facts in “a concise, easily accessible and intelligible form.” (Recital (Rec.) 20.) Consumers must be informed of the general parameters determining the rank of the search results as well as of their importance. (Recs. 22–23; art. 3, para. 4(b); art. 4, para. 5.)

Main amendments for Digital Consumers /2

New Definition of Marketplace

The definition of online marketplace has been updated to make it technology neutral. (Rec. 25.) The Directive defines online marketplace as “a service using software, including a website or an application.” (Art. 3, para. 1(b); art. 4, para. 1(e).) Furthermore, to increase transparency in online marketplaces, providers of online marketplaces must inform customers whether the third party is a trader or nontrader (consumer) in accordance with the self-declaration of the third party. However, providers do not need to verify that information. Consumers must be informed that, in the case of a contract with nontraders, EU consumer protection laws do not apply. (Art. 3, para. 4(a)(ii); rec. 28.)

Main amendments for Digital Consumers /3

Digital Content and Digital Service Suppliers

The Directive aligns the definitions of digital content and digital services with their respective definitions in Directive (EU) 2019/770 Concerning Contracts for the Supply of Digital Content and Digital Services. (Directive 2019/2161, art. 4, para. 1(d).) Digital content providers are now considered to be “continuous suppliers over a period of time” (as opposed to “suppliers of a single act”). As a result of this change, consumers must be granted a 14-day test period of the service and the ability to cancel the online contract within that period. (Art. 4, para. 11(b); rec. 30.) The scope of the Consumer Rights Directive is extended to cover contracts under which the consumer does not pay a price, but provides personal data in exchange for using the services of the supplier. (Art. 4, para. 2.)

Main amendments for Digital Consumers /4

Personalized Prices

Consumers must be informed if the prices presented to them are personalized on the basis of automated decision-making algorithms and profiling of consumer behavior. (Art. 4, para. 4(a)(ii).)

Price Reductions

To prevent fake price reductions resulting from increasing prices just before announcing price reductions, any announcement made for a price reduction must now indicate the prior price of the product. The prior price of the product is the lowest price in the last 30 days before the price reduction. (Art. 2, para. 1.)

Main amendments for Digital Consumers /5

Consumer Reviews

Traders are prohibited from submitting fake consumer reviews or commissioning fake reviews or endorsements. (Art. 3, para. 7(b).) When consumer reviews are provided, traders must inform consumers if and how they ensure that the submitted reviews originate from consumers who have actually used or purchased the product. (Art. 3, para. 4(c).)

Use of Bots

Traders are prohibited from reselling event tickets purchased through automated means such as bot software and thus exceeding the limit imposed on the number of tickets that may be purchased (Art. 3, para. 7(b).)

Consumer protection vs Empowerment

Consumer policies have indeed a **systemic dimension** that goes beyond the mere protection of individual rights.

Two paramount **objectives**:

1. to guarantee social fairness within the provision of services, by directly **protecting (vulnerable) consumers**.
2. to **empower consumers** by removing obstacles to the consumer free, rational and informed choice and let them play that disciplining role in the market much praised by economic theory.

Consumer protection vs Empowerment /2

- The centrality of consumption in economic theory derives from the idea that it is **consumers free choice between alternative options in the market the ultimate force that disciplines market power and introduces in the market the appropriate incentives for efficient decisions** by firms on the supply side.
- EU traditionally paid attention to consumer welfare issues, developing comprehensive general consumer protection rules, in order to **shield the most vulnerable market players from exploitation by firms**. However, for a long time it was almost neglected the different role that **consumers could play in influencing market dynamics**.

Consumer protection vs Empowerment /3

A **difficult balance** must be found between:

- **Protecting consumers** through 'excessive' forms of paternalism would end up neglecting not only their rationality but also their maturity and even possibly incentivising moral hazard conducts from their side. More specifically, they would get "lazy", renouncing to engage with markets and make the most out of the information and experience available.
- Whereas on the other side **empowerment** cannot be effective for certain categories of consumers (e.g. vulnerable consumers), who need to be more openly and extensively protected as they are not able to engage on an equal footing with businesses, even under an extensive information disclosure regime.



Thank you

antonio.manganelli@unier.it