



CONSUMER POLICY IN COSTA RICA

Foreword

This Report, *Consumer Policy in Costa Rica*, was prepared by the OECD Secretariat as a background document in November 2017 to support the accession review of Costa Rica by the Committee on Consumer Policy.

The OECD Council decided to open accession discussions with Costa Rica on 9 April 2015. On 8 July 2015, the Council adopted a Roadmap for the Accession of Costa Rica to the OECD Convention [C(2015)93/FINAL] (the Roadmap) setting out the terms, conditions and process for accession. The Roadmap provides that in order to allow the Council to take an informed decision on the accession of Costa Rica, Costa Rica will undergo in-depth reviews by 22 OECD technical committees, including the Committee on Consumer Policy.

In accordance with paragraph 14 of Costa Rica's Roadmap, the Committee on Consumer Policy agreed to declassify the Report in its current version and publish it under the authority of the Secretary-General, in order to allow a wider audience to become acquainted with the issues raised therein. Publication of this document and the analysis and recommendations contained in the Report do not prejudice in any way the results of the review of Costa Rica by the Committee on Consumer Policy or any other technical committees as part of Costa Rica's process of accession to the OECD.

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Note to Delegations:

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1. Introduction

In accordance with the Roadmap for the Accession of Costa Rica to the OECD Convention [C(2015)93/FINAL], the Committee on Consumer Policy (CCP) was requested to carry out an in-depth review of Costa Rica. The objective of the review was to evaluate the willingness and ability of Costa Rica to implement the substantive OECD legal instruments within the CCP's competence and to evaluate Costa Rica's policies and practices compared to OECD best practices in the area of consumer policy. For this purpose, the review refers to the CCP's Core Principles set out in the Appendix to the Roadmap:

- Advance consumer welfare through the development and enforcement of policies that promote:
- protection for consumers engaging in electronic commerce;
- enforcement co-operation against fraudulent and deceptive commercial practices affecting consumers, within and across borders;
- development of consumer dispute resolution and redress mechanisms, including alternative, out-of-court methods for consumers to address disputes;
- cross-border co-operation in addressing consumer product safety issues, including participation in activities to enhance information sharing;
- consumer empowerment, including consumer education and initiatives aimed at raising awareness of emerging consumer problems and consumer rights and obligations.

Accordingly, this report provides an overview of consumer policy in Costa Rica. The first section sets out the policy, legal and institutional framework for consumer policy and provides an overview of its implementation, monitoring and evaluation, also covering the Roadmap principle on cross-border co-operation and consumer empowerment. The following sections focus on consumer protection in the context of e-commerce (section 3), cross-border fraud (section 4), dispute resolution and redress (section 5), consumer product safety (section 6), and spam (section 7), thereby covering inter alia the other Roadmap principles.

The information used in this report was collected through a policy questionnaire, Costa Rica's presentations at the CCP meetings on 8 November 2016, on 25 April 2017 and on 9 November 2017, as well as interviews with Costa Rican government officials and representatives from the private sector and civil society in Costa Rica. The interviews were conducted by the OECD secretariat during a fact-finding mission to San Jose, Costa Rica, in January 2017. Additional information has been provided by Costa Rica since then.

Costa Rica further reported that on 3 October 2017, the President of the Republic of Costa Rica signed an Executive Decree that addresses the Committee's recommendations in the areas of e-commerce and spam. The Executive Decree came into force on 25 October 2017 upon its publication in the Official Journal *La Gaceta* No. 256. In addition, an E-commerce Observatory that began operating on 2 May 2017 helps to address recommendations in the areas of e-commerce and cross-border fraud. New alternative dispute resolution (ADR) practices help meet CCP recommendations in the area of dispute resolution and redress. In the area of product safety, Costa Rica has become an active participant in the work of the

CCP's Working Party on Consumer Product Safety. At the time of writing, Costa Rica was also developing a bill of law that would, in the longer-term, introduce further desirable reforms to improve consumer protection in Costa Rica, such as enabling collective consumer action in the judicial system.

2. CONSUMER POLICY FRAMEWORK

2.1. Policy

The objective of Costa Rica's policy for consumer protection is to effectively protect consumers and to guarantee and enable consumers to exercise their rights. Consumer policy in Costa Rica applies to business-to-consumer (B2C) relations and to domestic and imported products and services.

2.1.1. Legal and regulatory framework

Costa Rica's Political Constitution enshrines the basic interests and rights of consumers in its Article 46 “[...] Consumers and users are entitled to the protection of their health, environment, safety and economic interests, to receive adequate and accurate information; to freedom of choice and to equal treatment. The State will support the entities established for the defense of their rights. The law shall regulate these matters [...]”.

Costa Rica's main consumer protection law, Law No. 7472 for the Promotion of Competition and Effective Consumer Defence, was passed in 1994. It structures the legal and institutional framework for protecting consumer rights and replaced ex ante control and pricing with an ex post monitoring system. As a general regime for consumer policy, Law No. 7472 applies to all sectors in Costa Rica that are not governed by specific regulatory regimes, i.e. it applies to all sectors except for financial services, insurance services, food, health, telecommunications, the environment, energy and regulated public services (water, energy and transport).

Law No. 7472 created the National Consumer Commission (known as CNC, based on its acronym in Spanish), which is an administrative tribunal to resolve disputes that is attached to the Ministry of Economy, Industry and Trade (MEIC). With jurisdictional functions for non-regulated markets, the CNC can resolve claims and impose sanctions, fines, restitution, repairs, and seize or freeze goods when appropriate. However, the CNC cannot currently award damages, nor can it annul abusive clauses.

Law No. 7472 also established a technical support unit for the CNC administrative tribunal in the Directorate for Consumer Support (known as DAC, based on its acronym in Spanish) that is part of the Ministry of the Economy, Industry and Commerce. As Costa Rica's consumer protection agency, the DAC performs the following set of executive branch functions in relation to consumer policy: a) ensuring that goods and services meet health, safety, environment and quality standards; b) developing education and awareness programs for consumers; c) encouraging and promoting consumer organisations and ensuring their participation in decision-making processes and claims; d) ensuring access to effective and flexible mechanisms for administrative and judicial protection of consumers; and e) establishing a basket of basic goods and services.

The DAC supports the CNC directly. The DAC processes complaints filed with the CNC, ensures compliance with rulings, and responds to motions for *amparo*, or effective remedy, filed against DAC and CNC actions alleged to violate fundamental rights. When there is evidence of a violation of consumer rights and legitimate interests that may constitute a crime, the DAC transmits the complaint to the Public Prosecutor, which has jurisdiction over criminal matters. The DAC also performs product recalls and service suspension

actions for goods or services that present potential risks to the health and safety of consumers.

In recent years, the DAC has prioritised the establishment of a single, digital, consumer service platform to centralise information, consumer questions and claims. This platform provides a number of services to Costa Rican consumers and businesses at no charge, including information provision, advice in person or remotely and support to file complaints with the CNC. The platform promotes alternate dispute resolution mechanisms and helps with mediation, dialogue and negotiation, prior to, or in parallel to, administrative proceedings with the CNC. In addition, this part of the DAC conducts consumer awareness campaigns, monitors consumption patterns and encourages the creation and strengthening of consumer organisations (known as ODEC, based on their acronym in Spanish).

In the area of consumer education, the DAC works with the Ministry of Public Education to include consumer protection in the formal academic programs of all three cycles of Costa Rica's primary and secondary education system. It also works to strengthen informal education related to consumer protection through forums, workshops, seminars, and chats.

The DAC also conducts market research, surveillance and price monitoring, verifying the compliance of information, advertising, promotions and special offers presented to consumers with mandatory technical regulations. Transparency and price comparison research studies are made available to consumers. Where required in order to prevent irreparable damage to the health and safety of consumers, and to the environment, the DAC takes preventive measures that include seizing and freezing goods. The DAC engages in processes to correct breaches and can file complaints with the CNC. It also exercises its authority to register, authorise, and supervise term sales of goods or future execution of services, including general, real estate, and public shows.

In addition to Law No. 7472, several acts have been issued or are being developed to further regulate specific issues; the following provides an overview of some of the most important acts:

- Executive Decree 35867-MEIC, Regulation for Credit and Debit Cards governs the conduct of transactions and payment methods. It sets information disclosure requirements to protect consumers who use consumer payment cards.
- Executive Decree 37899-MEIC, Regulations to the Law for the Promotion of Competition and Effective Consumer Defence. An Executive Decree containing a Partial Reform to the Regulations of the Law on the Promotion of Competition and Effective Consumer Defence was signed by the President of the Republic on 3 October 2017. The Decree was published on 25 October 2017 and entered into force upon publication. The partial reform incorporates a chapter on consumer protection in electronic commerce (Chapter X):
 - One of the main objectives of the proposed reform is to give consumers in e-commerce equal rights as the ones already specified in Law 7472 and its Regulations for traditional forms of commerce.
 - New provisions establish the obligations of businesses engaged in e-commerce, including in the areas of business identity disclosure, transaction confirmation, communication and complaints, information, and contract resolution.
 - The partial reform of the Regulations to Law 7472 prohibits businesses from sending unsolicited electronic communications.

- An Executive Decree establishing a National Consumer Protection System to coordinate consumer protection public policy among all bodies competent for consumer protection is being drafted by the MEIC. It will define the organisations involved, the overall goal of the System and its powers and responsibilities, including the strategic planning of activities to monitor and enforce consumer-related legislation, and the collection of data, research and other information on consumer behaviour.
- A broad and in-depth reform of Law 7472 is also being drafted by MEIC in the form of a bill of Law. Once its text has been finalised, the bill will follow the Legislative Assembly's approval process. The DAC plans that the bill will contain provisions to enable Costa Rica to better protect consumer rights, including:
 - Broadening the powers of the National Consumer Commission and raising the amount of the fines;
 - Improving the scope of warranties;
 - Introducing collective or group actions in the judicial system; and,
 - Creating a list of arbitrators that can resolve consumer disputes.
- In addition to the recent reform of the Regulations to the Law No. 7472 and, in due course, of the Law No. 7472 itself, a draft Bill on Information Society Services has been proposed in the Legislative Assembly that would provide a framework for e-commerce.

2.2. Responsibilities and powers

The DAC is responsible for setting institutional policies for consumer protection, promoting the creation and strengthening of consumer associations; promoting mechanisms for alternative dispute resolution and remote consultations using several channels, awareness building and education of consumers and merchants, as well as supporting the CNC.

The CNC is responsible for enforcing the consumer protection provisions of Law No. 7472 and other rules that ensure effective consumer protection. The CNC acts as an administrative Tribunal to settle disputes between consumers and businesses. Law No. 7472 assigns administrative and jurisdictional mandates to the CNC. The CNC can impose penalties worth 1 to 10, or 10 to 40, times the monthly minimum wages depending on the type of infraction committed, which corresponds approximately to penalties ranging from USD 530 to 21 000.

The general consumer protection regime enforced by the CNC is complemented by special sector-specific regimes that are enforced by respective sectorial authorities. In addition to the CNC, some of the enforcement authorities listed below can resolve claims and order individual redress in their respective area. Ministries such as the Ministry of Health, the Ministry of the Environment and Energy and the Ministry of Agriculture and Livestock also have some complementary consumer protection responsibilities in Costa Rica, which are as follows:

- The Regulatory Authority of Public Services (Autoridad Reguladora de los Servicios Públicos, ARESEP), which protects and promotes the rights and obligations of public service users and providers.

- The General Superintendence of Financial Entities (Superintendencia General de Entidades Financieras, SUGEF).
- The Superintendence of Pensions (Superintendencia General de Pensiones, SUPEN).
- The Superintendence of General Securities (Superintendencia General de Valores, SUGEVAL).
- The Superintendence of General Insurance (Superintendencia General de Seguros SUGESE) which, along with DAC, shares authority for the recently liberalised insurance market in Costa Rica.
- The Ministry of Health.
- The Ministry of the Environment and Energy.
- The Ministry of Agriculture and Livestock.

The DAC is one of the largest parts of the Ministry of the Economy, Industry, and Commerce, with an annual budget of approximately USD 2.25 million (CRC 1 248 million) and around 47 staff.

The CNC is made up of three members and three substitute members that are appointed by the Minister of the Economy, Industry, and Commerce. Members are licensed attorneys with experience in consumer policy that are appointed for four year terms and can be re-elected. The Council of Governance sets the amount of the allowance for each meeting and also limits the monthly allowances. For the 2016 period, each allowance was approximately USD 50 (CRC 30 000) per full member per session and USD 25 per substitute member.

2.2.1. Consumer organisations

Consumer organisations in Costa Rica are grouped into a Consumer Organisation Network (known as RED ODEC, based on its acronym in Spanish) that functions as an inter-institutional coordination mechanism for consumer protection with public institutions and private organisations. Consumer organisations are supported by the DAC, which provides training, information and advice, maintains a monitoring plan designed to promote each organisation's development, as serves as the technical secretary for the network of consumer organisations. The Regulation to Law No. 7472, Executive Decree 37899-MEIC, provides that the Consumer Organisation Network should support the Ministry of the Economy, Industry, and Commerce in preparing and implementing public policies that are developed to benefit consumer organisations. Consequently, the MEIC holds public consultations for all standard reform projects, enabling civil society to review projects, make observations and when appropriate including civil society representatives in work panels.

Law No. 7472 provides that consumer organisations in Costa Rica can initiate (as a party) or be involved in (as an aide) proceedings before the CNC and before the courts to defend its associates' rights and legitimate interests. However, Consumer Organisations Network cannot currently represent consumers in legal proceedings.

Overall, the development of consumer organisations in Costa Rica is still at an early stage of development. Although at least three consumer organisations have reasonable credibility, their role is limited. Consumer organisations cannot receive public funds and there are concerns on the representativeness of consumer organisations and on their having

possible conflicts of interest. It should be noted that the bill for the partial reform of Law No. 7472 is expected to set conditions on consumer organisations related to prevent conflicts of interest and enable consumer organisations to represent consumers in legal proceedings.

2.2.2. Co-operation with the private sector

The DAC has developed a “Manual of Consumer Protection Practices”, which is a voluntary code of conduct for businesses in respect to consumer protection that, among other benefits, helps business to interpret the law. DAC has also set up a Voluntary Membership System that businesses can sign up to; businesses assign employee(s) to act as “liaison(s)” with the power to negotiate terms for resolving conflicts with consumers remotely, assisted by a neutral in-house DAC mediator. This alternative dispute resolution system enables businesses and consumers to negotiate a solution before a complaint is filed with the National Consumer Commission, potentially saving time and financial resources for all parties involved.

In addition, dialog between the DAC and business stakeholders is ongoing. When practices emerge that may infringe applicable laws, the DAC first approaches professional associations and business chambers, for example, in the area of business loan interest rates. Another way used to align private sector practices is through training; for example, training on technical regulations.

2.2.3. International co-operation

Costa Rica, through the DAC in the Ministry of Economy, Industry and Trade, participates actively in several international and multilateral organisations and agreements. The DAC is active in the discussions in the Committee on Consumer Policy, where Costa Rica is a Participant, and also participates in and actively contributes to the activities of the Consumer Product Safety Working Party. This allows Costa Rica to enter into a direct dialogue with OECD Members, to learn from and to contribute to good practices, and to profit from benchmarking exercises against policies, standards and performance of OECD Members.

DAC has been a member of the Iberoamerican Forum of Government Consumer Protection Agencies (FIAGC) since 2007 and in 2016-2017, DAC was president of the Forum, which provides staff training, interaction regarding enforcement assistance and sharing experience on cross-border topics. Within the Council of Governmental Consumer Protection Agencies of Central America and the Dominican Republic (CONCADECO), Costa Rica actively participates in information exchange for matters related to basic living expenses and medicines; as well as in formulating a project for forming a dedicated window for regional level controversy resolution, among other subjects of interest. The DAC is also an active member of the International Consumer Protection and Enforcement Network (ICPEN) which fosters cooperation among consumer protection organisations to fight cross-border infractions of consumer protection laws and to provide cross-border remedies as well as the INDECOPI - COMPAL School Training Program through which the Swiss government, via UNCTAD strengthens consumer protection in the Central and South American regions.

In the area of consumer product safety, Costa Rica belongs to the OAS Consumer Product Safety and Health Network (CSNH) and the International Consumer Product Health and Safety Organisation (ICPHSO).

The DAC enjoys good relationships with several consumer protection authorities of other countries. Costa Rica has signed co-operation agreements with authorities in the United States (the United States Federal Trade Commission and the United States Consumer Product Safety Commission), in Peru (the National Institute for the Defence of Competition and Protection of Intellectual Property or INDECOPI), and Mexico (the Office of the Federal Prosecutor for the Consumer or PROFECO). The main areas of co-operation are: i) technical support, ii) information exchange, iii) ongoing dialogue on improving consumer policy, and iv) exchange of experience and development of best practices.

2.3. Implementation and enforcement

2.3.1. Non-regulatory measures

Information and education

An important pillar of implementing consumer policy in Costa Rica is to empower consumers through information and education. Communication channels have been developed to communicate efficiently and quickly with consumers, businesses, consumer organisations and the media and to strengthen informal education related to consumer protection through workshops, seminars, physical and online forums and chats.

The DAC develops both formal and informal education and training programs on consumer rights. In partnership with the Ministry of Public Education, the DAC develops educational guides on consumer rights to support teachers in all three cycles of Costa Rica's primary and secondary education system. DAC has also been working with the Ministry of Public Education to develop curricular content for the subject called "Education for life": this contains several consumer education modules and focuses in particular on financial education. The DAC also develops non-formal educational and training programs targeting consumers, businesses and consumer organisations.

Advice, mediation and negotiation

The DAC uses a range of different information channels to provide advice to consumers and to help them to resolve conflicts as expeditiously as possible.

- **“Open Doors”:** “Open Doors” is an outreach program whereby the DAC sets up information stands for different communities in shopping centres, parks, and plazas. At the stands, the DAC distributes information material, receives complaints, offers practical advice, and can even enter into negotiations at points of sale to help resolve consumer complaints. The “Open doors” stands are also used to conduct surveys and to gather consumer information from consumers on the main issues they encounter.
- **Online advice:** consumers can request advice through an online form at <http://meic.go.cr/consumidorenlinea/> or through the MEIC-Consumer app.
- **Telephone counselling:** Dialling 800-266-7866 or 1-311 consumers can make inquiries and receive advice on the telephone at no charge.
- **Personal Attention Module:** DAC centralises services through its “PACO” platform, which receives complaints and provides personalised advice (see section 5.2.2 below).

- **Web Complaints Platform:** since 2015, a new service for consumers and businesses allows consumers to file complaints online with or without a digital signature, and provides online access to and management of all the relevant documents.
- **Games:** the DAC has also developed games to teach consumer protection rights.

An important priority for Costa Rica has been to help consumers to resolve conflicts with businesses expeditiously by acting as a neutral mediator and facilitating dialog, negotiation and conciliation remotely. This is in addition to promoting an ongoing institutional enhancement policy for processing complaints through administrative channels.

2.3.2. Enforcement by the CNC

Regulations for protecting consumers' rights and legitimate interests are enforced using the administrative or judicial proceedings.

As indicated above, the CNC is the administrative court for settling disputes between consumers and businesses. It must hear and sanction any administrative infractions that are committed related to consumption, as established in Law No. 7472 and other rules that ensure effective consumer protection, without prejudice to any pertinent criminal or civil liability. Depending on the seriousness of the event, infractions committed to the prejudice of consumers may be sanctioned with a fine from one to ten times the minimum monthly salary for infractions indicated Articles 31 and Article 35 of Law No. 7472 and from ten to forty times the minimum monthly salary for infractions indicated in Article 34 of Law No. 7472.

The CNC has the power to impose financial penalties; order the return of money or products, repair or replacement; impose precautionary measures of practices cessation, freezing or seizing of goods or cessation of services (see Box 2.1). The powers of the CNC are limited since the CNC is not authorised to cancel abusive clauses in adhesion contracts (based on Articles 46 and 53 of Law No. 7472), nor to redress damages, which must currently be heard by the competent jurisdictional bodies, but a bill being drafted to partially reform Law No. 7472 is expected to give additional powers to the CNC.

Box 2.1. Powers of the CNC under Law No. 7472

The current powers of the CNC are to:

- a) Hear and sanction any administrative infractions, breach of the obligations established in Chapter V and, in particular, protect the rights of consumers in accordance with Article (*) 29 of Law No. 7472. (*) (currently pertains to Article 32);
- b) Sanction any actions involving unfair competition as mentioned in Article 17 of Law No. 7472, when it harms the consumer;
- c) Order, depending on the seriousness of the events, the following injunctions as pertinent: freeze or seize goods, suspend services or temporarily halt the events being claimed that are in violation of Law No. 7472, while a ruling is being issued.
- d) Order the suspension of any credit sales plan or any term sales of goods or future execution of services when the contents of Article (*) 41 of Law No. 7472 are being

violated. The results of the ruling must be published for it to be general knowledge. (*) (currently pertains to Article 44).

e) Order, when pertinent, the return of any money or products. Likewise, it may set a deadline to repair or replace the good, as pertinent.

f) Under ordinary jurisdiction, transfer all of the practices that make up the crimes that are prejudicial to the consumer, as set forth in Article (*) 60 of Law No. 7472. (*) (currently pertains to Article 63).

It should be noted that the bill of Law being developed to partially reform Law No. 7472 would, among others, broaden the powers of the CNC and raise the amount of the fines.

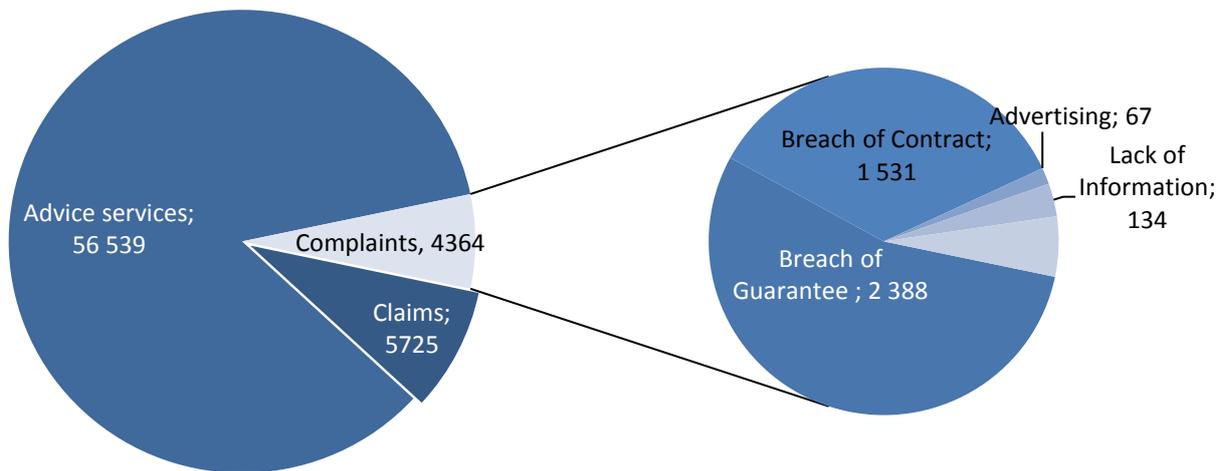
2.3.3. Enforcement in the courts

Complaints can be filed by means of a special process called “summary process”, - this process is established in Articles 432 and thereafter of the Civil Procedural Code, Law No. 9342 (Article 7, Law No. 7472). Complaints can also be filed in the criminal court system for crimes to the prejudice of the consumer as set forth in Article 63 of Law No. 7472.

2.3.4. Identifying and measuring issues

Consumer protection has been supported by applying the government’s Monitoring Plan and by developing comprehensive projects and research to conduct market studies and identify the consumer relation trends for better informed prevention and/or to develop corrective actions.

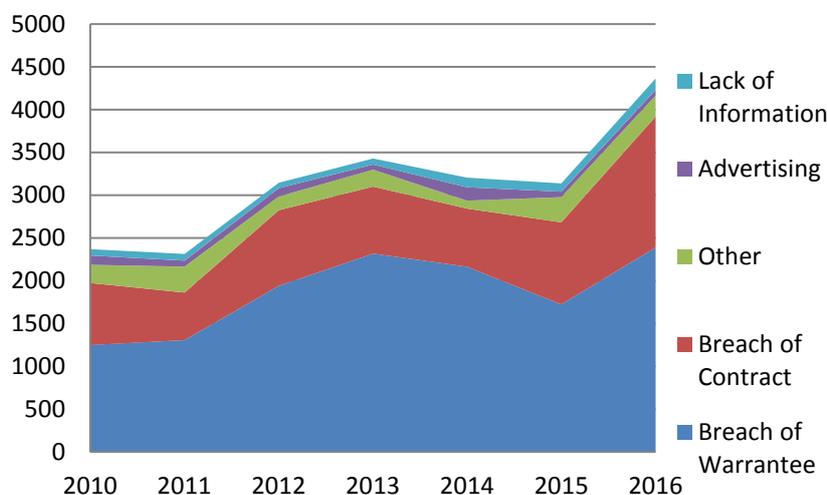
Figure 1. Requests for advice and claims filed with the DAC, 2016



Note: does not include the consumer protection cases handled by other governmental institutions.

Source: DAC database 2010-2016.

Figure 2. Top 5 Reasons for complaints filed with the DAC, 2011-2016

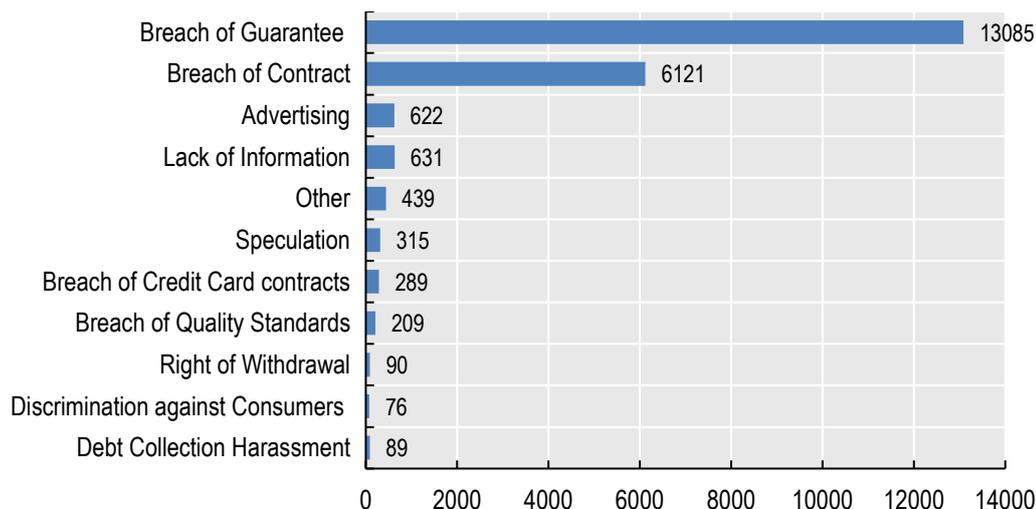


Note: does not include the consumer protection cases handled by other governmental institutions.

Source: DAC database 2010-2016.

Consumer requests for advice, complaints and claims are important indicators for consumer issues. In Costa Rica, the large majority of complaints are breaches of warrantee, e.g. the sale of defective products, which represented 60% of claims between 2010 and 2016 (over 13 000 claims). They are followed by breaches of contract, e.g. in the areas of tourism, insurance or housing (28% of claims over the same period representing some 6 121 claims). The other types of claims each constitute less than 4% of complaints (see Figure 1). For example, breach of quality standards, including health and safety standards, only represented 1% of claims (representing 209 claims) over the six-year period.

Figure 3. Total formal complaints by topic (2011-2016)



Note: does not include the consumer protection cases handled by other governmental institutions. Claims are simple notifications of consumer problems; complaints are formal request for redress to the CNC.

Source: DAC database 2010-2016.

In order to determine appropriate measures, including fines, the DAC assesses, on a case-by-case basis, potential consumer detriment as per the 2016 Guide for Preparing Public Policies of the Ministry of National Planning and Economic Policy. The following is taken into account to define consumer protection objectives:

- The claim incidence level and the risk or potential damage affecting consumers if the issue is not addressed.
- The applicability of various measures before regulation, which would be the most rigorous measure.
- The incidence in the marketplace, to ensure the policy facilitates the free flow of merchandise and services and imposes realistic behavioural obligations, burdens or expectations.
- The benefit that a measure would represent for the general population, the alternative measures that could be applied, for example, whether the same objectives may be met using other implementation mechanisms (such as education and training or using self-regulation manuals).

Indicators and specific goals are associated to the allocated budget and the different activities, and achievement of the goals monitored by the Ministry of Finance. The indicators used to measure the effect of the consumer protection policy for the year 2015 were the following:

- Number of consumers and businesses trained on subjects related to consumer protection and compliance with current regulations: Goal 1 500 people. 1 810 were actually trained.
- Number of consumer purchasing claims solved: Goal 400. 729 were actually solved.
- Number of consumer complaints solved: Goal 1,800. A total of 2 279 were actually solved.
- Financial compensation obtained using claim and complaint resolution mechanisms: Goal CRC 650 million. CRC 740 million were actually obtained.
- Number of market studies done and released: Goal 16. Nineteen were actually completed and released.
- The National Development Plan Program's Project Indicators, which included:
 - The number of people administered and public servants informed and trained for related areas: Goal 1,500 people. 1 810 were actually informed and trained.
 - The number of complaints resolved out of the complaints filed by consumers: Goal 3,400. 3 677 were actually resolved.

2.3.5. Challenges - reform of Law No. 7472

The main challenges for effective enforcement of consumer policy in Costa Rica are out-of-date regulation and a lack of consumer rights awareness. Law No. 7472, enacted 21 years ago, lacks legal provisions for consumer protection in relation to issues such as new payment mechanisms, new financial products, class actions, or cross-border fraud and insufficiently encourages consumer organisations. Nevertheless, an Executive Decree that came into force on 25 October 2017 expands its scope so that it covers e-commerce to

ensure that consumers engaging in e-commerce transactions are afforded the same level of protection as in other forms of commerce. Another challenge for effective enforcement of consumer policy in Costa Rica is that of insufficient staff resources, as the demand for consumer protection services increases but the payroll budget does not adapt to the demand for services, notably causing administrative backlog.

Another challenge in Costa Rica is the coordination and co-operation between the bodies that have consumer protection responsibilities, to minimise confusion for consumers, notably in regulated sectors such as financial services, insurance services, food, health, telecommunications, the environment, energy and regulated public services (water, energy and transport). An Executive Decree establishing a National Consumer Protection System to coordinate consumer protection public policy among all bodies competent for consumer protection and civil society is currently being drafted by the MEIC. It will define the organisations involved, the purpose of the System and its powers. Among other activities, the System will be responsible for strategically planning the activities necessary for the monitoring and enforcement of consumer-related legislation, and will collect data, research and other information on consumer behaviour.

A bill to reform Law No. 7472 in-depth is expected to be proposed to Parliament. The proposed reform will favour more expeditious, efficient complaint handling by the CNC.

2.4. Monitoring and evaluation

Consumer protection policies are measured by the Ministry of Planning (MIDEPLAN) and the Ministry of Finance (Ministerio Hacienda), since the DAC has indicators contained in the regular budget of the government of Costa Rica with which the budget execution is controlled. The data used to measure the effectiveness of institutional objectives results from the statistical information from DAC databases. The Ministry of Finance monitors the fulfilment of the goals associated with the assigned budget and the various activities ensuring compliance or evaluating the causes that have not allowed the effective fulfilment of the objectives or indicators raised.

2.4.1. Policy improvement

The results from monitoring and evaluation are taken into account by the authorities responsible for policy development on a regular basis. In particular, the data on the above indicators is shared with the MIDEPLAN and MEIC for policy evaluation and formulation.

2.5. Assessment and recommendations

2.5.1. Recommendation of the Council on Consumer Policy Decision Making [\[OECD/LEGAL/0403\]](#)

Costa Rica's policy decision making process for consumer protection reflects the major steps of consumer policy decision making recommended by the OECD. These steps include: to define the nature and source of a consumer protection problem; to assess the nature and magnitude of potential consumer detriment; to determine whether and what action is warranted; to set desired policy objectives, consistent with the general goals of Costa Rica's consumer policy; to evaluate and determine the most appropriate and cost effective options for achieving these objectives; and to periodically review and evaluate the effects of policies that are being implemented. The Costa Rican government also engages

with multiple stakeholders in policy decision making processes, including consumer organisations, industry associations and subject matter experts.

2.5.2. Recommendations

The Committee recommends that Costa Rica prioritise the finalisation of the Executive Decree establishing a National Consumer Protection System to coordinate consumer protection public policy among all consumer authorities and other competent bodies for consumer protection and stakeholders.

3. E-COMMERCE

3.1. Costa Rica's e-commerce market

Costa Rica's e-commerce market is still emerging, but it is growing rapidly and is reported to be the largest in Central America. One study of e-commerce in Costa Rica estimates that business to consumer (B2C) e-commerce sales represented about 1% of Costa Rica's GDP in 2016, or some USD 0.6 billion. Although only 12% of Costa Ricans buy online, Costa Rica is estimated to be the Central American country with the most online purchases. Nonetheless, most Costa Ricans currently prefer traditional channels.

According to the DAC, a barrier to the broader development of e-commerce in Costa Rica until now has been the lack of a legislative framework to protect consumers engaging in e-commerce, with areas like electronic payments, warranties, non-compliance, delivery and returns unregulated. The lack of offers or initiatives by banks for electronic payments was deemed to be another factor. Increasing consumer protection in e-commerce in areas such as electronic payments, warranties, non-compliance, non-delivery and returns was viewed as important to increase trust in e-commerce.

Although cross-border trade is growing rapidly, Costa Rica does not have enforceable remedies in cross-border cases. Even within Costa Rica, the general liability limitations mean that a number of decisions and judgments against companies cannot be enforced, as many start-ups simply declare bankruptcy after creating a business with little capital. Enforcement of the data protection law is still in the preliminary stages, with significant educational challenges on privacy.

3.2. Policy

One of DAC's main priorities is to ensure the development of a specific legal framework applicable to e-commerce, which is an area covered by the general Commercial Code of Costa Rica and consumer protection regulations of Law No. 7472. An Executive Decree containing a Partial Reform to the Regulations of the Law on the Promotion of Competition and Effective Consumer Defence entered into force on 25 October 2017. One of its main objectives is to give consumers in e-commerce equal rights as the ones already specified in Law 7472 and its Regulations for traditional forms of commerce. The Decree was pending publication at the time on writing on 23 October 2017 and will enter into force one month from its publication in the Official Journal *La Gaceta*, expected late October 2017. The partial reform incorporates a chapter on consumer protection in electronic commerce (Chapter X).

In parallel, an in-depth reform of Law 7472 MEIC is being drafted and will be proposed through a bill containing a partial reform of the Law on the Promotion of Competition and Effective Consumer Defence.

3.2.1. Legal and regulatory framework

Costa Rica did not have an e-commerce law and no specific standards in national laws addressed e-commerce. Nevertheless, several existing laws are relevant to consumer protection in e-commerce. The Commercial Code regulates all commercial transactions in Costa Rica. Consumer rights and their protection are established in Article 46 of the

Political Constitution. Consumer protection is further established in the Law for the Promotion of Competition and Effective Consumer Defence, Law No. 7472, and its Regulation, Executive Decree 37899-MEIC, and bodies of norms protecting end consumers (see section 1.2). The standard is general and applies to all consumer relationships, including e-commerce. For example, Article 37 of Law No. 7472 regulates advertising. It specifies that advertising should be based on the nature of the good or service and should not cause consumer error or deception. In addition:

- Law No. 8454 on Digital Certificates and Signatures and Electronic Documents is applicable to e-commerce. It states that a digital signature may be used for all sorts of transactions and legal acts. It has a functional equivalent, which means that it has the same value as a signature by hand. It has probative value so any document with this type of signature is completely legal. The person who places the signature is responsible for what is signed. A digital signature may be used for contracts, notifications, processes, certifications, statements, registration and processes in the National Registry.
- The Law on Personal Data Protection, Law No. 8968, provides the regulatory framework for data protection in Costa Rica. A list of regulated databases must be kept and the parties who manage the databases must keep any information needed to exercise their position, including the protocols used. Any claims of violations of the standards on personal data protection must be resolved, if needed with an order to delete, correct, add, or restrict the circulation of information contained in the files and databases. The law plans for sanctions on infringing public or private individuals or companies and for crimes to be referred to the Ministry of Security. Costa Ricans are encouraged to be aware of the rights concerning gathering, storing, transferring, and using their personal data.
- Article 44 of the General Telecommunications Law, Law No. 8642, establishes telecommunications users' right to not receive unsolicited correspondence and to require that communications that had been authorised previously be stopped. Law No. 8642 is applicable to marketing and advertising practices.

The Decree to partially reform the Regulations of the Law on the Promotion of Competition and Effective Consumer Defence subjects e-commerce information and contracts to the same protection as ordinary information and transactions, consistent with the Recommendation of the Council on Consumer Protection in E-commerce [[OECD/LEGAL/0422](#)], which recommends that consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.

New provisions in the decree establish the obligations of businesses engaged in e-commerce, including in the areas of business identity disclosure; participation in best practice or self-regulatory programs; information about the goods and services; information about the transaction; price information; transaction confirmation; consumer record; payment security; delivery timeframe; consumer claims; consumer reviews; advertising targeting vulnerable consumers and minors, and personal data protection. Some of the important Articles cover the following themes:

- i) *Functional equivalence for e-commerce*: contracts and information provided to consumers in the context of e-commerce should have the same protection as regular transactions and information.

- ii) *Information about the Good and Services*: Obligations include the need to provide consumers with sufficient information on elements that impact their purchasing decision, including if relevant the functionality of digital contents.
- iii) *Information about the business*: businesses engaging in e-commerce have specific identity disclosure requirements, including disclosing main geographical location, name, address, telephone number, e-mail address.
- iv) *Children and vulnerable consumers*: businesses engaging in e-commerce should take special care in advertising or marketing aimed at children, vulnerable or disadvantaged consumers.
- v) *Information about the goods or services*: businesses must provide information on the terms, conditions and costs associated with the transaction in a clear, truthful and sufficient manner.
- vi) *Transaction confirmation moment*: should be clear, sufficient and unambiguous.
- vii) *Payment security*: businesses engaging in e-commerce must use effective, reliable and certified security systems to guarantee the protection, integrity and confidentiality of consumer transactions and payments.
- viii) *Consumer reviews*: businesses engaging in e-commerce should provide mechanisms using the same medium as that of the transaction to enable consumers to submit requests, complaints, and claims. Companies should handle consumer complaints promptly, directly and without charge.

A bill to reform Law No. 7472 more deeply is expected, in due course, to be proposed to Parliament. The proposed reform will favour more expeditious, efficient complaint handling by the CNC.

It could also be noted that a draft "Bill on Information Society Services" has been proposed in the Legislative Assembly. Modelled largely on the European Union's E-commerce Directive (Directive 2000/31/EC), it also contains references and standards from several United Nations Commission on International Trade Law (UNCITRAL) Acts. This bill proposes that all transactions or services provided over the Internet be considered to be contracts with the same liabilities, infractions and sanctions as regular contracts.

3.3. Implementation and enforcement

The institutions in charge of implementing and enforcing consumer policy in the context of e-commerce are those that implement and enforce consumer policy in general (see section 2.2) and privacy policy and data protection policy.

3.3.1. Non Regulatory measures

The e-commerce market in Costa Rica is still emerging and many businesses are just beginning to look into the Internet as a sales channel. Data from the DAC's Consumer Service Platform shows that complaints related to e-commerce are less than 6% of the complaints received by the DAC in recent years. With trust in secure online transactions being particularly low in Costa Rica, a priority for the DAC in terms of non-regulatory measures is to inform and educate consumers and businesses as they begin to engage in e-commerce. The DAC therefore plans to increasingly integrate e-commerce components in its awareness raising and education initiatives. In March 2016 for example, the DAC held

a forum on Consumer Protection in E-commerce during World Consumer Rights Day. Consumer education and advice services that are provided at no charge via 800-CONSUMO and 1311 will also cover e-commerce related queries.

To coordinate consumer education initiatives on electronic payment mechanisms, the DAC maintains an open communication channel with the chambers of public and private banks. The DAC also has inter-institutional coordination with the Central Bank of Costa Rica to implement electronic payment mechanisms used to protect consumers. The Costa Rican Bar Association held a cycle of round tables on e-commerce, new technologies, and the insurance market to promote consumer rights related to this type of product.

An institutional priority area for the DAC has been to set up an E-commerce Observatory to detect fraudulent e-commerce practices such as deceptive advertising, and unfair commercial practices, such as price concealment, successive automatic charges or hidden contractual terms. Having obtained additional resources from the Ordinary Budget for its new E-commerce Observatory, the DAC, through its Department of Future Sales and Consumer Education, launched an E-commerce Observatory dedicated to online market surveillance in May 2017.

3.3.2. Enforcement

Consumer protection legislation for e-commerce is enforced through market surveillance by the E-commerce Observatory, and investigations and corrective measures by the DAC and the CNC. The E-Commerce Observatory monitors websites and verifies that information provided to consumers fulfil legal requirements. If it considers information to be deceptive, the Observatory sends a warning letter to the business, which can correct the information. If the business does not comply with the warning, the Directorate for Consumer Support can initiate an administrative procedure resulting in sanctions. In the five months between early May 2017 and early October 2017, the Observatory has monitored 607 websites and issued 13 warnings.

The DAC aims to further develop the E-commerce Observatory's technical competence through specialised training and international cooperation so that it is able to investigate the identity of e-commerce website operators, in co-operation with the judicial police. E-commerce investigations can result in administrative penalties by the CNC.

3.4. Monitoring and Evaluation

The DAC's priority will be to disseminate information and guidance on e-commerce consumer protection and to continuously assess how the market responds to existing rules. The e-commerce observatory will monitor websites and social media to identify potential or actual abuse of consumer rights and implement corrective actions.

The DAC participates in international monitoring and awareness raising exercises such as online sweep activities or fraud prevention months carried out by ICPEN. International online sweeps aim to target fraudulent and misleading conduct in e-commerce: participants spend an entire day searching web sites, spam messages, messenger services, social applications and media for misleading or fraudulent behaviour. The results from online sweeps provide important input to the DAC that helps in designing appropriate corrective measures. The DAC aims to continue to participate in this activity every year.

3.4.1. Indicators and data

Costa Rica monitors the number of complaints received that relate to e-commerce. While the number of complaints is still low (on average, between 2% and 6% of complaints received since 2014), it is expected to rise as the e-commerce market develops.

3.5. Assessment and recommendations

3.5.1. Recommendation of the Council on Consumer Protection in E-Commerce ***[[OECD/LEGAL/0422](#)]***

The main objective of Costa Rica's consumer protection policy in the context of e-commerce is to provide online consumers with the same level of protection as in other forms of commerce. A new Decree that came into force on 25 October 2017 provides specific standards for consumer protection in e-commerce consistent with the OECD Recommendation, notably requirements for the online transaction confirmation process, online security and privacy, prohibiting misleading advertisement in the context of e-commerce, setting the responsibility of businesses for providing clear, truthful, sufficient, timely, verifiable, understandable, accurate and suitable information to consumers about the products they offer as well as contact details of their business.

Costa Rica's consumer protection regime provides for dispute resolution and redress (DRR) mechanisms, including alternative DRR mechanisms. The protection of consumer privacy and data is a priority of consumer protection in the context of e-commerce. Costa Rica's general privacy and data protection framework applies in the context of e-commerce and is in accordance with the Recommendation of the Council concerning Guidelines Governing the Protection of Privacy and Transborder Flow of Personal Data [[OECD/LEGAL/0188](#)].

3.5.2. Recommendations

The Committee recommends that Costa Rica Continue to develop capacity within the DAC to detect fraudulent e-commerce practices and unfair commercial practices, including by developing the E-commerce Observatory.

4. CROSS-BORDER FRAUD

4.1. Policy

Costa Rica's policy to protect consumers from fraudulent and deceptive commercial practices focuses on fraud committed within the national jurisdiction. Costa Rica has no formal policy on cross-border fraud, but recognises the value of international co-operation and is part of several multilateral and international fora that enable or enhance international co-operation between consumer protection agencies to help prevent and combat fraudulent commercial practices across borders.

4.1.1. Legal and regulatory framework

Costa Rica's main consumer protection law, the Law on the Promotion of Competition and Effective Defence of the Consumer (Law No. 7472), does not specifically address cross-border fraud. However, it establishes a framework to combat fraudulent and deceptive commercial practices applicable in the Costa Rican territory or when such practices have consequences in the Costa Rican territory, provided that the offender is in the national territory.

Article 34 of Law No. 7472 indicates that businesses must provide clear and accurate information regarding elements that directly influence the decision to consume, and must also offer, promote or publicise their goods or services according to their nature, characteristics, conditions, contents, weight (when appropriate), use or purpose so as to not lead consumer into deceit or mistake (Article 37).

Costa Rica has a criminal prosecution policy for fraudulent practices that affect consumers. Article 63 of Law No. 7472 establishes heavier penalties for the crimes of usury, speculation and unfair advertising that cause prejudice to consumers. The breach of contractual conditions constitutes fraud when it is deceptive or otherwise manipulative. Such cases are reported to the criminal authorities for their investigation.

In addition, Article 217 Bis of Law No. 9048, which reformed various articles in the Penal Code, sanctions cybercrime and provides for the imprisonment of anyone who uses digital means to acquire an illegal benefit to the prejudice of a person, e.g. through deception, identity theft, etc. The penalty is aggravated when a fraud is perpetrated in public databases or the banking system.

4.2. Responsibilities and powers

In Costa Rica, the agency in charge of consumer protection is the DAC, which reports to the MEIC. The DAC can process cases of deceptive commercial practices and reports to the competent agencies any conduct that typifies as fraud in prejudice of a consumer. The DAC exchanges information and best practices with the different international forums on consumer protection of which it is a member, such as the ICPEN and CONCADECO.

Deceptive commercial practices are sanctioned by the National Consumer Commission (CNC). As violations of Law No. 7472, the CNC may order, as appropriate, that the manufacturer or business rectify any advertising, incur the corresponding costs, and disseminate the accurate or omitted information through the same means and in the same manner as in the past. As appropriate, the CNC may penalise deceptive commercial

practices that cause harm to consumers with fines ranging from 10 to 40 times the minimum monthly wages (Article 57).

Fraudulent practices against consumers constitute crimes: the DAC and the CNC sends such cases to the General Prosecutor's Office that has the power to investigate and prosecute crimes. The General Prosecutor's Office is part of the Judicial Branch and is responsible for directing the activities of the Judicial Investigation Organisation, is the police force in charge of investigating crimes. In fraud matters, offenses committed beyond the national territory and which affect nationals may be tried locally, provided the offender is physically in the national territory.

For cross-border crime investigations, Costa Rica's judicial and civil law enforcement bodies cooperate with other bodies through INTERPOL, the international police organisation. INTERPOL provides international co-ordination and co-operation mechanisms with its 190 member countries. Interpol supports organisations, authorities and services whose mission is to prevent or combat international crimes in line with the legislation of each country. Interpol provides support in the form of background and other information, and facilitates cross-border police co-operation in international cases involving public safety, terrorism, organised crime, drug trafficking, money laundering, child pornography, financial crimes, and corruption.

4.3. Implementation

Costa Rica's objective regarding deceptive commercial practices is to protect consumers through consumer information and education; efficient, international on-line dispute settlement mechanisms, and free access to the administrative protection provided by the National Consumer Commission. In matters of fraud, Costa Rica's objective is to penalise fraudulent activities in detriment of consumers. Several practical measures are carried out to identify and prevent cross-border fraud.

Cross-border fraud is notably detected through consumer complaints or claims and through information sharing via international networks, including international alert systems such as the Inter-American Rapid Alert System (SIAR) for product safety, as well as via bilateral exchanges with other consumer protection agencies. Information is exchanged at international conferences and in direct communication with other consumer protection authorities, notably those from neighbouring countries.

The DAC has recently (early May 2017) set up an E-commerce Observatory dedicated to online market surveillance to detect fraudulent e-commerce practices such as deceptive advertising, and unfair commercial practices, such as price concealment, successive automatic charges or hidden contractual terms. If it considers information to be deceptive, the Observatory sends a warning letter to the business, which can correct the information. If the business does not comply with the warning, the Directorate for Consumer Support can initiate an administrative procedure resulting in sanctions by the CNC. The DAC aims to develop the E-commerce Observatory's technical competence through specialised training and international cooperation so that it is able to investigate the identity of e-commerce website operators, in co-operation with the judicial police.

4.3.1. *International co-operation*

The main international network Costa Rica participates in to address cross-border fraud is the ICPEN. In particular, the DAC participates in ICPEN's online sweeps in order to prevent cross-border infringements in different areas, such as in tourism or in-app

purchases and in the Fraud Prevention month coordinated by ICPEN. Costa Rican consumers encountering fraud involving a company acting outside Costa Rica can file a complaint with econsumer.gov, a global system for co-operation on cross border cases in which the DAC participates. The validity of complaints is checked against the local legislation in order to coordinate actions to be taken with or against a local provider.

The DAC is active in the work of different Latin-American networks. For example, Costa Rica and Member countries of the FIAGC established a working party to help prevent cross-border fraud and create a cross-border dispute resolution mechanism. An MoU was signed within the FIAGC regarding cross-border dispute settlement in matters of tourism.

The DAC also co-operates directly with consumer protection enforcement authorities from other countries, exchanging information on investigations under way in other jurisdictions, treating the data and the course of the investigation in a confidential manner. For example, the information in econsumer.gov complaints may be added to the Consumer Sentinel system, a database of consumer complaints operated by the US Federal Trade Commission. The Consumer Sentinel system enables certified, government authorities responsible for law enforcement and regulatory agencies in ICPEN member countries, to access the grievance records to investigate suspicious companies or individuals, discover fraud and detect new modes of fraud. The information reported on line may also be used, in the aggregate, to analyse trends and statistics, which may be made public.

To seek consumer redress, a judge must issue an international request for assistance to freeze the assets and accounts of the persons involved. Also available to negotiate redress are the agreements of consumer defence agencies in the international forums in which Costa Rica participates.

4.3.2. Challenges

Notwithstanding these different activities, cross-border fraud remains a challenge for Costa Rica. The main challenges include:

- **International co-operation:** A significant challenge Costa Rica faces with regards to cross-border fraud is the inability of investigators to reliably obtain timely and relevant information from their foreign counterparts and from the private sector, notably from foreign ISPs and from large online platforms popular with Costa Ricans. The recent ratification of the Budapest Convention on Cybercrime (Budapest Convention) could significantly improve Costa Rica's ability to obtain evidence in investigations through faster and more effective regime of international cooperation, helping to address problems of jurisdictions.
- **Education and training of judicial branch:** Domestically, the judicial branch faces a lack of resources, compounding the difficulty to obtain information internationally. The lack of resources for training of the judicial branch causes domestic processes in Costa Rica to be lengthy and their outcome to be uncertain. Costa Rican investigators report lengthy processes of at least six months whereby requests must transit from the judicial police to the prosecutor's office, to the local judge, to an online platform abroad.
- **Sanctions:** Sanctions for deceptive commercial practices and for fraud, including at the cross-border level, are viewed as inadequate. In addition, the territorial limitations applying to Costa Rica's criminal justice system are an obstacle to address cases of cross-border fraud.

- **Consumer education:** Educating consumers on cross-border deceptive and fraudulent practices and co-operating internationally to detect new cross-border practices that could mislead consumers.
- **Domestic co-operation:** Enforcement co-operation between civil administrative side and criminal investigation side.

4.4. Monitoring and evaluation

4.4.1. Indicators and data

Besides criminal aspects that may be part of a cross-border case and would be treated and measured by the competent Costa Rican authorities, cross-border fraud is not being measured and there are no specific national indicators other than complaints and claims that enable DAC to identify trends and developments in cross-border fraud.

4.4.2. Policy improvement

Costa Rica takes the experiences and results from cross-border consumer protection cases into account to continuously improve and extend existing cross-border co-operation for protecting consumers from fraudulent and deceptive commercial practices across borders.

4.5. Assessment and recommendations

4.5.1. Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders [[OECD/LEGAL/0317](#)]

Costa Rica's main consumer protection law, Law 7472, does not specifically address cross border fraud, but establishes a framework to combat fraudulent and deceptive commercial practices applicable to offenses committed nationally, or beyond the national territory but that affect nationals, provided the offender is physically in the national territory. Costa Rica combats cross border fraud through its engagement in international and Latin American networks as well as through bilateral co-operation on a case-by-case basis.

The DAC and the Prosecutor's Office notify relevant networks in which Costa Rica participates on cross-border fraud, share information, and provide assistance with investigations in the framework of respective networks or bilateral co-operation. Confidential data is shared in accordance with relevant Costa Rica's legal framework, including the law governing data protection and privacy.

The CNC and the Prosecutor's Office have the authority to investigate domestic businesses engaged in deceptive (CNC) and fraudulent (Prosecutor's Office) commercial practices against foreign consumers and can take action within the Costa Rican jurisdiction. A new DAC E-commerce Observatory dedicated to online market surveillance is expected to help improve enforcement co-operation between the civil administrative side and the criminal investigation side and to improve Costa Rica's ability to obtain evidence in investigations.

4.5.2. Recommendations

The Committee recommends that Costa Rica:

- Continue to develop capacity within the DAC to detect fraudulent e-commerce practices and unfair commercial practices, including by developing the E-commerce Observatory.
- Continue to improve co-operation with international counterparts and with the private sector on information-gathering for investigations.
- Look into increasing sanctions for deceptive commercial practices and for fraud.

5. DISPUTE RESOLUTION AND REDRESS

5.1. Policy

Providing effective dispute resolution and redress (DRR) mechanisms is a key element in Costa Rica's consumer policy regime. The legal and regulatory framework provides both conventional and alternative dispute resolution (ADR) and redress mechanisms.

5.1.1. Legal and regulatory framework

Costa Rica main framework for DRR is established by the Law for the Promotion of Competition and Effective Consumer Protection (Law No. 7472) and its Executive Decree (37899-MEIC) that contain specific provisions to promote Alternative Dispute Resolution mechanisms for consumers to report violations of their rights, free of charge and without limit on the amount of the claim. Article 33 of Law No. 7472 provides that the State should "guarantee access to effective and streamlined mechanisms of judicial and administrative protection to defend the rights and legitimate interests of consumers". Law No. 7472 also establishes the administrative procedure for consumers to settle disputes through Costa Rica's administrative tribunal, the National Consumer Commission (CNC).

In addition, the Law on Alternative Dispute Resolution and Promotion of Social Peace, (Law No. 7727) established principles and sets up the alternative dispute resolution system in Costa Rica. It establishes alternative dispute resolution centres (centros de Resolución Alternativa de Conflictos, or "RACs" in Spanish) throughout the country that can resolve consumer cases. The Ministry of Justice and Peace authorises, controls and supervises their operation.

Arbitration is also available. At any point in time and by mutual agreement, parties can decide to resort to an arbitrator or arbitration tribunal, the ruling of which is binding, and the parties will incur any relevant costs (Articles 55 and 58 of Law No. 7472 and the Law on Alternate Dispute Resolution and Promotion of Social Peace, Law No. 7727).

The judicial path is also available for consumers through a specialised procedure within the ordinary courts (Articles 432 and following of the Civil Procedural Code), of which the first step is a conciliation hearing between the parties.

MEIC is also drafting a bill to partially reform Law 7472 that would introduce collective or group actions in the judicial system, with similar provisions as those contained in the Code of Administrative Procedure and the new Code of Civil Procedure.

5.2. Implementation and enforcement

Alternative dispute resolution (ADR) mechanisms, as well as administrative or judicial proceedings, are in place to allow consumers to settle disputes.

5.2.1. Domestic framework - administrative procedure

The administrative procedure allows consumers to settle disputes through Costa Rica's CNC. The CNC has jurisdictional functions and is empowered to impose fines for non-compliance with the law; or order restitution, either through refund to the consumer, repair or substitution of the good; it can also impose precautionary measures of cessation of

practices, such as the freezing of goods and the suspension of services (see Box 2.1). The DAC organises conciliation hearings to try to settle conflicts prior to the formal start of a procedure with the CNC. The powers of the CNC are limited since the CNC is not authorised to cancel abusive clauses in adhesion contracts (based on Articles 46 and 53 of Law No. 7472), nor to redress damages, which must currently be heard by the competent jurisdictional bodies. A bill being drafted to reform Law No. 7472 is expected to give additional powers to the CNC.

5.2.2. Domestic framework - alternative dispute resolution mechanisms

The Consumer Support Directorate manages a Consumer Dispute Resolution Centre on the Consumer Assistance Platform (PACO), regulated by the following decrees: Manual of Procedures, Executive Decree 32742-MEIC; Operating Manual, Executive Decree 32743-MEIC; Code of Ethics, Executive Decree 32741-MEIC.

The DAC operates a Consumer Assistance Platform (known as PACO) detailed in Section 1 of this report. Dispute resolution has been a priority for this platform. Remote negotiation mechanisms have been set up to enable each party to discuss the conflict and possible solutions with the DAC mediator, through email and phone conversations. Through this remote negotiation mechanism, the DAC was able to solve close to 90% of consumer claims submitted to the DAC (Table 1). In the future, the DAC intends to put in place real-time online dispute resolution allowing all the parties in a dispute to interact online simultaneously with the DAC mediator, for example using a virtual mediation room and videoconferencing.

The Ministry of Justice and Peace also plays a role in providing ADR channels. The National Directorate of Alternative Dispute Resolution (DINARAC, Spanish acronym for Dirección Nacional de Resolución Alternativa de Conflictos) is a unit of the Ministry of Justice and Peace that was created in 1998. The DINARAC is in charge of operating and monitoring 16 dispute resolution centres, composed of lawyers and community volunteers. The centres provide neutral mediation services, free of charge, throughout Costa Rica. The DINARAC operates RAC centres and the program “Houses of Justice” (“Casas De Justicia” in Spanish) inaugurated in 2000 to provide ADR to people with limited financial resources. Although the DINARAC can handle consumer claims, people who know about it reportedly tend to use the more specialised DAC and its PACO platform.

The DAC asked DINARAC to create an Alternative Dispute Settlement Centre as part of the Houses of Justice programme to deal specifically with matters related to consumers and businesses, using the infrastructure of the Customer Assistance Platform (PACO). In 2005, the Ministry of Economy, Industry and Commerce (MEIC) and the Ministry of Justice and Peace signed an Institutional Memorandum of Cooperation and a Specific Inter-Ministerial Cooperation Agreement to strengthen the programme on alternate consumer conflict resolution, agreeing to cooperate for the effective creation and implementation of an Alternate Dispute Settlement Centre (022-2005-DINARAC). The DAC and DINARAC cross reference cases to one another. DINARAC has no time limitations for processing complaints.

5.2.3. Collective mediation

Although the judicial system in Costa Rica does not contemplate class actions per se, mechanisms exist to protect collective interests. Article 10 of the Code of Administrative Procedure and Article 19 of the new Code of Civil Procedure, which will come into force in October 2018, allow those representing diffuse and collective interests to claim redress

collectively. During the preparatory stages of the process, a judge can summon a group of people to a conciliation hearing. Based on the powers deriving from these provisions, the National Consumer Commission will also have legal capacity to represent consumers in court. This change in Costa Rica's legislation will be complemented by the provisions being included in the draft reform to Law 7472.

The CNC has recently developed a collective mediation ADR mechanism to bring together consumers facing the same issues, for example in recent cases with travel agencies and Christmas baskets. This collective mediation is a voluntary process by which neutral mediators help multiple consumers who have a common claim against the same business to reach a collective agreement.

The first step is to prepare the collective case. To identify affected consumers, the DAC issues a public alert and press release and when the case is ready, conducts collective conciliation hearings. One recent case of collective mediations involved "Christmas baskets"; future sales contracts in which consumers pay from 12 to 48 annual instalments to purchase products for their Christmas dinner (beef, liquor, chocolates, etc.). The consumers made the payments but the supplier did not deliver the goods as contracted. The collective case began with three affected consumers. With the help of an alert published on the DAC website and institutional Facebook page, 29 affected consumers were included and a conciliation agreement reached for all the consumers, with the DAC verifying effective compliance with the agreement.

In another recent collective mediation case, a travel agency had sold tour packages to accompany the Costa Rican soccer team to a match in Mexico. In addition to the tickets, the package included accommodation, transfers and visits to touristic areas. Consumers paid for the package but no trip was made. With the help of press releases and online alerts, the DAC identified 105 affected consumers who are taking part in the (ongoing in October 2017) case and collective hearings.

5.2.4. Judicial procedure

The judicial path is also available for consumers (Article 432 and following of the Civil Procedural Code). However, once a consumer chooses to pursue a legal proceeding, the administrative path is excluded. Article 432 and following of the Civil Procedural Code plans that if the claim is about a monetary dispute, the judge holds a conciliation hearing to try to reach an agreement and settle the case.

5.2.5. Cross-border co-operation

Costa Rica participates, through the DAC, in international and regional networks of government consumer protection agencies, such as the Ibero-American Forum of Government Consumer Protection Agencies (Foro Iberoamericano de Agencias Gubernamentales de Consumidor – FIAGC), the Central American Council of Consumer Protection Agencies (Consejo Centroamericano de Protección al Consumidor – CONCADECO) and the International Consumer Protection and Enforcement Network (ICPEN).

For tourism services, Members countries of the Ibero-American Consumer Forum (FIAGC) signed a memorandum of cooperation to establish mechanisms for institutional collaboration and co-operation facilitating cross-border dispute resolution. Signatories include Uruguay, Costa Rica, Panama, Paraguay, Peru, Ecuador, Guatemala, the Dominican Republic, Brazil, Colombia and Chile. The objective of this agreement will be

to provide links of the websites of FIAGC and its members to help international tourists to file and respond to complaints and to find relevant information regarding their rights and duties.

As a member of the Central American Council of Consumer Protection Agencies (CONCADECO), the Consumer Defence Directorate is working with CONCADECO to design an initiative called Ventanilla Única de Atención y Resolución de Reclamaciones de Consumidores Transfronterizos (Single Window to Address and Resolve Cross Border Consumer Claims) to enhance direct cooperation among consumer protection government agencies through a legal instrument that lists the procedure to apply for mutual assistance and the mechanisms and instruments to consolidate relevant good practices and co-operation among member countries.

5.2.6. Co-operation with the private sector

The DAC has developed a “Manual of Consumer Protection Practices”, which is a voluntary code of conduct for businesses in respect to consumer protection that, among other benefits, helps business to interpret the law. DAC has set up a Voluntary Membership System that businesses can sign up to; businesses assign employee(s) to act as “liaison(s)” with the power to negotiate terms for resolving conflicts with consumers remotely, assisted by a neutral in-house DAC mediator. This alternative dispute resolution system enables businesses and consumers to negotiate a solution before a complaint is filed with the National Consumer Commission, potentially saving time and financial resources for all parties involved.

Several private alternative dispute settlement services are provided by third parties in Costa Rica, such as those established by the Costa Rican Bar Association, the Centre for Conflict Resolution of the Federated Association of Engineers and Architects, the Conciliation and Arbitration Centre (CCA) of the Costa Rican Chamber of Commerce, and the International Centre for Conciliation and Arbitration (CICA) of the American Chamber of Commerce in Costa Rica. The Office of Financial Consumers of the Costa Rican Bank Association is a self-regulatory mechanism established by private banks to address conflicts between financial service providers and consumers. The Office for the Protection of Insurance Consumers of the National Insurance Institute is another example.

5.3. Monitoring and evaluation

The MEIC, through the DAC, is in charge of monitoring the policy for DRR in Costa Rica, by collecting indicators and outputs quarterly, semi-annually and annually. According to the DAC, quarterly and annual results allow them identifying achievements, constraints, and areas for improvement. The annual data is used to measurement the contribution to achieving their national development goal.

The DAC collects real-time data on the cases brought to the DAC and CNC, including those resolved by the DAC DRR channels (Table 1). Between 2012 and 2016 the proportion of complaints resolved by DAC’s dispute resolution has increased from about 67% of complaints to over 80% over the past few years. The ADR provided by the DAC therefore relieved some of the pressure on the Ordinary Administrative Procedure handled by the Consumer National Commission.

Table 1. Number of complaints resolved by DAC's dispute resolution or by administrative procedure (with the CNC), 2012 to 2016

	2012	2013	2014	2015	2016	TOTAL	Percentage
ADR	1408	1663	1605	1862	1715	6538	78%
	67%	71%	87%	88%	83.6%		
CNC	699	668	232	251	337	1850	22%
TOTAL	2107	2331	1837	2113	2052	8388	100%

Source: DAC, 2016.

5.4. Assessment and recommendations

5.4.1. Recommendation of the Council on Consumer Dispute Resolution and Redress [OECD/LEGAL/0356]

Costa Rica has a solid legal framework and functioning mechanisms for dispute resolution and redress (DRR). Private firms are the first instance responsible for solving consumer claims and for providing redress. If no solution can be found between the disputing firm and the consumer, and if the case goes to the DAC, the latter attempts to find a solution with the business and the consumer, before opening a legal procedure.

The DAC monitors the market place in real-time based on the consumer complaints and claims that it receives and collects. The DAC carries out a variety of initiatives and programmes to raise awareness of consumer protection issues and to educate consumers about their rights to claim redress; some of them are carried out in co-operation with business or with civil society NGOs. While the judicial system in Costa Rica does not allow consumers to claim redress collectively, in practice mechanisms exist to protect collective interests.

5.4.2. Recommendations

The Committee recommends that Costa Rica:

- Empower the CNC to address unfair contractual clauses and to administer sanctions for non-compliance.
- Improve cross-border co-operation to facilitate dispute resolution and redress across borders.

6. CONSUMER PRODUCT SAFETY

6.1. Policy

The objective of consumer product safety policy in Costa Rica is to protect consumers from unsafe and non-compliant food and non-food products that present health and safety risks. To meet this goal, Costa Rica focuses on market surveillance, product recalls procedures, international enforcement co-operation, as well as business education.

6.1.1. Legal and regulatory framework

Costa Rica's main consumer protection law, Law No. 7472 for the Promotion of Competition and Effective Consumer Defence, establishes in its Article 45 a market surveillance function for the Public Administration, through the DAC. The DAC is also in charge of managing voluntary and mandatory product recalls and promotes education and training on product safety rules.

Having a market surveillance function means that the DAC must review goods and services offered on the market regularly and randomly, to verify that they comply with existing standards and regulations concerning health, the environment, safety and quality. For imports, the monitoring can be carried out before the product enters national markets (“nacionalización de mercancías” in Spanish), but should be exceptional, so that it does not become a non-tariff barrier. Where there is evidence that they do not comply with the relevant technical regulations and quality standards, the DAC can prevent goods from being imported and advertised for safety, health, quality or environmental reasons.

Costa Rica's work on product recalls began around 2006, when several international cases of toys containing dangerous levels of lead led to risks of intoxication or injury to small children. At that time, recalls at the international level by Mattel and Fischer Price permeated the Costa Rican market and created pressure for Costa Rica to develop a procedure to handle recalls. The Regulation on the Law on the Promotion of Competition and Effective Consumer Protection, Executive Decree 37899-MEIC, first issued in 2010 and reformed in 2017, defines both voluntary and mandatory procedures to recall products from the market in its Section VI. The Regulation requires businesses to immediately inform the DAC (Article 123) and to recall goods from the market as soon as they learn that these products could endanger life, health or consumer safety (except for goods that are by nature dangerous).

The voluntary recall procedure (Article 124) provides that businesses file a simple affidavit in which they must clearly indicate the risk or reason for the recall; identify the product (e.g., type, model, serial number, lot, etc.); estimate the amounts brought into and sold in Costa Rica, when appropriate, and; identify to whom products were sold, when possible. Businesses must also submit a remedial plan for affected consumers, which must be implemented at no cost to the consumers.

In the mandatory recall procedure (Article 126), if the DAC becomes aware of a product recall taking place in another country, it can request that the merchant or supplier provide, within ten working days, the same information as in the voluntary recall procedure.

The DAC analyses the documentation provided by businesses and passes an administrative resolution. The DAC may also order any additional measures to ensure consumer health

and safety and inform consumers about health and safety risks. A one-year term for completing the recall begins upon the publishing of the recall alert in mass media to inform consumers, as ordered by the DAC.

6.2. Implementation and enforcement

The DAC has followed systematic procedures for product recalls - both voluntary and mandatory - in Costa Rica since 2010, when the regulation on product recalls was issued (37899-MEIC, described above). To recall unsafe products, businesses provide the relevant documentation to the DAC, which passes duly motivated administrative resolutions. Table 2 lists the voluntary recalls conducted in 2015.

The DAC can launch a recall process or prevent goods from being imported and advertised following: i) the checking and testing of goods, if it finds evidence that the goods do not comply with the relevant technical regulations and quality standards for safety, health, quality or environmental reasons; ii) the receipt of national alert (e.g. by the Ministry of Health) or an international alert (e.g. from the CSHN); iii) the receipt of a voluntary recall request from a business. The remedial plans for consumers affected by a product recall do not necessarily entail full exchange or return: depending on the information provided by the business, in some cases reconditioning, adjustment, or component change may be sufficient.

The CNC, Costa Rica's administrative tribunal in charge of sanctions and redress to consumers, can impose fines in case of violations of product safety standards, determine basic compensation and redress for consumers and order injunctions to freeze or seize goods, suspend services or temporarily halt the activities claimed to be in violation of Law No. 7472, while a ruling is being issued (Box 2.1 details the powers of the CNC).

In addition to the DAC and the CNC, several other state actors play important roles in ensuring product safety, including the Ministry of Health, the Ministry of Finance and the Children's Hospital.

6.2.1. Standards

In Costa Rica, several state and non-state entities promote standardisation by product manufacturers. In particular, the Technical Regulation Body of the MEIC coordinates with relevant ministries to issue or amend technical regulations, including product labelling. This entity also establishes training programs related to procedures and best practices and participates in commercial negotiation processes, in regional harmonisation of technical regulations, and in advisory committees about technical barriers to trade.

Non-State actors also play an important role in standardisation. The non-State public Costa Rican Accreditation Entity (ECA) is in charge of issuing accreditations nationally in areas including laboratory testing and calibration, clinical laboratories, inspection bodies, certification bodies, and greenhouse gases validating/verifying agencies. ECA was established in 2002 under Law No. 8279, "National Quality System" and operates with the Ministry of Science, Technology and Telecommunications (MICITT). In addition, the Institute of Technical Standards of Costa Rica (INTECO) is a non-profit private organisation that has operated as Costa Rican standards certification organisation since 1995.

6.2.2. Business education and training

The DAC conducts education and training for businesses on product safety and encourages companies to use the recall procedure described in Executive Decree 37899-MEIC. The DAC is considering additional education campaigns, in particular, to address businesses that are concerned about their image if they perform a product recall and on the need, for recalls to be successful, for businesses to implement mechanisms to locate the affected parties and possibly, pursue alternate means such as labelling at points of sales.

6.2.3. Cross-border co-operation

Since 2015 Costa Rica is a formal member of the Organization of American States (OAS) Consumer Safety and Health Network (CSHN). The CSHN is an inter-American initiative of the 34 OAS countries to help training and to consolidate national and regional product safety market surveillance. CSHN facilitates the early detection of hazardous consumer products and enable co-ordinated actions by member country agencies to prevent and address risks. It also plays a role in measuring the impact of policies and programs on consumers' health and wellbeing. The CSHN operates an Inter-American Rapid Alert System (SIAR); an international reporting and alert system on consumer product safety alerts that allows countries of the region to take necessary measures to prevent or stop a product from being sold, in conformity with each country's procedures.

Within the OAS Consumer Safety and Health Network (CSHN), Costa Rica is emphasising international, multi-stakeholder co-operation to design and implement a risk assessment protocol for product safety. Such a risk assessment protocol could, in Costa Rica's view, help companies to detect risks in products early on, before these products reach the market. It would complement the exchange of information and alerts conducted through networks such as CSHN.

Costa Rica is a member of the Ibero-American Forum of Government Consumer Protection Agencies (FIAGC) and co-operates with the Central American Council of Consumer Protection Agencies (CONCADECO), a regional organisation focused on developing relations, co-operation and mutual assistance between government agencies in charge of consumer protection in Central America. Costa Rica also co-operates with the United States Consumer Product Safety Commission (CPSC) with which it has a Memorandum of Understanding for co-operation in matters related to consumer product safety.

Costa Rica participates in the OECD Consumer Product Safety portal and is an active contributor to its activities. DAC sees an opportunity to use the Working Party on Consumer Product Safety (WPCPS) to detect potential risks of products that have been removed from other jurisdictions yet are being sold in Costa Rica. In due course, Costa Rica will look into whether it is possible to integrate the information from the SIAR with that of the Consumer Product Safety Portal. In early November 2017, the WPCPS will conduct a campaign on the risks associated with tip-over furniture, especially for young children. Costa Rica is part of the group that is preparing the campaign and has translated the material into Spanish and shared it with countries of the Ibero-American Forum of Government Consumer Protection Agencies (FIAGC) and the Consumer Safety and Health Network (CSHN) of the OAS.

6.2.4. Challenges

One of the priorities underlined by the Costa Rican government is that of specialised training to increase the technical capacity of staff, through international cooperation.

Another priority for Costa Rica is to improve education programs and training for businesses, to improve awareness of consumer product safety and of the procedures to recall products.

The DAC has also identified increased coordination with other parts of the government as important. For example, the Ministry of Finance and Customs Office could help the DAC protect consumers by sharing with the DAC information to identify importers of products that have been declared risky in another market and are believed to have entered Costa Rica.

In future, the DAC aims to help develop regulation detailing requirements for publishing a recall alert in mass media to inform consumers as ordered by the DAC and for making available a dedicated space on business' website to communicate with consumers about the recall.

6.3. Monitoring and evaluation

The DAC is responsible for overseeing mandatory and voluntary recall procedures and for keeping track of recall procedures. Businesses must provide to the DAC detailed information about the products submitted to recall, as well as the impact and effectiveness of the measures implemented. The DAC assesses the main objectives for the product safety policy annually to inform the development of priorities and new initiatives, including those pertaining to institutional cooperation.

Costa Rica has participated actively in the CSHN since its creation in 2014. The CSHN accounts for over 59 000 product recalls since 2014 and for the imposition of measures such as reconditioning, change, and repair of the items.

Table 2. Voluntary recalls in Costa Rica in 2015

COMPANY THAT PERFORMED THE RECALL	PRODUCT/SERVICE	DISTRIBUTOR	DATE/ RESOLUTION
Corporación de Supermercados Unidos S.A. (WAL-MART)	Baby strollers. The side hinge for folding the stroller can pinch or bruise the finger of a child, posing a risk of laceration or amputation.	Corporación de Supermercados Unidos S.A. (WAL-MART)	RV-01-2015 The publication was made, and expires on 3/28/2016 and RV-04-2015.
Prismar de Costa Rica S.A.	Kraft Macaroni & Cheese Dinner (Macaroni and cheese) Pack of 5 units	Tiendas de PriceSmart	RV-02-2015
Olympus de Costa Rica Limitada	OLYMPUS digital camera brand, Style: VG-170. It can cause electric shock if it has been subjected to a strong impact.	Olympus de Costa Rica Ltda.	RV-03-2015
APPLE, INC.	Portable audio speaker with rechargeable battery. The risk is detailed as eight suspected incidents of smoke and fire risk reported worldwide.	Beats by Dr. Dre, Apple, and other retailers.	RV-05BIS-2015
Purdy Motor, S.A.	TAKATA air bag inflator on some Toyota vehicles.	Purdy Motor	RV-04-2015
Agencia Datsun S.A.	TAKATA air bag inflator	Agencia Datsun S.A.	RV-05-2015
FRANZ AMRHEIN & CO., S.A. (FACO)	TAKATA air bag inflator	The affected Honda models were distributed by Franz Amrhein & Co., S.A. (FACO)	RV-06-2015
Bavarian Motor CR, S.A.	TAKATA air bag inflator	BMW vehicles. Euro Autos, S.A. and currently by Bavarian Motors CR, S.A.	RV-07-2015

Auto Subaru de Costa Rica S.A.	TAKATA air bag inflator	Auto Subaru de Costa Rica S.A.	RV-08-2015
AUTOSTAR, S.A.	TAKATA air bag inflator	Chrysler vehicles. AutoStar Vehículos, S.A.	RV-09-2015
Auto Ensambladora S.A. (AESAs)	TAKATA air bag inflator	Mazda vehicles. Auto Ensambladora, S.A.	RV-10-2015
Nacional Automotriz NASA S.A.	TAKATA air bag inflator	FORD brand vehicles. NASA S.A.	RV-11-2015 in process

Source: DAC, 2015.

6.4. Assessment and recommendations

6.4.1. Recommendation of the Council concerning the Establishment of Data Collection Systems Related to Injuries Involving Consumer Products [OECD/LEGAL/0160]

Costa Rica is working on an injury data collection system and database. The DAC is developing the necessary administrative, financial and technical resources for an integrated system for collection of injury data from sources including customs, hospitals, and medical associations.

6.4.2. Recommendation of the Council concerning the Safety of Consumer Products [OECD/LEGAL/0183]

Costa Rica's consumer protection regime provides for: regular assessment of consumer product-related hazards by suppliers and government agencies; product safety standard development and implementation; the possibility to accept imported products with certificates from foreign agencies; and measures to prevent unsafe goods, which are banned or withdrawn from domestic markets, from being exported to other countries.

6.4.3. Recommendation of the Council concerning Recall Procedures for Unsafe Products Sold to the Public [OECD/LEGAL/0192]

The DAC is in charge of managing voluntary and mandatory product recalls. The DAC can launch a recall process or prevent goods from being imported and advertised following surveillance and testing activities, the receipt of a national or international alert or the receipt of a voluntary recall request from a business. If a recall is necessary, the DAC requests that the producer disclose relevant product information to the public, passes a duly motivated administrative resolution and orders the recall. Developing training programmes for business is a priority for the DAC. International recalls are co-ordinated through DAC's participation in relevant international networks.

6.4.4. Recommendation of the Council concerning Risk Management and Cost-Benefit Analysis in the Product Safety Field [OECD/LEGAL/0196]

The DAC carries out product risk assessments and cost-benefit analysis of products in the Costa Rican market, including of imported products. If appropriate, it takes into account information, methods, standards and certificates from other countries. Domestically produced products are assessed against the same criteria as imported products, which can be monitored before the product enters national markets ("nacionalización de mercancías" in Spanish), but only on an exceptional basis, so as to avoid becoming a non-tariff barrier.

Regional efforts are underway through the Regional Program to Support the Quality and Application of Sanitary and Phytosanitary Measures in Central America (PRACAMS).

6.4.5. Recommendation of the Council concerning Safety Measures Taken in the Interest of Children [[OECD/LEGAL/0208](#)]

Costa Rica's legislation, regulation and non-regulatory provisions include product safety measures and standards in the interest of children. The DAC conducts compliance monitoring, and takes preventive actions through product publicity and awareness raising campaigns to educate consumers on ways to protect children from unsafe products. Existing policies and prevention measures are reviewed regularly at the national level and in comparison with international standards and developments.

6.4.6. Decision-Recommendation of the Council on the OECD Notification System on Consumer Safety Measures [[OECD/LEGAL/0254](#)]

The Ministry of Economy, Industry and Trade (MEIC) has been appointed as the national contact point for the notification of dangerous products to the OECD's Global Recall Portal. No products have been reported yet, but future reports of products and measures taken in response to the notifications received will cover the ones outlined in the Decision-Recommendation and be carried out in a timely manner, in accordance with the suggested confidentiality measures.

6.4.7. Recommendations

The Committee recommends that Costa Rica improve communications on product safety and recalls with the commercial sector and with the Customs Office.

7. SPAM

7.1. Policy

Costa Rica has a domestic framework covering spam and co-operates with foreign spam enforcement authorities.

7.1.1. Legal and regulatory framework

Costa Rica's legal framework aims to protect citizens from unwanted or unsolicited communications by establishing the right to not receive unsolicited information, rules on the processing of personal data and considering spam-related conducts as computer-related crimes.

- The General Telecommunications Law (Law No. 8642 – Ley General de Telecomunicaciones) contains an article on unrequested communications. Article 42 details clauses that are considered abusive and Article 44 provides the right of citizens to not receive unsolicited information and requires that sending of information be suspended when they had not given their authorisation and when they no longer wish to continue receiving the communication.
- The Law on Protection of the Individual for the Treatment of Personal Data (Law No. 8968 – Ley de Protección de la persona frente al tratamiento de sus datos personales) provides the principles and regulation for the processing of personal data, which can be violated by spam since contact details are used for other purposes than the transaction in which the data was collected. The Law No. 8968 requires the registration of publicly available databases with the Data Protection Agency (Agencia de Protección de Datos de los Habitantes – PRODHAB) and requires that sensitive data be protected.
- The amended Costa Rican Penal Code (Law No. 9048) updates computer-related crimes, including phishing, installation of malicious software, spoofing of websites and computer espionage, which are activities often associated with spam.

The following regulations are also in place:

- The Regulation to the Law on Protection of Individuals for the Treatment of their Personal Data, Executive Decree 37554-JP.
- The Regulation on Measures to Protect the Privacy of Communications, Executive Decree 35205-MINAE.
- The Regulation of Credit and Debit Cards, Executive Decree 35867-MEIC, has a chapter that sets rules on the right to data protection of users of financial services. Article 23 establishes the rights of access, rectification, and cancellation. Article 24 sets the procedure for rectification and deletion of data users of financial services, and Article 25 provides for the possibility for cardholders to refuse advertising issued by credit and debit card issuers.

The Executive Decree of 25 October 2017 containing a partial reform to the Regulations of the Law on the Promotion of Competition and Effective Consumer Protection (Law No.7472), prohibits businesses from sending unsolicited electronic communications by any

means. It requires that traders develop and implement effective and user-friendly procedures for consumers to choose whether they want to receive commercial messages or not, and when they choose not to receive them, to respect their decision immediately. The Decree stipulates that for a commercial communication not to be considered unsolicited, the consumer must have expressed consent before receiving communications.

The Decree also establishes a coordination mechanism for spam between the DAC and the Superintendence of Telecommunications (SUTEL), according to which SUTEL may refer to the CNC cases where there are signs of a business being liable for issuing unsolicited communications or for the automatic or misleading subscription of goods or services without the express consent of the consumer (except in the case of operators or providers of telecommunications services).

The goal of these anti-spam regulations is to constitute a comprehensive antispam policy that covers telecommunication service operators, telemarketing and online marketing service providers and direct selling companies that use this type of practices. In addition, SUTEL is working on the approval of a Regulation for User Protection that includes provisions related to unsolicited communications sent by operators or providers of telecommunications services.

The Agency for Data Protection of the Inhabitants (PRODHAB), the Telecommunications Superintendency (SUTEL), the Supreme Court of Justice, the Consumer National Commission (CNC), consumer associations, and the private sector enforce the spam policy in Costa Rica.

7.2. Implementation and enforcement

SUTEL enforces spam policy using a complaint procedure described in Articles 47 and 48 of the Law No. 8462 vis-a-vis telecommunications operators. In that case, consumers may request to remove their names from database and stop any kind of undesired communication.

Moreover, the Costa Rican governmental agencies co-operate with private sector entities to protect consumers in relation to spam, for example through joint training activities with business sector entities and credit bureaus.

7.2.1. International co-operation

Costa Rica co-operates and exchanges information with foreign Spam enforcement authorities through international fora including the Ibero-American Network of Data Protection, the International Consumer protection and Enforcement Network (ICPEN) and the Central American Council of Consumer Protection Agencies (CONCADECO).

7.2.2. Challenges

From the perspective of the protection of personal data, policies are supported by different sources of national legislation but require further development, particularly in relation to coordination between the government and the parties involved.

Until October 2017, there was no efficient and expeditious mechanism in Costa Rica to withdraw from unwanted communications, for example when a consumer previously accepted or requested communications but no longer wishes to receive them. This is expected to change with the recent Executive Decree containing a partial reform to the

Regulations of the Law on the Promotion of Competition and Effective Consumer Protection.

7.3. Monitoring and evaluation

PRODHAB monitors the implementation of personal data protection policy, including aspects related to spam, by collecting information on the number of registered databases of personal data and the number of claims filed. Based on this information, the Agency prepares monthly and annual assessment reports aiming to improve the policy.

7.4. Assessment

7.4.1. Recommendation of the Council on Cross-Border Co-operation in the Enforcement of Laws against Spam [[OECD/LEGAL/0344](#)]

This instrument under the joint responsibility of the Committee on Digital Economy Policy (CDEP) and the Committee on Consumer Policy (CCP). The implementation of this Recommendation by Costa Rica is thus also discussed in the separate report on Digital Economy Policy in Costa Rica.

Costa Rica's policy to combat spam has been until recently limited to issues that are treated within the context of privacy and data protection in Costa Rica, with cross-border enforcement co-operation on spam limited to cases that involve the violation of privacy or data protection rights and co-operation with private sector entities to combat spam possible but not formalised.

A new Decree that entered into force on 25 October 2017 prohibits businesses from sending unsolicited electronic communications and requires that they develop and implement effective and user-friendly procedures to allow consumers to choose whether they wish to receive commercial messages. It is expected to help ensure comprehensive antispam policy in Costa Rica.