



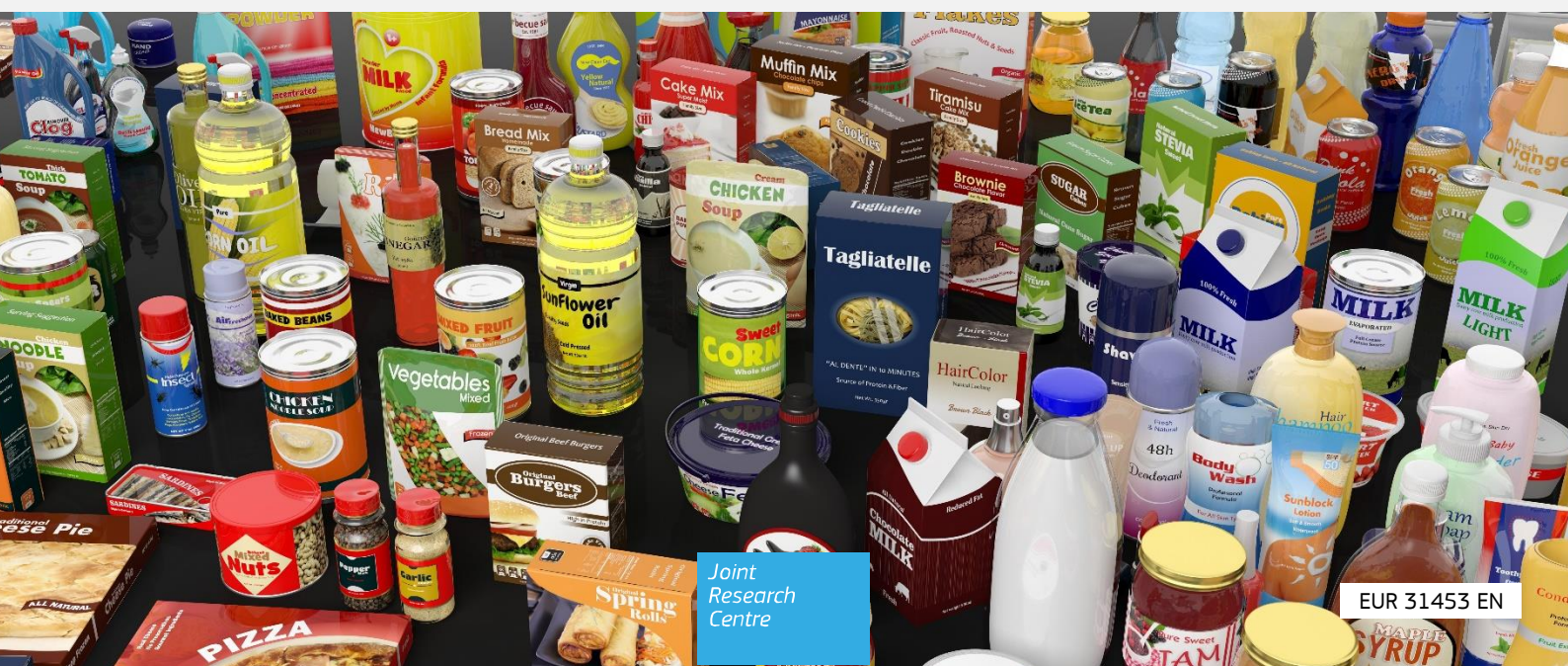
JRC TECHNICAL REPORT

# EU-wide comparison of the characteristics and presentation of branded food products (2021)

## Annex 5 – Company survey results

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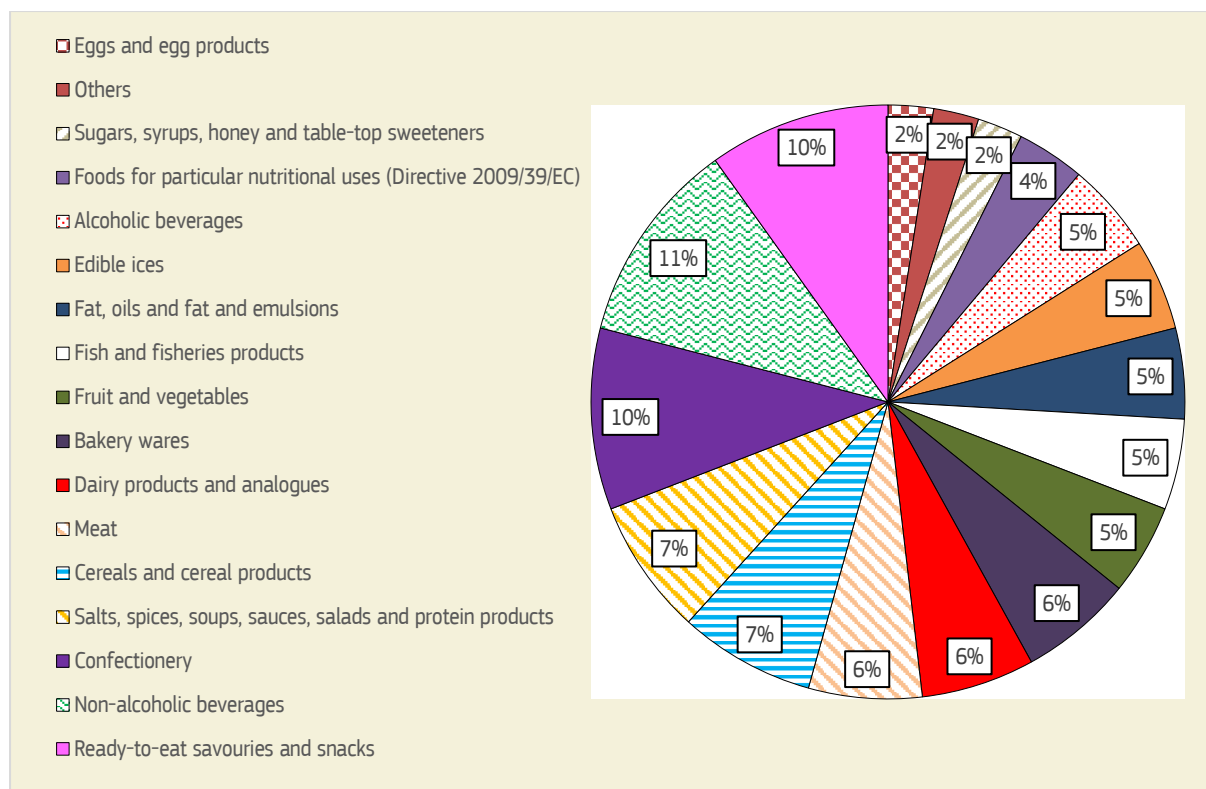
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## Company survey results: potential brand owners' (potential) responses to the Unfair Commercial Practices Directive

This annex summarises the results from the online survey, providing a more detailed analysis of the brand owners' (potential) responses to the changes in EU legislation concerning DC-SIP – i.e. the amendments to the Unfair Commercial Practices Directive (UCPD) – that Member States must apply from 28 May 2022.

Figure 1 shows the distribution of respondents by food sector. Most of the sectors are largely equally represented. Only the non-alcoholic beverages, confectionery and ready-to-eat savouries and snacks sectors are represented to a notably greater extent. A significant share of respondents (12 out of 33) represented multiproduct companies operating in several food sectors.

**Figure 1.** Composition of the surveyed companies by sector (percentage of all respondents)

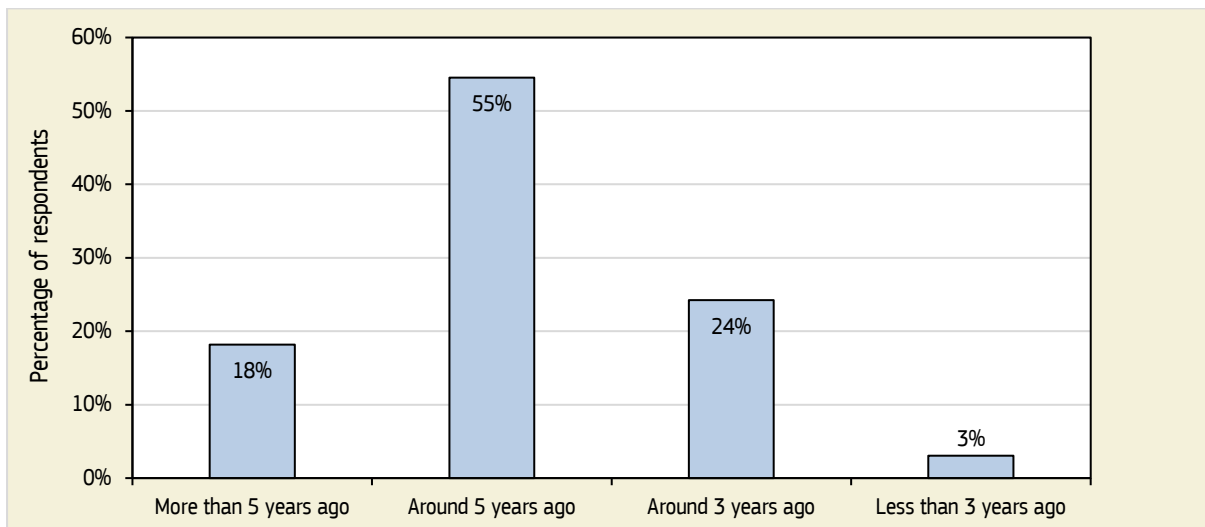


*NB: Respondents could select more than one sector.*

In terms of geographical coverage, 63 % (21 out of 33) of the surveyed companies were active in all EU Member States. The remaining 12 companies serve specific EU markets.

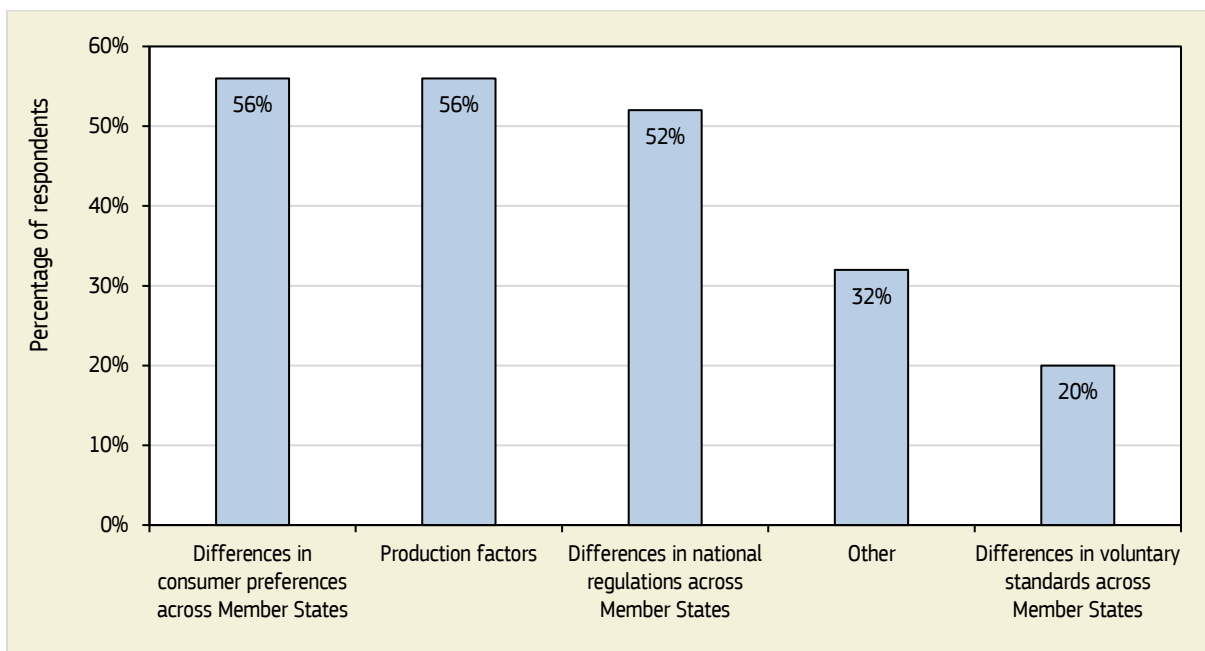
The surveyed companies were aware about the DC-SIP issue: 100 % of respondents asserted their knowledge of the DC-SIP issue. Around 55 % of respondents indicated that they became aware about the DC-SIP issue when it was brought to public attention (i.e. 'around 5 years ago'). Around 27 % of respondents became aware of the issue more recently (i.e. 'around 3 years ago') or very recently (i.e. 'less than 3 years ago'), and 18 % of respondents had become aware of the issue much earlier (i.e. 'more than 5 years ago') (Figure 2).

**Figure 2.** When respondents became aware of the DC-SIP issue (percentage of all respondents)



The main reasons provided by companies for their DC-SIP practices in the EU include heterogeneous consumer preferences (56 % of respondents that provided an answer), production factors (56 %), differences in national regulations (52 %) and other reasons (32 %) (Figure 3). Among other reasons for DC-SIP practices were 'voluntary strategies to reduce added sugars, saturated fats and salt', the gradual roll-out of recipe changes for 'organisational reasons and to ensure consumer acceptance', 'differences in retail environments' and 'outdated packaging layout'. The least represented reason for DC-SIP practices was differences in voluntary industry codes of practice and standards across Member States (20 %).

**Figure 3.** Reasons for DC-SIP practices across Member States (percentage of respondents that provided an answer)



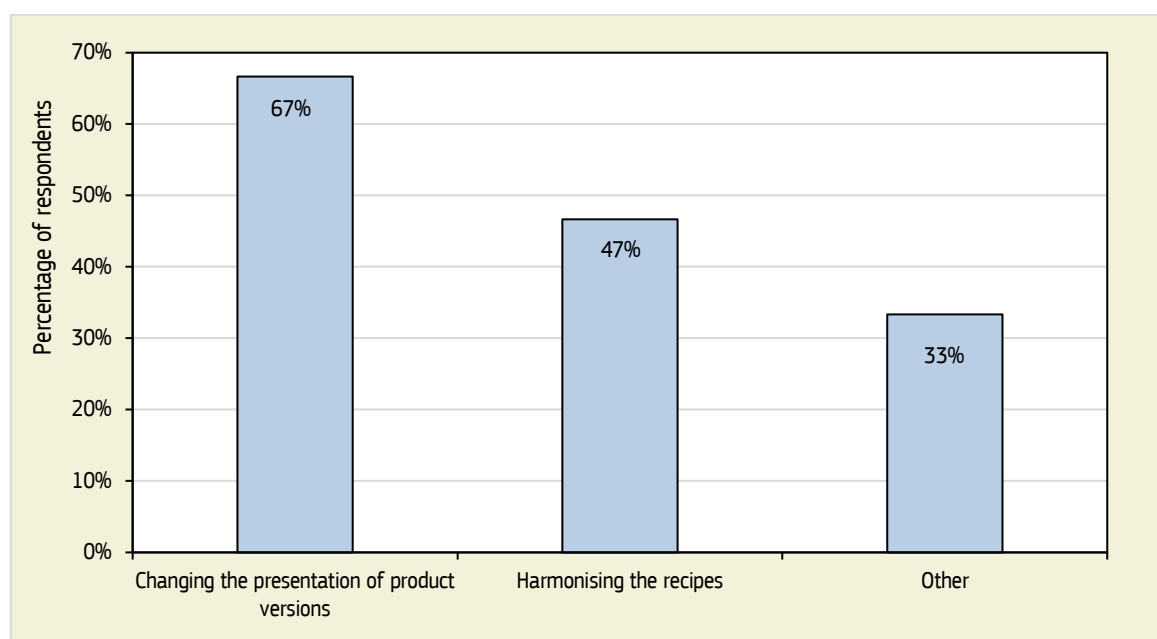
*NB: Respondents could select more than one reason.*

About 60 % (15 out of 25 of respondents with DC-SIP) took or planned to take action on DC-SIP. The most common actions were changing product packaging to differentiate between versions (67 % of respondents that took or planned to take action) followed by harmonisation of recipes (47 %) and other actions (33 %) (Figure 4). The majority (53 %) of respondents that took or planned to take action reported that they took or planned to take a combination of these actions (i.e. the harmonisation of recipes, changing the packaging of product versions or/and other actions). In terms of other actions, one company, for example, responded that they are reviewing their recipes across Europe to ensure that they are 'compliant with the EU legislation' and that they

inform consumers when 'there are regional differences' by posting information about any significant variation in recipes both on local company websites and through advertising, so that consumers can find the information. Another company stated that although there may be variations in the ingredients used in some products because of cultural differences and consumer preferences, they 'have nonetheless taken the internal action of establishing an internal guidance to educate and raise awareness on the alleged issue of dual quality'. A company reported that they made 'different functions in the company (marketing, R&D [research and development]) aware of the discussions and concerns related to DC-SIP'. Similarly, a company stated that 'information about ingredients and their [product] content is already available in nutritional information on the front of the package and in ingredients list on the back of the package'.

Nine out of 15 companies (60%) that took or planned to take action on DC-SIP had implemented the action in the past, most commonly around 3 years previously. The rest of the respondents (40 %) indicated that they planned to take the action within the next year or did not specify a time period. However, two respondents stated that it is an ongoing and continuous process.

**Figure 4.** Action taken by respondents on DC-SIP products (percentage of respondents that took or planned to take action)

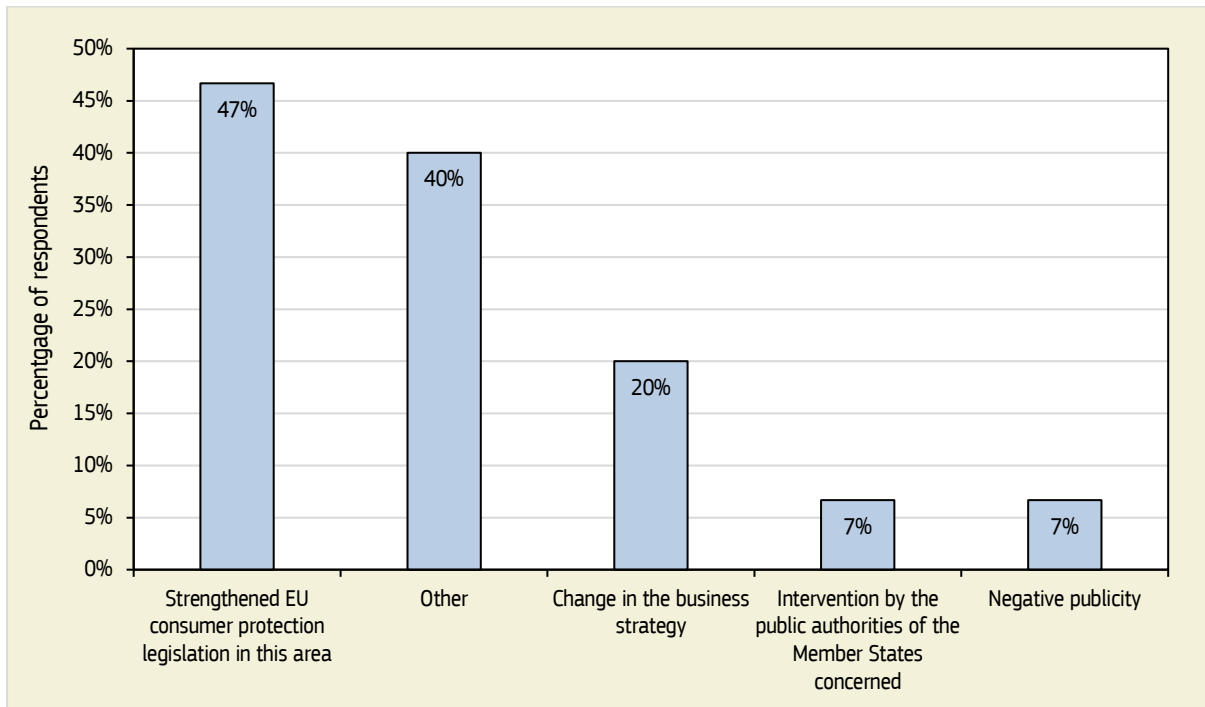


*NB: Respondents could select more than one action.*

Regarding the reasons for taking action, the most commonly reported (47 % of respondents that provided an answer) was strengthened EU consumer protection legislation, followed by change in business strategy (20 %), intervention by the public authorities of Member States (7 %) and negative publicity (7 %) (Figure 5). A significant share of the respondents (40 %) indicated that they took action for other reasons, such as the creation of a harmonised methodology by the JRC <sup>(1)</sup>, an internal 'process to review all [of the company's] labels' in the context of the company's transparency principles, and a 'continuous improvement process' where technology and manufacturing processes between EU facilities were upgraded and aligned, 'allowing the production of a fine-tuned recipe', to improve the information available to 'consumers on a voluntary basis'.

<sup>(1)</sup> The JRC harmonised methodology may stimulate companies to take action to adjust DC-SIP practices because it provides a consistent framework to analyse and identify potential DC-SIP issues.

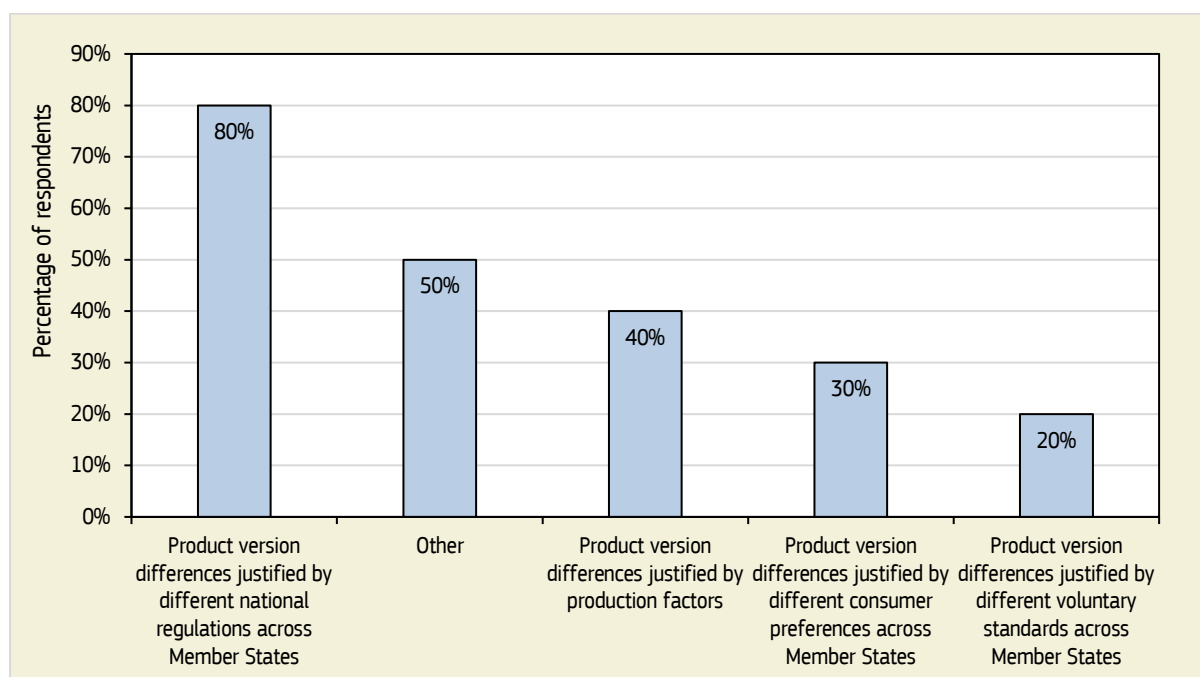
**Figure 5.** Main reasons for action taken by companies with DC-SIP (percentage of respondents that provided an answer)



*NB: Respondents could select more than one reason.*

Among respondents that did not plan to take action on DC-SIP (10 out of 25 respondents with DC-SIP), the most common reasons for taking no action were differences in national regulations (80 % of respondents that provided an answer), production-related factors (40 %), differences in consumer preferences (30 %) and differences in voluntary standards across Member States (20 %). Other reasons for not taking action were provided by 50 % of the respondents that provided an answer (Figure 6). For example, one respondent stated that ‘differences result from products not being from the same production period. Especially when products with long durability are being tested, it is possible that old and new products are on the market at the same time’. One respondent stated that they ‘apply the same quality across all of [their] manufacturing sites regardless of where they are based or where [...] products are distributed. The analysis showed minor differences in three products [...]; in none of these instances are the minor variances linked with any quality or geographical factors. [...] Small variations are due to the technical equipment used in [...] factories [or they] are in the process of harmonising [...] labelling declarations in all factories as insignificant variations are the result of the use of different rounding rules’. Another respondent explained that their company ‘has not defined a standard reference for most of [their] products [...], and thus [they] do not intend to present [their] products in different countries as seemingly identical’.

**Figure 6.** Main reasons stated by companies with DC-SIP for not taking action (percentage of total respondents that provided an answer)



*NB: Respondents could select more than one reason.*

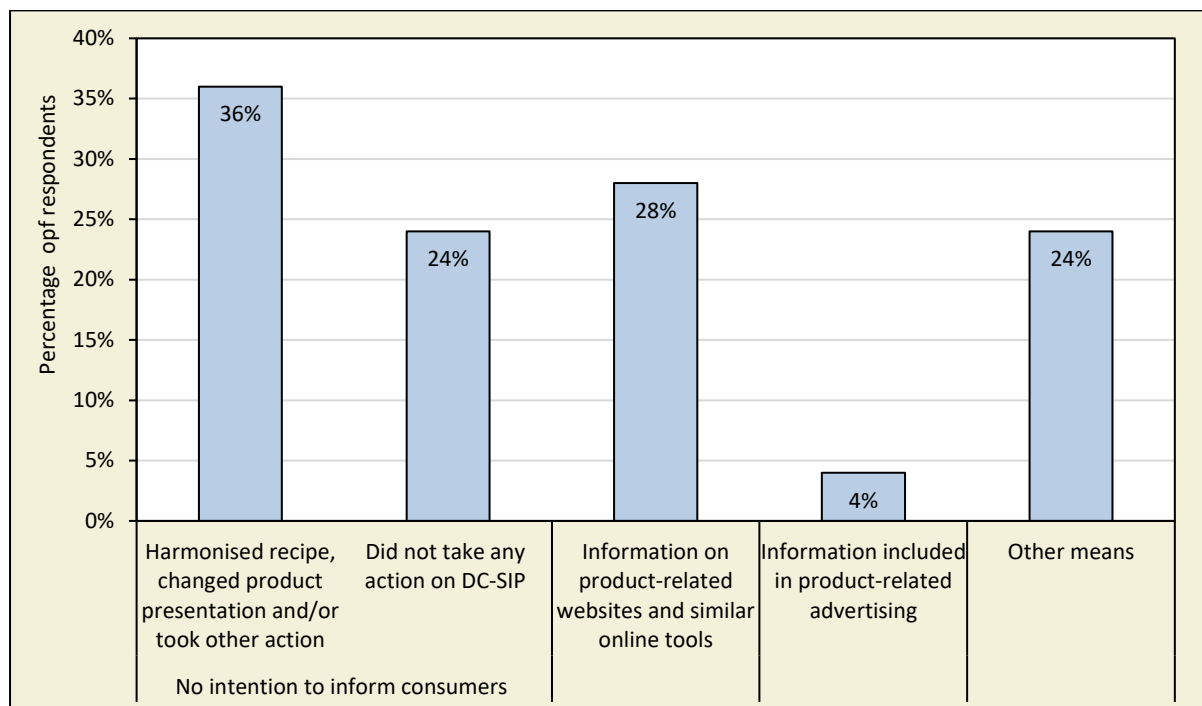
Around 40 % respondents with DC-SIP indicated that they would inform consumers about the product differences. These respondents stated that information would be disseminated through online tools, such as websites or mobile applications (28 % of respondents with DC-SIP), advertisement (4 %) and by other means (e.g. differentiated package layouts, labelling and/or ingredient lists) (24 %) (Figure 7). Some respondents (12 % of respondents with DC-SIP) indicated that they planned to use a combination of online tools, product-related advertisement and other means (Figure 7) <sup>(2)</sup>.

Around 36 % of respondents with DC-SIP stated that they did not plan to inform consumers about version differences because they had changed the product's presentation, harmonised product recipes and/or taken other action. The rest of the respondents (24 % of respondents with DC-SIP) did not plan to inform consumers about product version differences or take action on DC-SIP (Figure 7). Among these companies, several stated that they did not use DC-SIP practices or that the product version differences were minor. For example, one company stated that there are no differences in 'the composition of the products that would lead to a different quality in the context of Dual Quality'. Other companies stated that action was not necessary 'because the differences are minor and don't impact the taste of the product' or that 'the differences between the compositions, process and/or characteristics of the ingredients are already mentioned in the labels, which are not similar between countries'. One company stated that they would require feedback from the authorities to understand what significant differences had been found regarding their products (if any) and that 'European consumers can in some cases notice very minor differences in ingredients found in a product of the same brand and variety depending on where it is manufactured'. Similarly, one company stated that the vast majority of their branded products have exactly the same composition in all countries in which they operate, and that the 'few exceptions result only in marginal differences and are regularly due to different production and packaging processes of different own brand suppliers in different countries'.

<sup>(2)</sup> Note that some respondents provided more than one answer; for this reason the percentages do not add up to 100 % in Figure 7.



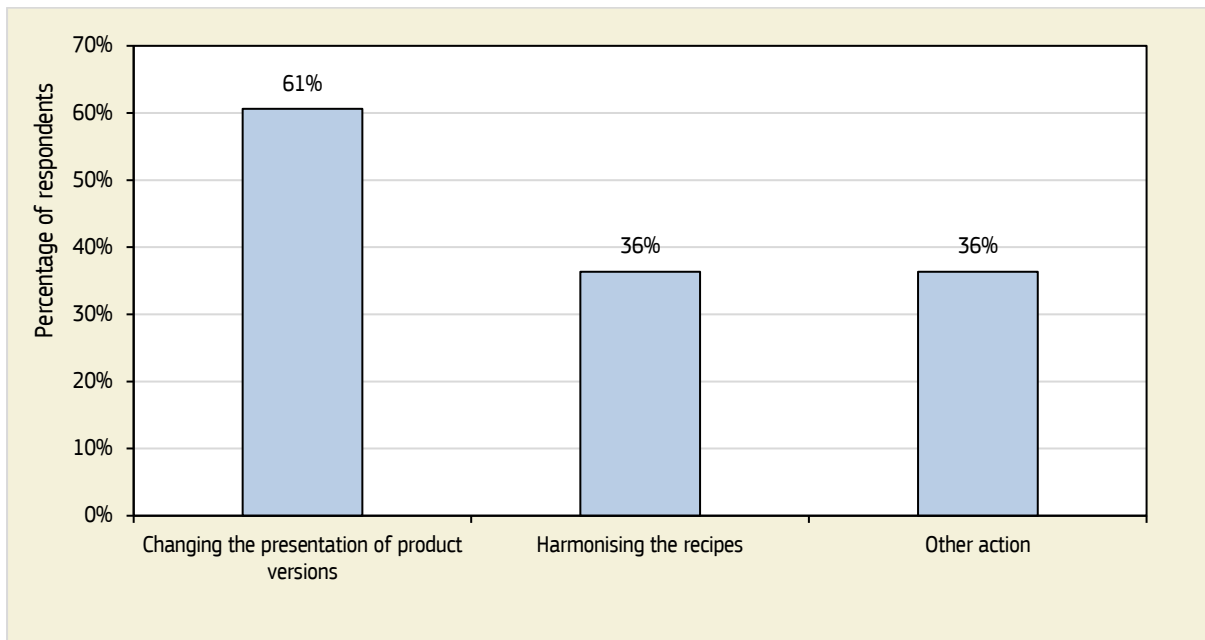
**Figure 7.** Companies intentions to inform consumers about DC-SIP (percentage of respondents with DC-SIP)



*NB: Respondents could select more than one answer.*

The survey also asked all respondents (i.e. including those without DC-SIP) about their potential response to a hypothetical situation in which they were found to offer product versions across Member States and that the practice was ruled to be misleading by public authorities. Respondents replied that they would change the presentation of the versions to make them distinguishable to consumers (61 % of all respondents) or that they would harmonise the recipes (36 %). Around 36 % of respondents indicated that they would respond otherwise, among whom several stated that they did not use DC-SIP practices or did not expect to face this hypothetical scenario (Figure 8). Nevertheless, some companies suggested that they would request feedback from the authorities to understand what significant differences had been found (if any). Suggestions included that they would 'take the action proposed by the authorities to be compliant with the applicable legislation', that the 'action would [...] depend on the concrete case', that they 'would check on which result (sensory test, measurement results, labelling) the assessment of the authority is based' and 'clarify in a statement what the alleged difference is due to' or that the issue 'would be treated as a matter of urgency'. Note that several respondents (33 % of all respondents) indicated that they would proceed with a combination of these responses (i.e. changing product presentation, harmonising recipes and/or taking other action).

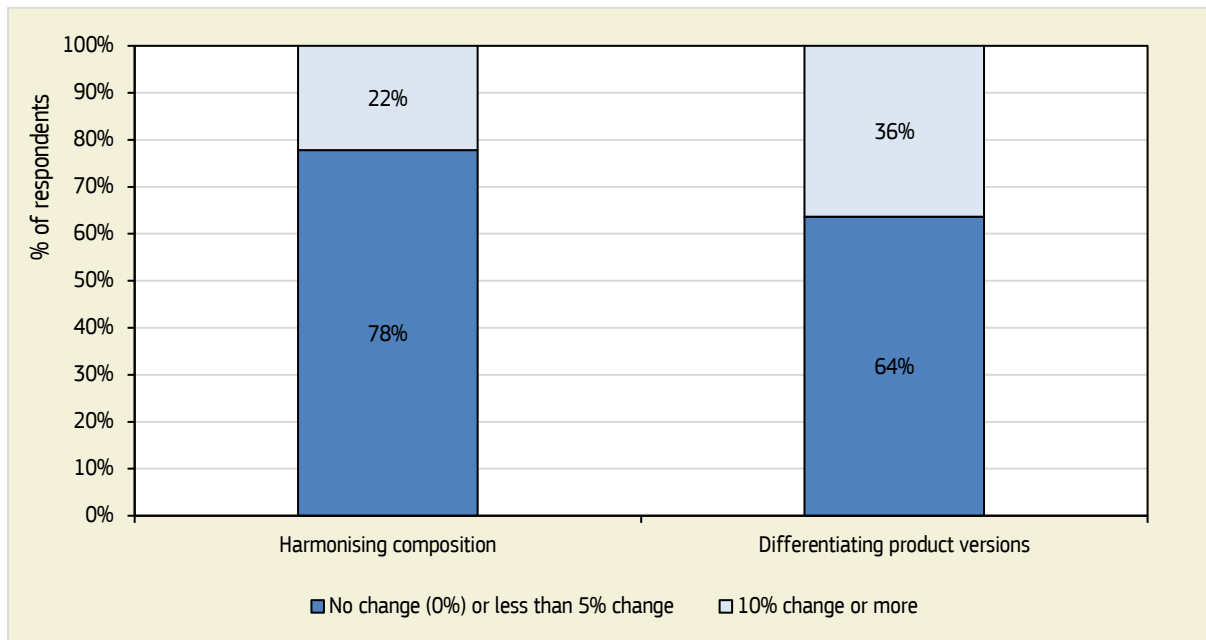
**Figure 8.** Companies' responses to a hypothetical situation of using DC-SIP practices across Member States that were ruled to be misleading by public authorities (percentage of all respondents)



*NB: Respondents could select more than one response.*

A total of 11 responses were received, representing 33 % of all respondents, to the survey questions intended to collect information on the (potential) economic impact of DC-SIP (i.e. the economic impact of harmonisation of product versions and the economic impact of differentiating product versions). The rest of the respondents replied 'don't know' or that the question was 'not applicable'. The majority of respondents that provided an answer (78 % and 64 %) reported no or a small (less than 5 %) (potential) impact of harmonisation of product versions and differentiating product versions on performance-economic indicators (i.e. production and marketing costs, price, profit margins, brand reputation, other), respectively. The rest of the respondents (22 % and 36 %) indicated the (potential) economic impact could be greater than 10 % (Figure 9). One respondent provided a qualitative assessment of the potential economic impact of DC-SIP as follows: 'It may be simpler to offer the same recipe everywhere, but this may not correspond to the diverse consumer preferences and perceptions across the European Union as indicated in the JRC study "Economic analyses of differences in composition of seemingly identical branded food products in the Single Market". While there are benefits for a food manufacturer to harmonize a recipe across Europe, it is difficult to determine the economic impact from consumer reactions to the new product, including on sales and brand image/reputation. Brands, whether international or local, compete in each market based on the local landscape. We believe a single recipe across EU would likely entail loss of consumer interest [...] there could be cost associated with the operations of changing a recipe (different procurement of raw materials, changing production lines, etc.)'. Another respondent stated that 'the costs may either be higher or lower depending on the type of packaging [change], e.g. inserting a claim on the front or adding/changing only one word. Further, the timeframe for changing the packaging also influences the level of impact' (e.g. if it involves destroying already existing packaging material then the financial and environmental costs will be higher).

**Figure 9.** The (potential) economic impacts for companies of harmonising the composition of product versions and differentiating product versions through product packaging (percentage of respondents that provided an answer)



*NB: Companies could report (potential) impacts of harmonising the composition of product versions and differentiating product versions on the following performance-economic indicators: production and marketing costs, price, profit margins, brand reputation and other impacts. The results in the figure count the number of responses if respondents reported (potential) impact for at least one indicator.*

The last part of the survey provided an opportunity for respondents to express comments and opinions on the amended UCPD and the DC-SIP issue in response to an open question.

Respondents' comments on the UCPD were as follows.

- 'What remains troublesome are potentially high fines and still a wide margin of discretion for national enforcement authorities (What is seemingly identical? How do you treat marginal differences in composition, which are due to different production processes?).'
- 'We see difficulties in the interpretation of the Directive by Member State authorities due to the very vague terms in the text of the relevant provisions. We welcome the publication of the European Commission's revised guidance on the application of the Unfair Commercial Practices Directive (UCPD) published in December 2021, to facilitate the smooth application and interpretation of the EU rules at national level. Harmonization on the enforcement between Member States is desirable, and we therefore encourage cooperation between Member State authorities. We welcome the expected report and assessment by the European Commission on the transposition and application of the Directive by Member States (due 28.05.2024).'
- 'The UCPD does not currently define "significant difference" – this may cause fragmented approaches from national Authorities if they define it more or less broadly. As of when we observe different interpretation amongst the [Member States] in defining significant difference, EU intervention to harmonise the definition of "significant difference" would be warranted.'
- '[...] the margin of discretion for national enforcement authorities is still very broad. Guidance on the UCPD by the European Commission is of course helpful. What is also helpful are practical examples of the JRC, which examples are seemingly identical and which are not, etc. The more research of the JRC is published on this matter and comes to the conclusion that there is no East-West divide in the European Union, the entire issue becomes less political and increasingly difficult to be applied in a disproportionate manner on national level.'
- The UCPD 'provides useful guidance and protects consumers. Allows flexibility for companies to comply with local rules and respect local supply chains'.
- 'We don't consider that slight recipe modifications in line with the consumer preferences in particular market infringe consumer rights. Consumer rights will be infringed if they can't get the products they like. We consider that the enforcement measures of the consumer rights should be unified across EU via EU regulation. Giving Member States too much flexibility in [the] Directive's applications causes a lot of difficulties to the EU manufacturers having to allocate significant resources for the local regulations

tracking and adapting products and packaging to these regulations. Individual Member States regulations lead to the disruptions in the free consumer goods movement in EU.'

- 'Whilst no one can doubt the sincerity of the desire to have the same products across Europe, there is still a divide in terms of income, market pricing and consumer tastes and perceptions.'
- 'The political compromise underlying this directive has led to a wording in the directive that is unclear and makes it difficult to implement [it]. For example,
  - In which cases is the condition fulfilled that products have a "significantly different composition"; is a difference of 1 %, 15 % or 20 % significant and does this apply to any kind of ingredient?
  - In which cases would the information about the difference be "easily identifiable"?
  - How do you assess if a supposed lack of information causes a consumer to take a transactional decision that they would not have taken otherwise?'
- 'There is a strong need to define what is meant by "seemingly identical". In addition there is a need to apply the JRC testing protocol with products with a best before date within the indicated 20 % margin.'

Respondents' comments on the DC-SIP issue were as follows.

- 'None of the differences in food composition is deemed to create an intentional discrimination between EU countries. Within Europe, there are slight differences in composition which have been developed over time based on consumer feedback, preferences on product characteristics (like taste profile), different eating habits and various uses.'
- 'Evident market preferences should be considered; Clear definition/guideline of/about the term "identity" is missing.'
- 'Attempts to deliberately mislead consumers with respect to quality are not in line with the consumer-centric brands.'
- 'Differences in composition that occur are the consequence of consumers' having different taste preferences in different market. In addition local regulations lead to different compositional requirements. [...] Differences in composition tends to be accompanied by packaging, labelling and branding that is sufficiently different to avoid being seen as identical by consumers. We reserve the right to present our products to consumers in ways that they find attractive, understanding that information must be accurate and truthful.'
- 'Transition periods for recipe adjustments in practice' would be 'helpful [...] in different country-language clusters.'
- 'It is a normal market practice that people in different countries have different taste preferences and manufactures should have the opportunity to modify their products in line with these preferences. [...] Consumers should be made aware at EU level that not all the products with the same front of pack have the same ingredients and they can check it on back of pack. [...] We consider that there are more burning issues for the unification in EU like for example unified sugar and plastics taxation and unified DRS [deposit return scheme] labelling, as the current situation disrupts the free products movement in EU.'

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