

The European Online Marketplace: Consumer Complaints 2008 - 2009

**A summary and analysis of consumer complaints
reported to the European Consumer Centres' Network**



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Introduction

The European Online Marketplace: Consumer Complaints 2008 – 2009 (further – e-commerce report) is a summary and analysis of complaints reported by consumers to the European Consumer Centres' Network (ECC-NET). The network comprises centres in 29 countries, and is co-financed by the Health and Consumer Protection Directorate-General of the European Commission (DG SANCO) and by each of the Member countries. The aim of the network is to create confidence in the European internal market by providing consumers with made-to-measure information on their rights under European consumer legislation, and by giving advice and assistance in the resolution of their individual cross-border complaints.

In addition, the network produces various joint projects, reports and surveys, and provides feedback to the European Commission and other stakeholders based on its practical experiences of handling consumer requests, complaints and disputes.

This is the fifth e-commerce report published by ECC-NET. The report focuses on the e-commerce related consumer complaints reported to all 29 centres during 2008 and 2009, and follows on from the last report published in 2008. It presents an analysis of the e-commerce cases handled in 2008 and 2009, and a summary of the results and trends observed.

The total number of e-commerce cases actively shared between ECCs for further follow-up was 2,088 in 2008, and 3,158 in 2009, while the number of complaints from consumers seeking advice related to shopping online was 6,123 (in 2008) and 7,051 (in 2009). The precise scope of this report, as regards the statistics used, is explained in the following section, while a detailed analysis of the types of complaints received is provided in the subsequent sections.

As far as the types of problems reported are concerned, the trends observed in 2008 and 2009 were similar to previous years, with delivery problems again constituting the main area of complaint handling. Therefore, relevant issues from the former report on delivery, product and price will be brought up to date. From the perspective of technological developments, issues in the area of digital content, price display issues and methods of payment will be subject to more detailed treatment.

The European Commission is actively working on the improvement of consumer rights. This resulted in a proposal for a Consumer Rights Directive in October 2008, in which four existing EU consumer directives¹ would be integrated into one set of rules. Under the proposal, the Commission intends to strengthen the legislation applicable to distance sales, to ensure that consumers continue to be adequately protected. Especially in the

¹ 1st Directive: Sales of consumer goods and guarantees (99/44/EC),
2nd Directive: Unfair contract terms (93/13/EC)
3rd Directive: Distance selling (97/7/EC)
4th Directive: Doorstep selling (85/577/EC)



light of technological changes and developments, the improvement of consumer rights is important. The data and information in this report aims to contribute to discussions on the improvement of these rights from a consumer perspective.

Regulation (EC) 2006/2004 on Consumer Protection Cooperation (CPC) has been in force since 2007. Many developments have taken place, which has resulted in individual solutions and collective enforcement. This year's report also details the growing co-operation between ECC-NET and CPC-NET.

The Eurobarometer Report on 'Attitudes towards cross border sales and consumer protection'² mentions that the level of cross-border online shopping in EU countries has remained relatively low: 8% of EU consumers (from an EU population of 501 million) bought goods or services via the internet from a seller located in another EU Member State in the last 12 months. A one-percentage point rise on the previous year is statistically not much, but if the confidence of these individual consumers increases, in time cross-border online transactions should continue to increase.

It is hoped, therefore, that the summary and analysis in this report will give a clearer understanding of the present state of the e-commerce market for individual consumers

within the European Union, and help identify key issues that may stimulate further discussion and improvements for consumers.

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This document does not reflect the views of the European Commission. The interpretations and opinions contained in it are solely those of the authors.

All the cases used to illustrate the report are real and come from the ECC-NET.

² Attitudes towards cross-border sales and consumer Protection, Survey conducted by The Gallup Organization Hungary upon the request of Directorate-General Health and Consumer Protection, March 2009

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Scope

The purpose of this report is to highlight the relevant e-commerce work undertaken by each ECC during 2008 and 2009, and to provide an analysis of the consumer complaints received. In doing so, the report seeks to highlight the main problems that consumers face when engaging in cross-border consumer transactions online.

The scope of this report is limited to cross-border online transactions involving the sale of consumer goods and services. Although a substantial number of online transactions involve contracts for transportation services, such as air travel or car rental, and accommodation services, such cases are excluded from the statistics used in this report.

The reason for this exclusion is two-fold. Firstly, the objective of this report is to highlight those problems faced by consumers that exemplify the difficulties encountered by virtue of the fact that the goods or services are purchased online. The problems that arise in the case of contracts for travel services, for example, are generally unrelated to the fact that the transaction was performed online, such as in the case of a delayed flight, lost luggage or damage to a vehicle during a car rental. Hence, the method of purchase has no bearing on

the resultant problem. Secondly, the above-mentioned contracts also fall outside of the scope of the main provisions of Directive 97/7/EC³, the main piece of consumer legislation applicable to contracts concluded online, and thus certain entitlements, such as the right to withdraw from the contract or the provision of written confirmation, do not apply to these contracts. This Directive is one of four directives that are being merged into the Proposal for a Consumer Rights Directive.⁴

All of the statistics, statements and conclusions made in this report are based upon information that has been received through analysis of the consumer complaints and disputes handled by ECC-NET in 2008 and 2009. The statistics are gathered through the use of the IT-tool, an internal ECC-NET system through which centres are able to transfer consumer cases to one another promptly and communicate with each other on the progress of an individual case. The European Commission's DG SANCO developed the tool, with cases classified through COICOP (Classification Of Individual Consumption by Purpose). This is a classification system developed by the United Nations Statistics Division to classify and analyze individual consumption expenditures incurred by households, non-profit institutions serving households

³ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, Official Journal L 144, 04/06/1999 P. 0019-0027

⁴ Proposal for a Consumer Rights Directive, 8 October 2008 The Proposal aims to ensure a high level of consumer protection and to establish a retail internal market. http://ec.europa.eu/consumers/rights/cons_acquis_en.htm#directive



and general government according to their purpose. It includes categories such as clothing and footwear, housing, water, electricity, gas and other fuels.

Cases received by the ECCs are categorized into simple complaints, normal complaints, and disputes, and the following are the definitions used for such terms. A 'complaint' is defined as a statement of dissatisfaction made by a consumer concerning a cross-border transaction with a seller. The ECC-NET distinguishes two kinds of complaints.

A 'simple complaint' is a complaint that requires no follow-up by an ECC, i.e. a 'one step operation' where advice is provided to the consumer.

A 'normal complaint' is any complaint that requires the subsequent intervention or follow-up of an ECC, and is therefore shared with the ECC in the country in which the trader is based.

A 'dispute' is the referral of a complaint to an out-of-court scheme or Alternative Dispute Resolution (ADR) body by an ECC, where the complaint has not been resolved through direct contact between the trader and the consumer.

Although ECCs additionally receive many requests for information from consumers in relation to shopping online, the emphasis in this report will be on actual cross-border complaints and disputes faced by consumers.

The statistics that are represented in the next section of the report are, unless otherwise stated, based on the normal complaints and disputes that were dealt with and shared between ECCs during 2008 and 2009. As with the previous e-commerce report⁵, the main focus here is to look at the number of cases that required the co-operation and intervention of another ECC in order to reach an amicable resolution with the trader.

For comparative purposes, a section is also included that examines the 'simple complaints' that were received by individual ECCs, where they merely provided advice to a consumer on their complaint.

⁵ The European Online Marketplace: Consumer Complaints 2007. Published by ECC-NET in May 2008.

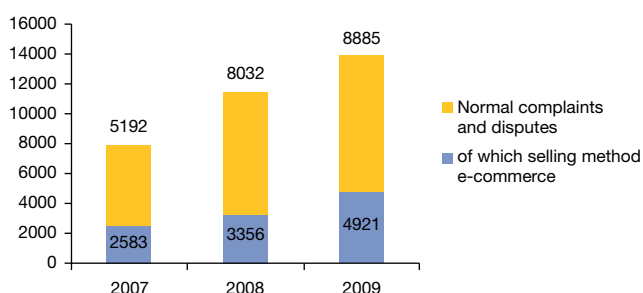
3

General Results

ECC-NET received 18,431 and 18,538 simple complaints respectively in 2008 and 2009, of which 9,006 (49%) and 10,401 (56%) were concerned with transactions involving e-commerce as the sales method. The other sales methods involved distance selling (not online), on the premises, (internet) auctions and markets.

Looking at the normal complaints and disputes, a total of 8,032 (in 2008) and 8,885 (in 2009) were received, of which correspondingly 3,356 (42%) and 4,921 (55%) respectively dealt with claims where the selling method was designated as e-commerce. In comparison, according to the statistics for 2007, there were a total of 5,192 normal complaints and disputes of which 2,583 (50%) concerned e-commerce. These figures serve to highlight the fact that contracts concluded online represent a growing proportion of the consumer complaints handled by ECC-NET.

ECC-NET normal complaints and disputes overall



As indicated above, the scope of this report is e-commerce complaints handled by ECC-NET, excluding online contracts for air and car transport or accommodation services. Thus, in 2008 and 2009 respectively, ECC-NET received 6,123 and 7,051 simple complaints, and 2,088 and 3,158 normal complaints and disputes within the meaning of this report. The geographical differences that occur will be looked into at the Country of trader section.

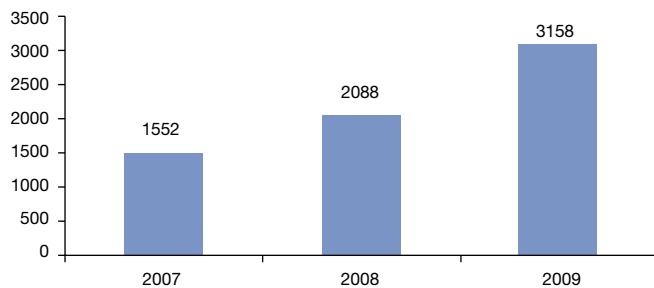
Alongside the figures quoted above, there were a further 118 simple complaints in 2008 and 49 in 2009 where the selling method was through an Internet auction, and 57 (2008) and 83 (2009) normal complaints and disputes.

3.1. Nature of complaint

The ECC-NET recorded a total of 2,088 normal complaints and disputes regarding purchases made online (excluding online contracts for air and car transport or accommodation services) in 2008, and 3,158 in 2009. By comparison, ECC-NET recorded a total of 1,552 normal complaints and disputes in 2007.



Total normal complaints and disputes regarding purchases made online

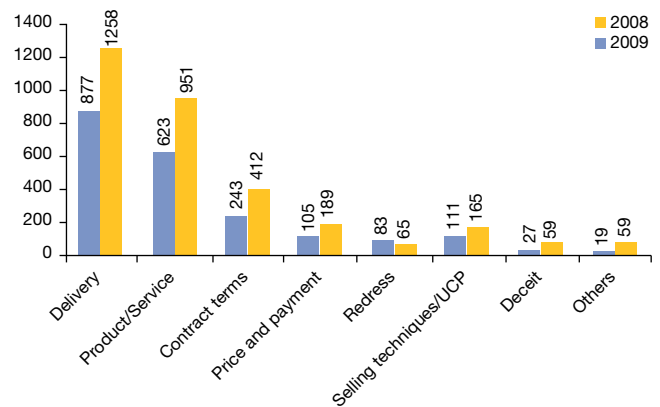


What were the types of problems consumers experienced in shopping online? The breakdown of the various categories of complaints is given below, with both the nominal and percentage values provided.

The nature of complaint falls under eight separate categories:

1. Delivery
2. Product/Service
3. Contract terms
4. Price and payment
5. Redress
6. Selling techniques/Unfair Commercial Practices (UCP)
7. Deceit
8. Others

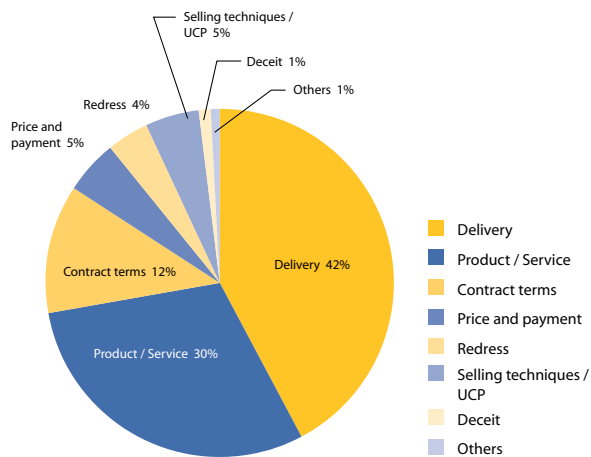
Normal complaints and disputes according to nature



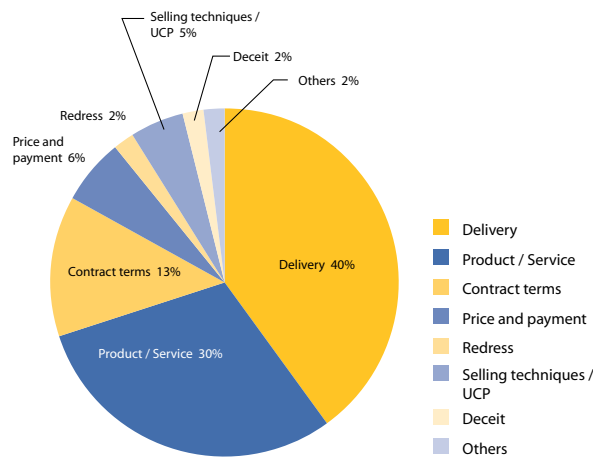
As can be seen, the three key categories are delivery, product/service and contract terms. Together these categories gave rise to 84% of the total number of normal complaints and disputes in 2008, and 83% in 2009. There is no relevant change in comparison to 2007 (86%).

As delivery and problems with product/service accounted for three-quarters of the total amount, a breakdown of the various subcategories within both of these areas is provided, so as to have a better insight into the kinds of legal and practical problems consumers face, and the areas in which a solution could improve consumer confidence in shopping online, cross-border.

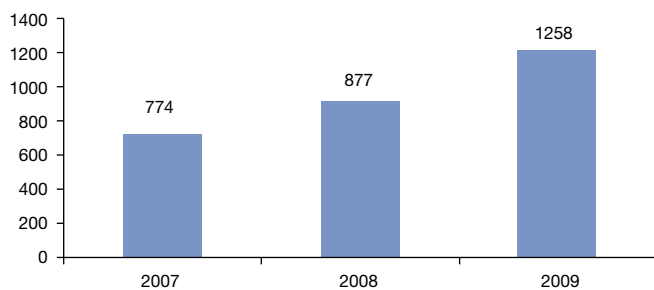
Nature of complaint in 2008



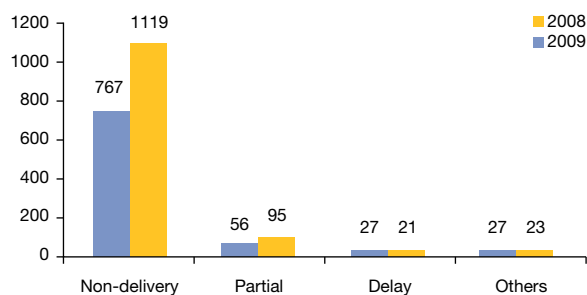
Nature of complaint in 2009



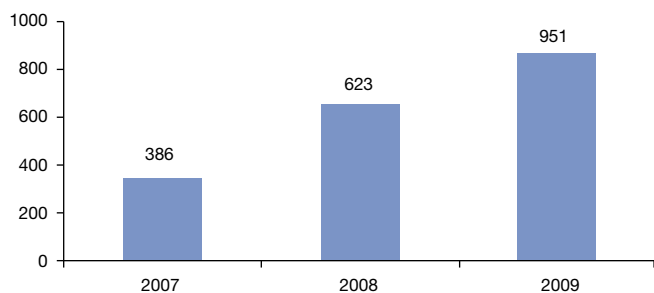
Nature of complaints: Delivery



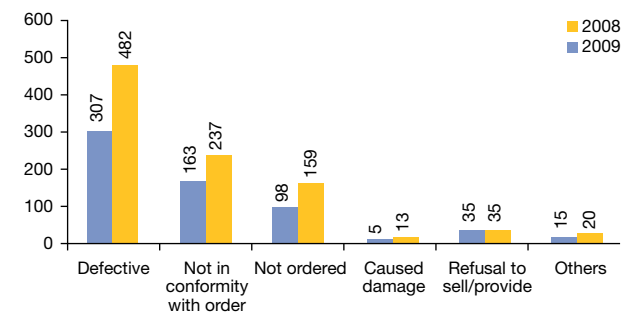
Categories of delivery problems



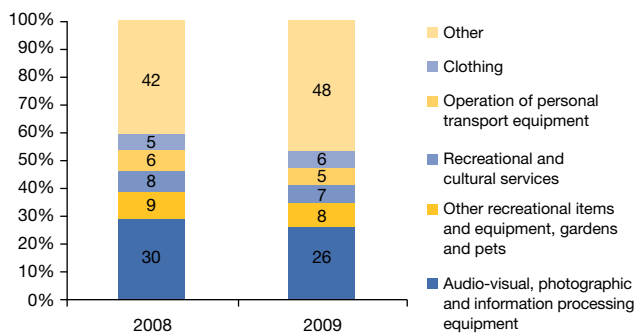
Nature of complaints: Product/Service



Categories of Product/Service



Product types



3.1.1 Delivery

Problems with delivery were by far the largest category of e-commerce complaint, accounting for 42% of all the normal complaints and disputes dealt with by ECC-NET in 2008, and 40% in 2009. This represents a relative proportional decrease in comparison to 50% in 2007. In absolute figures, the delivery complaints increased from 774 (in 2007), to 877 (in 2008) and 1,258 (in 2009).

Within the category of delivery problems, the vast majority of cases concerned the simple non-delivery of the product, which comprised a staggering 87% (2008) and 89% (2009) of all cases in this category. Other problems were related to partial delivery, where only part of the order was completed, or delayed delivery. A breakdown is given in the chart on page 8.

Many of the problems associated with delivery can be attributed to simple customer service or administrative problems. Many complaints concern solitary cases of small traders who are not associated to a branch organization. Sometimes these traders do not know about consumer rights, but in general they are willing to provide good customer service. The assistance of the ECCs frequently leads to a solution for the consumer. With large traders, who have their own legal department and customer service, an individual consumer might be confronted with general terms and conditions that follow the trader's strategy, but not European consumer legislation.

A Lithuanian consumer ordered a TV set from a French website, and it was sent to the consumer broken. The consumer tried to contact the web trader unsuccessfully. After the intervention of the consumer and trader ECCs, the consumer received a new TV set.

The issue of delivery will return in a later section of this report, where we will examine a number of interesting issues that have arisen in the complaints received by ECC-NET.

3.1.2 Problems with Product/Service

Problems with the actual product or service formed the second largest category of consumer complaints, accounting for 30% of all the normal complaints and disputes dealt with by ECC-NET concerning e-commerce sales in both 2008 and 2009. This is a relative increase in proportion in comparison to the 25% in 2007. In absolute figures, product and service complaints increased from 386 in 2007, to 623 in 2008, and 951 in 2009.

Within this category, the vast majority of cases concerned defects with the product, which comprised 49% of all cases in 2008, and 51% in 2009. Problems of non-conformity with the order accounted for 26% (in 2008) and 25% (in 2009) of cases. Other problems were related to products and services that had not been ordered, that caused damage, and the refusal of the trader to actually sell/provide goods or services. A breakdown is given in the graph on page 8.

3.2 Product type

Shopping online offers many advantages to the consumer: there is no need to travel to a supermarket in busy traffic and fight around crowded aisles; consumers can choose from a wide range of products or services around the clock (24 hours per day/seven days a week/365 days per year), not only from their home country but also from all other Member States; there are often discounted prices on many products, and so on. The five most purchased product categories online, according to COICOP and consumer complaints during 2008 and 2009, are:

1. Audio-visual, photographic and information processing equipment;
2. Other recreational items and equipment, gardens and pets;
3. Recreational and cultural services;
4. Clothing;
5. Operation of personal transport equipment.

The chart on page 8 shows the percentage of consumer complaints for each product category received by ECC-NET during 2008-2009.

The next sections take a brief look at some of the most popular types of product that consumers are purchasing online from other Member States.

3.2.1. Audio-visual, photographic and information processing equipment

This category according to COICOP includes equipment for the reception, recording and reproduction of sound and pictures, such as TVs, radios, stereos, CD/DVD players, and MP3 players; photographic and cinematographic equipment and optical instruments, such as digital cameras and video cameras, also including lenses, binoculars, microscopes, and telescopes; information processing equipment, such as computers, printers, software, also including typewriters and calculators, but excluding video-game software; recording media, such as CDs, DVDs, also including photographic supplies (such as flash bulbs and unexposed film, but batteries are excluded); and repair of audiovisual, photographic and information processing equipment.

An Estonian consumer purchased a laptop from an e-trader in the UK. It arrived, but worked for two weeks only before breaking down. He sent it back to the trader to be repaired. When he got it back, the laptop worked for another week before breaking down with the same problem. Since all this had caused significant inconvenience to the consumer, he requested a complete refund from the trader. The trader refused to do so, and expressed no interest of solving the case. As intervention from ECC-NET did not produce any positive results, the consumer was advised to apply to the European Small Claims Procedure (ESCP).

3.2.2. Other recreational items and equipment, gardens and pets

This category according to COICOP includes: games, toys of all kinds including dolls, hobbies, Christmas tree decorations, video-game software, card games and chess sets (but excludes unused postage stamps,

and collectors' items falling into the category of works of art or antiques); equipment for sports, camping and open-air recreation, such as gymnastics and physical education, firearms and ammunition for hunting, tents and accessories, repair of such articles, but excludes crash helmets and camping and garden furniture; gardens, plants, natural or artificial flowers and foliage; and pets and grooming, boarding, tattooing and training, including veterinary and other services for pets (but excluding horses and ponies and veterinary services for these).

A Hungarian consumer ordered a lawn mower, two spare blade tips and a free service kit from a UK trader. The consumer experienced the following problems:

- Late delivery (the offer promised delivery within seven working days, but it actually took 31 working days);
- The consumer did not receive an invoice;
- A free service kit was included in the offer, but was not delivered. The value of the kit was 21.99 GBP;
- The consumer ordered and paid for two spare blade tips, which were not delivered (the spare blade tips found in the box are normal accessories of the machine).

The consumer was told in an e-mail, as a response to his first complaint, that the undelivered items would be sent to his address by post, but they had still not been delivered. Upon the successful intervention of ECC-NET the missing items were delivered to the consumer.

A Norwegian consumer purchased an English bulldog puppy from Swedish breeders. The puppy was sick from the first day. Despite several visits to the vet, during which time the puppy was treated with cortisone and antibiotics, the animal was put to sleep after 15 days. An autopsy showed that the puppy had a congenital disease. The consumers contacted the breeders seeking a refund and compensation for their veterinary costs. The breeders maintain that they are not liable for the costs. The case is still pending and will be sent to the Swedish ADR.

3.2.3. Recreational and cultural services

This category according to COICOP includes games of chance, such as lotteries, gambling, also recreational and sporting services, such as horse-racing, dancing, ski courses, including the hiring of the equipment and entrance fees to swimming pools and tennis courts, as well as veterinary services. Also included are cultural services such as cinemas, zoological gardens, television and radio broadcasting, tour guides, the services of photographers and the services of musicians and performers for private entertainment.

An Estonian consumer purchased two tickets for a concert to be held in Stockholm from the website of a Norwegian trader. The trader, however, sent tickets for a different seat category to that requested. The consumer called the trader who, in the consumer's words, advised him to send the tickets back after the concert and he would be compensated the price difference. He did so, but did not receive any response. Then he filled in a complaint on the trader's website. When he didn't receive any response, he called the trader, who promised to deal with the problem

and provide a written response, but did not do so. To solve the issue, the consumer submitted a complaint to ECC Estonia. During the investigation of the case, in co-operation with ECC Norway, it turned out that, although the consumer had received tickets for a different seat category, there was no price difference, and thus the consumer's claim for compensation was considered to be unfounded.

3.2.4. Clothing

The general idea that prices online are often lower than those of local shopping centres, makes shopping for clothes online an attractive proposition. This category according to COICOP includes clothing materials, ready-to-wear or made-to-measure garments, also other articles of clothing and clothing accessories, for example gardening/working gloves and crash helmets. This category also includes the cleaning, repair and hire of clothing.

A Norwegian consumer purchased a wedding dress from a Swedish trader. The consumer was told the delivery date would be 30 days after payment and the delivery of measurements. However, the consumer received the dress only after her wedding. The trader blamed the consumer, claiming that she did not send the correct measurements on time, and that she was on a trip to the US when the trader wanted to deliver. The trader also claimed that the agreed delivery time was 60 days. The consumer delivered the measurements on time, had not been to the US, and had informed the trader of the exact wedding date when the dress was not delivered within 30 days as first promised. With the assistance of ECC Sweden, the trader delivered a dress that the consumer could sell to cover her expenses.

3.2.5. Operation of personal transport equipment

This category according to COICOP includes purchase of vehicles, such as new and second-hand bicycles and animal drawn vehicles, new and second-hand motor cars, new and second-hand motor cycles, purchase of spare parts and accessories, fuel and lubricants, maintenance, repair and other services in respect of personal transport equipment.

An Estonian consumer purchased spare parts for his motorcycle from a Dutch web trader, and paid 1,393 EUR in advance. After waiting for four months, he had still received only some of the ordered products. The trader changed delivery deadlines several times. The consumer kept contacting the trader to try and get either the missing parts or his money back. The trader again promised different delivery times and blamed the factory for the delay. After waiting almost a year, he decided to obtain help from ECC-NET. As a result of the ECCs intervention, the trader agreed to reimburse the money for the non-delivered items.

3.3 Country of trader

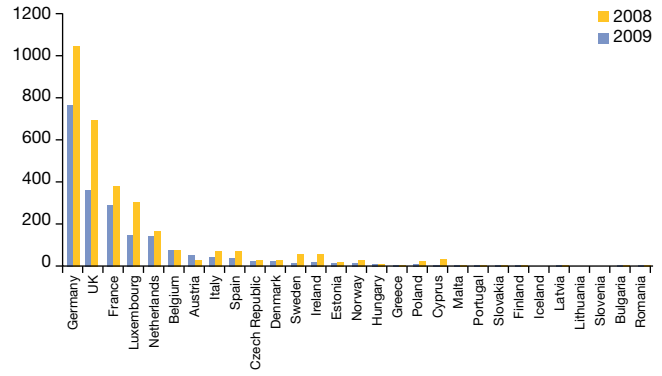
The total number of cases that required the intervention of an ECC in order to reach a resolution to a complaint was 2,088 in 2008 and 3,158 in 2009. However, as the chart below indicates, the largest number of normal complaints and disputes involved German web traders.

These accounted for 37% of the total amount in 2008, and 33% in 2009. German, French, British, Luxembourgian and Dutch web traders feature at the top of the chart. Traders from these five Member States accounted for almost three-quarters of the overall number of e-commerce related normal complaints and disputes.

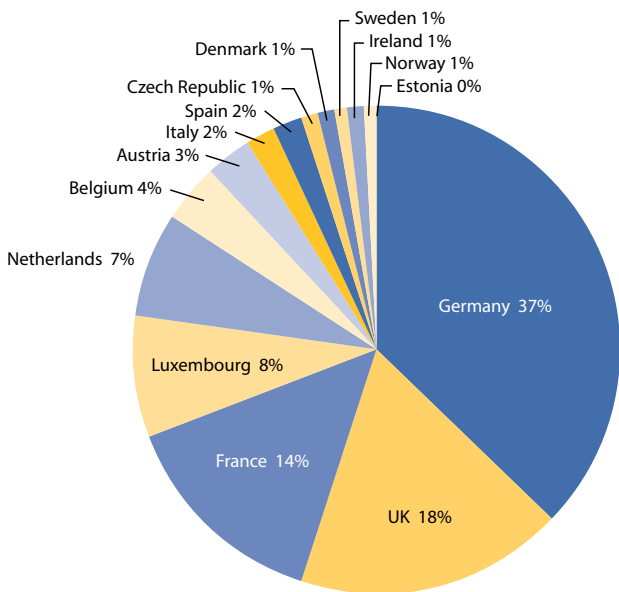
Ten Member States accounted for more than 94% of the total in 2008 and 93% in 2009.

These figures are rather unsurprising, given that these countries represent the largest e-commerce markets in the European Union. As such they would be responsible for the highest level of online consumer transactions. It is not intended to suggest or infer that there are any inherent problems as such with web traders in these countries.

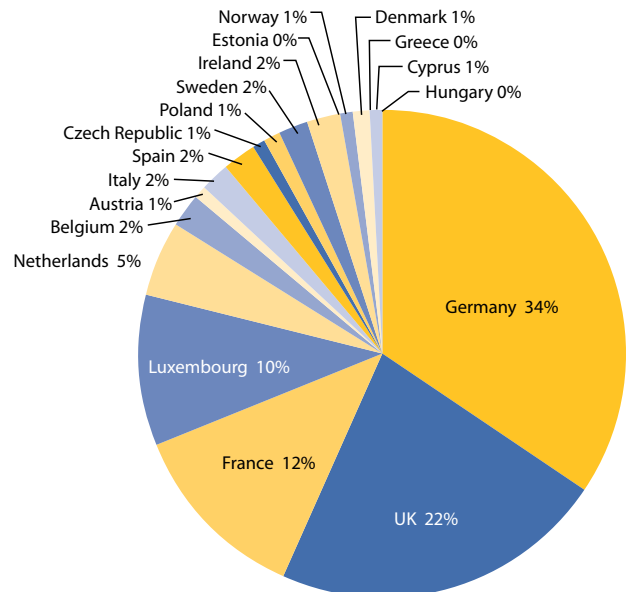
Country of web trader



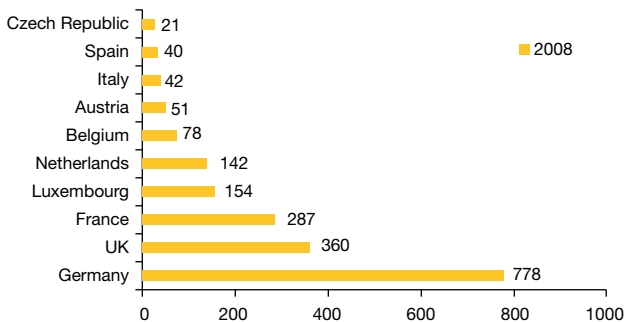
Country of web trader in 2008



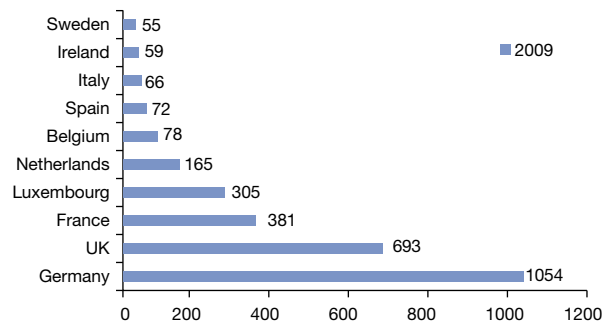
Country of web trader in 2009



Top 10 countries in 2008

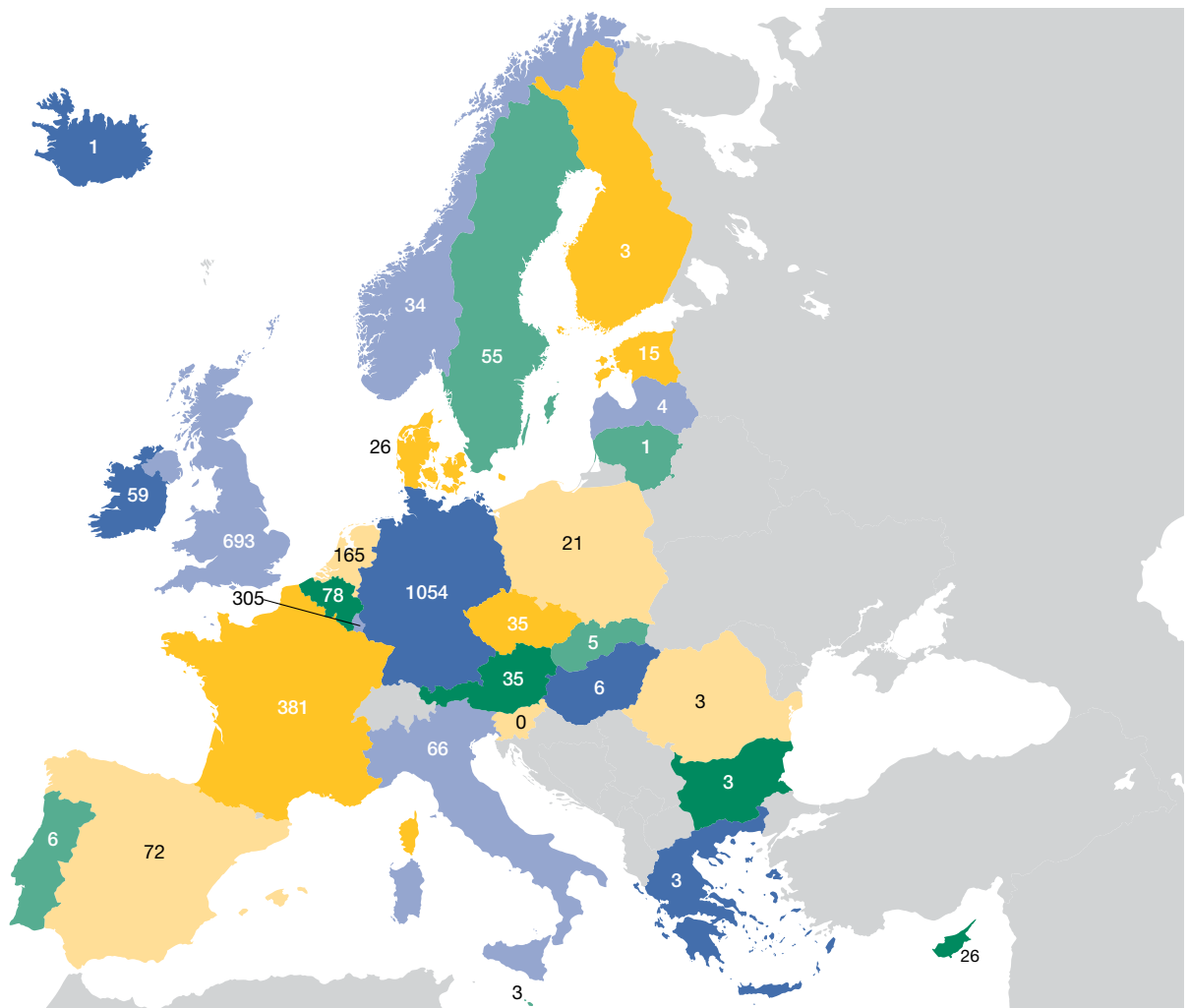


Top 10 countries in 2009



The largest number of normal complaints and disputes involved German web traders

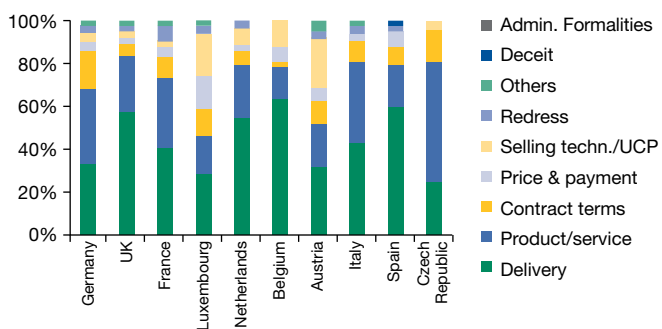
Map of Europe in which all ECC-NET countries are represented and showing the amount of cases (according to the place of web trader) in 2009.



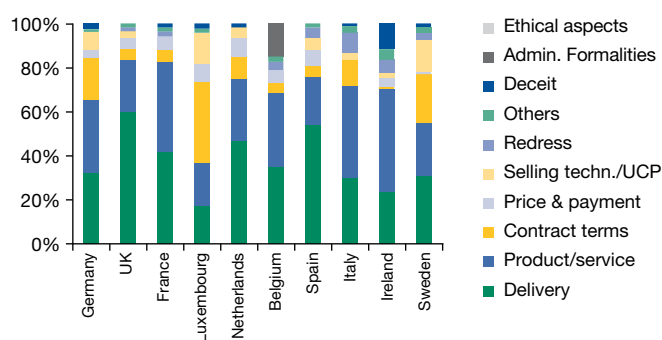


The variation within complaint categories within each top ten country is an interesting aspect. The chart below shows the different complaint categories within each top ten country in 2008 and 2009.

Categories of complaints in Top 10 countries in 2008



Categories of complaints in Top 10 countries in 2009

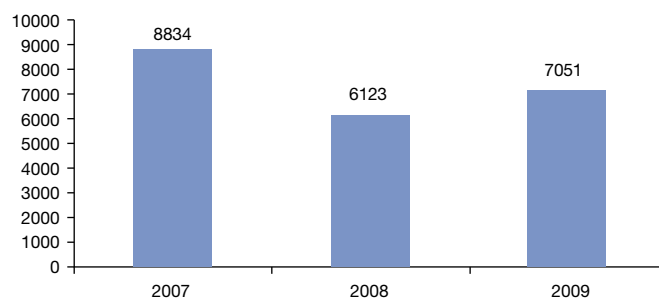


3.4 Simple complaints

The analysis of this report is confined to the normal complaints and disputes handled by ECC-NET in 2008 and 2009. As was mentioned before, the cases received by the ECCs are categorized into simple complaints, normal complaints and disputes. A ‘simple complaint’ is a complaint that requires no follow-up by an ECC, i.e. a “one step operation” where advice is provided to the consumer.

During 2008, ECC-NET received 6,123 simple complaints that concerned online purchases, and a further 7,051 in 2009. When compared to the statistics for 2007 (when a total of 8,834 simple complaints were received), there has been a decrease in this sphere.

Simple complaints



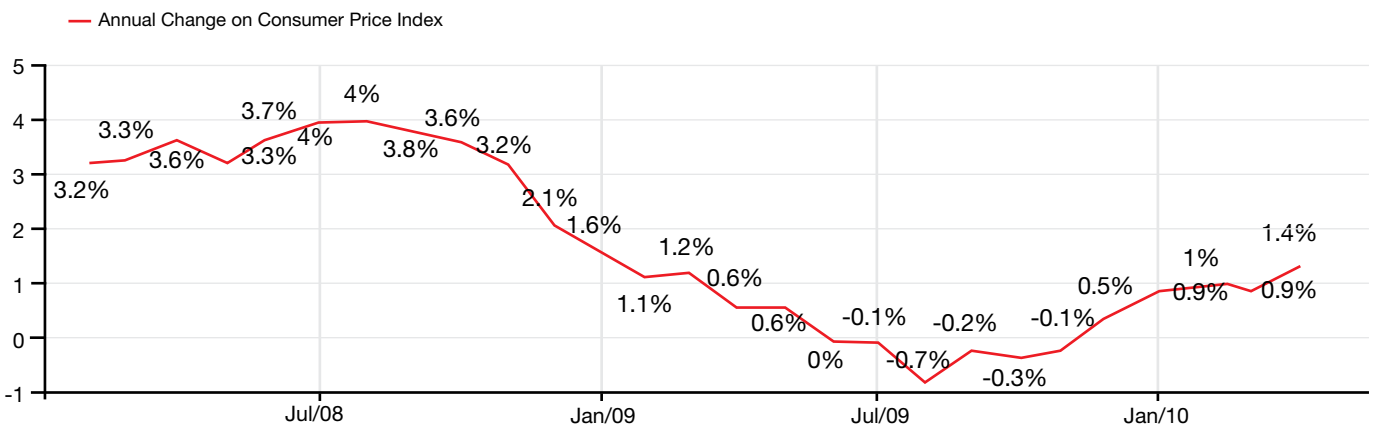
4.

Global Crisis

Beginning in the real-estate markets of the United States in December 2007, and greatly intensifying in September 2008, the global crisis has affected economies all around the world. In the euro area, GDP contracted by 4% in 2009, unemployment surged, and public debt rose to unprecedented levels.

The sharp drop in international trade has generated significant attention and concern, along with the rise in unemployment rates and the slump of commodity prices. The international financial crisis has had a deep impact on inflation – in February 2008, Reuters reported that global inflation was at historic levels, resulting in the weakening of currencies.

Euro Area Inflation Rate



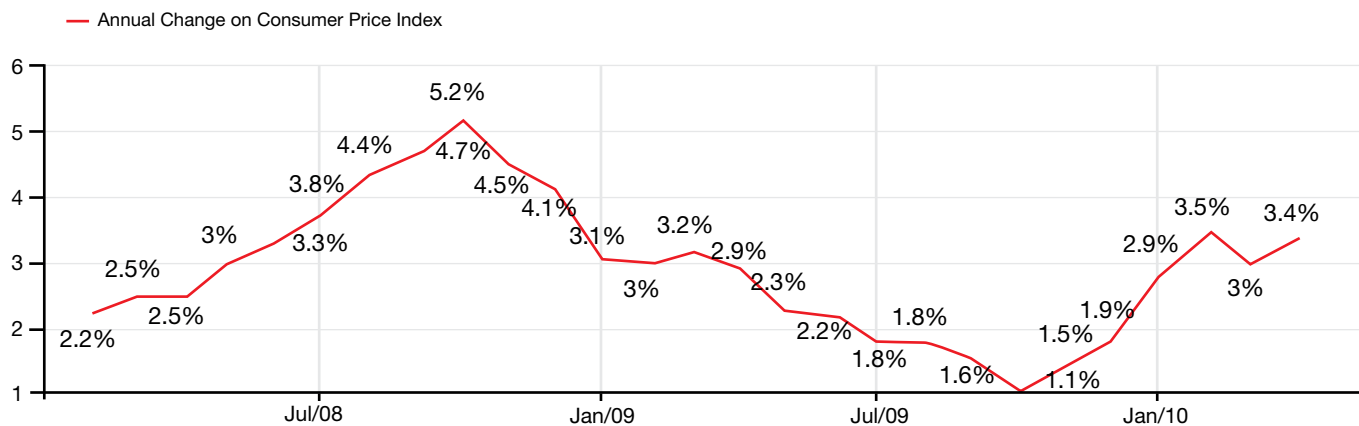


Although all countries have been affected by the global crisis, certain states were affected vastly more than others. A picture of financial devastation emerges when measuring currency devaluation, equity market decline, and the rise in sovereign bond spreads. These three indicators show financial weakness and, taken together, capture the impact of the crisis. According to the report of the Carnegie Endowment for International Peace in its International Economics Bulletin, central and eastern European countries Hungary and Ukraine are the most deeply affected by the crisis in Europe.

The Icelandic economy, too, has suffered serious consequences of the financial crisis. The national currency has fallen sharply in value, foreign currency transactions were all but suspended for weeks, and the market capitalisation of the Icelandic stock exchange has dropped by more than 90%.

The price of euros in Iceland is currently twice as high as it was three years ago. Consequently, the purchase of goods from the eurozone is highly expensive at present, which means that Icelandic people do not tend to purchase as many goods via e-commerce. ECC Iceland has reported of a decrease in complaints from Icelanders buying goods from another country through e-commerce.

United Kingdom Inflation Rate

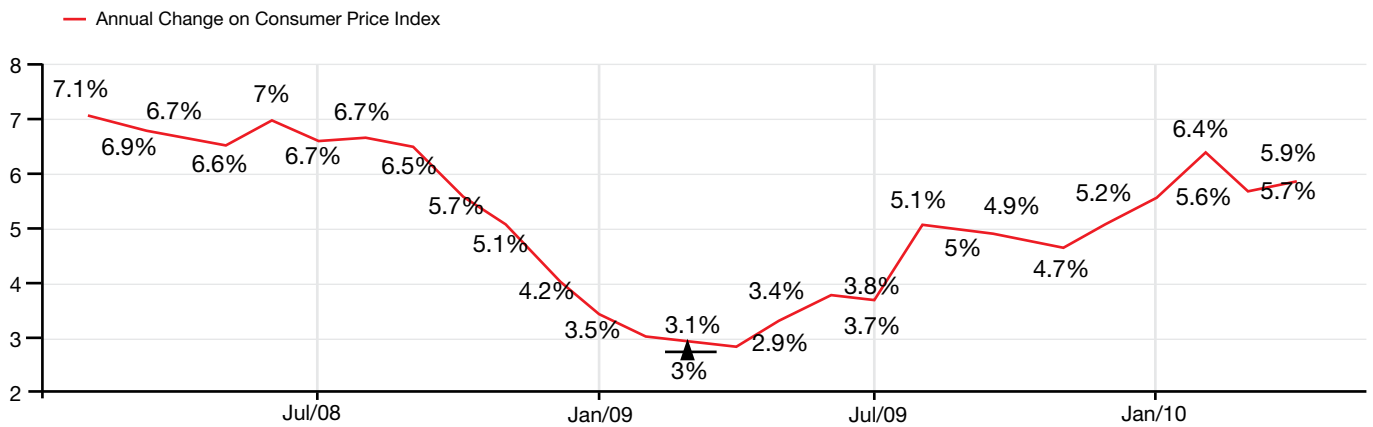


source: UK Office for National Statistics

www.tradingeconomics.com



Hungary Inflation Rate



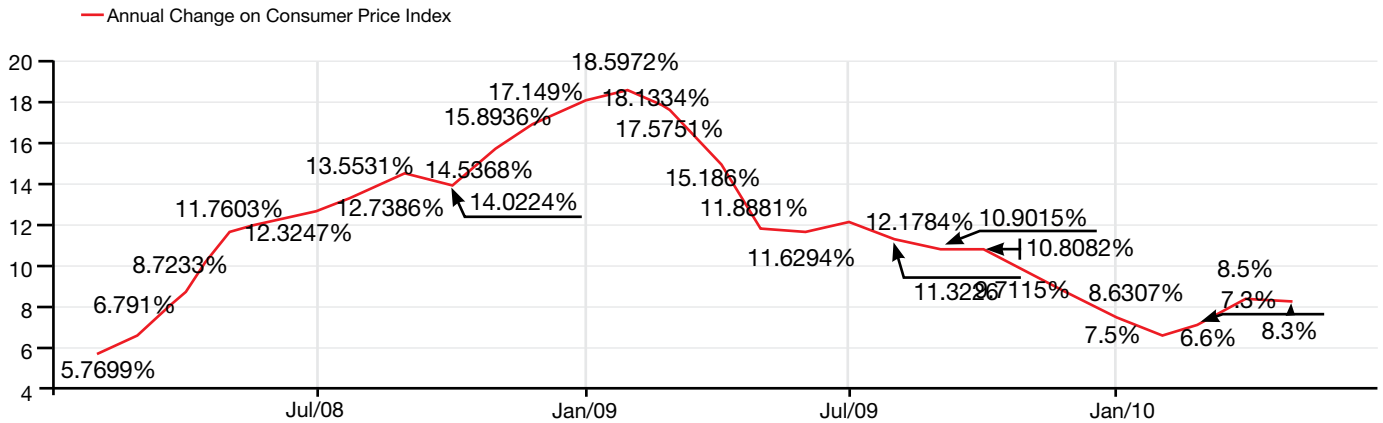
source: Hungarian Statistical Office

www.tradingeconomics.com

The reason of the number of ECC-NET complaints decrease may be the fact that consumers tended to be more cautious



Iceland Inflation Rate



source: Statistics Iceland

www.tradingeconomics.com

Most probably due to the crisis, ECC-NET saw a dramatic decrease in the number of simple complaints received in 2008 (44.6%) and 2009 (36%). The number of normal complaints also dropped considerably (by 19%) in 2008, but increased again in 2009 (22%). The reason for the decrease may either be the economic recession and cutbacks in consumer income, or the fact that consumers tended to be more cautious when making their purchases online.

5.

Main Problem Areas

Consumer complaints in the field of e-commerce filed at the European Consumer Centres in the course of 2008 and 2009 have presented a number of challenges to the Network.

Beside the current EU directives regulating electronic commerce, the applicable law, according to the Electronic Commerce Directive 2000/31/EC, is that of the Member State in which a service provider is established. Thus, there are a number of problem areas which do not fit easily within any of the categories of complaints discussed previously, but which have been observed as issues causing difficulty for consumers across Europe.

5.1. Delivery issues

Following the tendency of recent years, problems with delivery were by far the most frequent cause of e-commerce related complaints in 2008 and 2009. In those years, 42 and 40% respectively of all normal complaints and disputes concerned delivery issues – a large proportion, yet a relative decrease in comparison to the 50% rate registered in 2007. In absolute figures the delivery complaints increased from 774 in 2007, to 877 in 2008 and 1,258 in 2009. A possible reason for the decrease in the proportion of cases related to delivery issues may be the fact that, due to the economic crisis, consumers are significantly more cautious when ordering online.

Albeit decreasing in proportion, the high number of cases related to the non-delivery of goods clearly has a negative impact on consumer confidence and hinders the development of European cross-border e-commerce. Even though it is possible that cases of non-delivery are reported to the ECC-NET more frequently than others due to the flagrancy of the breach of consumer rights, it seems clear from the information provided that this is a problem that European consumers experience rather often; it is, therefore, an issue that must be addressed by all the relevant stakeholders of the cross-border e-commerce market.

As already indicated in the preceding section, the vast majority of cases within the category of delivery problems concerned the simple non-delivery of the product, which comprised the vast majority – a staggering 87% and 89% – of all cases in this category. Despite this, actual delivery of the product has also presented issues and difficulties for consumers, whether directly or indirectly, particularly in situations where the product has been delivered to the consumer late, or when only part of the order was delivered. The aim of this section is to highlight some of the main problems that have been registered by ECC-NET in 2008 and 2009.

A very frequent complaint is the delivery of faulty products where part of the problem is that the consumer does not examine the package before he or she actually signs for it, and it is therefore difficult to provide evidence of when or how the damage occurred.



An Italian consumer purchased a laptop from a French trader and transferred the purchase price via money transfer. The consumer did not receive the item, though he had made a number of unsuccessful attempts to contact the trader. The consumer then turned to the ECC-NET and managed to get a full refund.

A Lithuanian consumer purchased an air gun from a Polish web trader and transferred the purchase price. When the trader failed to deliver the product, the consumer contacted the trader in writing, requesting a reimbursement. The trader refused to refund the purchase price, so the consumer turned to ECC-NET. As a result of negotiations with ECC Poland, the trader agreed to partially reimburse the price. The claim was then forwarded to the Polish Trade Inspectorate, an alternative dispute resolution body in Poland. The consumer eventually attained a full refund.

A Hungarian consumer ordered three PlayStations from a web trader in the UK. The items were delivered, but the package was damaged and the consumer believes that two of the items had been used already, as the original packaging had been removed from them. The post automatically gave an acknowledgement of the damage. The consumer turned to ECC-NET in order to exchange the two PlayStations in question. The Hungarian and British European Consumer Centres are dealing with the case currently.

In the event that a consumer is sent a defective or damaged product, and thus has to return it, the coverage of the shipment costs often presents a problem.

A Finnish consumer purchased DVDs, Blu-Ray discs and a video cable from a Swedish web trader. The consumer received the products, however, they were not compatible with the consumer's devices, so he decided to withdraw from the contract within the cooling-off period and notified the trader of his decision. The trader at first refused to accept the cancellation and the coverage of the shipment costs, but upon the intervention of ECC-NET, the case was successfully resolved.

In cases where the package gets lost during delivery, the trader often denies responsibility for the loss of the item and refers the consumer to the relevant postal services or courier. There have also been complaints based on trader claims that something is in stock when advertised on the website, but once the consumer actually makes payment for the item, he is informed that it is no longer in stock, and that he will have to wait several weeks for it to be ordered in and delivered, and the trader refuses to make a refund, even though the consumer has decided to withdraw from the contract. The aforementioned problem may reflect malfunctions with the traders' administrative systems, but also misleading commercial practices.

A Belgian consumer ordered a product that was in stock in a Dutch web store, but due to a fault in the trader's computer system, both the order and the payment were cancelled. The consumer contacted the trader because he still wanted to place the order, as it was a very good deal, but the trader said it was not in stock anymore. The consumer refused to accept the trader's response, as the original order was placed when the item was still in stock. This case is currently being handled by ECC-NET.

ECC-NET has received numerous complaints from consumers about traders who deny liability for damages. Claiming that they have contracted a courier to carry out the service in their name, traders often attempt to shift responsibility and blame the courier for items that arrive damaged. As the consumers are not in a contractual relationship with the delivery company, however, it is the trader's responsibility to pursue a claim with the courier, if necessary. At any rate, traders should not deny their liability to the consumer for such problems – the property remains the possession of the trader until it is received and signed for by the consumer, so any damage or problems that result from delivery should be borne by the trader.

A consumer ordered plants online from a French trader. The consumer paid the price, but the ordered items were not delivered. ECC France contacted the trader, who claimed that the non-delivery was the fault of the postal service. However, thanks to ECC-NET he did agree to send the items again, which the consumer duly received.

5.2. Problems with Product/Service

Problems with the actual product or service were the second largest category of complaint for consumers in 2008 and 2009. Accounting for 30% of all the normal complaints and disputes dealt with by ECC-NET in both years, the number of product-related complaints has risen by 5% in comparison to previous years.

Although the vast majority of complaints in this field concern the defectiveness of the product, problems with non-conformity of the order have presented difficulties to consumers too. Other problems were related to the delivery/provision of unsolicited products and services; products/services that caused damage; and the trader's refusal to sell/provide.

According to Directive 1999/44/EC on the sale of consumer goods, "if a defect appears during the first six months following purchase, the consumer will not have to prove the product was defective at the moment of delivery". The onus will be on the seller to prove the product was without defect. A consumer will have up to two months following the discovery of the fault to inform the seller. If a defect becomes apparent within the two or one year period, depending on the type of goods, then the consumer has the right to choose a remedy using the following hierarchy. They can:

- Demand repair or replacement within a reasonable time and without any significant inconvenience. (Free of charge repair refers to the necessary costs to bring the goods "back to conformity").
- If this is impossible, disproportionate or cannot be done within a reasonable time or without significant inconvenience then the consumer can demand a price reduction or can rescind the contract (though not if the defect is minor).

A Cypriot consumer ordered a camera online. The product that was delivered to him, however, turned out to be faulty, so the consumer sent it back to the trader. After waiting weeks for the trader to return the camera and to reimburse the shipment costs, the consumer turned to ECC-NET. After the intervention of the competent ECCs, the trader demonstrated willingness to co-operate in the resolution of the case.

A Latvian consumer ordered a dynamo from a German Internet shop. The consumer received the package by courier post, but when he opened it, he found that instead of the dynamo there was a paper reel in it. A statement was signed by the forwarding agent (the courier), the consumer took a photo of the package, and informed the trader about the situation, but without result. The trader simply said that his supplier wouldn't give him any answer. The consumer paid 599 EUR for the dynamo and delivery expenses. After sharing this case with ECC Germany, the consumer received the purchased item.

A common problem proves to be the fact that traders often tend to refuse to accept any responsibility for shipping costs when the item has to be sent back due to a product fault. In doing so, traders violate the regulations of Directive 1999/44/EC, Article 3, paragraph 4, which clearly states that necessary costs incurred to bring the goods into conformity, particularly the cost of postage, labour and materials, should be free of charge for the consumer. It is important to note that, though it may cost more, it is worth sending the items back via registered post, as this means consumers are able to prove that the goods have been returned to the trader. The trader cannot be held liable to reimburse the cost of goods that have not been returned. Should an item be lost or damaged in the post, the consumer would need to make a claim against the postal company.

A Norwegian consumer purchased some Flora Danica porcelain items through a Danish Internet auction. The seller claimed the items were flawless and without damage. Upon receiving the goods, the consumer noticed that there were considerable cracks and chips in the porcelain and gold edging. The damage meant that the items were worth a lot less than what the consumer had paid. The consumer made a complaint to the trader. The trader initially agreed to the consumer returning the products but, after finding out he would have to cover the transport

costs, the trader claimed the consumer only has the right to withdraw from the contact within the cooling-off period, and that the consumer is then obliged to cover the return costs. The trader has refused to refund the consumer until the products are returned, and wants the consumer to cover the cost for returning the products. The case is still pending.

A Latvian consumer bought a TV set from a Belgian Internet shop. The TV broke down several times, and the consumer made numerous attempts to have the item repaired at the producer's representation in Latvia. Following the unsuccessful attempts to have the TV repaired, the consumer decided to request either a new machine or the full price of the TV back. The consumer negotiated with the trader, yet no solution was found. The consumer then turned to ECC-NET. After ECC Latvia shared the case with ECC Belgium, the trader agreed to reimburse the consumer, provided the consumer sends the TV back and it is established that the fault was not due to the consumer.

European Consumer Centres have also reported cases where the trader, after receiving the order and the payment from the consumer, changed the price of the product, and requested that the consumer pay the difference. The consumer must then either pay the higher price, or cancel the order and seek a reimbursement of the money he has already paid. Such additional charges can often happen in relation to postage costs, where the trader claims that the amount quoted for shipping costs was insufficient and that the consumer must therefore pay an extra amount to cover these costs in order to receive the product.

5.3. Digital content

The boom of e-commerce during the past few years clearly indicates that we are rapidly moving towards an “intangible” economy. As this intangible economy is today in an experimental phase, there is a considerable amount of uncertainty and a lack of sufficient legal regulation in the field. This section attempts to identify and highlight the most problematic areas related to the sale of intangible goods, also referred to as digital content.

Digital content may be defined as products that are available in digital form. It typically refers to music, information and images that are available for download or distribution on electronic media.

5.3.1. The current legislation

It was the Transparency Directive No. 2004/109/EC (adopted in June 1998) that laid down the basic EU rules for online services. The directive clearly distinguishes information society services from broadcasting and telecommunication ones. According to the new definition, information society services means any service, normally provided for remuneration, delivered at a distance

by electronic means and at the individual request of a recipient of services. The definition, moreover, covers online professional services (e.g. estate agents, insurance, travel agents), interactive entertainment (e.g. video on demand, online video games), online information (e.g. electronic newspapers, financial information), virtual shopping malls and distance-learning services.

Adopted in June 2000, the Electronic Commerce Directive provides the legal basis for the regulation of the electronic market. According to the directive, the applicable law is that of the Member State in which the service provider is established. At the same time, it excludes prior authorization for foreign online companies wishing to operate in other Member States. Furthermore, the directive also regulates areas of commercial communication (including unsolicited adverts, for example), contracts concluded by electronic means, the information service that providers must make available to users (various contact details) and the liability of intermediary services, like Internet Service Providers, in transmitting, “caching” and storing information.

There are eight further directives regulating the area of e-commerce, the most important of which is Directive 97/7/EC on the protection of consumers in respect of distance contracts.

In late 2008, the Commission made a proposal for a Consumer Rights Directive (CRD) which merges four existing EU consumer directives (Sale of consumer goods and guarantees (99/44/EC); Unfair contract terms (93/13/EC); Distance selling (97/7/EC); and Doorstep selling (85/577/EC)) into one set of rules. For several reasons, the CRD has been heavily criticized by stakeholders and is currently in legislative limbo in the European Parliament.

5.3.2. Discrepancies on the online market

The research conducted in preparation for this report has shown that there are a number of discrepancies between the way the digital market is evolving and the rights and interests of consumers. Cross-border e-commerce contains a great deal of potential, however, the protection of digital consumers needs to be enhanced and clearer regulation needs to be introduced and/or the existing consumer law needs to be adapted to the digital market.

A major deficit is that digital content is excluded from the scope of Directive 99/44/EC of the European Parliament and of the Council of 25 May 1999, as it only applies to tangible goods.

Due to the fact that the digital market itself is in an experimental stage, the lack of minimum standards of functionality, safety and user rights are recurring themes. It presents a problem, for instance, to apply certain regulations of Directive 1999/44/EC on the aspects of the sale of consumer goods and associated guarantees to the purchase of digital content. Article 2.2 (d) of the directive states “Consumer goods are presumed to be in

The introduction of sector-specific consumer laws would therefore be needed

conformity with the contract if they show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.” It is unclear, however, what conditions consumers may “reasonably expect” when purchasing digital content, therefore there is a definite need to set up common standards in this field.

Another key challenge facing stakeholders of the e-market is the privacy- and data protection issues of consumers on the one hand, while on the other hand, unauthorized copying and selling of digital content is also becoming an increasing concern.

The European Consumer Centres have come across a relatively large number of consumer complaints where business models and business practices impose restrictions to the internal digital market.

Finally, it has been observed that very little attention is paid to how minors and under-age users of the Internet and the electronic market internalize information, which poses considerable ambiguity for stakeholders.

The high level of legal uncertainty presents a problem not only to consumers, but seemingly to businesses too. It would, therefore, be in the interest of all stakeholders to introduce up-to-date and apt regulations that provide consumers with the necessary protection on the one hand, but do not impose obstacles to business innovation on the other. In order for e-commerce to flourish, consumers should be made more interested in, and confident of, the digital market.

The introduction of sector-specific consumer laws would therefore be needed. Attempting to balance the interests of consumers and traders, copyright law should regulate the matter of private copying and what information should be provided to consumers.

Data protection laws should prevent the unauthorised processing of personal data, whereas audiovisual laws would be needed to hinder unfair commercial practices and to protect minors. Telecommunications laws should ensure the provision of clear and comparable information in order to promote competition in the field.

5.3.3. Main problem areas related to the purchase of digital content

European Consumer Centres have indicated that the main areas of concern regarding the digital market in 2008 and 2009 were the following:

a. Intellectual property and copyright

The legitimate use, copying and distribution of intellectual property and copyrights appeared to be one of the most problematic issues for consumers. Traders very often tend to apply overly restrictive provisions in contract terms when it comes to the regulation of legitimate copying and/or playing of the digital content to be purchased.

A French consumer uploaded a photo of a paprika to his personal webpage. The photo of the paprika was copied from a German cookbook site. Shortly afterwards, the trader's attorney contacted the French consumer, demanding 400 Euros for the photo. The consumer then turned to ECC France for legal assistance and, in co-operation with the German Centre, the dispute was settled amicably.



b. Unclear information provided to consumers

On the one hand, consumers suffer from an information overload on the digital market; however, the European Consumer Centres have reported that one cause of cross-border consumer disputes when purchasing digital content is very often unclear or lacking information on terms and conditions, price, withdrawal or contact information for the traders.

A Luxembourgian consumer purchased a PC with a pre-installed test version of an antivirus program in a German department store. Shortly after the test version of the software had expired, the consumer received an invoice for the updates of the software. Having read the terms and conditions of the contract carefully, he learned that, as he did not withdraw from the contract after the test version of the software had expired, he automatically entered into a contract by using the software and its updates for which he was obliged to pay a fee. Upon the consumer's complaint, ECC-NET successfully intervened. The consumer was allowed to withdraw from the contract providing the antivirus program due to a lack of pricing information.

A Finnish consumer had ordered a free ringtone for which he was asked to provide his cell phone number. The consumer thus became the member of an online club that sent him numerous text messages. In the end of the month, the consumer was charged for the unsolicited SMSs the club had sent him.

c. Withdrawal based on the regulations regarding distance-selling

While regulations for distance selling allow consumers a cooling-off period during which they can withdraw from the contract, traders may seek to restrict consumers' withdrawal rights when purchasing digital content.

Intending to check a trader's price for an e-book, a German consumer provided the trader with his personal data. As the consumer did not speak English, he failed to realise that he had concluded an online contract and ordered an e-book. After he received the trader's confirmation of the order, the consumer decided to withdraw from the contract, however, the trader insisted on the payment of the purchase price, claiming that the e-book is a product that – due to its nature – cannot be returned.

d. Privacy- and data protection of consumers

There are an increasing number of problems related to the privacy- and data protection of consumers in the digital world. The ability to protect – particularly from third parties – the information one reveals on the internet is a growing area of concern.

Many European Consumer Centres have registered complaints from consumers who had been overwhelmed with unsolicited personalized advertisements or various approaches from third parties. The general experience is that consumers tend to be less cautious when giving out their personal data (for example when registering on websites), but then object to the unauthorized usage of their personal data.

e. Disclaimer or limitation of warranty

Due to the fact that the Consumer Rights Directive's scope does not extend to intangible goods, the rules of guarantee and warranty – amongst others – do not apply. Therefore, guarantee and warranty are practically excluded for intangible products, something that consumers seem to be aware of and therefore do not tend to complain about to ECC-NET.

However, it must be underlined that the lack of consumer complaints in this area does not mean that the situation

is ideal. In fact, a very important consumer right is being constantly violated by a number of businesses that are reported to make limitations and/or exclusions in their contract terms, especially regarding warranty disclaimers.

f. Non-functioning digital content/ Digital content restricted to some hardware

ECC-NET has registered a few cases where digital content was not functioning. The problem, again, is that it is unclear what, if any, remedies are available to consumers.

ECC Poland registered three simple complaints where the same trader excluded its liability for Beta-versions of software. In all three cases the consumers subscribed to games online and paid for the service. However, when the consumers did not receive the service they had already paid for, the trader referred to the exclusion of its liability, as it was clearly stated in the trader's terms and conditions that the trader does not assume liability for any technical problems with Beta software versions.

Traders at times restrict the usage of digital content contrary to the consumers' expectations. In other words, some business models restrict the usage of digital content to specific hardware.

The Norwegian Consumer Ombudsman filed a complaint with the Norwegian Market Authority against iTunes' contract terms. The Ombudsman demanded that iTunes change its DRM technology to make music available for all music players, not just iPod users. The case was submitted to the Norwegian Market Council when this demand was not met. In January 2009, Apple announced that it would drop its DRM technology from the iTunes Store.

Again, it should be stated that it is in the interests of all stakeholders of the digital market to settle problems of this kind, in order to be able to fully benefit from the e-market.

g. Minors

With minors or under age users entering the digital market and concluding contracts online, stakeholders of both the digital market and the legislative environment are forced to face challenges of a new kind.

About half of the European Consumer Centres have experienced an increase of cases related to minors. ECC Austria, ECC Estonia, ECC Germany, ECC Finland, ECC Latvia, ECC Sweden and ECC UK have all reported cases where minors used their parents' credit cards, mobile phones or internet accounts to buy products from the Internet. Once discovered, parents often contacted the traders seeking to cancel the contracts, but were unsuccessful in most cases.

Minors' parents are held liable for the actions of their under-age children, as traders may not be expected to know – or to investigate – who is involved on the consumer's side in online transactions. It appears, however, that adult content may also be purchased with teenagers' credit cards, in which cases the traders' liability should be considered:

ECC Netherlands has reported a case where a Spanish minor entered a website offering adult content. The minor received authorization to enter the website after paying 115 EUR for the service of with his youth credit card.

5.4. Incorrect display of prices

Complaints related to price display comprised 5% of complaints received by ECC-NET in 2008 and 6% of those received in 2009. The complaints mostly involved cases where the trader claimed that the price indicated on the website is incorrect, and demanded the payment of a higher sum in order to complete the transaction.

Price display errors may occur for a number of reasons, but are frequently related to currency issues. Another frequently encountered cause for dispute is either the incorrect display of the price, or the complete absence of any price display. Consumers furthermore complain about traders who display a price but charge consumers extra on top, such as the VAT or shipment costs, for instance.

This section deals with the four main categories of price display issues:

- Non-/incorrect display of prices
- Mistakes in price display
- Hidden costs
- Currency exchange-related problems

5.4.1. Non-/incorrect display of prices

ECC-NET received a relatively high number of consumer complaints related to non-display or the incorrect display of prices. These problems hinder the transparency of online transactions and have a negative impact on consumer trust as well.

A significant number of consumers – typically from German-speaking countries – reported websites offering various services, such as ringtones, music, lyrics, etc., where consumers registered on the websites by providing their personal data, something they have to do in order to attain the traders' services. Information about the cost is usually either not displayed at all, or hidden in the terms and conditions of the company. Many consumers thus do not see this information and register believing the service is free. Once the cancellation-period of the contract has expired, the traders usually send the consumers bills for the services provided, together with warning letters, which are followed up by letters from debt-collectors.

Wanting to avoid further disputes and the possibility of being taken to court, pressurized consumers very often pay the traders. What the vast majority of consumers seem to be unaware of is that, according to the general principles of law and national legislations, such contracts are either avoidable or void.

It is important, however, to raise consumer awareness regarding the dangers of providing their personal data online, as in this way consumers could avoid becoming victimized.

A relatively high number of Hungarian complainants claimed to have registered on German websites and/or downloaded digital contents (for example software or ringtones), firmly believing these services were free of charge, as the price information on the websites was inadequate or absent. A few weeks later the consumers received a bill of 100-200 EUR, the annual fee of the service, and a letter warning them of the legal consequences in the event that they fail to fulfil the traders' demands. Following a consultation with ECC Germany, Hungarian consumers were advised not to pay the bills; under German law, contracts not containing important elements (such as the price of the product/service) of the agreement clearly to all parties are void.

5.4.2. Mistakes in price display

Article 4 (1) of Directive 98/6/EC states “the selling price and the unit price must be unambiguous, easily identifiable and clearly legible.” However, ECC-NET did encounter cases where there was a mistake in the price listing. Although the legal regulation of pricing mistakes varies across Europe, the general principle is that, where a mistake should have been apparent or obvious to the parties concerned before entering into any agreement, then the contract is not enforceable.

There have been many instances where a consumer entered into a transaction where the price that had been displayed on the website was confirmed by the seller, thus the consumer legitimately believed that the contract had been concluded successfully. Following the undersigning of the contract, the consumer is informed that the price is incorrect, and is then told to pay the escalated price or to rescind the contract. According to the legislation of certain Member States, the consumer should be entitled to purchase the product/service at the displayed price, even if the seller mistakenly listed it. On the other hand, in the event that it is unreasonable to expect the trader to sell the products/services at the mistaken price, the trader is generally able to withdraw from the agreement and provide the consumer with a refund.

A Czech consumer bought a holiday package from a German online trader via a Czech agency. The consumer paid 1,428 EUR for the package and sent a signed contract to the trader. Afterwards, the consumer was sent a confirmation of the transaction and an undersigned contract. The consumer thus believed that the agreement

had successfully been made. A few weeks later, the trader contacted the consumer. Referring to the German Civil Code's regulations regarding mistakes, the trader declared the contract void and called upon the consumer to pay 2,088 EUR instead of the 1,428 EUR that she had already paid. The consumer insisted on the initial price and contract. The case is still pending.

5.4.3. Hidden costs

According to Directive 97/7/EC article 4, consumers shall be provided with information about the price of the goods or services, including all taxes and information about delivery costs, where appropriate. Unfortunately, however, a number of e-traders neglect this rule and charge consumers extra fees and costs. The extra costs are either not displayed on the website, or are written in the small print.

ECC Italy has come across several cases where the price initially quoted and advertised on traders' websites did not correspond to the final prices charged to the consumer. ECC Italy has reported cases where traders reimbursed consumers on a goodwill basis, but it has not yet managed to persuade the aforementioned businesses to change their unfair and misleading commercial practices.

A Latvian consumer ordered a product from a UK web trader. After the trader had confirmed the purchase and the money had been drawn from the consumer's bank account, the trader informed the consumer that he would also have to cover shipment costs, which exceeded the purchase price of the product. The consumer informed the trader that she intended to cancel the contract and demanded a reimbursement. Following an unsuccessful attempt to resolve the matter with the trader directly, the consumer turned to ECC-NET, the intervention of which was fruitful, and the consumer managed to get a refund.

5.4.4. Currency exchange-related problems

Mistakes in price display and problems related to payment frequently concern currency exchange issues.

A commonly encountered cause of consumer disputes in cross-border e-commerce is that the web business displays the price in a currency other than that it normally trades in. As a result, the consumer often ends up paying a higher amount than the advertised price, due to currency conversion fluctuations. Traders thus attain extra benefits from transactions.

A Norwegian consumer booked a holiday in Denmark. The price was 12,200 Danish crowns. After the consumer had made the booking arrangements, he attained an invoice stating that the price of the service was 15,250 Norwegian Crowns. The price in Norwegian Crowns was clearly significantly higher than that indicated on the website. The case was closed due to a lack of agreement with the trader.

Many European Consumer Centres, especially those

Avoid advance payments, if possible!

from Member States (also Norway and Iceland) outside of the euro area, have reported a different type of currency-related problem. ECC Iceland, for example, has reported consumer complaints that were the result of the dramatic fall in the currency. Credit card companies in Iceland have registered the currency at a different value than the European banks, and the European banks have used a different value to the Icelandic national banks.

The chart indicates the EUR against ISK between the years 2000 and 2009.



Source: Iceland Central Bank, exchange rates, time series, mid rate
<http://sedlabanki.is/?PageID=286>

The Swedish currency (SEK) was very weak in 2009. As a result, traders, mainly package travel retailers, increased their prices after having confirmed the conclusion of contracts online – sometimes in breach of the agreed terms and conditions.

Some European Consumer Centres have come across cases in the past two years where traders, in order to obtain a better deal, did not draw the purchase price of the goods at the moment when the contracts were concluded, but rather waited until the currency exchange rates were in their favour.

On 5 June 2008 a Polish consumer bought two plane tickets from Warsaw to Athens for August 2009. The tickets cost 622.60 EUR. The consumer was given the option to pay either in euros or in Polish Zloty. As the currency exchange rate in June was very much in favour of the consumer, she decided to pay in euros. On the day of purchase, according to the Polish National Bank the exchange rate was 3.37 PLN = 1 Euro, so the price of the tickets would have been 622.60 Euro (2,098.66 PLN). The air carrier, however, did not withdraw the money from the consumer in June, but in December, more than six months later. The difference between the price calculated in June and the money that was eventually drawn from the consumer's bank account amounted to 520.27 PLN. The air carrier did not inform the consumer when the money would be drawn from her account. The consumer was presented with a choice and thus chose the better option for her, and had not expected the transaction to take more than six months, especially because most airlines draw the money almost at the moment the reservation is made. According to the Polish act about price indication, clear information should be provided to the consumer about the way the purchase price is calculated. After the consumer turned to ECC-NET, the case was successfully resolved and the consumer was reimbursed.

A Slovakian consumer ordered goods from a Czech e-trader. The price was quoted in euros. When the consumer received the goods, the price was 4.98 EUR higher than the initial price. Upon the consumer's query, it was explained that the increase of the price was due to the fluctuation of the currency exchange rate, which was relevant as the Czech shipment company only accepted payment in Czech currency. Thanks to the intervention of the Czech and Slovakian European Consumer Centres, the trader reimbursed the consumer.



5.5. Methods of payment

In the following sub-sections the issue of secure payments and a new payment method shall be discussed in more detail. The security of payments have become increasingly important in the current recession, and the aim here is to provide useful tips to consumers on how they can secure their payments, obtain redress and what problems ECC-NET has come across related to the field.

The sub-section on the new payment methods concerns the SMS-billing system⁶, highlighting the advantages of this rapidly evolving payment method, but also the concerns related to it.

5.5.1. Secure payments

With many companies going out of business in the present crisis, the security of payments has gained an even more significant importance. The intermediaries that facilitate cross-border payments have a crucial role in securing consumers rights (e.g. credit cards such as VISA and MasterCard, Escrow companies, Pay Pal etc.). In many cases, consumers can obtain redress either from the intermediaries or on the basis of credit card liability. A charge-back option is obtainable either under the national legislation or based on the agreement between the consumer and the company offering these services. According to ECC-NET experience, however, consumers are not getting sufficient information on the possibilities of obtaining redress from these channels. The chart on the right indicates the source of information regarding the charge-back options in each Member State (also Norway and Iceland).

| Country | Source of information on charge-back options |
|-----------------|--|
| Austria | Contract with bank & national law |
| Belgium | Contract with bank |
| Bulgaria | No source of information |
| Czech Republic | Contract with bank |
| Cyprus | Contract with bank |
| Estonia | Contract with bank |
| Finland | National law |
| France | Contract with bank |
| Germany | Contract with bank |
| Greece | No source of information |
| Hungary | Contract with bank |
| Iceland | Contract with bank |
| Ireland | Contract with bank |
| Italy | Contract with bank or no source of information |
| Latvia | Contract with bank |
| Lithuania | Contract with bank |
| Luxembourg | Contract with bank |
| Malta | National law |
| The Netherlands | Contract with bank |
| Norway | Contract with bank & national law |
| Poland | Contract with bank |
| Romania | Contract with bank |
| Slovakia | Contract with bank |
| Spain | Contract with bank |
| Sweden | National law |
| UK | No source of information |

⁶ When using SMS Payment System, the consumer sends a payment request via an SMS or an USSD to a short code and a premium charge is applied to their phone bill or their mobile wallet. The merchant involved is informed of the payment success and can then release the paid-for goods. The SMS Payment System is an ultimately safe and anonymous payment method accessible to anyone. Source: Wikipedia

Quite a few European Consumer Centres have reported that in certain Member States consumers have difficulties obtaining a refund from the credit card company, unless they can clearly establish that fraud was involved. Regardless of whether the charge-back option is provided by the contract with the bank or by national law, consumers always have to turn to their banks first in order to attain a refund. Only in the event that the bank refuses to refund the consumer does the question of how the charge-back option is regulated become relevant for consumers. If the charge-back option is provided under the contract with the bank, the consumer may only file a claim individually at an ADR body or court. However, if it is the case that the charge-back option is provided under national law, the consumer may either file a lawsuit individually or can turn to a national enforcement body. The ECC UK says that in such cases consumers are signposted to the Financial Ombudsman Service, which is part of the FIN-NET and a notified ADR body for financial services in the UK, whereas ECC Denmark refers consumers who had been denied charge-back to the Danish Complaint Board of Banking Services.

or credit cards, a consumer can use a mobile phone to pay for a wide range of services and digital or hard goods such as:

- Music, videos, ringtones, online game subscriptions or items, wallpaper and other digital goods.
- Transport fares (bus, subway or train), parking meters and other services
- Books, magazines, tickets and other hard goods.

This payment method is convenient and beneficial not only for consumers, as it provides security along with mobility. There is no need to expose credit card details, no need to wait for the transaction to be completed – with SMS-payment consumers get what they want instantly, without having to think about cash – short messages are relatively cheap, and one can take these expenses as a part of the monthly telephone bill. The mobile payment market for goods and services, excluding contactless NFC (Near Field Communication) transactions and money transfers, is expected to exceed \$300 billion globally by 2013, according to Wikipedia.

ECC Estonia handled a case together with ECC Germany where an Estonian consumer intended to part take in a German online game and had thus sent an SMS (for 3.20 EUR) to pay for the service. Despite having sent the text message, the consumer could not join the game. Numerous queries from the consumer remained unanswered. Upon the enquiry of the ECC-NET, the trader claimed that the consumer's account had been closed due to a breach of the terms and conditions of the contract.

A number of European Consumer Centres have encountered problems where minors, without their parents' consent, have sent text messages to traders ordering goods or joining online games and competitions. The parents, unfortunately, become aware of their children's actions only after they received the bills, for which they were liable.

5.6. Bankrupt companies

A number of businesses have failed due to the economic downturn and the financial crisis that commenced in the fall of 2008. There have thus been a large number of consumer complaints where consumers have purchased goods or services online from traders who subsequently announced bankruptcy.

As consumers usually come rather low down on the list of creditors to whom a trader owes money, one cannot do much in such situations, unfortunately. Most European Consumer Centres may assist consumers, however, by informing the press about the bankruptcy proceedings of more significant companies, and they can help consumers filing their claims at the competent courts, as was the case during the bankruptcy proceedings of SkyEurope Airlines. Certain European Consumer Centres became the first port of call for the media and consumers and by keeping consumers up-to-date and urging them to

Tips to secure payments:

- Avoid advance payments, if possible!
- Avoid payments using money transfer services like Western Union or MoneyGram to unknown people!
- Check credit card accounts and bank accounts regularly!
- Check the trader's background – use HOWARD, the Shopping Assistant! (You can find it in almost every ECC website, for more information, contact the appropriate ECC)
- Check terms and conditions of payment!
- Check whether there is a padlock on the website, that it offers secure payment!
- If buying from a company, never transfer money to a private person's bank account!
- If using E-bay, do not accept the conclusion of a contract outside E-bay!
- Pay via secure websites whose address starts: https://!
- Use credit cards that offer protection against fraud, and charge-back!
- Use well-known and secure online payment methods like PayPal!
- Use a payment method that gives you the opportunity to cancel the payment if the trader does not fulfil his obligations!

5.5.2. New methods of payment

Although introduced not so long ago, the SMS-billing service has been coming to the fore among well-known and trustworthy payment methods, and is increasingly popular in Europe. Instead of paying with cash, cheque

file their complaints, have managed to assist dozens of consumers in attaining refunds.

5.7. Restrictions of sale based on residency

An issue frequently complained about is the restriction of sale based on residency. These cases concern web traders who either refuse to sell items or services to residents of certain Member States or would only sell the exact same things at an escalated price due to consumers' country of origin.

One must always consider carefully whether such restrictions are acceptable and are based on the freedom of choice for contract partners or are discriminative and are to be interpreted as a violation of EU law.

ECC Belgium has reported cases where Belgian consumers have tried to rent cars in Spain from a reputable car rental firm. The prices on the Belgian website were higher than those on the Spanish website, despite having the same conditions. Belgian consumers are not allowed to reserve cars through the car rental's Spanish website.

5.8. Unsolicited goods

The European Consumer Centres have registered complaints related to unsolicited goods, so-called inertia selling. Inertia selling is a method of selling that involves the sending of unsolicited goods on a sale or return policy. Inertia selling relies on the passive reaction of a potential purchaser to choose to pay for the goods received rather than undertake the effort to send them back. The receiver of the goods is not bound by law to pay for them but must keep them in good condition until they are collected or returned. Inertia selling is regulated under the Distance Selling Directive (97/7/EC) and prohibited under Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

A Greek consumer turned to ECC-NET after she started receiving text messages from a Dutch company, even though she had never ordered any such service. The consumer was charged 192 EUR for the text messages at the end of the month. Following the intervention of the competent European Consumer Centres, the consumer was reimbursed.

5.9. Cooling-off period and return costs

The table below indicates the cooling off period and return costs in each Member State (also in Norway and Iceland). The cooling off period is the period during which consumer can withdraw from the contract.

| Country | Cooling-off period | Who covers return costs according to the national law within the cooling-off period? |
|-----------------|-------------------------|--|
| Austria | 7 workdays | Consumer – if previously agreed on with the Trader |
| Belgium | 14 calendar days | Consumer |
| Bulgaria | 7 workdays | Consumer |
| Cyprus | 14 workdays | Consumer |
| Czech Republic | 14 calendar days | Consumer |
| Denmark | 14 calendar days | Consumer |
| Estonia | 14 calendar days | Consumer |
| Finland | 14 workdays | Trader |
| France | 7 workdays ⁷ | Trader |
| Germany | 14 calendar days | Trader ⁸ |
| Greece | 10 workdays | Trader |
| Hungary | 8 workdays | Consumer |
| Iceland | 14 calendar days | Consumer |
| Ireland | 7 workdays | Consumer |
| Italy | 10 workdays | Consumer ⁹ |
| Latvia | 14 calendar days | Consumer |
| Lithuania | 7 workdays | Trader |
| Luxembourg | 7 workdays | Consumer |
| Malta | 15 calendar days | Consumer |
| The Netherlands | 7 workdays | Consumer |
| Norway | 14 calendar days | Consumer |
| Poland | 10 days | Consumer ¹⁰ |
| Portugal | 14 calendar days | Consumer |
| Romania | 10 workdays | Consumer |
| Slovakia | 7 workdays | Trader/Consumer ¹¹ |
| Slovenia | 14 calendar days | Consumer |
| Spain | 7 workdays | Trader |
| Sweden | 14 calendar days | Consumer |
| United Kingdom | 7 workdays | Consumer |

⁸ It is the consumer who is to cover the return cost, if regulated in the contract or if the purchase price does not exceed 40EUR or if the consumer had not paid the purchase price at the moment of withdrawing from the contract.

⁹ Where expressly provided for in the contract, the consumer has to take over the expenses of returning the goods to the trader.

¹⁰ Polish national legislation does not regulate which of the parties is to cover shipment costs.

¹¹ The consumer only pays for delivery in the event that it was fully in conformity with the law and was not defective.

⁷ The first day of the 7-workday-cooling-off period is the day the consumer receives the item or, in case of services, the offer of the trader is accepted by the consumer. Should the seventh day fall on a Saturday, Sunday or a public holiday, the last day of the cooling-off period shall be the workday following the weekend/public holiday. In the event that a consumer is not provided with information regarding the cooling-off period, the 7-day cooling-off period is replaced by a 3-month-period. Should the trader inform the consumer about the cooling-off period within the three months, the 7-day cooling-off period starts on the day the consumer is informed.

6.

Fraud

The term 'Internet fraud' refers generally to any type of fraud scheme that uses one or more components of the internet – such as chat rooms, e-mails, message boards, or websites – to present fraudulent solicitations to prospective victims, to conduct fraudulent transactions, or to transmit the proceeds of fraud to financial institutions or to others connected with the scheme.¹²

Generally speaking, the current fraud schemes appearing online are very similar to those victimizing consumers and investors before the invention of the Internet. Online criminals attempt to present fraudulent schemes in ways that appear, as much as possible, like the goods and services that the vast majority of legitimate e-commerce merchants offer. Consequently, they not only cause harm to consumers and investors, but also undermine consumer confidence in legitimate e-commerce and the internet.

Electronic goods, such as laptops, mobile phones and photographic equipment, vehicle-related transactions and the re-sale of tickets for entertainment, all at highly attractive prices, are the most common products fraudulent traders offer, ECC-NET reports.

As it is a criminal matter, European Consumer Centres do not deal with cases where fraud is known or found to exist, but advise consumers to turn to the police. These cases are then registered by the ECC-NET as unresolved. Some ECCs will transfer such cases to criminal enforcement authorities.

¹² The definition of 'Internet fraud' on Wikipedia.

A typical internet fraud scheme:

- 1 Consumer sees an overly attractive offer online.
- 2 The consumer enquires about the product from the trader, receives all necessary information and is reassured about the attractiveness of the solicitation.
- 3 The consumer orders the product and receives a confirmation of the order, as well as pictures of the product in question.
- 4 The consumer is asked to pay either through money transfer or to the bank account of a private person, who is often said to be a manager of the company.
- 5 The fraudulent trader at this point either disappears, or, if in co-operation with a fake escrow company, informs the consumer that the product is being shipped to him.
- 6 The consumer is informed that there is a delay in the delivery due to either the actual holiday-season, or because of problems with customs at the border.
- 7 The consumer is requested to send more money to the trader or the escrow company, and – regardless of whether he or she acts accordingly, or not – the trader and the third party disappear without delivering the product.



6.1. Fake web traders

The ECC-NET receives a rather high number of cases where fraudulent web traders appear as legitimate ones in order to cheat consumers out of their money, very often hundreds of euros, by inducing consumers to pay in advance through either bank transfer or certain money transfer agencies.

In an attempt to appear as lawful and trustworthy merchants, fake web traders may invent their own credible company history and post it on their websites, together with unregistered trust mark schemes, or may even steal the identities of legitimate businesses. In the latter case the domain names are registered either through certain American companies that do not reveal the identity of the registrant, or by using addresses that are probably fake.

The vast majority of European Consumer Centres have reported consumer complaints against a fake web trader offering weight loss pills on the internet. The trader offers a free 14-day trial period and requires solely the coverage of shipment costs. Victimized consumers ordered the goods and provided the trader with their bank account data and transferred 3.95 GBP to cover delivery costs. Consumers did not receive e-mails confirming the purchase, but they did receive electronic invoices. The pills were never sent, but the trader drew the full price of the pills from the consumers' bank account. Some consumers have even complained of a further abuse of their bank details. The trader is impossible to contact, as it is not based at the UK

address it provides, but possibly in Singapore. ECC UK was informed about this following the local enforcement authority's visit to the address, in the course of which the authority found that a lot of the trader's bills get sent on to Singapore. Consumer complaints against the trader are referred to the police by a number of European Consumer Centres.

6.2. Fraudulent escrow companies

Escrow companies can be very helpful in assisting a safe, secure transaction between buyer and seller. The buyer sends funds directly to the escrow service, which then notifies the seller to ship out the goods. Once the goods arrive, the buyer has an inspection period to verify the legitimacy of goods. If everything proves to be satisfactory, the escrow releases the funds to the buyer.

Scammers, however, may set up fake escrow websites. Consumers are promised escrow services, but once a payment is made, the fake escrow website disappears.

A consumer placed an order with a Dutch Internet retail company. The consumer ordered a laptop and a video camera. The trader asked the consumer to pay through an escrow company, which the consumer did. A few days later the consumer asked the trader when he could expect his order to be delivered. The company reassured the consumer that his package had already been sent. The product was not delivered, however, and the trader failed to respond to any further queries. The consumer was advised to go to the police.

The table below lists national institutions responsible for the registration of legal entities or websites on which consumers can check whether a business is registered by entering the trader's name or other data.

| Country | Institutions, responsible for registration | Information provided in | Free/ Fee-paying |
|------------------------|---|---|--|
| Austria | www.compnet.at www.ksv.at detailed information by the Register of the Commercial Courts: http://www.justiz.gv.at/internet/html/default/2c9484852308c2a601240b693e1c0860.de.html | German | Free Free Fee-paying |
| Belgium | http://kbopub.economie.fgov.be/kbopub/zoekwoordenform.html?lang=fr Euro dB manages the Belgian Central Commercial Register. Subscription service. Registration on the internet: http://www.dns/en/index.php | Dutch, French, English, German | Free |
| Bulgaria | Companies have to be entered into the commercial register kept with the relevant district court, where the public can view them. There is no online register at present but information on the different types of companies can be found at D&B Report Guide Bulgaria (dbemc.dnb.com/reportguides/bulgaria.htm), Establishing a Business in Bulgaria (www.investbulgaria.com/establishingBusiness.htm). | x | x |
| Cyprus | Department of Registrar of Companies and Official Receiver www.mcit.gov.cy/mcit/drcor/drcor.nsf/index_en/index_en?opendocument Alternative sources for companies search in Cyprus include Cyprus-Data.com (www.cyprus-data.com) where you can search by name, registration number and registration date and CreditInfo Cyprus (www.creditinfo.com.cy). Both offer database searches and basic information free of charge. More detailed documents are priced. | Greek, English | Free Free/ Fee-paying |
| Czech Republic | Ministry of Finance, trade register http://wwwinfo.mfcr.cz/ares/ares.html.en | English | Free |
| Denmark | Danish Commerce and Companies Agency (DCCA) www.eogs.dk This is the official registry for Danish Businesses. There is a searchable database at the Central Business Register (CVR). | x | x |
| Estonia | Central Commercial Register of Estonia: https://ariregister.rik.ee/ (traders selling goods/services in Estonia must be registered here) Register of Economic Activities http://mtr.mkm.ee/ | Estonian, English, German | Free – but provides only general information |
| Finland | Trade Register www.ytj.fi/english/ | Suomi, Swedish, English | Free |
| France | EURIDILE - Le Registre National du Commerce et des Sociétés - RNCS www.euridile.inpi.fr | French | Free, Detailed information for fee |
| Germany | Judicial Register of the Federal States: www.handelsregister.de | German | Free for general information, for details, a fee must be paid |
| Greece | x | x | x |
| Hungary | Court of Company Registration http://www.e-cegjegyzek.hu Cégtaláló - CÉGKIVONAT www.cegtalalo.hu | Hungarian Hungarian | Free Free |
| Iceland | http://www.syllumenn.is/allir/firmaskra/ | Icelandic | Free |
| Ireland | Companies Registration Office http://www.cro.ie | English | Free |
| Italy | Infocamere - Società Consortile di Informatica delle Camere DI Commercio Italiane per Azioni www.infocamere.it | Italian | x |
| Latvia | Lursoft www.lursoft.lv | Latvian, English | Free |
| Lithuania | The Centre of Commercial Registry http://registrucentras.lt/jar/p/ | Lithuanian | Free; More detailed documents are priced |
| Luxembourg | Registre de Commerce et des Sociétés - Accueil http://www.rcsl.lu | French, German | Free |
| Malta | Registry of Companies http://registry.mfsa.com.mt/ | English | Free of charge for certain services e.g. search for company registration number; Fee-Paying for certain services (e.g. downloading of documents) |
| The Netherlands | Kamer van Koophandel : Trade Register http://www.kvk.nl/ | English, Dutch | Free |

| Country | Institutions, responsible for registration | Information provided in | Free/ Fee-paying |
|----------------|---|-------------------------|------------------|
| Norway | Brønnøysund Register Centre http://www.brreg.no/ | English, Norwegian | Free |
| Poland | Ministry of Justice Poland www.ms.gov.pl | Polish | Free |
| Portugal | x | x | x |
| Romania | The Ministry of Justice – The National Trader Register Office http://www.onrc.ro/indexe.php | English, Romanian | Free/ Fee-paying |
| Slovakia | Companies Register of the Slovak Republic on Internet http://orsr.sk Trade register www.zrsr.sk | Slovakian Slovakian | Free |
| Slovenia | x | x | x |
| Spain | Registro Mercantil Central http://www.rmc.es | English, Spanish | Fee-paying |
| Sweden | Swedish Companies Registration Office - Bolagsverket http://snr4.bolagsverket.se/snrgate/startIn.do | Swedish | Free/Fee-paying |
| United Kingdom | Companies House www.companieshouse.gov.uk for limited (Ltd.) companies | English | Free |

6.3. Buying/selling second-hand cars

As indicated above, a significant proportion of cases submitted to ECC-NET regarding scams concern transactions related to second-hand cars.

Buying a used car on the internet offers several advantages including a lower purchase price, but there are downsides, as well as the risk of falling prey to a scam.

Fraudulent traders offering second-hand vehicles would post classified ads on the internet. Consumers are told that the transaction is done through a logistics company. The fraudster induces the consumer to send a part or the whole price of the product to the bank account of the company, underlying the fact that in case he is unsatisfied he may get a full refund. After the consumer pays the purchase price, the fraudster posting the ad disappears with the money received.

A Hungarian consumer ordered a VW GOLF automobile via the internet and transferred the purchase price of 6,500 EUR to the bank account of Mr. F. S., the presumptive sales manager of the trader in the UK. The car never arrived, but the consumer was informed that, in order to check if the status of his shipment has changed, he was to visit the website of the carrier and check the tracking number. The case was referred to the police.

6.4. Internet auction fraud

A very frequent form of internet fraud occurs on online auction sites. These scams, and similar schemes for online retail goods, typically purport to offer high-value items that are likely to attract many consumers. These schemes instruct consumers to send money for the promised items, but then fail to deliver the product, or deliver an item of far less valuable than that which was promised (e.g., counterfeit or altered goods).

Tips to avoid scams:

- Search the web trader's background on HOWARD, the Shopping Assistant (details of which you can find on almost every ECC website), to make sure you are not dealing with a fraudster; you can also conduct searches through other online search-engines where you may attain further information on traders;
- Check whether there are any trustmark schemes on the trader's website (check if the trader truly belongs to the trustmark schemes);
- Secure your payments and try to avoid advance payments;
- Be alert if the trader offers an unusual form of transaction;
- Make sure you personally examine a vehicle you intend to purchase before you transfer the purchase price.

7



Redress and Enforcement

The single market as a whole, including the European online market place, necessitates the cross-border co-operation of the law enforcement and redress systems of the Member States.

Depending on the Alternative Dispute Resolution (ADR) structures in the various countries, some ECCs send a case directly to an ADR body before contacting the trader. Other ECCs will contact the trader before directing a case to an ADR, in order to solve the case amicably. If this does not succeed, the ECCs will direct consumers to an ADR scheme.

If ADR is not an option, ECCs may advise consumers to use the European Small Claims Procedure or take other legal action.

Currently, the following methods are available for enforcing a consumer complaint:

1. Out-of-court mechanisms (ADR, ODR)
2. Co-operation of the national authorities (Consumer Protection Co-operation, or CPC)
3. European Small Claims Procedure
4. Collective redress
5. Other methods to take control over e-commerce

7.1. ADR/ODR

Co-operation with an ADR body is required in cases where ECC-NET cannot obtain an amicable agreement directly with the trader. There are almost 400 Alternative Dispute Resolution bodies in the EU (<http://ec.europa>.


[eu/consumers/redress_cons/adr_en.htm](http://ec.europa.eu/consumers/redress_cons/adr_en.htm)). One of the main roles of ECC-NET is to help consumers find the competent ADR body, but the European Consumer Centres will also forward cases to the ADR bodies.

Eight ECCs reported some kind of online ADR methods. Some of these procedures are conducted fully online, like the Online Dispute Resolution (ODR) schemes in Germany and France. These schemes are focused on e-commerce issues and provide online effort-saving procedures, without need of complex paperwork.

A German consumer ordered a handbag and paid the purchase price, but she did not receive the item. As the trader failed to respond to her queries, the consumer turned to ECC-NET. The case was eventually transferred to Online-Schlichter, the German ODR body, which solved the case expeditiously.

The procedure at the Chambers of Arbitration of Rome and Milan in Italy are also fully online; mediation is handled through a chat between the consumer and the business with the assistance of a mediator. ECC Italy refers many cases to the ODR Risolvionline, which very often proves effective.

In other Member States, only part of the procedure is conducted online. In Hungary, ADR proceedings may be initiated online and documents may also be submitted online. It is an advantage for consumers in cross-border proceedings that ADR procedures are conducted in their absence. ECC Hungary increasingly frequently transfers cases to ADR bodies, and represents consumers at the hearings.



Filing in an ECC complaint form may launch proceedings of the Polish Trade Inspection, in the event that the trader is seated in Poland.

A Lithuanian consumer purchased an airsoft weapon in a Polish online shop and paid 720 EUR by credit card. The trader could not deliver the order, but did not refund the consumer straightaway. The trader proposed to transfer the purchase price in down payments of 100 EUR, but it was not clear when the first transfer was to be made. The assistance of ECC-NET in co-operation with the Trade Inspection resulted in full reimbursement.

The Austrian Internet Ombudsman co-operates closely with ECC Austria. The scheme is fully on-line. The Ombudsman contacts the trader directly in order to reach an out-of-court solution to the complaint.

Members of the ECC-NET contribute to the development of ADR/ODR bodies in their countries. The type of co-operation is different in each Member State. The network centres frequently participate in ADR conferences, where they distribute their publications. ADR bodies usually give ECCs limited access to their database. There are some countries, like Sweden, where ECCs receive detailed information from the ADRs about their activities, which helps in the development of systems.

A possible solution regarding the goal of the online single market would be the establishment of an EU-wide online Alternative Dispute Resolution system.

7.2. CPC authorities

The Regulation (EC) No. 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws (the Regulation on Consumer Protection Co-operation, or CPC) was adopted in 2004 to deal with intra-Community infringements of the laws that protect consumers' interests. The Regulation lays down the conditions under which the responsible authorities in the Member States shall co-operate with each other and with the European Commission in order to ensure compliance, the smooth functioning of the internal market, and in order to enhance the protection of consumers' economic interests. The CPC takes regular EU-wide enforcement actions focusing on e-commerce (the last one was in May 2009; for more details see European Commission MEMO/09/379).

These actions provide opportunities for other stakeholders to co-operate in cross-border issues.

ECC Luxembourg received a number of complaints from European consumers via other ECCs against a web trader offering a partner-finding service. The price indicated was per month, but consumers' credit cards were often charged with the price of the whole subscription period, which was at least six months long. Other consumers didn't even notice that they had subscribed to a service. ECC Luxembourg collected the complaints and contacted the CPC, which filed a lawsuit against the trader. The trader had to change its terms and conditions and the means of informing consumers about the price.

In the case of cross-border transactions, traders' terms and conditions very often do not comply with national regulations. The CPC plays an important role in the examination of traders' terms and conditions, flaws in which are frequently pointed out by the European Consumer Centres.

A well-known French company that sells electronic devices at highly appealing prices was repeatedly violating consumer law. Many consumers submitted complaints to ECC Finland against this company. The trader's contract terms were thus evaluated by the CPC authority, and the trader subsequently created a Finnish website to offer its goods to Finnish consumers. As a result, Finnish law is applicable for the transactions the trader establishes with Finnish consumers. Thanks to the measures taken by the CPC authority, Finnish consumers now get user manuals in their own language for the products they purchase from the company in question.

In the course of the co-operation between the ECCs and the CPCs, the CPC authorities may well take measures that help resolve consumer complaints that are originally filed with ECC-NET.

The consumer registered his personal data on the website of a Slovakian company in order to obtain 14 day test versions of the company's programs. The information provided on the website did not state that by filling in the registration form, the consumer was in fact concluding a contract. The consumer received an e-mail, along with an installation link and access codes, notifying him that the provision of the services commenced on the day of the installation. Even though the consumer had not installed the service, the company sent him an invoice through a debt collector based in Germany. Immediately after receiving the invoice, the consumer sent a registered letter to complain about the fact that it was not stated in the website that giving his personal data meant he would be charged. The company responded that, in order to cancel his contract, he would have to pay 18 EUR to a bank account. The consumer paid the cancellation fee, but the debt collector and trader continued to demand the annual registration fee. When ECC Slovakia could not contact the trader, the CPC, Slovak Trade Inspection (STI), was asked for help. After STI intervened in the case, the trader sent a letter of apology to the consumer and renounced its claim. The case was thus settled amicably with the assistance of the enforcement body.

The experience gained in 2008 and 2009 has revealed that co-operation between ECC-NET and CPC-NET is not of a purely formal nature. A number of European Consumer Centres, for example, say they have concluded co-operation agreements with their local CPC member, while other European Consumer Centres are intending to conclude such agreements. Co-operation means, among other things, the mutual forwarding of cases, the issuing of joint information materials and ongoing correspondence. Furthermore, many European Consumer Centres have combined their efforts with the CPC without having concluded co-operation agreements. In light of the fact that, although the two networks' concrete scopes

of work are different, the main aim of both networks is the promotion of the European single market, it is indispensable for the two networks to collaborate as well as to further their alliance in the future.

7.3. Small Claims Procedure

The Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure came into force in 2009. According to the Summary of the Act, the European Small Claims Procedure is intended to improve access to justice by simplifying cross-border small claims litigation in civil and commercial matters and reducing costs. 'Small claims' are cases concerning sums under 2,000 EUR, excluding interest, expenses and disbursements (at the time when the claim form is received by the competent court). Judgments delivered under this procedure are recognised and enforceable in other Member States without the need for a declaration of enforceability. The procedure is optional, offered as an alternative to the possibilities existing under the national laws of the Member States. It has been applicable from 1 January 2009 in all EU Member States except Denmark.

Promoting effective remedial action at EU level, ECC-NET informs consumers about the European Small Claims Procedure and encourages them to make claims against traders based in another European country, in the event that the dispute cannot be solved amicably.

ECC Estonia received numerous complaints from Estonian consumers against web traders from the United Kingdom and Germany. When traders ignored letters and phone calls, consumers were advised to initiate a Small Claims Procedure.

A consumer – a resident of Luxembourg – purchased a pocket bike from a German trader online. The item was not delivered and no reimbursement was given. Neither the consumer, nor ECC-NET was able to find an amicable solution, as the trader failed to respond to queries. The consumer was eventually advised to launch a European Small Claims Procedure against the trader.

7.4. Collective Redress

Collective Redress is a legal term used by the European Community to define the legal instrument of group proceedings.

With mass consumer markets expanding in size and becoming cross-border, the illegal practices of a trader can harm very large numbers of consumers. The effect of malpractice can be so widespread as to distort markets.

Published in November 2008 by the European Commission, the Green Paper on Consumer Collective Redress identifies barriers to effective redress in terms of access, effectiveness and affordability, and presents various options to close the gaps identified. The options set out in

the Green Paper seek to ensure that consumers who are victims of illegal commercial practices can get compensated for their losses, while avoiding unfounded claims. In the Green Paper, the Commission proposed four possible solutions to the issue of introducing collective proceedings for consumer redress at EU level.

Option 1 - No EC action:

The existing provisions, namely in the field of European law on civil procedure, represent a partial legal regulation in this area, such as the Small Claims Regulation. The effects of the current legislation are to be assessed. If needed, either the current legislation is to be amended or a new regulation is to be drafted as a partial or complete legislation on Collective Redress at EU level.

Option 2 - Co-operation between Member States:

According to the Commission's proposal, those 13 Member States that have some sort of Collective Redress mechanism should make these systems accessible to other States that have no such system. The systems would have to be converged sufficiently to remove their mutual differences.

Option 3 - Mix of policy instruments:

This solution anticipates the adoption of individual binding or none-binding measures that would be mutually complementary. Cases in point include:

1. Improving Alternative Dispute Resolution mechanisms.
2. Extending the scope of national Small Claims Procedures to mass claims, including a cross-border context.
3. Extending the scope of the Consumer Protection Co-operation Regulation, i.e. the powers of law enforcement authorities that, in cases having a cross-border dimension, co-operate within the CPC network.
4. Supporting enterprises in the introduction of internal complaint-handling systems.

Option 4 - Judicial Collective Redress procedure:

This solution points towards the adoption of voluntary or mandatory legislation geared towards the introduction of a uniform system of Collective Redress.

In the course of the public consultations held by the Commission regarding the Green Paper, stakeholders from all categories underlined the question of applicable law and competent jurisdiction as an inherent problem to the European Collective Redress mechanism. According to the Overview of the results of the Consultation on Consumer Collective Redress, while some industry representatives and legal practitioners questioned the justification for, and the added value of, EU action in the area of consumer Collective Redress, consumer representatives pointed to the existence of a "justice gap" to the detriment of consumers due to the lack of Collective Redress schemes in a number of Member States.

Even though not widely used, certain European Consumer Centres do have experience with Collective Redress schemes.

ECC Finland reported cases where Dutch traders were sending unsolicited text messages to a large number of Finnish consumers and were subsequently demanding payment for the SMSs in question. The Consumer Ombudsman, who is entitled to file a class action in court or a class complaint at the main Finnish ADR on behalf of consumers, managed to reach an understanding with certain Dutch mobile phone service providers that all demands shall be either revoked, or, in case the demand has already been fulfilled, consumers shall be reimbursed. ECC Finland said it was extremely satisfied with the outcome of these cases and suggests that the reason why traders have agreed to this solution may be that they were reluctant to risk a class action conducted against them.

7.5. Other methods to take control over e-commerce

There are certain cases, where ECCs are unable to provide assistance to consumers. These are typically the cases of fraud, when consumers are advised to turn to the police in order to obtain appropriate assistance.

The majority of European Consumer Centres have reported successful co-operation and joint efforts with the police.

More than 50 Cypriote consumers purchased on-line LCD TVs from a fraudulent trader, who collected payment, but never delivered the products. Following the close co-operation of ECC Cyprus with the competent police department and the Unit for Combating Money Laundering (Law Office of the Republic), measures were taken in order for the consumers to be reimbursed.

ECC Estonia reported that, in the event that a trader or a trader's activity is of a criminal nature, the Estonian police assist in the clarification of the trader's seat.

Other means of co-operation involved the organisation of joint conferences, the forwarding of consumer complaints, and informing the other party of new types of frauds.

Various trustmark schemes, like the Euro-Label Certification System, serve to strengthen consumer confidence. If a web trader has chosen to be affiliated with a trustmark scheme, this is often a sign that he has considered and is interested in ensuring consumer rights. The organisation behind the scheme will also normally monitor the web trader's compliance with its rules and regulations.

ECC Denmark has even integrated the Euro-Label search-system into the database of HOWARD, the online Shopping Assistant. Consequently, when a consumer checks whether a website is to be trusted, HOWARD also provides information on whether the website in question is a member of the Euro-Label trustmark scheme.



8

New Horizon in E-commerce

The Consumer Markets Scoreboard (see more details in Press release IP/10/384 Date: 29/03/2010) reveals that the gap between domestic and cross-border online purchases is growing: in 2009, 34% of European consumers bought goods or services online from national sellers (28% in 2008), but only 8% ordered from elsewhere in the EU (6% in 2008). The Commission is determined to pursue a strategy of dismantling barriers to cross-border online shopping, based on a catalogue of measures identified in October 2009 (see more details in MEMO/09/475). They include ending fragmentation of rules, boosting cross-border dispute resolution and simplifying regulations for retailers.

While e-commerce was reported to be working well, the Consumer Markets Scoreboard revealed that the main barriers to a more effective e-commerce market are geographical segmentation, language barriers and regulatory barriers.

One of the greatest shortcomings of the EU consumer protection mechanisms and consumer rights' system is the low level of enforcement in this field. The establishment of an EU-wide system where consumers could seek redress would raise consumer confidence in the single market in general, and e-commerce in particular.

There have already been measures taken by the EU in order to develop law enforcement in the field of consumer protection. In December 2006, the EU adopted a new consumer protection program for the period 2007-2013 with a total budget of 157 million EUR. It has two main objectives:

- to ensure a high level of consumer protection, notably through improved evidence, better consultation and better representation of consumers' interests;
- to ensure the effective application of consumer protection rules, notably through enforcement co-operation, information, education and redress.

The new Consumer Protection Co-operation (CPC) regulation that entered into force on December 29 2006 brought about positive changes in the way enforcement authorities in the Member States co-operate among themselves and with the Commission.

The obstacles to obtaining a fast and inexpensive judgment are exacerbated in cross-border cases. The establishment of a European Procedure for Small Claims (European Small Claims Procedure) was therefore necessary and will most probably prove highly beneficial for consumers. As mentioned in section 7.3 above, the aim of the European Small Claims Procedure is to simplify and speed up litigation concerning small claims



in cross-border cases, whilst reducing costs, by offering an optional tool in addition to the possibilities existing under the laws of the Member States. The European Small Claims Procedure Regulation also intends to make it simpler to obtain the recognition and enforcement of a judgment given in the European Small Claims Procedure in another Member State.

The Lisbon Treaty set out the aim of developing judicial co-operation in civil matters that have cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases.

For the above purposes, “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

- a. The mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;
- b. The cross-border service of judicial and extrajudicial documents;
- c. The compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- d. Co-operation in the taking of evidence;

- e. Effective access to justice;
- f. The elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
- g. The development of alternative methods of dispute settlement;
- h. Support for the training of the judiciary and judicial staff.”¹³

The establishment of a common European Alternative Dispute Resolution scheme would be highly beneficial for all stakeholders of the single market, especially if the resolutions of the common ADR system were to be enforceable. Furthermore, the common ADR system would be more effective if it could also operate online.

¹³ Treaty of Lisbon Art. 65 (2)

9

Conclusions

Though the global crisis has affected economies all around the world, and it is certainly appreciable in the EU member states, along with Norway and Iceland, simple and normal complaints in the e-commerce sphere encountered notable downward and upward variations. Despite that, it is evident that cross-border online trade offers tremendous choice and value and offers all consumers across Europe access to an enormous marketplace without geographical restrictions.

Consumers are becoming more confident in e-commerce, which is, on the one hand, a good achievement, but it does result in an increase of complaints and scams, many of them undisclosed. Some consumers are still discriminated against when trying to buy online on the grounds of their nationality or place of residence.

It is apparent, that consumers are consistently experiencing the same problems, therefore measures to reduce these should be applied further, jointly communicating with traders and enlightening or reminding them about consumer rights and the benefits that they receive for their own prosperity, while also reaching out and educating consumers and reminding them their rights and obligations when entering into an online contract.

Intangible goods of a relatively new nature – digital content – are increasing in number, as is the volume of complaints received by ECCs regarding the purchase of digital content. It would therefore be in the interests of all stakeholders in the market to introduce up-to-date and suitable regulation, which would provide consumers with the necessary protections on the one hand, but that would not impose obstacles to business innovation on the other. All in all, in order for e-commerce to flourish, consumers should be made more interested and confident in the digital market.

Web traders often point out the lack of clarity in certain legislative provisions. It is still hoped that increasing law enforcement by national CPCs and the new Consumer Rights Directive will add impetus to both consumers' and traders' confidence.

Clear enforcement mechanisms for specific infringements relating to cross-border trade are needed.

ECC-NET looks forward to strengthening its role in providing information to consumers on their rights when shopping online and assisting them when something goes wrong. However, it is necessary that efficient ADR/ODR bodies be set up, so that a viable dispute resolution mechanism is available to the consumer where ECC-NET



cannot resolve the issue. Co-operation with CPCs and other networks and enforcement bodies is also vital if cross-border issue enforcement is to become a reality. The European Small Claims Procedure for cross-border disputes offers the means for tackling cross-border e-commerce disputes when an amicable solution is not possible. ECCs encourage consumers to start this procedure, and a collective redress mechanism is also under development at a European level.

It is clear, therefore, that all parties – consumers, traders, and enforcement bodies – must assume responsibility for ensuring that education, enforcement, and effective dispute resolution channels are developed, and efficiently put into practice.

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