

The European Online Marketplace: Consumer Complaints 2007

A summary and analysis of consumer complaints reported to the European Consumer Centre Network



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Introduction

The European Consumer Centre Network (ECC-NET) comprises centres in 29 European countries, and is co-financed by the Health and Consumer Protection Directorate-General of the European Commission and by each of the member countries. The aim of the network is to create consumer confidence in the internal market by providing consumers with information on their rights under European legislation, and giving advice and assistance in the resolution of their cross-border disputes.

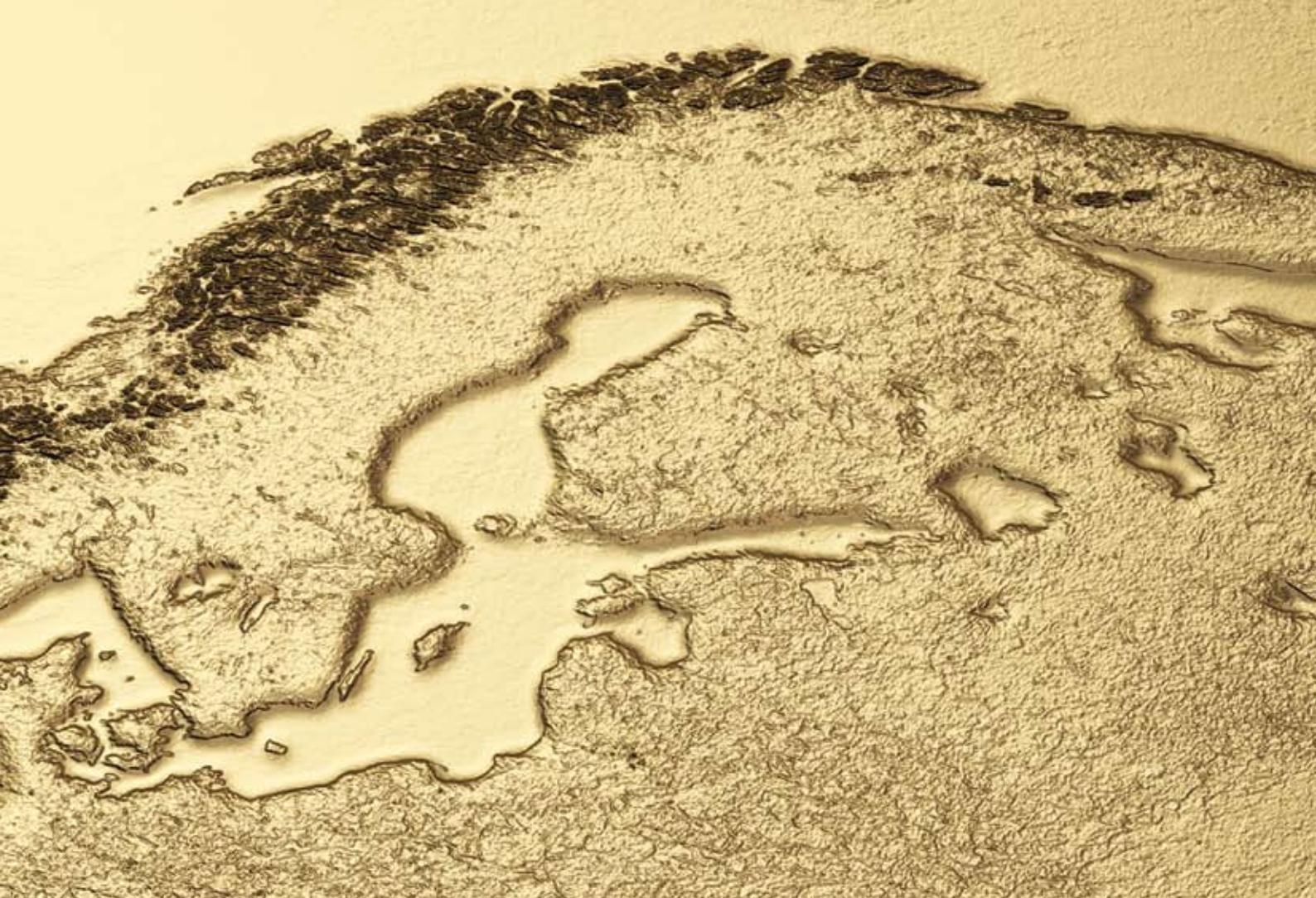
As part of their work, the European Consumer Centres produce information materials and campaigns designed to educate consumers of their rights; organise presentations, seminars and talks on areas of consumer interest; provide answers to consumers' questions about their rights under European legislation; and assist them in the resolution of cross-border disputes by contacting traders on their behalf. 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 complaints and disputes.

This is the fourth e-commerce report published by the ECC-NET that focuses on the e-commerce related consumer complaints reported to all of the centres during the previous year, and follows on from the last report pub-

lished in June 2006. This report presents an analysis of all the e-commerce cases handled by the network during 2007, and presents a summary of the results and trends observed. The total number of e-commerce cases that were actively shared between ECCs for further follow-up was 1,552, while the number of complaints from consumers seeking advice related to shopping online was 8,834. The precise scope of this report, as regards the statistics used, is explained in the next section, while a detailed analysis of the types of complaints received is provided in subsequent sections.

As far as the types of problems reported are concerned, the trends observed in 2007 were quite similar to previous years, with delivery problems again constituting the largest area of complaint for the cases handled by ECCs. Issues concerning delivery will therefore be the subject of a more detailed treatment in the report, along with other problematic areas that have been identified in the course of the complaint handling of ECCs. This year's report also reviews some of the main product categories in which consumer complaints were received, and discusses other issues of relevance to online transactions, such as fraud and online dispute resolution.

In addition to the case-handling activities of the ECC-NET, 2007 was an important year generally for the area of cross-border e-commerce. The European Commission



has been actively involved in its review of the existing acquis of European consumer legislation, and within this context has been considering the scope and strength of the legislation applicable to distance sales to ensure that consumers continue to be adequately protected, particularly in light of the ever-increasing technological change and development in this area. 2007 was also the first year in force of Regulation (EC) No 2006/2004 on consumer protection cooperation (CPC), which facilitates cooperation and the exchange of information between national enforcement authorities and their counterparts in other Member States in the field of consumer protection and is an important tool in ensuring effective enforcement of consumer legislation at the cross-border level. From an ECC-NET perspective, 2007 also saw the introduction by a number of ECCs of an interactive online shopping assistant tool, called Howard, to help educate consumers as to what they should look out for when shopping online. Thus, the report will also look at each of these areas and discuss the relevant issues that arise.

As the European Union continues to grow, with a population now of almost 500 million, more and more of its citizens are taking advantage of the benefits of the internal market to engage in cross-border transactions, many of which take place online due to the convenience this affords consumers. It is hoped therefore that the summary and analysis provided in this report will give a clearer

understanding of the present state of the e-commerce market within the European Union and help identify key issues that may stimulate further discussion and improvement for consumers.

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Scope

The purpose of this report is to highlight the relevant e-commerce work undertaken by each ECC during 2007 and to provide an analysis of the consumer complaints received. In so doing, the report seeks to highlight the main problems that face consumers 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 transport 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 facing 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 dam-

age 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/EC¹, 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.

All of the statistics, statements and conclusions made in this report are based upon the information that has been received through analysis of the consumer complaints and disputes handled by the ECC-NET.

The cases received by the ECCs are categorised 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 by a consumer concerning a cross-border transaction with a seller.

¹ 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 , 04/06/1997 P. 0019 - 0027



A 'simple complaint' is a complaint which 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 which requires the subsequent intervention or follow-up of an ECC, and is therefore shared with the ECC of the country of where the trader is based. A 'dispute' is the referral of a complaint to an out-of-court scheme or ADR body by an ECC, where the complaint has not been resolved through direct contact between the trader and the consumer.

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

The statistics which are presented in the next section of the report, unless otherwise stated, are based on the normal complaints and disputes that were dealt with and shared between ECCs during 2007. In contrast with previous e-commerce reports issued by the ECC-NET, the main focus here is to look at the number of cases which required the cooperation and intervention of another ECC in order to reach an amicable resolution with the trader. For comparison 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.



3

General Results

In total, during 2007, the ECC-NET received 19,838 simple complaints, of which 11,056 (56%) were concerned with transactions involving e-commerce as the selling method. The Network also handled a total of 5,192 normal complaints and disputes in 2007, of which 2,583 (50%) dealt with claims where the selling method was designated as e-commerce.

These figures serve to highlight the fact that contracts concluded online represent a substantial proportion of the consumer complaints handled by the ECC-NET. As outlined in the preceding section, however, given the large volume of online transactions that involve contracts for transport or accommodation services, which are excluded from the analysis here, the scope of this report is narrowed somewhat.

Thus, in 2007, the ECC-NET received 8,834 simple complaints and 1,552 normal complaints and disputes in relation to online purchases within the meaning of this report.

It should also be pointed out that in addition to the figures quoted above, there were a further 51 cases and 174 simple complaints where the selling method was via an internet auction. However, as internet auctions fall outside the scope of distance selling legislation, and can very often involve transactions between private individuals, they are not included within the scope of this report.

3.1 Nature of complaint

In 2007, the ECC-NET recorded a total of 1,552 normal complaints and disputes concerning purchases made online. This section provides an analysis of the nature of the complaints experienced by consumers in these cases and includes numerous case studies that illustrate the types of problems encountered. The breakdown of the different categories of complaint is given below, with both the nominal and percentage values provided.

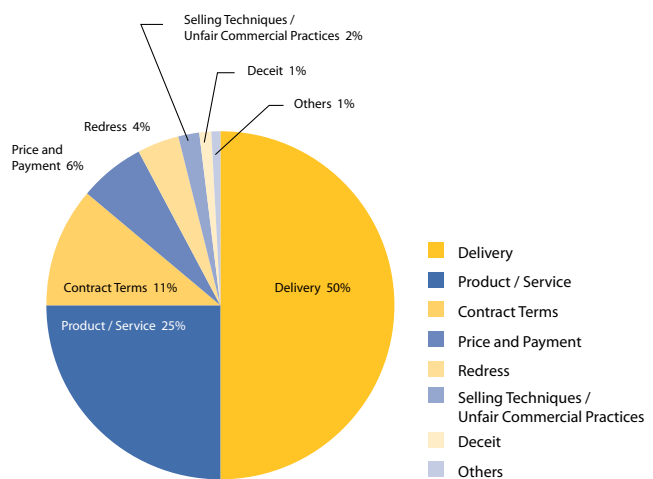
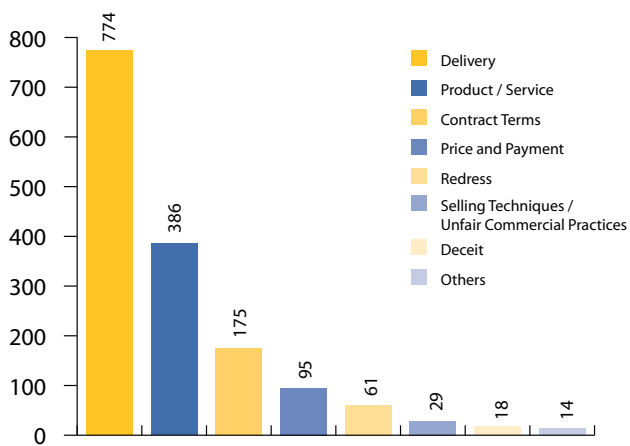
As the graphs show, the nature of the complaint falls under eight separate headings: delivery; product/service; contract terms; price and payment; redress; selling techniques/unfair commercial practices; deceit; and others. The three main headings of complaint – delivery, product/service, and contract terms – together gave rise to 86% of the total number of normal complaints and disputes (50%, 25% and 11%, respectively).

As delivery and problems with the product/service accounted for three-quarters of the total amount, a breakdown of the various sub-categories of complaint within both of these areas is also provided.

2001	2002	2003	2004	2005
879.4	13,556.1	13,269.7	13,025.9	12,848.5
242.9	9,742.6	9,636.6	9,229.5	9,079.6
756.9	719.2	683.4	649.5	885.4
370.9	1,287.9	1,500.0	1,324.6	1,324.6
143.6	1,022.7			
103.5	2,966.0			
250.6	1,168.0			
364.2	2,338.0			
252.9	2,000.0			
130.2	1,000.0			
765.1				
741.1				
699.0				
1,500.0				

Normal complaints and disputes 2007

Nature of complaints



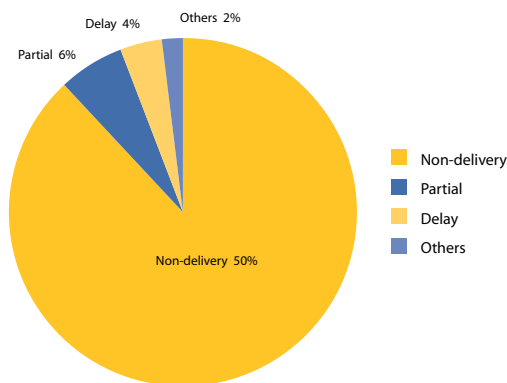
3.1.1 Delivery

Problems with delivery were by far the largest category of complaint for consumers, accounting for 50% of all the normal complaints and disputes dealt with by the ECC-NET during 2007. Previous e-commerce reports produced by the ECC-NET in recent years have all highlighted the fact that the delivery of the ordered item poses the greatest difficulty for consumers, although it seems that the proportion of such complaints is steadily rising.

Within the category of delivery problems, the vast majority of cases concerned the simple non-delivery of the product, which comprised a staggering 88% of all cases in this category. Other problems related to partial delivery, where only part of the order was completed, or delayed delivery, and the breakdown is given in the chart below.

Many of the problems associated with delivery can be attributed to simple customer service or administrative problems. These complaints relate to different delivery issues such as delayed delivery, non-delivery, and goods arriving damaged or being lost during delivery.

Delivery



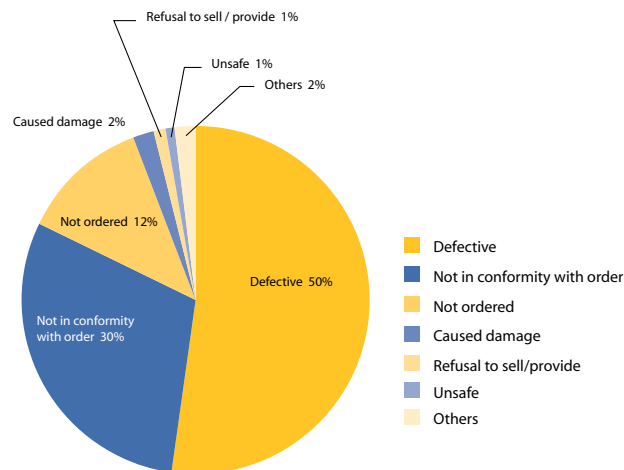
An Italian consumer ordered wheels for his bicycle from a German website, and they were subsequently sent by courier to the consumer. However, as he did not receive the goods, he made enquiries with the courier about the status of his delivery and discovered that the items had been damaged during delivery and sent back to the trader. The consumer contacted the trader requesting delivery or the reimbursement of the money, but without success. After the intervention of the trader ECC, the consumer received the goods.

As delivery (and its associated problems) has once again shown itself to be a significant problem area for European consumers during 2007, the report will return to this issue in a later section and examine a number of interesting issues that have arisen in the complaints received by the ECC-NET.

3.1.2 Problems with the Product/Service

The second most common category of complaint related to problems with the actual product or service ordered by the consumer. Within this category, problems with defective products accounted for the greatest number of

Product / Service



cases (52%), while problems with the product or service not being in conformity with the order accounted for 30% of cases in this category. Other problems in this category concern the product not being ordered, the trader's refusal to sell or provide the service, and problems with a product that was unsafe or caused damage. The exact breakdown is given in the chart below.

Problems with defective products are covered by another piece of European legislation, Directive 1999/44/EC² on the sale of consumer goods. According to this Directive, the seller is liable to the consumer for any lack of conformity or defect, and the consumer is entitled to have the goods brought into conformity free of charge by repair or replacement, or to have an appropriate reduction made in the price or the contract rescinded. The legislation also states that any repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods.

This Directive has important implications for online transactions. When a product purchased online is defective and is sent back to the webtrader for repair, an important issue to consider is what constitutes a 'reasonable time' for the repair to be carried out. The legislation does not clarify this issue and the element of subjectivity which is introduced by use of the word 'reasonable' can lead to obvious differences of opinion. Indeed, the very nature of the goods themselves may often have considerations for expectations of reasonability.

The issue of the reasonability of the length of the repair period is of particular significance when it comes to what could be considered as high-tech electronic products, such as digital cameras or computer hardware, which, as the next section shows, are the most common type of online purchase for consumers. The reason for making such purchases online is that the prices to be found are generally lower than those of high street stores in the consumer's own country. However, when the product is defective, it can sometimes take several months to get the product repaired, particularly if the seller needs to send it on to the manufacturer. As a result, when the consumer can finally use the product again, it may be available for a significantly lower price than he had to pay for it originally. Furthermore, given the rapid pace of development of new technologies, the product may no longer be as high-tech as at the time of purchase.

A Finnish consumer purchased an LCD television from a French online trader. However, after only 3 days, the product turned out to be defective. The consumer contacted the trader and was advised to send the product to an authorised service shop in Finland. The consumer duly followed the instructions given, but

was informed by the service shop that in all likelihood the product could not be repaired and that in any case it would take at least several months to get the necessary spare parts. The consumer felt this was an unreasonable amount of time and requested the cancellation of the contract and for the purchase price to be reimbursed. The case was subsequently shared with ECC France and following their intervention, the trader agreed to reimburse the consumer.

The above case had a successful outcome for this individual consumer but it serves to demonstrate this problem quite well. The product in question was defective after only 3 days, but the consumer would have had to go without the item for several months. Indeed, this case example also highlights another aspect of the problems experienced with defective products. Very often consumers face difficulties in obtaining after-sales service from the trader. However, unlike in the above example, consumers are prevented from availing of after-sales service in their own country and are instructed to send the product back to the trader directly. In such situations, there is strong argument to be made in support of the proposition that the trader should take into account the most convenient solution for the consumer in the circumstances, particularly if this would not prejudice the trader in any way.

A Belgian consumer purchased various items from a French webtrader, including a USB stick. He subsequently informed the trader that the USB stick was defective. He returned the item and received a voucher in return to buy something else from the trader. The consumer did not accept the voucher and contacted ECC Belgium, who transferred the case to ECC France. They wrote to the trader, pointing out the applicable law when it comes to the legal guarantee in the case of lack of conformity. The trader was reminded that the consumer has the choice between repair and replacement of the product and that no additional costs can be imposed on the consumer. In this case, if the consumer had used the voucher, he would have had to pay additional delivery costs for the new product. Following the contact of ECC France, the trader agreed to cancel the voucher and sent a new USB stick to the consumer.

An Austrian consumer bought a television set online for €582 from a French webtrader. Within 4 months of purchase, the television set became faulty, and after several emails with the trader, the consumer returned the television set for repair. She paid the trader €381.36 for the repair of the television, which had been demanded by the trader, but never received the repaired product. ECC France wrote to the trader, requesting that they honour their legal obligations and pointing out that the repair could not be charged to consumer. The consumer was entitled to seek a repair or replacement free of charge. The trader did not reply to ECC France, so the file was sent to an Alternative Dispute Resolution (ADR) body for further assistance, and they are currently still in negotiation with the trader.

² Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, Official Journal L 171 , 07/07/1999 P. 0012 - 0016

3.2 Product Type

The growing popularity of shopping online has meant that a wealth of possibilities and opportunities are now available to consumers that were simply not available before. The range and selection of products and services that can now be purchased online could never have been envisaged in the past, and it seems that European consumers are taking full advantage of the greater choice that the internal market offers them. This next section takes a brief look at some of the popular types of product that consumers are purchasing online from other Member States and examines some of the issues that arise.

3.2.1 Electronic goods

Given the prominence of electronic goods amongst the items which consumers purchase online at the cross-border level, it is worth pointing out certain difficulties that have been observed in this market.

In 2007, 34% of e-commerce normal complaints and disputes handled by the ECC-NET were classified as audiovisual, photographic and information processing equipment, and would include the purchase of televisions, cameras, computers, and other such electronic equipment. Although there are considerable costs savings to be made by purchasing such items online, they are still invariably expensive products. Thus, issues of non-delivery of orders and defective products are all the more significant. Moreover, the general desire amongst many consumers to have the latest and most up-to-date technological products, not to mention receiving a good bar-

gain, makes this an area that is quite susceptible to fraud. Indeed, a large number of the fraud cases received by the ECC-NET involve such goods.

Furthermore, the issue of defective goods and products that are not in conformity with the order are also quite prevalent in the field of electronic goods. The fact that such items are comprised of many technical components, and often have quite detailed specifications, means that there may be a greater likelihood that a consumer may encounter a difficulty than with other types of online purchase.

A particularly interesting area that has been identified as a problem facing some European consumers is the situation governing the disposal of Waste Electrical and Electronic Equipment (WEEE) in accordance with the legal obligations imposed on producers and retailers by Directive 2002/96/EC³. This legislation states that producers must provide for the financing of the collection, treatment, recovery and environmentally sound disposal of waste electrical and electronic equipment. It also provides that distributors of new products ensure that waste of the same type of equipment can be returned to them free of charge on a one-to-one basis. This seems to have had an effect on some consumers' ability to purchase electronic goods from other Member States, due to the trader's apparent unwillingness to sell goods into that country because of uncertainty as to their legal obligations under this scheme. Traders should therefore make sure that they are registered with the relevant Member State body created under this legislation and ensure that they are familiar with all of the requirements that they must satisfy in the provision of such equipment across Europe.

³ Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment, Official Journal L 37, 13/02/2003 P. 0024 - 0039



3.2.2 Cars

The general heading of 'Cars' accounts for 9% of normal complaints and disputes dealt with by the ECC-NET in 2007, and would include not only the purchase of vehicles, but also products relating to the operation of personal transport equipment, such as the purchase of spare parts and accessories. As far as the nature of the complaint was concerned, the problems here were reflective of the general trend, in that the main issues were non-delivery, defective products or non-conformity with the order.

Additionally, the purchase and sale of vehicles has become the subject of much fraudulent activity online, and this issue is discussed in more detail in the later section on fraud.

3.2.3 Ticketed events

Another problem area for consumers concerns the online sale of tickets for sporting events, concerts and other major entertainment events. This area is worthy of mention as the problems relate mostly to the non-delivery of ordered tickets. The typical scenario is that a consumer purchases tickets online from a website which is not an official agent authorised by the event managers, but which claims that it can source tickets for popular events that are usually sold out. In the majority of cases, consumers pay a significantly higher fee for these much sought after tickets but do not receive them from the trader. As the trader will often subsequently blame a third party for being unable to obtain the tickets for the consumer, it is difficult to say that fraud is involved, as it is unclear whether the trader

would have actually been in a position to provide the tickets in the place.

A significant problem for consumers in such a situation is the additional expenses they incur due to the tickets not being provided, such as the booking of flights and hotel accommodation, as in most cases the main reason for the consumer to travel in the first place was to attend the event in question. Although consumers may often complain about the fact that the price they paid for the tickets was significantly higher than their face value, this is something of which they should have been aware in the first place, as they are being purchased from a resale website, and not directly from the event organiser or an authorised agent.

An Irish consumer purchased a number of tickets from a Spanish webtrader for two different rugby games involving the Irish national team. As the games were approaching and the consumer had still not received the tickets, he tried contacting the company. The trader informed him that there was no guarantee that the tickets could be provided in time for the games and so they would have to cancel his order. The webtrader cited problems with their suppliers of the tickets and promised the consumer a full refund of the money he paid, in accordance with their own terms and conditions. However, no refund was ever received by the consumer, despite the follow-up of ECC Spain on his behalf. ECC Spain has expressed concern about the activities of this trader and the unwillingness to deal with cross-border complaints, and is therefore in contact with the relevant local consumer authorities regarding the complaints received.



3.3 Country of Trader

The total number of cases which required the intervention of an ECC in order to reach a resolution to the complaint was 1,552. However, as the table and chart below indicate, the largest number of normal complaints and disputes involved German webtraders, who accounted for 44% of the total amount. This is a repeat of the trend observed in recent e-commerce reports produced by the ECC-NET, with French, UK and Dutch webtraders again featuring at the top of the list, accounting for 12%, 10% and 7%, respectively. This means that 4 Member States accounted for almost three-quarters of the overall number of e-commerce related normal complaints and disputes, while the top 10 Member States accounted for over 92% of the total.

However, these figures are rather unsurprising, given that these countries represent the largest e-commerce markets in the European Union, and as such they would be responsible for the highest level of online consumer transactions. Thus, it seems only natural that the highest level of cross-border complaints and disputes would be against webtraders based in those countries. It is not intended to suggest or infer that there are any inherent problems as such with webtraders based in those countries. In fact, as the preceding section identified electronic goods as the largest product area in which complaints were received, this is not altogether surprising given the large number of webtraders based in the countries above that offer such products for sale.

Country of webtrader	Number of normal complaints/disputes
Germany	681
France	181
UK	154
Netherlands	114
Austria	77
Spain	74
Luxembourg	62
Denmark	31
Belgium	30
Sweden	28
Ireland	25
Estonia	22
Italy	20
Norway	15
Czech Republic	10
Hungary	5
Greece	4
Poland	4
Cyprus	3
Malta	3
Portugal	3
Slovakia	3
Finland	1
Iceland	1
Latvia	1
Lithuania	0
Slovenia	0
TOTAL	1,552

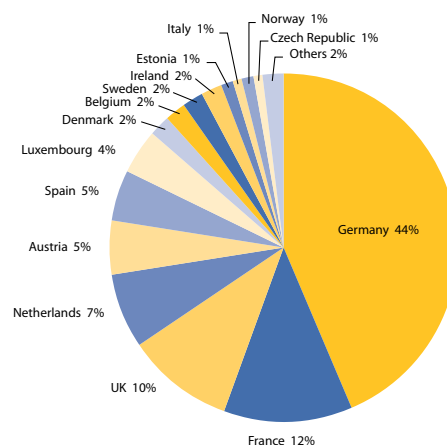
3.4 Simple complaints

Although the analysis of this report is confined to the normal complaints and disputes handled by the ECC-NET in 2007, for comparison purposes it is interesting to look at the breakdown of the nature of complaint when it comes to the simple complaints that were received, where advice was given to consumers and no intervention with the trade was required.

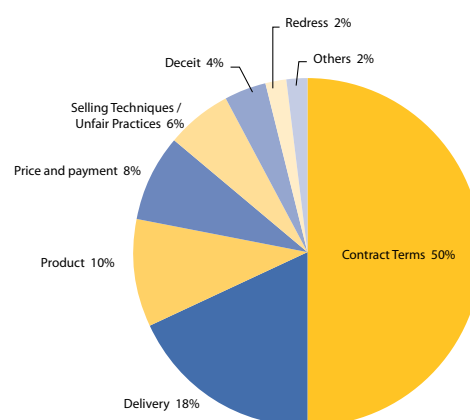
The ECC-NET received a total of 8,834 simple complaints during 2007 that concerning online purchases. However, what is interesting to note from the statistics relating to simple complaints is that although delivery problems also featured, they were not the number one cause for complaint. Delivery problems accounted for only 18% of simple complaints, while contract terms were the cause of 50% of the total received.

This provides a valuable insight into the manner in which consumers contact ECCs for advice. As one-half of all simple complaints regarding shopping online are concerned with contract terms, it would seem that traders are either unaware or failing to respect consumers' rights in this area, or that consumers themselves are not aware of their entitlements. In any case, it would seem that consumers with a complaint concerning contract terms do not need further assistance or follow-up after receiving the advice of the ECC, given the relatively low number of normal complaints and disputes that concern contract terms. On the other hand, these figures also suggest that the vast majority of simple complaints that concern delivery of the product are likely to end up as a normal complaint where the consumer requires the ECC to follow up the complaint with the trader on their behalf, showing that it is very difficult for a consumer to resolve such complaints with the trader directly.

Country of Trader



Simple complaints 2007



4

Main Problem Areas

This section describes in more detail the nature of the complaints received, which were the subject of analysis in the previous section.

During the course of 2007, the ECC-NET has come across certain problem areas that have raised some interesting and challenging regarding shopping online, mainly due to the fact that consumer legislation does not cover these issues therefore general principles of law, specific to the country in question, will apply. Such lack of uniformity can make matters quite complicated for consumers.

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.

4.1 Delivery issues

As the preceding section has shown, problems with delivery give rise to the greatest number of consumer complaints reported to the ECC-NET (50%). As the statistics for 2007 show, non-delivery has again been the main problem facing European consumers when shopping online, it being the cause of 44% of all the normal complaints and disputes handled by the ECC-NET in relation to shopping online. This is in line with the results of previous ECC-NET e-commerce reports, all of which highlighted non-delivery as the main reason for encountering difficulties with an online order⁴.

It is clear therefore that delivery of the product remains the number one problem area for consumers when it

comes to shopping online. However, although responsible for a substantial proportion of complaints, non-delivery is not the only concern – delivery of the product has also presented other issues and difficulties for consumers, whether directly or indirectly, particularly in situations where the wrong product has been delivered to the consumer or a defective product must be delivered back to the trader. The aim of this section is to highlight some of the main problems that have been noticed in the course of the ECC-NET's complaint handling during 2007.

The main problems identified are as follows:

- Situations where the product arrives damaged, or indeed the package is empty, but the consumer usually does not have the time to examine the package before signing for it, making it difficult to prove when or how the damage actually occurred.
- In the case of delivery of a defective or damaged product, the consumer is usually required to cover the postage costs to send the item back to the trader.
- If the package is lost during delivery, the trader usually advises the consumer to contact the relevant postal services or courier himself, and denies any responsibility for the loss of the item, despite the fact that in most legal systems, the trader is responsible for the product until it is received and signed for by the consumer.

⁴ "The European Online Marketplace: Consumer Complaints" (from 2003), where non-delivery accounted for 31.5% of complaints; "The European Online Marketplace: Consumer Complaints 2004", where non-delivery accounted for 31%; and "The European Online Marketplace: Consumer Complaints 2005", where non-delivery was the cause of 38% of complaints.



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 not in stock and that he will have to wait several weeks for it to be ordered in and delivered. This may be a case of poor administration by the trader but it also raises concerns of misleading practice. In some instances, the consumer had purchased and paid for a product which the trader subsequently claimed was no longer available, and so the order was cancelled. The consumer then faced difficulties in receiving the refund of the money he paid.

An Irish consumer ordered a camera from a French webtrader but when she received her order confirmation it appeared that, despite the information displayed on the website of the trader, the camera was not in stock. The consumer was moving house from Ireland to France at that time and therefore could not wait several weeks for the delivery. She contacted the trader and was advised to cancel the original order and re-order the camera in France. She was promised to be refunded €414, which never happened. She contacted the trader on numerous occasions but without satisfaction. ECC Ireland shared the case with ECC France and secured the refund for the consumer.

A Dutch consumer ordered and paid for two DVDs from an Italian webtrader. A few months later, however, the consumer was informed that the items in question were no longer available and was informed that his money would be refunded to him. Unfortunately, it was only after the intervention of the ECC that the promised reimbursement took place.

It can also happen that a trader claims that an item is in stock but later informs the consumer that it is not, and refuses to refund the consumer, requiring him to wait for the item to come back into stock.

Even where payment is to be made after receipt of the goods by the consumer, difficulties can arise, as the following example shows.

A consumer from Luxemburg ordered products from a German website for his plants. He received an invoice for his order, but not the ordered goods themselves. The terms and conditions of the website state that the consumer has to pay within 14 days of receipt of the goods. The trader asked the consumer to pay first and then the order would be delivered. The consumer cancelled his order.

Although the preceding examples demonstrate instances of webtraders failing to honour their legal obligations, the vast majority could be deemed to be the result of problems with the trader's own customer service or organisational management. Perhaps more worrying is the fact that the ECC-NET has received numerous complaints from consumers in relation to traders who try to deny responsibility by placing the blame solely on the delivery or courier company, despite the fact that it is the trader who contracted the courier company to carry out the service on their behalf. In such situations, the consumer does not have any contract with the courier or delivery company, and so is not entitled to take a claim against them. It is the trader who has the contractual relationship and therefore it is their responsibility to pursue a claim with the courier if necessary. In any case, the trader should not deny their

Delivery of the product remains the number one problem area for consumers

liability to the consumer for this – 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. Indeed, there have even been complaints where the trader has denied any responsibility for items arriving damaged because the consumer did not purchase additional insurance. However, it seems to be common practice that even where a trader is willing to accept responsibility, they refuse to deal with the consumer's claim until they have made a successful claim against the courier or postal services through their insurance.

A Greek consumer ordered a spare part for his car from a UK trader. The spare part was delivered broken. The consumer complained to the trader, but the answer he received was that the courier service was to blame for poor packing of the product. The consumer contacted ECC Greece to have his case resolved and eventually the trader agreed to refund the consumer in full.

A Spanish consumer purchased insecticide from a Swedish webtrader. The consumer had paid in advance but the product never arrived. The consumer contacted the trader and complained. The trader then claimed that since the consumer had only paid for normal postal delivery service, and the parcel was lost on the way, the consumer had to bear the risk for the loss of the parcel. ECC Sweden wrote to the trader and argued that the trader is responsible for the product until it is delivered to the consumer. The trader then apologised and refunded the consumer. A consumer from Luxembourg ordered cosmetics from a trader in Germany. The consumer paid the purchase price but did not receive delivery of the items. ECC Germany contacted the trader, who claimed to have attempted delivery but as the consumer was not at home, the product was sent back. The trader thus wanted to charge the consumer for the costs of delivery but was unable to prove the attempted delivery. The consumer also claimed to have not received any contact from the delivery com-

pany regarding this apparent attempt at delivery. Through further contact with the trader, ECC Germany was able to secure delivery of the items ordered from the trader.

A UK consumer ordered a folding bicycle online from a Dutch trader. Following her order and payment, the trader provided the consumer with information regarding the delivery of the bicycle. After a while, the consumer had still not received the bicycle, so she enquired about the status of the delivery. The trader responded by saying that the bicycle had already been sent to the consumer. The consumer contacted the postal company in her home country but they informed her that they could not trace the parcel. She contacted the trader to inform them of this but was told that there was nothing more they could do. The trader was of the opinion that the fault for the delivery lies with the postal company. ECC Netherlands wrote to the trader and pointed out that under Dutch legislation, a trader is responsible for the goods until they have been received by the consumer. As the consumer never received the product in this case, the trader was still the one responsible for the product. ECC Netherlands requested the trader to refund the consumer the purchase price. The trader did not wish to comply with this request and argued that they had an exclusion of liability in his terms and conditions to cover problems with delivery. Through the efforts of the ECC, however, the trader offered to send another bicycle to the consumer, which was duly received.

4.2 Problems with the product/service

Problems with the product or service accounted for 25% of all normal complaints and disputes related to e-commerce in 2007. The issue of problems with defective products was discussed in the previous section, and it is important to note that when making a purchase online Directive 1999/44/EC on the sale of consumer goods will apply. Another main problem area for consumers however, and one which is linked with the issue of delivery



arrangements, concerns the situation where a consumer has a fault with a product and needs to return it to the company. The main problem in this situation is that the trader refuses to accept any responsibility for the shipping costs when the item has to be sent back.

A Spanish consumer ordered several stamps online from an Italian trader. The stamps were delivered but they were defective, as they were sticking together. He sent the items back and asked for them to be exchanged. The trader exchanged the stamps but did not reimburse the shipping costs. Therefore, ECC Italy contacted the trader asking for the reimbursement of these costs and achieved a successful outcome.

An Irish consumer bought a laptop online from a UK webtrader. His credit card was charged, and the laptop was delivered – unfortunately, the computer he received was not the one he had ordered. He contacted the trader and was promised the correct laptop would be delivered. As nothing happened, he sought assistance from ECC Ireland, who shared the case with ECC UK. The trader insisted that the consumer send the laptop back at his own cost but ECC UK argued that the trader should either collect it or refund the cost of returning it to them. The trader kept refusing but finally stated in an email that if the consumer returns it, they will refund the cost. The consumer did so, but the company refused to refund the delivery cost. ECC UK contacted the trader again, and although they tried to refuse to reimburse the costs, it was only upon being presented with their own email promise that they eventually agreed to refund the cost of delivery.

Clearly, the trader has the right to examine the product to be sure that a fault exists, and can charge the consumer for such shipping costs if there is no fault, or if it was the case that the product was misused by the consumer. However, it can be argued that there is a certain imbalance for the consumer in this respect, as the trader on their own part should be accepting not only to reimburse the con-

sumer the shipping costs where a faulty product has to be returned, but should also provide confirmation of this fact to the consumer before the faulty product is sent back.

A UK consumer purchased some speakers and an amplifier from a German trader. When the goods were received, neither item was in working condition. The consumer contacted the trader, who requested that the consumer return the goods, which he duly did. After some time, no action was forthcoming so the consumer contacted the trader again, after receiving advice from ECC UK that the remedy had not been supplied within a reasonable time and that the consumer could therefore request a refund. The trader claimed that the consumer was outside of the time frame to claim a refund. The case was then shared with the ECC Germany. After contacting the trader the company agreed to issue a refund. The consumer confirmed that a refund of the goods had been received but the postage costs incurred were still outstanding. The trader refused to issue a refund of the postage so the case had to be closed partially resolved.

A Norwegian consumer purchased products online from a German trader for €7.18. Shipping costs were set at €6.90. The consumer received the goods and then received an invoice from a private delivery company to the amount of €55. The price information and marketing on the order was incorrect. The case was shared with ECC Germany and through their contact the trader agreed to cancel the invoice.

An Italian consumer ordered several parts for his helicopter, from an online trader in the Netherlands, paying by bank transfer. The trader sent the consumer confirmation of the shipping of the parts but they never arrived. ECC Italy shared the case with ECC Netherlands, who contacted the trader on the consumer's behalf. The trader insisted that the items were shipped but was not able to provide proof of the shipment. The responsibility was placed on the postal service. As the trader was not willing to cooperate any further, the case had to be closed unresolved.

An Italian consumer ordered a lamp from a German webtrader, which was delivered to the consumer with a damaged part. The trader claimed not to be responsible for damages caused by the courier. Despite the views of the trader, ECC Italy persisted and resolved the case with delivery by him of another lamp of a slightly less value.

An Italian consumer ordered two wheels with tyres from a webtrader in Luxemburg, which he paid for fully and received. After opening the package the consumer discovered that the wheels were faulty. This was confirmed by the garage where the consumer had the wheels with the tyres put on his car. It was not possible to securely drive the car due to the fault. After the consumer contacted the trader with the complaint, he was asked by the trader whether he reported the damage to the carrier immediately after he received the package. The consumer didn't report the damage to the carrier. Because of this the trader still refused the replacement or the reimbursement and unfortunately no amicable solution could be found by ECC Luxemburg.

There is generally an onus placed on consumers to check the product on delivery and to be satisfied that there is no damage before signing for it. However, this requirement should only be imposed on a consumer in the case of clear and visible signs of damage, and not in the case of faults that can only become apparent subsequently.

After having opened his delivery, an Italian consumer claimed to the seller from Luxemburg that some items initial ordered were not in the box. It seemed that the box had been opened and then closed again using tape. The seller first tried to report the fault to the carrier. After the ECC has warned him about the fact that the seller was, as the contracting party, the only party responsible for delivery toward his customer the seller then tried to use another excuse. He indicated that the carrier had noticed no incident during the transport, and that the consumer had not proved that the items were missing on delivery, for instance by photographs with a proof of the date. In spite of several mails, the seller still refused to send the missing items.

An Irish consumer ordered goods from a UK website. The goods were delivered but the package was damaged (the box was leaking). So the consumer rejected the delivery and the courier took it back. She also emailed the company on the next day to request a new delivery. The company advised that they could not dispatch a new parcel until they received the first one back. Two months after placing the order the consumer still had not received the goods she paid for. After ECC intervention she finally got the products.

A common problem that is encountered is that traders do not wish to reimburse consequential losses that are incurred directly from a breach of contract; usually these are postage costs.

Some companies also impose restrictions on how to send goods back, for example requiring the consumer to seek prior authorisation from the trader to return the goods before actually doing so and stating that goods will not be accepted without the correct authorisation and reference number. Following an investigation by the Office of Fair Trading in the UK, this term was held to be unfair as it infringed the rights of the consumer under the Distance Selling Directive.

There have been instances where the trader claims to not have received goods that have been returned to them. However consumers are advised to always return items by registered mail so they can prove that the goods have been returned to the trader. Should an item be lost or damaged in the post, the consumer would need to make a claim against the postal company. The trader cannot be held liable to reimburse the cost of goods that have not been returned. ECC Denmark has highlighted cases where the consumer has had to return the product to the trader by ordinary mail either for exchange or rescission of the contract, and the trader either never received the item or simply claimed that he had not. It is doubtful what happens in such situations. Of course, it would be safer for consumers to insure the parcel or send it by registered mail but unfortunately the traders are not usually willing

The main problem here is that the trader refuses to accept any responsibility for the shipping costs.

to undertake the relevant extra costs. As a consequence, consumers prefer to send the products by ordinary mail free of extra charge – according to the directive 1999/44, Article 3, paragraph 4 - but they can never be certain that the items will actually reach their destination. Hence, it can be considered that there is a legal gap in these instances which needs further clarifications.

There are also instances where traders claim to have sent goods but no goods are ever received, and quite often the consumer is asked to wait until the trader has completed their investigation with their courier before any redress is offered.

The ECC-NET has also received complaints where the trader, after receiving the order and the payment from the consumer, changes the price of the product, claiming that they have listed the incorrect price by mistake, and requests the consumer to pay the difference in price. The consumer must then either pay the higher price which the trader demands, or cancel the order and seek a reimbursement of the money he paid (which can also prove problematic). 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.

A Latvian consumer ordered items for his scooter from a Dutch webtrader at a cost of €220. The consumer paid for the items in advance but unfortunately never received them. He tried to contact the trader several times but was unable to get the problem resolved, so he turned to the ECC for help. ECC Latvia forwarded the case to ECC Netherlands, who contacted the trader on behalf of the consumer. The trader confirmed receipt of the consumer's order and that they had not yet sent the items to him. The trader proposed that they would send the goods to the consumer by secure mail, as they did not wish to risk the consumer not receiving the items, but required the consumer to pay an additional fee of €50 for secure mail services. Alternatively, if the consumer did not accept this offer, the trader would reimburse

the consumer for a lesser amount than what he paid, as the parts had been ordered especially for him. The consumer agreed to pay the additional amount in order to receive the goods, which he later received and was happy with the settlement obtained.

A Belgian consumer ordered a product on a Dutch website. She received confirmation and paid the price of €148.95. This amount included the delivery costs. At the time of the delivery the consumer had to pay a supplement of €10 due to the fact that the firm had to deliver the product in Belgium. This supplement was not indicated on the confirmation of the order of the consumer. Despite the fact that she did not agree with this supplement, she paid the transport firm and contacted the Dutch firm in order to get this supplement back. ECC Belgium transferred the case to ECC Netherlands. They contacted the trader but he refused to reimburse the consumer. He said that the information about the supplement was on his website. He considered that the fact that the information on his website about a possible supplement in delivery costs was clear enough, even if it was not specified on the contract.

ECC Sweden received several complaints of non-delivery against a company in Germany selling alcoholic beverages online. The reason for non-delivery was that the transport company which the consumers had employed (on the recommendation of the webtrader) had ceased operating. Since the consumers had arranged the transport themselves, the webtrader was reluctant to make any repayments saying that the dispute should be taken up with the company responsible for the delivery. There were however some uncertainties as to whether the orders had left the store or not before the transport company ceased operating. One of these cases was shared with ECC Germany as a trial case, to see if anything could be done. While the case was handled by ECC Germany, national media became interested in the dispute. When two articles had been published, the owners of the website contacted ECC Sweden in order to try and work out the problem. In the end, all the consumers that had contacted ECC Sweden were refunded the prepaid orders.

The problem of non-delivery of goods clearly has a negative impact on consumer confidence and, as such, could have the effect of hindering the development of the Euro-pean cross-border e-commerce market.

The webtraders' reasons for not delivering the goods vary. In some cases, it can simply be a matter of fraud. However, inadequate order processing, poor administration, or the fact that the company simply does not have the advertised goods in stock, gives rise to the majority of complaints. To not receive what one has ordered and paid for is the e-shopper's worst nightmare and might very well cause the consumer not to shop online again. It is possible that consumers who experience problems of non-delivery are more eager to report the cases to their ECC than consumers who experience other problems, since non-delivery is such a flagrant breach of the most fundamental consumer right. However, it seems clear from the information provided that this is a problem that European consumers experience rather frequently, so it is an issue that must be addressed by all relevant stakeholders if the cross-border e-commerce market is to continue to grow.

4.3 Price display issues

In 6% of complaints and disputes handled by ECC-NET there were instances where consumers had problems concerning the price displayed on websites. Most complaints arise where the trader claims that the price as advertised on the website is incorrect and demands that the consumer pay a higher price to complete the transaction.

One particular problem within this category that has been encountered in relation to currency issues is that a price may be displayed in a currency other than that of the trader, and is instead dependent on where the consumer is based. For example, a trader in France displays prices in GB Pound Sterling for UK consumers, but when the contract is concluded, the payment is actually taken in the currency of the trader, i.e. in Euro. As a result, the consumer often ends up paying a higher amount than the advertised price, due to currency conversion fluctuations. This is not always clearly indicated by the trader and can be viewed as a means of taking advantage of the difference in currencies or abuse by traders.

A Norwegian consumer ordered a battery for his mobile phone from a Swedish web trader. The prices were displayed on the website in Swedish Kroner (SEK). The consumer transferred the corresponding amount in Norwegian Kroner (NOK). The trader argued however that irrespective of the currency of the payment, the figure that the consumer would be charged was 129 NOK, and thus demanded that the consumer pay 129 NOK as opposed to 129 SEK or its equivalent in Norwegian Kroner. The consumer then cancelled the deal and demanded the money back. No reimbursement was made. ECC Sweden wrote to the trader but got no response and the case was closed. However, happily few months later, the trader suddenly appeared and paid back the money to the consumer.

The situation also often arises where the trader claims that the price that was quoted to the consumer was in the wrong currency, and thus the price that the consumer actually has to pay turns out to be much higher than what he





had been led to believe. In some cases, traders have simply charged consumers the higher amount and claimed that it was the consumer's misunderstanding about the price currency. In such a situation, it often happens that the price indicated on the website, as well as on the payment confirmation received by the consumer, is a certain amount. The item is delivered. Afterwards the company charges the consumer an additional amount, saying that the price was supposed to be in the other currency but that there was an error on the website.

Another problem in relation to currency is the reimbursement of a consumer who bought a good on a UK website, when he paid in Euro and is reimbursed in Pounds sterling. The amount may not be the same, because the value of those currencies at the moment of the purchase may be different from their value at the moment of the reimbursement.

A mistake in the price listing should clearly be corrected before a purchase is made, however the consumer is not entitled to buy goods for a price stated in adverts where he should have known otherwise. This does not necessarily depend on the consumer's state of knowledge but rather on what the consumer should have known, e.g. if a car worth €10,000 is advertised for €10, it should be clear that it is a mistake and that the consumer cannot demand to proceed with the purchase.

However, there have also been many instances of a price being displayed on a website and the consumer entering into a transaction and receiving a corresponding confirmation. The consumer is then informed that the price was incorrect on the website and that it should never have been displayed at that price. He is then presented with two options: to have the contract rescinded; or to continue with the contract by paying the higher price. The consumer is prevented from relying on the initial price due

to the mistake. The legal situation regarding mistake such as this can vary across Europe but the general principle seems to be as follows – where a mistake should have been apparent or obvious to the parties concerned before entering into any agreement, then the contract is not enforceable and neither party is able to rely on it. The test is usually that of the 'average consumer'.

In such a situation, there have also been examples where the company has stated that the confirmation that was sent to the consumer was not an actual confirmation of the transaction as such, but rather a confirmation of the consumer's offer to purchase the product at that price, which is still subject to the trader's acceptance of such offer.

These problems show a particular difficulty that consumers face in relation to certainty and transparency when it comes to concluding an online transaction, where the trader can pull out of the contract after the consumer legitimately believes that it has been concluded successfully.

It seems that the legal situation differs between Member States in such a situation. In some countries the legal view would be that the consumer should be entitled to purchase the product/service at the displayed price, even if it was mistakenly listed by the seller.

ECC Luxemburg has stated that in Luxemburg when there is a mistake in the displayed price the difference needs to be taken into account between a "small" mistake in the price (e.g. Displayed price: €56 - Real Price €65) and mistakes where it is clear that the price is not correct (e.g. Real Price €1,000 - Displayed price €10.00). For small mistakes you can ask that the good is sold at the displayed price. For mistakes where it is obvious that the price cannot be true the seller cannot be forced to sell the good at the displayed price.

Legislation in Finland on the matter is in line with other EU Member States' legislation, such as France or Germany. When an incorrect price is advertised and a consumer places an order, the trader can only rescind the contract if the mistake was so consequent that an average consumer could not reasonably believe that this was the real price. If not, the trader should deliver the product to the advertised price to the customer. So for example, a flat screen television is advertised on an online shop's website at €150 instead of €1,500. In this case, a consumer cannot reasonably believe that this was the correct price and the trader can therefore rescind the contract.

Thus, the nature of the mistake and its materiality must be evaluated on a case-by-case basis, making it seemingly impossible to set down fixed borders or parameters. Generally, however, if an error is made and it is clearly a mistake because it is not reasonable to expect to be able to purchase goods for the price advertised, the trader would be able to withdraw from the agreement and provide the consumer with a refund. An example of this is an incident that happened in the UK in early 2007.

A UK retailer mistakenly advertised a television which had a retail price of GB£1,500 at GB£150 on their website. A large number of consumers attempted to purchase this item. The trader refused to fulfil the order arguing that the payment had been taken immediately via an automated service and the email that was sent to the consumer was only an acknowledgement that the order had been received, not confirmation that the acceptance had taken place. After this incident the precedent regarding online trading was changed. Online retailers would send 2 emails after an order had been placed, once to acknowledge the order had been received and a 2nd to confirm that the order had been accepted. Upon receiving the acceptance email the contract was formed and became legally binding.

This would seem to be a good solution to the problem. But it would need to be clearly stated that it is only an acknowledgement and that the confirmation is yet to come. Moreover, the confirmation would need to be sent within a specified time, as it would be unfair to the consumer to be left in an uncertain situation whereby he may miss out on other opportunities while awaiting confirmation from the trader of a valid order.

There were also complaints relating to disparities between the price displayed on the website and the one charged to the consumer. For example, an Italian consumer ordered clothes from a German online trader. The price that was displayed on the website was also confirmed to the consumer by telephone. Nevertheless, when the consumer received his invoice, a different price was indicated. Another interesting example of a similar situation is given below.

A consumer from Luxemburg ordered books at an online-bookshop in Germany. After filling in his address and proceeding with the order, he was given the information on the order that the costs for transport and package would be €3.95. Once the consumer received the invoice for the order he discovered that the costs for transport and package were now €16. After having contacted the trader, the trader admitted that he had software problems and that the amount for transport and package did therefore not change even when foreign addresses were used. The trader reported that the information about delivery costs to foreign countries was given in the General Terms and Conditions. The trader agreed later on to post the order for the announced amount of postage.

Hidden costs
that increased
enormously

4.4 Customer Service

A company with a good customer service policy, and that wishes to help and assist its customers, will generally fulfil its legal obligations and take the necessary steps to resolve a complaint. As in all areas of commercial life, good customer service is one of the keys to developing a thriving, successful e-business.

However, unfortunately there are numerous unscrupulous webtraders whose actions tend to give a bad name to other online traders and have a negative impact on the confidence of consumers when it comes to shopping online.

The issue of customer service was also examined in a previous ECC-NET e-commerce report⁵ but it is clearly the cause of the majority of online transactions that go wrong. It should be highlighted that every incoming complaint received by the ECC-NET shows that the customer service of the trader in question is not functioning as it should, and in many cases not as the trader concerned would want it to function. The approach to customer service amongst certain webtraders therefore seems to be an issue.

The following two case examples show how a good customer service policy can lead to a satisfactory outcome for consumers.

A consumer in Cyprus ordered baby creams online from a French website. However, on receipt of the products, the consumer realised that one of the creams had expired a month prior to his placing of the order. The consumer requested the replacement of this expired cream. After the intervention of ECC Cyprus and ECC France, the trader refunded the cost of the cream that was out of date and also refunded the cost of two more creams as compensation.

A Slovenian consumer, who was a regular customer of a UK webtrader and from whom she had ordered many items and was always satisfied with their services, completed an order twice by mistake for which she received two confirmation e-mails. The consumer emailed the trader to inform them of her mistake and that only one order should be considered. However, as the consumer received neither a reply nor the ordered items, she checked her bank account and discovered that the trader had taken payment for the two orders. Therefore, the consumer emailed the trader seeking the ordered items or the reimbursement of the payment already taken. After having shared the case with the UK ECC, the consumer confirmed that the trader had finally sent her one of the orders and reimbursed her the amount taken for the second.

4.5 Other issues

4.5.1 Hidden costs

In 2007, a common problem encountered by ECC NET related to websites offering certain services but with hidden costs that increased enormously. More specifically, many complaints have been lodged by consumers who, surfing on the internet, discovered certain websites which offered various services such as life prognosis tests, intelligence tests, route planners, music downloads, genealogical research career choice tests, games, etc. The consumers, in order to make use of the companies' services have to register on the websites but they are not informed that when they do so they will be charged a fee. The information about the cost is usually hidden in the small print so many consumers do not see this information and register themselves because they believe the service is for free. After a few weeks, (when the cooling off period has expired) consumers get an e-mail with an invoice which has to be paid by bank transfer and can also receive letters from lawyers or debt collecting companies asking for the money 'owed', and putting extreme pressure on them to fulfil their so called "obligation". As it is stated, websites of this kind are mainly targeted on the German speaking area (Germany, Austria, Switzerland, Luxembourg, South Tyrol – Italy), however consumers from many European countries have been ensnared by such companies and then requested to withdraw from a contract they never tended to conclude.

ECC Luxembourg had a lot of complaints concerning traders that offer non-existing services such as "How old will I become", "When will I die", games, etc. The consumer does not see that he has to pay for the service as the trader hides the price and doesn't ask any credit card. The consumer only becomes aware that he has to pay for a service when he gets the invoice. Generally the invoice is only sent when the cooling-off period expired. Those traders are based in Germany, the UK, Switzerland and the Arab Emirates.

⁵ The European Online Marketplace: Consumer Complaints 2004

4.5.2 Bankrupt companies

There have also been numerous complaints where consumers purchased products from online shops which afterwards declared bankruptcy. Unfortunately, there is not very much that can be done in such a situation, as once insolvency proceedings are underway, consumers will feature quite far down the list of creditors to whom the trader owes money. However, there may be situations where an ECC can assist if such proceedings have not yet been initiated and the trader is willing to cooperate, as the following example illustrates.

A Greek consumer ordered a watch and an extra strap from the website of a UK trader. The consumer's credit card was charged for the purchase plus shipping costs but the company postponed the order, citing delays with the supplier as the reason. A few days later, he was informed by email that the company had ceased to trade and that joint administrators had been appointed to the company to proceed with product deliveries or reimbursements. On contacting the joint administrators to seek either the delivery of the product or a full refund, the consumer was informed that neither option could be carried out. The consumer contacted ECC Greece and the case was shared with the UK ECC, who were successful in securing delivery of the watch for the consumer, along with the extra strap.

4.5.3 Restriction of sale based on residency

Another issue widely raised by many ECCs concerns the lack of transparency with various webtraders as regards the countries to which they are willing to offer their products or services for sale. There have been numerous reported instances of apparent discrimination based on the country of residence of the consumer. This can relate to the refusal by the trader to sell products to consumers based in a particular country, or the trader offering the same product for sale in different Member States at different prices.

The above issue should be dealt with caution as it is widespread and affects the interests of many European citizens. ECC Czech Republic has noted a very interesting example of this tendency to trap the consumers to sign contracts and then to charge them with more money due to their country of origin.

"A Czech consumer wanted to buy an air ticket from a German trader's website. He wanted to order tickets to travel from Frankfurt to Astana and from Alma Ata to Frankfurt which cost €881.16 on the German version of the website. Later the page asks if "you want to continue" without signing in and then you have to choose the home country. Once you enter "the Czech Republic" the order is totally erased and you have to start your order again. After you fill the same order again the price does not amount to €881.16 but rather to 86,736 CZK or €3,423, in other words 4 times higher than the original price. The consumer called the Czech office of the trader and they confirmed that for residents in the Czech Republic the price was €3,423.

At this point we can draw parallels between the above case and the free movement of goods and services mentioned characteristically by the ECC Poland. More specifically, there are cases when a trader based in a European country, e.g. with domain "de" refuses to sell products to consumers based in another European country, e.g. to

Polish consumers, stating that the latter should make a transaction with the respective branch of the same company with domain "pl". The reason, however, why the Polish consumers prefer the German webpage is because they offer the same products at lower prices. Thus, the refusal of the company to sell forces the consumers to buy more expensive products. The above issue is rather controversial, as this kind of rejection can be interpreted as discrimination and violation of EU law whereas for others this practice is acceptable based on the freedom of choice for contract partners.

4.5.4 Secure payments

Other issues have also arisen in relation to safe payment and the liability of credit card companies. The intermediaries that facilitate cross-border payments have a crucial role in securing consumers rights (e.g. credit cards - VISA, Master card, Escrow companies, Pay Pal etc.). There are many cases where consumers can go to the intermediary to obtain redress, either because of national legislation or the agreement between the consumer and the company offering these services. However, it is our experience that consumers are not getting sufficient information on the possibilities of obtaining redress from these channels.

A UK consumer ordered a DVD player online via the company's website and paid using a UK credit card. After some time as no goods had been delivered, the consumer attempted to contact the trader without success. The consumer contacted the UK ECC who shared the case with ECC France. Despite ECC France sending numerous letters and emails to the trader no reply was ever received. After some investigation by ECC France it seemed that the company was having penal procedures taken against them. The consumer then contacted the UK ECC and stated that they had managed to obtain a refund from their credit card company.

The situation facing consumers in many Member States is that where a purchase is made via their credit card, the credit card company can also be held liable and the consumer may approach them to seek a refund of the money paid. However, this is not the case in all countries and consumers can experience difficulties in obtaining assistance from their credit card company unless they can clearly establish that fraud was involved.

4.5.5 Unsolicited goods

The ECC-NET has also received complaints in relation to unsolicited goods that were not ordered by consumers. ECC Denmark received complaints against webtraders selling health products and foods who to send parcels to consumers who have not ordered them. The latter's non-reaction to the offer is treated as acceptance by these companies and they consequently charge the consumers. ECC Italy faced a similar problem as an Italian consumer got, out of the blue, a confirmation e-mail by a German company that his order of €1,808.90 was accepted, though he had never placed an order and nor had he accessed the internet. It should be noted that inertia selling is prohibited⁶ and therefore if consumers receive unsolicited goods then are not obliged to pay and cannot be forced to do so.

Online transactions are getting progressively common

4.5.6 Lack of contact details on website

Another issue is that of “ghost companies” which appear to exist but are not in fact genuine companies. In such cases, when a consumer pays for a product or a service, but never receives it and yet he cannot claim his money back as the company does not actually exist. Such type of fraud perpetrated by online companies is unfortunately a rather widespread phenomenon in EU. ECC Sweden pointed out a recent version of it: ECC Sweden received a number of complaints against a company whose website looks like an ordinary web store but when things start to go wrong, it denies any responsibility stating that its role is solely to act as an intermediary. At first glance, the webpage looks like an ordinary web store selling flat screen television sets in low prices. Since flat screen television sets are quite expensive in Sweden and the same products can be bought in Germany 20 – 30 % lower many consumers prefer to purchase them online through this Swedish company. However, when consumers conclude the contract by paying for the product and accepting the terms of the sale, a contract clause stipulates that they should be aware that the web store does not actually sell any products but rather act as an intermediary. Hence, what the “web store” actually does is to use the information provided by the consumer (contact details, address, etc) and then to place an order in the name of the consumer with another European store. The “web store” pre-pays the orders with the money that the consumers pay and takes the surplus as a service fee. This phenomenon was noticed when one of the company’s “affiliates” in France never delivered the ordered products, thus unveiling the Swedish intermediary practice. Nevertheless, the consumers claimed their money back from the web store as they had not received any prior information regarding which country or from which “affiliate” the web store had placed their order.

An Irish consumer purchased a laptop from a large international trader. One year later the CD drive stopped working. The trader said they would repair it at a cost of €300- €400 and that there was only one year warranty. The consumer couldn't get anywhere, so he contacted ECC Ireland. It was difficult even for ECC to establish where the trader is based. They had headquarters in the Netherlands and a registered office in Belgium. But there was no postal address provided on their website, only complaint forms which were very complicated and different forms were pro-

vided for different types of products. ECC Netherlands wrote to different offices of the company across Europa, but received no response and the case had to be closed. ECC couldn't even advise the consumer as to where to pursue legal action against the company (in which country).

4.5.7 Applicable law

The majority of the ECCs stressed the issue of the applicable law in the field of cross border transactions. The consumers should know which national law applies. The consumer protection law varies in the member states and Norway and Iceland. For example, withdrawal from a contract without reason in e-commerce is possible only within the cooling off period, which is however different e.g. in France (7 days) and in Czech Republic (14 days). The above causes misunderstandings and set obstacles in the handling of the cases, creating confusion for consumers.

A Norwegian consumer ordered a portable music player online from a webtrader based in Ireland. The player malfunctioned within the two-year legal guarantee period provided for under Directive 1999/44/EC and the consumer received a new player. However, the new player also malfunctioned but the trader refused to repair or exchange the product, claiming that the guarantee period applied only to the original item and not to the new replacement player. This is not in accordance with Norwegian law, which holds that the full guarantee period applies to any replacement product. The case was shared with ECC Ireland, who contacted the trader on the basis of this Norwegian law, which would apply in this case as the trader was clearly marketing towards Norwegian consumers by maintaining a website in the Norwegian language and displaying prices in Norwegian Kroner. The company subsequently contacted the consumer and agreed to repair the product.

⁶ Inertia selling is regulated under the Distance Selling Directive (EC 97/7/EC) and prohibited under Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

5.

Fraud



Fraud has always been a problem in the e-commerce environment, though it seems to be becoming more widespread, with many new varieties appearing all the time. Generally, ECCs do not deal with cases where fraud is known to exist, as fraud is a criminal matter, so consumers are therefore advised to report the matter to the police. But quite often it may not be clear that fraud is involved until much later, such as in cases of non-delivery or where money transfer is used as the method of payment. In those cases where fraud is found to exist, the case will invariably end up unresolved, leaving consumers with no other option but to go to the police. It seems that fraud is unfortunately an inescapable element of both e-commerce itself and the type of complaints received by ECCs.

There were several different types of online fraud reported to the ECC-NET in 2007, among which were fake webtraders, fraudulent escrow companies, internet auction fraud, notification of lottery wins, phishing and usurpation of identity and the buying or selling cars on line. Among these types of fraud lottery wins and phishing do not specifically relate to online purchasing so these will not be dealt with here.

Different types of e-commerce fraud can be experienced by the consumer during one transaction, but to provide a clear picture of the consumer's situation the types relevant to online shopping will be examined separately below. An explanation of each type of fraud is given, along with one or more case examples to illustrate the problem. In all types of e-commerce fraud consumers will be advised to report their case to the local police, as the ECC-net is only allowed to handle cases in an extra judicial way.

5.1 Fake webtraders

As the internet is such an extensive medium, fraudsters who want to make 'easy money' from consumers have a huge number of potential targets available. The ECC network has received several cases concerning fake webtraders selling products such as cameras, computer equipment, CDs, DVDs, games, and health products. Some webtraders offered the downloading of documents and games for which the consumers received invoices afterwards.

ECC Hungary received a case in which a consumer ordered a laptop from the trader. The order was accepted by the trader and



the consumer transferred the money. The trader did not deliver the product and a few days later the trader disappeared altogether.

For consumers it is important to know who they are dealing with and understand the offer. This is not always easy. Trust marks can provide consumers with a sense of security, but a consumer should always check the website of the trust mark itself to see if the trader is really a registered member of the trust mark scheme or the branch organisation it mentions on its website. The following case illustrates how fake web traders can give a consumer a false sense of security and how they can be quite innovative in doing so. It also shows how consumer demand for certain products creates ideal conditions for these fraudsters to operate in.

ECC Sweden received several cases concerning a web shop that tried to take advantage of the massive demand for the new Playstation 3 console (PS3) that was released in Europe in the summer of 2007. The PS3 was released in the United States 6 months before, and many Swedish (and other European) consumers were quite anxious to purchase one. The cases concerned the same web shop that was supposedly in the Netherlands. ECC Sweden made a routine check of the website and

found several indications of fraud.

- The trader's webpage had been registered only a couple of months ago.
- The trader offered to sell the PS3 console at less than the official price.
- The consumer was asked to pay through money transfer.

The conclusion that the company was indeed fraudulent was further supported with the help of ECC Netherlands, who cross-examined that company name with the Dutch company register. There was no such company registered in the Netherlands. Surprisingly the website lasted throughout 2007 and it was interesting to see that during this time the company managed to change both their name and address. The company moved from the Netherlands to Italy in one day. The persons behind the fraud took some innovative steps to ensure the trust of potential consumers.

- The fraudsters were able to post a false company history on Wikipedia without any contest, which gave their company a history and credibility.
- The messages the company posted on the Swedish Internet forums and E-bay that discussed the store used very poor Swedish, in which some kind of simple translation tool had been used.

These innovative steps were not that thorough and were probably quite easy to spot for the experienced consumers.

Consumers should also be aware that the information concerning a trader available on the internet is not always true, as the Swedish examples show concerning Wikipedia and Internet Forums. The fake web traders open and close their web sites quickly, so the fact that no one has made a complaint on internet forums at that point does not mean that the seller is definitely legitimate.

Fake web traders can be very convincing in persuading consumers to buy more than originally intended. It is important that the consumer resists the pressure of the trader and remembers that if an offer is too good to be true, it probably is.

ECC Slovenia was contacted by a consumer who ordered a mobile phone for €255 via e-mail. He made the payment via money transfer as was instructed by trader. After an exhaustive exchange of e-mails the consumer was told that the trader would only accept his order and send the ordered item if the consumer ordered 5 items. The consumer at first refused but then gave in and paid the additional €1,000. The ordered items were never delivered. The consumer wanted reimbursement of the whole payment of €1,255. After sharing the case with ECC UK, the consumer was informed that the local authority had visited the trader's address, but the trader at the actual address did not know the organisation the consumer had contact with. It seems that the payment went to an unknown party and was therefore an obvious case of fraud. The case had to be closed and the consumer was advised to turn to the police.

A consumer can increase his confidence and trust in the internet market by being as well-informed as possible. It is always better to be safe than sorry. They should be encouraged to have the ability to scrutinize the information they find on the internet. The section on education shows several initiatives of the ECC network to help consumers increase their confidence in the internal market.

An interesting example is the tool ECC Denmark developed called Howard, the Online Shopping Assistant. This is a tool which helps individual consumers in an easy and quick way. Further information on Howard – the Online Shopping Assistant is included in Section 6.

5.2 Fraudulent escrow companies

As in the previous e-commerce reports, fraudulent escrow companies were also an issue for ECCs in 2007.

An escrow company acts as a trusted third-party during the payment process. The buyer's payment is deposited into a trust account and the escrow company notifies the

seller when they have received the payment. The seller then ships the merchandise to the buyer knowing that the buyer's payment is deposited. The buyer notifies the escrow company when he has received the merchandise and the escrow company pays the seller after all the conditions of the transaction are met. The procedure is fairly simple and should offer additional protection for both buyer and seller alike, if performed properly.

The ECC network has received several cases with fraudulent escrow companies that are probably set up by fraudulent sellers.

A Norwegian consumer ordered a bicycle online from a Spanish trader and pre-paid €1,000. He was then offered a second bicycle for €600, which he ordered and paid for as well. The agreement included free shipping worldwide. The delivery of both bicycles was delayed because of the Easter holiday and then because the trader was having problems with their shipping company. After three months the consumer was contacted by the trader and told that they could no longer offer him free shipping and requested €420 for the shipments of the bicycles. The consumer sent them a letter saying that he would not accept the new terms and demanded free shipping delivery or a refund of the €1,600 he had paid. Since then he has not heard from the seller. The case was shared with ECC Spain who found out that the trader did not exist and this was a case of fraud. The case was closed and the consumer advised to contact the police.

5.3 Internet Auction fraud

Internet auction is the term commonly used to describe any kind of website that allows people to buy and sell a wide range of goods in a number of ways, including through competitive bidding. Consumers need to be able to decide whether the person offering the item is trustworthy or not.

The previous e-commerce reports highlighted the increasing number of complaints in relation to internet auctions. The vast majority of which involved the non-delivery of goods. Internet auctions are still an area that generates complaints for the ECC-net (225 complaints in 2007). While these complaints are not analysed in this report, as such purchases fall outside the scope of the of distance selling legislation, it is worth, nonetheless, in highlighting general problems in this section.

The following case illustrates a business-to-consumer (B2C) case submitted to ECC Germany.

A German consumer bought a golf club from a trader. When he received the item he found out that it was a fake. So he claimed



a refund of the purchase price. As he received no answer, he contacted the German ECC, who contacted the trader. The trader told them someone else had misused his internet auction account. The trader told him the name of this person and sent a declaration of this person, signed in Thailand. It was assumed that the declaration was also fake. The ECC contacted the police and was told that there would be a penal procedure against the trader and assumed third person. Thankfully, later on the consumer got a refund from his credit card company.

5.4 Buying/selling second hand cars

Many of the cases submitted to the ECC Network regarding scams concern the sales of second hand cars. In these cases large amounts of money are involved which make it an attractive market for fraudsters. Surprisingly both sides of the market seem to be susceptible to scams. When it comes to buying a car online, the typical scam seems to involve the seller asking the consumer to make payment through some form of money transfer, often via a third party escrow company. Consumers may also be given the benefit of testing the car for a few days and

the option of returning it if he is not satisfied. Once the consumer has transferred payment, he is informed that the car is being shipped but ultimately never receives the car and is unable to recover the money as it was sent by money transfer.

ECC France received a case where the consumer had been looking for a used car. He found an interesting offer for a car on a German website. The consumer wrote an e-mail to the trader in order to get more information. The trader replied and told him first of all that he was a UK citizen and that he has asked a German friend to sell the car for him, which was why the offer was posted on a German website. Following various e-mails the salesman provided details for the car (which was apparently in London), papers, photos, etc. and asked in return for evidence that the consumer was bona fide and could pay for the car. The trader asked the consumer to use money transfer as a payment method which the consumer accepted. The consumer travelled to London himself to inspect the vehicle and transferred of €4,900 by money transfer to be withdrawn by him when arriving in London. In order to reassure the seller, he sent him a copy of the money transfer, but hid the transfer number. When the consumer arrived at the post office in London, where they were told that

There were even cases where consumers were given 'advice' which turned out not to be for free.

the money had already been withdrawn two days earlier. The consumer of course complained as the money should only been withdrawn by himself and on presentation of his identification. In addition the consumer contacted ECC France. The ECC could not help in finding an amicable settlement in such a case as the trader was untraceable. ECC France decided to start a test procedure against the money transfer company, with the help of ECC Ireland, as ECC UK was not operational at that time. The case is still ongoing.

The above case also highlights an issue that will be returned to in a later section as regards the liability of the relevant payment service provider.

When it comes to selling a car on the other hand, the consumer usually has a car advertised for sale online and is contacted by an interested party proposing to buy the car and pay by cheque. Generally, the cheque that is offered to the consumer is for a higher amount than the asking price. The buyer provides the consumer with some reason for this and requests him to refund the difference back to the buyer by money transfer. The cheque from the buyer bounces a short time later, but by that stage the consumer has lost both his car and the amount of money that was transferred to the other party. This is known as a 'cheque overpayment scam' and several ECCs have received complaints concerning this issue.

ECC Austria received a case in which a second hand car dealer reacted to an online advertisement and agreed the purchase price straight away. The buyer had sent the seller, in this case the consumer, a cheque of a higher amount and asked him to pay back the difference since he made a mistake. The consumer agrees to do so and afterwards the consumer received the information from his bank that the cheque was a bad one. So in the end the consumer lost money instead of selling his old car.

Cases like these show how sophisticated fraudsters can be and how difficult it is for consumers to pick them out. It is thus crucial that consumers are well-informed.

6

Consumer Confidence and Trust

Confidence and trust play a crucial role for consumers when it comes to shopping online, but the large volumes of complaints submitted to the European Consumer Centre Network each year by consumers who have experienced problems with webtraders suggests that there is still some way to go before the full benefits of the internal market in e-commerce will be realised.

Given the various problems that have been identified in this area, we must therefore consider what is the best way forward, i.e. the best way to enhance consumer confidence. Essentially, there are three aspects to achieving this, all of which are closely linked: education, legislation and enforcement.

6.1 Education

The best way to enhance consumer confidence is to increase consumer awareness, and this is where the ECC-NET has an important role to play. A consumer who knows his or her rights when shopping online, is a more empowered consumer, and thus a more confident consumer. But this awareness should not be restricted to the consumer's entitlements – it should also include awareness of the dangers and problems that exist, in order to reduce the likelihood of falling victim to problems such as fraud. In this regard, the previous e-commerce report published by our network included tips and advice for consumers when shopping online, and focused on some of the main things to look out for before concluding a transaction.

The ECC network uses various means to inform and educate European consumers. Almost all ECCs have published information leaflets on the steps to be taken in order to conclude safe transactions through the Internet. They also have the relevant EU legislation on their websites, namely the two Directives regarding distant sales, as well as useful tips that consumers should be aware of when making internet transactions. Finally, ECCs inform consumers on their right of redress. Useful information on problems such as non-delivery of pre-paid products or delivery of damaged goods is available on all websites.

The biggest initiative undertaken by ECC Net in 2007 in relation to e-commerce education was the launch of Howard – The Online Shopping Assistant. ECC NET developed this interactive online tool to make it easier for consumers to shop safely on the internet. The tool was developed by ECC Denmark, and localised for use by consumers nationally by the ECC centres in Member States. Represented by 'Howard', an animated owl character, the tool allows consumers to input the name of any website and review information about that site before they make an online purchase. By entering the name of a certain website, the country of the seller, or the company registration number, Howard gives the consumer lots of useful information about that site, including the following:

- When the website was registered. If the website has been registered very recently, particular care is needed, especially if prices seem extremely attractive and pre-payment is required.



- The results of a Google search.
If the results show negative comments from other consumers, there is good reason to be cautious.
- Contact details for your local European Consumer Centre.
If you are unsure about a web transaction or need further advice, always contact your nearest European Consumer Centre.

In addition, Howard also provides general advice and information about shopping online and consumer law e.g. the 7 days consumers have to return goods bought online. Howard, the Online Shopping Assistant cannot guarantee that website is trustworthy or offer a guarantee of service or quality. However, it can help consumers make better choices, provides consumers with knowledge of consumer related law, and is very practical and easy to use.

Further actions taken by all ECCs include the publication of magazine and press articles; television and radio interviews; and presentations and information campaigns in schools.

However, education of consumers is not enough. There must also be an increased awareness amongst traders of their obligations too, as all too often they fall short and seem to lack the requisite knowledge. This poses the question therefore as to whether it is the case that traders are not fully aware of their legal obligations in this area, or is it that they simply choose to ignore them?



HOWARD
THE SHOPPING ASSISTANT

6.2 Legislation

When it comes to the difficulties faced by webtraders not honouring their legal obligations, the question which inevitably arises is whether the legislation as it currently stands is sufficient to protect consumers. The European Commission is in the process of reviewing the current body of consumer legislation in the European Union, with a view to improving the situation of consumers and addressing any deficiencies or shortcomings that may be found to exist in the legislation as it stands. In the area of e-commerce, the Directive on distance selling has already been recognised as an outdated piece of legislation in such a rapidly-changing digital age. As such, there are many areas that currently fall outside of the scope of the protection which the Directive offers, such as internet auctions and new technologies, meaning that consumers are not as fully protected as they might be. The means by which consumers can enter into contracts by distance means is also ever-increasing and legislation needs to reflect this fact.

As the spread of e-commerce continues to steadily increase, certain types of new products and services raise interesting questions. For example, what is the legal situation regarding the download of software or computer programs online? At what stage is such a transaction completed? Is it possible to have a cooling-off period to allow a consumer to cancel the contract when the product is already downloaded and installed on the consumer's computer? Such products cannot be returned to the trader as such, and can only be uninstalled from the consumer's computer. A consumer may also purchase and download an update for an already existing program on his system. Another point that should be borne in mind by traders is the fact if they start to target or direct their marketing to another country, there may be additional legal requirements as regards consumer protection that will bind them. Online shopping raises important questions about which country's law is applicable and the place of jurisdiction. These questions are of importance for consumers, as the level of consumer protection varies across Member States.

The European Consumer Centre Network was invited by the European Parliament to address a public hearing on Consumer Confidence in the Internal Market in January 2007. This was a most welcome opportunity to share our experiences of the problems faced by consumers and to comment on how the situation might be further improved.

ECC Net also provide statistics on complaints received to the European Commission and to their national enforcement bodies and consumer agencies, in order for this 'grass roots' information to be shared with enforcement authorities. In addition some ECCs have submitted legal opinion on proposed legislative changes to the distance selling legislation to both their national governments and the European Commission.

The ECC-NET strongly welcomes proposals to strengthen and enhance the legislative protection afforded to consumers when shopping online, and hopes that the current review process will make the necessary improvements.

6.3 Enforcement

The effectiveness of any piece of legislation, no matter how well-drafted, is dependent upon its proper application and enforcement, and it is in this regard that national enforcement authorities and the recent Regulation on Consumer Protection Cooperation will play an important role. Enforcement of consumer protection legislation in the area of e-commerce has been recognised as a particular challenge for some time now, and the findings of the ECC Net's previous e-commerce reports reinforce this fact.

It is crucial, therefore, that the relevant national authorities in each Member State take action where any breaches of consumer legislation are identified. This needs to be done not only at the domestic level, but also at the cross-border level, and the CPC Regulation now provides the means for authorities to cooperate where such infringement occurs across jurisdictions.

In our previous e-commerce report, the ECC-NET identified enforcement as an important issue and welcomed the introduction of the CPC Regulation as a positive step forward. As it has been in force now for one year already, it appears that many European countries are at the initial stages of actual enforcement, via the mechanisms proposed.

Cooperation between ECCs and the CPC authorities differs from country to country, but most ECC have contact with their local CPC. Many transfer cross border e-commerce cases to the Consumer Authority of their country. These ECCs often have a working agreement with their national CPC authority. In a few exceptional cases, an ECC is even located at the same premises as the CPC authority, though naturally working under a different remit, as the following example shows.

The Belgian CPC authority is the Directorate General for Control & Mediation (DGCM) of the Ministry of Economics. If the DGCM receives complaints against the commercial practices of a company, they will investigate and arrange a meeting with the com-

pany initially. If they observe that the complaints are well-founded, they will issue a statement requesting the company to amend its practices. It will usually be sufficient to allow the company to follow their recommendations. The DGCM is competent to sanction the company, but according to ECC Belgium's experience, if the company does not comply with the statement of the DGCM, they will transfer the case to the public prosecutor. This was the case with a Belgium webtrader selling ringtones for mobile phones. On following the advertising of this company, a consumer could download ringtones for free on its website. However, once the consumer had signed up, he started to receive SMS messages on his mobile phone, for which he was then charged. The DGCM started an inquiry and concluded that this practice was misleading to consumers. The case was transferred to the public prosecutor and the company stopped sending such advertisements to Belgian consumers. However, Finnish consumers were still the subject of these advertisements from the company and ECC Belgium received several complaints from ECC Finland. ECC Belgium contacted the DGCM, but as they could not intervene directly, they contacted the Finnish CPC.

This example shows that enforcement on national level is progressing well, but that cross border enforcement action is still more cumbersome and time-consuming. This is something that must improve to order to enable the smooth working of the Internal Market.

For example several ECCs reported effective actions taken by the CPC authorities at the national level but problems were also reported: Some ECCs had their cases rejected by the CPC authority or were told that no further action was taken due to the lack of capacity, or due to the small number of cases relating to the specific trader. As the CPC authorities focus on the collective interest of consumers, it is understandable that they have to set priorities.

Many ECCs experience a huge lack of feedback when cases are sent to their national CPC authority. Initial 'teething problems' are to be expected, but as a partner in the field of consumer protection the ECCs would like more information, and to know if the CPC authority uses the cross border information they receive.

The following example illustrates the importance of the ECC-NET in gathering cross-border complaints that can be transferred to the relevant CPC authorities.

ECC Norway was contacted by ECC Austria with regards to a Norwegian webtrader selling tickets for Euro 2008. ECC Austria had been in contact with UEFA and was told that the company did not have permission to sell tickets for Euro 2008 and that they would not be able to provide the tickets they are selling. Furthermore, according to UEFA's terms and conditions, consumers who have purchased tickets from the Norwegian company risked being denied access to the stadium. Based on this information and other complaints against the company, ECC Norway asked the ECC network to co-sign a complaint against the company. Several ECCs co-signed the complaint, which was sent to the Norwegian Consumer Ombudsman (the Norwegian CPC authority). In a preliminary assessment sent to the trader, the Ombudsman has informed them that they were in breach of the Marketing Control Act. The Ombudsman has yet to make its final decision.

As the online marketplace is cross-border in principle, it is important that the enforcement of the CPC authorities is taken cross border. We hope that the cooperation with the CPC will develop further to effective cross border enforcement.

6.4 Alternative Dispute Resolution

When a consumer cannot resolve a cross-border complaint directly with the trader, the ECC Net intervenes in order to find an amicable solution. In the majority of instances this is successful. However, when this is not possible the ECC seeks an alternative to court so that the consumer can have access to redress. Alternative Dispute Resolution (ADR), (arbitration of mediation), is such an alternative. One of ECC Net's functions is to aid the development of ADR systems in each Member State.

Online Dispute Resolution (ODR) is another useful mechanism, as this provides a simple and convenient way for consumers to resolve their e-commerce complaints, particularly at the cross-border level. However, the majority of European countries have not yet developed such ODR systems and tend to maintain the traditional methods of Alternative Dispute Resolution (ADR) only. Some progress is occurring, for example the ECC UK and Ireland are undertaking a trial ODR service with an organisation called the "Mediation Room". In Poland one ODR scheme is available to consumers to resolve their on-line dispute, called "Euro-Label".

In four countries, existing ADR bodies operate as ODR boards: In Austria the Austrian Internetombudsman and in France the "French Médiateur du Net" are notified ADR-bodies especially for e-commerce disputes. In Germany there is one ODR, which is the Internet-Ombudsman, but unfortunately they have not been in a position to accept new cases since spring 2007. In Italy, though there is no specific ADR body related to e-commerce, although one of the general ADR bodies includes an ODR scheme called "Risolvionline", which allows consumers to solve online their cross border disputes. In Iceland the ADR body can also provide such services.

In five countries there are alternative resolution bodies that provide ODR even they are not such institutions per se. I.e.

In the UK, a subsidiary of the Chartered Institute of Arbitrators, called IDRS, deals with any dispute irrelevant of how the contract was formed, yet parties need to pay a fee in order to get ADR service. There is also a trade association called "Interactive Media in Retail Group (IMRG)" that can resolve disputes between consumers and businesses, only where the business a scheme member and the case involves a breach of the code of conduct regarding e-retail companies. In Latvia, consumers who intend to complain about a WEB trader (registered in Latvia) are able to turn to the Consumer Rights Protection Centre to help them solve their case. In Malta, an e-certification scheme for webtraders, called Euro-Label" plays the role of ODR. This certification also provides an online complaints procedure for consumers who lodge a complaint against a participating trader. A 'Complaints Committee Board' – comprising members from the Malta Communications Authority, Ministry for Communications and National Projects, and the Consumer and Competition Division within the Ministry of Finance, Economy and Investment, as well as the Malta Chamber of Commerce and Enterprise– handles the complaint. In Finland, though there is no specific online dispute resolution scheme exclusively dealing with e-commerce related complaints, the national complaint board is also dealing with cross border e-commerce related complaints. Furthermore, in the Netherlands there is a dispute resolution scheme available to consumers which deals with disputes concerning online purchases, namely the "Complaints Board for Home Shopping" – which is part of the Dutch Foundation for Complaints Boards. Finally, though not a notified ADR body according to the EU, the so called Qshop is also considered an independent dispute resolution scheme in the Netherlands. This mechanism can be initiated after a consumer has lodged a complaint at Qshops against an associated company.

The lack of both ADR and ODR in this area is something which needs to be addressed and ECCs continue to strive to assist in its development. However, it is clear that a lot more work needs to be done.



7.

Conclusion

Cross-border online trade offers tremendous choice and value and offers all consumers across Europe access to an enormous marketplace without geographical restrictions. This huge growth in online trade is welcomed by the European Consumer Centre network, and indeed it is hoped that that e-commerce will continue to thrive. However, there must also be a concurrent advance in consumer rights education, and particularly in traders' recognition of their legal obligations, if the full potential of this exciting marketplace is to be realised.

As seen above, consumers are consistently experiencing the same problems, and these need to be addressed on several fronts. Traders, for their part, must realise that, particularly in the absence of face-to-face contact, satisfactory customer service is critical for the continued growth of their business. Traders also need to educate themselves as to their legal obligations to the consumer. The 'offloading' of problems relating to the delivery service in question, for example is a frequent, and extremely

unsatisfactory stance. While many of these problems are undoubtedly genuine, traders must recognise that the consumer's contract is with the trader, and its proper fulfilment must be the trader's concern.

For their part, web-traders point to the lack of clarity inherent in certain legislative provisions. It is hoped that the current review of the 'Consumer Aquis' will remove any confusion currently in place. However, legislation is only as strong as the enforcement that it enjoys, and current levels of enforcement certainly reflect the need for improvement. Clear enforcement mechanisms for specific infringements relating to cross-border trade are needed.

Consumers, equally, must educate themselves as to their rights and obligations when entering into an online contract. Increased awareness of the potential pitfalls associated with fraudulent traders must be a priority, as these fraudsters are unfortunately likely to continue to engage in online scams.



The ECC Network looks forward to continuing to strengthen 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 bodies are set up, so that a viable dispute resolution mechanism is available to the consumer where the ECC Network cannot resolve the issue. It is also vital that the potential of the CPC regulation is realised and that cross-border enforcement becomes a reality. The introduction of the European Small Claims procedure will, it is hoped, prove a useful tool for consumers, but again, its rollout must be managed to ensure that adequate consumer awareness is achieved, and that consumers can utilise the procedure speedily and effectively.

It is clear therefore, that all parties, consumer, trader, and enforcement bodies must assume the responsibility of ensuring that education, enforcement, and effective dispute resolution channels are developed, and efficiently put into practice.

Appendix

European Consumer Centres Network (ECC-Net)

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European Consumer Centre Austria

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