



Too good to be true? It probably is!

Unfair Commercial Practices and Unsolicited Goods



This publication is available on the websites of the ECCs.
(Further information can be found in Annex I)

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Table of contents

Executive summary	6
1. Introduction	7
1.1 The ECC-Net	8
2. Research methodology	10
2.1 Purpose	10
2.2 Organisation and planning	10
2.3 Scope	11
3. Highlighting the problems	12
3.1 General description of the problems	12
3.2 Specific problems for consumers	14
3.3 A Trader ECC's perspective	15
3.4 Consumers at fault?	16
4. Statistics	17
4.1 The questionnaire	17
<i>4.1.1 Consumer related questions</i>	17
<i>4.1.2 Company and product related questions</i>	18
<i>4.1.3 Legal and regulatory questions</i>	19
<i>4.1.4 Success stories</i>	20
<i>4.1.5 Worst stories</i>	22
4.2 Statistics from the Commission	22
5. Legal	26
5.1 EU legislation	26
<i>5.1.1 Unfair Commercial Practices Directive</i>	26
<i>5.1.2 Distance Selling Directive</i>	27
<i>5.1.3 Payment Services Directive</i>	28
<i>5.1.4 Applicable law and jurisdiction</i>	29
<i>5.1.5 Enforcement</i>	30
<i>5.1.6 Case law</i>	30
5.2 National legislation	31

<i>5.2.1 Denmark</i>	31
<i>5.2.2 Finland</i>	32
<i>5.2.3 Norway</i>	33
<i>5.2.4 Sweden</i>	34
6. A way forward	35
6.1 Information for consumers	35
<i>6.1.1 Checklist for consumers before ordering</i>	36
<i>6.1.2 To do-list for consumers after ordering</i>	37
<i>6.1.3 Liability for Unsolicited Goods</i>	38
6.2 Information for regulatory bodies	38
6.3 Information for ECC-Net	39
<i>6.3.1 Cooperation with payment providers</i>	40
7. Conclusions and recommendations	42
7.1 Conclusions	42
7.2 Recommendations	43
<i>7.2.1 To consumers</i>	43
<i>7.2.2 To regulatory bodies</i>	43
<i>7.2.3 To ECC-Net</i>	43
Annex I	44
Annex II	48

Executive summary

The Nordic European Consumer Centres (Nordic ECCs) are regularly contacted by consumers who have been sent invoices for goods or services that they were convinced were free or for having been sent goods they never ordered. Due to the number of complaints regarding unfair commercial practices and unsolicited goods received by the Nordic countries, the Nordic ECCs decided that these problems needed to be analyzed and investigated further with the results produced in a report. The vast number of complaints regarding these problems is a clear sign that consumers are not protected as well as they should be. The use of unfair commercial practices heightens consumers' reluctance to engage in online cross-border trade and is likely to reduce the commercial opportunities available to respectable businesses as well as creating obstacles to the development of the Internal Market.

The report has focused on two types of cases: The first is where consumers have been misled into agreeing to enter into a contract. The second is where companies send unsolicited goods to consumers with a demand for payment. The main focus of the report has been on the first type of cases since the Nordic ECCs have received the highest number of complaints in relation to this type of case. Furthermore, the legal implications are clearer in the case of unsolicited goods.

The typical case that is dealt with in this report is when a consumer responds to an offer, most commonly on the Internet, for a product or service that is advertised as being free or for a very small sum of money. In order to make use of the offer the consumer has to provide the company with credit card details. Our observation is that far too often consumers are not given precise information on the product offered or on the terms of the offer. What the consumer is often not aware of is that the terms and conditions

state that the product or service is, in fact, not for free. Typically a consumer contacts the national ECC office explaining that his/her credit card has been charged an unauthorised sum of money. Usually, consumers do not know what to do when faced with this problem.

In order to get to the bottom of these problems the report provides three conclusions:

- Consumers need to be better informed and know how to handle these issues.
- The cooperation between regulatory bodies needs to be improved.
- The European Consumer Centres Network (ECC-Net) needs to cooperate more with other stakeholders in order to deal more effectively with problems arising from unfair commercial practices like the ones dealt with in the report.

The report found that consumers need to be educated about the problems that they might face when shopping online as well as how to spot disingenuous traders. The report therefore provides a checklist for consumers before purchasing something as well as a to-do list if they have already entered into an agreement. The report also clarifies consumers' liability in the case of unsolicited goods.

The cooperation between different regulatory bodies needs to be enhanced in order to better deal with consumer redress. ECC-Net could benefit from working more with other stakeholders. Increased contact with media is necessary in order to create awareness in consumers for these types of problems. Cooperation with banks and payment service providers has proven to be an efficient way to stop companies in certain situations. The report also offers suggestions and recommendations on how to face and adapt to future challenges.

1. Introduction



Too good to be true? It probably is! This report was prepared by the Nordic European Consumer Centres (Nordic ECCs) which are a part of the European Consumer Centres Network (ECC-Net). The Nordic ECCs regularly receive complaints and questions from consumers after they have ordered samples of different products online but then realize that the company claims they have agreed to a subscription. Consumers also contact the Nordic ECCs regarding goods they received but never ordered as well as invoices they have received for goods they never ordered and also did not receive. Consu-

mers are generally at a loss on how to deal with the variety of problems they are faced with in these situations. Most commonly the problems emerge around:

- how to reclaim the money charged by the company.
- how to exercise their right of withdrawal during the cooling off period.¹
- what to do with the received goods.

¹ In the EU (plus Iceland and Norway) you have the right to cancel your online purchase (distance selling) within at least seven working days. This is the so-called “cooling off” period. It begins on the day when you receive your purchase. You can choose to cancel your order for any reason within this timeframe. The seller must give you a refund within 30 days, including any shipping charges you paid when you made your purchase. This applies whenever you make a distance purchase according to the Distance Selling Directive for example by phone, fax, or mail order, as well as on the Internet.

In 2011 and in the beginning of 2012 the Nordic ECCs received a very large number of complaints concerning products and services that were mostly ordered online. In 2011 they were against a number of different companies while in the beginning of 2012 they were mostly against one company.

Consumers usually encounter these problems on the Internet when responding to Pop-Up advertisements, advertisements on social media such as Facebook and traditional advertisements in printed magazines. These advertisements usually promote a test offer or a free offer² but are usually unclear and contain little information beyond the fact that it is free, making it difficult for consumers to correctly assess the offer.

1.1 The ECC-Net

ECC-Net is made up of centers in each of the 27 EU Member States, as well as one in Norway and Iceland.³ The Network is co-financed by the Health and Consumers Directorate General of the European Union and by each Member State.

One of the main objectives of the ECC-Net is to increase consumer confidence in the Internal Market by providing free information to consumers on their rights and assisting them with cross-border consumer complaints.

When consumers are unable to resolve a problem with a company, they can contact ECC-Net for assistance. When a complaint is made the ECC where the consumer is based (Consumer ECC), who receives the complaint from the consumer, shares the case with the ECC in the country in which the company is based (Trader ECC). The Trader ECC liaises with the company directly in the hope of reaching an amicable solution or, if this is not possible, it can transfer the case to an Alternative Dispute Resolution (ADR) entity.⁴ If there is no appropriate ADR body in the circumstances and the complaint cannot be solved amicably then the consumer will be advised of the possibility of taking the case to court.

² A question that was raised is whether there is a difference between “test packages” and “welcome packages? Is a consumer allowed to test the product and still use the right to withdrawal during the cooling off period? The name of the offer ”test package / sample package” gives consumers the impression that they can test the “test product”. Welcome package is seen more as a special offer with an initial favourable price. These words are interpreted in different ways and consumers should not be misled to try a product and then receive information from the company that they were not allowed to do so.

³ Norway and Iceland are part of the European Economic Area (EEA).

⁴ Alternative dispute resolution (ADR) refers to helping consumers resolve disputes with traders when they have a problem with a product or service which they purchased. A typical example is when the consumer complains about the quality of his or her purchase but the trader contests the consumer’s claim, e.g. refuses to offer a repair or refund. ADR entities are out-of-court (non-judicial) entities. They involve a neutral party (e.g. a conciliator, mediator, ombudsman, complaints board etc.) who proposes a solution or brings the parties together to help find a solution. ADR mainly concerns individual cases, but can also handle several individual cases together when they are similar. MEMO/11/840, Brussels, 29 November 2011 http://europa.eu/rapid/press-release_MEMO-11-840_en.htm Some ECCs do not mediate when there is an ADR.

To this end, each ECC has a website, which it utilizes to carry out campaigns aimed at informing consumers of their rights, and on which it publishes relevant information and material relating to publicity. In addition, consumers can contact their national ECC office directly for information and advice: by phone, fax, e-mail, online forms or in person.⁵ The centers give presentations to interested parties and engage in joint reports and surveys with other ECCs. The Network provides important feedback to national consumer agencies, national authorities, the European Commission and other stakeholders on problem areas requiring action. ECC-Net is the only network that deals with cross-border consumer complaints and disputes and is therefore in a unique position to document the problems arising from these types of cases.

The European Consumer Centre in Sweden has led this project in close cooperation with the European Consumer Centres in Denmark, Finland and Norway, who formed the working group for this project.

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The views and analysis of information contained within this report are not those of the European Commission or the national funding bodies. They are solely those of the working group, based on the data results from the IT-Tool which is administered by the Commission and based on the responses to the questionnaire which was submitted to the working group leader, ECC Sweden (ECC SE) and by the working group members ECC Denmark (ECC DK), ECC Norway (ECC NO) and ECC Finland (ECC FI).

⁵ The ECC-Net contact details are provided in Annex I. For information on opening hours and means of contact please consult the website of the ECC office in question.

2. Research methodology



2.1 Purpose

The aim of the project is to compile a source of useful information that ECC-Net can proactively use to educate consumers, for example by providing check lists for consumers. Consumers should be made aware of the various marketing and selling methods used by certain companies so that they can identify them in advertisements and on websites. Consumers should also be educated on how to deal with potential problems that may arise in such circumstances and on how to dispute an invoice or an unauthorized credit card withdrawal if this occurs. The report will also provide valuable information for other stakeholders and the media.

2.2 Organisation and planning

The working group had its first meeting in May 2012 at the Nordic Meeting⁶ in Iceland. The Nordic ECCs agreed that the problem of misleading marketing by companies was one which ECC-Net should address due to the scale of the problem and the modus operandi of the companies. It was decided that the best way to address the problem was through a joint project between the Nordic ECCs. At the meeting the purpose and scope of the project was determined as well as the plan for the organization of the project process and the distribution of tasks among the working group members.

⁶ Once a year a Nordic Meeting is held with all the Nordic ECCs: Denmark, Finland, Norway, Iceland and Sweden.

In order to determine what kinds of problems consumers in the Nordic countries have faced, ECC SE compiled a questionnaire and sent it out to the other working group members: ECC DK, ECC FI and ECC NO. ECC Iceland did not have the possibility to participate in this project due to the fact that they did not receive any of these types of cases.

In early Spring 2012 the Nordic ECCs⁷ received a lot of complaints regarding one Danish company in particular.⁷ Almost all of these complaints were of the same nature and thus reflect the general problems which are the focus in this report. The company's approach has been almost the same in all of the affected Nordic countries. Since ECC DK had to deal with these problems as a Trader ECC they have an insight concerning the problem from a different perspective.

2.3 Scope

This project covers goods and services that have been sold in a misleading way and goods that have been received by consumers who have not ordered them, which are often referred to as unsolicited goods.⁸ There are two main types of practices that will be covered by the report:

- The first practice involves the situation where a consumer responds to an offer for a product or service that is advertised as either free, for example a free test package, or as a “try for only 1 EUR” type of deal

that, in reality, actually results in the consumer inadvertently paying for a subscription or incurring other costs.

- the second is the situation where companies send unsolicited goods to consumers along with a demand for payment.

The project is based on cases received by the Nordic ECCs as well as on data collected from the Commission regarding the whole ECC-Net between 1 January 2011 and 31 July 2012. Since the ECC-Net received a relatively small number of complaints during this period regarding unsolicited goods, the main focus of this report will be on the first type of problem.



⁷ Except for ECC DK where the company was registered: See section 1.1 “The ECC-Net”.

⁸ 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, article 9, also referred to as Inertia Selling. Oxford Dictionary of Law Enforcement, <http://www.answers.com/topic/unsolicited-goods>: goods sent to someone (other than a trader) who has not asked for them to be sent.

3. Highlighting the problems



3.1 General description of the problems

As clarified in the section relating to the scope of the report, there are two main issues that need to be addressed. The first is where consumers have participated in a survey/competition⁹ and have clicked on an advertisement on Facebook or on a pop-up advertisement on the Internet. These offers usually state that the product or service is free, while in the case of products it is usually stated that consumers only have to pay for the shipping cost. The consumer usually does not receive any other information and the terms and conditions are impossible to find. Under the impression that this is a free sample or a free service the consumer fills out the information sought by the company.

To benefit from the offer, consumers are asked to provide the company with their credit/debit card details so that the company can charge

them for the cost of shipping. When the consumers receive the ordered package(s) they are informed that they will soon receive the next package as they have agreed to a subscription. The company will either send a bill with the next item or charge for the products directly. So instead of receiving a free sample consumers end up tied to a subscription they did not want and were not aware they were agreeing to and they end up being charged quite a large sum of money. These companies will also often send the claims through debt collectors even if the consumer has contested the original claim from the company.

During the timeframe of the report, especially in 2012, the Nordic ECCs received 1 492 complaints against one company in particular. Consumers had clicked on an advertisement on Facebook and ordered what they perceived to be a free sample pack, and had done so while under the impression that the only charge payable in

⁹ Offers like these are sometimes included as a part of a survey or a competition where it may pop up as a question for the consumer to respond to before being able to continue. Surprisingly, the response to a survey has been seen to lead to an order confirmation.

relation to the pack was the cost of delivering the item. Consumers received the sample pack, but then also received additional packages and their credit/debit cards were charged without their prior knowledge or consent. When consumers contacted the company they were informed that they had agreed to a subscription.

On the Finnish market the offers were somewhat different from those in other Nordic countries. The advertisements were brought to consumer by “the consumer news editor”,¹⁰ advertised as free-of-charge. To make the offer more tempting to those consumers who were not instantly enticed by the offer and who tried to exit the webpage, the page displayed the following message:

“are you absolutely sure that you do not want to benefit from this offer. Please note that the product is available for a limited time only. As the product samples are absolutely free-of-charge you will not encounter expenses, nor will there be any risk. You can even donate them to someone else.”

Unlike in other Nordic countries the terms and conditions were not available as a hyper-link: they were only delivered with the product samples. Taking a closer look at the Facebook page a specialist at the ECC could see that the contract terms were in fact hidden in the source code of the page. A consumer could only accidentally stumble upon them.

One common problem for consumers in all of these cases was that they were not given clear enough information regarding the item they had bought or the agreement that they had entered into. Often the information was hidden in small print or was only available through a link to a

different website. If the companies in question provided this information, it was usually given on the companies’ website or in small print on the advertisement that the consumers responded to. By not providing clear information the company misled consumers and caused them to make decisions that they would not have made if they had been given the information that the companies were legally required to give the consumer in order to allow them to make an informed decision on the matter. A related problem was that it was difficult for the consumer to prove what information they had received before ordering the item. Consumers did not, for example, save a copy of the print screen image of the offer in question.

The second issue mentioned in the scope section is the situation where companies send products along with a demand for payment to consumers who have not ordered anything. These unsolicited goods are sent to consumers without there ever having been any prior contact between the company and the consumer. In this situation it is not that difficult to assess the consumer’s rights and obligations. If there has been no contact between the parties it is safe to say that the consumer has not entered into a contract and therefore there is no obligation on the consumer to pay for the products that have been sent to them.¹¹

However, it is still important that consumers do not start to use the products or throw them away without first informing the company because a consumer may risk accept a contract through their actions i.e. by using the product.

¹⁰ <http://www.raief.com/6309/consumer-news-reporter-and-internet-payday-scam/>

¹¹ See section 5.1.2 “Distance Selling Directive”.

One question that was discussed in these cases was whether or not a consumer was allowed to test a sample package. The company in these cases argued that since consumers had used the sample package they were not entitled to avail of their right of withdrawal. The discussion led to three questions:

1. Are you permitted to try a sample package that is marketed as a free trial as opposed to a welcome package?
2. Does the right of withdrawal only apply to the sample package since you are not permitted to use a product during the cooling-off period?
3. Or can you use the sample package and still retain your right of withdrawal?

3.2 Specific problems for consumers

The main problem faced by consumers, in the majority of the cases received by ECC-Net during the time period, was that their credit/debit cards were being charged directly and that when the consumer contacted the company to complain about this the company argued that the consumers had agreed to a subscription, while the consumers maintained that they had only agreed to receive a free sample pack.

The subscription obligated consumers to receive a couple of packages which they of course had to pay for. The company referred to the terms and conditions on its website or in the offer that the consumer had responded to. However, the consumers argued that they had never seen these terms and conditions before and that the company had no proof that the consumer had entered into any contract with them. It is for the company to prove that a contract exists. In many of these cases the company responded to the consumer that an

order had been made from their IP-address. The company thus argued that a contract existed though they provided no evidence of the content of the order. In the case of the Danish company, this company kept referring to the terms and conditions on their official website which was not where the consumers had placed their orders for the sample products. Consumers found themselves with a subscription they had not agreed to and did not want.

In addition, the company had not provided any information regarding the cooling-off period, and when the consumers tried to invoke this right the company would refuse to allow it. In general it was very difficult for consumers to receive reimbursement from the company because the company argued that consumers had not exercised their right to withdrawal in due time or that the consumers had used the sample product, an action which cancels the right of withdrawal. In many cases the company would also send their demands to debt collectors. This created even more problems for consumers since they then had to dispute the claim with yet another company.



3.3 A Trader ECC's perspective

Since the majority of companies complained about were Danish, ECC DK did not receive many complaints from Danish consumers. Instead, ECC DK was informed about the issue by the other Nordic ECCs at the annual Nordic Meetings and through the IT-Tool.¹²

Due to the large number of complaints received by the other Nordic ECCs and the fact that in the complaints received the problems were concentrated around a few specific issues, it was decided that the Nordic ECCs would share only a selection of cases with ECC DK, in order for them to examine the cases and analyse the possibility of assisting these consumers, either by contacting the trader or by transferring the cases to The Danish Consumer Complaints Board. As a result ECC NO and ECC SE sent a handful of cases to ECC DK for assessment.

With regards to the possibility of transferring the cases to the Complaints Board, ECC DK found that they encountered two main issues: One being that the relevant subject matter of the complaints fell outside the competence area of the Complaints Board or that the Danish Consumer Complaints Board's competence to handle the cases was uncertain due to the nature of the product. Another issue was that the majority of shared cases whose subject matter did come within the Complaints Board's competence would still be exempted from being handled by the Complaints Board due to the fact that the product in question did not have an economical value of more than DKK 800, which is the required minimum value for a case

to be handled by the Board. On these grounds ECC DK decided to contact the company directly in these cases to find a solution. In some of the cases, the company reimbursed the consumer. In the remaining cases ECC DK had to contact the company again, because they seemed to have agreed to reimburse the consumer but had not actually transferred the money.

When ECC DK initially contacted the Danish Consumer Protection Cooperation (CPC)¹³ to inform them about the issue at hand, the CPC stated that they had already contacted one of the companies in question with regards to the company's operation on the Danish market. Back then the company had agreed to cease marketing their products online for the Danish market.

ECC DK later received confirmation that the Danish CPC had also been in contact with the same company regarding their marketing material directed towards the Nordic countries. After negotiations with the CPC the company agreed to change the way they marketed their products in all of the Nordic countries. The discussions with the company also included the drawing up of new terms and conditions; however these were not approved by the CPC at the time that this report was written.¹⁴

¹² ECC-Net case handling IT-Tool, developed by the European Commission (DG Sanco).

¹³ Please see section 5.1.5 "Enforcement" for explanation of the CPC.

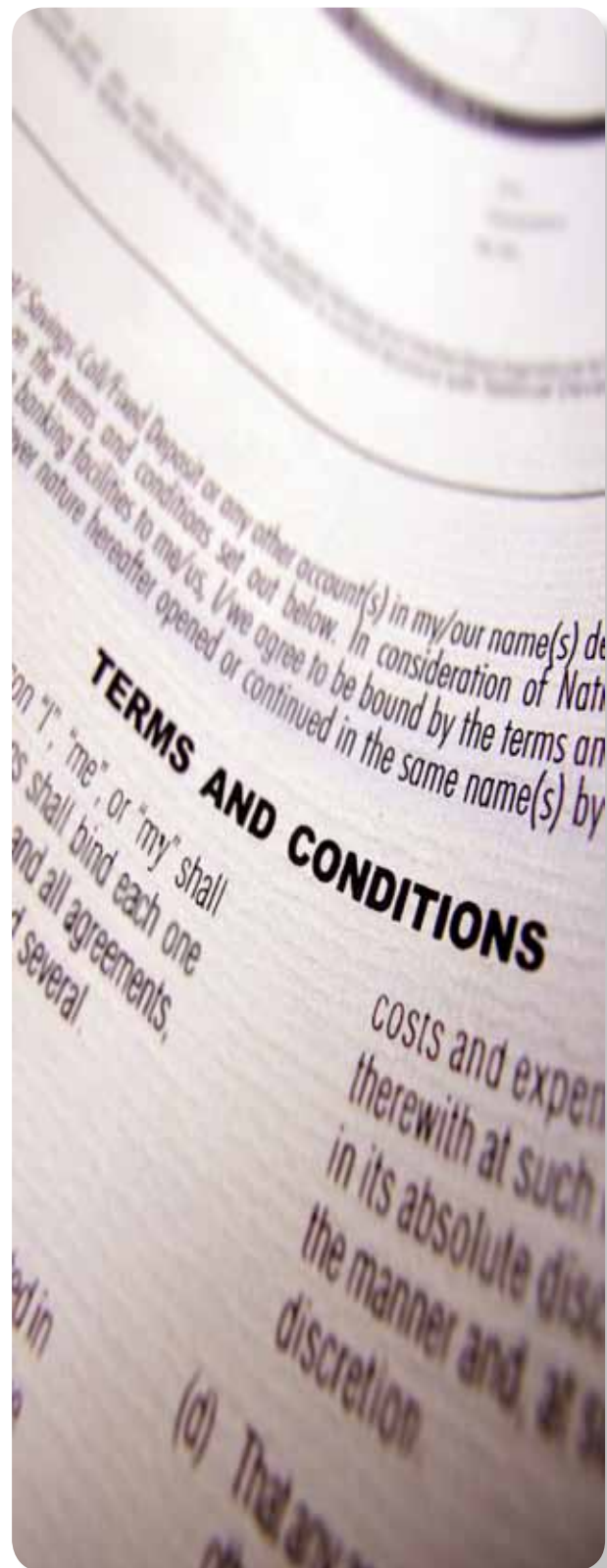
¹⁴ This issue is no longer relevant as the company has now ceased their operations and filed for bankruptcy.

3.4 Consumers at fault?

One cannot emphasize enough the importance of being cautious when encountering free offers on Facebook and on the Internet in general. There has been a long tradition of misleading free-of-charge online offers and consumers should not be forced to take responsibility for the blatantly unclear or even deceitful measures of certain advertisers on the Nordic market.

It is good to keep in mind that few things in life are free-of-charge. Yet, the average consumer seems to be idealistic and accepts advertisements at face value, having little or no concern about the undisclosed intentions of advertisers. The 1500 consumers who interpreted these advertisements in the manner that the traders intended them to, should not themselves be blamed. Instead, the Nordic ECCs request that advertisers respect marketing laws and consumer rights. Consumers should not be misled into making orders that they never would have accepted, had they been given the proper information to make a rational purchase decision.

However, a problem in these cases is also that consumers are not critical enough when they encounter offers on the Internet. Many consumers do not take the time to assess the company that they are ordering the goods from. Companies who use questionable business practices usually do not provide consumers with the information they are entitled to. For example, it is often difficult to find the company's contact details and terms and conditions. Unfortunately in most cases consumers only research the company they have ordered from after they have encountered problems. Consumers need to change their behavior and assess companies and offers before ordering.



4. Statistics



4.1 The questionnaire

The questionnaire was compiled in order to improve the assessment and analysis of the complaints received by the Nordic ECCs.¹⁵

4.1.1 Consumer related questions

Questions asked

The questions that the working group were keen to have answered in these cases concerning the consumers' experiences were how consumers came into contact with the companies. How did the process work?

Did the advertisements contain the information consumers needed to make informed decisions? What were the biggest problems faced by consumers in these cases?

Answers

These companies market their products and services in different ways. The most common way for consumers to come into contact with these companies is through advertisements on the Internet. Many consumers have responded to advertisements they have seen on Facebook. In these advertisements the information provided to the consumer is generally very limited. Terms and conditions are usually not available.

¹⁵ The questions can be found in Annex 2.

The biggest problems faced by consumers in these cases can be summarised in the following way:

- Very difficult to get in touch with the company.
- Consumers are denied their right of withdrawal.
- It is often difficult for consumers to prove that they have not entered into a subscription, since they do not save the advertisements that they have responded to.
- Consumers do not know what to do about the invoices and products they receive.
- Some consumers were contacted by debt collection agencies even though they had disputed the original claim. This is a problem which the Nordic ECCs have seen increase.

During the process of writing the report it has become apparent that one very big problem for consumers was that their credit/debit cards were charged directly upon ordering the product.

4.1.2 Company and product related questions

Questions asked

Here we wanted to see which companies were the most prominent in these cases.¹⁶ We also wanted to know where these companies came from and what type of products or services they sold.

Answers

The range of products/services varied greatly - from electric cigarettes to dating services and personality tests. However, the questionnaire showed that the main type of products in these cases were health related products and products connected to personal care (e.g. teeth whitening products, razors, diet pills and dietary supplements).

The questionnaire showed that even though the companies involved in these cases were based all over Europe, most of the complaints received were from companies based in Denmark. Estonia and Norway were also high on the list.

During the time period for the project there were two types of cases that were prominent for ECC FI and ECC SE. ECC FI received various complaints against companies based in Belgium, The Netherlands and Estonia that advertised quizzes and lotteries on their pop-up advertisements. These advertisements gave the impression that the consumer had won or could win something by answering a few simple questions. By participating the consumers were bound to mobile content subscriptions. In 2011 ECC SE received many cases against a Slovakian company that offered “free personality tests” to consumers. However, in the final stages of the process consumers were asked to accept the terms and conditions of the company in order to see the results. Since the consumers had initially read that it was a free test they did not read the terms and conditions where it stated that they would be charged 399 SEK for the result of the test.

¹⁶ The working group decided not to mention the companies by name, because the focus of this report is to clarify the problems and make consumers aware of different practises. The focus is not to mention the companies that caused them. In addition, experience shows that these types of companies are active for a period, disappear and then reappear under a new name.

4.1.3 Legal and regulatory questions

Questions asked

Here the questionnaire focused on how many cases had been received by the different national consumer authorities as well as how many cases had been shared with the CPC-Net.

We also wanted to know how chargeback was applied in different countries, how useful it had been for consumers and had the ECC office been in contact with any payment service providers?

Cases received by the Nordic Countries

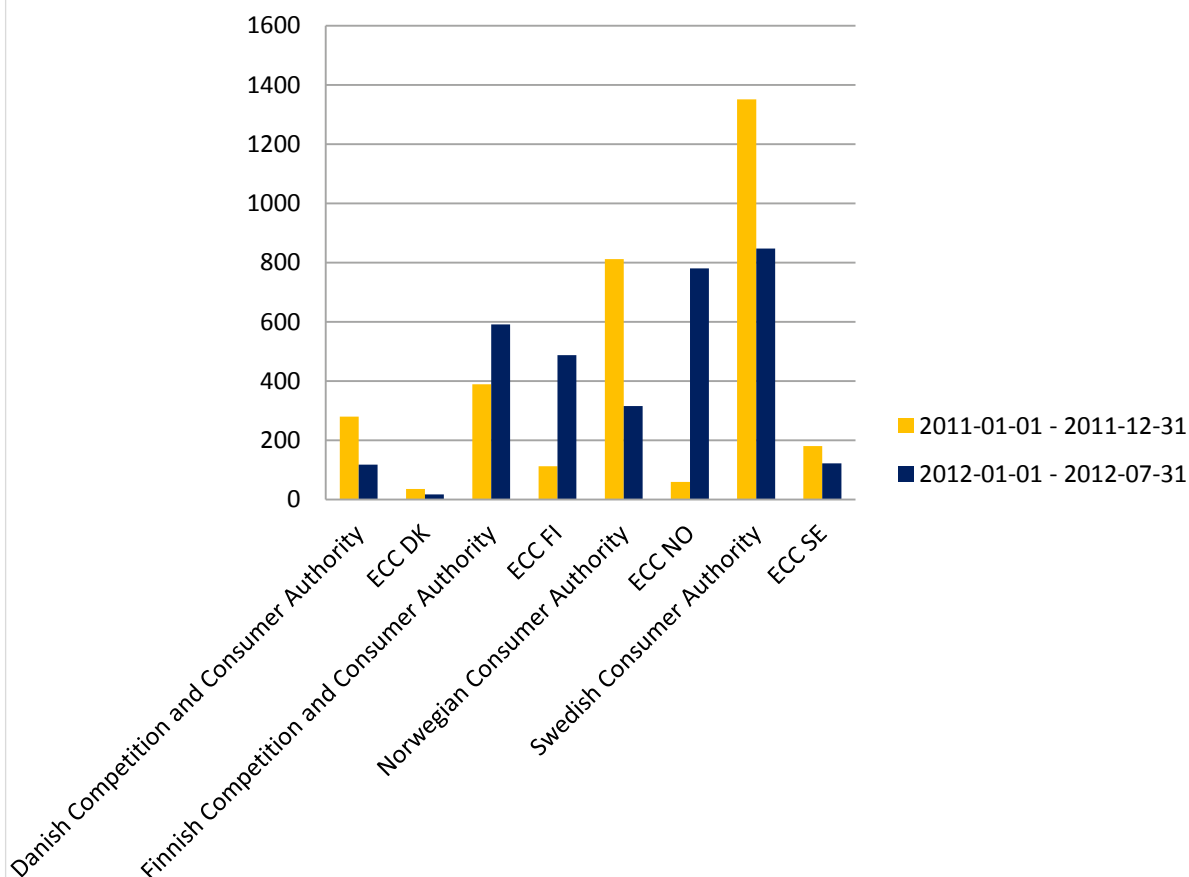


Table 1: Number of complaints made to national consumer authorities during 2011 and 2012

(January 2011– 31 July 2012).¹⁷

The Finnish Consumer Agency and the Finnish Competition Authority merged on the 1st January 2013. The name of the new structure is the Finnish Competition and Consumer Authority.

¹⁷ Figures from the questionnaire as provided by each ECC respectively.

Answers

The working group was asked to communicate the number of cases that had been submitted to their respective consumer authority. The reason for this was to have a complete picture of the situation in the different Nordic countries. The figures from the national consumer authorities were needed because the way in which complaints are received can differ from country to country. For example in Sweden many consumers submitted complaints to the Swedish Consumer Authority when they should instead have submitted them to ECC SE. In these cases consumers filed a complaint for unfair commercial practices and at the same time stated that they wanted their money back. However, since the Swedish Consumer Authority does not deal with individual claims the consumers had to file a new complaint with ECC SE.

In order to gain an insight into the cooperation between CPC and ECC the questionnaire asked about the working procedure. Since ECC-Net does not have the power to prohibit companies from using unfair commercial practices the working group was asked to provide information on how many of these types of cases CPC-Net¹⁸ had shared. It was found that CPC-Net had started proceedings against a couple of companies. This was the case in Denmark, where the Danish Consumer Ombudsman had already contacted one of the companies in question. In Finland the CPC database was not accessible during the time of the project, making it impossible to obtain any information. ECC SE closely cooperated with the CPC in Sweden which is a unit within the Swedish Consumer Agency.

ECC NO, ECC FI and the Swedish Consumer Agency in cooperation with ECC SE were successful in contacting banks and informing them about the problems regarding the Danish company. The result was that the relevant payment service providers cancelled the card acquirer agreements with the company. ECC NO did not receive any complaints after this initiative was implemented. In Sweden and Finland the cases stopped for a while and then they restarted on a smaller scale. The company had managed to sign a new agreement with another payment service provider.¹⁹

The Nordic countries²⁰ have the same rules when it comes to chargeback.²¹ Purchases made with a credit card are regulated under a specific law that gives the consumer the right to complain to the credit provider, requesting reimbursement of the sum charged, if the company has not reimbursed the consumer. This has helped many consumers in the cases described in this project as the companies were unwilling to reimburse the consumers in question in most cases.

4.1.4 Success stories

A Danish consumer had subscribed to dating services on a Luxembourgish website but the advertising had led the consumer to believe that the price listed was payment for a whole year. After signing up she received an order confirmation and at this point she became aware that the advertisement had misled her because the amount charged was much higher than advertised. For this reason she wanted to withdraw

¹⁸ Please see section 5.1.5 “Enforcement” for an explanation of the CPC-Net.

¹⁹ Please see footnote 10.

²⁰ ECC DK, ECC FI, ECC NO and ECC SE.

²¹ A demand by a credit-card provider for a retailer to make good the loss on a fraudulent or disputed transaction, <http://oxforddictionaries.com/definition/english/chargeback?q=chargeback>

from the contract but the trader refused to allow this. The intervention of the ECC-Net helped the consumer to receive a full reimbursement.

A Finnish consumer placed an order for a teeth whitening test-product from a Danish trader. After few months she received two more unsolicited packages with a bill from a Swedish collection agency. The consumer did not open the packages and returned them to the address given on the packages. After making complaints to the trader the consumer only received responses in Swedish which she could not read. She also received collection letters from the trader including attorney fees. The ECC-net contacted the trader who eventually agreed to annul all the invoices.

ECC NO received several complaints regarding a Nordic company that advertised health products, where consumers received unsolicited products and claims from a debt collector who was acting on behalf of the trader in question. ECC NO gave relevant information on legal rights to the consumers and also on the relevant legislation regarding debt-collection. The practice in question and the claims against consumers ceased as a result of the information given.

ECC SE had a lot of success against a Slovakian company in particular. Both ECC SE and the Swedish Consumer Agency warned against the company and after this the company decided to stop their business on the Swedish market and to withdraw their claims against consumers.





At the beginning of 2012 ECC Sweden was contacted directly by a director of a weight loss product business. The company had discovered that both ECC Sweden and the Swedish Consumer Agency had many complaints against the company (approximately 60 cases) and as they were interested in resolving the cases the director asked for information about the complaints as well as contact information for all the consumers. ECC Sweden provided the information requested and once the company had investigated the cases they confirmed that they had no further claim against any of the consumers.

4.1.5 Worst stories

As all of these cases involved the same type of problems, there was not one particular case that stood out as being worse than the others. Consumers were misled into agreeing to these contracts, they were refused their right of

withdrawal and their bank/credit cards were charged without their consent.

However, the modus operandi of one of the companies on the Finnish market was worse than that of the others. In Finland the company had coded their web page in such a way that it was not possible to see the terms and conditions.

4.2 Statistics from the Commission

In order to be able to compare the situation in the Nordic countries with the rest of the European Union, statistics were gathered from the whole ECC-Net.²²

Table 2 shows cases where consumers have filed a complaint with an ECC office. The statistics in this table show which markets were targeted the most by these companies.

²² Due to the nature of these complaints, and the variations between the goods involved, it is sometimes difficult to codify them in exactly the same way in every country.

Complaints received as Consumer ECC 1 January 2011 - 31 July 2012

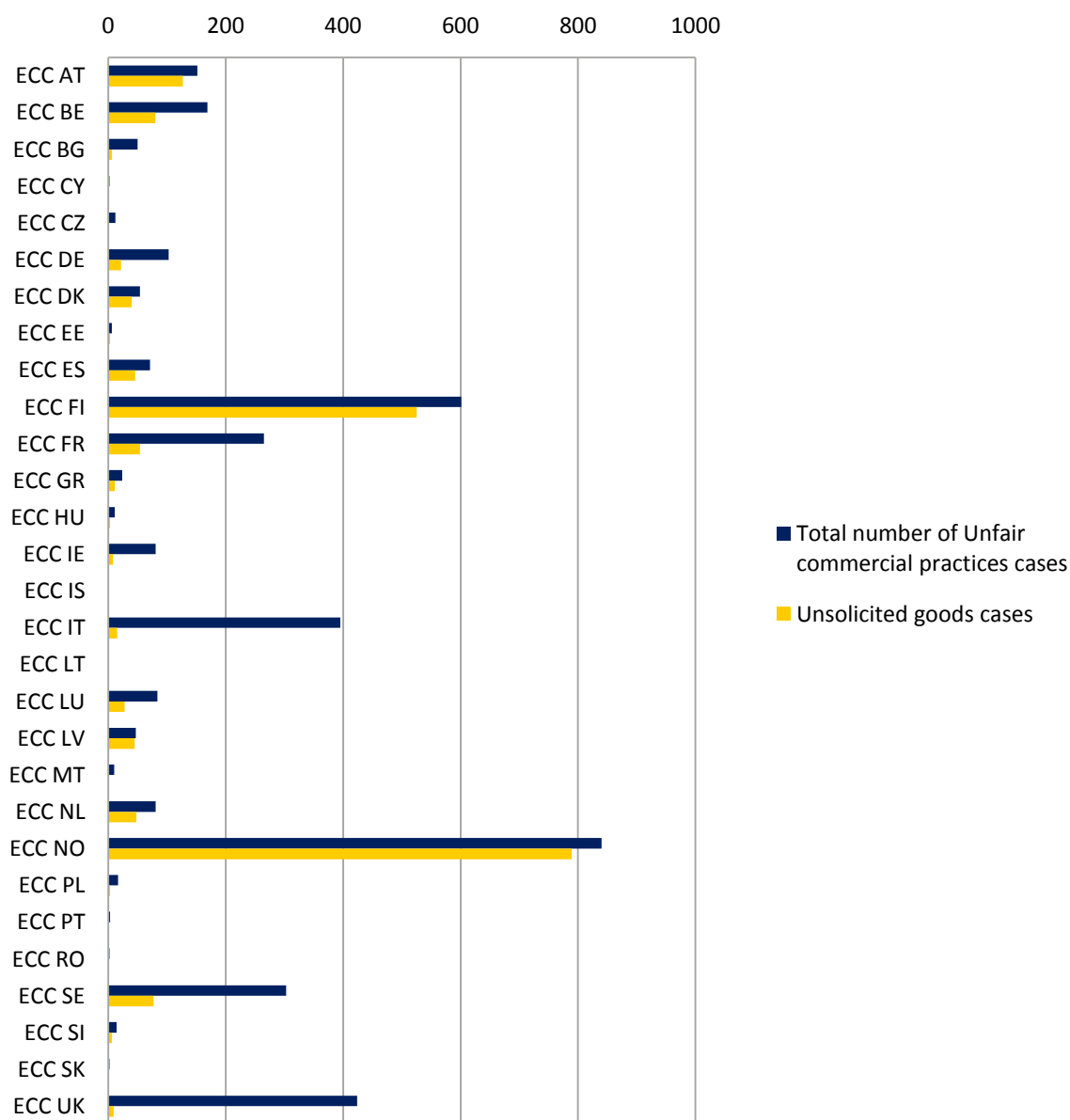


Table 2: Number of complaints received by the ECC-Net (1 January 2011 to 31 July 2012).²³

²³ Statistics from IT-Tool. Unsolicited goods are an unfair commercial practice and the bar showing unfair commercial practices cases therefore includes unsolicited goods and represents the total number of cases received by the different ECCs. At the time of writing this report ECC-Net used a system that categorized cases in three different ways: information requests, simple complaints (which involved giving advice to the consumer) and normal complaints (requiring the ECC of the consumer to transfer the complaint to the ECC of the country of the trader), please see http://ec.europa.eu/consumers/ecc/docs/e-commerce-report-2012_en.pdf for more information.

Complaints received as Trader ECC 1 January 2011 - 31 July 2012

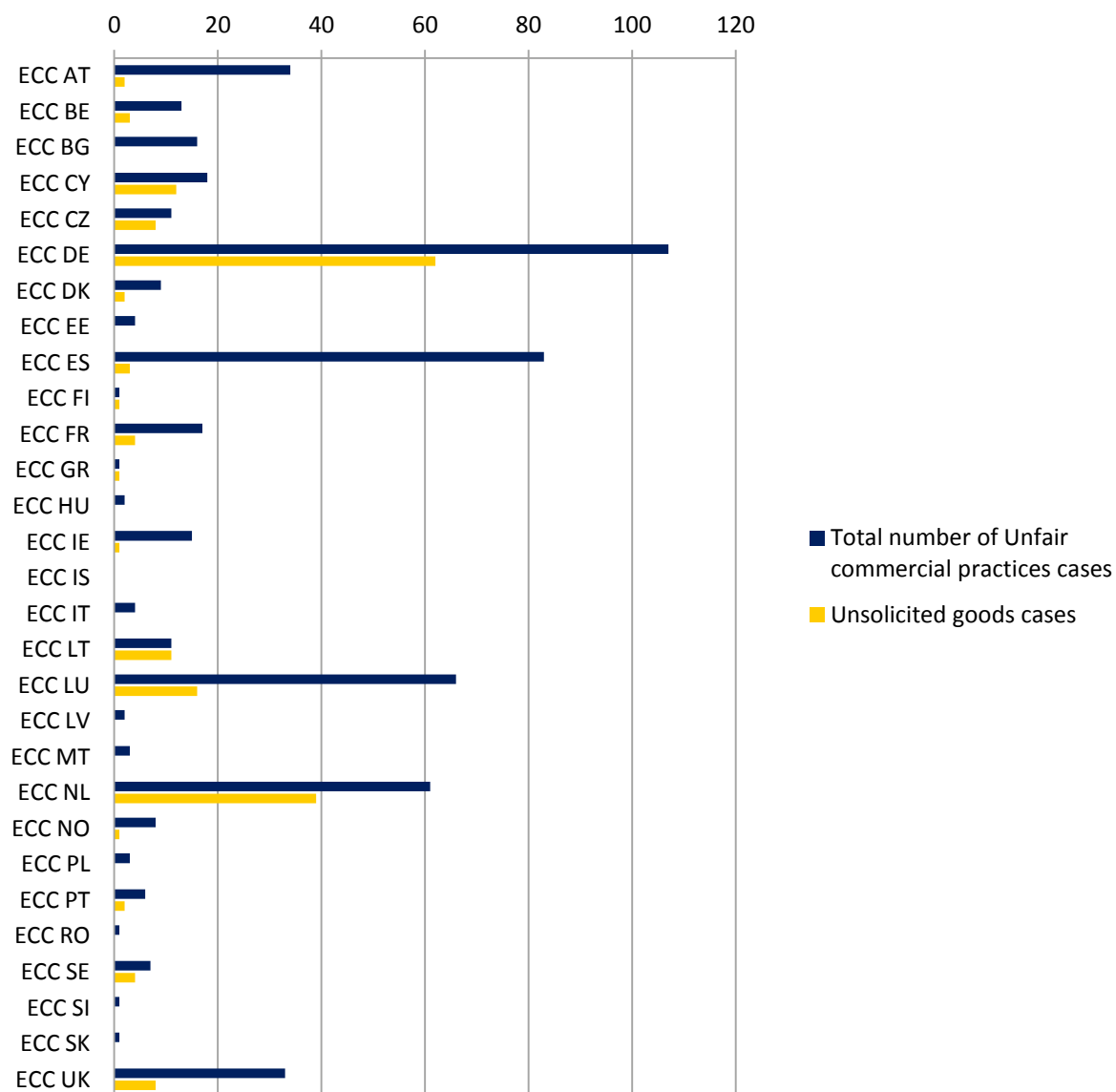


Table 3: Number of complaints received by the ECC-Net from 1 January 2011 to 31 July 2012.²⁴

²⁴ Statistics from IT-Tool. Sending unsolicited goods is an unfair commercial practice and the bar showing unfair commercial practices cases therefore includes unsolicited goods and is the total number of cases received by the different ECCs. Table 3 only shows normal complaints (cases that have been shared between different ECC offices); this is the only way to see how many cases have been received by different offices. Cases that were not shared regarding the Danish company are not seen in this table.

Table 3 shows cases that ECC offices have received from other ECC offices. Cases are shared with the ECC Office where the company in question is based. From table 3 it is therefore possible to see where these companies, and thus the cases, originate from.

The statistics in table 2 show that the following six countries received the largest number of complaints from their national consumers. The most targeted countries are:

1. Norway
2. Finland
3. United Kingdom
4. Italy
5. Sweden
6. France

The statistics from table 3 show that the countries where most of these problems originated i.e. where the companies were located are:

1. Germany
2. Spain
3. Luxemburg
4. The Netherlands
5. Austria
6. United Kingdom

Table 3 does not show Denmark as one of the top countries as these cases were not shared with ECC DK because they were registered in a different way and also due to the fact that many consumers were advised to get a refund from the credit card provider. This was a faster way for consumers to get redress and in these situations the cases were not shared.

However, having considered the answers to the questionnaire and by comparing the cases the Nordic ECCs had against a company registered in Denmark it is possible to conclude that Denmark is high on the list of countries that have a large number of these complaints originating in their territory.²⁵

The statistics show that these problems are not spread evenly across Europe as six countries received a lot more complaints than the rest of the countries in the European Union. Similarly, it is possible to see from the statistics that these problems come from companies in certain countries.

²⁵ See section 4.1.2 “Company and product related questions”.

5. Legal



5.1 EU legislation

5.1.1 Unfair Commercial Practices Directive

Under the Unfair Commercial Practices Directive²⁶ (UCP Directive) both misleading actions and misleading omissions are prohibited:

- Companies should not give false information to consumers, nor should they provide them with information which is factually correct but deceives or is likely to deceive the consumer. Marketing material and information, which the consumer needs in order to make an informed decision, cannot be hidden, and the companies should not fail to identify their commercial intent.
- It is prohibited to state that a product is available for a very limited time, if such a limitation does not actually apply.

- Products should not be described as “free” or “without charge” if the consumer is required to pay something. Immediate payment cannot be demanded when the product is not solicited by the consumer.

The purpose of the UCP Directive is to ensure a higher level of consumer protection by approximating the laws on unfair commercial practices within the EU.²⁷ The Directive states that commercial practices that are “unfair” shall be prohibited.²⁸ The Directive deals with the term “unfair” in a few different ways. To ensure that there is legal certainty on the matter, the Directive lists the commercial practices that shall, in all circumstances, be regarded as unfair. The practices found in the blacklist are the only practices that can be deemed unfair without a case by case assessment.²⁹ The list is valid in all

²⁶ Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the Internal Market.

²⁷ Directive 2005/29/EC, art 1.

²⁸ Ibid. art 5.1.

²⁹ Ibid. preamble p. 17.

Member States³⁰ and can only be changed by revising the Directive.³¹

Commercial practices that are either misleading or aggressive shall also be deemed unfair, according to the UCP Directive.³² Misleading commercial practices are divided into two categories: misleading actions and misleading omissions. A commercial practice is deemed to be misleading if it provides consumers with information that is false or that is presented in such a way that it deceives consumers into making choices that they would not have made if they had been correctly informed.³³ The same applies if information that the consumer needs in order to make an informed decision is omitted.³⁴ Information that is hidden or presented in such a way that the consumer cannot make an informed decision shall also be considered as omitted.³⁵

The Nordic ECCs find it problematic that the Directive does not exempt the consumer from obligations under the contract if the company has used unfair commercial practices. It is for a national regulatory body to order the cessation of the abusive behaviour on the part of the company, which does not, in itself, have a direct effect on consumers. This means that even if the company has used an unfair commercial practice in their advertisement the contract

that the consumer has signed is still binding. The Market Court can decide that a practice is unfair and that the company cannot continue with this practice.

5.1.2 Distance Selling Directive

The Distance Selling Directive³⁶ regulates distance purchases and provides a number of fundamental legal rights for consumers, one of which is especially important for consumers who find themselves in situations analogous to the ones described in this report. Consumers have a right to cancel the contract within a minimum of 7 working days without giving any reason and without incurring any penalty, except the cost of returning the goods. This time period is the minimum number of days that consumers are entitled to, which means that this period can vary between 7 and 15 days in different Member States.³⁷ However, if the company has failed to provide the consumer with the written confirmation specified in article 5 the time period for the right of withdrawal shall be extended to at least 3 months.³⁸ Since consumers usually do not receive sufficient information in these cases they could possibly have an extended cooling-off period of which they could avail.³⁹

³⁰ Directive 2005/29/EC has EEA relevance.

³¹ Ibid. art 5.5.

³² Ibid. art 5.4.

³³ Ibid. art 6.1.

³⁴ Ibid. art 7.1.

³⁵ Ibid. art 7.2.

³⁶ 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.

³⁷ Plus Iceland and Norway.

³⁸ Ibid article 6.1.

³⁹ See section 5.1.6 "Case law".

According to the Distance Selling Directive, Member States⁴⁰ shall prohibit unsolicited goods being sent to consumers and make sure that consumers do not have to accept any liability for goods that they did not order.⁴¹

5.1.3 Payment Services Directive

The Payment Services Directive⁴² protects consumers' rights in the event of unauthorised or incorrect debits from their accounts. A payment transaction is considered to be authorised only if the payer (hereinafter; the consumer) has given consent to execute the payment transaction. In the absence of such consent, a payment transaction is considered to be unauthorised.

In the case of an unauthorised payment transaction, the payment service provider should immediately refund the consumer the amount of the unauthorised transaction. Where a consumer denies having authorised an executed payment transaction or claims that it was not correctly executed, it is for the payment service provider to prove that the payment transaction was authenticated and accurately recorded. Also where a consumer denies having authorised an executed payment transaction, the use of debit/credit card for the payment recorded by the payment service provider is not necessarily itself sufficient to prove that the payment trans-

action was authorised by the consumer. It does not prove either that the consumer failed to fulfil the obligation to use the payment instrument in accordance with the terms governing the issue and use of the payment instrument.

If the consumer realises that an unauthorised debit has been made from the account, the right to an immediate refund exists as long as the consumer notifies the bank or credit card provider without undue delay on becoming aware of any unauthorised or incorrectly executed payment transactions, but in any event it must be no later than 13 months after the debit date.

One could argue that a single payment transaction, for example for ordering a "free" product sample with delivery costs, does not in itself prove that the consumer gave consent to any (one or more) subsequent charges being made by the company or that the consumer entered into a subscription with the company when ordering the product sample. However, if the terms and conditions for the purchase state that it is a subscription contract this is sufficient consent for further charges until the consumer withdraws his consent.⁴³

⁴⁰ Plus Iceland and Norway.

⁴¹ 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, article 9.

⁴² Directive 2007/64/EC on payment services in the Internal Market.

⁴³ Ibid article 54 3rd paragraph.

5.1.4 Applicable law and jurisdiction

The applicable law in contracts between consumers and companies is that of the country of habitual residence of the consumer, provided that this is also the country where the company pursues his commercial or professional activities or the country to which his activities are directed. Based on freedom of choice the parties may also apply another law as long as it provides the same level of protection to the consumer as that of his country of habitual residence.⁴⁴ Advertising is directed to a certain Member State when, for example the website or advertisements on social media is in the language of this Member State and the consumer does or could carry out the purchase process through the language of his Member State. In such cases the applicable law is the law of the country of habitual residence of the consumer.⁴⁵ Usually this has been the case with companies offering free sample packs to consumers on social media websites.

If a consumer decides to sue a company, the choice exists between bringing proceedings in the court of the EU country in which the company is domiciled or in the court where the consumer is domiciled. The company may only bring proceedings against a consumer in the court of the EU country in which the consumer is domiciled.⁴⁶



⁴⁴ Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I). Rome I is not applicable in Denmark and Norway (the Norwegian Supreme Court has stated in several decisions that Norway should seek unity with EU law and therefore the same principle applies). Convention on the law applicable to contractual obligations (80/934/ECC) is applicable in Denmark.

⁴⁵ Opinion of Advocate General Trstenjak delivered on 18 May 2010. *Peter Pammer v Reederei Karl Schlüter GmbH & Co. KG* (C-585/08) and *Hotel Alpenhof GesmbH v Oliver Heller* (C-144/09).

⁴⁶ Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I). Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007, art 16. is applicable to Norway.

5.1.5 Enforcement

In 2004 the Regulation on Consumer Protection Cooperation was adopted.⁴⁷ The Regulation lays down the conditions under which the responsible authorities in the Member States⁴⁸ shall cooperate with each other and with the European Commission in order to ensure compliance and to enhance the protection of consumers' economic interests. The Regulation covers breaches of 15 EU legal acts including the Directive on Unfair Commercial Practices, the Directive on Unfair Contract Terms and the Distance Selling Directive.

The supervisory authorities deal with collective interests and they can ask other members of the Consumer Protection Cooperation Network (CPC-Net) for help with investigations or taking action and the authorities of each country enter reports on legal violations into a shared database. The goal is to prevent illegal activities discovered in one country from occurring in other countries by cooperating with each other and with the Commission.⁴⁹ The CPC-Net is formed by more than 200 authorities responsible for the enforcement of at least one of the legal acts listed in the Regulation. CPC-Net coordinates simultaneous enforcement actions, such as Internet sweeps.⁵⁰ The authorities in CPC-Net have similar enforcement and investi-

gation powers which in some cases can include the possibility of carrying out on-site inspections.

The cooperation arrangements includes the following areas: (regular) contacts, case referrals, legal advice, sweeps, awareness-raising measures like information campaigns, specific arrangements related to the case handling of certain types of complaints.

5.1.6 Case law

Content services⁵¹

As has been stated in this report, one of the main issues for consumers is that they are not given sufficient information by the relevant companies. According to the Distance Selling Directive the consumer should receive all the relevant information needed to make an informed decision either through a written confirmation or confirmation through another durable medium.⁵² The Court of Justice of the European Union has recently found that it is not sufficient for a company to only supply this information via a reference to the company's homepage.⁵³ The Courts decision clearly reflects the Advocate General's conclusion in the case.

⁴⁷ Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

⁴⁸ Plus Iceland and Norway (Regulation (EC) n 44/5001 has EEA relevance).

⁴⁹ Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, article 3(b): "any act or omission contrary to the laws that protect consumers' interests, that harms, or is likely to harm, the collective interests of consumers residing in a Member State or Member States other than the Member State where the act or omission originated or took place; or where the responsible seller or supplier is established; or where evidence or assets pertaining to the act or omission are to be found".

⁵⁰ A "sweep" is an exercise to enforce EU law. It is led by the EU and carried out by national enforcement authorities who conduct simultaneous, coordinated checks for breaches in consumer law in a particular sector.

⁵¹ C-49/11 Content Services Ltd v Bundesarbeitskammer.

⁵² Directive 97/7/EC, Article 5.1.

⁵³ C-49/11 Content Services Ltd v Bundesarbeitskammer.

“The requirements of Article 5(1) of Directive 97/7/EC [...] are not satisfied where the information required by Article 5(1) is made available on a web page which the customer can access by clicking on a hyperlink shown when the contract is concluded.”⁵⁴

A possible consequence of this judgment could be that such companies will be required to provide consumers with the information in a way that the consumer can save it. The benefits for consumers would be that they would be able to prove what they agreed to when entering into the agreement. This also means that if the company has not provided the information according to the legislation the consumer’s right of withdrawal can be extended.

5.2 National legislation

5.2.1 Denmark

The national legislation in Denmark is the Danish Marketing Practices Act (Markedsføringsloven).⁵⁵ The Act is administered by the Danish Consumer Ombudsman. In general, the rules reflect those of the UCP Directive⁵⁶ and apply to both online and offline markets, however, marketing practises regarding financial products and services are exempted by some provisions of this Act.

The Act sets out the general rules of market conduct for companies. Depending on the nature of the complaint one or more provisions of the Act can be relevant (mainly Section 1

containing a general clause on good marketing practices, under which companies shall exercise good marketing practice with reference to consumers, other companies and public interest groups, when marketing their products and services towards the Danish market).

In Section 3, paragraph 1, it stipulates that companies marketing their products and services towards the Danish market may not use misleading or improper statements or omit material information if this is likely to materially distort consumers’ or other companies’ economic behaviour in the market.

According to paragraph 2, marketing whose content, form or method used is misleading, aggressive or subjects the consumers or companies to improper influence, and which is likely to materially distort their economic behaviour, is not permitted.

Cases that come under this provision include those cases relating to unsolicited goods and services where there has been no prior contact between the company and the consumer, and cases where some contact has been established, but where it was not clear to the consumer that an agreement had been entered.

The Danish Consumer Ombudsman has the power to impose sanctions on a company which is not complying with the provisions of the Danish Marketing Practises Act. Possible sanctions include: Issuance of guidelines, negotiation, file lawsuit against the company, conduct on-site inspections after court order and

⁵⁴ AG’s opinion to case C-49/11 para 47.

⁵⁵ Link to the Act in full (please note that the translation is not official): <http://www.consumerombudsman.dk/Regulatory-framework/Danish-Marketing-Practices-Act/marketingpractisesact>.

⁵⁶ See section 5.1.1 “Unfair Commercial Practices Directive”.

require the disclosure of all details considered necessary for his activities, initiate legal proceedings, issue prohibitions, impose provisional prohibitions, impose injunctions and take actions for damages (collective claims), issue fines and in some cases companies may even be subject to criminal liability (imprisonment).

In Danish contract law (Aftaleloven)⁵⁷ there is a bailout clause protecting the weaker party (here: the consumer) against unfair contract terms or improper conduct in business. The clause makes it possible for an ADR body or for the Court to rule that a specific term is unfair or to render the contract void. The clause also entitles an ADR body or the Court to change the term in question.

5.2.2 Finland

Consumer protection act (38/1978) Chapter 2 includes the regulations of marketing and implements the UCP Directive.⁵⁸ The Consumer Ombudsman supervises the lawfulness of marketing methods. In case of a violation of the law The Consumer Ombudsman primarily tries to resolve the matter by contacting the company so that they will voluntarily end or change their practices. Depending on the situation the company may be required to give an explanation of how it will change their illegal practice; the company may be asked to participate in negotiations on how they are going to end or change their practices; or the company may be asked for a commitment in writing that it will end or change the illegal practice. If these steps fail to resolve the matter or if the offence is repeated the Consumer Ombudsman may bring the matter to the Market Court or in obvious

cases may directly issue a prohibition against continuing the illegal practices. A temporary prohibition is also an option for the Consumer Ombudsman if a company's actions must be stopped quickly. It is effective immediately but the matter must be taken to the Market Court for confirmation within a few days. The Market Court and the Consumer Ombudsman can both impose conditional fines to support their prohibitions. If illegal practices are continued by the company despite the prohibition, the Consumer Ombudsman can apply to the Market Court for the fine to be collected. Both parties can apply to the Supreme Court to appeal against a decision of the Market Court.

Contract terms in consumer contracts are regulated by the Consumer Protection Act. A company offering consumer goods or services is not allowed to use contract terms which, considering the price of the good or service and the other relevant circumstances, is to be deemed unreasonable from the point of view of consumers. If a term in a contract is unreasonable from the point of view of the consumer, the term may be adjusted or it may be disregarded. If a contract term is of such a nature that it cannot reasonably be required that the rest of the contract would remain in force unaltered after the adjustment of the term, the contract may be ordered to lapse.⁵⁹

Chapter 7 of the Consumer Protection Act contains the rules on consumer credits. According to section 39 a consumer who is not obliged to pay a seller or who is entitled to receive a refund from the seller or the service provider based on a breach of the contract, has the same rights against the creditor who financed

⁵⁷ Link to the official text of the Act: <https://www.retsinformation.dk/Forms/r0710.aspx?id=82218>.

⁵⁸ Consumer Protection Act (38/1978): <http://www.finlex.fi/en/laki/kaannokset/1978/en19780038>

⁵⁹ Consumer Protection Act (38/1978) chapter 3 section 1 and chapter 4 section 1.

the purchase or the service. The creditor is not obliged to refund more than what he received from the consumer as payment.

The Finnish Consumer Agency is the CPC in Finland and it enters reports into the database on behalf of other Finnish authorities and otherwise serves as the contact agency for Finland. Due to technical problems the CPC database has not been accessible in Finland for at least 1½ years but problems have now been solved and the system is functioning again.⁶⁰

5.2.3 Norway

The national legislation applicable in Norway is The Marketing Control Act (Markedsføringsloven),⁶¹ which implements the UCP Directive.⁶² The Marketing Control Act relates to the control of marketing, commercial practices and contract terms and conditions in consumer transactions, and requires companies to follow good business practices in their transactions with each other.

The Consumer Ombudsman and the Market Council monitor the compliance with the provisions of the Marketing Control Act.⁶³

The main issue for Norwegian consumers was that their credit/debit cards were being charged directly and that the company argued that they had agreed to a subscription. The marketing information was not good or clear enough and

as a result consumers ended up agreeing to a subscription without their knowledge or intention. Consumers thought they were ordering a free sample pack and that they only had to pay for the cost of delivery.



⁶⁰ The technical problems were solved before the turn of the year 2013.

⁶¹ Act No. 2 of 9 January 2009 relating to the Control of Marketing and Contract Terms and Conditions, etc., A non-official translation can be found here: <http://www.forbrukerombudet.no/id/11039810.0>

⁶² See section 5.1.1 “Unfair Commercial Practices Directive”.

⁶³ With the exception of Chapter 6 (The Marketing Control Act).

When a company charges consumers under these circumstances it is considered contrary to Section 11 of the Marketing Control Act:

“It shall be prohibited in the course of trade:

*(a) to demand payment for goods, services or other products without prior agreement,
(b) to deliver goods, services or other products with a demand for payment without prior agreement.*

In the event of a delivery [...], the recipient shall not be obliged to pay [...]”

Consumers were advised to send a written complaint to the company and not to pay if they had not agreed to a subscription and that the company was unable to prove that they had a legitimate claim for payment.

In Norwegian contract law there is a protection against unfair contract terms or improper conduct in business. The contract term or the whole contract can be disregarded when it breaches the regulation. It applies to circumstances as they were at the time of entering the contract and to events occurring after the conclusion of the contract while also taking into consideration the different level of position between the parties. In addition there is a regulation protecting consumers from traders in relation to contracts that were not individually negotiated between them.

5.2.4 Sweden

⁶⁴ See section 5.1.1 “Unfair Commercial Practices Directive”.

⁶⁵ Swedish Marketing Law, Marknadsföringslag (2008:486).

⁶⁶ Swedish Contract Law, Lag (1915:218) om avtal och andra rättshandlingar på förmögenhetsrättens område, § 36 AvtL.

The UCP Directive⁶⁴ is implemented in Swedish law through the Swedish Marketing Law.⁶⁵ Annex 1 of the Directive is implemented in article 4 of the Marketing Law. Companies who violate the Marketing Law can be charged by the Consumer Ombudsman with either an order prohibiting them from continuing the practise or with an injunction ordering them to provide consumers with additional information. These prohibitions and bans are then connected to a penalty that will be enforced if the company continues the illegal commercial practice.

Certain practices are more serious than others and for these practices a special penalty can be charged to companies who violate these rules. The practices listed in annex 1 to the Directive are subject to these stricter rules.

A problem with the Marketing Law is that it does not impose any restrictions on the validity of contracts entered into by consumers in cases where companies have violated the Marketing Law.

In Swedish Contract Law there is a bailout clause⁶⁶ that states that if a contract term is unreasonable it can in certain circumstances be adjusted or disregarded. If a contract term is of such importance for the contract that the purpose of the contract fails the contract may be disregarded in its entirety. The clause also holds a reference to consumers stating that when assessing a contract according to this clause special consideration shall be taken in order to protect consumers.

6. A way forward



When considering how to deal with these issues there are a number of different things that need to be addressed. The problems can be accessed from a couple of different aspects. As the aim of the project was to collect useful information for consumers, stakeholders and the ECC-Net this section has been divided into three parts:

1. The first part is directed towards consumers and includes checklists, which can also be useful for the media.
2. The second part is directed towards regulatory bodies and highlights the problems on a larger scale.
3. The third part is directed to the ECC-Net with ideas how to go forward and how cooperation with payment providers can help.

6.1 Information for consumers

In many of the cases consumers could have avoided the problems they faced by simply being more critical towards the information provided by the company. It then stands to reason that this is one of the first things that need to be addressed. Consumers need to know how to assess the information (or lack thereof) given by companies and see early warning signs. Unfortunately, consumers might not always take the time to critically assess the company or the offer and sometimes they might miss the warning signs even if they have done so. The “Checklist for consumers before ordering” can help consumers do this.

The consumer authorities – the CPC-Net evaluate whether campaigns and practices are misleading⁶⁷ from the point of marketing law whereas the ECC-Net concentrates on the contract terms and the burden of proof on the existence of a binding contract.

6.1.1 Checklist for consumers before ordering

Consumers should be extra vigilant when ordering something online or via social media websites that is being marketed as a “free sample product”, or when an offer seems too good to be true, because it probably is.

As this project has highlighted, many consumers were tempted to click on a Facebook advertisement to order what they perceived to be a free sample pack, where the only cost would be to pay for the delivery of the item.

Experience shows that consumers should be more critical before agreeing to something advertised online, for example on social media. Below is a checklist of what consumer should keep in mind when considering such offers (non exhaustive):

Before responding to an advertisement make sure you have done the following:

- Check who you are dealing with: go to the company’s official website and see if you can find the company’s name and full con-

tact details, including postal address and e-mail address.

- Check where the company is based, do not assume that a website is based in the country indicated by the domain name. Your rights and ECC-Net’s ability to help you if something goes wrong depends on where the company is based. Keep in mind that if you shop from websites based outside the EU, Norway and Iceland, your European consumer rights will not necessarily apply and you may face unexpected customs and tax fees.⁶⁸
- Read the company’s terms and conditions. If they are not visible on the advertisement you should go to the company’s website and see if you can find them there. Keep a copy of the terms and conditions. If you can’t find the terms and conditions, do not agree to what is being offered.
- Consult Howard⁶⁹ in order to assess the website you’re considering buying from.



⁶⁷ http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/ucp_en.pdf

⁶⁸ Additional fees could be tied to products sent to and from Iceland and Norway. For more information see the ECC-Net report “Online Cross-border Mystery Shopping-State of the E-Union”, Section 4.2.2. “VAT and customs” and Section 5.3.2. “ Unexpected Costs. The report is available here: http://ec.europa.eu/consumers/ecc/docs/mystery_shopping_report_en.pdf

⁶⁹ Howard is the ECC-Net’s interactive shopping assistant who can help you to identify the trustworthiness of a website before purchasing. Howard also gives good advice on online cross border shopping. A link to Howard, the shopping assistant is available on your national ECC website.

When reading the terms and conditions you should especially look out for:

1. Information about your rights to withdraw from the contract.
 2. Information about the company's cancellation and return policy.
 3. Read the small print! Make sure you are not inadvertently agreeing to a subscription.⁷⁰
- It is always a good idea to research the background of the company before agreeing to what is being offered. A simple Internet search can reveal any negative feedback about the company left by other consumers. Be aware that positive feedback is not a guarantee that you will not encounter problems.
 - Make a screenshot of the advertisement and each step of the order process and save the terms and conditions with the special offer in order to keep a record of what you agreed to.
 - Paying using bank/credit card may give you additional protection depending on your contract with the bank/credit card company and the legislation in your country.
 - Make sure you use a secure website to enter bank/credit card information. Look for a closed padlock symbol in the bottom right of the browser window and for the website address to begin with "https://".
 - Use common sense! Remember, if it sounds too good to be true, it probably is.

6.1.2 To do-list for consumers after ordering

In cases where consumers have neglected to critically assess the offer and/or the company and as a result have inadvertently entered into an agreement, it is important to provide consumers with information on how to proceed and exercise their rights. Even when consumers have terminated a contract correctly, they usually do not know what to do when they keep on receiving invoices and/or goods. Consumers also have to be made aware of how to deal with these issues.

- Send a written complaint to the company where you explain the issue and where you inform them that you do not intend to pay. Indicate the number, amount and date of the invoice and the reason why you will not pay. Request a reimbursement if your debit/credit card has been charged without your consent. It is important to keep relevant documentation when disputing an invoice or unauthorised debit/credit card charge; you should therefore always keep copies of all correspondence exchanged.
- Never sign the complaint letter with your signature. There have been cases where companies have copied and forged signatures.
- If you receive a reminder about the first invoice, you are not obliged to dispute the same claim again. It is sufficient to object to the first invoice. Of course, if you want, you can send a reply and refer to previous correspondence.
- Although you have objected to an invoice the company may have taken the matter to a debt collection company. You will receive a new invoice or a payment reminder, this time from

⁷⁰ For information regarding what kind of information traders have to provide to consumers, see E-Commerce report, "European Online Market Place – Consumer complaints 2010-2011". Annex 2 checklist for traders, http://ec.europa.eu/consumers/ecc/docs/e-commerce-report-2012_en.pdf

the debt collection company. It is important to send a written complaint to the debt collection company disputing the new invoice/payment reminder. The objection should contain the same information as the original complaint to the company. Again, it is important to keep a copy of the letter you send.

- You do not risk a payment default⁷¹ just because you dispute a claim by a debt collection company. You will only get a payment default when the district court has ruled that you are obligated to pay, and you still choose not to pay. Dispute any invoice that you do not think you should pay.
- Some ECCs have a complaint guide with letter templates available in different languages facilitating the complaint process. Contact your national ECC to see if they have such a letter available.
- If you are unable to solve the complaint with a company located in another EU country or Norway and Iceland, contact your national ECC-office for further advice and assistance.

6.1.3 Liability for Unsolicited Goods

In cases where a consumer receives unsolicited goods from a company that the consumer has never been in contact with, no valid agreement exists and the consumer therefore does not have any obligation towards the company. However, it is important that the consumer does not use the product since this may imply an acceptance of the contract.

Consumers that have received unsolicited goods should be aware of the following:

- You have no liability for products you have not ordered.
- You do not have to pay for products you have not ordered.
- Even if you have no liability for the delivered product, you will still need to care for the delivered product in order to limit the damage for the company. This entails informing the company of the wrongful delivery and to some extent storing the product in question.
- If the company wants the products to be returned, the company should make arrangements so that you can return the products without any costs. Do not return products without a receipt.
- If you have not ordered a product, you are not required to pay when a debt collection company contacts you, but it is important that you dispute the claim. Debt collection companies do not examine whether the claim submitted by the company is legally correct before a consumer disputes it. It is up to the company to prove that you are obliged to pay.

6.2 Information for regulatory bodies

The level of cooperation between ECCs and CPC authorities differs from country to country. These cooperation arrangements range

⁷¹ A record for payment default is a record kept by credit reference agencies, noting if you have not kept up with your payments.

from “ad-hoc” arrangements to the signing of formal cooperation agreements. In some countries ECC’s are located in the same premises as the CPC, belonging to the same authority. This facilitates cooperation and exchange of information.

Both networks could benefit from enhanced cooperation in terms of efficiency, effectiveness and visibility in their work by creating a more concise system of cooperation as these two networks not only share common elements, but also some important differences:

- ECCs have no enforcement powers, the CPC authorities do.
- ECCs deal with individual complaints, the CPC authorities deal with collective interests.

As ECC-Net can only deal with individual complaints, cooperation with CPC-Net is invaluable to stop those companies who do business as described in this report. Although the work assignments of the two networks are different, the main aim of both networks is the promotion of the Internal Market; it is indispensable for the two networks to collaborate as well as to further their alliance in the future to achieve the best possible results for consumer issues.

The overall performance of the existing consumer redress and enforcement tools designed at EU level is not on a satisfactory level. The European Commission has also stated that although The

Consumer Protection Cooperation Regulation is relatively new the public cross-border enforcement is not yet at a satisfactory level. Alternative dispute resolution mechanisms are not available to consumers in all Member States or in all sectors.⁷² Even if there are ADR mechanisms available, some of the products in question are exempt from the competence area of the ADR bodies while some products are uncertain due to the nature of the product, because it has not yet been tried whether the ADR body has the necessary competence.

Another problem that has become apparent in this report is that there is a gap between the market law and the private law. The market law can force companies to stop with abusive behavior, however, this does not have a direct affect on individual consumer contracts. If a consumer has been misled into agreeing to a contract that contract can only be cancelled by an individual evaluation by the court. The outcome depends on the facts in each separate case based on the documentation provided.

6.3 Information for ECC-Net

The national consumer authorities also play an important role when fighting these types of companies. Here, cooperation with other stakeholders can also be beneficial. ECC NO along with the Norwegian Consumer Council had a lot of success stopping one of most problematic companies through cooperation with the banks and payment processing companies in Norway.

⁷² http://ec.europa.eu/consumers/redress_cons/greenpaper_en.pdf. Page 6, point 17.

Case handling

It is important to have a case handling tool adapted to the harmonised methodology for classifying and reporting consumer complaints and enquiries.⁷³ Case handling manuals with COICOP⁷⁴ codes aids the case-handlers to codify all the cases in exactly the same way in every country. This is sometimes difficult due to the nature of these complaints and due to the variations between goods. Case-handling statistics provides a good basis for how we can develop different areas, show trends and highlight how various issues dominate in different countries.

6.3.1 Cooperation with payment providers

Payment processing companies

ECC NO reached out to the payment processing companies. They first contacted the largest acquirer of international payment cards in the Nordic region (hereinafter “card acquirer company”) informing them about the number of complaints received and the fact that the company was acting contrary to The Marketing Control Act.

As a result the card acquirer company informed ECC NO which Swedish bank had a card acquirer⁷⁵ agreement with the company. ECC NO then contacted the bank in question informing them about the company’s conduct and the number of complaints received. As a result the

bank terminated the card acquirer agreement a couple of days later. The bank then passed the information on to the payment service provider who terminated their Payment Service Provider⁷⁶ agreement with the company.

Unfortunately, after a short while ECC NO started receiving new complaints. The card acquirer company informed ECC NO that another Swedish bank now had the card acquirer agreement with the company and another payment service provider the Payment Service Provider agreement. After ECC NO informed the bank and the payment service provider about the situation these agreements were also terminated in May 2012.

Banks

The Norwegian Consumer Council reached out to the Norwegian banks. They argued that the banks were obligated to reimburse consumers, due to the fact that there was no valid subscription contract between the company and the consumers. The withdrawal from the consumers’ bank accounts was therefore unauthorized. In addition, The Norwegian Consumer Council informed them that they were willing to take the issue to court if the banks refused to refund the affected consumers.

ECC NO and The Norwegian Consumer Council informed consumers about their rights

⁷³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a harmonised methodology for classifying and reporting consumer complaints and enquiries [SEC(2009)949]

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009DC0346:EN:NOT>

⁷⁴ Classification of Individual Consumption According to Purpose, <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=5>

⁷⁵ A card acquirer processes credit and/or debit card payments for products or services for a merchant.

⁷⁶ A Payment Service Provider (PSP) offers merchants online services for accepting electronic payments by a variety of payment methods including credit card, bank-based payments such as direct debit, bank transfer, and real-time bank transfer based on online banking.

and how to proceed in relation to the company and the banks. They were also advised to contact the Finance Complaints Board⁷⁷ if the banks refused reimbursement. Standard letters which could be used for submitting a complaint to the banks and the Finance Complaint Board were prepared for consumers.

The joint action and cooperation between ECC NO and the Norwegian Consumer Council, together with the information provided to the media resulted in a dramatic decrease in the number of complaints and an increase in the number of consumers being refunded by the banks. The fact that it was easy to get in touch with the payment processing companies, who were very forthcoming, took the matter seri-

ously and acted accordingly, really helped the situation for consumers.

The success in Norway can be used as an example of how the ECCs/national consumer authorities can cooperate with payment processing companies and banks in order to deal more effectively with problems like these. The same procedure was used in Sweden where the Swedish Consumer Agency contacted the banks after receiving information about the Norwegian procedure from ECC SE. The cooperation between the Swedish Consumer Authority and the banks was made possible by the information exchanged between ECC offices.



http://ec.europa.eu/consumers/ecc/index_en.htm

⁷⁷ <http://www.finkn.no/vis.asp?id=1>

7. Conclusions and recommendations



There is a need to empower consumers by providing them with the information and the tools they need in order for them to know what they are buying or agreeing to. Consumers need to know how to handle these problems as it would strengthen consumers' confidence in cross border trade and thus strengthen the Internal Market.

The problems assessed in this report arise fast and affect many consumers. It is the view of Nordic ECCs that authorities have to be faster in responding to these commercial practices. There is a need for faster ways to warn consumers about these companies and to inform them on how to proceed if they have already gotten themselves into trouble. Consumers also need to be more aware of the potential problems they face when accepting offers on the Internet and how to deal with them. In order to be able to face and adapt to future challenges we offer the following conclusions and recommendations.

7.1 Conclusions

- Consumers do not have the knowledge needed to deal with the types of problems described in this report. They are also not sufficiently critical about advertisements they encounter on the Internet.
- ECC-Net and CPC-Net work in different ways but share a common goal. The networks could therefore benefit from enhanced cooperation in terms of efficiency, effectiveness and visibility in their work. This would boost consumer confidence and strengthen consumers' rights when shopping in the Internal Market.
- ECC-Net needs to increase their cooperation with other stakeholders like banks and payment service providers as well as with the media in order to be able to inform consumers about their rights and warn them against specific companies.

7.2 Recommendations

7.2.1 To consumers

- Consumers should be more careful when encountering advertisements on social media websites etc offering free products. In most cases there is a subscription involved.
- Consumers should consult the checklist and the to-do list provided in this report to see what they have to do before or after ordering an item advertised as explained in this report or when they receive goods they did not order.
- Consumers should also contact their national ECC office when in need.
- Consumers should also use Howard the shopping assistant as a tool to evaluate different websites.

7.2.2 To regulatory bodies

- It is important that the CPC- and ECC-Networks have the ability and resources to handle these types of cases without undue delay, especially when it becomes clear that many consumers are being affected during a short time period.
- Consumers would benefit from an increased cooperation between the ECCs and enforcement authorities, such as consumer agencies, CPCs, ADRs, police etc.
- Cooperation with banks and payment processing companies. The experiences from Norway and Sweden showed that this is an effective and efficient way to stop companies from charging consumers bank/credit cards.

- Clarify certain legal aspects, e.g. in Sweden there was a discussion regarding if consumers are allowed to test a sample product.

7.2.3 To ECC-Net

- Continue to develop ECCs websites in relation to these types of problems, providing tools for consumers e.g. template letters, checklists etc.
- To develop new alert systems within ECC-Net, by using statistics to spot new problems. Working methods could be an alert tool within ECC-Net. Special meetings with authorities. Sweeps together with the CPC, checking potential websites.
- The statistics for the entire ECC-Net shows that consumers from some countries are targeted and affected by potential misleading practices more than others. These companies often, for example, direct their business operations towards consumers in the Nordic countries. ECC-Net should regularly evaluate and analyze the statistics that are available. By analyzing statistics for certain sectors ECC-Net would be able to focus resources towards problem sectors more efficiently in order to serve consumers in the best possible way.
- Increased cooperation with the media is imperative in order to influence consumer behaviour before they fall victim to such scams and to inform them when ECC-Net or a particular office has received many complaints against a particular company.

Annex I

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Annex II

Questionnaire

Unsolicited Goods and Unfair Commercial Practices

Please answer all the questions, and if you do not have any information or answer for a question just write “no data” instead. The time period for the questionnaire is 1/1/2011 – 31/7/2012. When you answer, please separate the information for 2011 and 2012. The questionnaire presupposes that you have read the updated project proposal. If you have any questions do not hesitate to contact ECC SE.

Question 1	2011		2012	
<p>How many unsolicited goods cases has your ECC office received? (Please make a distinction between cases where the consumer has had no prior contact with the trader and cases where the consumer has ordered a sample and then been bound by a subscription.)</p>	<p>Pure inertia selling (no prior contact).</p> <p>1. Consumer ECC:</p> <p>2. Trader ECC:</p>	<p>Unsolicited goods (Unfair commercial practices).</p> <p>1. Consumer ECC:</p> <p>2. Trader ECC:</p>	<p>Pure inertia selling (no prior contact).</p> <p>1. Consumer ECC:</p> <p>2. Trader ECC:</p>	<p>Unsolicited goods (Unfair commercial practices).</p> <p>1. Consumer ECC:</p> <p>2. Trader ECC:</p>
Question 2	2011		2012	
<p>How many unsolicited goods cases has your national consumer authority received? (Please make a distinction between cases where the consumer has had no prior contact with the trader and cases where the consumer has ordered a sample and then been bound by a subscription.)</p>				
Question 3	2011		2012	
<p>Which are the most prominent companies in these cases? Please list the top five companies.</p>	<p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5.</p>	<p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5.</p>		
Question 4	2011		2012	
<p>Which are the most prominent products in these cases? Please list the top five products.</p>	<p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5.</p>	<p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>5.</p>		

Question 5	2011		2012	
Which are the most prominent countries in these cases? i.e. the countries where the trader has his place of residence.	1.		1.	
	2.		2.	
	3.		3.	
	4.		4.	
	5.		5.	
Question 6⁷⁸	2011		2012	
How many cases has your host organization sent to CPC? What has the outcome been?	Number of cases:	Outcome:	Number of cases:	Outcome:
Question 7	2011		2012	
With regard to these types of cases, have you been in contact with any payment service providers?	Yes/No: (If yes, please indicate what the result of that contact has been?)	Outcome:	Yes/No: (If yes, please indicate what the result of that contact has been?)	Outcome:
Question 8	2011		2012	
How do you apply chargeback in your country? (Is the chargeback system based on law or contractual grounds?) Has it been useful for consumers in these types of cases?				
Question 9	2011		2012	
Success stories: Please list five cases that have been successful. (Please add the IT-Tool number)	1.		1.	
	2.		2.	
	3.		3.	
	4.		4.	
	5.		5.	
Question 10	2011		2012	
Worst cases: Please list five cases that have been unsuccessful. (Please add the IT-Tool number)	1.		1.	
	2.		2.	
	3.		3.	
	4.		4.	
	5.		5.	

⁷⁸ “Numbers can vary due to national organizational differences between host structure and CPC-authority.”

<p>Question 11</p> <p>How did the consumers get in contact with the companies, where did they find the ads? (e.g. Facebook, Newspaper...) Did the ads have information about the subscription if you bought the test product? Did the consumers read the terms & conditions? Was there any information about the cooling off period? Did you receive any misleading ads for documentation purpose. If so, please attach them when sending the answer to ECC SE.</p>	2011	2012
<p>Question 12</p> <p>Please list the top five Unfair Commercial Practices used by companies in these cases.</p>	<p>2011</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5. 	<p>2012</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5.
<p>Question 13</p> <p>Which are the biggest problems that consumers are faced with in these cases? (e.g. they cannot reach the company, they do not know which company they ordered from, it is not clear which company actually sent the product, the consumer does not know what to do with the product etc.) Please list the top 5 issues.</p>	<p>2011</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5. 	<p>2012</p> <ol style="list-style-type: none"> 1. 2. 3. 4. 5.

Notes

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This report has been coordinated and written by the following ECC offices.

ECC Denmark *ECC Finland* *ECC Norway* *ECC Sweden*