

Brussels, 16 September 2010

## Sweep Investigations. Frequently Asked Questions: 2009 Sweep on electronic goods (second phase)

### GENERAL BACKGROUND

#### What is a sweep?

An "EU sweep" is a joint EU investigation and enforcement action to check for compliance with consumer protection laws. It involves carrying out a targeted and coordinated check on a particular sector in order to see where consumer rights are being compromised or denied. National enforcement authorities then follow up on these findings, contacting the non-compliant companies and demanding that they come into line with the relevant requirements. Legal action can be taken against operators who violate EU consumer law.

#### How does a sweep work in practice?

There are two phases:

- *The first phase is the **co-ordinated sweep action**. National authorities systematically and simultaneously check a particular market for practices which breach EU consumer law. All the authorities use a common checklist of irregularities that they are looking for. For instance, it is against EU-wide consumer rules not to provide full contact details of the trader, or not to inform online buyers clearly about their right to withdraw from the transaction.*
- *The second phase is the **enforcement action**. During the enforcement phase, authorities further investigate traders which are suspected of irregularities, and take follow-up actions to ensure that non-compliant conduct is corrected and to impose appropriate sanctions. National authorities investigate and take enforcement actions for national cases. For cross-border cases (where the trader operates from another country), enforcement authorities can ask for assistance from authorities in other countries. This is possible thanks to the Consumer Protection Co-operation (CPC) Network of national enforcement authorities from 27 EU Member States as well as Norway and Iceland. During this enforcement phase the companies have a right of reply and an opportunity to correct practices which are illegal. Those who fail to do so can face legal action leading to fines or to their websites being closed. For the 2009 electronics sweep, the results of this phase are presented below.*

#### How long does enforcement take?

It varies. Some companies are ready to correct mistakes after the first contact by the enforcers while others tend to postpone the necessary changes or even challenge the findings. The length of the enforcement phase depends on how complex the individual cases are or whether they require international coordination. Complex cases – e.g. those involving several sites in different countries – may last even longer than a year.

### **How do you contact websites that do not have contact details (which is one of the problems identified with many of these websites)?**

Authorities have the necessary powers and tools to establish the identity of operators – either those owning the site or at least those operating the server on which it is based. If the identity of the (legal or private) person operating a problematic website cannot be established and therefore enforcers cannot contact it, the authorities may request the webserver operator to shut it down.

### **Why does a sweep require EU co-operation?**

Online selling concerns a certain percentage of operators located in countries different from the consumers' country. **Tackling rogue online traders across borders** would be difficult without an EU-wide network. For example, a website selling to France may well be based in Belgium, and to challenge an illegal practice in this case France needs to ask Belgian authorities for co-operation. Handling such cases as part of a co-ordinated, simultaneous EU-wide check reduces the risk of a duplication of effort and is therefore **good use of resources**.

A co-ordinated EU-wide action also has **clear added value at national level** since the sweep is not just about cross-border cases but also about acquiring and sharing the experience of enforcing the legislation at national level. Experience gained by enforcement authorities at national level will also benefit them when handling cross-border cases. This is important as the CPC Network builds its capacity in its first years of operation.

### **What sanctions can be imposed?**

EU consumer laws are enforced – and sanctions and penalties are therefore set – at national level. Possible measures can include a request to a company demanding to change or cease a prevailing practice, imposing and collecting fines, or as a last resort, may ultimately lead to the closing down of the websites. Enforcement authorities are obliged to take measures (repeatedly if need be) until the infringement has ceased.

## **2009 SWEEP ON ELECTRONIC GOODS**

### **Enforcement phase results**

The sweep on **electronic goods** targeted websites selling popular electronic goods in six product categories. Co-ordinated by the European Commission, the first phase simultaneous check was carried out between 11 and 15 May 2009 by enforcement authorities in 26 EU Member States (all except Slovakia) as well as by Norway and Iceland (see [IP/09/1292](#)).

The following enforcement results are based on available reports from 28 participating EU/EEA countries. Out of the 369 websites checked, 310 sites (84%) now comply with EU consumer laws, compared with only 163 sites (44%) in May 2009. For the remaining 59 cases, enforcement action is still ongoing, either nationally or in co-operation between enforcement authorities in different EU/EEA countries.

**Table 1: Summary**

Total number of websites checked	Total number of compliant sites in May 2009 (first sweep phase)	Total number of compliant sites in Sept 2010 (results of the enforcement phase)	Ongoing cases		
			National cases	Cross-border cases	Total number of ongoing cases
369	163	310	38	21	59

**Table 2: Results per country**

Country	Total number of websites checked	Total number of compliant sites in May 2009 (first sweep phase)	Total number of compliant sites in Sept 2010 (enforcement results)	Ongoing cases		
				National cases	Cross-border cases	Total number of ongoing cases
Austria	10	10	10	0	0	0
Belgium	17	6	15	1	1	2
Bulgaria	12	12	12	0	0	0
Cyprus	12	0	12	0	0	0
Czech Republic	10	6	9	1	0	1
Denmark	10	4	10	0	0	0
Estonia	10	5	9	0	1	1
Finland	12	2	12	0	0	0
France	16	12	13	3	0	3
Germany	29	8	25	0	4	4
Greece	10	4	8	2	0	2
Hungary	10	0	8	2	0	2
Iceland	10	2	10	0	0	0
Ireland	15	6	10	1	4	5
Italy	17	11	16	1	0	1
Latvia	11	4	9	2	0	2
Lithuania	10	3	10	0	0	0
Luxembourg	6	1	2	3	1	4
Malta	10	3	7	1	2	3
Netherlands	13	3	5	7	1	8
Norway	22	14	16	5	1	6
Poland	10	2	7	2	1	3
Portugal	10	8	10	0	0	0
Romania	11	5	11	0	0	0
Slovenia	10	10	10	0	0	0
Spain	26	11	17	7	2	9
Sweden	16	3	15	0	1	1
United Kingdom	14	8	12	0	2	2
<b>TOTAL</b>	<b>369</b>	<b>163</b>	<b>310</b>	<b>38</b>	<b>21</b>	<b>59</b>

**Table 3: Results by main problem categories**

Table 3 groups the results by the three main problem categories found in the first phase of the sweep in May 2009.

Type of problem	Examples of problem	Initial check (May 2009)		Enforcement results (Sept 2010)	
		No. of <u>compliant</u> sites	% of <u>compliant</u> sites (total =369)	No. of <u>compliant</u> sites	% of <u>compliant</u> sites (total = 369)
Misleading or missing information about <b>consumer rights</b>	<ul style="list-style-type: none"> <li>- No information or misleading information on the right to withdraw (e.g. the right to return the product within the minimum of 7 days without giving a reason)</li> <li>- Misleading information on the legal right to have a faulty product repaired or replaced, or get a refund</li> </ul>	238	64%	319	<b>86%</b>
Misleading or incomplete information about the <b>total cost</b>	<ul style="list-style-type: none"> <li>- The initial price display does not include information on extra costs such as delivery charges</li> <li>- The initial price display contains deceptive information (e.g. misleading claims such as "free delivery" or "all inclusive")</li> <li>- The initial price does not include taxes</li> </ul>	276	75%	348	<b>94%</b>
Missing or incomplete <b>contact details of the trader</b>	Missing name, geographical address or e-mail address of the trader	304	82%	350	<b>95%</b>

### **Why were online sales of electronic goods picked for the third sweep action?**

Electronic goods are among the most popular product categories bought online. The value of online retail sales of consumer electronic goods in Europe is ca. € 6,8 billion (2007). In 2008, about 25% of EU consumers who ever purchased anything online bought an electronic product (including cameras)<sup>1</sup>. Shopping for these products online often results in better deals and more choice for many buyers. But one of the consequences is also a large number of consumer complaints in this product category. The European Consumer Centres (ECCs) report that 34% of the complaints about online shopping which they handled concerned purchases of electronic equipment (2007 data). These were the key reasons why the network of national enforcement authorities (CPC) decided to pick this product category for a joint exercise.

### **Which product categories were concerned?**

The present sweep targeted websites selling popular electronic goods in six product categories: computer-related equipment, personal music players, digital cameras, mobile phones, DVD players, and game consoles.

### **When did this sweep take place and what did it involve?**

Co-ordinated by the European Commission, the initial check (the sweep action) was carried out in May 2009 by enforcement authorities in 26 EU Member States (all except Slovakia) as well as in Norway and Iceland. The EU-wide results were reported in September 2009 (see [IP/09/1292](#) and [MEMO/09/379](#) for more details of the first phase). Since then, the authorities have been investigating suspected breaches and taking follow-up action, including imposing sanctions.

### **Which countries participated in the sweep?**

26 EU Member States (all except Slovakia) plus Norway and Iceland participated in the electronic goods sweep. Slovakia did not participate because the capacity of the national authorities was absorbed by monitoring market prices after the introduction of the euro in the country. The full list of participating authorities, and their press contacts, can be found under the link provided at the end of the MEMO.

### **What exactly was checked by the authorities in the first phase?**

Below is a checklist agreed on by the network of national enforcement authorities before the sweep and used by all participating countries to check websites during the sweep.

- *Information about the trader*

1. Are the name, geographical address and e-mail address of the trader provided?

- *Information about the offer*

2. Is there clear information about the **main features** of the product?

3. Does the price **include taxes**?

4. Is clear information provided about **payment** arrangements (e.g. about possible payment methods)?

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<sup>1</sup> "Report on cross-border e-commerce in the EU":  
[http://ec.europa.eu/consumers/strategy/docs/com\\_staff\\_wp2009\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/com_staff_wp2009_en.pdf)

5. Is clear information provided about **delivery** arrangements (e.g. delivery options and times)?

- *Misleading practices*

6. Is the consumer **clearly informed about all additional delivery costs**, if they can be reasonably calculated in advance?

6a. If additional delivery costs cannot be reasonably calculated in advance, is the consumer **clearly informed that such extra charges may be payable?**

7. Is the **final price to pay** (including all taxes and delivery charges) **the same** as stated in the information provided before the purchase?

8. Is the initial price not displayed in a way which can **deceive consumers or mislead them into a purchase decision** which they may not have taken otherwise (for example, by falsely claiming an "all inclusive" price at the beginning)?

9. Are consumers provided with information on their **right to withdraw** (e.g. return the product within a minimum of 7 days without giving a reason)?

9a. If the information on the right to withdraw is provided, is it not **misleading** (e.g. by falsely claiming that the buyer cannot send the product back if it is not faulty)?

10. If the site contains information about **legal rights of the consumer** (such as the right to have a faulty product repaired or replaced, or get a refund if the repair or replacement are impossible, too inconvenient or would take too long), is the information not misleading (e.g. by falsely claiming that this right only exists for one year after the purchase)?

#### **What are the EU consumer rules that companies need to comply with?**

- The following EU Directives provided the legal basis for the sweep:

- **Unfair Commercial Practices Directive 2005/29/EC**. The UCP Directive provides that traders must display all the information that consumers need to make an informed choice in a clear and intelligible way. It also bans deceptive or misleading advertising or marketing, and aggressive sales techniques. Certain groups that may be particularly vulnerable to unfair commercial practices due to age/credulity (e.g. children) are also protected under the UCP Directive. (Under the competence of DG Justice) **2**.

- **Distance selling Directive 1997/7/EC**. This Directive defines some of the minimum information requirements which online traders must provide, including the identity of supplier, main characteristics of goods, complete price (including taxes), period of subscription, duration of the contract etc. (Under the competence of DG Justice) **3**.

- **E-Commerce Directive 2000/31/EC**. This Directive provides for additional information requirements concerning the details of the service provider, including his e-mail address. (Under the competence of DG Internal Market) **4**.

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<sup>2</sup> [http://ec.europa.eu/consumers/rights/index\\_en.htm](http://ec.europa.eu/consumers/rights/index_en.htm)

<sup>3</sup> [http://ec.europa.eu/consumers/rights/gen\\_rights\\_en.htm#distsell](http://ec.europa.eu/consumers/rights/gen_rights_en.htm#distsell)

<sup>4</sup> [http://ec.europa.eu/internal\\_market/e-commerce/index\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/index_en.htm)

## What kinds of problems do consumers actually experience on this market?

The two examples below are real cases reported by the European Consumer Centres. They illustrate some of the frequent problems that European consumers are faced with.

### - (a) Case study 1

*A Belgian consumer decided to order a mobile phone on a Dutch website because it looked cheaper than the same model she could buy locally. She received confirmation and agreed to pay €148.95, which was supposed to include delivery costs. But when the phone was delivered she was asked to pay an extra €10 because the firm had to deliver to Belgium. The extra charge or even the fact that it could apply was not indicated anywhere on the order confirmation. She paid the freight company but was unhappy about the hidden charge and wanted to recover it. The trader refused, saying that information about possible supplements was on his website, which he considered sufficient, even though they were never mentioned in the contract.*

### - (b) Case study 2

*A Czech consumer bought a camera from a French online retailer specialising in electronics and offering goods in Czech on a website with a Czech domain. A little more than a week after receiving the camera, he changed his mind, and decided to return it. The time limit for sending back a product without giving a reason under the Czech law is 14 days. But the trader refused to refund him, first not replying at all and then citing a French law where the time limit is only 7 days. This was not indicated on the website, and was at any rate irregular because the Czech law applied in this case.*

*(This story had a happy ending: the consumer contacted the European Consumer Centre in his country, which in turn asked their French counterpart for help. The French ECC intervened and persuaded the retailer to refund the money)*

## What were the main problems originally found?

- The most common problems found were detected in the first phase of the sweep (in May 2009) were:
- **Misleading information about consumer rights (66% of problem websites)**  
Buyers were either not informed at all or misinformed about their "right to return" – the right to cancel an order bought a distance within a minimum of 7 days and return the product without giving a reason. For example, they were told that the trader would not accept the product back, or that they could only have credit rather than cash refund. In other cases, consumers were misled about their right to have a faulty product repaired or replaced for at least 2 years after the purchase (e.g. they were told that they only had this right for one year).
- **Misleading information about the total price (45% of problem websites).**  
For example, information on the extra delivery charges was either missing or difficult to find. The extras were then added only at the final payment stage. Some other websites went as far as promising "free delivery" or an "all inclusive" deal, even though delivery charges were in fact applied.
- **Missing or incomplete contact details of the trader (33 % of the problem websites).** Details of the trader's name, geographical address or e-mail address were missing or incomplete, so that they could not be contacted in case of problems.

The current degree of compliance for the three categories as a result of the enforcement action is described above ("Enforcement phase results")

### **What happened as a follow-up to the initial findings?**

The Sweep investigation phase was followed by appropriate enforcement actions. This is the **enforcement phase**. Based on the findings of the initial investigation, flagged sites were scrutinised closely to determine those sites that required action. Some traders improved their websites even before authorities made contact with them, possibly in reaction to the media coverage which the first of phase of the sweep received. In other cases, national enforcement authorities contacted the traders responsible for the non-compliant websites, telling them to correct the irregularities or face legal sanctions.

For cross-border cases, this enforcement phase of the exercise involved requesting investigative and enforcement assistance from authorities in other countries, using the co-operation channels put in place by the Consumer Protection Co-operation (CPC) Regulation. Cases when the business, consumer and enforcer authority were all situated in the same country were followed by the national authority.

### **What sanctions were imposed?**

In a proportion of cases, national enforcers decided against sanctions, e.g. because traders responded promptly and fully to the initial request for corrections and/or because the breaches were minor. In other cases, sanctions were imposed, including fines and shutdown of the non-compliant websites.

### **Why are some of the cases still ongoing?**

The time needed for enforcement varies. Some companies are ready to correct mistakes after the first contact by enforcers while others tend to use all the available tools (including legal ones) to postpone the necessary changes. For example, some of the companies which have been fined have lodged appeals which are still pending before a court of law. Some complex cross-border cases, requiring investigation and enforcement proceedings in several countries, may take longer to resolve.

## **MYSTERY SHOPPING EXERCISE**

A separate check on the market was done by three Member States: Hungary, Ireland and Norway.

Three countries (Hungary, Ireland and Norway) conducted an additional mystery-shopping exercise, to recreate and check the entire shopping experience, from ordering online to delivery, return and refund. In total, 21 sites were checked in this way, of which only **7 (33%) complied with all the laws**. Today, 14 of the sites (**67% are in order**), whereas investigation is ongoing for the other cases.

The main problems found were delayed reimbursement or no reimbursement at all to consumer when the purchased good was returned to the trader and insufficient information provided to consumer following a purchase (e.g. the information on the conditions and procedures for exercising the right of withdrawal).

**National press contacts for the 2009 Sweep can be found under the following link:**

[http://ec.europa.eu/consumers/enforcement/sweep/electronic\\_goods/national\\_press\\_contact\\_en.htm](http://ec.europa.eu/consumers/enforcement/sweep/electronic_goods/national_press_contact_en.htm)