



**ECC-Net**  
**European Small Claims Procedure Report**  
*September 2012*



## FOREWORD:

The European Small Claims Procedure is established by Regulation (EC) No 861/2007 and is intended to improve access to justice by simplifying cross-border small claims litigation in civil and commercial matters and reducing costs. “Small claims” are cases concerning sums not exceeding €2,000, excluding interest, expenses and disbursements (at the time when the claim form is received by the competent court). The procedure is conducted mostly in writing using pre-defined forms. The judgment is made in the country of residence of the consumer, protects the defense rights and becomes directly enforceable in the country of the losing party.

The Italy European Consumer Centre (ECC) together with ECCs in Lithuania, Estonia and Poland, have decided to conduct a joint research project on how the Small Claims procedure worked in practice across the 27 EU Member States. This study involved all the members of the ECC-Network. They checked the level of awareness of national competent courts and the practical implementation of the procedure.

This report offers a comprehensive presentation of the results collected by the ECC-Net.

*European Consumer Centres Network, September 2012*



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# EXECUTIVE SUMMARY



For cross border disputes where the value of a claim does not exceed 2000 EUR, the EU Small Claims Procedure is a valid alternative to the already existing legal proceedings within the Member States. It is intended to be relatively fast, cheap and to remove all the intermediate measures aimed at recognizing and enforcing national judgments abroad.

Regulation (EC) No 861/2007 took effect on 1 January 2009 across the European Union. At that time, Member States were asked to identify the courts with jurisdiction, organize the related legal activity, make the forms available and provide consumers with proper assistance in submitting their applications and carrying out the procedures.



In 2009, a few months after the enforcement date in which the procedure should have been accessible for citizens, ECC-Net started to check its concrete functioning in some countries (e.g. in Italy). The following year, in 2010, the survey was extended at the EU level.

A working group, composed by ECC Italy, Lithuania, Estonia and Poland, led a Joint Project on the European Small Claims Procedure, proposing to all ECCs two main tasks:

- an on-site visit or phone call to the European courts. ECCs contacted numerous national courts, in most cases introducing themselves as consumers with a cross-border issue, asking for the concrete possibility to commence the procedure, the availability of the forms and of the assistance in filling them in.
- a meeting with the competent judges at national level, to check their awareness on the Regulation and if necessary to solicit their interest in the procedure. Following this activity ECCs were asked to complete a detailed questionnaire, drafted by the working group and validated by DG SANCO and DG JUSTICE.

As an alternative to meeting with judges at national level, or in addition to this, ECCs could also discuss the matter with the national points of contact in the European Judicial Network in civil and commercial matters.



## Main findings and recommendations:

### a) Lack of awareness among the judges and lack of information or assistance for consumers

- The main problem seems to be an overall lack of awareness among judges and also consumers. Unfortunately there are still courts in some Member States who have never even heard about the European Small Claims Procedure.
- As a consequence, consumers are rarely able to obtain necessary and accurate information on the Procedure and to get practical assistance in initiating it. Furthermore, many of the courts and tribunals still do not provide consumers with specific forms, neither on their premises, nor on their websites, as they should, according to the Article 4 § 5 of the mentioned Regulation.



#### *Recommendation:*

*Before widely promoting the European Small Claims Procedure, it should be ensured that the procedure works smoothly from beginning to end. It is of a certain importance that the awareness of the Procedure among the judges in the Member States is increased.*

*One possible option to implement the European Small Claims Procedure more effectively would be to amend the current rules on jurisdiction in Regulation (EC) No 44/2001 as regards the small claims and establish one or several Court Authorities in each Member State which would be responsible only for European Small Claims Procedures.*

*As for lack of information and assistance to consumers, the ideal solution seems to be the introduction of a system of assistance, widely spread throughout the territory and assigned to consumer protection organisations, able to provide claimants with forms, support to fill them in, explanations and suggestions on the procedural steps - even for all cross-border judicial procedures and not only for the one introduced by Regulation (EC) No 861/2007.*



## b) Language issues increase the costs of the procedure

- Although the European Small Claims Procedure is meant to be a relatively inexpensive way for people to use their constitutional right to initiate the court proceeding, it often may not be so. One issue which could lead to extraordinary expenditure is that of translation costs. According to civil proceeding legislations in force in some Member States all the documents supporting the claim must be officially translated. Even if this is not the case in all Member States, the consumer most probably has to bear the translation costs as not all Member States accept the claim and its documents in one common language.



### *Recommendation:*

*As the European Small Claims Procedure is established for cross border litigation, it should also be facilitated in terms of language, for example establishing that one common language is accepted in all the European courts.*





### c) Procedure for the service of judgments is unclear

- Practical problems have been identified as regards the service of judgments: after receiving a judgment in their favour consumers need to notify it to the counterpart, but they have no information on how to carry out this operation; some of them sent the document by fax or registered mail, but as it is normally issued in their own language, it happened that the defendant didn't understand it and it wasn't properly considered.

On some occasions it happened that the consumers turned to the ECC asking for assistance in the service of the judgment: the problem in this case is that the defendant itself may require assistance about the matter and could decide to communicate with the ECC; but being involved in judicial proceedings is definitely outside the ECCs scope.



#### *Recommendation:*

*Better coordination among procedural officers such as bailiffs seems to be necessary: if consumers could avail themselves of a European network of bailiffs, contacting their own national officers and notifying the defendant of the judgment via the latter's national officers, this issue would be solved.*

### d) The enforcement of judgments

- A much bigger problem than the lack of awareness and other issues described before, is the question of the enforcement of judgments. Even if the consumers have achieved a positive outcome, which, from the data we have, is mostly the case – in the process, it does not always mean that the decision has really been put in force. Sometimes the losing party uses a conscious strategy by protracting the fulfilment of the judgment or in using some other means to avoid the fulfilment. As the enforcement procedures are very different from one Member State to another, it is hard to get advice on who to turn to and what it may cost; furthermore, considering that an enforcement procedure, to be started in the country of the defendant with necessary legal assistance, can cost even more than the value of the claim itself, all the Small Claims Procedure benefits can be nullified.

#### *Recommendation:*

*Easier enforcement of the rulings issued within a Small Claims Procedure is advisable, in order to maintain the benefits of the Procedure, which also aims to favour fast and cheap cross-border dispute resolution and subsequently to encourage transactions within the European Single Market; for example, more definite coordination among bailiffs of the Member States, could represent a solution.*



## e) Lack of statistics

- One final problem is the fact that, as seen in the survey carried out by ECC-Net, most of the Member States do not gather separate statistics regarding European Small Claims Procedures; therefore there is a lack of reliable figures about the procedures.

### *Recommendation:*

*In order to gain an adequate overview of the current state and problems within the European Small Claims Procedure, it is highly necessary to collect respective data on a national basis. This is necessary in order to make crucial conclusions of functioning and shortcomings of the procedure.*

*(Main findings and recommendations do not reflect the official opinion of the European Union. Responsibility for the information and views expressed lies entirely with the authors.)*

*“Consumers who want to take advantage of the opportunities offered by the Single Market need to be able to rely on a variety of effective and efficient means of redress. I am disappointed to see such a low level of assistance to consumers who have tried to use the European Small Claims Procedure. Today, any small amount counts and not getting proper compensation for consumers affects pockets, hurts confidence and slows down European growth.”*

**John Dalli,  
European Commissioner for Health  
and Consumer Policy**





# INTRODUCTION



## §1 – ECC-Net. A clear mission: to help European Consumers trust in the Single Market



The ECC-Net is a European network consisting of 29 European Consumer Centers (in all 27 Member States, plus Iceland and Norway), which work together to provide consumers with information on cross-border shopping and assist in the resolution of cross-border complaints and disputes.

It was launched in 2005 - result of a merger of two previous networks, Euroguichets and Clearing Houses – and it is co-financed by the European Commission, the EU Member States, Norway and Iceland.

A section in the website of the European Commission / DG Health and Consumers is devoted to ECC-Net: [http://ec.europa.eu/consumers/ecc/index\\_en.htm](http://ec.europa.eu/consumers/ecc/index_en.htm)

## §2 – Main activities and services

The Network provides information on cross-border purchases and ensures that consumers are aware of their rights. It also provides information on both EU and national rules and on opportunities offered by the Single Market.

It gives advice and support to any individual with a problem related to a cross border purchase. The contacted ECC will work together with the ECC of the country where the problem originated.

In most cases ECC-Net helps consumers reach an amicable solution with the trader. Alternatively, ECC-Net will help consumer to reach an out-of-court agreement through the appropriate mechanism (a neutral third party). In some cases the only solution may be taking the case to court.

Members of the ECC-Net cooperate in so-called joint projects to investigate specific sectors where consumers experience particular difficulties. On the basis of registered cases the ECC-Net reports periodically on air-passenger rights and e-commerce problems in Europe.

A specifically developed IT-tool (internal ECC-Net system), where all complaints are registered, connects the different ECCs and facilitates sharing cases. This IT-tool is also useful for compiling different types of statistics.

An online complaint form is available as of 2009 on the 29 ECCs' websites and allows consumers to register their questions or complaints online.



The ECC-Net also cooperates with other EU-wide networks, for example the European Judicial Network in Civil and Commercial Matters which is concerned with improving the implementation of civil and commercial law, SOLVIT which addresses problems arising from misapplication of Internal Market rules, and FIN-NET which is an out-of-court network for financial services.

The ECC-Net, on the basis of its practical experience with everyday consumers, also provides highly significant input for consumer policy makers at national and EU level.

In 2010 and 2011 the centres handled about 71,000 contacts with consumers per year. This showed an increase of more than 15% compared to 2009, when the ECC-Net handled over 60,000 contacts. Sectors in which consumers face the most frequent cross-border problems are: transport services (e.g. cancellation of flights, baggage loss), purchase of goods (e.g. undelivered or defective goods, performance of guarantee), other tourism products and services (e.g. car rental, accommodation services). In almost half of all complaints (48 %), the ECC-Net was able to secure an amicable settlement. There was a failure to reach an agreement in 39 % of the cases; in this category, ungrounded consumer claims accounted for 18 %, traders “refusal to compromise” accounted for 68 %, consumers “refusal to compromise” accounted for 7 %. Complaints transferred to another organization or agency amounted to 13 %, and 7 % of the cases and were classified as ‘others’. Enforcement mechanisms must be strengthened to avoid situations where vendors can avoid the consequences of poor trading practices.

### **§ 3 - The ECC-Net Joint Project on the implementation of Regulation (EC) No 861/2007 establishing a European Small Claims Procedure.**

According to Regulation (EC) No 861/2007 it has been possible to start European Small Claims Procedures since 1 January 2009 (see Article 29 of the Regulation).

In order to check the concrete availability of this important legal tool ECC Italy started a survey in the courts at national level in 2009, in coordination with its host organisation Adiconsum.

The information collected required a re-launch of the activity in 2010, which ECC Italy decided to propose to all ECCs, in the form of a Joint Project (EU-wide coordinated study), so extending the survey at EU level. Three other ECCs composed the Working Group of the project: ECC Estonia, Lithuania and Poland.

The present Report is the outcome of the ECC-Net Joint Project 2010 on the European Small Claims Procedure, which information has been updated in the end of 2011 and can therefore be referred to the whole period 2009 – 2011.

Abbreviations:

ESCP: European Small Claims Procedure

ECC: European Consumer Centre

# PART 1. The European Small Claims Procedure

## § 1 – A new judicial tool to enforce consumer rights

European Small Claims Procedure: a new judicial tool to enforce consumer rights.

In light of the above, it is of primary interest to analyze a cross-border legal procedure introduced by the European Union in 2007 which could provide supplementary help to consumers when all amicable attempts to solve a dispute have failed: the European Small Claims Procedure.



Starting from January 2009, in fact, it has been possible to commence this simple and incisive judicial path in the case of small cross border disputes. Introduced by Regulation (EC) No 861/2007 of the European Parliament and Council, this legal tool ensures judicial cooperation between Member States in all civil and commercial claims whose value does not exceed 2000 Euros. The need to launch this new procedure came directly from the Internal Market goals (included in the Treaty establishing the European Community – Articles 61 c and 67) and, in particular, from the will to “maintain and develop an area of freedom, security and justice” and also to “eliminate obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States”.

The Regulation was preceded by the Green Paper on a European Order for payment procedure and on measures to simplify and speed up small claims litigation. The European Commission presented the proposal (COD/2005/0020) that led to the adoption of this Regulation on 15 March 2005.

*The European Small Claims Procedure is part of a list of European initiatives aimed at allowing judicial cooperation among Member State Authorities, harmonizing and simplifying the notification and communication of judicial and extrajudicial documents in civil or commercial matters at cross-border level, the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Among the various cross-border legal instruments on judicial cooperation in civil matters, available at European level, two of them are mentioned within this survey:*

*a) the European Order for Payment Procedure (Regulation (EC) No 1896/2006) which applies when you are claiming money from someone who does not deny that they owe you the sum in question (“uncontested pecuniary claim”). The procedure is based on standard forms that you must fill in. These are available in all the EU languages, along with a lot of other information, on the website of the European Judicial Atlas in Civil Matters: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_filing\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filing_en.htm)*

*b) the European Enforcement Order (Regulation (EC) No 805/2004) which is a certificate accompanying a national judgment, a court settlement or an authentic instrument, allowing it to be enforced in another Member State. It also applies to claims against someone who does not contest the claim, where a national judge has already declared that you owed the money in question. To apply for an enforcement order you would normally ask the court which passed judgment on the merits of your case, and you must comply with the national requirements in that Member State. For this procedure, the claim will be considered uncontested, if the defendant has agreed with your claim either in court, in a court-approved settlement or in an authentic act, or if he never objected to it, or if, having initially objected, he then failed to appear in court (tacit admission).*



## § 2 - What the European Small Claims Procedure introduced

The European Small Claims Procedure is a valid alternative to the already existing proceedings within Member States, which removes all the intermediate measures aimed at recognizing and enforcing the national judgments abroad. Article 2, explicitly states that the Small Claims Procedure does not apply to some matters; it is likewise important to specify that the Regulation does not apply to Denmark. For the purposes of the Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal in question.

It is a proper judicial procedure, carried out in a written way. The European Small Claims Procedure is a simplified procedure aimed at reducing length and cutting costs of judicial proceedings, including costs of legal representation before a court, thus facilitating access to justice for every consumer who might face a cross-border dispute.



Oral hearing should be held only if necessary upon individual decision of the judge, who is not bound by request of a party wishing to have a hearing. Evidence should be taken using the least burdensome method, including written statements and oral hearing could be carried out in a form of videoconference.

The judgment given in a Member State shall be recognized and enforced in other Member States without the need for a declaration of enforceability or any possibility of opposing its recognition.



### § 3 – How the European Small Claims Procedure works

It follows a series of steps:

- A) Filing the claim. To file a claim for a sum less than 2,000 Euros, the claimant fills in a standard claim form (Form A, provided in Annex I to the Regulation), giving details of the claim, the sum demanded, etc., and lodges it with the competent court by any means of communication acceptable to the Member State in which the action is taken. If the claim is outside the scope of the Regulation the court will notify the claimant to that effect; if the claim is not withdrawn, the court will proceed with it in accordance with the relevant applicable procedural law in that Member State.
- B) Correcting and/or completing the claim form. If the claimant has not provided enough information, the court will send him a Form B (Annex II) asking for the missing information. The claim will be rejected if the claimant fails to complete or correct the claim in the time specified, or if it is manifestly unfounded or inadmissible.
- C) Notifying the defendant. Once the court has received the properly filled in claim form, it prepares a standard answer form (Form C, Annex III). This, together with a copy of the claim and, where applicable, the supporting documents, is served on the defendant by post with dated acknowledgment of receipt within 14 days.
- D) The defendant's response. The defendant then has 30 days to prepare and return his response, counting from the date of service of the answer form.
- E) The defendant's response is forwarded to the claimant. Within 14 days of receiving the defendant's response, the court forwards a copy of it to the claimant, with any relevant supporting documents.
- F) Any counterclaim submitted by the defendant (using Form A) is served on the claimant in the same way as the original claim was served on the defendant. The claimant has 30 days to respond. If the sum of the counterclaim is more than 2,000 Euros, both claim and counterclaim will be dealt with in accordance with the relevant procedural law applicable in the Member State in which the action is taken (and not in accordance with the European Small Claims Procedure).
- G) Judgment is given within 30 days. The court must give judgment within 30 days of receipt of the response from the defendant (or claimant, if there is a counterclaim). It can, however, decide to ask for further information (the parties have 30 days to reply) or to take evidence on the matter or to summon the parties to an oral hearing (within 30 days); in these cases, the court gives its judgment within 30 days of receiving the information or holding the hearing. If the parties do not reply in time, the court will still give its judgment.
- H) Taking evidence. The court determines the extent of the evidence necessary for its judgment and the means of taking it, using the simplest and least burdensome method.
- I) Judgments are recognized and enforced in the other Member States, and cannot be reviewed by reason of substance in the Member State of enforcement. At the request of one party the court will issue a certificate of judgment (without further cost), using Form D (Annex IV).





J) Enforcement of the judgment. This is governed by the law of the Member State in which the judgment is enforced. The party seeking enforcement produces an original copy of the judgment, and of the certificate (Form D) translated by a qualified person into the language, or one of the languages, of the Member State of enforcement. The party is not required to have an authorized representative or a postal address in the Member State of enforcement, other than with agents competent to carry out the enforcement procedure. The authorities cannot require any security, bond or deposit on the grounds that the claimant is a foreign national or is not domiciled or resident in the Member State of enforcement.



*Refusal of enforcement and appeals:* the court in the Member State of enforcement can, at the request of the defendant, refuse to enforce the judgment when:

- the judgment is irreconcilable with an earlier judgment between the same parties for the same cause of action;
- the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition there;
- the irreconcilability of the judgments was not and could not have been raised as an objection in the proceedings in the court where the judgment in the European Small Claims Procedure was given.

When a party has challenged or applied for a review of a judgment given in the European Small Claims Procedure, the competent authority in the Member State of enforcement can limit the enforcement procedure to protective measures, make enforcement conditional on some security, or, in exceptional circumstances, stay the enforcement proceedings.

Appeals against a judgment given in the European Small Claims Procedure are governed by the procedural law of the Member States, which had to inform the Commission whether an appeal is available under their procedural law and in what court. The Commission made that information publicly available on the Website of European Judicial Atlas in civil matters.



The defendant can apply to the court that gave a judgment for a review when:

- the claim form or summons to an oral hearing was not served by a method with proof of receipt by him personally;
- service was not effected in time for him to prepare his defence, without any fault on his part;
- he was prevented from objecting to the claim by reasons of force majeure or due to extraordinary circumstances, without any fault on his part.

In any of these cases, the defendant is expected to act promptly. When a review is justified, the original judgment becomes null and void.



#### § 4 – Role of the courts and provisions relating to languages, hearings and costs

The court does not require the parties to make any legal assessment of the claim. If necessary, it informs the parties about procedural questions, and whenever appropriate it seeks to reach a settlement between them.

**Languages and translations.** The claim must be submitted in the language, or one of the languages, of the court, as must the response, any counterclaim, the description of supporting documents, etc. The court can require a translation of a document received in another language only if that document seems to be necessary for giving the judgment. If a party refuses to accept a document because it is in a language he does not understand or a language other than one of the official languages of the Member State addressed, the court will notify the other party so that he can supply a translation.

**Oral hearings.** The court will hold an oral hearing only if this appears to be necessary or if requested by one of the parties. The request may be refused if an oral hearing is obviously not necessary for the fair conduct of the proceedings. The hearing may be conducted through videoconference or other communication technology.



**Costs.** The costs of the proceedings are borne by the unsuccessful party.

**Scope of the Regulation:** the European Small Claims Procedure applies to cross-border cases, that is, cases in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court where the action is brought. Domicile is determined in accordance with Articles 59 and 60 of Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In order to determine whether a party is domiciled in the Member State of the court, it applies its internal law; if the party is not domiciled in that Member State, the court determines whether he/she is domiciled in another Member State by applying the law of that Member State (Article 59). Companies and legal persons are domiciled in the place of their statutory seat, their central administration or their principal place of business (Article 60).

The Regulation does not apply to revenue, customs or administrative matters, to the liability of the State (*acta jure imperii*), or to:

- the status or legal capacity of natural persons;
- matrimonial regimes, maintenance obligations, wills and successions;
- bankruptcy, compositions and similar proceedings;
- social security;
- arbitration;
- employment law;
- tenancies of immovable property, except for monetary claims;
- violations of privacy and of rights relating to personality, including defamation.

Regulation (EC) No 861/2007 took effect on 1 January 2009 across the European Union. By then, Member States were to identify the courts with jurisdiction, and to organize related activities, make the forms available and provide consumers with proper assistance in submitting their application and carrying out the procedure. These implementing steps are very sensitive, because they affect the actual accessibility, usability and effectiveness of the procedure: jurisdictional structures must be provided with communication infrastructures as well as legal and linguistic experts.

## PART 2. The Joint Project on the European Small Claims Procedure: description of the activities



### § 1 – The main tasks of the ECCs

During the preliminary stage of the project ECCs were proposed two main tasks:

- an on-site visit or phone call to the European courts. ECCs contacted numerous national courts, in most cases introducing themselves as consumers with a cross-border issue, asking for the concrete possibility to commence the procedure, the availability of the forms and of the assistance in filling them in.
- a meeting with the competent judges at national level, to check their awareness on the Regulation and if necessary to solicit their interest in the procedure.

Following this activity ECCs were asked to complete a detailed questionnaire (Appendix 1), drafted by the working group and validated by DG SANCO and DG JUSTICE.

All ECCs filled out the questionnaire and provided the Working Group with detailed answers or information that no data was available regarding a specific question. The questions and related answers are illustrated in the following chapters and some of them through the charts included in the report.

As an alternative to meeting with judges at national level, or in addition to this, ECCs had the chance to discuss the matter with the national points of contact in the European Judicial Network in civil and commercial matters, thanks to the support of DG SANCO which provided the Centres with significant and valuable contacts within that Network.

It is to point out that the European Consumer Centres Network is not directly involved in judicial procedures and it is not allowed to provide legal assistance to consumers: the survey was launched to get information on the functioning of this important cross-border judicial tool for consumer rights enforcement.



## § 2 – Cooperation with the European Judicial Network in civil and commercial matters

Created in 2001 by the European Council, the European Judicial Network in Civil and Commercial Matters (hereinafter also the EJN) is a well functioning network representing a flexible, non-bureaucratic structure, which operates in an informal mode and aims at simplifying judicial cooperation between the Member States. It gives unofficial support to the central authorities set by European Union's legal instrument and facilitates relations between different courts.

As of 1st of January 2011 the EJN has a legal basis for cooperation with ECC-Net. As stated in Decision 568/2009/EC of the European Parliament and of the Council, the EJN shall maintain relations with the ECC-Net, in particular, in order to supply any general information on the working of Community and international instruments to facilitate consumers' access to justice, and the contact points of the EJN shall be at the disposal of the members of the ECC-Net.

During the preparation of the current report most of the ECCs have held meetings with national contact points of the EJN, which are operating mostly under the national Ministries of Justice. With respect to the European Small Claims procedure, but also regarding European Order for Payment and other possible legal procedures available in the EU, it is often unavoidably necessary for the ECC-Net to develop and maintain good cooperation with the European Judicial Network. The contact points of the EJN can be of a big help to ECC-Net due to their valuable experience in the field of legal procedures as on a daily basis ECCs are advising consumers on further possibilities to solve their cross-border problems which have not found an amicable solution with the traders.





## PART 3. The outcome of the survey

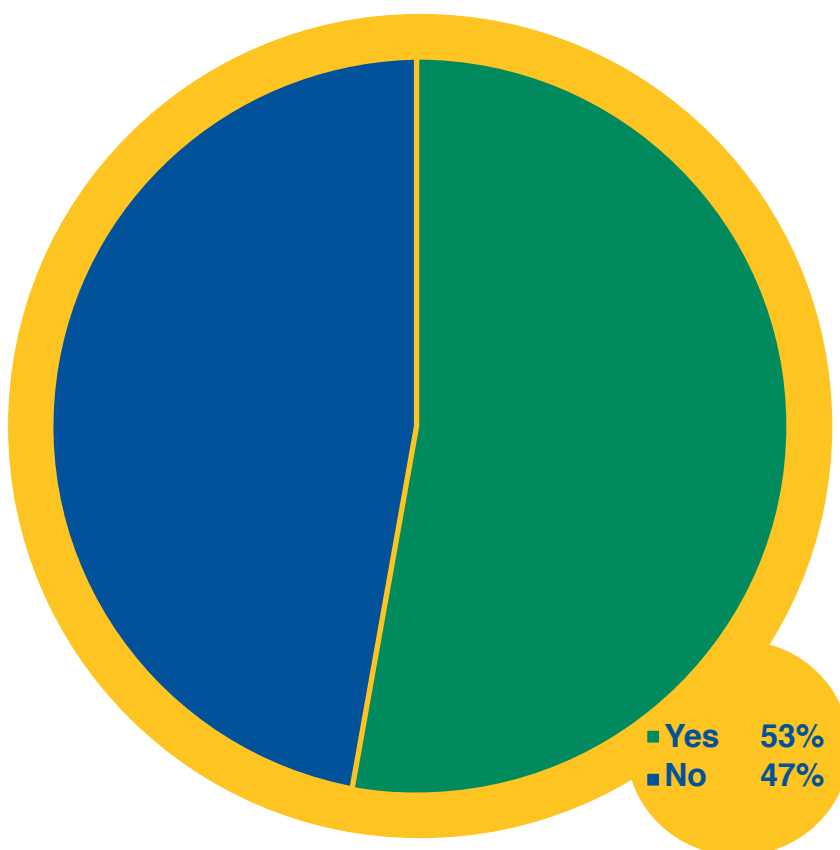
### § 1 – Main problem areas within the European Small Claims Procedure

Although the European Small Claims Procedure should be a relatively fast, simple and comfortable way for consumers to protect their contractual rights which have been infringed by traders abroad, there are still several issues in the area which would prevent consumers from using this procedure efficiently.

The comments listed above are based on studies and opinions of the ECC-Net members and on feedbacks received from consumers, illustrated in chapter § 2.

#### “Chart No. 1:

*Regulation (EC) No. 861/2007 on European Small Claims Procedure has applied in all Member States since 1 January 2009. Are the courts and judges aware of the ESCP?”*



*“Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure applies in all the Member States (with the exception of Denmark) since 1 January 2009. According to statistics, 53% of the courts and judges in all Member States are aware of the existence of the ESCP, while 47% had no knowledge about the application of this procedure.*

*Those who responded positively reported that the knowledge of the ESCP had been acquired by various means: reading articles, attending seminars, conferences, etc. One Member State informed that training sessions had been organised about ESCP in early 2009 among the Civil Court Judges, and the Ministry of Justice has developed the guidelines (sent to judges) on how to understand the chapter of ESCP in the Judicial Atlas. Special conferences have been regularly organized in other Member States introducing training programs aimed at training judges of the 1st and 2nd instance courts as well as court staff on the application of the ESCP.”*

#### a) Lack of awareness among judges and lack of information or assistance for consumers

Based on the survey carried out by the ECC-Net within the European Small Claims Procedure Joint Project in all participating Member States, the main issue seems to be an overall lack of awareness among judges and also consumers. Unfortunately there are still courts in some Member States who have never even heard about the European Small Claims procedure, and to be precise – the number of such courts is quite big. Still, the most regrettable aspect is not the fact that almost half of the courts are unaware of the procedure, but the fact that the other half – the one that is aware – is not well informed about the details and principles of the procedure itself.

As a consequence, consumers are rarely able to obtain necessary and accurate information on the European Small Claims Procedure. Promotional activities and informational leaflets cannot bring expected results when there is a lack of human resources, with sufficient awareness of the matter who could adequately advise and help consumers with respect to the procedure.

Low level of awareness regarding the European Small Claims Procedure has caused regrettable situations which have prevented consumers from getting information about the procedure at all or caused them to receive misleading or incorrect information from the courts. Thus, there are no doubts that if receiving the very basic information about the European Small Claims Procedure is so complicated, the issue is even bigger to get practical assistance to initiate the procedure. One of the other problematic aspects about initiation of the procedure is that almost half of the courts and tribunals still do not provide consumers with specific forms, neither on their premises, nor on their websites, as they should, according to the Article 4 § 5. Also, despite the fact that the website of European Judicial Atlas in Civil Matters provides some help with starting the European Small Claims Procedure, published guidelines may not be clear enough for people without a legal background.



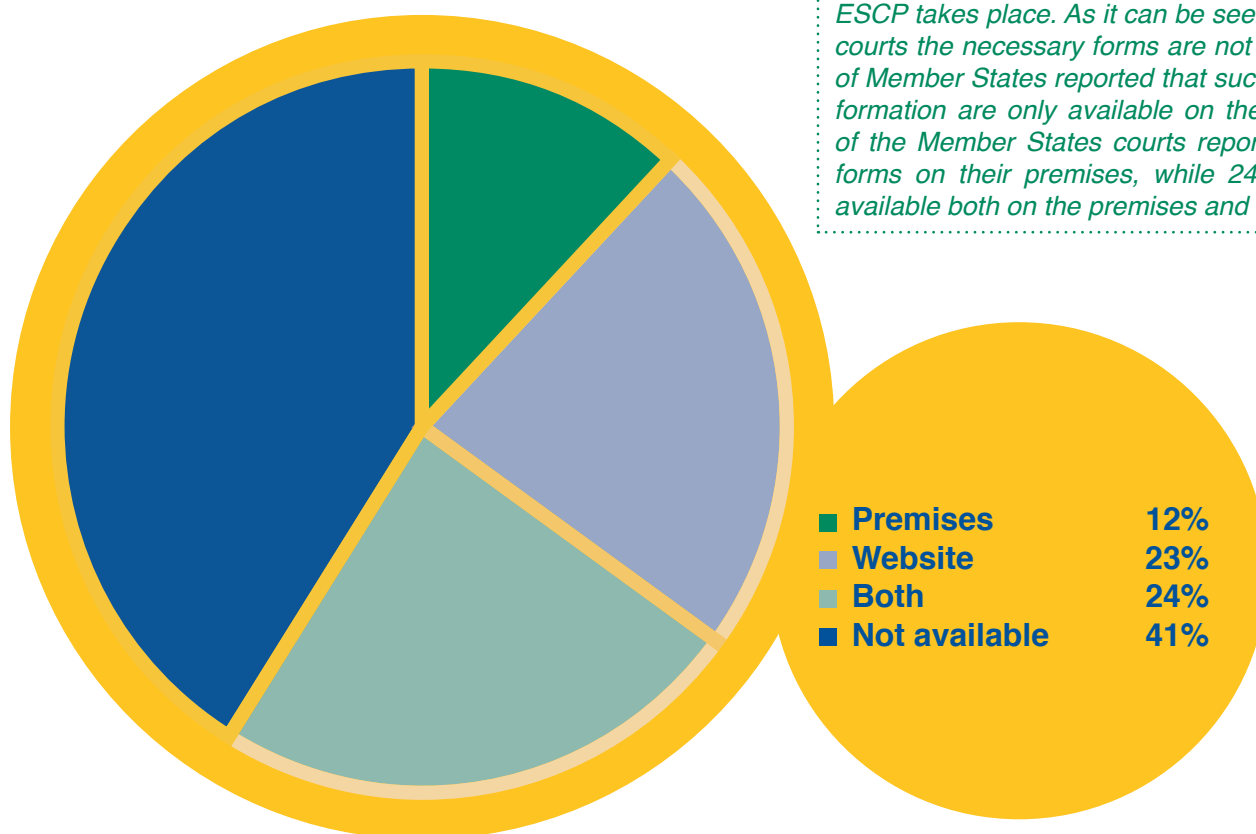
There are some Member States in the EU where the courts are more familiar with the European Order for Payment procedure, which was established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for an European order for payment was submitted. Therefore, the consumers who would like to initiate the European Small Claims procedure are persuaded to use the European Order for Payment procedure but only because the judges are not aware of the European Small Claims Procedure. Since the European Small Claims Procedure and the European Order for Payment are both different procedures and using the European Order for Payment might not always ensure that full advantage is taken of the legal procedure, it is important to let the consumers choose which procedure to use and to ensure a high level of professionalism among judges to advise consumers respectively.



## Chart No. 2:

*Are the specific forms provided by the Regulation available for consumers on the premises/on the websites of the competent court/tribunal in accordance with Art. 4 part 5?*

*Member States shall ensure that the claim forms are available at all courts and tribunals where the ESCP takes place. As it can be seen in 41% of the courts the necessary forms are not available. 23% of Member States reported that such forms and information are only available on the internet. 12% of the Member States courts reported having the forms on their premises, while 24% made them available both on the premises and online.*



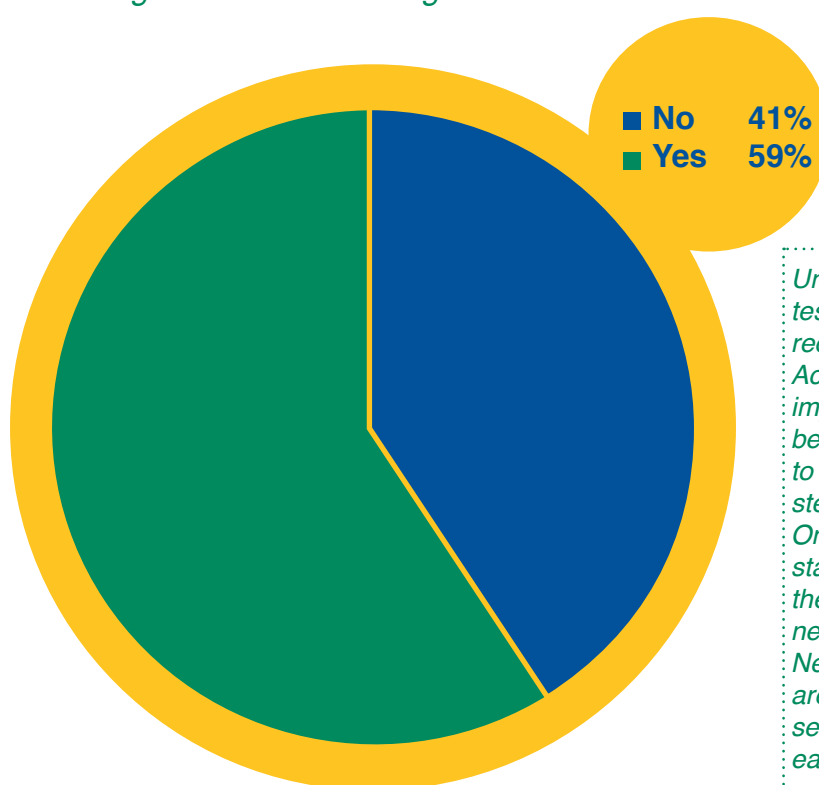
Article 11 of Regulation (EC) No 861/2007 enacts the obligation for the implementing Member States to ensure that the parties can receive practical assistance when filling in the forms. This provision is formulated in a general manner, leaving the Member States the possibility to adopt solutions most suitable for their legal systems. However this formulation does not ensure that consumers are clear about whom they should address for assistance and actually the Regulation does not oblige Member States to notify of the methods and modalities of provision of assistance to applicants.

In some Member States there are established information centres or offices within the courts to provide information and assistance on the European Small Claims Procedure in addition to other legal procedures and in others there is a chance to get free legal advice from judges once a week. Also, the fact that not every officer or judge is aware of the European Small Claims Procedure or its details, hinders the provision of assistance; as a result of this – the statistics of the survey show that in almost half of the cases – required assistance by Article 11 of the Regulation was not provided. Still, respective assistance is definitely necessary because the forms created for the European Small Claims Procedure are too complicated for the average consumer to fill in because of some details, also required for all cross-border judicial proceedings, e.g. calculating the interest, determining the court with jurisdiction, selecting the appropriate attachments etc.



### Chart No. 3:

*Is the expected assistance in filling in the forms and starting the procedure available for consumers, according to Art. 11 of the Regulation?*



*Under Regulation (EC) No 861/2007 Member States have the duty to ensure that the parties can receive practical assistance in filling in the forms. According to the chart such a requirement is being implemented in slightly more than half of the Member States participating in this study, which amounts to 59%. 41% reported that assistance to the interested parties is not available.*

*One Member State noted that even though assistance to consumers is not available in the courts, the Ministry of Justice is always ready to help, if necessary.*

*Nevertheless, in most Member States consumers are advised to turn to private lawyers. It definitely seems that an assistance service is necessary in each Member State.*

*Before widely promoting the European Small Claims Procedure, it should be ensured that the procedure works smoothly from beginning to end. There are some Member States that have organised training for judges and court officers on the European Small Claims Procedure; however it has not helped to remarkably increase the level of awareness on the procedure. One possible option to implement the European Small Claims Procedure more effectively would be to amend the current rules on jurisdiction in Regulation (EC) No 44/2001 as regards small claims and establish one or several Court Authorities in each Member State which would be responsible only for European Small Claims Procedures.*

*This would be a way to assign required implementation tasks to a smaller group of competent entities, who would be completely familiar with the procedure itself as well as the details of enforcement of the judgments and would cooperate with each other to develop the functioning of the European Small Claims Procedure. But even if such a thing were to be accomplished, raising the awareness among the consumers would take time; it is also unclear whether creating such entities would be cost-effective or not.*

*As for lack of information and assistance to consumers, the ideal solution seems to be the introduction of a system of assistance, widely spread throughout the territory and assigned to consumer protection organisations, able to provide claimants with forms, support to fill them in, explanations and suggestions on the procedural steps - even for all cross-border judicial procedures and not only for the ones introduced by Regulation (EC) No 861/2007. Moreover, it would be beneficial if Member States, possibly in co-operation with ECC-Net and the European Judicial Network contact points prepared and made available relevant information on how and where claimants can receive support.*



## b) The costs of the procedure

Although the European Small Claims Procedure is meant to be a relatively inexpensive way for people to use their constitutional right to initiate court proceedings - the court fees at EU level range from 15 to about 200 Euros and legal assistance is not mandatory - it often may not be so.

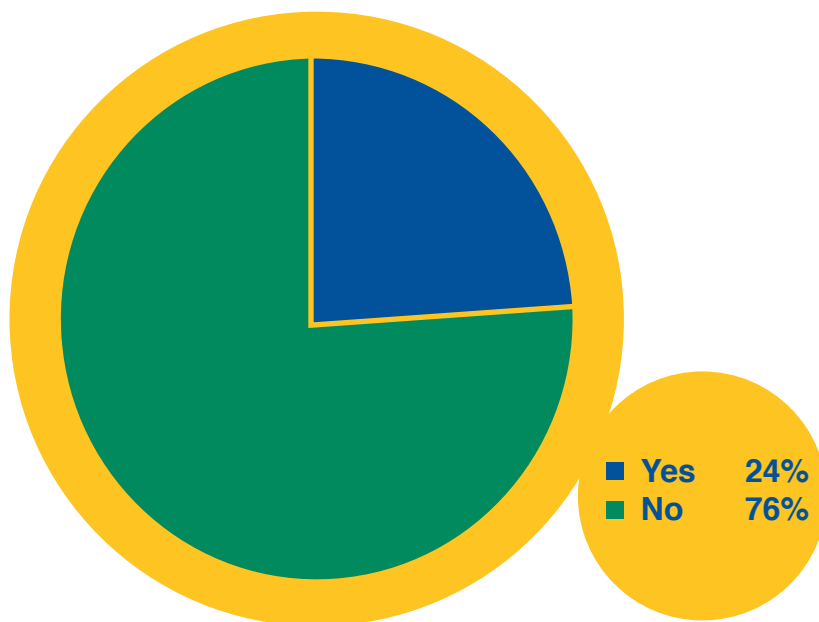
One issue which could force an unusual expenditure type is translation costs. According to civil proceeding legislation in force in some Member States all documents supporting the claim must be officially-translated. Even if this is not the case everywhere, the consumer most probably has to bear the translation costs as only a few Member States accept the documents in other languages than their own official languages. Hence it may be that the costs for translation are greater than the claim itself. Although the translation tool is provided on the website of the European Judicial Atlas in Civil Matters, it cannot however be considered a reliable method of translation of the documents.



### Chart No. 4:

*Is the ESCP free of charge?*

*In other words, should the consumers meet any expenses at the start, during and at the end of the procedure? If yes, what kind of expenses?*



*The core question here was whether any application fees or any other charges apply during the ESC process. If yes, what kind of expenses?*

*As a result, 76% of the Member States indicated that the ESCP is cost free, meanwhile in the courts of the other Member States (24%) it is subject to various charges, such as stamp-duty (usually depending on the value of the claim), expert fees or translation costs, as claims together with supporting documents, in some cases, should be translated into a different language.*

*In accordance with the Regulation (EC) No 861/2007, the costs of the proceedings fall on the "shoulders" of unsuccessful party.*

Additional expenses can also be met by consumers, e.g. for postal services or experts' fees; and some problems seem to exist also for the payment of fees at a distance.

*As the European Small Claims Procedure is established for cross border litigation, it should also be facilitated in terms of linguistic aspects and remote payments of the court fees.*





### **c) Some procedural issues**

Although the European Small Claims Procedure is meant to be a relatively inexpensive way for people to use their constitutional right to initiate court proceedings - the court fees at EU level range from 15 to about 200 Euros and legal assistance is not mandatory - it often may not be so.

Despite the fact that in the case of disputes arising from consumer contracts, the claimant is allowed to initiate the Small Claims Procedure in his domestic court, however it does not seem to be a very convenient option for the courts. There have been some real examples that the courts have rejected the consumer's claim referring to the lack of jurisdiction, although Regulation (EC) No 44/2001 clearly indicates that the consumer, under certain conditions, may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled.

In some cases identifying the court which has jurisdiction could turn out to be a significant problem. Thus if the case is rejected due to the lack of awareness of the judge, this undoubtedly represents very negative impact on legal certainty, clarity and integrity.

Another problematic matter is oral hearing. Although the European Small Claims procedure should be, in principle, a written procedure, the court may decide to hold a hearing if it finds it necessary or if one of the parties so requests. When there is a need for a hearing, it may presumably bring significant extra costs for the consumer (e.g. travel, accommodation costs etc.)

On the other hand, even if Regulation (EC) No 861/2007 states the possibility to hold a hearing through video conference or other communication technology, in practice this possibility is denied in many of the Member State courts due to lack of technical means. Added to this, in some cases, requesting a hearing may also be a tactical tool for the trader to put the consumer in a rather complicated situation.

### **d) The enforcement of judgments**

A much bigger problem than the lack of awareness and other issues described before, is the question concerning the enforcement of judgments. Even if the consumers have achieved positive outcome, which, from the data we have, is mostly the case – in the process, it does not always mean that the decision has really been put in force. Sometimes the losing party uses the conscious strategy of protracting the fulfilment of the judgment or uses some other means to avoid the fulfilment. As the enforcement procedures are very different from one Member State to another, it is hard to get advice on who to turn to and what it may cost; furthermore, considering that an enforcement procedure, to be started in the country of the defendant with necessary legal assistance, can cost even more than the value of the claim itself, all the small claims Procedure benefits can be nullified.

Lack of information regarding enforcement procedures in different countries may even lead the applicant to abandon enforcement if the respondent fails to comply with the terms of the court order. In practice an incredible example can be demonstrated, where the judge of one Member State has referred the consumer to apply for ECC-Net for enforcement of the judgment.

An easier execution of the rulings issued within a Small Claims Procedure is advisable, in order to keep the benefits of the Procedure, which aims also at favouring fast and cheap cross-border disputes resolution and subsequently at encouraging transactions within the European Single Market; for



example, more definite coordination among bailiffs of the Member States could represent a solution.

### e) Lack of statistics

One final problem lies in the fact that, as seen from the survey carried out by ECC-Net, most of the Member States do not gather separate statistics regarding European Small Claims procedures; therefore there is a lack of reliable figures about the procedures.

*In order to gain an adequate overview of the current state and problems within the European Small Claims Procedure, it is highly necessary to collect respective data on a national basis. This is necessary in order to make the crucial conclusions of functioning and shortcomings of the procedure.*

## § 2 – The real experience of consumers

In this chapter concrete feedback from consumers is illustrated, mostly confirming all the comments listed above.

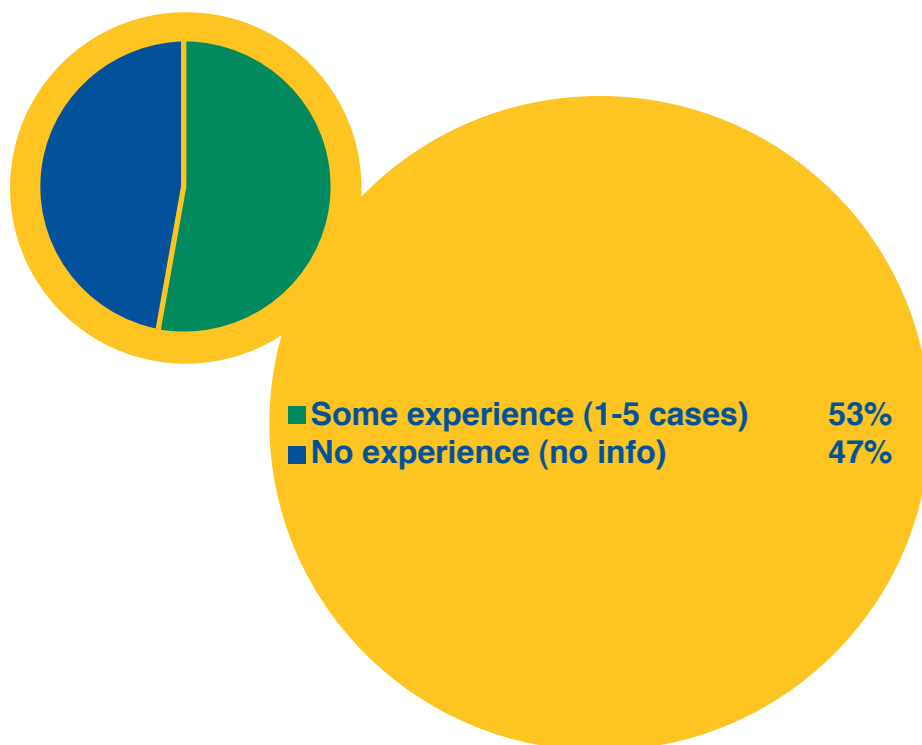
### a) Lack of information and statistics

Usually ECCs state that consumers are advised to use the European Small Claims Procedure, in the event that an amicable solution with ECC's help was not found. Currently a consumer does not have to inform the ECC about the decision to start the European Small Claims Procedure, therefore ECCs rarely have knowledge of whether the consumer has availed himself of the procedure or not.

That is why most ECCs reported lack of data in this issue (Bulgaria, Germany, United Kingdom, Sweden, Austria, Cyprus, Estonia, Latvia, Spain, Romania, Poland, Ireland, Luxembourg and Slovenia).

#### Chart No. 5:

*Do you already have some experience with ESCP cases?*



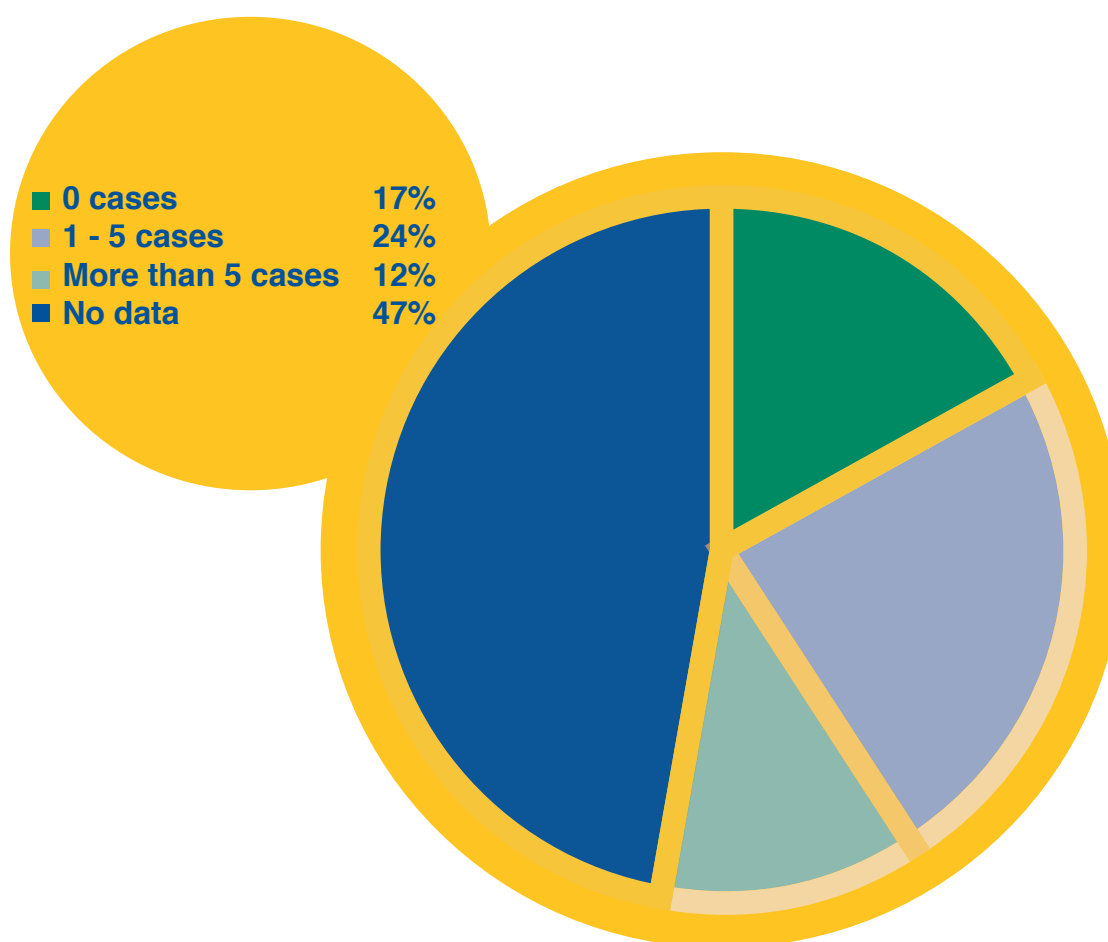
*The ESCP is not yet well known among consumers in most of the legal systems of the Member States. Such arguments are supported by the chart which shows level of experience in dealing with ESCP cases. As we can see 53% of Member States have experience of invoking the ESCP in solving cross-border disputes. Taking into consideration the 47% of which have no experience with this procedure, it is evident that it has not yet become as popular as might have been expected by the legislators.*



Most ECCs indicated that the established overall transfer of ECC cases to the European Small Claims Procedure is less than 1 % of all handled cases. In France, for example, few consumers (10) informed the ECC of their intention to start the Small Claims Procedure. ECC Malta reported that only two cases have been transferred to the European Small Claims Procedure in 2010 among those which have not reached an amicable solution, and two more were transferred in 2011. There are very few cases that have been followed by the Small Claims Procedure in Portugal. However, ECC Portugal has not advised the consumers to use this Procedure because of some procedural difficulties still present at national level. ECC Slovenia reported that the consumers are also advised to contact the court for more detailed information about the procedure. In Italy a few consumers occupied themselves with receiving cooperation from the judges of the peace who are not used to starting this type of procedure.

#### Chart No. 6:

*How many procedures have been started in your country since the beginning of 2009 (according to the ECCs experience)?*



*During 2009 and 2010 European Consumer Centres have seen a low number of cases negotiated in their national courts. Most European Consumer Centres faced with difficulties in obtaining the statistical information on the volume of cases being handled using ESCP. Therefore, 47% of them were not able to provide such data. 24% of the members reported having between 1-5 cases, 12% reported more than 5 and 17% indicated having no cases of ESCP to date.*

By way of comparison, ECC Poland carried out a survey on its own website. Within 2 months 53 people participated in this study. According to the survey only 36% of respondents are aware of the the European Small Claims Procedure. However, from the data obtained in this survey only 8 % (4 people) used the Procedure. The rest of the respondents had never used it. ECC Poland is currently in touch only with one consumer who filed a lawsuit in the European Small Claims Procedure and still monitors progress and gives assistance on the matter.

## b) Specific problems experienced by consumers while using the European Small Claims Procedure

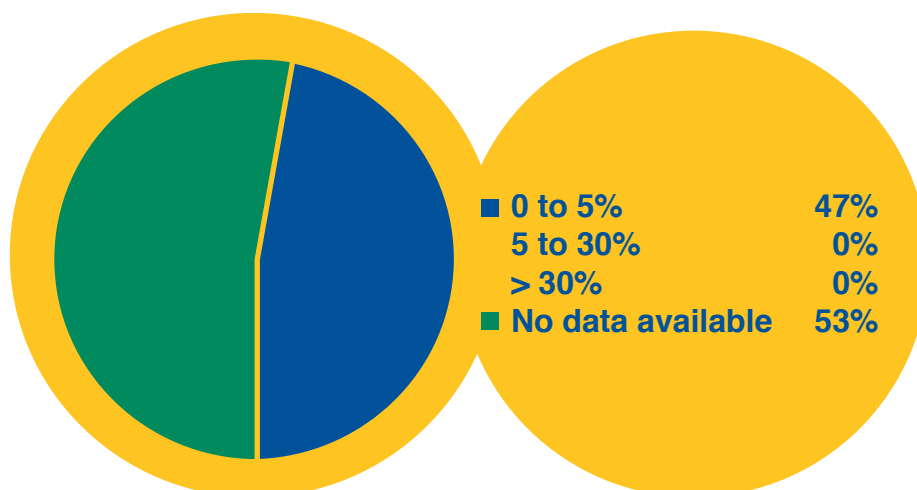
*Lack of awareness of the judges and lack of assistance to consumers.* Several consumers pointed out the lack of awareness of judges about the the European Small Claims Procedure. This resulted in rejecting their claims because the judge was not aware of the procedure (from ECC Estonia and ECC Belgium). In Czech Republic one court did not respect Regulation (EC) No 44/2001 and in another one a meeting on the premises of the court was ordered by the court without reason. In Slovenia, the consumers were advised by the court to contact an attorney to get more information about the procedure. Finally because of lack of information and assistance, some consumers decided not to use the European Small Claims Procedure or, as ECC Italy reported, they themselves had to provide judges with documented description of the procedure in order to get it started.

On the other hand, while availing themselves of the European Small Claims Procedure, individual consumers reported to have had difficulties in determining the applicable law. Some of them took into account Regulation (EC) No 44/2001 about which court is competent in order to solve the problem of finding the appropriate jurisdiction. It follows that consumers' legal knowledge is not enough on the subject of legal procedure in courts. By the same token, they have had a lot of problems with filling the claim forms due to the legal terminology used therein. As ECC Malta refers, the problem appears in point 4 in Form 'A' because consumers do not know which court has jurisdiction and for what reason. ECC Luxembourg pointed out that the text of the regulation is vague, especially the definitions at the beginning which are too complicated for consumers without legal assistance. ECC Germany clearly indicated that filling in the forms could be difficult even in the national language. Other problems associated with the specifics of each country such as length of procedure or unwillingness to take to court were raised by some individual Centers such as ECC Poland, ECC Czech Republic and ECC Lithuania based on respective consumer feedback.

*Language issues.* Most of the ECCs state that another major problem reported by consumers wanting to start the European Small Claims Procedure in another EU country, is completing the claim form in the language of the court (Ireland, The Netherlands, Estonia, Germany, and Belgium). ECC Lithuania found that the translation of the documents could generate additional costs for consumers, which sometimes could be even higher than the value of the dispute. ECC Netherlands and ECC Belgium commented that translation of form D, in the stage of judgment enforcement, may represent a problem.

### Chart No. 7:

*Do you have information regarding what percentage (%) of consumer complaints handled by your ECC which have not found amicable solution with ECCs' help, have been handled further with ESCP?*

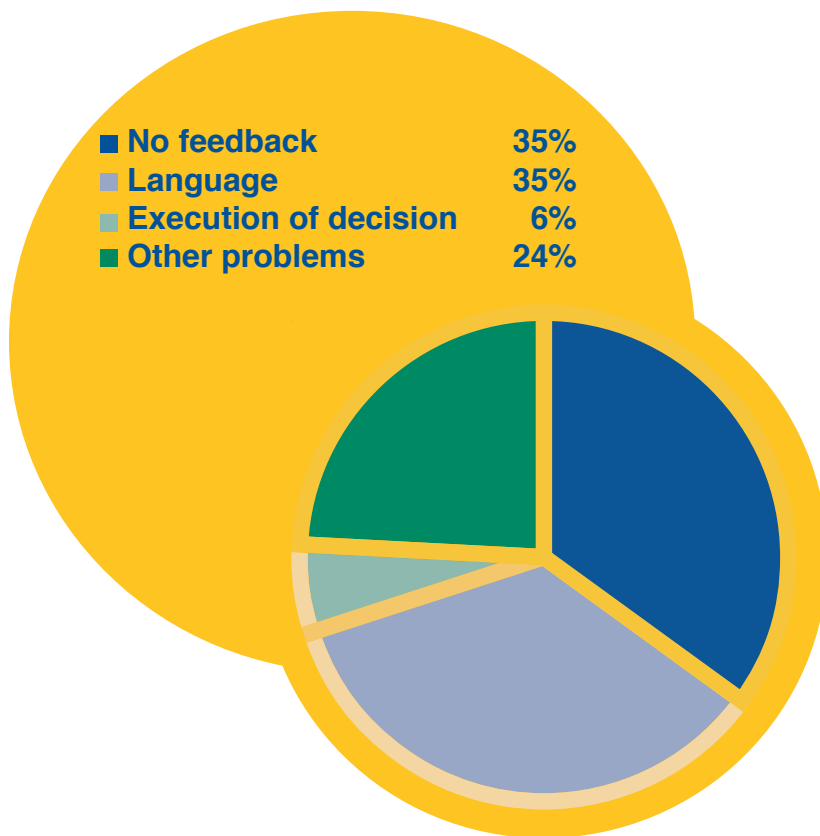




*Unavailability of forms.* Many consumers drew the attention of ECCs to the lack of forms provided by the Regulation, both on-site in the courts and on the Ministry of Justice website. In addition, practical assistance in completing the forms was unavailable almost everywhere, which is one of the most significant issues in the practical functioning of the procedure.

#### Chart No. 8:

*Do you experience particular problems (e.g. language issues, documentation, hearings)?*



*Language issues form by far the largest category of problems accounting for 35% of all the criticisms. The first incomprehension for the consumer is the fact that the necessary forms are available online and can be automatically translated, but he/she has to complete it in the language of the competent court. No assistance for translation is foreseen and it has to be done by a certified translator whose services are usually too expensive. 24% are linked to other problems, such as determining the competent court, filling the forms, which are too long and complicated, the calculation of interest, printing the form from the EC website, as usually the webpage is printed directly and not translated at the end of the form by simply clicking on the 'Show form' icon, etc., as well as execution of decisions (6%).*

*One Belgian consumer had a problem with the execution of the judge's decision. He contacted the competent person in Ireland (the bailiff), but the latter never replied. Finally, he asked for the help of the ECC-Net. ECC Belgium asked ECC Ireland to inform the trader about the decision of the Belgian judge.*

#### c) About service of judgment

Some issues have been reported related to the service of judgments; it basically happens that consumers, after receiving a judgment in their favour, need serve it to the counterpart, but they have no information on how to carry out this operation.

Some of them sent the document by fax or registered mail, but as it is normally issued in their own language, it happened that the defendant didn't understand it and didn't consider it properly.

On some occasions, if the European Small Claims Procedure was recommended by the ECC, consumers turned again to the ECC asking for assistance: this is the case for ECC Malta, contacted twice - through the consumer ECC - by foreign consumers who had a judgment in their favour against a Maltese trader not willing to honour the ruling. ECC Malta informed the traders concerned that there was a judgment against them and that they should comply with the decisions. However, this is something that ECC Malta is not entirely comfortable with, as it is cautious about getting involved in cases which are subject to legal proceedings and decided upon by the court. The same situation happened to ECC Italy: on a couple of occasions colleagues from other ECCs asked the ECC to





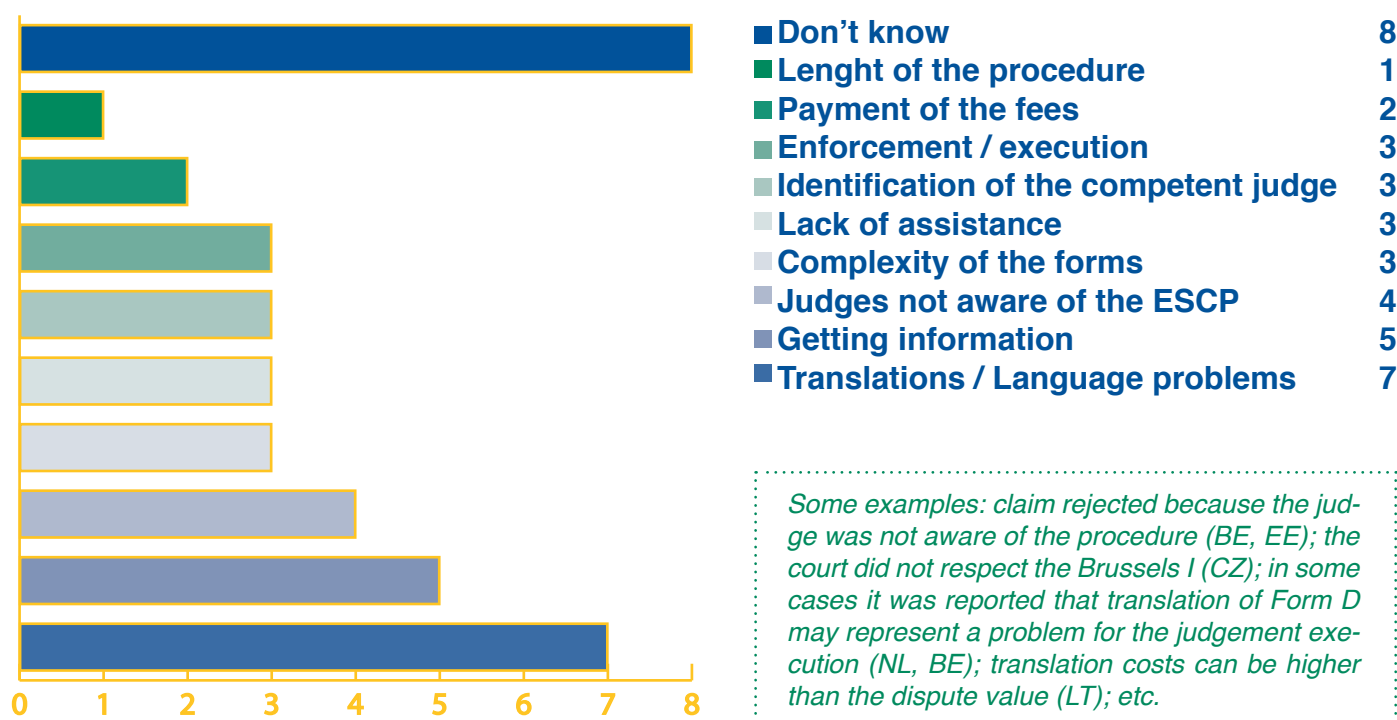
informally notify the Italian traders of the judgment; the problem in this case is that the defendant himself may require assistance in the matter and could decide to turn to ECC, which is his only interlocutor; but being involved in judicial proceedings is definitely outside the the scope of ECCs.

ECC Poland noted that if all formal procedural requirements are fulfilled, the court is obliged to send a copy of the lawsuit to the other party and request a response to the allegations. However, the common practice of protraction of proceedings as a conscious strategy of the defence can also be adopted for the Small Claims Procedures, thus posing an additional issue.

A specific solution exists in Ireland. Consumers who had obtained an order in their favor but did not know how to enforce it were advised by the Court Service staff to seek further advice/information from the European Commission Representative in Dublin. Upon the agreement between ECC Ireland and the Your Europe Advice/Eurojust Consultant, in the event of the respondent's failure to comply with the terms of the court order, Irish consumers contacting the European Commission Representation in Dublin for further advice in this context, would be referred to ECC Ireland. ECC Ireland would then try to assist consumers in identifying the enforcement authorities in the country where the respondent is based.

#### Chart No. 9:

*Are you aware of any specific problems experienced by consumers whilst using the ESCP? (Some ECCs reported more than 1 issue)*





#### d) Reported issues with the enforcement of the judgment

The successful party should be able to enforce the claim easily and without further delay. Language difficulties and differences between the respective legal systems may make it difficult for the claimant to achieve enforcement and excessive difficulties of enforcement procedures in a different country may even lead the applicant to abandon enforcement if the respondent fails to comply with the terms of the court order.

According to feedback from consumers the ECCs Netherlands and Lithuania underlined that some problems arising from the decision enforcement are associated with translation and finding a bailiff in the country the decision is to be executed. ECC Austria reported that several consumers expressed their concern that the verdict would not be implemented by the trader.

According to the survey conducted in Poland, the four people who benefited from the the European Small Claims Procedure had experienced difficulties with the enforcement of the judgment. ECC Austria and ECC Spain, identifying a language issue also in the enforcement of the judgment, noted that in cases where an official translation is demanded by the court this may cost more than the amount in dispute.



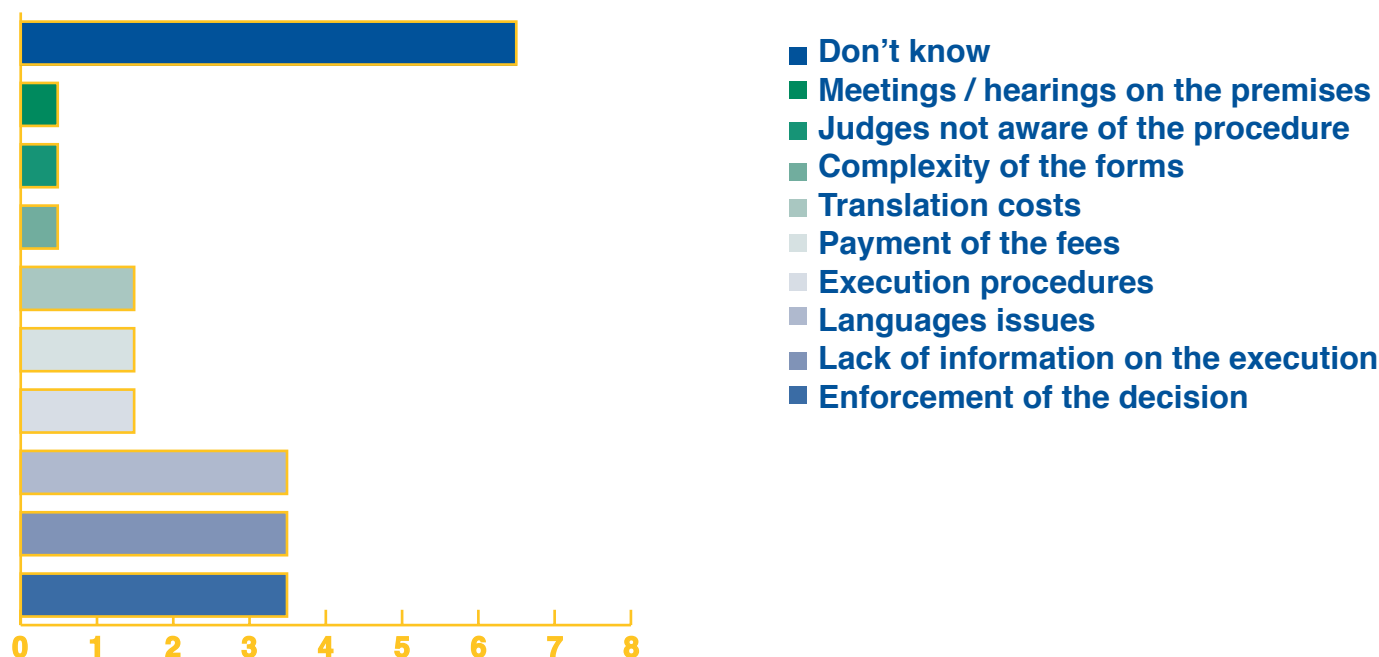
ECC Netherlands indicated the specifics of the territories in their case – for example if the country is Belgium, in their experience the consumer can indeed enforce the decision relatively easily, but in other countries the enforcement can be problematic. So success depends upon the country due to language, legal and cultural differences.

However the main problem in this context is probably the lack of information. In the European Judicial Atlas in Civil Matters, it is possible to find a lot of information about the procedure; nevertheless some additional information about its enforcement would be useful, e.g. practical answers to basic questions such as: who do I need to contact to enforce the verdict? As far as the financial aspect is concerned, how much does it cost? Who has to pay?



## Chart No. 10:

*Are you aware of any obstacles to the success of cross-border ESCP cases?*



### e) Further procedural issues

The questionnaire sent to all the ECCs in order to collect consumers' answers and sample cases on the functioning of the Small Claims Procedure also contained a question about further procedural aspects such as appeal of the judgment. In reality, under the current state of the implementation of this procedure at EU level, it has not been possible to receive exhaustive information on all its phases.

There are no concrete reports by consumers, so far, about judgments which have been contested by the defendant, leading the procedure to become a normal judicial procedure. Additionally it was not possible to receive concrete examples about hearings set by the judge: it would indeed be interesting to know if there are any issues concerning the practice of judges with regard to oral hearings, what are the practical circumstances in which they decide on a hearing, if they are following the principle of written nature of the proceedings or they convene hearings upon contingent reasons.

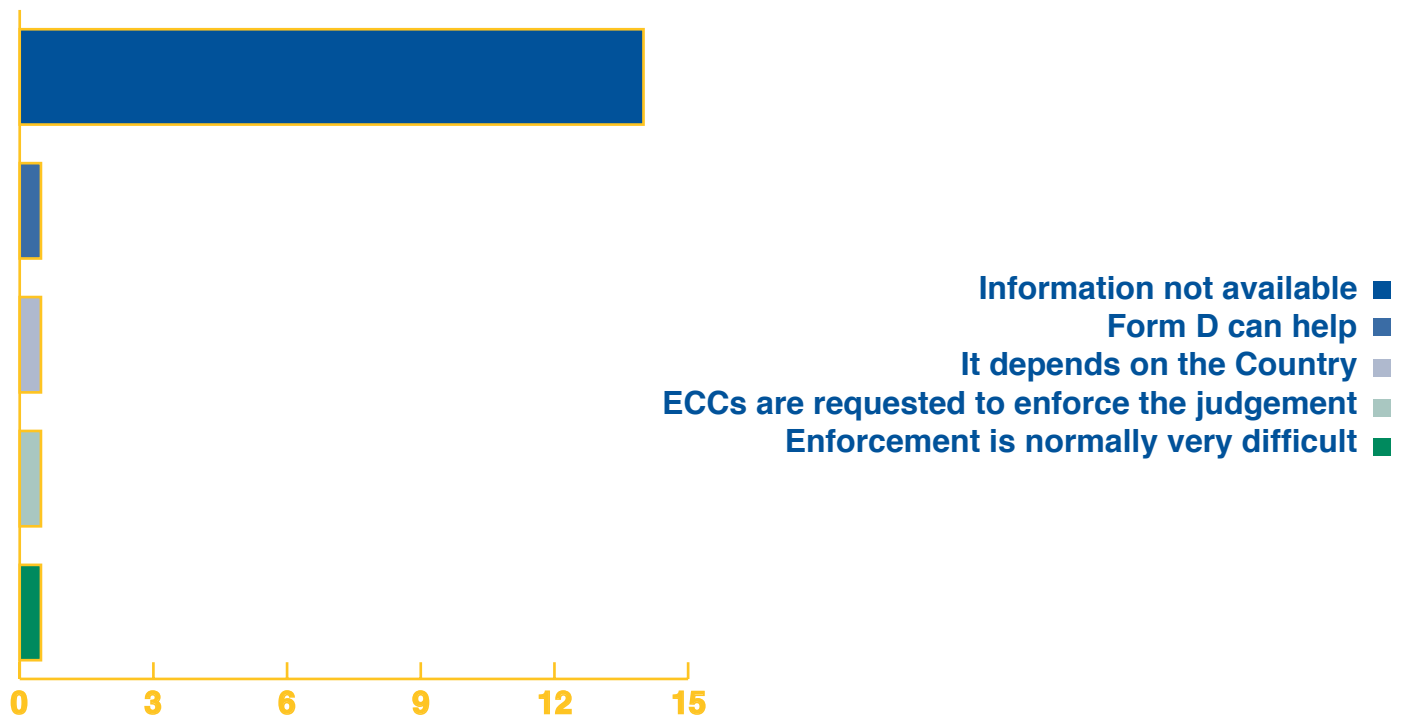




The ECC working group on this survey hopes that any future investigations will make it possible to have a complete picture of how the Regulation (EC) No 861/2007 has been implemented in all Member States and it is providing European citizens with a valid tool for their transactions in the Single Market, preferably with the support of statistics by the Member States themselves.

#### Chart No. 11:

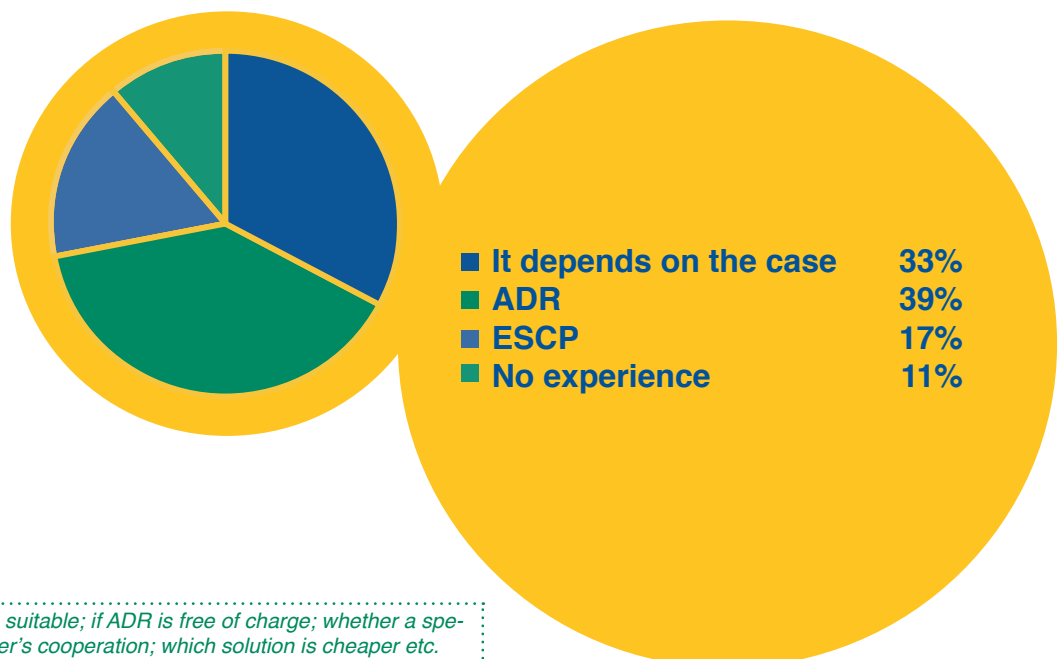
*In your experience, when the ESCP is won by the consumer, does enforcement/execution of the decision take place easily in the country of the trader?*



#### Chart No. 12:

*Based on your experience, which procedure would you recommend at first: an ADR scheme, if existing, or the ESCP?*

*In 39% of cases ADRs are regularly recommended at first; when a solution is not reached ESCP is suggested.*

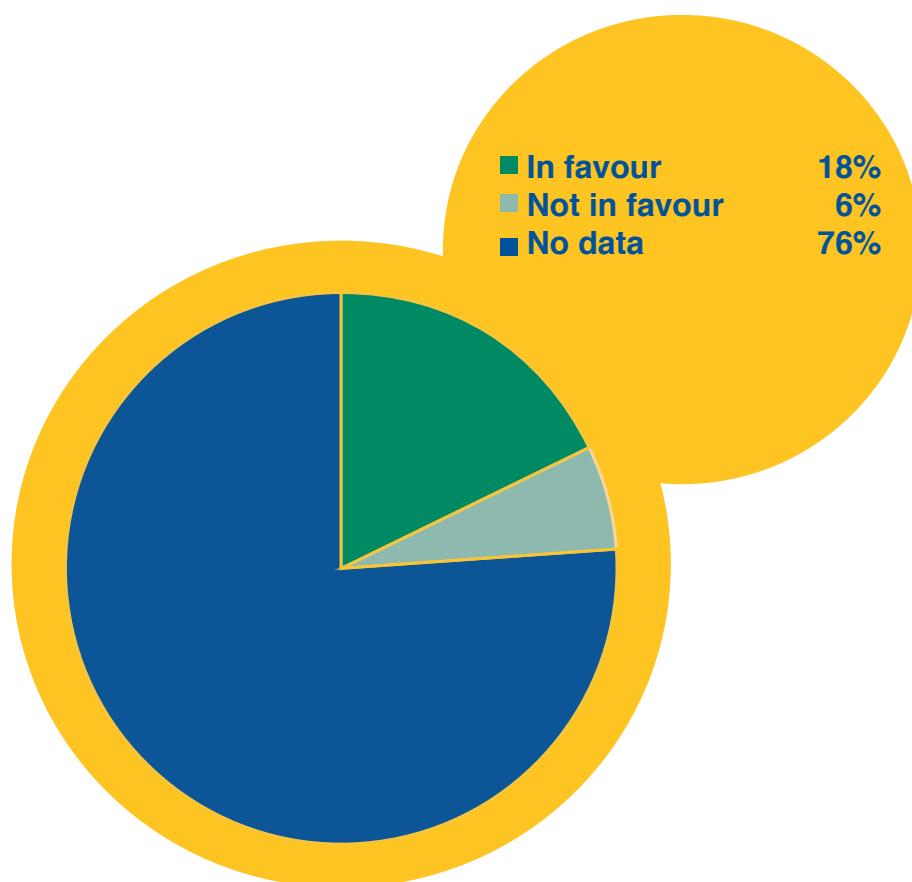


*Factors: which solution is more suitable; if ADR is free of charge; whether a specialised ADR exists or not; trader's cooperation; which solution is cheaper etc.*



### Chart No. 13:

Please describe a general trend of the outcomes (Judgments in favour/not in favour of consumer)



76% of the European Consumer Centres were not in possession of the information regarding the outcome of the judgments. 18% of the judgments were in favor of the consumers, while in 6% of cases consumers lost the proceedings.

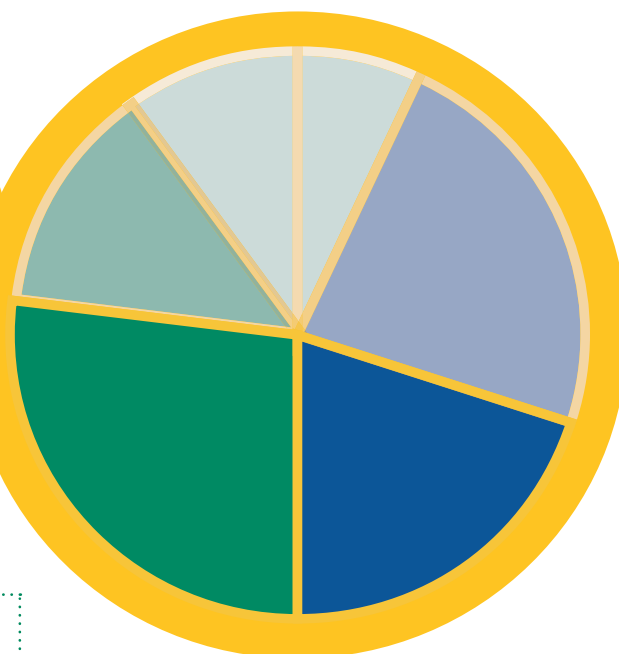
### Chart No. 14:

What activity intended to promote advantages of ESCP was taken by your ECC or – more generally - by authorities, organizations in your country (according to the ECCs experiences)?

94 % of ECCs took action:

29 % of authorities took action:

- training for judges;
- brochures;
- press releases;
- conferences.



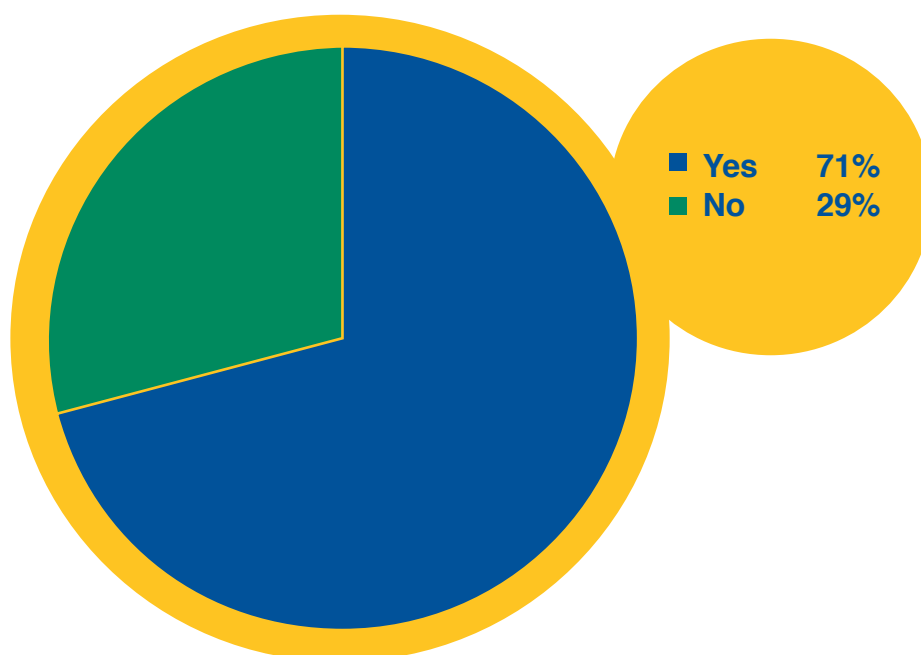
ESCP has been actively promoted by various means: websites (27%), leaflets and brochures (23%), adverts (20%), seminars (13%), articles in newspapers (10%) as well as newsletters (7%). According to European Consumer Centres experience, authorities have mainly concentrated on web promotion of the ESCP.





### Chart No. 15:

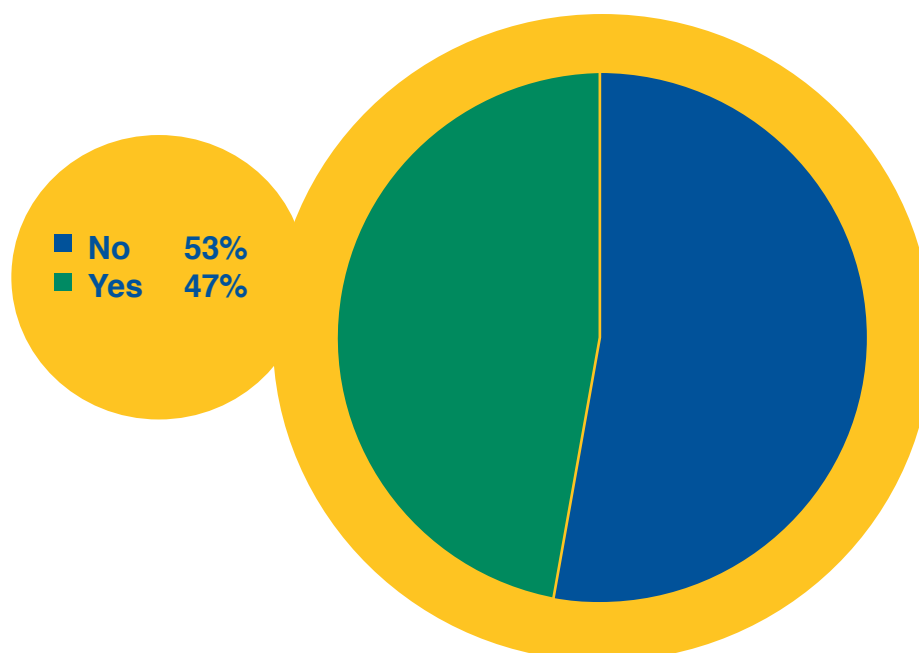
*Is training required for the case handlers on the ESCP?*



Some ECCs affirm that the staff members are already well informed about the procedure. However most of them consider that some training sessions would be very useful. In some cases ECCs were offered some training courses by the national Ministry of Justice. The required training is related to the Regulation 861, the assistance to provide consumers with, the general rules about the competent Court.

### Chart No. 16:

*In your opinion, would the ESCP increase the workload and represent extra costs for your ECC? If so, please explain.*



Reasons for NO: ESCP related requests are not very frequent, ECCs' staff members are already well informed and know how to help consumers, some ECCs don't foresee an increase of ESCP referrals during the coming years, the required assistance is more or less already part of ECCs' daily tasks (until the judicial steps).

Reasons for YES: the assistance activities would take time and resources: education and information to consumers, assistance in completing the forms, several requests by the same consumer, carrying out the work that Courts should do, a kind of judicial assistance which would need additional financing by the competent Ministry.



## CONCLUSIONS

In conclusion, there are many problems regarding the effectiveness of the European Small Claims Procedure to be solved. The purpose of ECC-Net in this project was to highlight most of these, with the hope that competent European and national authorities could take them into account and make this procedure as effective as possible, for the benefit of the whole European Single Market.

The findings of this report could be linked also to the ongoing ADR/ODR policy and system review at EU level, as a working and efficient judicial remedy at cross-border level could be a deterrent for businesses to refuse a mediation attempt by consumers.

The conclusions listed above are based on opinions of ECC-Net members. All information included in the report was collected and processed by the members of the working group of this joint-project (ECC Italy, ECC Lithuania, ECC Poland and ECC Estonia) who are very grateful to all the ECCs for the input they provided and to the European Commission for valuable support.

The content of this report does not reflect the official opinion of the European Union. Responsibility for the information and views expressed therein lies entirely with the authors.

### For further contacts with the Working Group:

**Federico Vicari**

Director ECC-Net Italy  
[federico.vicari@ecc-netitalia.it](mailto:federico.vicari@ecc-netitalia.it)

**Saulius Linkevicius**

Director ECC-Net Lithuania  
[saulius.linkevicius@ecc.lt](mailto:saulius.linkevicius@ecc.lt)

**Kristina Vaksmaa**

Director ECC-Net Estonia  
[kristina.vaksmaa@consumer.ee](mailto:kristina.vaksmaa@consumer.ee)

**Piotr Stańczak**

Director ECC-Net Poland  
[piotr.stanczak@konsument.gov.pl](mailto:piotr.stanczak@konsument.gov.pl)

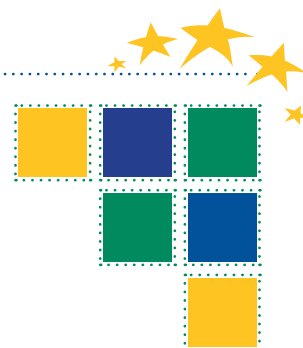
# QUESTIONNAIRE ON THE ESCP 2010

Working Group: ECC IT, LT, EE, PL

ECC \_\_\_\_\_

1	Regulation (EC) No. 861/2007 on European small claims procedure applies in all the Member States since 1 January 2009. Are the courts and judges aware of the ESCP?
2	Are the specific forms provided by the Regulation available for consumers at the premises/on the websites of the competent court/tribunal in accordance with Art. 4 part 5?
Specific forms are provided (please, mark the appropriate):	
	<input type="checkbox"/> At the premises <input type="checkbox"/> Website
3	Is the expected assistance to fill in the forms and to start the procedure available for consumers, according to the Art. 11 of the Regulation?
4	Is the ESCP free of charges? Otherwise, should the consumers meet any expenses to start, during and at the end of the procedure? If yes, what kind of expenses?
5	Do you have already some experience with ESCP cases? Is this procedure well known and operates well in your country?
6	Does the competent court in your country accept procedures started by citizens from other EU countries? (I.e. in the case the procedure is not available in the foreign consumers' country, are they allowed starting it in front of your Court/Tribunal, where the trader is based?)  If so, would the forms be accepted whether filled in the consumers' own language, or at least in English?  Would the expenses be the same compared to the standard procedure's ones? If not, what the difference would be?
7	How many procedures have been already started in your country from the beginning of 2009?
8	Can you report particular problems (e.g. language issues (translation), documentation, hearings)? Translation of case/related documents: Are you aware of any assistance foreseen for translation into and from the language of the consumer? Do consumers expect the respective ECC to provide assistance?
9	Can you describe a general trend of the outcomes? (Judgments in favour / not in favour of the consumer, judgment spontaneously executed or not by the losing party etc.)
10	What activity intended to promote advantages of ESCP was taken by your ECC or – more generally - by authorities, organizations in your country?
11	<u>Based on your experience</u> : which procedure would you recommend at first: an ADR scheme if existing or the ESCP?
12	Is training required for the case handlers on the ESCP?
13	In your opinion, would the ESCP increase the workload and represent extra costs for your ECC? If so, please explain.
REAL EXPERIENCES OF CONSUMERS	
14	Do you have information what proportion (%) of consumer complaints handled by your ECC which have not found amicable solution with ECCs' help, have been handled further with ESCP?
15	Are you aware of any specific problems experienced by consumers while using the ESCP?
16	Do you know about any obstacles to the success of cross-border ESCP cases?
17	In particular, how/ whether traders were notified about the judgment? If a problem had occurred with the execution of the judgment (e.g. a refusal from the trader), was it solved (and if it was, how)?
18	Did you have cases where the trader contested and the ESCP became a normal judicial procedure?
19	<u>In your experience</u> , when the ESCP is won by the consumer, does enforcement/execution of the decision take place easily in the country of the trader?
20	Issue of enforcement / appeals/ contest – are you aware of any practices in your country? What was the outcome of these?

# ECC-Net - National contact details



The updated list of the European Consumer Centres' contact details is also available at: [http://ec.europa.eu/consumers/ecc/index\\_en.htm](http://ec.europa.eu/consumers/ecc/index_en.htm)

## AUSTRIA

EUROPEAN CONSUMER CENTRE AUSTRIA  
MARIAHILFER STRASSE 81  
1060 WIEN  
Tel: +43 1 588 77 0  
Email: [info@europakonsument.at](mailto:info@europakonsument.at)  
Web: [www.europakonsument.at](http://www.europakonsument.at)

## BELGIUM

EUROPEAN CONSUMER CENTRE BELGIUM  
RUE DE HOLLANDE/HOLLANDSTRAAT 13  
1060 BRUXELLES/BRUSSELS  
Tel: +32 2 542 33 46 (NL)  
Tel: +32 2 542 33 89 (FR)  
Email: [info@eccbelgium.be](mailto:info@eccbelgium.be)  
Web: [www.eccbelgium.be](http://www.eccbelgium.be)

## BULGARIA

EUROPEAN CONSUMER CENTRE BULGARIA  
BACHO KIRO STREET 14  
1000 SOFIA  
Tel: +359 2 986 76 72  
Email: [info@ecc.bg](mailto:info@ecc.bg)  
Web: [www.ecc.bg](http://www.ecc.bg)

## CYPRUS

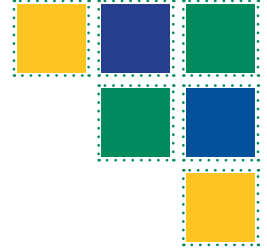
EUROPEAN CONSUMER CENTRE CYPRUS  
ANDREAS ARAOUZOS 6  
1421 NICOSIA  
Tel: +357 228 67 177  
Email: [ecccyprus@mcit.gov.cy](mailto:ecccyprus@mcit.gov.cy)  
Web: [www.ecccyprus.org](http://www.ecccyprus.org)

## CZECH REPUBLIC

EUROPEAN CONSUMER CENTRE CZECH REPUBLIC  
ŠTĚPÁNSKÁ 15  
12000 PRAGUE 2  
Tel: +420 296 366 155  
Email: [esc@coi.cz](mailto:esc@coi.cz)  
Web: [www.evropskyspotrebitel.cz](http://www.evropskyspotrebitel.cz)

## DENMARK

EUROPEAN CONSUMER CENTRE DENMARK  
CARL JACOBSENS VEJ 35  
2500 VALBY  
Tel: +45 4171 5000  
Email: [info@forbrugereuropa.dk](mailto:info@forbrugereuropa.dk)  
Web: [www.forbrugereuropa.dk](http://www.forbrugereuropa.dk)



#### **ESTONIA**

EUROPEAN CONSUMER CENTRE ESTONIA  
RAHUKOHTU 2  
10130 TALLINN  
Tel: +372 6201 708  
Email: [consumer@consumer.ee](mailto:consumer@consumer.ee)  
Web: [www.consumer.ee](http://www.consumer.ee) / [www.ecc.ee](http://www.ecc.ee)

#### **FINLAND**

EUROPEAN CONSUMER CENTRE FINLAND  
HAAPANIEMENKATU 4A, 7TH FLOOR  
P.O. BOX 5  
00531 HELSINKI  
Tel: +358 1 194 676  
Email: [ekk@kuluttajavirasto.fi](mailto:ekk@kuluttajavirasto.fi)  
Web: [www.ecc.fi](http://www.ecc.fi)

#### **FRANCE**

EUROPEAN CONSUMER CENTRE FRANCE  
BAHNHOFSPLATZ 3  
77694 KEHL  
Tel: +49 7851 991 48 0  
Email: [info@cec-zev.eu](mailto:info@cec-zev.eu)  
Web: [www.europe-consommateurs.eu](http://www.europe-consommateurs.eu)

#### **GERMANY**

EUROPEAN CONSUMER CENTRE GERMANY  
BAHNHOFSPLATZ 3  
77694 KEHL  
Tel: +49 7851 991 48 0  
Email: [info@cec-zev.eu](mailto:info@cec-zev.eu)  
Web: [www.eu-verbraucher.de](http://www.eu-verbraucher.de)

ECC KIEL OFFICE  
ANDREAS-GAYK-STR. 15  
24103 KIEL  
Tel: +49 7851 991 48 0  
Email: [info@cec-zev.eu](mailto:info@cec-zev.eu)  
Web: [www.eu-verbraucher.de](http://www.eu-verbraucher.de)

#### **GREECE**

EUROPEAN CONSUMER CENTRE GREECE  
ALEXANDRAS AV. 144  
114 71 ATHENS  
Tel: +30 21064 608 62  
Email: [ecc-greece@synigoroskatanaloti.gr](mailto:ecc-greece@synigoroskatanaloti.gr)  
Web: [http://www.synigoroskatanaloti.gr/index\\_ecc\\_en.html](http://www.synigoroskatanaloti.gr/index_ecc_en.html)

#### **HUNGARY**

EUROPEAN CONSUMER CENTRE HUNGARY  
JÓZSEF KÖRÚT 6  
1088 BUDAPEST  
Tel: +36 1 459 48 32  
Email: [info@magyarefk.hu](mailto:info@magyarefk.hu)  
Web: [www.magyarefk.hu](http://www.magyarefk.hu)

#### **ICELAND**

EUROPEAN CONSUMER CENTRE ICELAND  
HVERFISGÖTU 105  
101 REYKJAVIK  
Tel: +354 545 1200  
Email: [ena@ena.is](mailto:ena@ena.is)  
Web: [www.ena.is](http://www.ena.is)

#### **IRELAND**

EUROPEAN CONSUMER CENTRE IRELAND  
MACRO CENTRE, 1 GREEN STREET  
7 DUBLIN  
Tel: +353 1 8797 620  
Email: [info@eccireland.ie](mailto:info@eccireland.ie)  
Web: [www.eccireland.ie](http://www.eccireland.ie)





#### ITALY

EUROPEAN CONSUMER CENTRE ITALY  
VIALE DEGLI AMMIRAGLI 91  
00136 ROMA  
Tel: +39 06 442 38 090  
Email: [info@ecc-netitalia.it](mailto:info@ecc-netitalia.it)  
Web: [www.ecc-netitalia.it](http://www.ecc-netitalia.it)

#### LATVIA

EUROPEAN CONSUMER CENTRE LATVIA  
KR. VALDEMARA STREET 157-228  
1013 RIGA  
Tel: +371 6738 8625  
Email: [info@ecclatvia.lv](mailto:info@ecclatvia.lv)  
Web: [www.ecclatvia.lv](http://www.ecclatvia.lv)

#### LITHUANIA

EUROPEAN CONSUMER CENTRE LITHUANIA  
ODMINIŲ G. 12  
01122 VILNIUS  
Tel: +370 5 265 03 68  
Email: [info@ecc.lt](mailto:info@ecc.lt)  
Web: [www.ecc.lt](http://www.ecc.lt)

#### LUXEMBOURG

EUROPEAN CONSUMER CENTRE LUXEMBOURG  
RUE DES BRUYÈRES 55  
1274 HOWALD  
Tel: +352 26 84 64 1  
Email: [info@cecluxembourg.lu](mailto:info@cecluxembourg.lu)  
Web: [www.cecluxembourg.lu](http://www.cecluxembourg.lu)

#### MALTA

EUROPEAN CONSUMER CENTRE MALTA  
SOUTH STREET 47A  
VLT 1101 VALLETTA  
Tel: +356 21 22 19 01  
Email: [ecc.malta@gov.mt](mailto:ecc.malta@gov.mt)  
Web: [www.eccnetmalta.gov.mt](http://www.eccnetmalta.gov.mt)

#### THE NETHERLANDS

EUROPEAN CONSUMER CENTRE NETHERLANDS  
CATHARIJNESINGEL 55E  
3511 GD UTRECHT  
Tel: +31 30 232 64 40  
Email: [info@eccnl.eu](mailto:info@eccnl.eu)  
Web: [www.eccnl.eu](http://www.eccnl.eu)

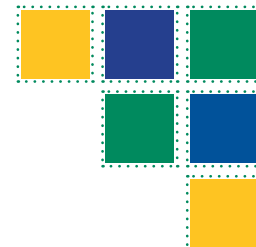
#### NORWAY

EUROPEAN CONSUMER CENTRE NORWAY  
ROLF WICKSTRØMS VEI 15  
0404 OSLO  
Tel: +47 23 400 500  
Email: [post@forbrukereuropa.no](mailto:post@forbrukereuropa.no)  
Web: [www.forbrukereuropa.no](http://www.forbrukereuropa.no)

#### POLAND

EUROPEAN CONSUMER CENTRE POLAND  
PLAC POWSTAŃCÓW WARSZAWY 1  
00 950 WARSAW  
Tel: +48 22 55 60 118  
Email: [info@konsument.gov.pl](mailto:info@konsument.gov.pl)  
Web: [www.konsument.gov.pl](http://www.konsument.gov.pl)

ECC BOLZANO OFFICE  
VIA BRENNERO 3  
39100 BOLZANO  
Tel: +39 0471 98 09 39  
Email: [info@euroconsumatori.org](mailto:info@euroconsumatori.org)  
Web: [www.euroconsumatori.org](http://www.euroconsumatori.org)



#### **PORTUGAL**

EUROPEAN CONSUMER CENTRE PORTUGAL  
PRAÇA DUQUE DE SALDANHA 31-1  
1069-013 LISBOA  
Tel: +351 21 356 4750  
Email: [euroconsumo@dg.consumidor.pt](mailto:euroconsumo@dg.consumidor.pt)  
Web: <http://cec.consumidor.pt>

#### **ROMANIA**

EUROPEAN CONSUMER CENTRE ROMANIA  
MAIOR AVIATOR STEFAN SANATESCU STR. 44, FLOOR 1, AP. 2, SECTOR 1  
011478 BUCHAREST  
Tel: +40 21 315 71 49  
Email: [office@eccromania.ro](mailto:office@eccromania.ro)  
Web: [www.eccromania.ro](http://www.eccromania.ro)

#### **SLOVAKIA**

EUROPEAN CONSUMER CENTRE SLOVAKIA  
MIEROVÁ 19  
827 15 BRATISLAVA 212  
Tel: +421 2 4854 2019  
Email: [info@esc-sr.sk](mailto:info@esc-sr.sk)  
Web: [www.esc-sr.sk](http://www.esc-sr.sk)

#### **SLOVENIA**

EUROPEAN CONSUMER CENTRE SLOVENIA  
FRANKOPANSKA 5  
1000 LJUBLJANA  
Tel: +386 1 432 30 35  
Email: [epc@epc.si](mailto:epc@epc.si)  
Web: [www.epc.si](http://www.epc.si)

#### **SPAIN**

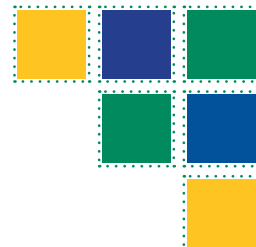
EUROPEAN CONSUMER CENTRE SPAIN  
PRINCIPE DE VERGARA 54  
28006 MADRID  
Tel: +34 91 822 45 55  
Email: [cec@consumo-inc.es](mailto:cec@consumo-inc.es)  
Web: <http://cec.consumo-inc.es>

#### **SWEDEN**

EUROPEAN CONSUMER CENTRE SWEDEN  
TAGE ERLANDERGATAN 8A BOX 48  
65102 KARLSTAD  
Tel: +46 54 19 41 50  
Email: [info@konsumenteuropa.se](mailto:info@konsumenteuropa.se)  
Web: [www.konsumenteuropa.se](http://www.konsumenteuropa.se)

#### **UNITED KINGDOM**

EUROPEAN CONSUMER CENTRE UK  
1 SYLVAN COURT, SYLVAN WAY, SOUTHFIELDS BUSINESS PARK  
SS15 6TH BASILDON ESSEX UK  
Tel: +44 8456 04 05 03  
Email: [ecc@tsi.org.uk](mailto:ecc@tsi.org.uk)  
Web: [www.ukecc.net](http://www.ukecc.net)





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