

KFST – independent Consumer Authority

# WELL-FUNCTIONING MARKETS

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# MISLEADING CONSUMERS ONLINE IS A CROSS-BORDER ISSUE

**Danish consumer authorities are working together with authorities in other EU countries to tackle companies who consciously, and in violation of the law, mislead consumers on the Internet.**

Misleading practices, e.g. in the form of subscription traps, can lead to significant losses for consumers and affects their willingness to shop online. It is also harmful for the majority of companies who do follow the rules.

In Denmark, the Consumer Ombudsman enforces the Marketing Act on Danish territory, while the Danish European Consumer Centre provides guidance and help for consumers who have experienced problems when trading across national borders in the EU.

The European Consumer Centres Network has reported a sharp increase in the number of complaints about consumers being misled on the Internet, which should be seen in the context of an increase in online trade.

Læs den fulde artikel på næste side →

**M**ost companies follow the rules when it comes to marketing and good practice. But there are also exceptions, i.e. companies who deliberately deceive consumers.

Misleading practices on the Internet is a growing international problem, which can be viewed in the context of increasing online trade and the fact that more and more consumers are conducting e-commerce in other EU states<sup>1</sup>. Therefore, this area is prioritised by authorities and consumer organisations throughout the EU.

It's expensive for the affected consumers, and it can reduce the trust in online trade which, in turn, also has an impact on the great majority of companies, who all follow the rules and seek to reap the benefits of the EU's digital single market.

The Swedish consumer authorities have assessed that a total of 3.5 million consumers in Sweden, Norway, Finland, Holland, Belgium and Austria have been tied to an unwanted subscription in the last three years. The study also showed that each consumer who ended up with an unwanted subscription paid an average of 855 kroner (approx. 115 EUR).

#### Box 1.

### The European Consumer Centres Network

The European Consumer Centres Network (the ECC-net) is a European network that advises consumers on their rights and provides help if there is a problem with a trader in another EU country. The ECC-net also collects information about the problems that consumers experience when they trade and travel across EU borders.

If there is a specific complaint that the consumer cannot solve themselves, the ECC-net can help solve the case amicably with the company. This is done in cooperation between the European Consumer Centre's legal staff in the consumer's own country and in the company's country.

There are European Consumer Centres in every EU country, as well as in Norway and Iceland, and the European Commission co-finances the network's activities. The Danish European Consumer Centre<sup>2</sup> is a part of the Danish Competition and Consumer Authority.

The number of complaints received by the Danish European Consumer Centre has risen by 80% in the last five years, and in 2017, the European Consumer Centre in Denmark received more than 1,000 consumer complaints. In addition, more than 2,000 Danish consumers contacted the European Consumer Centre office in 2017 with questions about cross-border trading.

<sup>1</sup> Analysis of the e-commerce area, report from the Danish Business Authority (in Danish), March 2016, [Link](#)

<sup>2</sup> [www.forbrugereuropa.dk](http://www.forbrugereuropa.dk), [www.consumereurope.dk](http://www.consumereurope.dk)

This is also a major problem in the Danish office of the European Consumer Centre. In 2017, there were 195 complaints relating to trial packages, unwanted parcels and trial subscriptions. This makes it the second largest case area for the Danish European Consumer Centre, which forms an independent part of the consumer policy centre in the Danish Competition and Consumer Authority, see box 1.

#### Examples of "traps"

Some of the companies bypass consumer protection laws through marketing that tricks consumers into buying products they don't want (the so-called online traps). In other cases, the company persuades consumers to subscribe to something the consumer doesn't want to subscribe to (the so-called subscription traps).

The traps can take many forms, see box 2. An example might be an online ad that says, "Enter your address here to continue," without displaying the price of the product. Subsequently, the consumer suddenly receives a product together with a bill for cash on delivery, which the consumer often pays.

It can also be a consumer, who reacts to "Win a smartphone for 1 EUR", and without realising it is suddenly signed up to an expensive, on-going subscription. Some examples have shown that attempts to get out of such agreements are met with threats of debt collection if the bill isn't paid. The new

#### Box 2.

### Typical traps on the Internet

*Subscription traps:* The consumer typically orders a free or low-cost trial package or reacts to a message about having won a prize. The company either doesn't inform you, or hides deep in their website, that by accepting the free trial or gift, the consumer also accepts to receive further gifts as part of a subscription with a payment obligation. The company then uses the consumer's payment details and withdraws further amounts.

*Unrequested packages:* The company registers an order without the consumer being aware of it. The order is registered e.g. by the consumer entering their address in order to click to the next page of the site and read more about the product. If the consumer shuts down the website without entering their payment details, the company simply sends the unwanted package with a cash on delivery bill.

digital marketing channels, such as web banners, advertisements on social media etc. have a number of benefits, but they are also used for deceitful marketing, even though the EU's consumer protection rules also apply to these forms of marketing<sup>3</sup>.

<sup>3</sup> The European Commission and Member States consumer authorities ask social media companies to comply with EU consumer rules, March 2017, [Link](#)

There are examples of companies that exploit online opportunities for e.g. targeted advertising that links to their own campaign sites. These campaign sites are only active for a short period of time. The campaign material is then removed so that neither consumers nor authorities can find the ads again and thereby prove that the marketing has violated the EU's consumer protection laws.

#### Example:

Quote from a consumer complaint received by European Consumer Centre Denmark

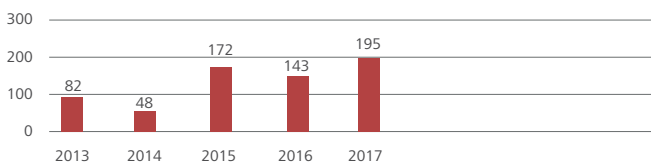
*“The day after my mother told me about the case, I could see that [company] had completely changed the design of their website. Now, everything was suddenly in English and at the bottom of the page, the business terms and conditions and the company's contact details had emerged.*

#### Denmark: a hotbed of misleading online trade

Based on the number of complaints, the challenge of misleading business methods in cross-border online trade is a growing problem<sup>4</sup>. At the Danish European Consumer Centre, unwanted subscriptions and packages is the area that receives the most complaints, only exceeded by flight-related complaints. The number of complaints has more than doubled since 2013, see figure 1.

**Figure 1**

Complaints received by the European Consumer Centre in Denmark for trial packages, unwanted parcels and trial subscriptions



A large number of these complaints come from European consumers complaining about companies based in Denmark. On a European level, some Danish companies have been source of a large number of complaints about unwanted packages. Many Danish consumers have also fallen for subscription traps, which is why this area is also under scrutiny by the Danish Consumer Ombudsman, who is responsible for enforcing the Marketing Act in Denmark.

<sup>4</sup> Report on subscription traps in Europe (in Danish); Unfair Commercial Practices and Unsolicited Goods, March 2013, [Link](#). Misleading "free" trials and subscription traps for consumers in the EU, September 2017, [Link](#)

In 2017, the Consumer Ombudsman received 440 complaints about subscription traps and so-called subscription based sales platforms<sup>5</sup>. The Consumer Ombudsman's efforts have led to a number of Danish companies being reported to the police<sup>6</sup>, but these cases have yet to reach the court system.

Meanwhile, the number of complaints only reveals a small part of the true scope of the problem. The Consumer Ombudsman also refers to studies from other countries showing that out of 5,000 affected consumers only one reported to the authorities that they had been trapped<sup>7</sup>.

#### High cost for consumers

The cost for the consumers that are tied to unwanted subscriptions or receive unrequested packages is considerable. The Swedish consumer authorities have assessed that a total of 3.5 million consumers in Sweden, Norway, Finland, the Netherlands, Belgium and Austria have been tied to unwanted subscriptions in the last three years<sup>8</sup>. Every consumer who ends up with an unwanted subscription has estimated that it has cost them an average of 855 kroner (approx. 115 EUR)<sup>9</sup>. The Danish Consumer Ombudsman also previously confirmed monthly withdrawals of up to 699 kroner (approx. EUR 94)<sup>10</sup> in studies on subscription traps in Denmark.

#### Example:

Quote from a consumer complaint received by European Consumer Centre Denmark

*“Ordered [product] and [product] on 6.1.18. It was a free offer, only needed to pay the delivery fee of 46 kroner (approx. 6 EUR) each. Received the products, they were fine. Thanks for the free gift. On 30.1.18, 2228.75 kroner (approx. 299 EUR) were withdrawn from my bank account. Only then did I spot the terms. You needed to return the products within 14 days. It was written at the bottom in English, and you had to click on “more” before it appeared. But the price of the products and the free offer was written in Danish.”*

<sup>5</sup> Consumer Ombudsman wants to shut off easy access to online fraud (in Danish), dr.dk, januar 2018, [Link](#)

<sup>6</sup> Consumer Ombudsman sharpens focus on subscription traps (in Danish), forbrugerombudsmanden.dk oktober 2016, [Link](#). Two Danish companies reported to the police for sending unwanted packages and demands for payments (in Danish), forbrugerombudsmanden.dk januar 2017, [Link](#)

<sup>7</sup> Consumer Ombudsman wants to shut off easy access to online fraud (in Danish), dr.dk, januar 2018, [Link](#)

<sup>8</sup> 3.5 million Europeans affected by subscription traps, Konsumenteuropa.se, september 2017, [Link](#)

<sup>9</sup> Subscription traps milk European consumers (in Danish), forbrugereuropa.dk, maj 2017, [Link](#)

<sup>10</sup> Consumer Ombudsman sharpens focus on subscription traps (in Danish), forbrugerombudsmanden.dk, oktober 2016, [Link](#)

The companies behind misleading business methods make money from it. Around one in five consumers pay the company without following up with a complaint, even though they don't believe they accepted the subscription. This is revealed in a study by the Swedish consumer authorities<sup>11</sup>.

The individual consumer also has to deal with the worry and regret they feel when they have to pay for a product they don't believe they ever bought, or if they have to fight a long battle to get out of the problem. They might also have to respond to debt collectors, and the threat of being registered as a bad payer is sometimes seen as an even more serious consequence than the actual demand for payment. This type of worry is often the biggest concern for consumers who contact the European Consumer Centre for help.

Consumers ultimately risk losing the trust in online trading and marketing. Consequently, the vast majority of companies who do follow the rules then struggle to reach the consumers.

### Cross-border companies

The bigger cases involving misleading marketing often occur across borders, where the same companies are active in several countries. Misleading practices on the Internet and the challenge of unwanted subscriptions and packages must therefore be combatted with a common European effort<sup>12,13</sup>.

Among other things, the European Consumer Centres Network receives cross-border consumer complaints, see box 1, and are among the first to become aware of companies with questionable business practices through consumer requests. The network can share this information with the authorities (in Denmark, e.g. the Consumer Ombudsman), so that they can investigate and stop the companies behind. Additionally, the same information is used to warn consumers about potential online traps.

In 2017, the European Consumer Centres Network launched a joint project with the aim of discovering the extent of misleading business methods on the Internet, and strengthening the cooperation on investigations into violations of legislation and the enforcement of legislation across borders. As part of this project, the Danish European Consumer Centre and the Danish Consumer Ombudsman organised a joint workshop with corresponding authorities from 26 European countries and European Commission representatives<sup>14</sup>. The workshop was held by the Competition and Consumer Authority in Denmark.

<sup>11</sup> Subscription traps milk European consumers (in Danish), forbrugereuropa.dk, maj 2017, [Link](#)

<sup>12</sup> e.g. the European Consumer Centres and CPC network (collaboration between EU countries' consumer authorities – in Denmark, the Consumer Ombudsman)

<sup>13</sup> The European Commission and Member States consumer authorities ask social media companies to comply with EU consumer rules, marts 2017, [Link](#)

<sup>14</sup> Strengthening European efforts against online traps (in Danish), forbrugereuropa.dk, april 2017, [Link](#)

### Strengthened European effort against online traps

The collaboration to improve efforts on a European level has resulted in a long list of suggestions and recommendations, all based on the participants' experiences. There are three areas in particular where increased efforts would be beneficial:

- **Improving the dialogue across authority networks and national borders**

We need to work towards a more efficient information sharing process regarding e.g. potential violations between different EU states and authority networks. As a specific example of a stronger collaboration, the EU countries' national consumer authorities and the European Consumer Centres Network have developed a common (confidential) digital platform for exchanging information about companies that consumers in multiple EU countries have complained about to the European Consumer Centres Network.

- **Enhanced collaboration with commercial actors**

Collaboration with commercial actors ensures a faster and more effective effort against companies that use misleading digital marketing. The relevant commercial actors are e.g. the media platforms where the companies advertise and the hosting companies where they buy domains. For example, the European Commission and the consumer authorities have entered into dialogue with Facebook, Twitter and Google+ to ensure that more is done to stop companies who use social networks to trick consumers<sup>15</sup>.

Other significant actors include the banks and credit card companies, as payment solutions enable the company to repeatedly withdraw money, even if the consumers believe that they only agreed to one single purchase.

The banks' and credit card companies' willingness to reimburse unauthorised payments is often the consumer's best chance of getting their money back when an amount has been unfairly withdrawn. The European Commission has also started talks with the banks and credit card companies about making it harder to withdraw further payments from a consumer's account when the consumer has not been made clearly aware that they have entered into a subscription agreement.

Similarly, results can also be achieved through improved dialogue with debt collection companies who collect the questionable demands to consumers. These should be notified as soon as possible that they are collecting money on behalf of companies who have no genuine claim against the consumer.

<sup>15</sup> The European Commission and Member States consumer authorities ask social media companies to comply with EU consumer rules, marts 2017, [Link](#)

- **Help consumers to avoid traps completely**

If consumers want to avoid unwanted packages and subscriptions on the Internet, it is important that they are able to spot the traps and that they have a greater knowledge of basic European consumer rights. Consumers should also know that they can refuse to pay for an unrequested package or a subscription they did not accept.

**Box 3.****Psychological tools**

Some psychological tools are typically used in ads on social media. They urge consumers to act impulsively and without thinking. The offer is typically very attractive and piques someone's interest through an introductory story. For example, the consumer is chosen as a test person for a new product, e.g. a smartphone. Sometimes, the consumer engages in a competition or get a free product by completing a questionnaire or simply by paying the postage. The price is often very low compared to the type of product, such as a phone for just 1 krone (approx. 13 cent). This is why the consumer sees it as a win-win situation with minimal risk. The consumer is also put under time pressure. They have to make a quick decision because the offer is only available for a short period of time or in a limited quantity.

Finally, work also needs to focus on making European consumer authorities and the European Consumer Centres Network even better at getting early and clear warnings out about companies who are deliberately deceiving consumers.