



Consumers vs. Traders

Disputes between consumers and traders are inevitable; however lengthy procedures can prove costly and time consuming for both parties. What means does the consumer have to seek redress to a claim against a trader? In this issue, we will be highlighting the various options that a consumer has to solve issues with traders both when shopping cross-border and also when shopping locally. We will also be having a look at the main categories of complaints that ECC Malta has dealt with in the first half of the year.

What means does the consumer have for seeking redress?

When it comes to consumer claims, obtaining redress through ordinary court procedures can be very costly and in many cases, higher than the compensation sought. Consumers should be aware of the alternative remedies available to them when it comes to cross-border disputes. Such options include Alternative Dispute Resolution and the European Small Claims Procedure.

Alternative Dispute Resolution (ADR) schemes or bodies are out-of-court mechanisms which aim at solving disputes without going to court. The process involves the use of an independent, neutral third party such as an arbitrator or a mediator to help the parties reach a resolution of their dispute. Sometimes, the law or the courts will oblige you to go to alternative dispute resolution,





but usually the parties themselves decide to resort to this remedy. ADR bodies are still little known and used by consumers, but they can have great advantages. Alternative dispute resolution comes in different forms, distinguished by the way in which the third party gets involved. The consumer however must be aware that ADR schemes differ between the different European Member States. Various different schemes are found within the EU, which schemes will also have different competences.

In order to facilitate the ADR process, the EU Commission has worked on the development of an Online Dispute Resolution (ODR) platform. This is a web based platform that is specifically designed to help consumers settle their disputes for their online purchases who have bought goods or services online from a trader based in an EU country. This platform is free to use and is available in 23 EU languages. It serves as a single point of entry for consumers and traders seeking to settle disputes emerging from online transactions irrespective of where the contract was concluded. The Platform links all National Alternative Dispute Resolution (ADR) entities. Consumers will be able to send their complaint directly to the trader via the ODR platform and reach an agreement on the ADR entity that will handle the dispute. There is a contact point in every Member State to provide support to the users of the

Platform and to assist in the submission of the complaints through the Platform. The European Consumer Centre Malta is the designated contact point in Malta. Additionally the ODR contact points will also assist by providing any general information on consumer rights or other means of redress and by providing explanations on the specific procedures applied by the proposed ADR entities.

The European Small Claims Procedure

is another procedure which aims at simplifying cross-border procedures in those cases where the claim is not more than 2,000 Euros. It is available throughout the European Union except Denmark. It is a relatively quick, less formal and inexpensive procedure. Hiring a lawyer is not necessary. The procedure is a written one and it will be conducted mainly through correspondence although the Court may request an oral hearing if it deems necessary. In order to start this procedure, the consumer is to go to the Civil Registry, Small Claims Tribunal, at the Law Courts Valletta and fill in a number of forms. Firstly, the consumer is to fill in a form in the official language or one of the official languages of the court where it is to be filed – Maltese, in our case, together with another form in a language that the other party may understand. He is to give the relevant details and the grounds for his claim, attaching any documents and other evidence available. A copy

of the claim is sent to the trader within 14 days. The trader is to submit his reply within 30 days of service of the claim. Documents are sent by post. Subsequently, the court issues a decision within 30 days and a copy of the judgment is sent to both parties by post.

On the other hand, consumers living in Malta who have a dispute against a local trader, based in Malta, may lodge a claim against him at the **Consumer Claims Tribunal**. A claim may be lodged against a trader after a mediation case has been opened at the Malta Competition and Consumer Affairs Authority and an amicable settlement has not been reached. The Tribunal may hear cases if the value of the claim does not exceed the sum of three thousand, five hundred euro (€3,500). A claim before the Tribunal can be filed by filing a 'notice of claim' form and submit it with the Secretary of the Tribunal upon payment of a small fee which varies depending on the value of the claim. After that the claim is presented, the other party will be notified and will have the opportunity to file a reply. If the claim is disputed, the Secretary of the Tribunal will appoint a date for the hearing to take place before an arbiter who will give a decision after hearing all the parties involved and after considering all the evidence. The Tribunal can also order the appointment of experts to a case.

An overview

of the complaints received by the Centre during the first six months

The following are the top 3 categories of complaints by Maltese consumers against businesses situated in another European country received by the Centre during the first six months:

Transport services – 40%

Purchase of electronic goods – 16%

Purchase of furnishings and household equipment – 14%

The transport category includes services related with flights services such as luggage delay and passenger rights, car rental and also other touristic transport services. When it comes to electronic goods and purchase of furnishings and household equipment, common grievances include defective products, non delivery of goods and other services under the guarantee.

On the other hand when it comes to consumers resident in other EU countries complaining against Maltese based traders, the top 3 categories of complaints are as follows:

Restaurants hotels and accommodation services – 38%

Transport services – 28%

Recreational and cultural services – 12%

The first category of complaints includes touristic accommodation services such as holiday clubs, whilst in the transport services category the main complaints derive from services related with car rental. The last category includes betting and gaming activities.

An important objective of the ECC is that of assisting consumers with complaints and disputes against a business situated in one of the EU Member States whilst also providing information and advice to consumers on their rights and obligations in connection with cross-border trade. The ultimate aim of the ECC is to help consumers reach an amicable solution with the trader.

Success Story

A Lithuanian consumer rented a car for his summer holiday in Malta. As specified in the reservation, the consumer ordered a luxury category car in automatic transmission. The consumer complained that, no car from this category was available upon collection. To the consumer's disappointment the car rental company provided the consumer with a car of an inferior category with manual transmission without giving any reimbursement or compensation. The consumer's experience was made worse when on delivering the car he was charged the amount of €295 for a small scratch on the rear of the vehicle, despite the consumer having purchased the full protection insurance policy which policy covered the consumer against all damages made to the car during the rental period as stated in the terms and conditions.

Upon complaining with the car hire company, the company representative maintained that the car provided to the consumer was not of an inferior category but of the same category stipulated on the reservation. The difference was that the trader provided a car with manual transmission instead



of automatic as stipulated in the reservation. Additionally, the company also refused to refund the amount charged for the damages. The consumer contacted the ECC with his complaint for assistance. Following the intervention of ECC Malta, the trader agreed to refund the consumer the amount of €355 representing the amount charged for the scratch and the difference in price as compensation for not providing a car with automatic transmission as ordered by the consumer.

Half Day Conference

Organised by the European Consumer Centre Malta in collaboration with the Malta Competition and Consumer Affairs Authority

Disputes between consumers and traders are a reality. But what can the consumer do to seek redress following an issue with a trader? Are there any differences when seeking redress following a cross-border transaction than when dealing with a trader in your own country?

It must be submitted that this sphere of redress is also challenging for businesses. This is due to the fact that when agreement cannot be reached, seeking redress through lengthy procedures can prove expensive and also time consuming for both parties. In this context we will discuss new

developments related with Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) aimed at increasing consumer confidence and enhancing business opportunities within the EU market and what are the implications for businesses and consumers.

The conference aims to give insight to consumers about the various means of redress available to them both when buying locally as well when shopping cross border. During the conference various stakeholders coming from different organisations within the area of consumer protection will discuss how the consumer can be assisted when dealing with an issue with a trader.



Help and advice for consumers in Europe
ECC-Net
European Consumer Centre Malta

CONSUMER MEANS OF REDRESS

10 NOVEMBER 2016
08:30AM

THE BALLROOM HALL, LE MERIDIEN HOTEL & SPA, ST JULIANS

Co-funded by the European Union

MCCAA
MALTA COMPETITION AND CONSUMER AFFAIRS AUTHORITY

Registration
2122 1901
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eccnetmalta.gov.mt

Interested in attending?

Register your place [here](#).

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