



BEUC's 8 Priorities for the
Hungarian
Presidency



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BEUC calls on the Hungarian Presidency to bring forward consumer friendly EU policy

When the European Commission published the **Single Market Act** in late October, BEUC, the European Consumers' Organisation, expressed its hope that the policy initiatives resulting from this Single Market Act will bring real tangible benefits to consumers. We hope that this approach – generating legislation that respond to consumers' needs – will guide the Hungarian government when it engages in its first Presidency of the European Union.

The flagship policy initiative of the Hungarian Presidency with major repercussions for European consumers will be the **Consumer Rights Directive**. With the plenary vote upcoming in the European Parliament and following the work done by the Belgian Presidency the Hungarian Presidency will have a lead role in bringing this piece of legislation to a result which clearly benefits European consumers. To achieve this, major improvements have to be brought to the design of the proposal itself, as the maximum harmonisation approach initially proposed by the Commission, combined with the low level of consumer protection, is not acceptable from the perspective of a sound consumer policy, neither at EU nor Member State level. We regret that the Council might decide to delete substantial parts of the original Commission's proposal. After two years of hard work this would not be a satisfactory result from the consumers' perspective. We ask the Council not to take a premature decision, but to wait for the first reading opinion of the European Parliament, before finally deciding on this fundamental issue. Linked to this, BEUC is very sceptical about the Commission's European contract law initiative, namely the use of an **optional instrument** for consumer contracts (the so-called '28th regime') and we worry about its potential negative impact on consumer legislation and the risk to rule out national protection standards. There is no need for deviating from traditional regulatory means for consumer contract law and in any case the Commission should await the adoption of the Consumer Rights Directive. We hope that the Hungarian Presidency will give consideration to our position in case this issue will be discussed in the Council.

The economic and financial crisis has left many consumers puzzled about the quality of the level of consumer protection in the area of **financial services**. The Hungarian Presidency has the opportunity to bring forward some very relevant initiatives to restore consumer confidence in the financial sector. In this respect, the deposit guarantee scheme directive, the SEPA (Single Euro Payment Area) regulation and the upcoming legislation on responsible lending in the mortgage sector are all initiatives in which the Hungarian Presidency will have the opportunity to contribute shaping financial services tailored to consumer needs.

As regards **energy**, we call upon the Hungarian Presidency to continue the good work of the Belgian Presidency in concentrating on how the energy market can be of benefit for consumers. The liberalisation of the EU energy market has not yet delivered to consumers; the energy sector is still a complaints intensive sector with poor billing practices, difficulties in switching, non transparent pricing policies, aggressive

marketing practices, and poor complaints handling. When European leaders meet in February for the special Energy Council to discuss the new Energy Strategy 2011 – 2020, we call upon them to focus on how to create competitive energy markets that benefit consumers.

We also invite the Hungarian Presidency to make progress on the following dossiers to ensure that:

- ➔ More is done with regard to the safety of consumer products, with special regard to **dangerous chemicals**, particularly in the context of the upcoming revision of the **General Product Safety Directive**
- ➔ The **Proposal for a Framework Directive on collective management of copyright** will increase the availability of creative content across Europe and will create a more competitive Single Market for the development of legal offers for content online
- ➔ Progress is being made in making a **collective consumer redress mechanism** available to consumers who have been harmed by illegal behaviour of traders or anticompetitive business practices
- ➔ The **Food information to consumers regulation** helps consumers to make informed and healthy choices by giving them clear and complete information on their food
- ➔ The proposed legislation on **Information to patients** allows patients to have access to reliable, non-promotional and comparative information on diseases, treatment options and medicines.

With this in mind we have identified **eight main areas of concern** which we describe in this document, together with **numerous concrete proposals**. In the first semester of 2011, the Hungarian government will be responsible for conducting discussions and negotiations on these dossiers. BEUC¹ and members, call on the Prime Minister and the members of his government to make these a matter of priority, and to measure concretely how its programme will benefit consumers.

¹ BEUC, the European Consumers' Organisation, is the umbrella organisation for 44 of the most important consumer organisations in 31 European countries. It is our objective to represent and promote consumer interests with EU decision makers in all consumer relevant areas that match our members' strategic priorities.

Consumer contracts

Strong rules to protect consumers online and offline

I. Consumer Rights Directive

In October 2008, the European Commission adopted a proposal for a Directive on Consumer Rights (pCRD) which revises four consumer Directives², merging them into one instrument. The Commission's aim is to simplify and complete the existing rules on contracts between businesses and consumers when buying products or services,

The minimum harmonisation approach (under which Member States are able to maintain or adopt stricter consumer protection rules) is blamed for having created different rules in different countries and discouraging cross-border trade. Therefore the Commission proposed to abandon the minimum harmonisation approach and replace it with full harmonisation (where Member States would lose the possibility to adopt or maintain rules going beyond the protection provided by the EU instrument) which is supposed to increase the still limited cross-border trade and promote consumer confidence.

Yet, the reasons why consumers are still hesitant to engage in cross-border transactions are not related to the differences between national legislation. Rather, consumers face difficulties with foreign languages, the lack of cross-border redress mechanisms or fears regarding security and data protection on the internet.

Besides the problematic application of full harmonisation to consumer contract law, the proposal provides for only a very low level of consumer protection: the proposed Directive would result in taking away essential rights from consumers just for the sake of promoting the Single Market. The proposal requires substantive changes and supplementation before it can become a piece of legislation that responds to the needs and expectations of consumers in the EU.

Against this background, BEUC welcomed the announcement of the Commission to abandon full harmonisation across the whole Directive and to favour a more targeted full harmonisation approach, leaving the rest to minimum harmonisation.

The draft report in the European Parliament's leading committee (IMCO) addresses some concerns regarding the drawbacks of an indiscriminate application of the principle of full harmonisation. It suggests a mixed approach which combines both minimum and fully harmonised rules. However, the draft report does not improve the substance of the proposed Directive and would create legal uncertainty due to the unclear delimitations between the different levels of harmonisation.

In contrast, BEUC salutes the outcome of the vote in the European Parliament's Economic Affairs Committee which adopted the principle of minimum harmonisation as

² Directive on contracts negotiated away from business premises (85/577), Directive on unfair terms (93/13), Directive on distance contracts (97/7) and the Directive on sale of consumer goods and associated guarantees (1999/44).

a basic rule and introduced many improvements in the level of consumer protection in the proposal. The Legal Affairs Committee has also delivered a draft report which includes many improvements and puts forward minimum harmonisation as a basic rule.

BEUC favours the introduction of a notification duty for Member States, to increase the transparency of national rules based on minimum harmonisation. Yet, a so-called 'efficiency test' as suggested in the draft report of the IMCO committee, is neither politically desirable nor workable in practice.

In the Council, significant progress has been made under the Belgian Presidency, yet we are very disappointed that at the last minute, the Council might decide to delete substantial parts of the proposed Directive. After two years of hard work this would not be a satisfactory result from the consumers' perspective. We ask the Council not to take a premature decision, but to wait for the first reading opinion of the European Parliament. We count on legislators and, in particular, on the Hungarian Presidency which has a crucial role to play in these negotiations, to bring this piece of legislation to a result which clearly benefits European consumers.

BEUC has submitted proposals which aim to support legislators' work in getting this piece of legislation right.

How should consumers' needs be addressed?

General

- Ensure that the future Directive does not reduce, but rather clearly improves the rights of consumers;
- Full harmonisation can only be accepted if applied to technical and/or cross-cutting issues (definitions and right of withdrawal for example), its application should ensure a genuinely high level of protection and the scope of the fully harmonised field should be crystal clear so that legal certainty is provided;
- The fields of consumer guarantees for defective products, unfair contract terms and information requirements, which are inseparably linked with national civil law, should NOT be fully harmonised. Otherwise, the proposal could lead to a situation where general contract law evolves freely, while consumer law is frozen due to the ceiling imposed by full harmonisation;
- Adapt the existing consumer legislation to the digital environment. The promotion of the online Single Market requires harmonised rules to address consumer needs with regard to the particularities of digital content products (such as downloaded software or music).

Further concrete demands to improve the proposal:

Information requirements

The list of information requirements should be a non-exhaustive list. The impact of a fully harmonised list on the legislation of member states has never been assessed. We

call on legislators to maintain the only innovative element in the Commission's proposal, namely the introduction of a horizontal duty to inform the consumer, but to make it a minimum harmonisation rule.

Right of withdrawal

More consumer friendly rules on the starting point of the right of withdrawal, on the consequences of any omission of information by the trader and regarding the obligations of the parties in cases of withdrawal should be introduced.

Some exemptions from the right of withdrawal as proposed in the Directive should be deleted (for example for e-auctions and for car rental and leisure services bought at a distance).

Legal guarantees

The provisions in relation to consumers' rights in relation to defective products must not be fully harmonised and should be improved. If adopted as they are, the proposed rules would deprive consumers from having the initial choice between all available remedies. The proposal to deprive consumers of the right to a guarantee should they not report a defect is not balanced and should be deleted entirely. Also, in suggesting an EU guarantee period of two years, the proposal does not encourage the commercialisation of sustainable products.

What consumers really need in case they buy defective goods is a prolongation of the reversal of the burden of proof for the defect which is currently too short, accompanied by a free choice of remedies between repair, replacement, price reduction and the termination of the contract.

Unfair contract terms

The proposed fully harmonised regime for unfair contract terms would create significant legal uncertainty and put long established, efficient national case law at risk. Member States who have more extensive lists of unfair contract clauses would have to repeal these clauses from their black/grey lists.

In this regard, we welcome the fact that the European Parliament and Council are now working on the basis of non-exhaustive lists of unfair contract terms which should be prohibited or presumed to be unfair throughout the EU. Yet we consider that not only the lists of unfair terms, but the entire chapter on unfair contract terms should remain under minimum harmonisation.

The rules on unfair contract terms should apply widely to all consumer contracts and be adapted to the particularities of digital products.

A modern consumer rights proposal

The following new elements should be introduced into the proposed Directive to ensure effective and modern consumer rights:

- Introduce a rule establishing the direct responsibility of the producer in case of lack of conformity. The introduction of such a rule would promote consumer confidence in cross-border shopping e.g. by allowing consumers to seek redress from the producer for defective goods purchased from retailers in other EU countries;

- Stop trapping consumers in through long-term service contracts (for example gyms or internet subscriptions) by granting the consumer the right to cancel a contract after a maximum duration of one year;
- Ensure consumers have access to at least one means of payment without additional charges.

II. Revision of the Package Travel Directive and of air passengers' rights legislation

In December 2009, the European Commission consulted on certain aspects regarding the upcoming revision of the Directive on package travel, which dates back to 1990. The Commission's aim is to update the existing rules on package travel, as the travel market and consumer behaviour have changed substantially due to online booking and low cost airlines etc. In parallel, at the beginning of 2010, the Commission undertook a consultation on a possible revision of EU air passengers' rights legislation. BEUC has responded to both consultations highlighting current consumer problems, which are not sufficiently addressed by the existing legislation and underlining the need to adopt a broader, horizontal and more consistent approach to consumer rights in the field of transport. A proposal for legislation on package travel is expected to be issued by the Commission early in 2011.

How should consumers' needs be addressed?

- Establish a comprehensive travel directive that would set out the legal rights and remedies of all passengers and holidaymakers in one single piece of legislation;
- Extend the current scope of the Package Travel Directive to cover the widest number of travel service contracts (transport, with or without accommodation, leisure service linked to transport, fixed or dynamic package);
- Clarify the legal regime for liability. Consumers are often confused about who is responsible in case of problems. We call for joint liability of the seller and the organiser/tour operator. Also the Commission should provide guidance on an EU wide system to calculate compensation owed to the consumer;
- To avoid misleading consumers, request that the consumer is always informed as to the full price and that prices cannot be increased after the conclusion of the contract;
- Establish efficient protection against insolvency of airlines or other operators offering prepaid travel services;
- Establish a list of unfair and thus prohibited contracts terms in travel contracts;
- Oblige businesses to establish an efficient complaint handling system and Member States to establish an alternative dispute resolution system, which is in line with the Commission's recommendations on this matter;

- At present, conflicts with regard to air passenger rights often fall under a jurisdiction different to the passenger's place of residence. This makes it very difficult for passengers to enforce their rights before the courts. The Rome I regulation should be amended in this respect.

III. Towards an optional instrument for business to consumer contracts?

The introduction of a so-called '28th regime' or 'optional instrument' in the field of European contract law, and in particular for business to consumer contracts, has been announced as a priority for the Commission from here on. A legislative proposal is expected as early as the second half of 2011. Thereby a self-standing set of rules (i.e. an optional instrument) would be the basis for the contract (business to consumer contract) setting aside the application of the relevant national rules. A Commission expert group has been established and a Commission consultation on options for further harmonisation of contract law is running until the end of January 2011.

BEUC is very sceptical about the use of an optional instrument for consumer contracts. Given that the proposed Consumer Rights Directive is likely to be adopted soon, there is no need for deviating from traditional regulatory means for consumer contract law. Even more so as an optional instrument would rule out the application of mandatory consumer rules, would probably not be at the choice of the consumer (but rather unilaterally chosen by the business) and might well provide for lower standards of protection than those consumers currently enjoy in many countries. Besides, it would be confusing for consumers and business to have to deal with national legislation, foreign legislation and, on top of that, with an optional instrument. Therefore, we call on the Council to examine very carefully whether there is a real need to introduce such an optional instrument and to fully consider the magnitude and the practical consequences of the use of such an instrument for business to consumer contracts.

Safety

Safe consumer products – consumers and the environment protected against dangerous chemicals

I. Safe products for consumers

Unsafe consumer products, including products bearing the CE mark, are often found on the EU market and need to be recalled, thus posing risks to health and safety which could have been avoided. In recent years, the first products to be notified by Member States as unsafe have been toys, electrical appliances and cars and this is likely to be the case in coming years. The high number of RAPEX notifications show that general and sector-specific product safety legislation ought to be reviewed and adapted to cover all risks which may be posed by products. More clarity is needed as to how the various product safety legislations that are in effect within the EU interact with each other. In addition, manufacturers' responsibility needs to be strengthened and clarified. Last but not least, it needs to be ensured that the level of enforcement is the same across the EU and that market surveillance and control activities are both numerous and effective.

The Commission is planning a revision of the General Product Safety Directive (GPSD), of which the preliminary consultation phase took place in 2010. The European Parliament is planning to adopt an own initiative report at the beginning of 2011. BEUC, in collaboration with ANEC³, provided input to the Commission for a revised Directive by way of our participation in the public consultation. We will continue to provide input to the European Commission through our participation in the GPSD Committee and we will also closely follow the co-decision process. With regards to chemicals, we will continue to raise concerns regarding the use of problematic chemicals in consumer products and the lack of specific provisions for chemicals in the EU safety legislation.

How should consumers' needs be addressed?

- Strengthen the GPSD while developing a horizontal legal framework for the safety of services. In addition, it is crucial that the safety of products used in the context of a service provision, whether they are operated by consumers or the service providers, is covered by the legal framework for the safety of services. For the moment, only products provided in the context of a service and that are operated by consumers are covered by the GPSD.⁴ If a legal framework for the safety of services is not developed in the immediate future, the scope of the revised GPSD should be extended to all products provided in the context of a service;

³ ANEC is the European consumer voice in standardisation

⁴ Fairground equipment, responsible for a high number of serious accidents, is a good example of a product for which the safety aspects are not covered by any European Directive or legislation. The GPSD on the other hand, does not for instance cover the safety aspects of the installation, operation and maintenance of such equipment or the competences of the personnel.

- Ensure the safety of child-appealing products through the GPSD by including a legal definition for child-appealing products and introducing related specific safety requirements in the GPSD. In addition, the prohibition of food-imitating products should be maintained;
- Ensure a more effective market surveillance system through the development of a European framework for market surveillance and wider access to information on dangerous products. An EU-funded accident statistics system and a European complaints handling and reporting point ought to be put in place;
- Adapt emergency measures to the risks posed. This means allowing Community emergency measures to be fully adapted to the risks they are intended to address either by making these measures permanent or ensuring their validity until a satisfactory solution is found;
- Give a legally-binding status to Commission decisions which lay down safety requirements under the scope of the GPSD and which aim to support the development of standardisation mandates.

II. Ensure the safe development of nanotechnologies and nanomaterials

Nanotechnologies are newly emerging technologies. Using nanotechnologies is like working on a scale ten thousand times smaller than the thickness of a human hair. Increased energy efficiency, a cleaner environment, more effective medical treatment and improved manufacturing production – there is a wide variety of existing and foreseen applications of nanotechnologies in various areas.

We acknowledge that some of these applications could bring benefits in particular for consumers' health and safety and for the environment. However, we are concerned about the potential adverse effects of nanomaterials on human health and the environment, both in the short and long term.

In this context, we are alarmed by the increasing use of nanomaterials in consumer products that are being sold on the European market without prior risk assessment. We are particularly concerned about products with which consumers come into direct contact on a daily basis (e.g. cosmetics and food products) and in products which lead to discharge in the environment. It is crucial that consumers are properly protected and can feel confident that any product containing nanomaterials (or made using nanotechnologies) on the market has been independently assessed and found to be safe before it is permitted to go on sale. In this context, we have high expectations with regard to the future EU Action Plan on nanotechnologies and nanomaterials. In 2011, the Commission will have to respond to the European Parliament's Resolution on regulatory aspects of nanomaterials adopted in April 2009. This resolution called for various ambitious actions to be taken to ensure the safety of nanomaterials and nanotechnologies.

How should consumers' needs be addressed?

- Agree on clear definitions of nanomaterials and nanotechnologies as the lack of definitions leads to legal uncertainties and hampers the development of regulatory requirements;
- Review and adapt, when necessary, all relevant legislation (such as REACH and product safety legislations) in order to adequately address the potential risks of nanotechnologies for health and the environment;
- Promote the development of adequate safety and risk assessment methodologies taking into account all characteristics of nanomaterials;
- Impose a safety assessment and approval for all nanomaterials used in consumer products or in products that can have important impacts on the environment. The 'no data, no market' principle should prevail;
- Establish an inventory of products containing nanomaterials on the EU market;
- Require manufacturers to label consumer products containing nanomaterials in particular clothes, household and food products, as it will be done in the new regulation for cosmetic products that will soon enter into force;
- Regulate misleading claims that are made on products marketed as containing nanomaterials;
- Prioritise funding and research towards environmental and human health and safety aspects of nanomaterials;
- Launch a public debate on nanotechnologies and nanomaterials with the Commission and Member States across the EU in order to ensure that citizens are involved in the safe and sustainable development of these technologies and materials.

Financial Services

A dynamic Single Market for retail financial services

The financial crisis has clearly demonstrated that consumer rights in the financial area have been, at best, simply not taken into account and, at worst, systematically violated. Financial service providers have been focusing on enormous profits rather than providing services tailored to individual consumer needs. Consumers have lost confidence in deposit, credit and investment service providers, which weakens the basis of the Single Market and prevents cross-border shopping for financial services. Furthermore, the financial sector does not operate in a competitive EU market.

I. Improve Deposit Guarantee and Investor Compensation schemes

The financial crisis illustrated that the protection of consumers' assets was insufficient and that such an insufficiency creates a risk of bank runs. Some quick fixes were adopted both at national level and EU level (higher protection level, abandonment of the co-insurance possibility). But, to achieve sufficient protection and restore consumer confidence in the financial sector, other shortcomings should be eliminated.

How should consumers' needs be addressed?

BEUC welcomes and supports the two Directive proposals issued by the European Commission on 12 July 2010 on Deposit Guarantee Schemes (DGS) and Investor Compensation Schemes (ICS).

As regards the DGS proposal, some improvements need to be adopted:

- Apply the guarantee limit *per depositor* and *per brand* instead of *per bank license*;
- Allow for compensation if the Competent Authority waits more than 5 days to determine that deposits are unavailable due to the financial situation of the bank;
- Enable that a depositor who is living in a country other than that where the bank is located, should have the possibility to ask for information on and to be repaid by his local DGS, even if the bank is not running a branch in the country of the depositor.

II. Enhance investors' protection

Savings, investments and life insurances cover the same financial needs of the consumer, but pre-contractual information and conduct of business rules differ depending on the kind of financial service provided. The consequence is consumer confusion and regulatory arbitrage.

Member States are adopting local regulations to assure better information and comparability, but the different national approaches are undermining the Single Market. The consumer needs coherent and cross-sectoral regulation of savings and investments.

How should consumers' needs be addressed?

- Adopt coherent and cross-sectoral regulation of savings and investments. The PRIPs initiative is a good step forward, but it should not be limited to 'packaged' investments. The need for information and the selling practices involved should not be different for any type of investment

III. Payment services - SEPA

The Single Euro Payments Area (SEPA) aims to realise a Single Market for electronic payments in Euro. So far, SEPA has been a banking project developed by the European Payments Council (EPC), the decision-making and coordination body of the European banking industry in relation to payments. Although the ultimate outcome should be to design the means of payments to serve the users' needs (notably consumers), the EPC has failed to take the users' requests into account, especially with regard to SEPA direct debit. Besides, consumer requests and needs are upheld by all EU institutions (the ECOFIN Council Conclusions of 2 December 2009, the European Parliament Resolution of 10 March 2010 on the Implementation of SEPA and the joint European Commission/ECB letter to the EPC of 10 March 2010). As a result, the upcoming legislative proposal of the European Commission on migration end-dates for SEPA credit transfer and SEPA direct debit should include a list of essential requirements that need to be fulfilled by pan-European credit transfers and direct debits. The proposal should also address the issue of a long term business model for direct debits taking into account consumers' interests.

How should consumers' needs be addressed?

- Consider payment services as essential commodities available to all EU consumers;
- Ensure that the Single Euro Payment Area provides concrete advantages to consumers: All SEPA products (credit transfer, direct debit, debit card and credit card, e-payment and m-payment tools) should be efficient, affordable (cost-based) and with a high level of security;
- Safeguard that the proposal for a Regulation (SEPA end-date) includes essential requirements on direct debit and credit transfer to meet consumers' needs notably on security (e.g. blockage of some creditors, etc.) and provisions abolishing Multilateral Interchange Fees per transaction;
- Ensure better SEPA governance in order to take on board end-users' needs. SEPA should be a market project, not only a banking project.

IV. Credit - responsible lending

Irresponsible lending is one of the main causes of the financial crisis. As a result, more attention should be paid to this issue. Lenders should be obliged to assess the financial capacity of consumers asking for credit and check their creditworthiness. All financial service providers, credit products and distribution channels of these products must behave responsibly and be regulated to achieve a high level of quality.

How should consumers' needs be addressed?

- Foster consumer protection and responsible behaviour of credit institutions with the upcoming legislation on responsible mortgage lending: if the bank's decision is based on a poor quality assessment of the consumer's financial situation, the costs of irresponsible lending should be taken on only by lenders and not by consumers (see Belgian law on responsible lending);
- Regulate home loans notably by binding measures on Annual Percentage Rates (APRs), advertising and commercial practices, pre-contractual information, major contractual provisions, responsible lending conditions;
- Regulate crediting activities that seriously endanger the solvency of consumers (foreign currency credit, credit secured with mutual funds, Lombard credit, revolving credit, etc.) as well as usury rates and excessive costs;
- Assure that lenders and intermediaries possess appropriate professional knowledge and ability; they must also possess a professional liability insurance;
- Extend legislation on responsible lending to also cover consumer credit instead of limiting it to home loans.

V. Unfair commercial practices

All EU consumers should be offered financial services without being affected by discriminatory practices or unfair commercial practices.

How should consumers' needs be addressed?

- Adopt binding measures prohibiting discrimination based on residence or nationality;
- Adopt binding measures prohibiting unfair commercial practices not covered by the Unfair Commercial Practices (UCP) Directive, in all financial services areas (credit, accounts, payments) and more specifically tied and bundled products, conditional and aggressive sales practices;
- Adopt binding measures prohibiting some forms of incentive and remuneration systems which lead to 'mis-selling'.

VI. Financial advice

Financial products are more and more complex. The financial crisis has unveiled the problems consumers have to face: even enlightened consumers have not been able to understand the financial products offered to them (e.g. Madoff's clients). Moreover, everywhere in the EU there is a lack of *independent* advice from creditable sources that consumers can rely on – sources which do not belong to financial institutions and intermediaries. In general, advice is only given by financial service providers and is often not tailored to consumers' needs and expectations, but is rather linked to the bank or intermediary's commercial interests. This leads to a detrimental situation for consumers.

How should consumers' needs be addressed?

- Make independent advice a reality to prevent consumers from taking unwise decisions, especially in case of major financial decisions:
 - Provide funding for independent advisors partly by public authorities, for instance using tax incentives, and partly by consumers. In any case, independent advice should be provided at affordable rates;
 - Enable consumer organisations or other independent bodies to provide advice.
- Increase responsibility of advisors (service providers, intermediaries and independent advisors):
 - Set up a MiFID profile (Markets in Financial Instruments Directive) for each investor. If the product does not match the profile, consumers should receive a warning;
 - Ensure information given to consumers is reliable;
 - Give effective documentation of the advice to the client;
 - Make it easier for consumers to claim compensation (the burden of proof should lie with the advisor).
- Adopt binding rules applicable to all financial advisors at EU level.

VII. Harmonisation of legislation on financial intermediaries

Many financial intermediaries sell complex financial products without having any qualifications and are not accountable in case of failure of the product.

How should consumers' needs be addressed?

- Ensure that conflicts of interests are effectively reduced as far as possible and that the remaining conflicts of interest are disclosed to the consumer. Intermediaries should inform their clients about received inducements;
- Ensure harmonisation of rules for intermediaries, regardless of what they are selling;
- Introduce rules on registration, qualification, transparency, liability and insurance.

VIII. Clarity and comparability of bank fees

Clarity and comparability of bank fees is a key to consumer mobility and enhanced competition among financial institutions. The European Commission study on bank fees⁵ published in 2009 has clearly shown that in many Member States, bank fees are non-transparent and opaque thereby preventing consumers from comparing market offers and switching their bank accounts should they be unhappy with their current bank. Furthermore, the study found a strong correlation between 'intransparency' and fee level, the most non-transparent markets being the most expensive ones. The European Commission has recently asked the European Banking Industry Committee (EBIC) to invite the European banking industry to take actions to identify and implement appropriate solutions to ensure proper understanding and comparability of bank fees throughout the EU.

How should consumers' needs be addressed?

- Adopt binding measures at EU level (self-regulation in the financial services area has shown its limits):
 - Harmonise terminology;
 - Harmonise tariffs structure and presentation of brochures;
 - Provide consumers with monthly and annual statement of how much they have paid in fees and charges;
 - Create an opt-in-system which requires consumers to agree with overdraft limits. Charging models for overdrafts should be closely examined as overdraft is still a credit granted to the consumer;
 - Prohibit double charges.
- Set up public and independent bank fee databases everywhere in Europe accessible to all EU consumers in order to facilitate prices comparison.

⁵ "Data collection for prices of current accounts provided to consumers", European Commission Directorate-General for Health and Consumer Protection, 2009:
http://ec.europa.eu/consumers/rights/docs/study_bank_fees_en.pdf

IX. Ensure access to a minimum banking service for all consumers

Financial exclusion is a problem for many European consumers, principally in the recent Member States. The result is that they do not have access to any basic financial services (current account, savings accounts, insurance). This often leads to social exclusion. There is also a European cross-border dimension to financial exclusion, as a citizen who wishes to settle abroad must often overcome a real 'banking headache': in order to be able to open a bank account in a Member State, a consumer must reside there. At the same time, in order to rent or obtain housing a bank guarantee must be provided.

How should consumers' needs be addressed?

- Recognise the right of citizens to have access to basic banking services with a European scope (universal services approach).

X. Enhance financial supervision

In many Member States, national supervising authorities have been incapable of correctly detecting risks and imposing the necessary safety measures. If national supervisors are not doing their job properly, consumers are at risk.

At EU level, the new European Systemic Risk Board (ESRB) and the three financial supervisory committees transformed into the new European Supervisory Authorities (EBA, EIOPA and ESMA) should start operating in 2011. This new architecture is focused on prudential supervision and does not take due account of the conduct-of-business side of supervision despite the fact that links between prudential supervision and consumer protection in the financial services area are so obvious.

How should consumers' needs be addressed?

- Make national supervisors all over Europe more powerful and independent. Reflection on the need to separate prudential supervision on the one hand and the control of marketing methods and professional compliance on the other hand, is needed. A clear definition of corresponding responsibilities of both supervisors is also needed, so as to avoid any conflict of interests;
- Ensure that, in order to provide better protection to consumers, national supervisory bodies fulfil the following functions: participate in advertising control, control of financial information, control of unfair practices (bundled and tied products, conditional and aggressive sales practices), control the distribution of financial products (for example in the area of consumer credit) and take charge of an early warning system (inform consumers about the risks/risk category of various financial products on the basis of continuous enquiries);
- Ensure effective consumer representation on the boards of financial supervisors. To this end, consumer representatives should be provided with necessary means, e.g. sufficient financial resources;

- Strengthen the cooperation between national supervisors and regulators: create a binding network between them (see e.g. the Regulation on Consumer Protection Cooperation);
- Adopt binding rules at EU level so that all Member States are obliged to comply with them. Soft law has shown its limits especially in the area of financial services. The regulatory gaps must be closed.

Energy and Sustainability

A competitive energy market and sustainable products

I. Promoting access, choice and affordable prices for all consumers

a) Towards a competitive, consumer-centric and 'smart' European energy market

It is a challenging time for the European energy market.

On the one hand, the liberalisation of the energy market has been happening over the last two years and yet consumers are still not benefiting from real competition. In a survey carried out by BEUC on the functioning of the European gas and electricity markets, published in 2008⁶, BEUC's members identified in particular the lack of real choice, difficulties in switching suppliers and unclear bills as major concerns. A Retail Market Study of DG SANCO (to be published in November 2010) comes to similar conclusions that more needs to be done to help consumers participate better in the electricity market.

Effective consumer choice is an essential condition for a competitive market. The Third Energy Package aims to make Europe's energy markets more competitive and introduces new measures for increased consumer protection: access to consumption data, customer complaints procedures, the right to supplier switching etc.

BEUC participated in the work that has been carried out by the Citizens Energy Forum on transparent energy billing and we hope that the recommendations defined by the Forum in September 2009 will soon be implemented by the industry. Consumers and energy suppliers periodically communicate through bills. Understandable, clear and complete bills are imperative for consumers to check what they consume and what they pay and to allow them to compare offers.

On the other hand, climate change and its impact are prompting many consumers to reconsider their habits. Achieving the 20/20/20 objectives will significantly impact the energy sector through the implementation of 'smart' technology such as digital meters and the integration of ICT into the energy networks, creating 'smart grids'. Consumers are willing to contribute to those changes, but will only be able to if their views are taken into account during the planning stage of smart grids and smart meters and if they are given enough information on their contribution, including information on 'green' offers.

How should consumers' needs be addressed?

- Ensure a swift implementation of the Third Energy Package. Ensure that the provisions regarding switching supplier and information and data ownership are fully transposed into national legislation and that their effectiveness is monitored by national regulators;

⁶ The full results of the study are available at www.beuc.eu

- Investigate ways to separate the ownership of production from that of energy networks (described as ‘full ownership unbundling’) to increase competition and make entry for new suppliers into European energy markets easier;
- Ensure that the development and roll out of smart grids and related infrastructure happen in a way which is beneficial to consumers;
- Recognise the need for national programmes to support consumers in changing their energy consumption behaviour (especially in the context of the smart meter roll-out);
- Ensure that consumers choosing their energy supply based on environmental reasons are not misled;
- Ensure consumers have easy access to information about their actual consumption, notably through smart metering.

b) Consolidate and implement consumer rights

Apart from a lack of real choice and difficulties in changing supplier, BEUC’s energy survey also identified problems with non-cost reflective payment methods and difficulties for consumers to assert their rights. These findings are in line with the ERGEG (European Regulators Group for Electricity and Gas) report on the transposition of consumer rights, published in October 2008.

As energy is fundamental for every single consumer in the Single Market, attention should be paid to the vulnerable groups in our society. The recommendation of the Belgian presidency to examine a framework definition of the term ‘vulnerable customer’ and to measure to what extent the EU is hit by the ‘energy poverty’ phenomenon should be duly followed-up during the next Presidency.

At the same time, consumer rights need to be taken into account when changing the energy sector. The right to privacy is fundamental to our society. When privacy concerns are well addressed, consumer acceptance of new technologies will be high and their roll-out will be facilitated.

How should consumers’ needs be addressed?

- Ensure that the planned Commission Working Paper on ‘An Energy Policy for Consumers’ provides an overview of the existing EU energy policies which can directly or indirectly contribute to making energy policy more consumer friendly (including best and worst practices⁷) and feeds into additional regulation when appropriate;
- Ensure that the recommendations on smart meters take consumer issues such as data and privacy protection by design, interoperability, costs, user-friendly layout, safety and protection of vulnerable consumers in case of remote disconnection into account and deliver consumer benefits;

⁷ Presidency Summary - Informal Council of Energy Ministers, Brussels, 6-7 September 2010

- Guarantee access to energy for the most vulnerable consumers, notably by providing social tariffs and protecting their rights when new functions like remote disconnection or 'smart' tariffs are implemented;
- Mandate the European Commission to propose criteria for a definition of 'energy poverty' under the 3rd energy package and develop guidelines when necessary;
- Assure that a continuous monitoring of the functioning of the energy markets and of switching and billing practices as well as complaints handling procedures feed – where needed – into measures to make the energy sector more consumer-friendly.

II. Promote sustainable choices through efficient measures and useful tools

- a) Encourage more sustainable design of products and take the least sustainable products off the market

More and more consumers are ready and willing to buy more sustainable products, in particular more energy efficient ones, in order to reduce their impact on the environment. In addition, there is an urgent need for reducing energy consumption and the use of natural resources in the European Union and to move towards sustainability. In this context, it is essential to impose strict and ambitious product standards as well as to increase the number of sustainable products on the market. Yet the current Directive on Ecodesign, defining the principles, conditions and criteria regarding ecological requirements in product design, is limited to energy-using and energy-related products and their impact on energy consumption in the use phase.

In the summer of 2008, the Commission presented its much awaited Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP).

How should consumers' needs be addressed?

- Ensure that the initiatives and measures announced in the context of the SCP/SIP Action Plan are properly undertaken. It should involve all economic actors including industry, consumers and governments, and lead to the setting of ambitious regulatory goals in particular in relation to sustainable product standards;
- Develop specific Ecodesign requirements for the various product categories which would allow to regularly eliminate unsustainable products from the shelves, for example the highest energy-consuming products or products with the worst environmental performance;
- Promote the crucial role of retailers in sustainability and notably in 'choice editing' i.e. the withdrawal of non-sustainable or less sustainable products from the shelves in favour of a broader range of sustainable products and services in all price ranges. This should be done within the Retail Forum which was set up by the Commission in March 2009. Ambitious objectives will have to be set up by the participants and independent monitoring of progress will need to be undertaken regularly – possibly by consumer organisations. If no progress is

made, the Commission should take stricter measures to ensure that retailers actually play their role.

b) Promote clear and objective information on sustainability-related aspects of products

Even if consumers wish to turn to more sustainable products, the lack of clear, reliable and comparable information and the vast number of 'green' labels and self-claims used by industry without third-party verification often prevent them from acting.

The EU Energy Label (using a closed A to G scale) has been one of the few labels that has really pushed the market towards offering more energy-efficient domestic appliances, notably thanks to its simplicity, transparency and user-friendliness for consumers. A survey commissioned by BEUC and other partners of 7,000 people across Europe which was published in May 2008⁸ shows that between 97% and 99% of respondents identified the product labeled with 'A' as the most energy-efficient household appliance. This has been confirmed by other research⁹. Despite these findings, the new Energy Label Framework Directive 2010/30/EU foresees to introduce three additional classes on top of class 'A' ('A+++'). Moreover, the colour code that had been previously fixed to the letters, will change for different appliances and over time. The agreed compromise will not provide for a long term solution as for some product groups, such as refrigerators, the last class will soon be populated. We will therefore continue to call for the A-G label to be made more dynamic by making the classes more ambitious over time (thus obliging products to become more and more energy efficient to achieve the "A" class).

How should consumers' needs be addressed?

- Give consumers the possibility to act in a more sustainable way when they purchase, use and dispose of products, by providing them with easy tools such as the A-G Energy Label and the Ecolabel;
- Recognise the European Ecolabel as a label of environmental excellence following a full life-cycle approach and promote the launch of an awareness-raising campaign at European level to familiarise consumers with it;
- Make the Energy Labelling scheme more dynamic, so that it can be easily adjusted to new developments on the market (for example by updating the criteria for the various label categories), whilst maintaining a closed label design with classes from A to G;
- Ensure greater consistency between Ecodesign and the various EU eco-labelling schemes (in particular, existing ones such as the EU Ecolabel and the Energy Label);
- Promote sustainable products and more sustainable consumption through better targeted information campaigns (i.e. taking into account behavioural research).

⁸ See: http://www.mtprog.com/spm/files/download/byname/file/Full_MORI_summary.pdf

⁹ See: <http://www.mtprog.com/cms/library-publications/>.

Group Action

How to make consumer rights a reality

Whilst existing legislation must be enforced and reinforced to improve the situation of consumers, this is not enough. Consumers must be in a position where they can implement the rights which they have been granted.

Very often, groups of consumers, often across different Member States, are victims of faulty or dangerous goods or services. They are also often faced with anti-competitive business practices. Individual actions by each affected person are not an appropriate remedy, as the litigation costs involved can be much higher than the compensation the affected consumers are entitled to. However, as the illegal behaviour of a trader can easily encompass a very high number of consumers, a legal Group Action instrument is needed to ensure those consumers have adequate access to justice and the possibility to claim appropriate compensation for damages suffered.

A European Group Action system is essential to enable groups of consumers to secure compensation for loss caused by the same trader by combining their claims into one single action. Currently, national systems across the 27 EU Member States vary significantly. The integration of European markets and the subsequent increase in cross-border activities highlight the need for EU-wide, consistent, redress mechanisms.

Group Action does not grant any new rights to consumers. It only provides new means to enforce existing rights. Moreover, it does not impose any additional burden on companies. Experience from those Member States that already have collective redress mechanisms in place clearly demonstrates that European legal traditions provide for the necessary safeguards to avoid any abuse of the system. On the contrary, group actions will benefit those companies that comply with the law and respect consumer legislation.

How should consumers' needs be addressed?

- Define the common principles for collective redress as a follow-up to the Commission consultation;
- Define and put in place as soon as possible, and in cooperation with the European Institutions, a Europe-wide Group Action for violations of consumers' interests in order to:
 - Give consumers access to justice in cases where individual redress is not suitable;
 - Ensure effective access to justice to all EU consumers irrespective of their nationality or country of residence;
 - Improve the enforcement of consumers' rights;
 - Minimise litigation costs for both consumers and defendants;
 - Reduce overloading of courts;
 - Reduce inequality between consumers residing in different Member States as some can and others cannot benefit from group actions;
 - Improve the functioning of the Single Market, as consumers will be much more confident about shopping abroad.

- Support the adoption of a Community Directive on Private Damages Actions for breach of antitrust rules that is open to victims of such practices. This would give effect to the right to compensation for victims of anti-competitive practices and make it possible for consumer organisations to bring claims on behalf of all victims.

Food

Healthy food for informed consumers

I. Help consumers to make informed choices

In some EU countries, over half of the adult population is overweight, and one child in five is obese. Cardio-vascular disease is the cause of almost half of the total deaths in Europe, and almost one third of these cases are due to diet. Type II diabetes, which is also closely linked to diet and obesity, is also on the increase. Although the solution to the problem of obesity involves many factors, diet plays a key role.

Even if more consumers are becoming aware of the link between what they put on their plates and the effect this has on their health, they are often bewildered when they look at the labels on food products. Either the nutritional information is incomplete or difficult to use – consumers are faced with different simplified labels on the front of the packaging which makes it difficult to make comparisons between products – or they are misled about the nutritive value and benefits of products through the use of exaggerated or false claims.

How should consumers' needs be addressed?

- Make healthy products more available and more readily accessible to all consumers, paying particular attention to disadvantaged groups;
- Make it compulsory to include complete, back-of-pack nutritional information on the 'Big 8' nutrients (protein, energy, fat, saturated fats, carbohydrates, sugar, salt and fibre) as well as transfats;
- Ensure there is the possibility for simplified front-of-pack labelling which is easy to understand and compare, showing the levels of key nutrients from a public health perspective (fats, saturated fats, sugars and salt). Ensure that the use of a multiple colour coding system (green, orange and red) to interpret the levels of these nutrients in a food product can still be used.
- Improve the legibility of the labels, in particular with regard to the size of the print ensuring that a minimum requirement of 1,2mm lower case height font is introduced and that the contrast between the lettering and the packaging background is clear;
- Introduce mandatory country of origin labelling, not only on foodstuffs consisting of a 'single' ingredient but also for 'significant' ingredients and 'characterising' ingredients in foodstuffs made from several ingredients;
- Introduce strict nutrient profiles that are developed in an independent and transparent manner by the Commission which reflect the objective of the Health Claims Regulation. Nutrient profiles are essential as they will determine which food products can or cannot bear a health or nutrition claim and should enable consumers to trust those claims which are made on the products they buy.

- Ensure that misleading or exaggerated claims are removed from the market as soon as possible so that consumers can trust the claims which are made on foods.

II. Protect children as a matter of priority

European Commission figures show that 14 million children in Europe are either overweight or obese. Studies by our member organisations show that most advertisements for foods and drinks targeting children are promoting products which are high in fat, sugar or salt.

Alongside 'conventional' advertisements in magazines or on TV, we are now seeing adverts on the Internet, via sponsorship of sports gear in schools, in product placement at the cinema or in SMS competitions. This puts unacceptable pressure on children – and their parents – to make them eat unhealthy food, and goes against all declarations made by EU decision-makers in support of the fight against obesity.

How should consumers' needs be addressed?

- Introduce a ban on TV advertising of food and drinks which are high in fat, sugar or salt from 6 am to 9 pm (based on the nutritional profiles to be defined by the European Food Safety Agency – EFSA);
- Extend the restrictions on the advertising of food products to children to cover all forms of marketing techniques (e.g. sms, viral marketing);
- Promote the adoption by the industry of the "Code on the marketing of food products and non-alcoholic drinks to children"¹⁰ proposed by Consumers International, pending the setting up of a binding measure at European level.

III. Keep the level of food safety as high as possible

Thanks to the work of EFSA and the application of, among others, the HACCP¹¹ principles, the European Union has a reliable, scientific basis recognised at international level to guarantee its consumers the safety of the food they buy.

Under pressure from the United States, the Commission proposed to authorise the use of certain chemical substances for the antimicrobial treatment of poultry. Such a situation would lead to an unacceptable relaxation of the hygiene measures applied during production, transport and slaughter, particularly in the case of imported products. The US has decided to challenge the decision of EU Member States to reject the proposal and to pursue this issue with the WTO.

New technologies in food rearing and production processes may have an impact on food safety. Although consumers can benefit from these innovations, competitiveness and innovation must not be allowed to take priority over public health and safety.

¹⁰ Recommendations in favour of a Code relating to the marketing of food products and non-alcoholic drinks to children, Consumers International, March 2008.

¹¹ The HACCP system consists of Hazard Analysis and Critical Control Points in food hygiene.

How should consumers' needs be addressed?

- Oblige all food companies, including small businesses, to apply the HACCP principles;
- Defend the principle of respect for the rules of hygiene 'from farm to fork' and categorically reject their replacement by 'chemical treatment' (such as washing poultry meat with chlorinated water) at the end of the production chain;
- Include on the list of 'novel' foods all those originating from a production technology not previously used, such as foods derived from plants, produced by non-traditional growing methods or modified by new production processes, such as nanotechnology and nanoscience;
- Ensure that all novel foods undergo a complete evaluation of their safety before being authorised on the European market.

Health

Put consumers' health first

Health is a fundamental human right. Decision makers must ensure that public health is protected and must guarantee access to high quality and efficient health services.

At EU level, it is important to ensure a better balance between public health and commercial interests in the formulation of policies regarding pharmaceuticals, medical devices and e-health.

I. Better health information

Patients need better information on diseases, treatment options and medicines. This information should be reliable, non-promotional and comparative. In order for consumers to be able to make an informed choice, it is imperative to maintain a clear distinction between information and advertising.

How should consumers' needs be addressed?

Develop a health information strategy which:

- Is based on an in-depth assessment of consumers' information needs, on the way these needs are currently met and on any potential improvements;
- Promotes reliable sources of information;
- Allows consumers to choose and compare medicines and different treatment options;
- Addresses inequalities in access to information from a wide public health perspective.

II. Safety of consumers in relation to side effects of medicines

Medicines save lives but can also have adverse effects which may sometimes prove to be fatal. To ensure patient safety, it is therefore of the utmost importance to have an efficient, transparent and proactive pharmacovigilance system to monitor and manage the risks of medicines.

How should consumers' needs be addressed?

- Enable consumers to report side effects directly to the competent authorities;
- Put in place efficient pharmacovigilance procedures, with strict rules in case of non-compliance;
- Maintain strict criteria to grant (conditional) marketing authorisations;
- Grant the public greater access to pharmacovigilance information;
- Undertake independent research and post-approval safety studies on the potential long-term effects of medicines;
- Conduct public information campaigns to draw attention to the importance of reporting side-effects.

III. Protect consumers from counterfeit medicines

Counterfeit medicines can be very dangerous for people's health. It is important that the supply of medicines is safe, more strictly monitored and more transparent.

How should consumers' needs be addressed?

- Introduce safe track and trace technologies that do not generate an additional cost for consumers;
- Put in place specific measures against illegal sales of medicines on the internet;
- Educate consumers about the risks posed by counterfeit medicines;
- Reinforce international cooperation to fight organised crime;
- Impose stronger sanctions on counterfeiters.

IV. More certainty on patient rights

It is essential for European consumers, who are increasingly mobile, to know what their rights are in the area of health services, both in their country of residence and abroad.

How should consumers' needs be addressed?

- Ensure that consumers have access to high quality health care services, are aware of their rights and have the means to enforce them in all Member States;
- Establish a clear legal framework for patients' rights in cross-border health care, namely on reimbursement, information provision, redress in case of problems and continuity of care;
- Ensure that the existing social security legislation on cross-border health care is effectively implemented.

V. E-health for the benefit of consumers

There is no agreed definition of e-health but it arguably includes a wide range of tools based on information and communication technologies (ICT) used in the prevention, diagnosis, treatment, monitoring and management of health. It also includes amongst others health information networks, electronic health records or telemedicine services. Major progress has been made in this area. All European consumers should benefit from the opportunities that ICTs can provide to the healthcare sector.

How should consumers' needs be addressed?

- Ensure that new e-health applications bring concrete and tangible benefits to consumers;
- Take account of the patient's perspective in decisions regarding e-health.

Digital Environment & Telecoms

Empower consumers to play a central role in a safe, fair and competitive digital market

Information and Communication Technologies (ICT) have significantly changed consumption habits and make up an increasingly large part of household budgets. Although these technologies offer citizens a 'must-have' tool for accessing information and participating actively in society, they also give rise to violations of a number of fundamental rights.

The EU Digital Agenda is the first flagship initiative of the Europe 2020 Strategy. It defines ambitious objectives and outlines the main actions to be undertaken by the European Commission in the next five years. BEUC has prepared a 'Digital Agenda' listing a set of 10 horizontal principles to be applied across all sectors and policy areas that would ensure European consumers are empowered in their digital lives.

I. Ensuring access to telecommunication services for all

The gradual liberalisation of EU telecoms markets has increased choice and quality of service for consumers by stimulating competition. However, new threats to competition are arising with companies' ability to limit access for consumers to some content, services and applications. At the same time, not all European consumers have access to broadband internet which leads to social exclusion.

- a) The review of the scope of universal services in telecommunications should allow all European citizens to have access to these services

E-government, e-health, e-business, user-generated content, e-learning (such as online encyclopaedias and study courses), job sites, comparison websites (e.g. for energy prices), social networks, etc. – these are only but a few of the new services which broadband has made feasible. Driven by increasing penetration rates (50% of European households are using broadband now¹²) and increasing speeds, these services have become widespread.

Following the public consultation on the universal service provision in the telecommunications sector, the European Commission is expected to adopt a Communication by the end of 2010 that will outline the different options under examination. As far as BEUC is concerned, we believe that it is time to widen the scope of universal services to broadband and to analyse whether, at this stage, mobile telephony should also be included.

¹² Eurostat 2008

How should consumers' needs be addressed?

- Promote the inclusion of broadband within the scope of universal services in telecoms;
- Analyse to what extent mobile telephony should be included in the scope of universal services in telecoms.

b) Ensuring the internet remains open and neutral

Over the past few years, the European Parliament and the Council have extensively debated the update of the telecommunications regulatory framework. The aim was to guarantee healthy competition, leading to a significant decrease in retail prices and better quality of services.

In this context, more attention should be paid to the 'network neutrality' principle; Internet Service Providers, telecom operators and content providers are increasingly vertically merging and cooperating so that they are technically capable of limiting access to content, services or applications which could represent competition for their own services. What is at stake in the long term is the innovative capability of the internet.

BEUC believes it is of critical importance to take a strong stance on net neutrality. In order for regulators to do so, the new telecommunications rules should be fully and quickly implemented. This is all the more important if we take into account the inherent potential for abuse of dominant positions within network industries.

How should consumers' needs be addressed?

The European Commission is currently consulting on net neutrality. BEUC supports a regulatory approach towards net neutrality in order to ensure coherent implementation across Member States. The new telecoms framework simply focuses on information to consumers and transparency, thus failing to provide consumers with a strong framework within which competition can function.

- Ensure that the European Commission recognises net neutrality as a fundamental regulatory principle and adopts a binding instrument;
- Ensure the EU regulators analyse their markets and fully apply the powers they have under ex-ante competition rules to ensure new companies can offer innovative services and markets remain competitive while new technology is being implemented.

II. Protect consumer rights in the digital environment

Digital technologies have given rise to new ways of promoting, buying and receiving goods or services. There is practically no area of consumption which is not affected by the rapid development of modern information and communication technologies. The internet is also an essential way of accessing knowledge and online services (such as

administrations or health services), as well as public and democratic debate. It must therefore be ensured that consumer rights are fully applied in the digital world.

How should consumers' needs be addressed?

- Recognise and enforce the six basic consumer rights in the digital world:
 - Right to choice, knowledge and cultural diversity;
 - Right to the principle of 'technological neutrality';
 - Right to benefit from technological innovations without abusive restrictions;
 - Right to the interoperability of content and devices;
 - Right to the protection of privacy;
 - Right not to be criminalised.

In particular, the following two issues are of special concern to consumers:

a) The protection of personal data and privacy

The internet opens the door to potential violation of the right to privacy to an extent without precedent. New technologies (including behavioural targeting and deep packet inspection techniques) and new digital content platforms (for example social networking sites) in particular, allow stakeholders from the private sector to identify consumers by collecting and using their personal details and invading their privacy without their knowledge or approval. This same data is also exposed to online crime, such as ID theft and/or the diversion of sensitive information.

The European Commission is currently working on the review of the Personal Data Protection Framework Directive. A Communication outlining the main challenges is expected in October 2010 and will be discussed at the European Parliament and Council. BEUC strongly believes that the existing framework Directive is technology neutral and therefore its fundamental principles can apply to the digital environment and therefore should be maintained.

How should consumers' needs be addressed?

- Ensure a high level of personal data protection in the forthcoming review of the Data Protection Framework Directive;
- Maintain the principles of transparency of data collection, fair and lawful processing, purpose limitation and specification, consent and the right to access, object, correct and withdraw one's data;
- Impose transparency, fairness, consumer control and respect of consumers' choice online in the use of new technologies likely to have an impact on consumer privacy;
- Encourage the implementation of 'privacy and security by default' in ICT, digital products and applications including smart meters;

- Introduce new rights ‘to be forgotten’ in a way that does not interfere with freedom of information and the right to ‘the silence of the chips’,¹³ and to conduct research as to how such rights could be made effective in practice;
- Establish a general data breach notification obligation and impose joint responsibility between controllers and those third parties which process data on their behalf;
- Give consumers access to efficient complaint and redress mechanisms in case their personal data have been compromised;
- Require companies to take the appropriate measures in order for telecom networks to be secure and reliable;
- Ensure that Internet Service Providers offer consumers adequate technology to resolve security issues, at reasonable prices;
- Assess all European Commission proposals and international agreements in light of the European Charter of Fundamental Rights.

b) Intellectual property rights (IPR) and ‘graduated response’

We fully acknowledge the need to ensure the protection of IPR – especially on the internet – and for artists to get a fair remuneration for the distribution and use of their works. However, we are fiercely opposed to the IPR enforcement solution towards which France and other Member States seem to be moving, i.e. the ‘Graduated Response’ according to which rights holders could ask Internet Service Providers to threaten to suspend internet access for the presumed infringers of intellectual property rights.

We strongly believe that instead of focusing on repressive enforcement measures, more attention is needed with regard to the fostering of innovative business models which would provide consumers with legitimate content online. The reform of the current copyright framework together with the establishment of an efficient and well regulated licensing system would contribute to the significant reduction of unauthorised use of copyright-protected works.

How should consumers' needs be addressed?

- Acknowledge the distinction between counterfeiting/piracy as conducted by organised entities running for profit and practices carried out by numerous private consumers at home, on a small scale and without commercial motivation. In particular, when it comes to **criminal sanctions**, it should be made clear that such sanctions can only apply to commercial infringers operating at the level of organised crime.
- Oppose any attempt to introduce the responsibility of the Internet Service Providers in terms of policing copyright violations: such a measure would be disproportionate, inefficient and, more importantly, would violate certain

¹³ “Silence of the chips” refers to the possibility for individuals to disconnect from their networked environment at any time

fundamental rights such as the right to the presumption of innocence, to a fair trial and to the protection of personal data and privacy. Numerous harmful effects are also reported in practice, such as the identification of a computer rather than the person responsible, and the application of very strict rules, despite the fact that the distinction between legal and illegal downloading is far from simple and cannot be made automatically;

- Ensure that the proposal for a Directive on collective management of copyright cross-border fosters the development of pan-European licensing of creative content and establishes strong supervision of collecting societies;
- Ensure that ACTA complies with the EU legislation on IPR enforcement, e-commerce and the European Charter of Fundamental Rights;
- Provide clarity as to the scope of the private copying exception and assess the effectiveness of the current systems of private copying levies as a form of fair compensation. It is essential to ensure alternative systems of fair compensation are being explored that would be best suited to the challenges of the digital environment and would compensate right holders for the actual economic harm suffered.



- AT - Verein für Konsumenten-information - VKI
- AT - Arbeitskammer - AK
- BE - Test-Achats/Test-Aankoop
- BG - Bulgarian National Association Active Consumers- BNAAC
- CH - Fédération Romande des Consommateurs - FRC
- CY - Cyprus Consumers' Association
- CZ - SOS - Consumers Protection Association
- CZ - TEST - Czech association of consumers
- DE - Verbraucherzentrale Bundesverband - vzbv
- DE - Stiftung Warentest
- DK - Forbrugerrådet - FR
- EE - ETL - Eesti Tarbijakaitse Liit
- EL - Association for the Quality of Life - E.K.PI.ZO
- EL - General Consumers' Federation of Greece - INKA
- EL - Consumers' Protection Center - KEPKA
- ES - Confederación de Consumidores y Usuarios - CECU
- ES - Organización de Consumidores y Usuarios - OCU
- FI - Suomen Kuluttajaliitto
- FI - Kuluttajat-Konsumenterna ry
- FI - Kuluttajavirasto
- FR - UFC - Que Choisir
- FR - Consommation, Logement et Cadre de Vie - CLCV
- FR - Organisation Générale des Consommateurs - OR.GE.CO
- HR - Croatian Union of the Consumer Protection Associations - Potrosac
- HU - National Association for Consumer Protection in Hungary - OFE
- IE - Consumers' Association of Ireland - CAI
- IS - Neytendasamtökin - NS
- IT - Altroconsumo
- IT - Consumatori Italiani per l'Europa - CIE
- LU - Union Luxembourgeoise des Consommateurs - ULC
- LV - Latvia Consumer Association - PIAA
- MK - Consumers' Organisation of Macedonia - OPM
- MT - Ghaqda tal-Konsumaturi - CA Malta
- NL - Consumentenbond - CB
- NO - Forbrukerrådet - FR
- PL - Polish Consumer Federation National Council - Federacja Konsumentów
- PL - Association of Polish Consumers - Stowarzyszenie Konsumentów Polskich
- PT - Associação Portuguesa. para a Defesa do Consumidor - DECO
- RO - Association for Consumers' Protection - APC-Romania
- SE - The Swedish Consumers' Association - Sveriges Konsumenter
- SI - Zveza Potrošnikov Slovenije - ZPS
- SK - Association of Slovak Consumers- ZSS
- UK - Which?
- UK - Consumer Focus



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