

A Single Market for Consumers

BEUC's response to the Commission's draft Single Market Act including a ranking of the 10 most important initiatives from a consumer point of view

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1. BEUC welcomes the fact that the Commission decided to consult with all stakeholders about the draft Single Market Act (SMA). We also welcome Parliament's initiative to hold a Single Market Forum as a regular platform for discussions between the institutions and for exchanging views with stakeholders on how the SM works and how we can improve it.
2. The Commission's SMA brings forward many valuable initiatives and points to areas which indeed are in need of improvement and further measures in order to making the SM deliver to citizens/consumers.
3. However, from the consumers' point of view, the Commission could and should have put more emphasis on prioritizing consumer friendly initiatives, as the Parliament, in the report on the "Delivering a SM for consumers and citizens", stated. We are disappointed and worried about the fact that surprisingly little space is dedicated to consumers in the draft SMA: consumer initiatives are one small subcategory within the chapter on citizens (point 2.5) and only 5 initiatives are dedicated to consumers, of which one is not consumer specific, dealing with "tax obstacles".
4. Successful markets are driven by informed consumers making good choices in a truly competitive environment. What's good for consumers helps good businesses to thrive. This is why the SMA should put consumer interests center stage and focus on interventions aiming at making markets work properly thereby placing consumer welfare at the heart of EU policy.
5. Against this background we identified below the main legislative or non-legislative initiatives, which clearly have the potential to provide a positive impact on European consumers. We call on the Commission to put these initiatives highest on its agenda for the Single Market.
6. We are doubtful about the Commission's categorization and differentiation between measures which should serve business on the one hand and measures which should serve consumers/citizens on the other hand. We would have preferred an approach in which all policy objectives are pursued as part of a unified and integrated, "holistic" policy for the Single Market: for example, measures in relation to copyright management and counterfeiting (as named in chapter 1.1. proposal 1 and 2) should of course encourage and promote creation of content, but they should also ensure fair consumption opportunities for consumers; another example concerns e-commerce : this is a key part of consumers in the SM and it is not clear why this issue is dealt with in the business chapter (1.2., proposal 5) etc. We therefore suggest that the Commission reconsider the architecture of its SMA.
7. We propose that the perspective taken by the SMA should be to address these issues on a subject by subject basis and with each to look at the benefits for all parties concerned be it consumers, citizens, workers , business etc.

8. Importantly, the Single Market should not be seen as “a market of cross border activities”, whose scope would be limited to cross-border activities of our citizens: The Single Market is relevant to consumers in their daily life, be it when engaging in cross border purchase and activities, be it when shopping locally at home. There is for example an important role for the EU in enabling consumers to make informed choices and giving them the confidence to be able to enforce their rights regardless whether they have engaged in cross-border activities or not but simply to reap tangible benefits from the integration of the Single Market.
9. Whilst liberalising markets and increasing competition are key objectives of the SM policy and play an important role in allowing consumers to choose freely, consumers need a robust framework of protective rights in relation to the purchase of goods and services and on efficient enforcement of these rights, be it through public means, such as market surveillance and the intervention of regulators, be it through private means, with the necessary tools for consumers to pursue individual economic and legal interests. Ultimately consumers drive markets so consumer-facing regulation should be viewed as setting the framework for well functioning markets in which good businesses can thrive and bad businesses are driven out.
10. In relation to redress and enforcement, we are disappointed by the SM Act which does not underscore the importance of ensuring consumer confidence in relation to the enforcement of rights. Much remains to be done and the shortcomings in terms of redress constitute a major issue of consumer trust in the market, and even more in the cross-border market: Whilst we welcome that finally after 10 years, the Commission seems to be prepared to take action on ADR procedures, we remain impatient to finally see an efficient collective judicial redress instrument being made available to European consumers.
11. In a Single Market consumers should be able to buy cross border almost as easily as they can buy at a distance within their own member state. Yet, this is far from being the case in the EU at present. Compared with buying “at home”, consumers buying cross border face big uncertainties and imponderability.
12. According to BEUC members’ experience the following are the main reasons why consumers lack the confidence to shop cross border on-line:
 - Practical difficulties associated with enforcing legal guarantees if there is a fault with the product/service e.g. the cost and time associated with returning goods cross border. A recent survey by our UK member organisation Which? clearly indicates that the main reasons why UK consumers have not bought from an EU company is being concerned that if something goes wrong they won't get an exchange/ refund;
 - The costs and potential problems regarding delivery /non or late delivery etc...;
 - Practical difficulties with after-sales care across borders and potentially over long distances;

- Lack of an effective cross border redress mechanism (including ADR mechanisms) and the practical difficulties of seeking redress in another country;
 - Language barriers and cultural differences;
 - Privacy concerns e.g. how their personal data will be used;
 - Security concerns over payment systems (especially online);
 - Not all consumers want to shop cross-border because they prefer to shop in their own country, as a recent survey by our UK member which? showed clearly;
 - Finally, we should not forget that consumers would not buy everything cross border (and should not, for reasons of sustainability) even in a perfect single market, because there is just no added-value to crossing the border.
13. Those consumers who want to shop cross-border on-line, are often prevented from doing so because of
- Intellectual property based sales restrictions (e.g. copyright levies etc.);
 - Exclusive distribution arrangements by manufacturers which cause the single market to be divided into separate territories;
 - Selective distribution arrangements by manufacturers which often limit the ability of retailers to sell online;
 - Valid commercial reasons – (often businesses will not want to stray away from their own territory for reasons linked, e.g., to tax discrepancies or administrative diversity).
14. The Commission's impact assessment procedure should be changed to ensure a better balance between costs to business and benefits to citizens, consumers and wider society. The Guidelines should provide the Commission services with a clear methodology and toolkit – like for example the checklist developed by DG SANCO - enabling them to adequately respond to the consumer oriented questions in the analytical part and to take the subsequent steps for assessing relevant impacts. We very much welcome the IMCO Committee's approach to dedicate time also for examining the Commission's IA.
15. The Consumer Scoreboard is a very important initiative in this context. Consumer organisations across Europe should be more closely involved in the process of data collection and in particular as regards the determination of indicators for the scoreboard.
16. We also welcome the idea to set up a list of the top 20 problems / frustrations, but we would like consumer organizations to be closely involved in the process of data gathering.
17. Furthermore the Commission should report once a year to the EP on how its SM policy has achieved its overall outcomes and in particular has delivered to consumers. A specific focus on reporting the consumer outcomes should ensure that the consumer perspective is taken into account right from the start and in a systematic manner.

18. Whilst we welcome the emerging new vision of the SM, such a vision cannot be complete without a vision for the consumer's role in this market and consequently without a vision for the EU's consumer policy. Yet, this is what clearly lacks as can be seen from the seriously flawed proposal for a consumer rights directive and current consultation and on-going impact assessment on the European contract law initiatives for business to consumers contracts. The Commission's believe that legal fragmentation and in particular the divergence of consumer contract law between Member States suffers from a fundamental lack of evidence. We are extremely worried that the Commission overstates the benefits of further contract law harmonization and that consumers will have to pay the price for this premature political agenda.
19. There is currently NO market analysis which defines the problem of "legal fragmentation" and assesses its dimension. All we know is that the Commission believes that the potential of cross-border e-commerce is "partly unfulfilled". And that the Commission assumes that this may be caused by legal fragmentation. This in our opinion is not enough to introduce an entirely new governance concept for consumer law, namely an "optional instrument" which rules out fundamental principles of consumer protection as enshrined in conflict of law rules and is likely to deprive consumers in many countries from the level of protection they benefit from today .
20. Finally in this context, we need not only to strengthen and "empower" the individual consumer, but also their representatives, namely consumer organisations themselves, to make sure that they can make a valuable input into the EU's policy making. This is particularly true for those consumer organizations that are active in the Central, Eastern and South Eastern Europe Member States, because they face major difficulties in developing within their countries a market and policy approach that acknowledges the importance of consumer policy in decision making.
21. Many of the initiatives listed in the SMA could make a difference in improving the Single Market in relation to the problems mentioned above, yet it is clear that the Commission is only at the very beginning of addressing these issues in an efficient manner. Below we ranked the most important policy initiatives from a consumer perspective.

The top 10 Initiatives for BEUC are: initiatives n° 1, 5, 6, 11, 29, 39, 40, 43, 46, 48 (ranked in numerical order of appearance in the SMA).

Proposal n° 1: Better access to generic and innovative medicines

For the field of health policy, we consider that initiative n° 1 of the draft SMA is most important, namely the adoption of the proposals for the EU patent, its languages and the unified patent litigation system. The aim is for the first EU patents to be issued in 2014. The pharma sector inquiry showed that the current system is very costly and inefficient and most of all it prevents the entry of generic and also innovative medicines on the market.

Proposal n° 5: Better access to and conditions in e-commerce transactions across the EU

It is important to improve the conditions consumers face in e-commerce. Proposal n° 5 envisages initiatives to develop electronic commerce in the internal market. It should concentrate in particular on problems faced by consumers in the digital economy.

Proposal n° 6: Better quality for products and services on the market across the EU

In the context of product and services safety, the Proposal 6 for a legislative reform of the standardisation framework in 2011 to make standard-setting procedures more effective, efficient and inclusive and to extend the scope of the procedures from goods to service is crucial for European consumers.

Proposal n° 11: Energy savings and sustainable and energy efficient products and services

The Commission will revise the eco-design framework and launch measures to ensure an energy efficient market and measures for energy suppliers to provide energy savings for consumers.

Proposal No 29: Effective implementation of the charter of fundamental rights

Pursuant to its new strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, the Commission will ensure that the rights guaranteed in the Charter, including the right to take collective action, are taken into account. The Commission will first of all conduct an in-depth analysis of the social impact of all proposed legislation concerning the single market. We expect the Commission to particularly look into the fundamental rights to privacy and data protection, a high level of consumer protection and access to health care etc.

Proposal n° 39: Safer products on the market across the EU

For the field of product safety, Proposal 39 is crucial. It foresees the development of a multiannual Action Plan for European Market Surveillance. A good market surveillance system is crucial to ensure product safety.

Proposal n° 40: More protection and better access to financial services

The Commission will adopt a legislative initiative on access to basic banking services at the start of 2011.

Proposal N° 43: Improved passenger rights

In 2012 the Commission will adopt a proposal amending the regulation on the rights of air passengers, particularly in the light of the crisis triggered by the recent volcanic eruption in Iceland, and potentially a Communication on the rights of passengers using all means of transport.

Proposal N° 46: Improved access to justice

Better access to justice / enforcement and redress is one of the most important current issues for consumers. The Commission envisages a legislative proposal for alternative dispute resolution in the EU and a public consultation on a European approach to collective redress in 2010-2011, which has already been launched. We hope that the commission will finally act on this issue as requested by the European Parliament and recommended in the Monti report.

Proposal No 48: Better access to and better involvement in the Commission's policy consultations

The Commission will increase consultation and dialogue with civil society in the preparation and implementation of texts. Particular attention will be paid to taking into account the points of view of consumers, NGOs, trade unions, businesses, savers, users and local authorities in the consultations prior to the adoption of proposals and, in particular, with regard to the work of expert groups. BEUC calls on the Commission to start this initiative with a consultation

on how to consult and how to “maintain a dialogue” with civil society according to Article 11 para 1 to 3 TEU.

Initiatives missing in the draft SMA

Beyond the measures proposed in the SMA, BEUC has identified several initiatives that are relevant to consumers and that therefore should be included. These initiatives are:

- a) **Copyright levies:** despite the fact that the current divergence in national rules applying to copyright levies has been highlighted as a major obstacle to the internal market (in Monti report, Consumer Scoreboard). We call on the Commission to come forward with a legislative proposal to provide more consistency in criteria, scope and application of copyright levies.

For further information please refer to [BEUC's Discussion paper on fair compensation for copyright-protected content](#) – Ref.: X/2009/079 – 22/10/2009 at www.beuc.eu

- b) **Revision of the EU Copyright Directive:** The Copyright Directive adopted in the late 1990s is far from adapted to the digital environment. It is based on a system of exceptions and limitations that fail to take into consideration the new technologies and the needs of consumers. The European Commission should give priority to revising the current system of copyright exceptions and limitations, which is not only out of date, but it also hinders innovation and creativity.

For further information please refer to [BEUC's Response to the creative content reflection paper](#) – Ref.: X/2010/003 - 05/01/10 at www.beuc.eu

- c) **Net Neutrality:** Unless the Commission regulates Net Neutrality (or at least provides guidelines to Member States), there is a significant risk that each Member State will adopt different rules when implementing the Telecom Package. The example of France and the UK proves this risk: ARCEP adopted a pro-consumer approach aiming at regulating the different aspects related to NN, whereas Ofcom in the UK did not consider the need to adopt further rules, but simply improve transparency for consumers.

For further information please refer to [BEUC's Response to the consultation net neutrality](#) – Ref.: X/2010/070 - 30/09/10 at www.beuc.eu

- d) **Data Protection:** the forthcoming revision of the Data Protection Directive should address the increasing cross-border data flows and aim at reducing the differences between national legislation on key issues, such as the definitions of personal data, consent, applicable law, obligations for the data controller, as well as measures to improve compliance and enforcement. This initiative should be mentioned in the 50 initiatives of the SMA.

For further information please refer to [BEUC's response to the review of the data protection consultation](#) – Ref.: X/2011/003 – 24/01/11 at www.beuc.eu

- e) **Financial services:** Initiatives related to investor (consumer) protection are missing.

For further information please refer to BEUC's position on [“Facing up to the financial crisis: BEUC's concrete suggestions to protect consumers in the short and long term”](#) - Ref.: X/2009/008 - 29/01/09 at www.beuc.eu

- f) **Energy:** the Directive for Energy Efficiency and Savings (expected third quarter 2011) is important to consumers but not explicitly mentioned in the draft SMA.

For further information please refer to [BEUC/ANEC's position on smart energy systems for empowered consumers consultation](#) – Ref.: X/2010/044 at www.beuc.eu

Initiatives which we are not in favour of consumers and therefore should be taken out of the SMA as not being priorities:

Proposal No 3: In 2010 the Commission will propose an action plan against counterfeiting and piracy, including both legislative and non-legislative measures. Furthermore, in 2011 it will make legislative proposals, in particular to adjust the legislative framework to meet the needs generated by the development of the Internet and to enhance customs work in this area, and it will re-examine its strategy on the implementation of intellectual property rights in third countries.

The European Commission should distinguish the issue of counterfeiting of physical goods from the issue of copyright infringements online. The harm caused by the selling of counterfeit medicines is not the same as the harm caused by a teenager downloading a single music file for his private use in order to discover a new artist. The European Commission should first undertake an assessment of the overall economic impact of file-sharing on the basis of independent and objective data.

Moreover, **any further strengthening of Intellectual Property Rights Enforcement should be done only once initiative n° 29 (see above)** , namely the Commission's in-depth analysis of the social impact of all proposed legislation concerning the single market and the measures concerning the implementation of the Charter of Fundamental Rights by the European Union has been undertaken and discussed. Due consideration of the impact on fundamental rights, innovation and the development of information society is essential to avoid detriment of consumers and creativity in this respect.

For further information please refer to [BEUC's letter on the revision of the IPR Enforcement Directive](#) – Ref.: X/2011/004 - 27/01/11 at www.beuc.eu

Annex:

We attach for information a presentation submitted by our Director General, Monique Goyens, at the occasion of the Commission's conference "Single Market: Time to Act, on 8 February 2011, which provides examples of typical consumers' problems in cross-border transactions.



Empowerment of Consumers in the Single Market

How to beef up the SMA with a consumer perspective

Monique Goyens
Director General

EP IMCO Committee - Brussels

Public hearing

Single Market Forum

9 November 2010



Some preliminary remarks

- ✓ Citizen - consumer ? Who is to be empowered in the single market ?

- ✓ The yard sticks for policy making in the Single Market :
 - President Barroso's political guidelines
 - Grech report : consumer welfare to be put at the heart of the EU policy in the Single Market
 - Monti report

- ✓ Does the SMA pass this test ?



SMA : could do better for consumers !

- ✓ Some valuable initiatives to be welcomed
- ✓ But not enough priority to those initiatives that have a potential to provide a positive impact on European consumers
- ✓ Single Market not to be seen just as a market for cross-border activities
 - The need for a level playing field
 - The need for added value to engage into cross-border behaviour
- ✓ Several proposals mere recycling of initiatives already in the pipeline – very few new consumer friendly ideas



SMA : the most important and urgent consumer relevant files

- ✓ Collective redress
 - ADR
 - No political will to provide for collective judicial redress
- ✓ Retail banking services
 - Need for supervisory authorities that proactively seek consumer protection
- ✓ E-commerce
 - Too much talk about legal fragmentation
- ✓ Digital content
 - The focus on copyright holders
- ✓ Energy
 - Need to proactively enforce consumer rights in a liberalised market

Beyond empowerment : adequate monitoring of consumer welfare

- ✓ Impact assessment procedure refocused towards social impact with adequate toolkit
- ✓ More involvement of consumer organisations in identification of indicators for the consumer scoreboard and in data collection
- ✓ More involvement of consumer organisations in identification of top 20 list of frustrations
- ✓ Need for a regular report by Commission to EP on outcomes of SM for consumer.



Beyond the SM : what vision for EU consumer policy

- ✓ Reference to the role of the consumer in the market needs a clear vision for the EU consumer policy
- ✓ Policy makers have to be reminded of this. Consumer watchdogs are needed
- ✓ Strong involvement of consumer organisations is a tool to enhance legitimacy of policy making
- ✓ In many countries, bodies in charge of consumer policy/advice/protection suffer from budget restrictions that are imposed due to the economic crisis : is this the correct political signal to deliver to consumers ?