

Memorandum for
the Cypriot
Presidency

Memorandum 2012



Table of Contents

Introduction:

Consumer priorities for the Cypriot Presidency

I. Horizontal issues	4	VI. Consumer Redress	34
1. Consumer Agenda	4	1. Collective Redress	34
2. The Consumer Programme (2014-2020)	6	2. Alternative Dispute Resolution	36
3. e-Commerce	8	VII. Consumer contracts	38
II. Food	10	1. The Common European Sales Law for business to consumer contracts	38
1. Review of the hygiene package	10	2. Air Passengers' Rights legislation	41
2. Food intended for particular uses ('PARNUTS')	12	3. Revision of the Package Travel Directive	44
3. Health and Nutrition Claims	14	VIII. Health	46
III. Energy	16	1. Medical devices	46
1. Energy Efficiency Directive	16	2. Information to patients	48
2. Smart Grids/Smart Meters	18	3. Pharmacovigilance	50
IV. Digital Environment & Telecoms	20	IX. Financial Services	52
1. Net neutrality	20	1. Guarantee schemes	52
2. Data protection	22	2. Enhance investors' protection: PRIIPS, MiFID & IMD	54
3. Intellectual Property Rights Enforcement Directive	24	3. Mortgage Credit Directive	56
4. Collective management of European copyright	26	4. Bank account package	58
5. Roaming Regulation review	28		
V. Safety & Sustainability	28		
1. Revision of the General Product Safety Directive	28		
2. Nanotechnologies and nanomaterials	30		
3. Chemicals which disturb the hormonal system	32		

Consumer priorities for the Cypriot Presidency

In this Memorandum for the Cypriot Presidency of the Council of Ministers, The European Consumer Organisation (BEUC) presents its consumer policy priorities in the hope policymakers will recognise consumer welfare to be a key factor of sound policymaking and a core element of economic and social growth.

2012 sees BEUC celebrating its 50th anniversary. While we can look back to many achievements for European consumers, we are also witness to emerging challenges related to the economic crisis, an ageing population, the digitalisation of our economies and the globalisation of markets.

In its 'EU Consumers' 2020 Vision', presented in May 2012, BEUC provides a clear pathway to address these new challenges. We hope that our Vision will be taken into account by the European Commission's **Consumer Agenda**, which we expect by the end of May 2012 and by the Council conclusions on this Agenda.

Another essential horizontal dossier to be dealt with by the Cypriot Presidency is the proposed regulation for the **Consumer Programme** 2014-2020, which is expected to be finalised by the end of this year in the context of the decision on the EU financial framework. Both the Consumer Agenda and Programme will set out the shape of consumer policy for years to come and present the Cypriot

Presidency with a unique opportunity to leave a lasting, consumer-friendly footprint in the EU.

Alternative Dispute Resolution (ADR) mechanisms, which lead to settlements of disputes outside courts, can offer cheap and effective solutions to individual consumers. The European Commission's proposals on ADR and Online Dispute Resolution (ODR) try to ensure availability of ADR mechanisms for consumer disputes with traders across the European Union. The two legislative proposals are very welcome and if further improved, will finally provide European consumers with an efficient means of accessing justice. We hope the Cypriot Presidency will successfully conclude negotiations with the European Parliament and reach a 1st reading agreement in 2012. However, relying on ADR as the only solution to situations of consumer detriment should be avoided, the work on judicial collective redress must be further pursued.

The **Common European Sales Law** will also be discussed during the Cypriot presidency. BEUC is not in favour of such an 'optional' instrument for consumer contracts, nor are many business stakeholders. We believe it will not provide added value for consumers but will instead have a negative impact on the development of the Single Market and consumer confidence in cross-border transactions. In our analysis, the risks are very high that this European Sales Law would be imposed on consumers by the trader,

involving a lower level of protection compared to many national consumer laws. We therefore call on the Cypriot Presidency to continue to carefully assess the need, if any, for such an instrument – particularly given the pending implementation of the Consumer Rights Directive and to discuss alternative solutions.

The recent breast implants scandal and emerging technologies have challenged the current legislative framework for **Medical Devices** and highlighted loopholes which put consumers' health at risk. We hope that the Cypriot Presidency will demonstrate strong commitment to the upcoming proposed revision of the current legislation and improve the quality and safety of the medical devices sector thereby restoring consumer confidence.

Increasingly omnipresent digital technologies and services offer new benefits to consumers but can on the other hand represent a major risk to consumers' personal data. With its proposal for a regulation on **Data Protection**, the European Commission is addressing new challenges such as the collection and storage of large quantities of personal data, the tracking of individuals' online behaviour or data breaches. BEUC strongly supports the Commission's proposal and we hope that the Cypriot Presidency's work on this issue will help build towards ensuring consumer confidence in online transactions.

People borrowing finance to build or buy a home cannot afford to be sold a bad deal. A more responsible **Mortgage Credit** market is therefore of central importance to consumers across Europe. The proposal for a

directive on mortgage credit is pending in first reading and it will be the Cypriot Presidency's task to advance this highly important proposal, the aim of which should be to raise protection standards for borrowers all over Europe.

In these times of soaring energy prices, improving energy efficiency and saving energy is the best way for many consumers to cut their energy costs. The **Energy Efficiency Directive**, which is currently stalled in 1st reading negotiations, will affect energy customers' daily lives. BEUC demands that consumers are provided with the right tools and information to be more energy efficient and increase their savings potential. We hope that the Cypriot Presidency will do its utmost to successfully conclude this important dossier by putting European consumers centre-stage of any final agreement.

Aside from these key consumer dossiers, in this Memorandum we have identified further important initiatives within BEUC's 8 priority areas. We hope that under the Cypriot Presidency progress will be made on all these initiatives with the aim of delivering clear benefits to European consumers.

We wish Cyprus a most successful Presidency.

Horizontal Issues

I Consumer Agenda

Background

The European Commission will present a new consumer policy strategy, entitled 'The Consumer Agenda' by the end of May 2012. This document has been developed under the joint leadership of Commissioners Dalli and Reding and will replace the current consumer policy strategy which would have run until the end of 2013. For the first time, the new consumer policy strategy or Agenda is qualified as a strategic initiative in the Commission's work programme, which is a promotion in terms of the importance placed on it.

The European Parliament adopted an own initiative report in November 2011 providing timely input to the Commission's work. BEUC welcomed the Parliament's report as it calls for a horizontal and holistic approach to consumer interests and highlights many of the most relevant consumer concerns.

In parallel BEUC submitted its 'EU Consumers' 2020 Vision'. This aims to feed into the Commission's preparatory work for the Consumer Agenda and was presented to the European institutions on May 10th, 2012 on our 50th anniversary conference. We hope that the Cypriot Presidency, when reacting to the European Commission's Consumer Agenda, will also take BEUC's 2020 consumer policy Vision into account.

Our demands

- From a consumer perspective, the Single Market is not an end as much as a means. It has to be constructed with the rationale of serving European consumers and citizens, ensuring they can make transactions within and across European national borders with full confidence.
- BEUC calls for a holistic approach, taking into account all factors that allow consumers to fully benefit from the Single Market. In 2020 we want to see a Europe striving to move the world towards better consumer protection and where consumers:
 - Have straightforward, meaningful choices in fair and competitive markets and can exercise them;
 - Get access to, and better value, from all goods and services, including basics such as health, energy and food;
 - Benefit fully and safely from advances in technology;
 - Have the knowledge and awareness to exercise their rights;
 - Have access to impartial information and advice;
 - Are given adequate and efficient tools to obtain redress for loss or harm;
 - Find sustainable choices to be the easy and affordable ones;
 - Trust that EU policymaking takes full account of their interests;
 - Benefit from a strong and influential consumer movement at national and European Union level.
- All EU legislation with an impact on consumer welfare should be based on a high level of consumer protection while meeting the needs and expectations of European consumers.
- The Commission should report once a year to the Parliament and the Council on how consumer interests have been taken into account with EU policy making and how the outcomes have delivered to consumers.
- We call on the Commission to increase its support for and better acknowledge the importance of a strong and well-resourced consumer movement, both at national and EU level.

Documents

- BEUC's EU Consumers' 2020 Vision ([X/2012/033](#))



The Consumer Programme (2014-2020)

Background

The proposal for a regulation ‘Consumer Programme 2014-2020’ was presented by the European Commission in November 2011. As it is proposed, the Programme will run from 2014 to 2020 with a €197 million budget (approximately €28 million per year). The main purpose of the regulation is to allocate the budget for measures necessary for meeting the four identified policy objectives – which are very broad.

With this Programme, the Commission intends to support the general policy objective of placing the empowered consumer at the centre of the Single Market. The objectives of the Consumer Programme focus on four issues: safety; consumer information and education; consumer rights and effective redress; enforcement. The proposed Programme will provide the financial framework, whereas the more political and strategic framework will be issued in the Consumer Agenda (see above).

The budget of the newly proposed Programme forms part of the Commission’s proposal for the overall EU budget, the Multiannual Financial Framework. This means that the budget proposed for the Consumer Programme is dependent on the overall agreement by EU legislators on the EU budget. That is expected to be partially finalised in June 2012 before the Cypriot Presidency and finally adopted, at the very latest, by the end of 2013 to allow the start of the new consumer programmes in 2014.

We hope that the Cypriot Presidency will do its utmost to, if not increase the insufficient financial resources for consumer policy, then at least maintain it at the proposed level.

Our demands

- BEUC calls on the European institutions to increase the proposed budget. If this is not possible due to financial constraints, the EU should at the very least guarantee to maintain the proposed amount, which is the minimum to ensure a visible and efficient EU policy.
- BEUC welcomes that the new Programme retains the same general objectives as the previous Programme, but its specific objectives focus on four issues namely 1) safety, 2) consumer information and education, 3) consumer rights and effective redress, 4) strengthening enforcement.
- In the Commission's proposal, objective II on information and education also covers support for consumer organisations. Consumer organisations are not only primary sources of information for consumers, but they also play a fundamental role in representing consumer interests by providing input to policy making. Strong consumer organisations are essential in order to meet the Commission's promises to build EU policies around people's needs.
- In order to ensure the Commission's promise to put consumers at the heart of EU policymaking can be fulfilled, the programme should be amended to include this fifth objective.

Documents

- European Commission's Proposal for a Consumer Programme 2014-2020 – Position by BEUC ([X/2012/016](#))



e-Commerce

Background

Developing online commerce at both national and cross-border level can potentially contribute to achieving the goals of the EU 2020 Strategy, boost the European economy's competitiveness while improving consumer choice and welfare. Nevertheless, data provided by the European Commission in 2010, reveals that only one third of European consumers purchase online and only 7% of those have engaged in cross-border online commerce.

In order for e-Commerce to fulfil its potential, the EU must undertake concrete actions to help to boost consumer trust and confidence.

BEUC welcomed the European Commission's adoption in January 2012 of an Action Plan for e-Commerce which identifies the key areas where EU action is needed. The Council under the Cypriot Presidency is expected to adopt conclusions on the Action Plan. The European Commission will also adopt guidelines on the implementation of Article 20.2 of the Services Directive on non-discrimination on the basis of nationality and/or place of residence in June 2012; while an initiative on "notice and action" regarding the liability of Internet Service Providers (ISPs) is also expected in the second half of 2012.

Our demands

- It is important to ensure the focus is on the development of a smoothly functioning and interconnected market for e-Commerce, where online access to goods and services and consumer welfare stimulate growth and innovation.
- The European Commission's proposal for a Common European Sales Law will not help boost cross-border e-Commerce. The Commission should instead explore options which are less intrusive to consumer rights and more practical for businesses e.g. the adoption of European model contracts.
- Compliance with, and enforcement of, Article 20.2 of the Services Directive which forbids territorial discrimination in the provision of services on the basis of a consumer's nationality and/or place of residence should be secured.
- The current fragmentation of the market for online content should be addressed by promoting multi-territorial licensing, adopting forward-looking copyright exceptions and limitations as well as reforming copyright levies systems. These issues are missing in the e-Commerce Action Plan.
- The notice and action initiative for the removal of illegal content should prevent abusive notification and should establish the possibility for the concerned parties to provide counter-evidence in accordance with the principle of due process.
- Enforcement of existing legislation must be improved and consumer access to effective redress mechanisms, including judicial collective actions, ensured.

Documents

- European Commission's Consultation on the Implementation of the e-Commerce Directive – Response by BEUC (X/2010/078)



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I Food intended for particular uses ('PARNUTS')

Background

In June 2011 the European Commission put forward a proposal to revise the framework legislation on foodstuffs intended for particular nutritional uses ('PARNUTS'). This regulation aims to abolish the concept of dietetic foods and provide for a new framework establishing general provisions only for a limited number of well-established and defined categories of food which are considered as essential for certain vulnerable groups of the population (infant formulae and follow-on formulae, cereal based foods and baby foods for infants and young children and foods for specific medical purposes).

BEUC supports the Commission's proposal to revoke the framework directive but maintain some of the existing specific rules for these specific food categories. BEUC has previously voiced concerns that having a special designation under the current framework directive would exclude certain foods from complying with other important provisions laid down in the horizontal rules (e.g. maximum levels of nutrients in food or health and nutrition claims) which apply to all foodstuffs and could provide loopholes for manufacturers or importers to circumvent other pieces of legislation. This is an important piece of legislation for European consumers. If negotiations are not completed under the Danish Presidency, this will remain the sole piece of food legislation to be carried over and finalised under the Cypriot Presidency.

Our demands

- The scope of the regulation should be limited to only a few well-established and defined categories of food which are considered essential for certain vulnerable groups of the population. All other categories of foods besides those contained in the proposal could and should be addressed by the other pieces of horizontal legislation governing food composition and labelling issues.
- EFSA should assess whether toddler milks provide any additional nutritional benefits to young children up to three years, in order to inform future policy decisions. Of course, it is vital that in the meantime such products continue to be covered by other EU regulations including the claims regulation.
- Gluten free and low gluten foods should be considered under the regulation on the provision of food information to consumers as it already provides for the adoption of specific rules to indicate the presence of substances that cause allergy or intolerance.
- Sports foods are not an essential category of food and should not be considered under the scope of this regulation, but rather be assessed through the regulation on Health and Nutrition Claims as should slimming foods (meal replacers).
- Specific rules governing the specific food categories detailed in the Commission proposal should be maintained. In particular:
 - Specific compositional criteria which are underpinned by scientific evidence (e.g. minimum and maximum amounts of vitamins, minerals, amino acids etc. specific pesticide residue limits);
 - Additional labelling requirements which are justified by consumer protection considerations (e.g. important notice as to the specific nature and particular nutritional characteristics of these products, their target group and intended uses, the necessity of medical supervision when appropriate, the promotion and protection of breastfeeding practices).

Documents

- Food Intended for Infants and Young Children, and for Medical Purposes – BEUC position paper on the Commission’s proposal (X/2011/095)
- Letter to Member States’ Permanent Representations to the EU (X/2012/035)



Review of the hygiene package

Background

The European Commission is currently reviewing the EU's hygiene laws on provisions related to meat inspection, mechanically separated meat (MSM), good food safety practices and cold stores, amongst others. Following on from the impact assessment carried out on the current hygiene package, the Commission is due to make proposals during the second half of 2012 related to the review. While it has been determined that no fundamental overhaul is required, a number of improvements have been suggested (via ordinary procedure). From a consumer perspective, the most pertinent points relate to meat inspection, mechanically separated meat and the application of specific hygiene rules to retail.

Our demands

- Consumer perceptions of mechanically separated meat is further examined and taken into account in any future proposals in this area especially regarding the definitions and labeling of such products.
- Meat inspection is a very sensitive issue amongst consumers and any proposal to delegate certain tasks to slaughterhouse staff could severely undermine consumer confidence in meat safety (as controls would be perceived as less independent and transparent). Any proposal on delegating certain tasks should only be made once the Commission is in a position to specify the exact tasks which would be concerned.
- In the interest of consumer safety (and consistency), the specific hygiene requirements of Regulation 853/2004 should be applied to retail as it is increasingly common for retail to cut, slice and re-wrap meat that is then sold at a 'self-service' counter.

Documents

- BEUC response to the Commission questionnaire on the Revision of Meat Inspection ([X/2011/088](#))
- BEUC comments on the review of the Hygiene Package ([X/2012/036](#))

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Health and Nutrition Claims

Background

Health and nutrition claims are used as a major marketing tool by the food industry in order to entice consumers into buying products. Due to the huge number of exaggerated or unsubstantiated claims currently on the market, it is very difficult for consumers to know which ones to trust and ultimately make an informed choice. Too often claims stress only one positive aspect of a product, claiming for example a low level of sugar, but not mentioning the high levels of salt or saturated fat.

In response to the proliferation of food products claiming health and/or nutrition benefits to appeal to consumers, an EU regulation was adopted in 2006 laying down harmonised rules for the use of claims.

The purpose of regulating claims is to eliminate unsubstantiated and misleading claims and only allow claims that are scientifically proven and that consumers can trust. It also ensures that companies which make scientifically substantiated claims can benefit from their investments. The adoption of the so-called 'Article 13' list of general function health claims goes some way to achieving this objective. Our hope is that, by the end of this year, consumers can start to trust in the claims being used on food products.

Of course there is still some work to be undertaken in the area of claims. In the context of so-called botanical products, we ask the Council to encourage the Commission to give the green light to EFSA to continue with its assessment of claims relating to botanicals. We would be very concerned if the Commission were to make a special case for these products and allow them to bear claims based on 'traditional use' rather than providing the sound scientific evidence to justify their claims (as has been the case for all other claims). Such a move would result in consumers continuing to be misled about the purported benefits of these products and also risks opening the door to challenges from other companies whose claims have already been rejected by EFSA.

Our demands

- Claims relating to the botanical substances should be assessed by EFSA as a matter of urgency in the same way as all other general function health claims.
- Nutrient profiles, a vital and a necessary part of the Health Claims regulation, will help consumers to make an informed choice. They were due to be developed by the European Commission by January 2009. However, three years later and we are still awaiting a proposal. BEUC therefore calls for the European Commission to come forward with its proposal for nutrient profiles as soon as possible. We ask that such profiles be robust and scientific and to be fit for purpose i.e. that they prevent consumers from being misled about the qualities of a food through the use of claims.
- Member States should ensure the timely removal of rejected claims from the market within the six month transition period in order that only those authorised generic health claims are in use by end 2012.

Documents

- Brochure: No special treatment for Botanical Claims! ([X/2012/038](#))
- BEUC Factsheet on Nutrition & Health claims ([X/2011/025](#))
- BEUC Factsheet on Nutrient Profile ([X/2011/024](#))

Energy



I Energy Efficiency Directive

Background

The proposal for an Energy Efficiency Directive (repealing directives 2004/8/EC and 2006/32/EC) provides a framework for the energy efficiency and savings policies of Member States, the public sector, industry and consumers. It includes targets, financing and consumer information.

Energy efficiency measures and provisions on the supply of services will affect energy consumers' daily lives. BEUC demands consumers are provided with the right tools and information to be more energy efficient and increase their savings potential while becoming more active players on the energy market.

The directive is currently being negotiated between the European Parliament, the Council of Ministers and the European Commission with the aim of adopting it at first reading stage. We call on the Cypriot Presidency to do its utmost to achieve a final text which put consumers' needs at the forefront of the directive's provisions.

Our demands

- As has been foreseen in the European Parliament's opinion, energy saving schemes, likely to be largely funded by the revenue from consumers' bills, must be delivered at the lowest possible cost to them. Transparency of the impact of these schemes on cost and energy savings is crucial to ensure the directive meets consumer needs, in particular for the most vulnerable.
- As Member States roll-out smart metering technology, meters shall be provided at no additional cost for the final customers, allowing them to accurately measure their consumption in real time, free of charge while in a format enabling consumers to better understand their usage and forecast their budgets. It is also important that consumption data is provided in a format which enables fare comparison on a 'like-for-like' basis.
- Article 8a of the European Parliament's opinion is key for European consumers. It looks to enhance consumer engagement, which is vital for the effective deployment of energy efficiency measures. Information alone will not be sufficient; therefore a clear sense of direction is necessary from national governments. Furthermore, single points of contact should be in place to provide basic energy service advice and to signpost consumers towards accredited providers.

Documents

- BEUC position paper on the Energy Efficiency Directive ([X/2011/115](#))
- ANEC/BEUC position paper on the Energy Efficiency Plan 2011 ([X/2011/057](#))
- Letter to Member States' Permanent Representations to the EU on the Energy Efficiency Directive ([X/2012/029](#))



Smart Grids/Smart Meters

Background

Europe has paid a significant price for its poorly interconnected and often outdated energy infrastructure. The European Union is now facing many challenges: ensuring security of supply, increased efficiency needs and proper integration of renewable energies are crucial for well-functioning markets delivering benefits to consumers.

As set out in the European Commission's communication on Energy Infrastructure Priorities for 2020 and Beyond, the roll-out of smart grid technologies are among the European Commission's priorities.

BEUC is actively involved in a European Commission Task Force on Smart Grids to develop a common vision for the implementation of smart grids and smart meters, and to recommend regulatory requirements to address the key issues. BEUC recently commissioned research which studied how consumers can maximise the potential of smart meters and what needs to be done to enable consumers to make use of their savings potential.

We request Member States carefully assess consumers' need before the roll-out of smart meters and engage in awareness raising activities to explain its use to save energy.

Our demands

- Consumer trust and engagement are both crucial to successful deployment. Member States should develop strategies and campaigns based on a social marketing approach to promote behavioural change.
- Transparent and robust processes are needed to assess whether the benefits of implementation outweigh the costs. Regulatory mechanisms are needed to ensure any such benefits are reflected in consumers' bills.
- Consumer interests and consumption patterns differ. Therefore, it should be up to them to decide if they want or need a smart meter.
- Special attention must be paid to vulnerable consumers. It should be analysed how smart meters will affect them and if they will benefit.
- Data protection and privacy should be integrated at the earliest possible stage and throughout the development of the project. Security of data and privacy by design, in tandem with the principle of data minimisation are crucial.
- It is necessary to provide easy-to-read and consistent information on consumption to allow comparisons of the tariffs available on the market (e.g. time of use tariffs). Consumers must have free access to their actual energy consumption information as well as back-dated data.
- Strong protections are needed for remote disconnection and switching.
- Standards to promote interoperability and additional functionalities of smart meters are necessary.

Documents

- ERGEG Consultation on Guidelines of Good Practice on Regulatory Aspects of Smart Metering for Electricity and Gas – BEUC response ([X/2010/065](#))
- Smart Energy Systems for Empowered Consumers – ANEC/BEUC Position ([X/2010/044](#))
- 'Empowering Consumers through Smart Metering'. Research conducted by Gregoire Wallenborn and Frederic Klopfert, Université Libre de Bruxelles ([X/2012/030](#))

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I Net neutrality

Background

The European Union missed the opportunity in 2009 with the revision of Telecoms Rules to safeguard Net Neutrality, a fundamental principle of the internet, as a regulatory norm. The possibility for network providers to engage in traffic management opens the door to potentially unfair and discriminatory internet traffic control. The adoption of transparency and information disclosure requirements cannot be the sole remedy, particularly in a market where competition is seriously hampered by barriers to switching.

The Communication on Net Neutrality by the Commission in April 2011 only included general principles and refrained from providing national governments with specific guidelines when implementing the Telecoms package. In the meantime, an increasing number of Net Neutrality interferences have occurred across the EU.

The Body of European Regulators for Electronic Communications (BEREC) carried out a fact-finding exercise with the aim of reporting traffic management practices by operators. According to the preliminary results submitted to the European Commission in March 2012 the blocking and throttling of peer-to-peer (P2P) traffic, on both fixed and mobile networks, and the blocking of Voice over Internet Protocol (VoIP) traffic are widely reported across Europe.

According to the study 'Steps Towards a Truly Internal Market for e-Communications', on behalf of the European Commission, they and BEREC are falling behind as Member States take their own initiatives. Therefore, a uniform approach towards Net Neutrality is an urgent need.

The Cypriot Presidency should reiterate the Council position in favour of an open and neutral internet and maintain pressure on the European Commission to provide guidance and clarify key provisions of the Telecoms Package.

Our demands

- In the short-term, the European Commission should provide Member States with specific guidelines on the implementation of the revised Telecoms Package to ensure coherent implementation across Europe.
- In the medium term, the European Commission should adopt a specific Net Neutrality regulation covering all issues and not only the ones addressed in the Telecoms Package.
- Consumers should be entitled to:
 - An internet connection of the speed and reliability advertised;
 - An internet connection which enables them to send, receive and use content, services and applications of their choice;
 - An internet connection free from discrimination of application, service or content, or based on the sender or receiver's address;
 - Competition among network, application, service and content providers;
 - Know which network management practices are deployed by network providers.

Documents

- Public consultation on Net Neutrality – BEUC response ([X/2010/070](#))



Data protection

Background

Digital Information & Communications Technologies and new services, while benefitting consumers, also represent a major challenge to the protection of their personal data. ICT often leads to a proliferation of the information collected, stored, filtered, transferred or otherwise retained. The risks to privacy therefore multiply. In the digital environment, almost every communication leaves behind detailed footprints and the collection of personal data has become the default rule. Internet and mobile information appliances allow large quantities of personal data to be collected, while data mining tools are used to track the online behaviour of individuals and predict their preferences.

In January of this year, the European Commission adopted a proposal for a regulation on Data Protection which will replace the current directive. The proposal aims to ensure a uniform set of rules across Europe, while strengthening the rights of individuals and facilitating the flow across borders of personal data. The introduction of an explicit transparency obligation; the data minimisation principle; the establishment of the right to data portability; the horizontal breach notification obligation; the introduction of data protection by design and by default as mandatory principles; the strengthening of sanctions for data protection infringements are positive elements of the draft regulation.

We hope the Cypriot Presidency will do its utmost to ensure negotiations on this highly important revision will pursue a high level of protection and ensure consumer confidence in online transactions.

Our demands

- Clarify the provisions on 'consent' to ensure it is meaningful.
- Clarify the relationship and possible impact of the right to be forgotten and the right to data portability with freedom of expression.
- Establish rules for assignment of the lead Data Protection Authority when the controller is not established within the European Union.
- Include a clear and risk-based definition of which personal data breaches must be notified to Data Protection Authorities and data subjects.
- The appointment of Data Protection Officers should be mandatory irrespective of the number of employees. The key factors should be the nature of the processing operations, the quantity and type of personal data involved.
- Joint and multiple liability rules between controllers, processors and third parties for breaches should be established.
- Judicial collective actions for compensation for harm suffered from data protection infringements should be introduced.
- Introduce specific provisions regarding funding of Data Protection Authorities to ensure they utilise the necessary financial, technical and human resources required to fulfil their tasks.
- Limit the powers of the European Commission to adopt delegated and implementing acts to those provisions which refer to technical and non-essential elements.

Documents

- Public consultation on Data Protection – BEUC response ([X/2011/003](#))
- BEUC position paper on Data Protection ([X/2012/039](#))

Intellectual Property Rights Enforcement Directive

Background

The European Commission is currently reviewing the Intellectual Property Rights Enforcement Directive 2004/48 (IPRED) with the aim of adopting a proposal for revision in September 2012. However, due to the late transposition of the Directive by Member States and the lack of case law, BEUC believes it is premature to adopt stronger rules for IPR enforcement. The adoption of stronger enforcement measures pre-supposes a revision of the substantive law with the aim of adapting it to the digital environment. An overall assessment of the economic impact of the current provisions on the development of the 'information society' and innovation is required by the directive.

Nevertheless, the European Commission has not carried out such an assessment, while it has ignored the conclusions of a number of independent studies by governments, international organisations and academics highlighting the positive overall economic impact of file-sharing on the development of the content industry. The responses to the public consultation on the implementation of the 2004/48 directive showed that the majority of respondents do not consider revision of the directive necessary.

We ask the Cypriot Presidency to carefully assess whether there is a real need for the revision to take place and ensure the fundamental rights and freedoms of online users are not compromised. The provisions dealing with injunctions against Internet Service Providers and the right to information should comply with the rulings of the European Court of Justice.

Our demands

- Enforcement measures need to be proportionate and comply fully with consumers' fundamental rights, namely the right of a presumption of innocence, the right to fair trial, the right to privacy and the right to confidentiality of communications. Legislation treating consumers as criminals are to be rejected.
- The IPRED should not be revised before a comprehensive economic analysis of its impact on innovation and the development of the information society is carried out.
- The European Commission should clarify the infringing nature of mere downloading acts and clarify the limits of private copying exceptions.
- Any proposal for enforcement of IPR needs to treat an Internet Protocol (IP) address as personal data and ensure personal information on online users must only be disclosed to public law enforcement authorities.
- Internet Service Providers should not be obliged to apply general filtering and blocking technology to enforce copyright, in accordance with the recent ruling of the European Court of Justice in the Sabam v. Scarlet case.

Documents

- Public consultation on the Review of the Intellectual Property Rights Enforcement Directive – BEUC Response (X/2011/041)

IV

Collective management of European copyright

Background

Consumers want to have access to diverse content of good quality and at a fair price, irrespective of their nationality or their country of residence. They must be able to benefit from the establishment of a Single Market both online and offline. Currently, the territorial management of copyright, combined with uncertainty of the ownership of copyright, complex licensing mechanisms and a lack of standards regarding the governance and supervision of collecting societies result in fragmentation of the European market for creative content.

The forthcoming proposal of the European Commission on collective management of copyright is expected to be adopted in June 2012 and will therefore be dealt with by the Cypriot Presidency. The proposal will include general principles which all collective management entities will have to comply with in terms of transparency and accountability, as well as specific rules and principles regarding multi-territorial licensing.

Our demands

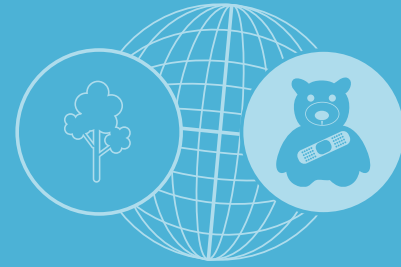
- Multi-territorial and pan-European licensing of content should be facilitated.
- Transparency of copyright ownership needs to be increased via the creation of a publicly accessible Rights Database.
- A 'one stop shop' for the clearance of rights and the granting of multi-territorial licences should be established.
- Competition between collecting societies in terms of services and tariffs must be introduced.
- The development of new and innovative business models for the online distribution of content should be fostered.
- The current system of nationally-based release windows should be revised and the media chronology in the distribution of audio-visual content eliminated.
- Comprehensive rules regarding the governance, transparency, accountability and supervision of collecting societies should be established.

Documents

- BEUC IPR Strategy: How to Make IPRs Work for both Creators and Consumers ([X/2011/034](#))
- Reflection Paper on Creative Content Online – BEUC response ([X/2010/003](#))



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I Revision of the General Product Safety Directive

Background

Unsafe consumer products, including products bearing the CE mark, are often found on the EU market and need to be recalled, thus posing avoidable risks to health and safety.

The European Commission is planning a revision of the General Product Safety Directive (GPSD) in 2012, the preliminary consultation phase of which took place in 2010. BEUC has made suggestions to the European Commission and Parliament for a revised Directive. Many of our concerns have been addressed by the European Parliament in its resolution of March 2011 and we hope that it will be taken up by the European Commission in its proposal for a “product safety package” consisting of a Single Market surveillance instrument for all products, a proposal for a new General Product Safety Directive (GPSD) and a multiannual market surveillance framework plan. This package is expected to be presented during the Cypriot Presidency towards the end of 2012.

Our demands

- BEUC calls on the European Commission to reflect the recommendations of the European Parliament resolution of March 2011 on the revision of the General Product Safety Directive (GPSD) & Market Surveillance in its legislative package.
- More clarity is needed as to how the various product safety legislations in effect within the EU interact with each other. Manufacturers' responsibilities need to be strengthened and clarified.
- It must be ensured that the level of enforcement is the same across the EU and that market surveillance activities are effective.
- Child-appealing products should be explicitly addressed. In addition, the prohibition of food-imitating products should be maintained.
- A European framework for market surveillance and wider access to information on dangerous products should be developed. An EU-funded, accident statistics system and a European complaints handling and reporting point should be set up.
- EU emergency measures should 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.
- Legally-binding status should be given to European Commission decisions which lay down safety requirements under the scope of the GPSD and which aim to support the development of standardisation mandates.

Documents

- Joint BEUC/ANEC paper: Revision of the General Product Safety Directive – Key Issues from a Consumer's Perspective ([X/2010/031](#))

Nanotechnologies and nanomaterials

Background

Nanotechnologies are newly emerging technologies. Some of these applications could bring benefits to consumers' health and safety, increase energy efficiency, make medical treatment more effective and improve manufacturing production. However, BEUC is 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 sold on the European market without prior risk assessment. We are particularly concerned about products with which consumers come in direct contact with on a daily basis (e.g. cosmetics and food products).

It is crucial that consumers are properly protected and can feel confident that any product on the market containing nanomaterials (or made using nanotechnologies) has been independently assessed and found to be safe, before it is permitted to go on sale.

In October 2011, the European Commission published a recommendation to define the term 'nanomaterials'. Although BEUC welcomed the fact that more clarity about the term 'nano' can lead to the adoption of specific safety requirements in legislation, we were disappointed because the definition was too narrow.

We hope that our demands for more market transparency and for a mandatory reporting scheme about the use of nanomaterials in consumer products will be considered in the upcoming Commission communication on the use of nanomaterials in the European Union.

Our demands

- A review and adaption, if necessary, of all relevant legislation (REACH and product safety legislation) should be undertaken in order to adequately address the potential risks of nanotechnologies.
- The development of adequate safety and risk assessment methodologies should be promoted, taking into account all characteristics of nanomaterials.
- Safety assessment and approval should be imposed 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.
- Manufacturers should label consumer products containing nanomaterials, as it will be done in the new regulation for cosmetic products. An inventory of products containing nanomaterials on the EU market should be established.
- Misleading claims are currently being made on products marketed as containing nanomaterials, resulting in a need for regulation.
- Funding and research should be prioritised towards the environmental, human health and safety aspects of nanomaterials.
- A public debate on nanotechnologies needs to be launched across the EU.

Documents

- Consultation for a definition of "nanomaterials" – BEUC response ([X/2010/081](#))
- Leaflet ([X/2010/076](#)) for 2010 inventory of products claiming to contain nanomaterials ([X/2010/077](#))
- 'Small is beautiful, but is it safe?' – ANEC/BEUC position paper ([X/2009/043](#))



Chemicals which disturb the hormonal system

Background

Each day we come in close contact with an enormous range of man-made chemicals. We use skin creams with parabens, computers with brominated flame retardants and plastic kitchen tools with bisphenol A (BPA). Many of these chemicals found in consumer products are known to disturb the hormonal system, in particular when exposure takes place during crucial stages of development such as the pre-natal phase. Endocrine disruptors are associated with common diseases such as obesity, diabetes, cardiovascular diseases, cancer and infertility.

The exposure to multiple chemicals in everyday life is of particular concern as the EU regulatory framework largely neglects this 'chemical cocktail effect' and assesses safety on a chemical-by-chemical approach. In December 2009, the Environment Council asked the European Commission to make recommendations as to how exposure to endocrine disruptors should be further addressed within relevant existing EU legislation.

The Commission is planning to start the revision process in 2012 on its EU strategy on endocrine disruptors. We call on the Council to make the protection of consumers from endocrine disruptors a priority and to send a strong message to the Commission of an ambitious, future strategy on EDCs.

Our demands

- Exposure to endocrine disrupting chemicals (EDCs) should be reduced. To this end, chemicals with endocrine disrupting properties must be subject to restriction and phased out. Safe alternatives have to be used where they exist.
- A scientifically based definition for “endocrine disruptor”, which should be coherent and applicable to all existing and future EU legislation, is needed.
- Under REACH, the role of authorities is to evaluate registered substances and to propose appropriate risk management measures. When screening the registrants’ chemical safety assessments, authorities should not only consider the information of the REACH dossier, but also take into account other available information to assess if the substance is (potentially) endocrine disrupting.
- EDCs which have been identified as Substances of Very High Concern (SVHC) should be included in Annex XIV of the REACH regulation. Consequently these substances would need authorisation.
- As part of the EU strategy on endocrine disruptors, the European Commission identified a priority list of substances for further evaluating their role in endocrine disruption. However, this list was established several years ago and should be updated, taking into account REACH registration dossiers and newly available data.
- Risk assessment and risk management methods have to be updated to take into account low-dose effect of EDCs as well as the combined effect of different chemicals.
- More EU-funded research is needed to better understand the complexity of the endocrine system and the effects of endocrine disrupting chemicals on human health and on the environment.

Documents

- ‘Top 10 Actions MEPs can Undertake to Lower the Exposure of Consumers and of the Environment to Endocrine Disrupting Chemicals’ ([X/2011/040](#))
- Factsheet on Endocrine Disrupting Chemicals ([X/2011/039](#))
- ‘BPA Should be Phased Out from Consumer Products’ – BEUC Position paper ([X/2011/038](#))



For more information: safety@beuc.eu

Consumer Redress



I Collective Redress

Background

Groups of consumers across different Member States are sometimes victims of faulty goods, dangerous services or are confronted with unfair or anti-competitive business practices. Individual actions are not a fitting response, as the litigation costs involved can be much higher than the compensation to which the affected consumers are entitled.

A European Group Action procedure is essential to enable groups of consumers to secure compensation for loss caused by the same trader, by gathering their claims in a single action. Currently, national systems across 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.

In spring 2011, the European Commission undertook a consultation called 'Towards a Coherent European Approach to Collective Redress'. Although we welcomed this initiative, it is worth noting that this was the fourth such consultation since the 2005 Green Paper and a 2008 White Paper on anti-trust damages actions, as well as a 2008 Green Paper on consumer collective redress.

We believe it is time that concrete action is finally taken, particularly in light of the recent European Parliamentary report, adopted in February of 2012. The report recognises the benefits of collective redress and welcomes the Commission's work towards a coherent European approach. We have high expectations the Commission will in the near future issue a long-overdue legislative proposal.

Our demands

A binding instrument at EU level should outline the main features a judicial, group action mechanism must respect.

These include:

- Encompassing all areas of consumer harm and aim at obtaining compensation;
- Legal standing of consumer organisations;
- Comprise both national and cross-border cases;
- Court discretion over the admissibility of the claim;
- Both opt-in and opt-out procedures;
- Accompanying information measures directed at consumers;
- Control of out-of-court settlements;
- Allowing compensation to be distributed fairly;
- Efficient funding mechanisms.

Documents

- Factsheet Consumer redress ([X/2011/96](#))
- Public consultation on Collective Redress – BEUC response ([X/2011/049](#))
- List of Potential Cross-Border Collective Cases ([X/2011/011](#))
- Country by Country Guide to Group Action ([X/2010/067](#))
- Brochure – 10 Golden Rules on Group Action ([X/2008/31](#))



Alternative Dispute Resolution

Background

Alternative Dispute Resolution (ADR) mechanisms, which lead to the settlement of disputes due to the intervention of an independent third party, can offer cheap and effective solutions to individual consumer disputes. As such, ADR is an important tool for consumer redress. However, as there has so far been no obligation to establish ADR bodies or harmonise the standards applied there are important shortcomings in the current functioning of ADR in the EU. Those gaps must be addressed to ensure consumer protection and fair procedures.

In November 2011, the European Commission adopted proposals on ADR and on Online Dispute Resolution systems for e-Commerce disputes (ODR) and qualified them as strategic initiatives in the Single Market Act. The proposals, which BEUC welcomes, aim to oblige Member States to ensure there is always an ADR mechanism available for consumer disputes with traders.

The proposals also aim to ensure that those ADR mechanisms respect certain quality principles. It is in this particular respect that the proposal on ADR needs improvement. We hope that the Cypriot Presidency will successfully lead the trialogue negotiations and reach a 1st reading agreement still in 2012.

Our demands

- Independence must be a key element of ADR. Only those ADR schemes which are independent from the influence of industry should fall under the scope of the proposals. Therefore we call for the explicit exclusion from the scope of the proposals schemes run by just one trader. Stronger criteria must also be included to ensure the independence of all ADR bodies, especially regarding the governance of the schemes.
- ADR should:
 - Base its outcomes on the principle of legality;
 - Be free or low cost for consumers;
 - Be transparent as to the outcomes and rate of compliance;
 - Have a wider impact on the market by providing for 'guiding decisions'.
- It should be ensured that legal prescription periods do not begin to run during the period where the ADR scheme is used, but instead start anew at the end of the ADR procedure.
- With regards to ODR, the name of the online platform should make it clear to consumers what service it provides and therefore the emphases should be on information and referral, particularly if traders are able to refuse to participate in the ODR process.
- Relying on ADR as the only solution for mass claims situations should be avoided, the work on judicial collective redress must be further pursued.

Documents

- BEUC position paper on ADR and ODR of Consumer Disputes (X/2012/010)

 For more information: consumerredress@beuc.eu

Consumer contracts



I The Common European Sales Law for business to consumer contracts

Background

A proposal for a Common European Sales Law regulation (CESL) introducing a '28th regime' of law, covering business to consumer (b2c) contracts was adopted by the European Commission in October 2011. It consists of a set of rules which co-exist alongside national law and which can be "chosen" by the parties as the legal basis for the contract. It would set aside the consumer specific regime of Private International Law (the Rome I Regulation) and circumvent the application of the relevant national, mandatory consumer protection provisions.

BEUC is not in favour of the introduction of an "optional" regime for consumer contracts. There is no need to deviate from the traditional means of regulating consumer contract law. This is particularly true as the Consumer Rights Directive was adopted in October 2011, significantly increasing harmonisation of the most important elements of consumer contracts, in particular in relation to the most relevant cross-border selling method: online contracts. Consumers are much better protected by solid legal rights enshrined in national law, than by an 'optional' measure, offered or withheld from them by the trader.

This 28th contract law regime would rule out the application of national mandatory consumer rules and prompt lower standards of protection than those currently enjoyed in many countries. It would give the trader the choice as to what level of protection the consumer benefits from. Importantly, it would be confusing for consumers and businesses to deal with different regimes of contract law (national and the European Law) and thus, instead of facilitating cross-border commerce, it would become more complicated and costly for consumers and businesses alike.

Our demands

- Before entering any negotiations on the details of the proposal for a regulation on a Common European Sales Law, European legislators should thoroughly consider whether there is even a need for this costly and time-consuming initiative and whether its objective to facilitate cross-border business to consumers cannot be met by much better, cheaper and swifter means using less intrusive measures such as developing European model contracts and speedy implementation of the recently adopted Consumer Rights Directive.
- The Commission's Impact Assessment for the proposed Common European Sales Law does not provide sound evidence that consumer contract law is a significant barrier to trade. Indeed, according to the Commission's own data, nearly 80% of traders told the Commission that harmonised EU consumer law would make "little or no difference to their cross-border trade" (Flash Eurobarometer #300). We call on legislators to carefully analyse and openly discuss the methods and conclusions of the Commission's Impact Assessment.
- The Commission does not take into account that under current Conflict of Law rules, businesses do not have to adapt to 26 other Member States' laws in advance of offering, but rather they are free to choose their preferred national law as the basis for a cross-border contract with a foreign consumer.
- The proposed CESL, which aims to override EU private international law, is incompatible with Article 6(2) of the Rome I regulation which aims to guarantee the application of higher consumer protection standards. Furthermore, on a technical level, the proposed CESL cannot work properly: Even if the CESL is chosen by the trader, the consumer-specific rules of the Rome I regulation on the applicable law would still come into play, but in an unclear and arbitrary manner. The proposal would drastically increase legal uncertainty, not decrease it, as we have shown in Annex B of our position paper.
- BEUC's analysis (Annex A of our position paper) shows that the level of protection in the proposal's annex is not truly high. It does not match higher standards in numerous Member States. For example, in the field of unfair contract terms and on specific issues related to legal guarantees (e.g. the burden of proof, payment use).
- Digital content is an area in which the current situation is causing detriment to consumer rights, as clearly shown by two recent Commission studies. More legal certainty and modern consumer protections are needed at EU level. The CESL proposal includes modern rules in this field, but they will only be applicable if businesses deem it advantageous for them. This is another example of the major flaw that is the 'optional' nature of the proposal.

- BEUC could support a “toolbox” initiative for European contract Law, as long as the basis for consumer legislation consists of not only the Draft Common Frame of Reference, but also a set of more consumer-oriented rules specifically adapted to modern consumers’ needs.
- Instead of introducing a new era of optional regulatory EU tools, inappropriate to consumer contracts, we call on the European Commission to continue modernising consumer law with traditional methods – using full and minimum legislative harmonisation techniques as appropriate – and completing the review of the consumer law acquis as originally envisaged.

Documents

- The European Commission’s proposal for a Common European Sales Law – BEUC position ([X/2012/14](#))
- Joint letter with SMEs to the Council of the European Union: BEUC/UEAPME letter to Permanent Representatives ([X/2011/113](#))
- BEUC comments on some elements of the European Commission’s Impact Assessment on the proposed regulation for a Common European Sales Law ([X/2011/119](#))
- BEUC’s preliminary comments for the Commission’s expert group on European Contract Law: Part I ([X/2011/001](#)); Part II ([X/2010/086](#)); Part III ([X/2011/005](#)); Part IV ([X/2011/015](#)); Part V ([X/2011/035](#)); Part VI ([X/2011/082](#))
- Letters to Françoise. Le Bail, Director General of DG Justice on 17/09/2010 ([X/2010/90](#)) and on 27/10/2010 ([X/2011/088](#))

Air Passengers' Rights legislation

Background

The European Commission is currently reviewing the legislative framework on the rights of air passengers. In early 2010 the Commission undertook a public consultation on the revision of air passenger rights legislation, identifying gaps and shortcomings (e.g. liability for mishandled and lost luggage, the settlement of disputes, problems with pricing transparency, unfair clauses and ineffective enforcement of the legislation). In March 2012, a new public consultation on the revision of Regulation 261/04 on compensation and assistance to passengers denied boarding, affected by cancellation or long flight delays, was closed. A legislative proposal for the review of the regulation is expected to be published by the European Commission before the end of 2012.

The European Commission published a study in March 2012 regarding the protection of passengers in instances of airline insolvencies. Despite findings in the study identifying the significant harm consumers suffer when their airline goes bankrupt, the European Commission has postponed the adoption of a new proposal and appears to now favour a voluntary and/or self-regulatory approach for airlines and Member States to act.

BEUC responded to the Commission's public consultations highlighting existing shortcomings and pointing to a number of business practices which cause consumer detriment and are insufficiently addressed by the existing legislation, such as the proliferation of unfair contract terms in air transport contracts, the lack of transparency of ticket pricing and the difficulties consumers have in obtaining redress should their rights be ignored (e.g. air companies refuse to adhere to Alternative Dispute Resolution (ADR) systems, in-house complaint handling is not regulated). A number of other issues which are not dealt with in regulation 261/04 should also be addressed in the current revision.

Finally, the practical application of this regulation has created many problems, mostly due to gaps in its scope and the often biased interpretation by the airline industry of some of the more 'controversial' provisions. We hope that under the Cypriot Presidency, a speedy start to negotiations on the review of air passenger rights will be given high importance.

Our demands

- The upcoming review should not weaken the level of passenger protection for cases of cancellation or flight delays.
- The current protection should be extended to passengers travelling on flights coming into the EU and operated by non-EU carriers; this is particularly important for code-sharing with airlines based outside the EU.
- Information obligations should be strengthened; surveys show passengers are often left with no information when they encounter travel problems.
- The rights of passengers to receive assistance in extraordinary circumstances must not be put into question on the grounds of the volcanic ash cloud. Any reduction of such rights would be a disproportionate and ill-founded response to what was a highly exceptional event.
- The occurrence of “technical problems” should not always be considered “extraordinary circumstances” in attempts to exempt the airline from paying compensation to affected passengers.
- The right to compensation of passengers in cases of long delays (Sturgeon judgement) should be incorporated in the future regulation.
- A ‘blacklist’ of unfair terms in air transport contracts (on the basis of existing court cases) should be established.
- New passenger rights should be added: transferability of tickets, the right of withdrawal for early bookings; correction of input errors in e-commerce; the rights of passengers should be tightened when luggage is lost or damaged.
- The obligation of airlines to publish/advertise the final price of the ticket at all times should be tightened; the practice of ‘unbundling’ ancillary services (‘drip-feed pricing’) should be addressed: the carriage of certain luggage should be included in the advertised price of the ticket; an EU-wide guarantee scheme to protect buyers of seat-only ticket against airline insolvencies should be established.
- Airlines should be obliged to adhere to Alternative Dispute Resolution (ADR) systems for solving consumer complaints.

Documents

- Public consultation 2012 – Response by BEUC ([X/2012/037](#))
- Public consultation on passenger protection in case of insolvency – Response by BEUC ([X/2011/048](#))
- Public consultation on Air Passengers' Rights – Response by BEUC ([X/2010/013](#))
- Synopsis of BEUC's concerns on air passengers' rights in the EU ([X/2011/70](#))
- Protection of air passengers in case of insolvency of airlines ([X/2011/105](#))



Revision of the Package Travel Directive

Background

Back in 2010, the European Commission launched a consultation on the revision of the Package Travel Directive. The results of the public consultation showed the need to revise the scope of the directive in light of major developments in the travel market and the consequent change in consumer expectations since the existing directive was adopted in 1990.

Indeed, the market developments which have taken place in recent years, namely the dramatic increase in internet sales, the advent of online travel agencies and the evolution of consumer expectations and preferences as regards travel, have fundamentally changed the market since the 1990s. Many new travel services and products currently offered to consumers fall outside the scope of the existing directive and leave them unprotected. Moreover, consumers do not distinguish between the 'classic' packages and the new products available in the market.

BEUC responded to the Commission's public consultation and highlighted the need to modernise the current legal framework by including not only tailor-made packages in its scope, but equally to cover services consisting of a single element e.g. only flight or only accommodation or other single services. The future directive should provide for an inclusive, consistent, future-proof and non-discriminatory protection framework.

Given the fact that the publication of the review proposal has been considerably delayed, we call on the Cypriot Presidency to kick-off work as soon as the proposals have been issued and to aim to give consumer protection aspects the highest consideration.

Our demands

- BEUC advocates a broad review of the scope of the directive, covering not only new selling methods such as the so-called ‘dynamic packages’ (where consumers individually compile their own travel arrangement) and internet ‘click-through contracts’, currently not covered by this directive.
- BEUC proposes that any trader who sells or organises services of another service provider should be liable for the fulfilment of the contract and the provision of the services agreed. A trader can be either a travel agency, an online travel agency, a tour operator or even a hotel or airline. The services sold do not have to constitute a package, but the sale of a standalone product (hotel, entertainment, flight) by a different trader, should be sufficient to establish liability of the seller, potentially in the form of joint liability. The new directive should clarify that moral damages (loss of enjoyment) also qualify for due compensation.
- The new directive should clarify that moral damages (loss of enjoyment) also qualify for due compensation.
- Prices should be all-inclusive and fixed (price modification once the contract is concluded should be prohibited).
- Especially in case of early booking, consumers should be able to withdraw from the contract without penalty if the contract was concluded or negotiated at a distance (e.g. online); there is no valid reason for exempting per se travel services from the right of withdrawal granted to consumers in other distance contracts.
- The insolvency protection system should cover not only reimbursement or repatriation, but also the possibility to continue the travel already started.
- All service providers should be obliged to adhere to Alternative Dispute Resolution (ADR) systems for solving consumer complaints.

Documents

- Public consultation on the Package Travel Directive – Response by BEUC ([X/2010/008](#))

 For more information: consumercontracts@beuc.eu



I

Medical devices

Background

In June 2012, the European Commission will present a proposal to revise the EU medical devices legislation with the aim of simplifying and strengthening the existing rules. The Commission intends to replace the existing directives with two regulations, one on medical devices and one on in vitro diagnostics.

The recent PIP breast implants scandal and emerging technologies have challenged the current framework while highlighting loopholes which put consumers' health at risk.

The EU exploratory process on medical devices (2009-2010) and the Conclusions of the Council of Ministers on innovation in the medical device sector adopted in June 2011 highlighted potential adjustments of the current regulatory framework, mainly focused on enhancing the innovativeness and competitiveness of the medical devices industry.

In light of the recent developments, we hope the Council will now demonstrate strong commitment to improving quality and safety in the medical devices sector and restore consumer confidence.

Our demands

- Increase in quality and safety standards.
- Reconsideration of the classification system with special attention to aesthetic products and self-testing devices.
- Address the challenges of new and “border-line” products.
- Strengthening of the pre-market assessment of medical devices.
- Reinforcement of market surveillance.
- Provide consumers with better information on medical devices.
- Improvement in coordination of supervisory authorities and enforcement.
- Harmonise rules on advertising of medical devices.
- Designing a legal framework which meets the needs of tomorrow.

Documents

- Revision of EU legislation on medical devices – BEUC open letter ([X/2012/004](#))



Information to patients

Background

In October 2011, the European Commission published its revised proposals on industry information to the general public on prescription medicines. The proposal was an amended version of the previous proposal (published in 2008) which faced strong opposition from public health representatives, massive redrafting by the European Parliament and reluctance by the Council to open discussions on it. The 2011 proposal also included new elements on the safety of medicines following the scandal of Mediator (see below point III). Upon request by the European Parliament and the Council in February 2012, the European Commission split the proposal in two parts, one on information to patients and one on pharmacovigilance.

BEUC acknowledged the efforts by the Commission to improve the original proposals, but still considers the text to have no added value for consumers.

We hope that in examining the proposals, the Council and the European Parliament will put health interests first and will defend the consumer right to unbiased and non-promotional information on medicines.

Our demands

- Careful assessment of the added value of the proposals and ensure they truly respond to consumers' health information needs.
- Consider the significant administrative burden that the new measures would entail.
- Better clarify what can be considered information and what constitutes commercial communication from a commercially interested party.
- Ensure that the proposal does not introduce a bias in favour of the most profitable medicines and against non-drug therapies.
- Ban the dissemination of printed material prepared by the industry.
- Guarantee effective enforcement of the legislation, including on the internet and social media.
- Prevent any undue interference of pharmaceutical companies in the healthcare professional-patient relationship.
- Put in place an efficient and effective ex ante control and monitoring system to maintain the ban on advertising.
- Reinforce and promote good and independent sources of information (e.g. European Medicines Agency, the EU register on clinical trials).

Documents

- BEUC position paper on the Amended Proposal on Information to Patients ([X/2011/127](#))
- BEUC position paper on information on prescription medicines ([X/2010/068](#))



Pharmacovigilance

Background

No medicine can be considered risk free, even after undergoing extensive clinical trials. Side effects become apparent only once the medicine is used by a large number of people. Pharmacovigilance is the process of detecting and managing those risks in order to protect public health.

In December 2010, the European Parliament and the Council agreed upon a major revision of the EU legislation on pharmacovigilance by adopting Directive 2010/84/EU and Regulation 1235/2010. The new measures, due to apply in July 2012, increase consumer safety, involve consumers in the detection of problems via a system of direct reporting of side effects and improve consumer access to information on the benefits and the risks of medicines.

However, the emergence of a major medicine safety scandal in France, the 'Mediator' case - a weight loss medicine associated with the death of thousands of people - showed that there were still some loopholes in the regulatory framework that needed to be tackled. The European Commission responded by carrying out a 'stress test' on the 2010 legislation in order to identify any additional lessons which needed to be learned in the light of the 'Mediator' case and proposed (in February of this year) some further changes to Directive 2010/84/EU and Regulation 1235/2010 to address these concerns. The new proposals are now under discussion in the European Parliament and the Council and an agreement should be reached under the Cypriot Presidency.

Our demands

- Swift adoption of the new measures in order to increase consumer safety.
- Reinforcement of the current regulatory framework to ensure scandals such as Mediator never recur.
- Increased transparency with regard to medicines under intensive surveillance.
- Trigger an immediate EU response in case of safety concerns.
- Ensure the EMA Pharmacovigilance Risk Assessment Committee has sufficient resources to fulfil its increased task range.
- Introduce as soon as possible the black symbol as foreseen in the current pharmacovigilance legislation to identify products under additional monitoring.

Documents

- BEUC position on Pharmacovigilance (X/2009/086)

 For more information: health@beuc.eu



I

Guarantee schemes

Background

The financial crisis has shown that protecting consumers' deposits is essential, both for ensuring stability of the banking sector and encouraging consumer confidence. Two important legislative initiatives are currently pending in ordinary legislative procedure:

The function of Deposit Guarantee Schemes (DGS) legislation is major: it ensures deposit protection while providing safety to financial systems by helping to prevent bank runs. The European Commission's directive proposal of July 2010 contains many advances in comparison to the current legislation on deposit guarantee schemes. However, there is room for some improvements. It is apparent that too much emphasis has been placed on the stability of the banking sector rather than increasing consumer safeguards by harmonising useful protection measures.

The protection of investor assets in cases of fraud or mismanagement by an investment firm or bank is important to restore retail investor confidence in financial services. The European Commission directive proposal on Investor Compensation Schemes (ICS) contains many advances to ensure consumer compensation for fraud compared to the current legislation on Investor Compensation Schemes.

Progress on both the DGS and ICS proposals has recently stalled in negotiations between the Council and European Parliament. We therefore call upon the Cypriot Presidency to focus its work on resolving this blockage by overseeing the comprehensive closure of both dossiers, while emphasising the interests of European consumers.

Our demands

A. Deposit Guarantee Schemes

- BEUC supports the European Commission proposal to abolish compensation mechanisms between the liabilities of the depositor and his deposits; protection of the accrued, but not credited, interests; compulsory ex ante funding of the DGS.
- The guarantee limit should be per depositor and per brand, not per bank license.
- Minimum harmonisation is needed for temporary higher balances and the circumstances which lead to protection should be extended.
- Repayment of depositors should not be privileged over interventions to permit deposit transfers to another institution or prevent failure.
- If the repayment does not occur within 7 days, the depositor should be entitled to early repayments.
- There should be no time limit to claiming repayment. Each DGS should settle a provision for all depositors whose identity is known, but who have not yet contacted the DGS.

B. Investor Compensation Schemes

- BEUC welcomes the Commission's review of the ICS directive which aims at:
 - Extending protection to some cases not covered previously (failure of a depositary or of a custodian chosen by the investment firm);
 - Protecting the unit holder in case of failure of the depositary of the UCITS (Undertakings for Collective Investment in Transferable Securities) assets;
 - Establishing a higher protection level: €50,000 instead of €20,000;
 - Excluding the co-insurance principle;
 - Covering funds in currencies in addition to Member State currencies.
- We believe all gaps in the protection of liquidities should be eliminated. Consumer protection should not be weaker for clients who enter the market via an investment firm than those who do so via banks.

Documents

- BEUC Position paper on Investor Compensation Schemes ([X/2010/084](#))
- BEUC Position paper on Deposit Guarantee Schemes ([X/2010/083](#))

Enhance investors' protection: PRIIPS, MiFID & IMD

Background

The complexity and long term dimensions of investments make it difficult for the retail investor to assess the suitability of an investment before a long time has elapsed after the decision to invest. The lack of comparability of different kinds of retail investments makes it impossible for the non-sophisticated investor to make an informed decision regarding their investments. The mis-selling of long term investments is highly prejudicial to consumers who will not have sufficient revenue upon retirement.

In December 2010, the European Commission consulted on certain aspects for the upcoming revision of several directives regarding the protection of the retail investor: Package Retail Investment Products (PRIIPS), Market in Financial Instrument Directive (MiFID) and Insurance Mediation Directive (IMD). BEUC responded to each of these consultations highlighting the improvements needed to prevent mis-selling of investments and restore consumer confidence in the financial sector. The MiFID review proposals (Directive and Regulation) were released in October 2011 and are currently pending in first reading in the European Parliament and Council. The proposals for legislation on PRIIPS and IMD are expected at the end of May 2012, so that all proposals will be on the agenda of the Cypriot Presidency.

Our demands

- The duty to act honestly, fairly and professionally in accordance with the best interests of clients should be a general principle applicable to all financial services, irrespective of the type of financial product.
- The introduction of a standardised Key Investor Information Document (KIID) with a Synthetic Risk Indicator (SRI) is essential in order to better inform consumers and make comparison easier. BEUC supports a highly standardised information sheet and asks for a review of the existing SRI for UCITS (Undertakings for Collective Investment in Transferable Securities) to make it useful for all types of investments.
- BEUC welcomes the consumer protection improvements proposed by the European Commission in its MiFID Review and MiFIR (Markets in Financial Instruments Regulation) legislative proposals. BEUC is particularly concerned by the impact of conflicts of interest when a consumer receives financial advice. BEUC asks for further improvements: commissions and inducements should be banned for all investment advice; tying and bundling practices involving investment products should be banned; additional complex UCITS should be excluded from the execution-only regime (which are sales where a client has requested a specific investment and has chosen not to receive advice at that time); telephone registration should be compulsory for all investment services and, not only for orders, and on-going supervision of conduct of business rules should take place in all Member States.

Documents

- BEUC Brochure on retail investments “A good investment – How the EU can better protect consumer finance” ([X/2011/102](#))
- BEUC position paper on MiFID ([X/2012/006](#)) and BEUC responses to consultations on PRIIPS ([X/2011/009](#)), IMD ([X/2011/026](#)) and UCITS ([X/2011/007](#))



Mortgage Credit Directive

Background

Borrowing money to build or buy a home is the single most important financial decision in most people's lives, one which engages them for 20, 30 years or longer. Borrowers cannot afford to be sold a bad deal. One of the lessons of the financial crisis has been on the inadequate protection of borrowers in many EU countries: unsuitable loans, misinformation, aggressive marketing, lack of information on risks linked to using foreign currency and superficial assessments of borrower's financial means have made many loans increasingly unaffordable, raised defaults of payments and seen an increase in foreclosures.

BEUC welcomes the long-awaited legislative proposal from March 2011 on credit agreements relating to residential property which should provide borrowers from all over Europe with a higher protection standard, while allowing Member States to raise national standards even further. While the minimum harmonisation approach adopted by the European Commission is welcomed, the proposal needs some further improvements. We hope that the European Parliament and the Council will come to an agreement on this proposal during the Cypriot presidency.

Our demands

- Combine a high level of EU consumer protection with a minimum harmonisation approach.
- Complete the Commission proposals as regards the conduct of business obligations and minimum competence requirements.
- Enable competent authorities in the host country to play an important role in the supervision of creditors and intermediaries: in this context we prefer a ‘European driving license’ rather than a ‘European passport’.
- Extend the scope of the directive proposal to ensure responsible contractual relationships between creditors and borrowers, including in cases of prolongation of contracts.
- Ensure that all the problems identified in the application of the Consumer Credit Directive regarding advertising and pre-contractual information are properly taken into account.
- Adapt the APRC (Annual Percentage Rate of Charge) definition to include all tied and ancillary services.
- Address the issue of variable interest rates.
- Restrict cross-border exchange of data to negative credit data only.
- Remove the provisions involving sanctions against consumers.
- Add provisions which aim to develop truly independent advice.
- Redraft the Commission proposal to offer consumers a real right of early repayment.

Documents

- BEUC position paper on Credit Agreements to Residential Property Directive ([X/2011/055](#))

IV

Bank account package

Background

In March 2012 the European Commission launched a public consultation on bank accounts with the aim of gathering stakeholders' views on the need for action and the possible measures to be taken in relation to the transparency and comparability of bank account fees, bank account switching and access to a basic payment account.

As stated in the consultation paper "Consumers should have access to bank account services anywhere in the EU, whatever their Member State of permanent residence is, and should be able to easily switch bank account providers, including on a cross-border mode. All this requires transparent and comparable information on fees related to bank accounts".

Commissioner Barnier has announced a legislative proposal for autumn of this year. Such a proposal is important for several reasons: first, the Commission's recent monitoring report of the self-regulation on bank account switching revealed numerous shortcomings in its implementation; second, the attempt to adopt another self-regulation on transparency and comparability of personal current account fees failed last year due to banks' incapability of meeting the requests by both consumers and the European Commission; in addition, according to recent data, 7% of all EU consumers, i.e. 30 million Europeans aged 18 or above do not have a bank account. We hope that the Cypriot Presidency will give high priority to the Commission's proposal.

Our demands

- Ensure any and every consumer has the right of access to a basic payment account, i.e. not only the financially excluded, but also those who do not need additional services offered on top of a regular bank account.
- Harmonise national interpretations of EU rules on the prevention of the use of the financial system for money laundering and terrorist financing, so they are not used by financial institutions as a means of financially excluding consumers.
- Ensure information on bank account fees is transparent and comparable across financial institutions to enable consumers to shop for better deals and spur competition in the market. In particular, improve the terminology, develop bank account glossaries, standardise the presentation of fee tables, set up independent pricing databases, provide annual fee statements to consumers and ensure appropriate enforcement and monitoring.
- Remove all technical and legal obstacles to bank account switching to enable consumers to easily and without hassle switch their bank accounts from one bank to another. In particular, set up account number portability or at least an automatic re-routing system of direct debits and standing orders from the old account to the new one; provide better training of bank staff to ensure a smooth consumer switching experience across financial institutions.

Documents

- ‘Transparency and comparability of bank account fees’ project – BEUC requests ([X/2011/054](#))
- BEUC response to the consultation on Access to a Basic Payment Account ([X/080/2010](#))
- BEUC response to the consultation on Bank Accounts ([X/2012/028](#))



For more information: financialservices@beuc.eu



BEUC The European
Consumer
Organisation

The Consumer Voice in Europe

- AT - Verein für Konsumenteninformation - VKI
- AT - Arbeiterkammer - AK
- BE - Test-Achats/Test-Aankoop
- BG - Bulgarian National Association Active Consumers - BNAAC
- CH - Fédération Romande des Consommateurs - FRC
- CY - Cyprus Consumers' Association
- CZ - Czech Association of Consumers TEST
- DE - Verbraucherzentrale Bundesverband - vzbv
- DE - Stiftung Warentest
- DK - Forbrugerrådet - FR
- EE - Estonian Consumers Union - ETL
- 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 - Kuluttajaliitto - Konsumentförbundet 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 - Għaqda tal-Konsumaturi - CA Malta
- NL - Consumentenbond - CB
- NO - Forbrukerrådet - FR
- PL - Federacja Konsumentów - FK
- PL - Stowarzyszenie Konsumentów Polskich - SKP
- PT - Associação Portuguesa para a Defesa do Consumidor - DECO
- RO - Association for Consumers' Protection - APC Romania
- SE - The Swedish Consumers' Association
- SI - Slovene Consumers' Association - ZPS
- SK - Association of Slovak Consumers - ZSS
- UK - Which?
- UK - Consumer Focus



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The Consumer Voice in Europe

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