Memorandum for the Irish Presidency

Consumer priorities 2013

BEUC The European Consumer Organisation

The Consumer Voice in Europe

Memorandum for the Irish Presidency 2013

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Consumer priorities for the Irish Presidency

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

Increasingly pervasive digital technologies and services offer new benefits to consumers, but can on the other hand represent a major risk to the security of 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 Irish Presidency's work on this issue will help build consumer confidence in online transactions.

During the Irish Presidency two highly important proposals for reviews affecting the rights of travellers will be issued, namely the review of the EU's **Air Passenger Rights Regulation** 261 and of the **Package Travel Directive**. Both initiatives will update and modernise EU consumer protection and have been long expected. We hope the Irish Presidency will promptly begin the negotiations on these dossiers.

Consumers are rarely compensated for competition infringements – this despite the jurisprudence of the European Court of Justice which has acknowledged the right to redress of any person harmed due to an infringement of European competition law. We have high expectations for a European Commission proposal on **antitrust damages actions** which is expected to be presented by the end of 2012 and we hope the Irish Presidency will lead the negotiations with the aim of overcoming the various legal and procedural national differences, thereby making European victims' right to redress a reality. BEUC would also strongly support the possibility to claim damages via a collective redress procedure, as individual actions by consumers are unrealistic in most antitrust damages cases.

The recent PIP 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 the Irish Presidency will demonstrate a strong commitment to the revision of the current legislation proposed in September 2012 and improve the quality and safety of the medical devices sector, thereby restoring consumer confidence.

By the end of 2012, the European Commission is planning to propose a '**product safety package**' consisting of a Single Market surveillance instrument for all non-food

products, a proposal for a new General Product Safety Directive (GPSD) and a multiannual market surveillance framework plan. Strong guidance on this issue by the Irish Presidency can help prevent consumers being exposed to avoidable risks to health and safety because of unsafe consumer products found on the EU market.

In the area of financial services, our hopes are for the Irish Presidency to help advance two important legislative proposals in the Commission's work programme for 2013. The revision of the **Payment Services Directive** should make payment services in the EU more efficient and contribute to the development of a competitive and well-functioning European payments market to the benefit of all consumers. A legislative proposal on **bank accounts** intends to give all EU citizens access to a basic payment account, ensure bank account fees are transparent and comparable and make switching bank accounts easier.

In the area of food, we hope that the Irish Presidency will make the revision of the **food hygiene package** a priority. Pertinent consumer issues are meat inspection, food safety practices and the application of specific hygiene rules at the retail level among others.

The **Common European Sales Law** will also be discussed during the Irish Presidency. BEUC does not support such an 'optional' instrument for consumer contracts, nor do many business stakeholders. We believe it will not provide added value for consumers and the development of the Single Market and that it is an inappropriate approach for regulating b2c contracts. Given the deadline for the implementation of the Consumer Rights Directive by the end of 2013, this proposal should be put on hold.

An essential dossier to be dealt with by the Irish Presidency in the framework of the proposed EU Multiannual Financial Framework is the regulation for the **Consumer Programme 2014-2020**, which will be finalised partially – in relation to its content – under the Cyprus Presidency. We hope that the Irish Presidency will do its utmost to ensure that in case of EU budget cuts, the already very small financial envelope for the consumer programme will not be reduced in any way.

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 Irish Presidency progress will be made on all these initiatives with the aim of delivering clear benefits to European consumers.

We wish Ireland a most successful Presidency.

Safety & Sustainability

1 Revision of the General Product Safety Directive

Background

Unsafe consumer products, including products bearing the CE mark, are often found on the EU market requiring recall. They pose an avoidable risk to health and safety.

The European Commission is planning a revision of the General Product Safety Directive (GPSD), 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 non-food products, a proposal for a new General Product Safety Directive (GPSD) and a multi-annual market surveillance framework plan.

This package, which is an element of the European Commission's Single Market II Act, is expected to be presented during the Cypriot Presidency towards the end of 2012 and will feature on the agenda of the European Council and European Parliament during the Irish Presidency. We hope that the Irish Presidency will do its utmost to ensure that consumer protection will be the top priority during the Council negotiations.

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) and 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.
- The same level of enforcement must be ensured across the EU as must be effective market surveillance activities.
- Child-appealing products should be explicitly addressed. In addition, the prohibition on 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 intend 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)

II Nanotechnologies and nanomaterials

Background

Nanotechnologies are newly emerging technologies. Some uses could benefit consumers' health and safety, increase energy efficiency, make medical treatment more effective and improve manufacturing. 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 2012, the European Commission published the second regulatory review on nanomaterials, accompanied by a staff working document which identifies the uses and types of nanomaterials. Our demands for more market transparency and for a mandatory reporting scheme on the use of nanomaterials in consumer products have not been taken on board. Moreover, despite admitting that REACH is currently inadequately covering nanomaterials, the Commission does not foresee any regulatory change in this regulation.

We urgently call on the Irish Presidency to consider these shortcomings of the Commission's communication when reacting to it and to try to ensure that pending safety issues will be addressed.

Our demands

A review and adaptation, 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 in the new regulation for cosmetic products. An inventory of products on the EU market containing nanomaterials 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

- '*Small is beautiful, but is it safe?*' – ANEC/BEUC position paper (X/2009/043)
- Nano-silver brochure (X/2012/036)

III Chemicals which disturb the hormonal system

Background

Every 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 disrupters (EDC) 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.

The issue has been recognised at EU level. In spring 2012, the Environment Council called for making hormone disrupting chemicals one priority in the 7th Environment Action Programme. In May 2012, the Commission published a communication on combination effects of chemicals. In 2011, the Commission started a review process of its EU strategy on endocrine disrupters and the European Parliament started drafting an own initiative report which is scheduled for adoption in plenary in February 2013.

We call on the Council to make the protection of consumers from endocrine disrupters a priority and to send a strong message to the Commission to work for an ambitious, strengthened strategy on EDCs.

Our demands

- Exposure to endocrine disrupting chemicals should be reduced. To this end, chemicals with endocrine disrupting properties must be subject to restriction and phased out. Safe alternatives must be used where they exist.
- A scientifically based definition for 'endocrine disruptor', which is 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-dosage effects 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)
- Endocrine Disrupting Chemicals Factsheet (X/2011/039)
- *'BPA should be phased out from consumer products'* – BEUC Position paper (X/2011/038)

IV CO_2 emission targets for cars

Background

In July 2012, the European Commission proposed mandatory CO_2 emission limits to be achieved by the year 2020. The target has been set at 95 grams per kilometre (g CO_2/km) and will apply to new cars. This law, when adopted by European Parliament and Member States, will reduce Europe's CO_2 emissions and lead to substantial fuel savings for car drivers while helping the environment.

Most cars run on oil-based fuel and oil is an increasingly scarce and expensive resource. This obvious equation offers a bleak consequence for consumers: driving a car will become increasingly unaffordable. With expenditure on transport playing an important part in private households' budgets, this is a serious concern to many consumers. A 2011 survey by our UK member Which? found that 91% of consumers were worried about fuel prices and a German 2012 survey indicated that 94% of German consumers value fuel consumption as a very important or important factor when buying a car. Not only will driving a car become more expensive, but consumers are more dependent on this mode of travel than ever before.

The emission target of 95g CO_2/km will reduce fuel costs and lead to fuel savings – two big concerns of EU consumers. Therefore tighter CO_2 emission targets for passenger vehicles will not only reduce the impact on the environment, but also help consumers achieve significant cost savings – a win-win situation for consumers and the environment.

We call on the Irish Presidency to ensure a swift adoption process and to prevent the proposal from being watered down during the legislative procedure.

Our demands

- We support achieving the average CO_2 emissions limit value of 95g CO_2/km by 2020 solely by technical improvements (as foreseen in the Commission proposal). Allowing manufacturers to prove the achievement of the emissions target through additional non-technical measures such as training consumers on eco-driving would shift the responsibility from manufacturers to consumers and thereby lower the level of ambition of the targets.
- It is fundamental that targets should not be phased in from 2020 onwards, but that average emissions of 95g CO_2/km should be fully achieved for the entire new car fleet by that target year. A phase-in period would only lead to a weakening of the target and delay the benefits to consumers.
- Manufacturers of heavier cars should shoulder a higher share of the burden to cut CO_2 missions. This is justifiable because lower-income households usually purchase cheaper, smaller and lighter cars. We believe that any price increases for small, light cars as a result of higher emission standards should be minimised.
- 'Super credits' allowing car manufacturers to count low emitting cars (e.g. electrical cars) as more than one vehicle in their overall fleet should be abolished. They discourage manufacturers from achieving significant improvements in fuel-efficiency for their conventionally fuelled car fleet.
- We suggest using footprints (calculation: wheelbase x track width) as the parameter for determining emission targets in order to encourage manufacturers to invest in weight (or mass) reductions. Using weight as the parameter, as suggested by the current proposal, might have the unintended negative consequence that manufacturers increase the weight of the cars in order to improve compliance. By making use of footprints as the parameter for determining the limit values, the necessary CO_2 reductions can be achieved in a more economical way and the costs passed on to car buyers are likely to be lower.

Documents

- *'Good for the environment and good for your pocket'*: Consumer benefits of CO_2 emissions targets for passenger vehicles (X/2012/047)
- BEUC Factsheet: CO_2 emissions of cars (X/2012/074)

For more information: **safety@beuc.eu / environment@beuc.eu**

Consumer Redress

I 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 not so far been an obligation to establish ADR bodies or harmonise the applicable standards there are either no ADR mechanisms available for consumers or key shortcomings in their functioning.

In November 2011, the European Commission adopted proposals on ADR (including Online Dispute Resolution systems for e-Commerce disputes – ODR) and qualified them as strategic initiatives in the Single Market Act I. The ADR proposal aims to oblige Member States to ensure there is always an ADR mechanism available for consumer disputes with traders and that those mechanisms respect certain quality principles. The ODR proposal aims to set up an on-line platform to identify the relevant ADR for a specific cross-border consumer complaint.

The negotiations have proceeded at a very quick pace in 2012 and unfortunately some important improvements to the proposals have been omitted. It is crucial that Member States are allowed to maintain and establish higher requirements for their ADR bodies. In case the negotiations continue in 2013, we hope the Irish Presidency will do its utmost to ensure the best result for European consumers on this core dossier.

Our demands

- Independence must be a key element of ADR. Only those ADR schemes independent of influence by industry will be seen as trustworthy by consumers. Therefore we call for strong criteria to ensure the independence of all ADR bodies, especially regarding the governance of the schemes. In particular we favour the requirement of the participation of consumer organisation representatives either in designating the natural persons who take decisions in ADR or participating in a collegial decision making panel with business representatives.
- There are serious concerns about dispute resolution run by single traders – such mechanisms should not be considered as independent ADR as there is an inherent conflict of interest in the process, especially if the person in charge has previously worked for the company and has close ties with it.
- As the directive does not establish mandatory business participation in ADR, it is important there are strong incentives for companies to participate. In this respect the requirement for all businesses to clearly communicate to consumers whether or not they submit to the ADR processes would play an important role.
- It is necessary 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. The European Parliament has made a good proposal in this respect and we hope the Council will accept it.
- 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)

II 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 collective redress procedure is essential to enable groups of consumers to secure compensation for losses 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. Unfortunately, so far the Commission failed to take any follow-up action to the consultation.

We believe it is time that concrete action is finally taken, particularly in light of the European Parliament 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 collective action mechanism must respect. These include:

- Encompassing all areas of consumer harm and aim at obtaining compensation;
- Legal standing for 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/2011/096)
- 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/2008/031)

III Antitrust damages actions

Background

Competition infringements which result in consumer detriment may occur every day – but the consumer victims of these are rarely compensated. Since its creation in 2004, the European Competition Network (network of European national competition authorities) has tackled more than 600 cases of competition law infringements; more than half of these cases related to cartels and certainly had a direct impact on consumers' pockets. However, almost no compensation claims have been taken by private individuals or consumer organisations. This is despite the jurisprudence of the European Court of Justice which has acknowledged the right of any person who has suffered harm because of an infringement of European competition rules to obtain redress before national courts.

The Commission is planning to publish its proposal on antitrust damages actions by the end of 2012. Undoubtedly the most sensitive question in the negotiations will be the possibility to claim damages via a collective redress procedure. We strongly support this possibility, as individual actions by consumers are unrealistic in most antitrust damages cases.

We have high expectations for the Irish Presidency to lead the negotiations with the aim of overcoming the various legal and procedural national differences to turn European victims' right to redress into a reality.

Our demands

- Consumer associations should be recognised, across the EU, as qualified entities to bring damages claims on behalf of the victims of anti-competitive behaviour.
- Both opt-out and opt-in procedures should be available.
- Final decisions of National Competition Authorities shall be considered an irrefutable proof of the infringement and be binding on the courts.
- There should be a rebuttable presumption that end consumers (indirect purchasers) have borne the overcharges generated by unlawful practices.
- Access to evidence is indispensable: the victims must have access to the files held by the competition authorities and by the liable party under certain conditions.
- Appropriate methods of calculating the damages need to be established, including the presumption of an average overcharge.
- The cost of actions needs to be driven down, namely by the creation of a 'fund for group actions' and by other systems such as recourse to insurance.

Documents

- BEUC response to the White Paper on damages actions for breach of EU antitrust rules (X/047/2008)

For more information: **consumerredress@beuc.eu**

Digital Environment & Telecoms

1 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 January 2012, 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 'privacy by design' and 'by default' as mandatory principles; the strengthening of sanctions for data protection infringements are positive elements of the draft regulation.

The proposal strikes the right balance between the need for an effective system of data protection and businesses not being confronted with excessive administrative burdens. And yet, lesser administrative burden should not result in weaker protection of personal data nor limit the liability of companies vis-à-vis data subjects. Consumer confidence is essential to economic recovery. A solid framework for data protection would help boost consumer confidence, especially in the complex online environment.

The proposed revision is currently pending in ordinary legislative procedure. We ask the Irish Presidency to ensure that strengthening the rights of data subjects are at the forefront of the discussions in the Council and that consumers benefit from efficient and modern protection, rather than ending up with less than under the current rules.

Our demands

- The scope of the 'legitimate interests' exception for data processing should be better defined to ensure that it does not become a 'catch-all' category resulting in processing of personal data when there is no other legal ground.
- As regards the principle of purpose limitation, a clear definition of what is to be considered 'compatible use' needs to be introduced in the draft regulation.
- In order to foster uniform application, the scope of the exceptions to the rights of data subjects should be narrowed or at least better defined.
- The appointment of a lead Data Protection Authority and the establishment of a 'one stop shop' should not result in forum shopping. To mitigate this risk, the powers of the lead authority should not be exclusive.
- Clarify the relationship and possible impact of the right to be forgotten and the right to data portability with that of 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.
- 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.
- 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

- BEUC position paper on Data Protection (X/2012/039)

II Net neutrality

Background

Net neutrality is one of the fundamental principles of the internet and it has significantly enhanced citizens' participation in society, access to knowledge and diversity, while promoting innovation, economic growth and democratic participation.

Net neutrality is being constantly violated throughout Europe, in fixed and mobile internet markets alike. The fact-finding mission carried out by the Body of European Regulators for Electronic Communications (BEREC) in the spring of 2012 provides overwhelming evidence that a large number of network operators are using their power as regards the control of traffic in order to block the transmission of data, prioritise their own services at the expense of their competitors, restrict the use of certain applications or charge online service providers a premium to guarantee fast delivery of their content.

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 European Commission is expected to adopt a recommendation in early 2013. Although a recommendation and guidance given by the European Commission may provide some partial solutions it also represents a risk that the necessary binding legislative solutions are further delayed. BEUC is supportive of a binding legislative instrument.

The Irish 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

- The European Commission should adopt a specific binding legislative instrument that will include at least the following elements:
  - A definition of the net neutrality principle;
  - A definition of legitimate and illegitimate traffic management;
  - A general prohibition of non-discrimination between internet traffic streams unless done on legitimate traffic management grounds and in particular a prohibition on violating the 'end-to-end' principle;
  - A clear set of obligations on Internet Service Providers (ISPs) regarding the neutrality and Quality of Service (QoS) of the internet access services on the one hand and specialised services on the other.

- Other demands to policy makers include:
  - Ensure an internet connection which is free from discrimination as to the type of application, service or content;
  - Enable consumers to access content, use services and run applications of their choice;
  - Safeguard consumers can use any communication method to reach any destination from any point on the internet without restrictions.

Documents

- Public consultation on Net Neutrality – BEUC response (X/2012/077)

III 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 spring 2013.

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 show that the majority of respondents do not consider revision of the directive necessary.

We ask the Irish 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.

Our demands

- Enforcement measures need to be proportionate and comply fully with consumers' fundamental rights, namely the right to a presumption of innocence, fair trial, 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.
- Any proposal for enforcement of IPR needs to treat an Internet Protocol (IP) address as personal data and ensure personal information on online users is only 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.
- The European Commission should focus on reviewing the directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) in order to update the list of copyright exceptions and limitations.

Documents

- Public consultation on the Review of the Intellectual Property Rights Enforcement Directive – BEUC Response (X/2011/041)
- BEUC paper on 'Copyright exceptions and limitations – a reality check' (X/2012/010)

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 on 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 a fragmented European market for creative content.

In July 2012, the European Commission adopted a proposal for a Directive on collective management of rights and multi-territorial licensing of rights in musical works for online use. The proposal includes general principles which all collective management entities will have to comply with in terms of transparency and accountability, as well as specific requirements for those collecting societies who engage in multi-territorial licensing of online music.

It is a welcome step towards improving collective management in Europe and fostering the development of new online legal services for content by reducing transaction costs for the clearance of rights. However, the proposal is very soft when it comes to enforcement, simply requiring collecting societies to establish internal bodies to guarantee compliance with the obligations set in the draft directive. The provisions regarding financial management and dispute resolution must also be strengthened.

The Irish Presidency should guide the negotiations to guarantee strict requirements are imposed on all collective management entities to guarantee transparency and predictability for all stakeholders, facilitating the licensing of content and the emergence of new services.

Our demands

- Strengthen the provisions for the supervision and control of collective rights management bodies by independent authorities.
- Royalties collected should be distributed to right holders as soon as possible and not within a period of five years. It should not be possible to invest the money collected in royalties to the benefit of the collective management body.
- All collective management bodies should comply with a minimum set of requirements without exceptions on the basis of the number of employees or financial turnover.
- Tariffs for the licensing of content should be reasonable and subject to a dispute resolution system.

Documents

- BEUC IPR Strategy: How to make IPRs work for both creators and consumers (X/2011/034)
- Collective management of European copyright and multi-territory licensing – BEUC position paper (X/2012/091)

V Cloud computing

Background

Consumers are increasingly using cloud computing services to store and share data. These services can offer many benefits to users such as a large storage capacity, convenient access from any computer and a high level of security. Use of cloud computing services by governments and businesses can reduce their expenditure on hardware and software, while the resulting savings could be passed on to taxpayers and consumers. However, cloud computing services using the personal data of consumers raises many concerns.

In September 2012, the European Commission adopted a communication 'Unleashing the Potential of Cloud Computing in Europe'. The communication looks into the existing barriers which impede the consolidation of cloud computing within a European Digital Single Market and specifically looks into issues related to standards, contracts, copyright, e-Commerce and data protection.

The Communication identifies 3 key action areas to overcome these barriers which include: The development of technical standards so that cloud users get interoperability, data portability and reversibility; the support for EU-wide certification schemes for trustworthy cloud providers; the adoption of an optional instrument regarding contract terms for cloud computing contracts including Service Level Agreements.

In their response to the Commission's strategy, we hope that the Irish Presidency will ensure that the emergence of cloud computing services do not undermine consumer rights.

Our demands

- The strategy should be more ambitious and propose concrete measures to deal with issues related to copyright, data protection and net neutrality.
- Optional instruments fail to safeguard consumers' rights. Allowing businesses themselves to choose whether to safeguard consumer rights, as has been proposed here by 'optional regulation', is extremely risky and leaves consumers vulnerable to unfair contract terms.
- Facilitate the multi-territorial and pan-European licensing of all types of creative content.
- Phase out the copyright levies system, as more and more content becomes available in the cloud through licensing which allows right holders to be compensated for the use of their works.
- Ensure the enforcement of data protection rules in the cloud.
- Ensure that personal data can only be transferred to third countries which provide an adequate level of protection or when safeguards related to processing have been met.
- Clarify the liability of cloud service providers for illegal content.

Documents

- EU Cloud Computing Strategy – BEUC position paper (X/2012/089)

For more information: **digital@beuc.eu**

Energy

1 Making the internal energy market work for consumers

Background

Energy is unequivocally one of consumers' top concerns in every country across Europe. The energy sector is at an historic low in terms of public acceptance and consumer trust in the industry which runs it. Energy consumers in many Member States cannot choose between different suppliers as there is no real market competition. In many other countries, even if there is a choice of providers, this does not result in genuine competition benefitting consumers. Moreover, our member associations consistently report that basic characteristics of a well-functioning retail market such as affordability, complaint handling, comparability, ease of switching, clarity, are still to be achieved across Europe.

To achieve the political target set by Member States of completing the internal energy market by 2014, the complete and efficient transposition of the third energy package is a fundamental step. Regrettably some Member States missed the 2011 implementation deadline and in many countries where the package has been transposed, it is too soon to evaluate what the impact of this legislation has been on the national market. That is why both the European Commission and the Council of the European Union need to keep national retail energy markets under close supervision and, where needed, act promptly.

The Commission's communication 'Making the Internal Market Work' adopted in November 2012 as part of the Single Market Act II is an important step towards a thorough analysis of the current retail energy markets situation across Europe and is to be much welcomed. We hope the Irish Presidency will work towards ensuring Member States will draw the necessary conclusions to improve the situation consumers face across the EU when buying energy products and services.

Our demands

- National markets need strong and proactive national regulators who are sufficiently empowered to monitor billing, switching and consumer complaints.
- Energy companies need to move away from the monopolistic mentalities of the past and realise that in a competitive market they need to gain and retain consumers by providing more affordable and reliable services which extend value for money to consumers. In this respect, consumer rights need to be strengthened and guaranteed. There is a need for increased transparency on tariffs and pricing.
- Consumers need to be able to make well-informed choices between the products and services offered by various energy suppliers. There must be sufficient choice without overburdening them with a wide variety of tariffs which are incomparable. Comparability of energy offers is of crucial importance. Furthermore, switching needs to be facilitated and consumers must get independent advice so they can decide what is best for them.
- It is of utmost importance that vulnerability in the energy sector is properly addressed and that Member States transpose the relevant provisions contained in the third energy package helping vulnerable consumers in their country.
- Consumers need to be given the choice on whether or not they participate in new programmes and schemes, like for example smart metering or demand response.

Documents

- BEUC response to CEER's discussion paper on a 2020 Vision for Europe's Energy Customers (X/2012/057)
- BEUC presentation on Energy Retail Markets – A snapshot from a consumer perspective (X/2012/079)
- BEUC response to CEER's public consultation on the Guidelines of Good Practice on Retail Market Design with a focus on supplier switching and billing (X/2011/094)
- BEUC response to CEER's public consultation on Advice on Price Comparison Tools (X/2012/003)
- BEUC position paper on the Energy Efficiency Directive (X/2011/115)

II Smart grids and 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: security of supply, increasing efficiency and proper integration of renewable energies are crucial for a well-functioning market benefitting consumers.

BEUC is actively involved in a European Commission Task Force on Smart Grids and the development of a common vision for the implementation of smart grids/meters and recommending regulatory actions on key issues. BEUC has commissioned academic research which examined 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. According to the results, the best case scenario for consumers is where they achieve a 2-4% reduction of their consumption in the short term. This amounts to approximately €15 to €30 per year for an average European household. Yet the preconditions for achieving these savings are numerous and not all consumers will be able to reduce their consumption, even marginally.

We request Member States carefully assess consumers' needs before the roll-out of smart meters and engage in awareness-raising activities to explain their use ensuring those who choose to use a smart meter actually benefit from the system.

Our demands

- Smart meters should be rolled out to consumers on a voluntary basis. Consumer interests and consumption patterns differ. Therefore, it should be up to them to decide if they want or need a smart meter.
- Consumer trust and engagement are both crucial to a successful deployment. Member States should develop strategies and campaigns based on a social marketing approach to promote behavioural change, at both national and local level.
- Transparent and robust processes are needed to assess whether the benefits of implementation outweigh the costs. Regulatory mechanisms are needed to guarantee a fair sharing of costs and benefits of the roll-out.
- 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 project. Security of data and privacy by design, in tandem with the principle of data minimisation are crucial.
- Where consumers have smart meters, they should have the right to receive an accurate bill. Consumers must have free access to their actual energy consumption in an easily understandable format so that they can compare deals available on the market. They should also be provided with independent advice on how to benefit from smart meters.
- Strong protections are needed for remote disconnection and switching.
- Member States should guarantee modular smart meter solutions within an open architecture. This will help avoid techno-economical 'lock-ins' to the technology in future.

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)
- BEUC position paper on Future Smart Energy Markets (X/2012/80)

For more information: **energy@beuc.eu**

Food

1 Review of the food 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 related to the review during the first half of 2013. While it has been determined that no fundamental overhaul is required, a number of improvements have been suggested.

From a consumer perspective, the most pertinent points relate to meat inspection, mechanically separated meat and the application of specific hygiene rules at the retail level and we encourage the Irish Presidency to support these aspects in Council discussions.

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 at the retail level 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)

II Health and nutrition claims & nutrient profiles

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. The list of permitted claims comes into force in December 2012. We urge Member States to ensure the list is enforced in order that consumers can begin to trust in the claims used on food products.

We also ask the Council to encourage the Commission to give the green light to the European Food Safety Authority (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 as they should ensure that claims only appear on the healthiest products. They were due to be developed by the European Commission by January 2009. However, four years later 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 enforcement of the Article 13 list and make sure rejected claims have been removed from the market (the end of the transition period for such claims is 14th December 2012).

Documents

- Brochure: No special treatment for Botanical Claims! (X/2012/38)
- BEUC Factsheet on Nutrition & Health claims (X/2011/025)
- BEUC Factsheet on Nutrient Profiles (X/2011/024)

III Cloning and Novel Food

Background

New technologies in food rearing and production processes may have an impact on food safety. Although consumers can benefit from innovation, competitiveness and innovation must not be allowed to take priority over public health and safety. With regards specifically to the use of the cloning technique for food production, BEUC has expressed concerns. Indeed, an overwhelming majority of EU consumers do not want cloning to be used for food production purposes. Also, given the lack of traceability and labelling, consumers have no means of knowing whether or not their meat or milk has been produced from clones or their offspring. Furthermore, the European Food Safety Authority itself has recognised that scientific uncertainties remain when they stated that all the issues were not "satisfactorily addressed".

We regret the negotiations in conciliation between the European Parliament and the Council on the novel food proposal failed back in 2011, leaving a loophole in the regulation of marketing of food products from offspring of clones and dropping the positive provisions achieved, for instance improved authorisation procedures for foodstuffs from third countries or a definition of nanotechnology.

BEUC reacted to the European Commission's report on cloning published in October 2010 wherein they proposed to come forward with specific legislation establishing a temporary ban of the cloning technique and food from cloned animals.

We understand that European Commission is now due to put forward separate proposals on cloning and novel food during the first half of 2013. We hope that the Irish Presidency will quickly start to work on the new proposal.

Our demands

- The European Commission's proposal on cloning should tackle the issue and loopholes of food derived from cloning technique as a matter of urgency.
- Should the current moratorium on cloning be removed in the future, there should be a full compulsory traceability system of clones and their offspring as well as labelling rules for derived food.
- Any definition of nanotechnology in the new novel food regulation puts the health and safety of consumers first.

Documents

- BEUC comments on the European Commission report on cloning for food production (X/087/2010)

IV Consumer Information on Fish

Background

Fish is a healthy and nutritious part of Europeans' diet and ever more health-conscious consumers are trying to follow advice to eat seafood twice a week. Beyond price and freshness, consumers are increasingly interested in what fish they buy, where and how it was caught or farmed and they would like to find this information both on fresh and processed fish. Those wishing to support small-scale fishermen also would like to be able to distinguish between fresh fish caught by big industrial vessels that have been at sea for several days/weeks and fish caught by artisanal off-coast vessels whose catch is landed every day. As for sustainably sourced fish, the plethora of labels on the EU market makes it difficult for consumers to know what to buy and to distinguish truthful sustainable fish labels from bogus ones.

Against this background, BEUC has welcomed the European Commission's review of the EU Common Fisheries Policy which seeks to introduce improved and extended rules for the labelling of fish and fish products. We however regret that few of these new consumer-friendly labelling provisions have so far been retained by the Council and Parliament. As we understand that discussions on the EC proposal for a Common Market Organisation in fishery and aquaculture products will continue under the Irish Presidency, we encourage the Presidency to support improved consumer information on fish.

Our demands

- For both fresh and processed fish, consumers should be provided with the following essential information: the scientific name and commercial designation of the fish, the precise catch area or farming country and the production method.
- Date of catch should be mandatory on fresh fish. Date of landing, on the other hand, would not help consumers distinguish between fish caught several weeks ago by a big industrial vessel and fish caught 24 hours ago by an artisanal fisherman.
- Consumers should always be clear as to whether or not the fish they buy as fresh has been previously frozen.
- Transparent minimum criteria should be set to ensure that only genuine sustainable fish labels can remain on the market. If retained, the concept of an EU-wide ecolabel for fish would have to be underpinned by strict, independently set criteria which are regularly updated in order to promote ever more sustainable practices.

Documents

- Improving fish labelling: Consumers no longer want to fish for information (X/2012/031)

For more information: **food@beuc.eu**

Financial Services

I Deposit and investor 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 pending in ordinary legislative procedure:

The Deposit Guarantee Schemes (DGS) legislation has a crucial function which is to ensure 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 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 stalled in negotiations between the Council and European Parliament for several months. Therefore we call upon the Irish 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 to prevent failure.
- If the repayment does not occur within 7 days, the depositor should be entitled to early repayment.
- 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 to:
  - Extend protection to some cases not previously covered (failure of a depositary or of a custodian chosen by the investment firm);
  - Protect the unit holder in case of failure of the depositary of the UCITS (Undertakings for Collective Investment in Transferable Securities) assets;
  - Establish a higher protection level: €50,000 instead of €20,000;
  - Exclude the co-insurance principle;
  - Cover 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)

II Investors' protection package: Key Information Documents (PRIPS) & Insurance Mediation Directive

Background

The complexity and long term nature of investments make it difficult for the retail investor to assess their suitability before the passing of a lengthy period of time after deciding to invest. The lack of comparability between 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 very harmful to consumers who, for instance, will not have sufficient revenue upon retirement.

The Regulation on Key Information Documents (KID) and the recast of the Insurance Mediation Directive (IMD) proposals were released in July 2012 and are currently pending in ordinary legislative procedure in the European Parliament and Council. They form part of the EU legislative package on investor protection which also included the Markets in Financial Instruments Directive (MiFID) which was voted on in European Parliament on 26 October.

We ask the Irish presidency to consider these proposals a priority and focus on the aspects of consumer protection as described below.

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.
- BEUC welcomes the consumer protection improvements stipulated in the proposed regulation on KID and asks for the following:
  - A highly standardised Key Investor Information sheet is essential to better inform consumers and make comparing easier. In order to achieve this, the KID should be compulsory for all savings and investment products and not only for packaged investment products;
  - Consumers need information from the distributor and not only from the manufacturer of a financial product. In order to make an informed choice and compare investment products, consumers must receive information on the real costs of their investment which includes the remuneration of the financial intermediary (such as fees, commissions and retrocessions received from assets managers for each product he recommends) and the tax regime applicable to the investment products being recommended;
  - In comparison with the existing KID for UCITS (Undertakings for Collective Investment in Transferable Securities), the information on risks needs to be adapted in order to improve the existing synthetic risk reward indicator (SRRI) and take the specific risks of other types of investment products into account. Consumer testing should be a key element in the disclosure design.
- BEUC welcomes the IMD proposal, as the harmonisation of sales rules for all types of investments, including life insurance, is necessary to avoid loopholes in consumer protection and avoid regulation arbitrage from the financial industry. This proposal needs to be improved on the following points:
  - Ensuring full consistency between the rules under MiFID and IMD as regards investment products;
  - Avoiding conflicts of interest;
  - Supervision by competent authorities, especially with regards to the conduct of business rules.

Documents

- BEUC Brochure on retail investments '*A good investment – How the EU can better protect consumer finance*' (X/2011/102)
- BEUC position paper on KID (X/2012/009) and IMD (X/2012/026)

III Payment Services Directive (PSD) and the Single Euro Payments Area (SEPA)

Background

Retail payment services are ubiquitous in consumers' everyday lives.

There are several ongoing initiatives in the payments area. After the Commission's Green Paper 'Towards an integrated European market for card, internet and mobile payments', the Single Market Act II has announced the Commission's next steps; namely the revision of the Payment Services Directive and a proposal for multilateral interchange fees to make payment services in the EU more efficient. We hope the upcoming proposals will contribute to the development of a competitive and well-functioning European payments market to the benefit of all consumers.

In parallel, the SEPA (Single European Payments Area) project continues to develop. At the end of 2012 the European Commission is expected to announce new SEPA governance rules as requested by the Council and the European Parliament.

We hope the Irish presidency will begin negotiations within the Council as soon as legislation is proposed by the Commission (spring 2013) and focus on consumer protection aspects and more effective competition rules.

Our demands

- Ensure that all payment service providers are efficiently regulated and supervised.
- Ensure that all payment services are accessible to all consumers and are secure, efficient and as cheap as possible. When paying, consumers should always have several payment options both for physical and remote transactions.
- Ensure that business model(s) for card payments do not constitute a barrier to competition in the payments market and to the market entry for new providers and new products.
- Ban payment surcharges at EU level: surcharging has been proven harmful to consumers and inefficient.
- Ensure that all business, commercial and technical barriers are eliminated at cross-border level.
- Provide direct debit users with an unconditional refund right for authorised and unauthorised transactions, in line with recital 32 of Regulation No 260/2012 on SEPA direct debits and credit transfers.
- Design coherent rules for a consumer refund right with regard to other means of payment: consumers should have strong protection regardless of the payment method used, taking into account existing strong consumer protection rules in some Member States.
- Extend the scope of the Payment Services Directive to payment transactions in all currencies of the EU and to one-leg transactions.
- Revise the governance of SEPA so that requests from all stakeholders, including consumers, are taken into account. However as the SEPA project is a project of public interest, authorities should have the leading role and legislation should be the rule, not the exception.

Documents

- BEUC response to the Commission Green Paper '*Towards an integrated European market for card, internet and mobile payments*' (X/2012/022)

IV Bank account package

Background

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

The Single Market Act II announced the Commission's next steps to adopt a legislative initiative to give all EU citizens access to a basic payment account; ensure bank account fees are transparent and comparable; and make switching bank accounts easier.

This initiative is highly important for several reasons: the Commission's recent monitoring report of implementation of the code of conduct on bank account switching revealed numerous shortcomings; last year's attempt to adopt another self-regulation measure on transparency and comparability of personal current bank account fees failed 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 Irish Presidency will give high priority to the Commission's proposal.

Our demands

- Ensure every consumer has the right to a basic payment account, i.e. not only the financially excluded. A basic bank account should be available to all customers.
- Harmonise national interpretations of EU rules against 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 by: developing glossaries of terms covering all the terminology linked to current accounts; fully standardising the presentation of the lists of fees; preventing banks from levying any fees and charges not stated in the lists of fees; developing regularly updated independent price comparison websites, accessible to all consumers; providing annual fee statements to consumers and ensuring appropriate enforcement and monitoring.
- Remove all technical and legal obstacles to bank account switching to enable consumers to easily switch their bank accounts from one bank to another. In particular, set up an account number portability system to achieve a seamless and hassle-free switching experience or at least an automatic re-routing system of direct debits and standing orders from the old account to the new one; provide better information and 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 public consultation on bank accounts (X/2012/042)

V Initiatives waiting final adoption

Background

Directive on credit agreements relating to residential property

The Irish Presidency will finalise the trialogue negotiations on the directive dealing with credit agreements relating to residential property. The Council adopted its general approach at the end of May 2012 and the European Parliament plenary vote is scheduled for January 15, 2012.

Key consumer aspect to be decided in the negotiations

- Do not allow exemptions and Member State options to exempt certain types of credit agreements from the scope of the Directive.
- Ensure that remuneration of employees and intermediaries is 'product neutral'.
- Impose a ban on tying unless the ancillary product is a fully integrated part of the credit.
- Allow flexibility (minimum harmonisation) with regard to the pre-contractual information sheet.
- Ensure that costs of all ancillary products are included in the Annual Percentage Rate of Charge (APRC).
- Prevent selling of foreign currency loans to consumers.
- Ensure that variable interest rates are capped.
- Ensure that internal and external appraisers carrying out property valuations are professionally competent and independent.
- Ensure adequate supervision of credit registers.
- Ensure that consumers always have a right of early repayment.
- Ensure that the consumer's consent is required before the creditor is able to transfer credit agreements or portfolios of credit agreements to other creditors.
- Ensure that creditors exercise forbearance and make all other reasonable attempts to resolve the position before initiating foreclosure proceedings.

Markets in Financial Instruments Directive

The Council is yet to finalise its position while the European Parliament's plenary vote took place in October 2012. Therefore, it may be that the Irish Presidency will be involved in the trialogue negotiations.

Key consumer aspect to be decided in the negotiations

- Conflicts of interest are better addressed in the relations between issuers and advisors of investment products and within firms distributing investment products. Commissions and retrocessions paid to advisors or portfolio managers should be banned. Furthermore the remuneration and/or the performance evaluation of their employees should not be influenced by the investment products they recommend.
- Additional UCITS should be considered as complex and not only the structured ones. Complex UCITS should not be distributed through execution only service.
- Services provided by telephone should be recorded, as written documentation drafted by the investment firm is insufficient as a means of evidence when the contact with the consumer leads, or could lead, to giving personal recommendations (financial advice) or collecting orders. The conservation period of telephone records should be equal to the investment period plus one year.

For more information: **financialservices@beuc.eu**

Health

1 Medical devices

Background

Medical devices such as contact lenses, pacemakers or pregnancy test kits are a feature of many consumers' daily lives and this broad range of products contributes significantly to people's health and well-being.

On 26 September 2012, the European Commission presented its proposals to revise the EU's medical devices legislation with the aim of simplifying and strengthening the existing rules for the benefit of consumers and healthcare professionals. The package includes regulations on medical devices and in vitro diagnostic devices, as well as a Commission Communication on safe, effective and innovative medical devices.

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 June 2011) highlighted potential adjustments of the current regulatory framework, mainly focused on enhancing the innovation and competition in the medical devices industry.

The proposals for regulations are currently being negotiated within the ordinary legislative procedure. In light of these recent developments, we hope the Council will now demonstrate strong commitment to improving the quality and safety of medical devices and restore consumer confidence.

Our demands

- The proposal falls short in terms of pre-market assessment requirements. We ask for a more thorough pre-market assessment for high risk devices and more clarity on borderline products (food supplements, medicines, herbal preparations).
- Other demands include:
  - An increase in quality and safety standards;
  - Reconsideration of the classification system with special attention to aesthetic products and self-testing devices;
  - Addressing the challenges of new and borderline products;
  - Strengthening the pre-market assessment of medical devices;
  - Reinforcement of market surveillance;
  - Provide consumers with better information on medical devices;
  - Improvement of coordination between supervisory authorities and enforcement;
  - An increase of transparency;
  - Designing a legal framework which meets the needs of tomorrow.

Documents

- BEUC position on the revision of the EU legislation on medical devices (X/2012/58)

II eHealth

Background

eHealth is an integral component of the EU's Digital Agenda which includes targeted eHealth actions and objectives as part of a wider strategy towards sustainable healthcare and ICT-based support for dignified and independent living.

In parallel, Member States have been taking a complementary and pro-active approach to eHealth. The Council's conclusions adopted in December 2009 called upon the European Commission to update the 2004 eHealth Action Plan and was followed by the creation of the 'eHealth Governance Initiative'.

The second eHealth action plan (eHAP) to be adopted by the end of 2012 which runs until 2020 provides an opportunity to consolidate the actions which have been addressed to date, take them a step further where possible and provide a longer term vision for eHealth in Europe – also in the context of the Innovation Union Communication and its associated European Innovation Partnership on Active and Healthy Ageing. The main policy objective of the initiative is to continue to support Member States and healthcare providers so that they may benefit from ICT solutions in the best interests of consumers, healthcare systems and society.

The Council is expected to adopt Council Conclusions on the action plan during the Irish Presidency and the European Parliament is also planning to adopt a resolution in response to the plan. We hope that the consumer perspective will be placed at the centre of the discussion in order to facilitate the uptake of eHealth solutions.

Our demands

- Guarantee privacy, data protection and truly informed consent.
- Ensure the highest level of quality and safety.
- Provide consumers more information on the implications of eHealth solutions, including benefits and possible shortcomings.
- Improve interoperability of ICT health services.
- Organise adequate training for healthcare professionals and education programmes for consumers.
- Conduct research to identify the benefits, risks and costs of eHealth solutions.

Documents

- Public consultation on the EU eHealth Action Plan, BEUC answer (X/2011/058)
- BEUC position on the electronic health records (X/2011/059)

For more information: **health@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 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 key consumer law areas 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.

Moreover, the 2011 Consumer Rights Directive which significantly increases harmonisation of the most important elements of consumer contracts, and in particular of online contracts, will be implemented already by the end of 2013.

Because 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, BEUC is in favour of reviewing and further harmonising the few

remaining consumer contract law elements which are relevant for the Single Market, i.e. the rules for legal guarantees and for digital content products, instead of pursuing an 'optional' approach.

The Council under the Cypriot Presidency started to examine the provisions of Annex I of the proposed regulation. We hope that the Irish Presidency will work towards clarifying some fundamental questions, for example the relationship with the Rome I regulation and the scope of the proposal given the imminent implementation of the Consumer Rights Directive.

Our demands

- 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 more effective, cheaper and swifter means using less intrusive measures such as developing a European code of conduct for e-commerce transactions 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 welcome that the European Parliament has requested a "health check" of the Commission's Impact Assessment and hope that the Council too will consider its results.
- 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 a product, 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: for 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 for 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. Instead, BEUC calls for a non-optional legislative directive to harmonise contract law elements for digital content products.
- BEUC supports a gradual continuation of the successful harmonisation process for those consumer contract law elements useful for the development of the Single Market, but is opposed to the application of optional law for b2c contracts. Instead of introducing a new era of optional regulatory EU tools, inappropriate to consumer contracts, we call on the 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. A review of the 1999 consumer sales directive also including provisions for digital content products should be the next step.

Documents

- BEUC's contribution tot the Parliament's Legal Affairs committee workshop on unfair contract terms (BEUC/X/2012/055)
- The European Commission's proposal for a Common European Sales Law – BEUC position (X/2012/014)
- 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) and Part VI (X/2011/082)

II Air Passengers' Rights legislation

Background

In spring of 2012, the European Commission undertook a public consultation on the revision of Regulation 261/04 on compensation and assistance to passengers denied boarding, affected by cancellation or long flight delays. A legislative proposal for the review of the regulation is expected to be published by the European Commission before the end of 2012.

BEUC responded to the Commission's public consultations highlighting existing shortcomings in the application and scope of Regulation 261/04. 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. Thus BEUC, while supporting the revision of the Regulation 261/04, hopes that the forthcoming proposal deals with a number of those issues that are not regulated and which cause detriment to consumers when travelling by air.

As regards passengers' protection in the case of airline insolvency, despite findings in a 2012 European Commission study identifying significant detriment, consumers still suffer when their airline goes bankrupt. To date, the European Commission has not proposed any measures to address this longstanding problem.

In recent months, the European Parliament has adopted a number of recommendations calling for better application and enforcement of the legislation on passengers' rights as well as an improvement of the rights of passengers in all modes of transport (European Parliamentary resolutions of March 28, 2012 and October 23, 2012).

We hope that under the Irish 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 an attempt to exempt the airline from paying compensation to affected passengers. On this point, the judgment of the European Court of Justice in the *Vallentin* case should be incorporated in the Commission's proposal.
- Passengers' right to compensation in cases of long delays (*Sturgeon* judgment) should be incorporated in the future regulation. This right was confirmed by the European Court of Justice in its recent judgment of October 23, 2012 (cases C-581/10 and C-629/10).
- The new regulation should complete the rights of air passengers in circumstances such as missed connections, the advance rescheduling of flights and tarmac delays. It should be expressly stated that the option of re-routing includes transport with other airlines and by other means of transport.
- A 'blacklist' of unfair terms in air transport contracts (on the basis of existing court cases) should be established. The European Parliament also called for the setting up of such a list in its Resolution of March 28, 2012.
- New passenger rights should be added: transferability of tickets; the right of withdrawal for early bookings; correction of input errors in online bookings; the rights of passengers should be increased 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: check in, the boarding pass and the carriage of at least one checked baggage should be included in the advertised price of the ticket.
- An EU-wide guarantee scheme to protect buyers of seat-only tickets against airline insolvencies should be established.
- Airlines should be obliged to adhere to Alternative Dispute Resolution (ADR) systems in order to solve consumer complaints.

Documents

- Revision of Regulation 261/04 on the rights of air passengers in the event of denied boarding, cancellation and long delays – BEUC's response to the Commission's public consultation (X/2012/037)
- Forthcoming revision of the legislation – Synopsis of BEUC's position (X/2012/053)
- Contribution to the Commission's impact assessment 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/2011/070)
- Protection of air passengers in case of insolvency of airlines (X/2011/105)

III Revision of the Package Travel Directive

Background

Back in 2010, the European Commission launched a public consultation on the revision of the Package Travel Directive. The results of this 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 adoption of the existing directive in 1990.

Market developments since the 1990s, 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. 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 to cover equally services consisting of a single element e.g. flight-only or accommodation-only etc. The future directive should provide for an inclusive, consistent, future-proof and non-discriminatory protection framework.

A new proposal for the revision of the Package Travel Directive is due to be adopted by the European Commission early in 2013. We hope that the Irish Presidency will proceed swiftly with the negotiations on this proposal.

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 include rules for travel agents and other travel intermediaries (online travel agencies, online platforms), on their respective liabilities.
- 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).
- Consumers should be able to cancel the contract by paying reasonable compensation and clear rules to calculate the amount of compensation due (proportionate to the price of the travel and based on the time of cancellation in sliding scales) should be provided.
- Particularly with early bookings, 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 that is granted to consumers in other distance contracts.
- The insolvency protection system should cover not only reimbursement or return, but also the possibility to continue the travel already started.
- All service providers should be obliged to adhere to Alternative Dispute Resolution (ADR) systems in order to solve consumer complaints.

Documents

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

For more information: **consumercontracts@beuc.eu**


BEUC
The European
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- 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 - 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
- HU - National Association for Consumer Protection in Hungary - OFE
- IE - Consumers' Association of Ireland - CAI
- IS - Neytendasamtökin - NS
- IT - Altroconsumo
- IT - Consumatori Italiani per l'Europa - CIE
- LU - Union Luxembourgeoise des Consommateurs - ULC
- LV - Latvia Consumer Association - PIAA
- MK - Consumers' Organisation of Macedonia - OPM
- MT - Ghaqda tal-Konsumaturi - CA Malta
- NL - Consumentenbond - CB
- NO - Forbrukerrådet - FR
- PL - 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

BEUC activities are partly funded from the EU budget

BEUC The European Consumer Organisation

The Consumer Voice in Europe

Bureau Européen des Unions de Consommateurs AISBL | Der Europäische Verbraucherverband
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • Fax +32 (0)2 740 28 02 • consumers@beuc.eu • www.beuc.eu