



Croatian Presidency of the European Union

BEUC priorities
2020



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Introduction

The European Consumer Organisation (BEUC) is the umbrella organisation for 45 independent consumer organisations in 32 European countries. Our mission is to represent and promote consumers' interests to EU decision makers in all consumer-relevant areas that match our members' strategic priorities. Our member in Croatia is Unija potrosaca Hrvatske.

In this Memorandum for the Presidency of the EU Council of Ministers, which will be held by Croatia for the first time, BEUC highlights the most pressing files under the Presidency's term that are of relevance to consumers. We also make concrete proposals for how the Croatian Presidency can work towards successful consumer policies, and we provide recommendations for how the Council of Ministers and the European Parliament should legislate to achieve a high level of consumer protection and empowerment.

While we expect the new European Commission to swiftly adopt proposals to implement its flagship policy of a European Green Deal, a number of important consumer files that were proposed by the previous Commission are still awaiting finalisation. The Croatian Presidency has the important task of bringing these legislative processes to a successful conclusion.

In this Memorandum, we draw attention in particular to the following initiatives:

A European Green Deal

As measures to fight climate change cannot succeed without European consumers, sustainable products and services should be accessible and affordable for them.

Representative actions for consumers

The negotiations on the legislative proposal for representative actions including collective redress should be finalised as quickly as possible. The result should allow consumer associations to make use of collective compensation actions across the EU, while at the same time creating a level playing field for all businesses by penalising the cheaters.

A European approach to artificial intelligence

Consumers should benefit from artificial intelligence rather than be exposed to new risks.

ePrivacy

The finalisation of work on a legislative proposal for ePrivacy is overdue and urgently needed. This legislation should lead to a higher level of privacy protection for consumers in the digital age and should complement the General Data Protection Regulation (GDPR).

Access to innovative medicines

The legislative proposal on Health Technology Assessment (HTA) has the potential to help governments save money as well as to reward health technology, but only if it benefits consumers.

Financial services

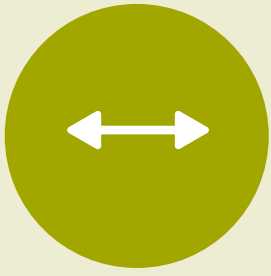
Legislation on non-performing loans and the review of the Motor Insurance Directive should all lead to better outcomes for financial services consumers.

We hope that progress will be made on these and other initiatives mentioned in this Memorandum, with the aim of delivering clear benefits to European consumers.

We wish Croatia a most successful Presidency.

Monique Goyens
Director General

Örjan Brinkman
President



Horizontal

1

A European Green Deal

Why it matters to consumers

Consumers are affected by and will increasingly suffer from the impacts of a changing climate in their daily lives, with negative consequences such as health threats due to increased exhaust gases in the atmosphere, higher living costs related to increasing prices for food, energy and transport, and endangered food security.

To turn the tide, systemic changes are needed in how we produce and consume. Currently, however, multiple market failures prevent consumers from playing a role in this change. Consumers who would like to live more sustainably must often pay more to do so. They do not receive relevant information about sustainable products and services or opportunities to purchase them. They may also be frustrated by the prevalent misleading information about the sustainability of products.

State of play in legislative procedure



On 11 December 2019, the **European Commission** unveiled its European Green Deal. Its Communication on the subject announced a number of policies and measures to tackle challenges related to climate change and the environment in general, notably on supplying clean, affordable and secure energy, making buildings more energy efficient, and creating an environmentally-friendly food system. It also announced an action plan for the circular economy and a sustainable chemicals policy for a non-toxic environment.

Recommendations for the Presidency



While well-designed sustainable development policies can promote both consumer interests and sustainable development, ill-defined strategies bear the risk of penalising consumers, particularly the more vulnerable ones. The world is heating up at an ever-quicker pace. There is no time to waste for the Croatian Presidency, and the Commission's proposals must be addressed as a priority.

What we need to succeed

- Sustainable financial services: We urgently need to increase transparency and consumer awareness about the climate impacts of financial products. More and better value offers for green savings and investments must be made available to consumers. Access to well-designed and responsible financial solutions for energy efficient investments (e.g. house renovations or the installation of heat pumps) must be facilitated. We also need to reduce investments in ‘brown’ activities, and ensure that consumers can rely on trustworthy financial advice that takes environmental, social and governance (ESG) criteria into account.
- Sustainable mobility: We urgently need to strengthen public and intermodal transport, and a consumer-friendly roll-out of fully electric vehicles is also imperative. The reduction of CO2 emissions from road transport must be accelerated, and consumers should be better informed about the environmental impact of their cars. Kerosene should be taxed to reflect the true environmental and climate costs of aviation, and revenues should be reinvested in rail and public transport in order to create a level playing field for train transport. Better passenger rights help to make rail transport more attractive for consumers.
- Sustainable housing: We need to improve energy efficiency in buildings – which currently account for the largest share of energy consumption in the EU – and speed up their decarbonisation. Most of the housing stock for 2050 already exists today. Given that most of this stock is inefficient and that 45% of total energy consumption for heating and cooling in the EU is used in the residential sector, we need higher renovation rates, a switch to renewable heating and cooling, and the use of the most efficient products and appliances.
- Sustainable food: We see great potential for engaging consumers in low-carbon diets and for a transition towards sustainable food systems. In order to enable consumers to buy healthy food on a healthy planet, we urgently need to increase transparency about the impacts of food on climate and sustainability. Information is not enough, however, and the consumer food environment must also change. This includes getting the prices right.
- Chemicals strategy for sustainability: A strong EU chemicals policy that includes the sustainable use of resources and the protection of human health will be essential in achieving the goals of the European Green Deal. We urgently need new solutions for how the EU can minimise cumulative exposures of consumers to harmful chemicals, including an integrated policy on chemicals in products, better protection of vulnerable groups, and a response to known policy gaps such as combination effects and endocrine disruptors.
- Meaningful information for consumers about the sustainability of products and services: Consumers should receive clear and accurate information that allows them to make sustainable choices, for example about the life expectancy of a product and/or its environmental footprint.
- Measures to fight premature obsolescence as well as reparability and updateability – particularly regarding electronic and internet-connected products – are necessary.
- Measures should also be taken to fight unfair business practices that mislead consumers about the environmental features of products and services.

Additional sources

Consumers’ mission letter for a European Green Deal
[BEUC-X-2019-077](#)

The European Green Deal must address consumers concerns about harmful chemicals
 Letter [BEUC-X-2019-064](#)

Joint BEUC-ETUC-EEB recommendations for chemicals policy and the European Green Deal
 Letter [BEUC-X-2019-088](#)

2

Brexit

Why it matters to consumers

Consumers from across the EU benefit from rights and protections that have been established at a European level, whether on food, air passenger rights, toy safety, protection against unfair contract terms or cooling off periods for online sales. The enforcement of these rights often involves European authorities or networks of national authorities that co-operate to provide a strong framework for the supervision of markets. There is a risk that consumers in both the UK and the EU will see vital rights and protections watered down if the UK's negotiations for exiting the EU – as well as the subsequent trade negotiations – do not grant specific attention to consumers. It is essential that a good outcome for consumers is secured on both sides of the Channel.

State of play in legislative procedure

The EU and the UK revised the withdrawal agreement in October 2019. Most importantly, they updated the Protocol on Ireland and Northern Ireland and the Political Declaration. The UK Parliament is likely to ratify this agreement before the end of January 2020. The **European Parliament** will then proceed during the plenary session of 29 January 2020. The withdrawal agreement plans for the UK exit from the EU on 31 January 2020. It also foresees a transition period until 31 December 2020. As of February 2020, the EU will start to negotiate an agreement defining the new relationship with the UK. The goal is to conclude and ratify this agreement by 31 December 2020, the end of the transition period.



Recommendations for the Presidency

We call on the Croatian Presidency to ensure that the consumer interest is central in the implementation of the withdrawal agreement and in the EU negotiations on the future relationship with the UK. Member States will have a key role to play in ensuring that their customs, market surveillance, enforcement and competition authorities continue to co-operate with their UK counterparts. We urge the Croatian Presidency to facilitate this process and to make sure that the future relationship will pave the way towards continued co-operation in order to keep consumers safe. The Croatian Presidency should also call on the Commission to keep the negotiations transparent and to involve consumer organisations.



What we need to succeed

When implementing the withdrawal agreement

- Inform consumers about what Brexit means for them by means of communications campaigns coordinated by both the Commission and Member States.
- Protect consumers when implementing the withdrawal agreement: UK and EU customs authorities should have sufficient resources to perform sound checks. Further, an advisory group should be established to monitor the implementation of the withdrawal agreement as well as the Protocol on Ireland and Northern Ireland. Consumer organisations should be part of this group in order to verify that the decisions of the joint committee are in line with the consumer interest.

When negotiating the future relationship

- Make consumer protection a key objective of the future relationship: a dedicated consumer chapter should promote regulatory alignment and enhancement of consumer protection in the future.
- Ensure consumer access and choice in the area of goods and services: the future agreement should maintain a zero tariff/zero quota trade framework while ensuring sound import checks.
- Maintain regulatory dialogues to keep consumers safe: both sides should define mechanisms to enable the continuation of the existing co-operation between authorities and agencies in the future.
- Assess the impacts on consumers: the impact assessment should notably look into the value of preserving consumer protection rules as far as possible in order to enable trade flows.
- Involve consumer organisations and prioritise transparency: negotiations on the future relationship should be as transparent as those on the withdrawal agreement. A specific advisory group including consumer organisations should be created in the EU to guide the Commission in this process.

ADDITIONAL SOURCES

Seven recommendations to secure positive outcomes for consumers after Brexit
[BEUC-X-2019-094](#)



FINANCIAL SERVICES

1

EU secondary market for non-performing loans

Why it matters to consumers

The European Commission has proposed the creation of a single – secondary – market for non-performing loans (NPL). This would enable banks to easily sell soured loans to third party investors, including so-called ‘vulture funds’,¹ established in any EU country or outside the EU.

This initiative is against the interests of borrowers who are in financial difficulty, as they would be exposed to credit purchasers and credit servicers (debt collectors) located in other countries. Furthermore, it is unlikely that a supervisory authority would monitor the overseas practices of a passported debt collector registered in their country but operating in another one.

State of play in legislative procedure



European Commission

Council

European Parliament

The **Commission’s** NPL package – containing a regulation and a directive – was published in March of 2018. The co-legislators have already finalised work on the prudential backstop regulation that aims to impose higher capital requirements on credit institutions to prevent future NPL accumulation. As regards the proposed Directive on a secondary NPL market, the **Council’s** general approach was adopted in March 2019 and the **European Parliament’s** Committee on Economic and Monetary Affairs vote is scheduled for February 2020.

Recommendations for the Presidency



Croatian Presidency

We urge the Croatian Presidency to ensure that the interests of individual borrowers are protected under the NPL Directive. NPLs in Europe are a legacy of the recent financial crisis and irresponsible lending practices by some financial institutions. Therefore, the solution to the problem of non-performing loans must not be borne by distressed borrowers alone. Exposing these borrowers to debt investors and collectors is not an adequate and sustainable way to tackle NPLs.

1 | Vulture funds are various forms of private equity firms and pension funds that invest across a series of asset classes, one of which is debt.

What we need to succeed

- The scope of the Directive should be limited to non-performing loans, while forbidding credit institutions from selling performing credit agreements to third parties. We welcome the Council's position that limits the scope of the instrument to NPLs alone.
- Whenever the borrower is in financial difficulty, the lender should exercise forbearance measures in line with Article 28 of the Mortgage Credit Directive and the European Banking Authority Guidelines on arrears and foreclosure.
- Credit servicers dealing with distressed borrowers should be required to obtain an authorisation from and to establish a branch or a subsidiary in the Member State where they intend to operate. Furthermore, they should be supervised by that same country's authority. The Council's position improves the directive by granting stronger supervisory power to host state authorities.
- When a credit institution intends to transfer a credit agreement to a credit purchaser at a specified price, the credit institution should allow the debtors (individual households) to buy back their debt at the same discounted price or with a small mark-up.
- Distressed borrowers should have strong protection from unfair behaviour by credit servicers and credit purchasers. This requires subjecting credit servicers and credit purchasers to strict conduct rules.
- Distressed borrowers should have the right to receive free or affordable legal support when in court. This ensures equal representation of the borrower and the lender or a third party.
- Member States should be able to maintain existing national measures aimed at protecting distressed borrowers, as well to adopt stricter measures.

ADDITIONAL SOURCES



Secondary market for non-performing loans: The European Commission's proposal is a bad deal for distressed borrowers
BEUC position paper

BEUC-X-2018-068

2

Review of the Motor Insurance Directive

Why it matters to consumers

Consumers must have access to affordable, fair and transparent motor insurance policies. The current review of the Motor Insurance Directive should deliver positive reforms for consumers, making insurance policies more transparent and enhancing the capacity for consumers to switch between insurance contracts. Consumers across the EU should benefit from more affordable insurance premiums based on their driving histories.

State of play in legislative procedure



In May 2018, the **European Commission** announced new rules amending the Motor Insurance Directive. The changes proposed by the European Commission will enhance the protection of motor insurance policyholders and potential victims of motor vehicle incidents. New measures will now also require insurers to take into account claims history statements from other EU countries, ensuring that consumers can benefit from better insurance conditions when they move abroad. Under previous rules, insurers were not required by law to consider claims history statements issued in other EU Member States. This new requirement should ensure that citizens who purchase insurance when moving abroad can benefit from more advantageous insurance premiums in another EU country based on their previous driving history. While we welcome the 'portability' of claims history statements across EU Member States, the European Commission has not introduced an explicit obligation for insurers to take these statements into account when calculating premiums for consumers.



The **Parliament** adopted its position in February 2019. The **Council** adopted its general approach in December 2019.

Recommendations for the Presidency



We urge the Croatian Presidency to work towards a consumer-friendly regime for motor insurance.

What we need to succeed

- The only way to guarantee EU-wide portability of claims history statements and to improve consumer outcomes in the insurance market is to impose and harmonise the use of ‘bonus-malus’ discounts at the European level. Mandatory bonus-malus rules already exist in several Member States, including France and Luxembourg. In France, for example, 95% of drivers receive a bonus based on their driving history. In other EU Member States, there is no specific obligation for insurance firms to take a consumer’s claims history statements into account when setting premiums. It is regrettable that neither the European Parliament nor the Council adopted our proposals to harmonise bonus-malus at the European level. However, we support the European Parliament’s review clause that requires the European Commission to assess the merits of an EU-wide harmonisation of bonus-malus rules in the future.
- The Motor Insurance Directive must be future-proofed in order to deal with anticipated technological changes in the automotive industry (connected and autonomous driving). As proposed by the European Parliament, the European Commission should be obliged to reassess the suitability of the Motor Insurance Directive in the near future to determine whether it continues to be fit for purpose in light of technological developments.

ADDITIONAL SOURCES

Revision of the EU’s Motor Insurance Directive
Position Paper
BEUC-X-2018-088

Consultation response on the review of the
Motor Insurance Directive
Position Paper
BEUC-X-2017-149

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Consumer Rights

1

Revision of the Rail Passenger Rights Regulation

Why it matters to consumers

There is an underlying tendency for passengers to gravitate towards more sustainable ways of transport. As rail will undoubtedly play a central role in the way European passengers travel in the future, it is essential that this trend be supported.

Although passengers travelling by rail are entitled to a high level of consumer protection throughout the EU, they currently do not always receive it. Protections differ significantly, as Member States have implemented the national exemptions provided by the current EU Regulation differently. In order to fully enjoy travelling by rail, passengers need more legal certainty and equal treatment no matter where they travel in the EU.

State of play in legislative procedure



In September 2017 the **Commission** published a legislative proposal for a recast of the current Regulation, which dates from 2007.



The **European Parliament** adopted an ambitious position on this proposal in November 2018. Among other things, this proposal called for the clause on force majeure to be deleted; for the mandatory provision of through tickets; and for higher compensation levels.



The **Council** reached a common position at the Transport Council on 2 December 2019. Negotiations with the Parliament on a final deal can begin under the Croatian Presidency.

Recommendations for the Presidency



We ask the Croatian Presidency to ensure that the discussions during the trilogues on the rail passenger rights proposal move forward quickly. The current reform is a great opportunity for the Croatian Presidency to send a strong political message to European passengers and to promote alternative modes of transport. The promotion of rail must be coupled with the introduction of strong rights for travellers, so that passengers' rights are strengthened and not reduced in the ongoing negotiations.

What we need to succeed

- The new proposal for the revision of rail passenger rights is a positive step forward. It reduces the number of national exceptions from the scope of application, increases the transparency of rail services, and facilitates national complaint handling mechanisms. However, it unjustifiably reduces consumer protection in the case of ‘force majeure’ incidents, and does not provide easy access for consumers to so-called ‘through tickets’. Such tickets, which allow passengers to buy several railway services in one ticket, would enable easier booking for consumers as well as coverage by rail passenger rights for the entire journey.
- The possibility to use national exceptions should be further removed, both in time and in scope.
- The provision of through tickets should be mandatory.
- The new proposal should not allow for an exception linked to extraordinary circumstances.
- The implementation of a comprehensive system for dealing with consumer claims is key for effective consumer protection.
- Increased powers should be granted to the National Enforcement Bodies (NEBs) so that they can efficiently monitor compliance with rail passenger rights legislation.
- All operators should be obliged to adhere to an Alternative Dispute Resolution (ADR) scheme, without prejudice to the right of the parties to seek legal action in court.
- Complaint handling procedures should be implemented by all rail operators, and should include deadlines to be respected when dealing with complaints.
- Automatic compensation schemes should be available to passengers where technology allows it.

ADDITIONAL SOURCES



Rail Passenger Rights Regulation Recast:
BEUC position paper
BEUC-X-2018-014

2

Revision of the Air Passenger Rights Regulation

Why it matters to consumers

The existing Air Passenger Rights Regulation (No 261/2004) has significantly improved the situation of passengers through the granting of basic rights. However, enforcement of these rights has been defective and inconsistent. Problems remain widespread, and consumer complaints of poor compliance have risen steadily. Unclear and incomplete information from airlines – including information on the right to compensation – has caused a great deal of consumer frustration and chaos. Over the past years, this was demonstrated by Ryanair’s mass cancellations practices: passengers were often left in the dark, not knowing whether their flight would be cancelled and whether they would reach their planned destination on time.

These and other examples are evidence that passengers are often left with the sole alternative of taking legal action against non-compliant airlines, although few are in the position to actually do so. The volume of cases before the Court of Justice of the European Union (CJEU) in recent years clearly shows the need to clarify fundamental aspects of the Regulation in order to ensure that passengers can more easily enforce their rights. However existing rights should not be weakened in the process, and the CJEU rulings should be codified in EU law.

State of play in legislative procedure



BEUC gave a lukewarm welcome to the **European Commission**’s spring 2013 proposal to update the Air Passenger Rights Regulation. Our reservations focused mainly on the weakening of some of the existing rights (mainly with regard to how to establish the delay that triggers compensation and requests for assistance and compensation in ‘extraordinary circumstances’).



The **European Parliament**’s position adopted in February 2014 considerably improved the Commission’s proposal on many issues, but negotiations in the **Council** of Ministers soon became deadlocked. Only during the recent Finnish Presidency did the Council recommence a debate on the key elements of the proposal and the way forward. At the same time, the European Commission is undertaking studies to evaluate the situation of air passenger rights and a presentation of the outcomes is expected in January 2020.

Although the Commission has published ‘interpretative guidelines’ on the Air Passenger Rights Regulation that summarise the existing case law, the last six years have clearly demonstrated that enforcement of the Regulation is problematic, and that better enforcement tools and powers are needed.

Recommendations for the Presidency



We hope that with the input from the European Commission’s new evaluations, the Croatian Presidency will continue the discussions and finally ensure that the work to improve the protection of air passenger rights is revived.

What we need to succeed

- Airlines should compensate passengers when delayed arrivals exceed three hours, as per the CJEU Sturgeon ruling.
- The right to compensation should not depend upon a proactive request by the passenger. To the contrary, innovative schemes should be considered to strengthen the enforcement of the Regulation. These could include automatic compensation schemes; binding decisions of Alternative Dispute Resolution (ADR) bodies; or an expansion of the applicability of and individual enforcement decision to all passengers travelling on the same flight and having the same cause for compensation.
- The new Regulation should include an outright ban on the denied boarding of a connecting or return flight when a passenger has not taken or has missed the outbound leg (so-called 'no-show clauses').
- The majority of 'technical problems' should not qualify as 'extraordinary circumstances'; staff strikes should never be considered as 'extraordinary circumstances'.
- The general right to accommodation in extraordinary circumstances must be maintained.
- The right of passengers to file complaints with airlines should not be time limited.
- Re-routing should be granted as soon as possible and must involve alternative means of transport. The right to re-route should also be granted to passengers subjected to long delays.
- The mandatory reimbursement and repatriation of passengers should be introduced in the case of airline insolvencies, as was demanded by the European Parliament position in 2014 and confirmed by its recently adopted resolution following the bankruptcy of Thomas Cook.
- Passengers should have the right to transfer their tickets to another person should they not travel (e.g. for package travellers).
- Advertised air ticket prices should include the following minimum services: check-in, provision of a boarding pass, and one item of checked luggage. In addition to one item of hand luggage, passengers should have the right to carry other essential items and any airport retail purchases.
- Airlines should be obliged to adhere to Alternative Dispute Resolution (ADR) systems.

ADDITIONAL SOURCES

EU Air Passenger Rights and Enforcement: Real improvements are needed
BEUC updated position paper
[BEUC-X-2019-083](#)

Air Passengers' Rights: Revision of Regulation 261/04 on the rights of air passengers in the event of denied boarding, cancellation and long delays
BEUC updated position paper
[BEUC-X-2013-056](#)

Air Passengers Rights: Revision of Regulation 261/04
Presentation to the European Parliament
Transport Committee Hearing
[BEUC-X-2013-038](#)

Air Passenger Rights: BEUC comments on Commission draft interpretative guidelines on Regulation 261/2004 on air passengers' rights
BEUC updated position paper
[BEUC-X-2016-034](#)

Protection of passengers in case of insolvency of airlines
BEUC Position
[BEUC X/2011/105](#)

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DIGITAL RIGHTS

1

Artificial Intelligence

Why it matters to consumers

Artificial intelligence (AI) is changing the way in which consumer markets and our societies function. AI holds out big promises to make our lives easier and our societies better. It is powering a whole range of new types of products and services, from digital assistants to autonomous cars as well as all sorts of ‘smart’ devices. All of this can bring benefits for consumers, but the widespread use of AI also raises many concerns. Consumers are at risk of being manipulated and becoming subject to discriminatory treatment and arbitrary, non-transparent decisions. It is essential to ensure that consumers have strong and tangible rights that allow them to defend themselves when necessary and that empower them to reap the benefits of the digital transformation of our societies.

State of play in legislative procedure



The President of the new **European Commission**, Ursula von der Leyen, announced in her political priorities that the Commission will prepare legislation for a coordinated European approach on the human and ethical implications of AI within the first 100 days of her mandate. The Commission is currently preparing the groundwork for this initiative and is expected to present a White Paper by the end of February.

Recommendations for the Presidency



Artificial intelligence is set to change everything as we know it. We urge the Croatian Presidency to support the development of a solid legal framework in order to ensure that AI develops in a way that respects our fundamental and consumer rights and values and that makes our lives better. The EU can be a global standard setter in this area, much like it has been with the General Data Protection Regulation.

What we need to succeed

- Strong, enforceable rules to ensure the fair and safe use of AI technology: Europe needs a horizontal legal framework that sets out the main principles for the regulation of AI and algorithm-based decision making. Ethical guidance – such as the principles published in June 2018 by the High-Level Expert Group on artificial intelligence – can be helpful as a starting point, but is not enough to ensure that consumers have effective rights.
- Consumers must have a strong set of rights enshrined in law, including:
 - the right to transparency, explanation and objection
 - the right to accountability and control
 - the right to fairness
 - the right to non-discrimination
 - the right to safety and security
 - the right to access to justice
 - the right to reliability and robustness
- A risk-based approach: New rules should follow the general principle that the higher the potential adverse impacts of the use of algorithmic decision making and AI technology, the stronger the regulatory response. Particular attention should be given for example to the use of biometric identification technology, such as facial recognition, which is quickly becoming the new norm for user identification, authentication and access control.

ADDITIONAL SOURCES

Automated Decision Making and Artificial Intelligence: A Consumer Perspective
Position paper
[BEUC-X-2018-058](#)

AI rights for consumers
Position paper
[BEUC-X-2019-063](#)

Telecoms Council meeting 3 December:
Informal discussion on artificial intelligence and automation
Letter
[BEUC-X-2019-076](#)

AI must be smart about our health
Position paper
[BEUC-X-2019-078](#)

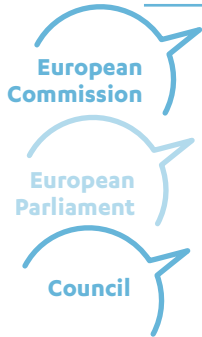
2

ePrivacy

Why it matters to consumers

Although beneficial to consumers, digital information technologies and the emergence of new services also represent a major challenge to the fundamental rights of privacy and personal data protection. It is important to ensure that consumers can benefit from innovative online services without having to give up their privacy rights.

State of play in legislative procedure



In January 2017 the **European Commission** put forward a proposal for a regulation on ePrivacy. In October 2017 the **European Parliament** adopted a very strong and consumer-friendly position as its mandate for trilogue negotiations. The negotiations for a general approach are still ongoing in the **Council**. Meanwhile, the General Data Protection Regulation (GDPR) has entered into application, creating more pressure to ensure a comprehensive and consistent EU legal framework on privacy and data protection through the adoption of the ePrivacy Regulation proposal.

Recommendations for the Presidency



We urge the Croatian Presidency to swiftly reach a general approach in Council and to start trilogue negotiations on the proposal for the ePrivacy Regulation as soon as possible. The review must guarantee the protection of confidentiality in all electronic communications services and protect consumers against unwanted online tracking and unsolicited commercial communications. Hardware and software used by consumers must by default provide the highest level of privacy protection. The ePrivacy reform is essential for strengthening individuals' right to privacy and the confidentiality of communications, as well as for rebuilding and reinforcing public trust and security in the digital economy.

What we need to succeed

- As a principle, electronic communications must be confidential. Over-the-top services (OTTs) must be duly covered by the Regulation. In line with the European Parliament's position, it should not be possible to process electronic communications data under broad legal grounds such as for 'legitimate interests' or 'compatible purposes'. Whereas the processing of metadata without prior user consent for statistical counting could be envisaged, this must be subject to strong safeguards and strictly limited to purposes of public interest.
- Default settings in devices and software should be configured to provide the highest level of privacy protection, in line with the European Parliament's position. An obligation to simply provide information about the privacy settings would not be sufficient from a consumer privacy protection perspective, and would undermine the 'data protection by design and by default' principle enshrined in Article 25 of the GDPR.
- The behaviour and activities of users should not be monitored without their consent, and they should have access to digital services without being forced to accept unnecessary invasions of their privacy, as stated in the Parliament's position. In particular, making access to a service conditional on the acceptance of cookies that process personal data that are not necessary for the provision of that service should not be allowed. This would go against Article 7.4 of the GDPR.
- Users should be able to mandate NGOs to represent their interests, and NGOs must be able to take initiative whenever users' rights have been breached, in line with the European Parliament's position.
- Council must introduce specific provisions to protect the privacy of children, as Parliament ultimately neglected to do so.

ADDITIONAL SOURCES

Summary of BEUC response to ePrivacy public consultation
[BEUC-X-2016-073](#)

Infographic: Consumers caught in a tracking web
[BEUC-X-2017-102](#)

Proposal for a regulation on privacy and electronic communications (ePrivacy) Position paper
[BEUC-X-2017-059](#)

Open letter to EU member states from consumer groups, NGOs and industry representatives in support of the ePrivacy Regulation
[BEUC-X-2019-056](#)

Factsheet on ePrivacy
[BEUC-X-2017-090](#)

COREPER 22 November: Improvements needed in Presidency compromise text Letter to Finnish Presidency
[BEUC-X-2019-071](#)

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REDRESS AND ENFORCEMENT

1

New Deal for Consumers – the proposal for a Directive on representative actions

Why it matters to consumers

Lack of compensation for suffered harm is a major loophole in legal systems, allowing businesses to retain illegal profits. Judicial collective redress for consumers exists only in a limited number of Member States. And even when it is available, the models and effectiveness of the mechanisms vary significantly. They also do not provide for solutions in the case of harm caused by cross-border business transactions. For these reasons, there is significant discrimination when it comes to access to justice, and this is to the detriment of consumers.

State of play in legislative procedure



In April 2018, the **European Commission** published the long-awaited New Deal for Consumers package. This includes the proposal for a Directive on Representative Actions for the protection of the collective interests of consumers. This proposal links injunctions and collective redress measures and is a major breakthrough in EU consumer legislation as it finally addresses the gap in access to justice for EU consumers.



The **European Parliament** already adopted a first reading opinion in the spring of 2019. Most importantly, MEPs strongly supported the overall approach and key elements of the proposal. They improved some provisions and called for the strengthening of provisions on minimum harmonisation.



The **Council** adopted the general approach at the end of November 2019, under the Finnish Presidency. Trilogue negotiations are scheduled to begin in January 2020.

Recommendations for the Presidency



We urge the Croatian Presidency to do its best to ensure that the proposed Directive on Representative Actions is finalised quickly in the trilogue negotiations, and that the result is an effective procedure that is available to consumers in all European countries.

What we need to succeed

- It should be clearly stated that this Directive should not have any negative impact, in terms of consumer protection, on existing national collective redress procedures where they exist and function efficiently.
- Member States should make sure that consumer organisations are designated as qualified entities in all countries, and that they are able to ask for collective redress for consumers in a wide range of mass damage situations.
- The original Commission proposal included the possibility for Member States to derogate from collective redress and to empower the court or another authority to simply issue a declaration of the infringement instead of carrying out the full collective redress procedure. This was one of our main concerns: it is not realistic to expect consumers to claim their redress individually, particularly in complex cases. We very much welcome the deletion of the possibility of derogation by both the Council and the European Parliament.
- The new Directive should facilitate consumers' ability to receive redress and should reduce costs for organisations that protect the collective interests of consumers.
- Exemptions from the 'loser pays' principle so as to enable consumer associations to launch collective cases are needed. Most civil society organisations do not have the financial means to start collective injunction proceedings.
- Effective, proportionate and deterrent financial penalties in the case of non-compliance by the trader with the outcomes of the procedure are required. Such fines should then be redirected to consumer causes.

ADDITIONAL SOURCES

Why we need collective redress at EU level:
A compelling collection of cases
Brochure
[BEUC-X-2019-062](#)

Proposal for a Directive on representative actions
Position paper
[BEUC-X-2018-042](#)

Representative actions and collective redress
Factsheet
[BEUC-X-2018-097](#)

Injunctions: Making them fit
Position paper
[BEUC-X-2017-035](#)

Myths and realities on collective redress
Factsheet
[BEUC-X-2018-048](#)

For more information: consumer-redress@beuc.eu



HEALTH

1

Access to medicines

Why it matters to consumers

Confronted with skyrocketing prices for medicines and limited public budgets, governments have to make very hard choices about which treatments to reimburse. Consumers must increasingly make ‘out-of-pocket’ payments in order to receive timely treatment, and they run the risk of not being reimbursed. This deepens existing health inequalities in the EU.

While some new medicines offer consumers additional value in comparison with existing treatments, others don’t. Superfluous drugs waste taxpayers’ money and, when reimbursed by healthcare systems, eat up budgets that could otherwise be spent on innovative treatments for consumers. Better management of public healthcare budgets can lead to better access to needed medicines.

In addition, consumers in all Member States are increasingly exposed to the problem of medicines shortages. Lack of access to needed medicines can seriously affect consumers’ health and quality of life. Drug shortages have led to patients being switched to suboptimal treatment, as well as to medication errors, side effects and longer stays in hospital.

State of play in legislative procedure



In January 2018, the **Commission** presented a legislative proposal on Health Technology Assessment (HTA). This proposal aims to foster collaboration between national HTA bodies at EU level in order to avoid duplication in the current assessments. The added value will be efficiency gains in the assessment of new drugs and medical devices, and the facilitation of decisions by national authorities on which treatments to reimburse.



The **European Parliament** adopted its position at first reading in February 2019, and agreed on a text that would significantly improve the Commission’s proposal. Meanwhile, negotiations are ongoing in the **Council**. The Finnish Presidency sought to advance the Council’s position regarding the scope of health technologies to be assessed, the procedures for carrying out and approving joint clinical assessment reports, and the level of obligations by Member States in relation to the reports. The progress report published by the Presidency documents the advancement of discussions on these questions, although divergencies persist.



Recommendations for the Presidency



We urge the Croatian Presidency to advance as quickly as possible on the negotiations for the proposal on HTA, and to find a compromise that benefits consumers.

We further call on the Presidency to follow up on the discussion on medicines shortages initiated by the Finnish Presidency, and to help set the EU on the path to effective management and prevention of disruptions in the supply of medicines.

What we need to succeed

- Pricing and reimbursement decisions should reward truly innovative products that offer added therapeutic value in comparison with existing alternatives. The proposal for a Regulation on HTA can make this happen and will ensure that consumers get value for their money.
- To this end, the new Regulation must result in high-quality assessments for all evaluated medicines and medical devices. It is important to ensure good governance in the new HTA system, with transparent decision making and strict rules on conflicts of interest. Consumers must be given a voice and provided opportunities to contribute to the EU HTA, for example during the drafting of the work programme and during joint clinical assessments.
- To ensure impact, the Regulation must include guarantees that the joint reports will be used at the national level. At the same time, the system should ensure that countries have enough flexibility to adapt the HTA reports to the needs of their national healthcare systems.
- In relation to drug shortages in the EU, the Council must contribute to the development of a common, ambitious policy that ensures the following:
 - Better monitoring of medicines' supply and an understanding of the root causes of shortages;
 - Prevention of drug shortages;
 - Effective management of supply disruptions when these occur;
 - Effective reporting mechanisms and communication around shortages; and
 - The prevention of the payment by consumers of the financial consequences that shortages may cause.
- As the main victims of drug shortages, patients and consumers must be at the centre of this debate and must be duly involved in discussions on solutions for how to best address this growing public health threat.

ADDITIONAL SOURCES

Sustainable access to innovative therapies
BEUC response to the OECD public consultation
BEUC-X-2017-044

BEUC comments to the European Commission's Proposal on a Regulation for Health Technology Assessment
BEUC-X-2018-027

Access to medicines
Position paper
BEUC X-2015-104

To protect consumers health, the EU needs an ambitious, comprehensive policy on medicines shortages
BEUC letter to Health Attachés
BEUC-X-2019-079

For more information: health@beuc.eu



Trade

1

EU-US trade negotiations and regulatory co-operation dialogues

Why it matters to consumers

The United States is one of the EU's top trading partners. Reducing tariffs on industrial goods could be beneficial to EU consumers in terms of price reduction and enhancement of choice.

In parallel, improved dialogues between regulators from the EU and US could bring positive outcomes for consumers. However, the deregulatory trend in the US is a cause for concern in this respect.

State of play in legislative procedure



In April 2019, the **Council** authorised the opening of trade negotiations with the United States. Two negotiating directives have been adopted: one intending to eliminate tariffs on industrial goods and the other aiming for an agreement on conformity assessment. In addition, the Council revoked the TTIP mandate. The United States has not yet notified the EU whether or not it wants to engage in these new, smaller-scale negotiations. In the meantime, however, dialogues between regulators on certain issues have already begun. These negotiations follow the plan agreed upon by President Juncker and President Trump in July 2018.

Recommendations for the Presidency



We call on the Croatian Presidency to monitor the tariffs and conformity assessment negotiations as well as the regulatory dialogues with the United States. The Presidency should make sure that negotiations are conducted in a transparent manner and that the outcomes will benefit all consumers. The first proposal by the EU on conformity assessment was published only weeks after it was sent to the US, bypassing consultation with the Free Trade Agreement expert group.

What we need to succeed

- Negotiations on industrial tariffs should contribute to lower prices and increased choice for consumers.
- A potential agreement on conformity assessment should include checks and balances to guarantee that products certified by US labs comply with EU law and are safe for consumers.
- Regulatory co-operation must be carefully weighed against the current deregulatory trend in the US.
- Transparency must be ensured in both the trade negotiations and the regulatory dialogues.
- Should the EU decide to retaliate against the tariffs imposed by the US, it must ensure that any retaliation does not put a disproportionate burden on consumers.

ADDITIONAL SOURCES

Trade negotiations and regulatory dialogues with the United States
BEUC and ANEC recommendations
BEUC-X-2019-011

Transatlantic Consumer Dialogue (TACD)
Positive Consumer Agenda:
New Rules for the Global Economy
Vision paper

2

World Trade Organization e-commerce negotiations

Why it matters to consumers

E-commerce would not be the success it is without consumers: its continued growth depends on their trust in the market. This is why consumers must be at the heart of the e-commerce initiative by the World Trade Organisation (WTO). Any agreement, be it multilateral or plurilateral, must protect and deliver benefits to consumers.

State of play in legislative procedure

In December 2017, a group of WTO members launched the 'Enabling E-commerce' initiative with the aim of exploring the possibility of a WTO agreement on e-commerce. In January 2019, 76 countries – including the EU 28 – announced the launch of plurilateral negotiations. The **Commission**'s first engagement in the negotiations was in April 2019, with the submission of a proposal covering a large range of issues from online consumer trust to telecoms, net neutrality and cross-border data flows.



In May 2019, the **Council** adopted complementary negotiating guidelines for these e-commerce negotiations, supplementing the existing WTO Doha Round mandate.



Recommendations for the Presidency

We call on the Croatian Presidency to ensure that the outcome of the WTO e-commerce negotiations will protect and benefit consumers. As the scope is likely to go beyond e-commerce, for example covering larger digital trade issues, we call on the Presidency to exercise caution. For instance, the EU should not put citizens' fundamental rights at risk. Sensitive issues for consumers – such as cybersecurity and artificial intelligence – must first be addressed in EU law. Otherwise there is a risk that weak levels of protection will be locked into the trade agreement. This would limit the ability of the EU to enhance consumer protection in the future.



What we need to succeed

- The negotiations should bring tangible benefits to consumers. Such benefits could notably come from voluntary provisions on online consumer trust, mirroring what the EU proposed to Australia and New Zealand. The agreement could go even further by calling for transparent and affordable telecoms prices for consumers. There should also be political will for stronger co-operation between regulators dealing with consumer protection, from enforcement to product safety authorities.
- The EU must fully preserve its ability to protect citizens' personal data and privacy. It must not compromise on its horizontal position on cross-border data flows, data protection and privacy in trade agreements.
- On net neutrality, we call on the Croatian Presidency to prevent any flexibility that would result in limiting access to internet for EU citizens.
- The EU should prevent the inclusion of rules related to cybersecurity in this plurilateral context. It should not limit its ability to regulate on cybersecurity nor promote self-regulation as an alternative. This is key to ensuring that connected products can become safer for people.
- The EU should ensure that WTO e-commerce does not prevent authorities from auditing automated decision-making processes by banning their access to the algorithms expressed in the source code of self-learning algorithms (i.e. artificial intelligence). This is key to preventing bias and discrimination, as well as to protecting people's fundamental rights.
- Negotiations about e-commerce should be transparent and should meaningfully engage civil society. Negotiating proposals and consolidated texts should be made public so that consumers know what is being negotiated on their behalf. The EU should encourage the co-conveners of the initiative to organise public briefings in Geneva.

ADDITIONAL SOURCES

WTO e-commerce negotiations
BEUC recommendations
[BEUC-X-2019-014](#)

International negotiations on e-commerce
(digital trade) at the WTO
Factsheet
[BEUC-X-2019-015](#)

3

Trade agreement with Australia and New Zealand

Why it matters to consumers

The goal of the ongoing negotiations with Australia and New Zealand is to “help to deliver jobs, growth and investment, benefitting EU businesses and citizens alike”. The agreement could benefit consumers if it is well designed, consumer oriented, and adapted to today’s public interest needs.

However, current trade agreements fail to fully achieve these objectives. Specific consumer issues often play only a minor role during the negotiation phase. Tariff reductions are often the only actual outcomes that could benefit consumers, but these reductions are usually not automatically passed on to them. Furthermore, tangible benefits – such as reduced telecoms prices, limitation of geo-blocking practices and easy access to redress – are absent from current trade agreements. Consumer protection is not always guaranteed, and it can be undermined by tools like regulatory co-operation and investment protection if the agreement is not carefully designed.

State of play in legislative procedure



In 2017, the **Commission** recommended that the **Council** approve the launch of the negotiations with both Australia and New Zealand. The **European Parliament** adopted resolutions in 2017 that supported the opening of trade negotiations with both countries under the condition that the highest level of consumer protection would be guaranteed. The Council authorised the Commission to open formal negotiations with both countries in May 2018. The negotiations were officially launched in July 2018. Six rounds of negotiations have taken place with New Zealand and five with Australia; the next one will happen in February 2020. The EU proposed ambitious rules for consumers, notably to enhance their trust online. Some proposals have already been merged in consolidated texts.

Recommendations for the Presidency



We call on the Croatian Presidency to ensure that the talks with Australia and New Zealand contain safeguards to protect consumers, and tools to bring them tangible benefits.

What we need to succeed

- The EU needs to convince its Pacific partners of the value of its positive proposals for consumers. For instance, the EU needs to remain firm on its willingness to enhance consumer trust online in the digital trade chapter. It should also insist on its approach to protect human health first and to co-operate on antimicrobial resistance in the sanitary and phytosanitary chapter.
- The EU should ensure that its horizontal position on cross-border data flows, data protection and privacy in trade agreements remains non-negotiable. This is key to ensuring consumer trust in trade and preserving fundamental rights.
- The EU's approach to good regulatory practices should be more cautious. It is worrying that the EU proposal aims to use a trade agreement to influence key decision-making processes such as public consultations and legislative reviews. We call on the Croatian Presidency to prevent such incautious provisions that could limit the EU's ability to regulate in the public interest.

ADDITIONAL SOURCES

Australia
The consumer checklist for a positive
EU-Australia trade agreement
Factsheet
[BEUC-X-2018-051](#)

The consumer checklist for a positive
EU-Australia trade agreement
Position paper
[BEUC-X-2018-053](#)

New Zealand
The consumer checklist for a positive
EU-New Zealand trade agreement
Factsheet
[BEUC-X-2018-050](#)

The consumer checklist for a positive
EU-New Zealand trade agreement
Position paper
[BEUC-X-2018-052](#)

BEUC model for a consumer chapter in trade
agreements
[BEUC-X-2017-096](#)

For more information: trade@beuc.eu

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- AT Verein für Konsumenteninformation
- AT Arbeiterkammer
- BE Test Achats/Test Aankoop
- BG Асоциация Активни потребители
- CH Fédération Romande des Consommateurs
- CY Kypriakos Sundesmos Katanaloton
- CZ dTest
- DE vzbv
- DE Stiftung Warentest
- DK Forbrugerrådet Tænk
- EE Eesti tarbijakaitse LIIT
- EL ΕΚΠΙΖΟ
- EL ΚΕΡΚΑ
- ES CECU
- ES OCU
- FI Kuluttajaliitto – Konsumentförbundet ry
- FR CLCV
- FR UFC-Que Choisir
- HR Unija potrošaca Hrvatske
- HU Fogasztóvédelmi Egyesületek Országos Szövetsége
- HU Tudatos Vásárlók Egyesülete
- IE Consumers' Association of Ireland
- IS Neytendasamtökin
- IT Adiconsum
- IT Altroconsumo
- IT Consumatori Italiani per l'Europa
- LT Lietuvos vartotojų organizacijų aljansas
- LV Latvijas Patērētāju interešu aizstāvības asociācija
- LU Union Luxembourgeoise des Consommateurs
- MK Organizacija na potrosuvacite na Makedonija
- MT Għaqda tal-Konsumaturi
- NL Consumentenbond
- NO Forbrukerrådet
- PL Stowarzyszenie Konsumentów Polskich
- PL Federacja Konsumentów
- PT DECO
- RO Asociația Pro Consumatori
- SK Združenie slovenských spotrebiteľov
- SK Spoločnosti ochrany spotrebiteľov
- SE Sveriges Konsumenter
- SI Zveza Potrošnikov Slovenije
- UK Citizens Advice
- UK Financial Services Consumer Panel
- UK Legal Services Consumer Panel
- UK Which?



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