

Consumer rights in electricity and gas markets

BEUC position paper

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Summary

National energy markets generally fail to satisfy consumer expectations and the energy sector is constantly rated as one of the worst performing for consumers.¹

Even after the adoption of several EU legislative packages, European consumers have often difficulties to effectively exercise their rights and therefore essential characteristics of a well-functioning retail energy market are still missing.

In this position paper, BEUC, The European Consumer Organisation, analyses the current state of play of consumer rights in the energy sector; identifies existing gaps and underlines future challenges for European and national legislators as well as for enforcers. These include inter alia:

- **Access to energy** is not guaranteed to all EU consumers. As for electricity, gas should also be part of the universal service concept and Member States should ensure that there are effective procedures in place to minimise the risks of disconnection.
- Consumers should receive **objective and reliable information on the offers available in the market** and have the possibility to compare such offers through **independent comparison tools**.
- The **terms and conditions** governing the contractual relationship between consumers and providers **should be transparent and fair**. This includes adopting specific measures to help consumers understand complex contracts, for example via a standardised summary of the contract.
- Consumers should also be protected against **misleading and aggressive marketing practices**, in particular in off-premises contracts. Effective enforcement of the Unfair Commercial Practices Directive and the Consumer Rights Directive is urgently needed.
- The **single point of contact** and **consumer checklist established by the Third Energy Package** should help consumers to access information about their rights in the energy market. However, effective scrutiny is necessary to assess how consumer can best use them.
- Consumers should be able to assess and, where appropriate, change their consumption patterns. To do so, access to **understandable consumption information** and **clear information on bills** is essential. Additionally, the **effective implementation of the Energy Efficiency Directive** will also help consumers to manage their consumption while reducing costs.
- **Switching** should be easier and faster for consumers. Specific measures at national and EU level need to be implemented in order to help consumers change suppliers if they wish to do so (e.g. on switching period and renewal or termination of contracts).
- Finally, better enforcement by national authorities and consumers' access to **effective means of redress** in case of disputes between consumers and service providers is essential to build trust in the energy sector.

A detailed analysis of these elements can be found in the paper together with specific policy demands.

¹ From the current market surveys, consumer awareness and trust in the energy sector is dramatically low and over 40% of consumers do not know if there is a cheaper offer for them. As concluded by Consumer Market Scoreboard 2011:

- Less than two thirds of consumers are satisfied with their energy supplier.
- Less than one third of consumers have compared offers from different suppliers.
- Less than half of consumers know how much electricity they consume.

I. Introduction

Well-functioning retail markets for electricity and gas need well-informed and well-protected consumers, who can benefit from competition, transparent offers, compare information on consumption and costs, freely chose the most competitive suppliers, and who are aware of their rights and have effective means to solve any eventual dispute in case something goes wrong. Consumers must be able to be active in the market whenever they wish so. At the same time, all stakeholders should respect the general principles of reliability, affordability, simplicity and protection and empowerment as outlined in the CEER-BEUC 2020 vision for Europe's energy customers.²

For this to happen, the European Commission must co-ordinate with Member States and National Regulatory Authorities (NRAs) to undertake a systematic review of consumer protection rules. As a first step, it should be assessed whether the necessary safeguards are in place and why the existing ones might not be sufficient to cope with ever-changing energy markets. Consequently, policy makers should put forward proposals (including an eventual revision of European energy legislation) to address identified gaps and challenges without undue delay.

A solid set of consumer rights must be guaranteed at EU level to ensure consumers benefit from a minimum set of rights across all Member States. The Third Energy Package³ and the Energy Efficiency Directive⁴ as well as horizontal consumer rights legislation (e.g. Consumer Rights Directive⁵, Unfair Contract Terms Directive⁶ and Unfair Commercial Practices Directive⁷) lay out a number of consumer rights which are already applicable in the energy sector. However, as explained in this paper, these laws have not yet had the necessary impact, which is to empower and protect European consumers of electricity and gas. This paper analyses the rights which are already in place for consumers in energy markets, identifies the gaps, underlines future challenges and provides additional policy demands for decision makers.

² www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab3/CEER-BEUC%202020%20VISION-joint%20statement_Long_v140613.pdf

³ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

⁴ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC

⁵ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

⁶ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

⁷ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

II. Access to energy

Energy services are essential for people to heat their homes, to cook, and to communicate with others, just to name a few examples.

Universal service and protections against disconnection

It is hard to understand that while electricity is a universal service,⁸ it is not the case for natural gas. This is an essential energy source for European households as its consumption is steadily increasing.⁹ Thus, BEUC believes natural gas should also be part of universal service to ensure wide consumer access.¹⁰

Moreover, as set in the Directive 2009/73,¹¹ the prohibition of disconnection of gas in critical times can be applied to vulnerable customers. However, BEUC strongly believes the conditions and responsibilities for disconnection need to be always carefully considered for any consumer. Therefore, obligations should be put on energy suppliers to avoid disconnections to a maximum extent possible, and not only in the case of vulnerable consumers. In this regard, Member States should ensure that suppliers have effective procedures in place to inform consumers about the risk of a potential disconnection and help consumers to manage debt to avoid disconnection and provide alternative solutions. Additionally, specific safeguards should be put in place so that consumers in vulnerable situations can afford these important services.

Completion of internal energy market

Consumers should be able to shop around to choose their preferred supplier irrespective of their place of residence. While this would be expected in the internal market and after several legislative packages, European consumers are still waiting to reap the benefits of truly competitive energy markets. Already the Third Energy Package obliges Member States to allow consumers to choose the supplier regardless of the country in which the supplier is registered. BEUC believes that consumers should have the right to participate in a market where there is a significant number of competing operators leading to downward pressure of prices. However, the reality is that there is no real internal market for household consumers in which they could choose energy suppliers from a different Member State.

BEUC demands:

- Gas should be part of universal service as it is the case for electricity.
- Member States should ensure there are effective procedures in place to minimise the risk of a potential service disconnection.
- The internal energy market needs to be completed to allow consumers to reap the benefits of truly competitive, consumer-friendly energy markets delivering real choice to all consumers.

⁸ Directive 2009/72 lays down electricity as a universal service meaning that all household consumers should have “the right to be supplied with electricity of a specified quality within their territory at reasonable, easily and clearly comparable, transparent and non-discriminatory prices”.

⁹ According to Eurostat (2012), natural gas consumption covered 39 % of the total energy needs of households in 2010. The share of electrical energy was 24 % in 2010 compared to 21 % in 2000.

¹⁰ As it is already the case in Portugal for instance.

¹¹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC

III. The precontractual phase

a. CONSUMER INFORMATION

According to the Third Energy Package, consumers are entitled to receive transparent information on applicable prices and tariffs as well as on standard terms and conditions with regards to the access to and use of both electricity and gas services. Moreover, regarding information requirements in energy contracts, service providers must equally comply with the horizontal legal framework on consumer protection, in particular the pre-contractual information listed in Article 5 (for on-premise contracts) and Article 6 (for distance and off-premises contracts) of the Consumer Rights Directive. These pre-contractual information requirements complement, where compatible, the information included in Annex I of Directives 2009/72 and 2009/73,¹² in particular regarding the contact details of the service provider (e.g. telephone number), the conditions to exercise the right of withdrawal and the availability of out-of-court procedures.

Contact points

Despite the legislative framework, consumers often find energy markets unclear and non-transparent and therefore additional measures are needed to ensure that it is always clear to them whom to contact when any kind of problem arises. BEUC supports that the supplier should be the main point of contact for the consumer, especially for issues related to switching, billing or when moving house. Although the supplier-centric model should be considered as a general rule, it is important to bear in mind the variations among Member States. For instance, in France the supplier is considered as the unique contact point for the consumer and therefore should also have a unique liability towards the consumer. However, in some other countries, as it is already the case in Italy, the Distribution System Operator (DSO) may sometime be the contact point for consumers in particular situations.¹³

Information on offers

Consumers need accessible and understandable information with a clear description of the service or product available on the market and each offer needs to be presented in a clear, consistent and simple manner so that consumers can choose the most suitable one for them. This could be done through an offer or tariff information label that would contain all the key information about an offer including prices, discounts, termination fees, etc. This information should be provided to consumers at the point of sale and should use a standardised template.

At the same time, market liberalisation can lead not only to a market diversification but also to an increase of dubious offers as it has been observed in some countries. Unreliable service providers are one of the main obstacles for consumers to switch their supplier.¹⁴ Therefore, it is essential that strict rules and control to strengthen consumer confidence and protection are in place.

¹² Apart from the details about the supplier and the service provided, it also stipulates the following information consumers should be provided with prior to the conclusion of the contract:

- the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained,
- the duration of the contract, the conditions for renewal and termination of services and of the contract, and whether withdrawal from the contract without charge is permitted,
- any compensation and the refund arrangements which apply if contracted service quality levels are not met including inaccurate and delayed billing,
- the method of initiating procedures for settlement of disputes and,
- information relating to consumer rights, including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the undertaking's web site.

¹³ In Italy, consumers can find contact details of the provider and distributor together with the specification of whom to contact in each particular situation.

¹⁴ The number of German consumers staying with their energy provider due to the fear of dubious offers doubled in 2012 (49%).

Market segmentation

Suppliers often segment the market and target a minority of engaged consumers with their best offer, extracting higher returns from rather passive consumers who do not switch.¹⁵ Therefore, all offers should be available to all consumers under the same conditions.

BEUC demands:

- Member States and National Regulatory Authorities (NRAs) should undertake the necessary steps in order to ensure that consumers get clear information on whom to contact in different situations.
- Member States should oblige suppliers to provide easily accessible, understandable and comparable information about each offer. NRAs should ensure that energy offers are standardised, more transparent and fully comparable across all suppliers.
- National authorities should monitor the market and take the necessary action to avoid and stop dubious offers and market segmentation.

b. TRANSPARENT AND FAIR CONTRACT TERMS AND CONDITIONS

Directives 2009/72 and 2009/73 provide that terms and conditions shall be '*fair and well known in advance*'.¹⁶ Furthermore, terms and conditions of service providers directed to consumers must comply with the transparency and fairness requirements of the 1993 Unfair Contract Terms Directive, as transposed by the Member States.¹⁷

Transparency and fairness of contractual conditions

Consumers often encounter difficulties to access and understand the contract terms and conditions in energy contracts. This information is often difficult to find, for instance because it is placed in different web sections, presented in very small font, the language used is not comprehensible and/or the text is too long.

Bonuses, discounts or additional services

BEUC members have raised multiple concerns regarding the presentation of incentives such as bonuses, discounts or additional services because these practices can have a misleading character and can aim at making offers seem cheaper than they really are.

Common examples include:

- Lack of clarity on the conditions for the renewal of the contract or the consequences of a termination of a fixed-term contract (e.g. consumer's obligations such as reading of the meter or handling of device);
- 'Discounts' rewarding a cost-reflective consumer action (e.g. paying by direct debit, taking gas and electricity from the same supplier) that are paid annually, therefore functioning *de facto* as a termination fee in case the consumers does not prolong his contract (i.e. if you switch before 12 months you will not receive your discount);
- Not all companies explain prominently in the contract terms and conditions or through other commercial communications, e.g. by telephone or off-premise visit, what happens after the initial period, when the 'special offer' is over;

¹⁵ The Imbalance of Power, The Retail Market – report published by Which?, December 2012

¹⁶ Annex I, point 1a. last paragraph

¹⁷ It is important to note that due to the minimum harmonization clause of the Unfair Contract Terms Directive, different levels and concepts of consumer protection in the field of the control of contract terms are in place across the EU. For example, the unfairness test and the list and content of unfair clauses can be more protective in some Members States compared to others.

- Application of termination fees representing a lock in situation of the consumer and an anti-competitive measure as they often prevent consumers from changing the supplier.

A way to improve transparency would be to provide consumers with a summary of the key contractual conditions in a concise and simple language alongside with the contract. Such a summary should be offered in the form of a standardised notice including key pre-contractual information and the rights and obligations of the consumer and the supplier under the contract, to ensure that the aspects included in the summary do not diverge from the contract terms or cannot be used as a means to mislead consumers in relation to the contractual conditions.

Unilateral change of contractual conditions by the supplier

Consumers must be protected against unfair contract terms limiting their rights under the contract, such as those related to switching suppliers (e.g. termination fees, if allowed under national law); the cancellation of the contract; access to redress or the unilateral change of contractual conditions by the supplier. In the latter case, the Annexes to Directives 2009/72 and 2009/73 establish that in case of an increase of charges, consumers have the right to terminate the contract and therefore change supplier.

The current situation in some Member States makes it difficult for consumers to exercise this right in practice. This is mainly a problem in markets with limited competition or where all suppliers in the market change simultaneously their conditions in detriment of consumers. This is a matter also to be looked at from a competition policy perspective and better enforcement of antitrust rules by competition authorities.

Furthermore, consumers do not often understand why prices increase due to the limited transparency and complexity of energy offers. Thus, suppliers should be able to increase the price of their service only under certain conditions.

For example, this problem was considered in Austrian law: Section 80 of the Austrian Electricity Act (Elektrizitätswirtschafts- und -organisationsgesetz) refers back to the general contract law framework on unfair contract terms. As a consequence, suppliers can only unilaterally increase the price of the service under certain conditions established in the Austrian Consumer Protection Act (Section 6, paragraph 1, nr 5):

- in the event of a price increase, there has to be the possibility of a price decrease;
- the increase must be based on objective parameters, defined in the contract, and
- the price change shall be independent from the suppliers' will (ie. it should not be up to the supplier to decide that there is a reason to increase the price).

Price increase notifications

BEUC is also concerned that notification letters to inform consumers about price increases can be confusing. Some BEUC members reported that price rise notification letters sent along with marketing materials can often lead consumers to ignore the letter. Thus, BEUC encourages energy regulators to consider the misleading nature of this practice and explore other means of communication of eventual price increases such as standardised forms, which could then be used across the industry.

Market developments

With new actors entering the market and offering innovative, added value services, BEUC is concerned that the provision of new products and services sold as part of a bundle or separately may increase the number of long-term contracts, which could lock-in consumers.¹⁸ Moreover, consumers should be provided with a clear explanation of what

¹⁸ This has been the case for instance with mobile telephony services. According to the experience in this sector, longer contracts typically offer customers cheaper up-front charges and lower monthly tariffs, but can be significantly more expensive over the life of the contract.

kind of impact the conditions of a long-term contract may have on their energy bills over the period of the contract duration if their energy consumption changes. National regulatory authorities should monitor the situation in this respect in order to assess the impact on competition in the market.

BEUC demands:

- In order to improve transparency, a summary of the key contractual conditions should be provided to consumers in concise and simple language alongside with the contract.
- In case of a revision of the Third Energy Package, the European Commission should consider the introduction of a rule limiting the cases where suppliers can unilaterally change the terms and conditions of the contract. Alternatively, the European Commission should urgently provide National Regulatory Authorities with the guidance in this particular area.
- National Regulatory Authorities should analyse the means through which consumers are informed about price increases and improve the communication via standardised forms.

c. COMPARISON TOOLS

When searching for a suitable deal, in some Member States consumers can use price comparison tools which help to compare different energy offers available on the market. Work on this issue include the Guidelines of Good Practice on Price Comparison Tools by CEER¹⁹ and the report on Comparison tools prepared by the Multi-Stakeholder Dialogue²⁰ set up by the European Commission.

Key principles for price comparison tools

Regardless of who is running the comparison website, it must be ensured that the information consumers get is impartial, up to date, accurate and provided in a simple way so consumers can assess all available offers in the market.²¹ Each comparison tool should respect the main principles which are further described in BEUC's position paper on Comparison Websites.²²

Availability of comparison tools

According to the test of energy comparison tools conducted by Stiftung Warentest in March 2013,²³ these tools sometimes fail to provide consumers with reliable results.²⁴ Nevertheless, when consumers are looking for a better deal, comparison websites play a key role in this process. It is essential that the consumer gets clear and independent information on the offer. Thus reliable price comparison websites must be put into place in each country. They are an essential element for empowering consumers to stir the competition in a liberalised market.

Comparison tools should be obliged to use all reasonable endeavours to include all available deals on the market. However, where this is currently not possible, providers of price comparison websites must communicate clearly and transparently about the fact

¹⁹ http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/Tab3/C12-CEM-54-03_GGP-PCT_09Jul2012.pdf

²⁰ http://ec.europa.eu/consumers/documents/consumer-summit-2013-msdct-report_en.pdf

²¹ For instance, in Belgium, any offer presented online needs to also display a link to the regulator-operated online tool for consumers to check whether a better offer exists in the market.

²² <http://bit.ly/13IMFDJ>

²³ <http://www.test.de/Stromtarifrechner-Kein-Vergleichsportal-ist-gut-4505887-0/>

²⁴ While analysing 10 online tools, the test concluded that these tools fail to offer consumers with the reliable results as they are not user-friendly, the transparency of displayed offers is often poor and the websites do not provide consumers with the best offer for them. In addition, these tools often lead to higher prices for the consumer due to hidden information and therefore hamper consumer confidence in energy markets.

that the comparison does not provide the complex picture of all offers and should specify market coverage and selection of suppliers,²⁵ as also considered by the recommendations already provided by DG SANCO's Multi-stakeholder Dialogue Group on comparison tools of May 2013.

Nevertheless, in order to ensure consumers can get a complete picture on what is available on the market, BEUC suggests that in the future there should be an obligation on Member States to ensure that there is at least one comparison tool for electricity and gas services which consumers can use to compare all offers available to them. The suppliers should be obliged to provide the most recent data input on their offers. A similar obligation has been proposed by the European Commission with regard to financial services: the specific obligation could be drafted on the basis of a similar provision as the one included in the recent bank accounts proposal.²⁶

At the same time, personalised advice may be preferable for those consumers who are not completely aware of their consumption but this should not be used as a means to offer deals to consumers based on other parameters than consumption patterns (e.g. place of residence).

Role of consumer organisations

Consumer organisations play an important role in informing consumers about suitable offers, as many of them already provide these online tools. Some of them have also been running accreditation schemes which are important as they provide consumers with the guarantee that they can trust the comparison site.²⁷

BEUC demands:

- Member States should ensure that consumers are able to access independent comparison tools in order to get the information on electricity and gas offers which is impartial, up to date, accurate and provided in a simple way.
- Member States need to ensure there is at least one comparison tool for electricity and gas services which consumers can use to compare all offers available to them and choose the most adequate. Suppliers should be obliged to provide complete overview of their offers.
- The European Commission should use the recommendations already provided by DG SANCO's Multi-stakeholder Dialogue Group on comparison tools of May 2013 and establish criteria for comparison websites specific to the energy sector. Together with national authorities it should support accreditation schemes for the comparison tools available online.

²⁵ Price comparison websites: consumer perceptions and experiences – report by RS Consulting for Consumer Futures

²⁶ Article 7 of the Commission's proposal for a Directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

²⁷ For instance our UK member, Consumer Futures, created the Confidence Code, a voluntary code of practice for online price comparison services in the UK. The scheme was established to ensure that consumers have access to impartial, comprehensive and accurate information and serves as a handy tool for setting standards. In March 2013, Ofgem, the UK energy regulator, took over the management of this Confidence Code.

d. MARKETING, ADVERTISING AND SELLING PRACTICES

Energy offers are often structured in a very complex way. Misleading and unfair marketing practices have been major issue in many Member States and have resulted into a drop of trust in the energy sector. Let alone, this has led to many consumers signing up to deals that are not suitable and are in fact more expensive for them.²⁸

Aggressive marketing practices

Several marketing practices (e.g. door-step or in public places) have raised numerous problems.²⁹ When being contacted by selling agencies or door-step sellers, consumers often pay attention to the seller describing the offer without having the possibility to actually read the contractual conditions and the promotional material. Furthermore, printed materials are in many cases kept by the sellers until the consumer has signed the contract, so they do not really allow consumers to properly verify what they are explaining.

Energy regulators and national authorities need to urgently review how suppliers offer, market and sell their services. Considering future challenges in energy markets with the deployment and uptake of new services related for instance to smart meters and demand response, these practices could aggravate. It is therefore essential that the national authorities tackle the problem of aggressive practices while setting clear conditions for door-step selling.³⁰

Bundled offers

Energy services are sometimes being sold as a package with other services such as insurance policies or telecom services. Energy services provided within such a package are often unfavourable to consumers as they may not provide the best deal reflecting the particular situation and consumption patterns of the consumer.

Implementation of existing legislation

Effective enforcement of the Unfair Commercial Practices Directive and the newly implemented Consumer Rights Directive in this sector is urgently needed. These Directives include several provisions to tackle typical consumer problems with door-step selling contracts, as well as unfair and aggressive practices occurring before, during and after the conclusion of the contract. The European Commission together with the competent national authorities should closely monitor all marketing channels and the compliance of selling practices with in particular the unfair commercial practices legislation to ensure that consumers make informed and well reflected consumption choices.³¹

²⁸ For instance, according to our UK member Which?, around three quarters of consumers are on what are typically amongst the most expensive – primarily their supplier’s standard offer. Consequently, Which? estimates that, collectively, UK households miss out on savings of some £4 billion per year by not being on the cheapest offer for their payment and account management type - *The Imbalance Of Power, Which?, 2012*

²⁹ For instance, our Italian member published an article based on a true story related to unfair contract terms in Soldi&diritti (2010). In order to face the problems of the so called “unwanted contracts”, the Italian NRA put in place the rule establishing a duty for all new distant contract to verify if the consumer is really willing to subscribe for the new contract.

³⁰ The principles suggested in the report 'End of the Road' published by Consumer Futures in 2011 could serve as an inspiration. It is important to point out that following this initiative as well as discussions with the stakeholders involved, the big UK energy suppliers have called a voluntary halt to unsolicited doorstep sales. The main recommendations of the report are:

1. An end to unsolicited door-step sales by energy companies, with suppliers moving to a system of pre-booked appointments.
2. If a supplier visits a home for a non-sales related purpose (for instance meter exchange, meter reading, meter safety check, boiler repair, etc.) it must obtain prior written permission from the consumer before conducting a sales pitch.
3. The supplier must clearly signpost consumers to a source of independent advice ahead of any home sales visit and provide these details in any information left with the consumer.
4. A new requirement on all face to face sales or telesales processes with energy suppliers to inform consumers, where appropriate, that there are cheaper offers available via alternative sales channels.
5. Suppliers seeking to sell any new smart offers via face to face sales or telesales must give the customer a cost projection based on the household’s actual consumption data.

³¹ For more information about the consumer viewpoint on the application of the Unfair Commercial Practices Directive, please refer to BEUC’s position paper X/2013/049

Green offers

Over the years, suppliers have developed electricity offers with a reference to the environmental impact they have. But there is often a big difference between what consumers believe they are subscribing to and what the real impact of their choice is.³²

Consumers who care for the environment assume that choosing these *green offers* will have a positive impact on the environment and bring additional investments to environmentally friendly low carbon energy sources. Consumers should be informed about the sustainability of the different offers. However, it is necessary to define *what a green offer is* and what should be the criteria to substantiate a *green offer* so it does not constitute a misleading environmental claim within the meaning of the Unfair Commercial Practices Directive.³³ Therefore, BEUC calls for a clear definition of *green offers* and solid labelling scheme reflecting the added value and positive environmental effect.

BEUC demands:

- The European Commission should closely monitor the application and enforcement of the Unfair Commercial Practices Directive as well as of the Consumer Rights Directive in the energy sector.
- The European Commission should co-ordinate with national authorities a sweep investigation about unfair practices in this sector, in particular regarding door-step and distance selling. In order to address aggressive selling practices, national authorities should set clear conditions for door-step selling according to best practices (e.g. as suggested in footnote 30)
- Regulators and national authorities should urgently review how suppliers offer, market and sell their services, including bundled offers.
- The European Commission should conduct research aiming to define clear parameters for green offers in electricity and gas markets as well as a solid labelling scheme for these offers.

e. SINGLE POINTS OF CONTACT

As stipulated in the Third Energy Package, Member States need to ensure that the single points of contact are in place to provide consumers with all necessary information regarding their energy rights.

Building on the approach established in the Third Energy Package, BEUC believes that single points of contact should provide clear information, advice about basic energy services and help consumers find accredited service providers in their area. While some BEUC members reported that the system of single points of contact has been broadly implemented, some consumer organisations pointed out a slow process of the implementation of the Third Energy Package in this respect. Furthermore, where single points of contact already exist, there is low awareness about it (e.g. in Denmark or Belgium) or it takes a long time to provide the consumer with a satisfactory answer to their claims (e.g. in Italy). In addition, the system is sometimes too complex and makes it difficult for consumers to find the right and direct way to get all the information they need.

³² For instance, as highlighted by our German member VZBV, one third of consumers expect that there are legal criteria for green offers. At the same time consumers find the existing labels more and more confusing and have difficulty distinguishing between them. - <http://www.vzbv.de/cps/rde/xbcr/vzbv/Energie-Oekostromlabel-Bericht-vzbv-2012.pdf>

³³ As a model of good practice, in Denmark, there are two instruments covering *green offers*: firstly, the declaration on green offers in electricity markets and the Ombudsman Guidelines on the marketing of green products.- <http://www.consumerombudsman.dk/Regulatory-framework/dcoguides/Environmental-and-ethical-marketing>

BEUC demands:

- The European Commission should analyse the effectiveness of the system of single points of contact and where relevant propose means of improvement.
- Member States should increase awareness of the existence of the single points of contact system and ensure the system works smoothly and swiftly.

f. ENERGY CONSUMER CHECKLIST

According to the Third Energy Package, the energy consumer checklist was established to provide consumers with practical information on their rights. This checklist should be publically available and consumers should receive a copy. As concluded by the Council of European Energy Regulators (CEER),³⁴ around half of the Member States have contributed to the establishment of an energy consumer checklist. However, only a few have already started a coordination process with suppliers and Distribution System Operators.

BEUC members reported that the energy checklist is often not in place yet or consumers are not aware of its existence. Therefore, better promotion of the checklist is needed so that it is handy and useful for every consumer to get an overview about their rights.

BEUC demands:

- The European Commission should assess how the energy consumer checklist benefits consumers across Member States.
- Member States should increase awareness of the existence of the energy consumer checklist which needs to provide meaningful information to consumers.

³⁴ CEER Status Review of Customer and Retail Market Provisions from the 3rd Package as of 1 January 2012

IV. Contractual phase

a. INFORMATION PROVIDED ON OR WITH THE BILL

As stipulated in Directives 2009/72 and 2009/73 as well as in Directive 2012/27, consumers are entitled to be informed about their actual electricity and gas consumption and related costs. They should also get a clear explanation on how their bill was calculated, particularly if the bill is not based on actual consumption. Such information should be provided free of charge in a clear and understandable manner so that consumers can make more efficient consumption choices. Additionally, information on consumer rights in the event of dispute must be available to both electricity and gas consumers. The Energy Efficiency Directive stipulates consumers should be provided with a specific set of information.³⁵

Although the relevant legislation provides a number of rules, BEUC members continue raising issues related to unclear and confusing bills, often caused by unclear price structure, as one of the major consumer concerns. Consequently, consumers have difficulties to use the information on the bill in practice³⁶ and as a result, they spend very little time analysing their energy bills.³⁷

The information in the bill must be clear and concise, in order to facilitate comparability of offers and prices and must provide all relevant information to consumers, including complaint handling and contact points in case consumers have complaints or questions regarding their energy bills and their consumption. Suppliers should take a proactive approach and ensure that energy bills are clear, accurate and well-structured as also recommended by a Working Group of the European Commission.³⁸ Moreover, suppliers should effectively communicate with their customers and seek their opinion on the clarity and usefulness of the information provided. In order to improve the overall understanding of the energy bill, consumer testing can be an appropriate tool.

Energy regulators should undertake a full scale review of the content of energy bills and annual statements and urgently put forward proposals to improve the information provided. This should also include a review of billing practices in each Member State, identifying best practices and setting minimum standards for energy bills.

Finally, consumers should be offered the option of electronic billing without any additional costs.

³⁵ Annex VII, 1.2: Consumers should get the following information in a clear and understandable manner in or with their bills, contracts, transactions, and receipts at distribution stations:³⁵

(a) current actual prices and actual consumption of energy;

(b) comparisons of the final customer's current energy consumption with consumption for the same period in the previous year, preferably in graphic form;

(c) contact information for final customers' organisations, energy agencies or similar bodies, including website addresses, from which information may be obtained on available energy efficiency improvement measures, comparative end-user profiles and objective technical specifications for energy-using equipment;

(d) highlight to the customer that a cheaper offer is available from their supplier.

In addition, Member States should also "ensure that comparisons with an average normalised or benchmarked final customer in the same user category are available to final customers in clear and understandable terms, in, with or signposted to within, their bills, contracts, transactions, and receipts at distribution stations".

³⁶ As concluded by the European Commission in its report 'The functioning of the retail electricity markets for consumers in the EU'³⁶, around half of European consumers still struggle to find the vital information they need. Moreover, only 25% of the surveyed respondents found it easy to identify and understand additional information related to energy savings, who to contact in case of problems or for information on switching.

http://ec.europa.eu/consumers/strategy/docs/SWD_function_of_retail_electricity_en.pdf

³⁷ According to Accenture, the average person spends 6 minutes per year looking into their energy use.

³⁸ European Commission (DG SANCO) Working Group on Billing: Good Practice Guidance for Billing, 2009

BEUC demands:

- The European Commission and national regulatory authorities should undertake a full scale review of the content of energy bills and annual statements and urgently put forward the proposals and minimum standards to improve the information provided on and with the bill.

b. CHOICE OF PAYMENT METHODS

The Third Package foresees that consumers should be offered a wide choice of payment methods which do not discriminate between different types of consumers. At the same time, prepayment systems should be fair and adequately reflect likely consumption. CEER states³⁹ that a wide choice means minimum two payment methods.

Choice of payment methods

Considering the diversity of payment methods (such as cash, electronic payments, direct debit, standing order among others), BEUC believes that consumers in energy markets should be able to access a wide range of user-friendly payment methods. It has been recommended by CEER that at least one payment method should be free of charge while other payment methods should be at a low charge, cost reflective and feasible for consumers.

Surcharges

BEUC strongly opposes any surcharges on any payment method. At the EU level, the Payment Services Directive Art 52(3) provides the option to Member States to allow the application of surcharges.⁴⁰ However, as in practice surcharging has not benefited consumers and market competition, but has become a business model generating significant revenue to some traders, BEUC believes this should be adequately addressed in the current revision of the Payment Services Directive.⁴¹

As a first step in the right direction, the Consumer Rights Directive which should be implemented by December 2013 aims at protecting consumers against excessive fees for the use of means of payment (Article 19) or against hidden costs (Article 22).

Moreover, there may be certain risks related to some payment methods, for instance, with regards to direct debit: once the consumer has signed the mandate, payments are not under her or his full control anymore. In addition, it is widely acknowledged that suppliers are the main beneficiaries of payments by direct debit, while consumers may, when offered choice, opt for more suitable payment options. A mechanism ensuring the balance between suppliers and consumers is necessary. Therefore, a guarantee for unconditional and immediate refund rights for direct debits needs to be put in place under the revision of the Payment Services Directive.⁴²

Finally, it has been identified as a common practice in some countries to charge consumers if they wish to receive the bills in paper form. This implies a discriminatory treatment among consumers who do not have access to the internet since they would be

³⁹ Guidelines of Good Practice on Retail market design, with a focus on supplier switching and billing

⁴⁰ Directive 2007/64/EC

⁴¹ The revised PSD should ban surcharges on any payment method which should stay neutral. All the costs of doing business should be included in the price of goods and services including the cost of payment transaction. The consumer should not be charged for choosing a specific mean of payment.

⁴² Consumers in some Member States, e.g. Germany (the biggest direct debit market in Europe), currently enjoy an unconditional refund right for direct debit payments. It is important to note, the right to recall a payment does not relieve the consumer from his duty to pay for the goods/services consumed.

always obliged to pay for these additional charges. Therefore, relevant national authorities need to analyse the current practices by different energy suppliers and assess if the current system and the choice of payment methods benefit consumers.

BEUC demands:

- Consumers should be provided with a wide choice of user-friendly payment methods.
- National authorities should carry out an assessment of the payment methods offered by energy suppliers in their countries to see whether consumers have the possibility to choose a payment means which suit their expectations.
- EU legislators should ban surcharges on any payment method and introduce a guarantee for unconditional and immediate refund rights for direct debits.

c. SWITCHING PROCEDURES AND RIGHT OF WITHDRAWAL

Duration of the switching process

Although the Third Package sets 3-weeks switching period, BEUC members reported that switching is often an unacceptably long process with little information provided to the consumer during the switching period (for example the exact switching date or when the new offer applies). Some BEUC members have also reported a lack of communication between suppliers during the switching process.

The process must be smooth and fast⁴³ in terms of information and service provision so that consumers get timely information⁴⁴ and a continuous service.

As mentioned in CEER's Guidelines of Good Practice,⁴⁵ the switching period is shorter in Ireland and Norway (around 1 week) while consumers in Finland, France, Spain and Sweden can change their supplier in 2 weeks. However, it is alarming to see that in 13 EU countries, switching takes one month or even up to two months. For instance, BEUC member pointed out that when consumers decide to change energy supplier in the UK, it takes around 5-6 weeks⁴⁶ which is the way the relevant provision of the Third Energy Package was implemented in this Member State. The situation is even worse in Italy where BEUC member reported 78 days as an average time for switching.

Switching based on off-premises or distance contracts

In the event the energy contract has been concluded at distance or off-premises, article 9 of the Consumer Rights Directive establishes that the 14-day cooling off period for the right of withdrawal starts on the day of the conclusion of the contract. According to CEER it might be feasible for the new supplier to respect the cooling off period before initiating the switch. However, in order not to delay the switch while allowing the consumer to re-consider the conclusion of the contract, BEUC believes that the cooling-off period should be considered as being included in the maximum three weeks switching period of article 3(5)(a) of Directive 2009/72.

⁴³ For instance, Consumer Futures' online survey of 2048 customers March 2010 found that 78% of consumers said it should take three weeks or less to switch supplier: 15% said maximum three weeks, 35% wanted a maximum one week and 28% as soon as the technology allows – preferably same day. The rest were happy with longer time frames.

⁴⁴ For instance, our Slovenian member reported that the national legislation sets meter reading has to be done no later than 6 weeks from the switch. The data of meter reading is usually done after the switching has been carried out. After such a long period consumers have difficulties proving that their consumption has been different than the one presented by DSO.

⁴⁵ CEER GGP on Electricity and Gas Retail market design, with a focus on supplier switching and billing, September 2012

⁴⁶ Three weeks plus statutory (two weeks) cooling off period - this period is unacceptably long and the gains from switching do not benefit household budgets immediately in the way that, for example, shopping at a cheaper supermarket the day after shopping at an expensive one would.

Furthermore, in some countries suppliers are obliged to contact consumers before starting the switching process in order to verify (e.g. by call) if consumers really wish to switch their energy supplier and have a complete understanding of what they have agreed with the agent/sales person. This solution could be further investigated in the course of future revision of the existing energy legislation.

Final Disclosure Account

After the switching consumers have to wait for the Final Disclosure Account between 4 and 8 weeks. Such a period becomes irrelevant when considering available technologies. Thus, regulators should take a proactive approach and clearly state the starting date and set a maximum period of two weeks within which the final bill should be received.

Termination fees

Finally, switching should not be subject to any termination fee or penalty.⁴⁷ In some Member States such a ban is in place already. Where there is no ban for the application of termination fees, they can be used as a means to discourage consumers from switching providers. Additionally, termination is often subject to strict and complicated formal requirements (e.g. notification procedures). Thus, EU harmonisation prohibiting penalties for terminating energy contracts in order to facilitate switching should be foreseen in an eventual revision of the energy legislation.

BEUC demands:

- The European Commission and national regulatory authorities should reduce the switching period to less than three weeks. Moreover, the switching period should comprise the cooling off period for the right of withdrawal in case the contract has been concluded at distance or off-premises in order to avoid unnecessary delays in the switching.
- The European Commission should further investigate the necessity of an obligation on suppliers to contact consumers before starting the switching process in order to verify consumer's will to switch (in case of off-premises contracts).
- National Regulators should state the starting date and set a maximum period of two weeks within which the final bill should be received.
- The European Commission should establish specific rules on the renewal and termination of contracts in order to allow consumers to switch providers at no cost if they wish to do so.

⁴⁷ For instance, the Belgian legislator has decided in 2012 to allow consumers to switch operators at any time without the possibility of imposing penalties for the breach of contracts.

V. Energy efficiency

a. ADVICE

Energy efficiency can be considered as one of the most cost-effective, if not the most cost-effective, way of reducing energy bills. To make this work, any measure that promotes energy efficiency must look at the consumer benefit and the price tag that comes with it. Therefore, consumers need transparency and information on these multiple benefits. In this regard, the rules of the Directive 2012/27 need to be effectively implemented and enforced in practice so that consumers receive contact information of independent consumer advice centres and energy agencies where they can get advice on energy efficiency measures and how to reduce their energy consumption.⁴⁸

BEUC believes that communication programmes to promote energy efficiency services and products will have no value without an assessment of the real benefits and a guarantee of the quality of these providers. Therefore, single points of contact as one of the communication channels described above should direct consumers to accredited providers.

BEUC demands:

- National authorities should ensure that measures promoting energy efficiency are appropriate to the needs of consumers and the investments into these measures are cost-effective.
- Member States should effectively implement consumer-related provisions of the Energy Efficiency Directive.

b. ENERGY AUDIT

The Energy Efficiency Directive also obliges Member States to promote high quality energy audits which are cost-effective and carried out by independent and qualified providers.

Energy audits should be affordable and carried out independently by experts who should be both qualified and accredited. Therefore, strict requirements for these experts are also needed. Moreover, to meet the challenge of affordability it must be recognised that there should be some funding support for audits available for low income households. Whilst respecting national sovereignty over social security systems, funding support will be necessary in order to provide consumers with information and advice and enable community outreach schemes targeting in particular energy poor consumers.

⁴⁸ Annex VII, 1.3: *When sending contracts and contract changes, and in the bills customers receive or through websites addressing individual customers, energy distributors, distribution system operators and retail energy sales companies shall inform their customers in a clear and understandable manner of contact information for independent consumer advice centres, energy agencies or similar institutions, including their internet addresses, where they can obtain advice on available energy efficiency measures, benchmark profiles for their energy consumption and technical specifications of energy using appliances that can serve to reduce the consumption of these appliances.*

BEUC demands:

- Member States should make sure that efficiency measures go hand in hand with independent and accredited information schemes. National authorities should ensure there are strict requirements for experts conducting energy audits.
- Member States should explore the possibility of funding support for audits for low income households.

VI. Enforcement and redress

a. COMPLAINT HANDLING

As stipulated in the Third Energy Package, consumers should have access to speedy and effective complaint handling procedures in order to address any eventual dispute with their energy providers.

Effective complaint handling procedures within companies are an important first step in situations when something goes wrong. For example, a change of supplier that has turned out badly, an excessively long delay while switching from one supplier to another, an error in the bill which has caused harm to the consumer and similar situations can, if effectively dealt by the complaints handling services, be an important ingredient to build consumer trust towards energy companies.

However, as reported by several BEUC members, company complaint handling procedures can be often lengthy and burdensome. Thus, national authorities should control that these schemes do not represent obstacles for consumers to solve their disputes and exercise their rights.

b. EFFECTIVE ALTERNATIVE DISPUTE RESOLUTION

If a consumer's complaint has not been dealt with to their satisfaction by the company, or when a deadlock letter has been received, the complaint can be taken to the Energy Ombudsman. According to Annex I of Directives 2009/72 and 2009/73, such out-of-court dispute settlements procedures should enable disputes to be settled fairly and promptly, preferably within three months, and shall provide for a system of reimbursement and/or compensation.⁴⁹

BEUC members are increasingly reporting complaints in current retail markets. Looking forward, new technologies may pose new challenges to the current practices of complaint handling and redress procedures and regulatory arrangements need to be fit for purpose. More bundled offers are expected once new actors providing innovative services enter the market. These services will be provided by a variety of suppliers and service providers from different industry sectors, which may result in complex complaints.⁵⁰

BEUC finds important that the whole system is ready for a shift from what is currently the remit of one single regulator (or a sectoral Alternative Dispute Resolution (ADR) body) to address possible overlap of competences between regulators⁵¹ or other bodies

⁴⁹ As set in the Third Energy Package, independent dispute resolution mechanisms such as an energy ombudsman must be available to consumers. The Alternative Dispute Resolution (ADR) body should ensure an effective out-of-court dispute settlements and offer free of charge and effective solutions to individual consumer disputes. ADR schemes should also notify the energy regulator about the key trends in disputes between the consumers and energy providers and other systemic issues, in order to allow the regulator to tackle those issues. At the same time, judicial collective redress must be available in order to solve mass disputes that may arise.

⁵⁰ There is already evidence from the UK smart grid pilot reported by our member. The consumer had signed up to a critical peak pricing trial. He was told he would be rewarded with a cheaper tariff if he shifted his load away from peak times. Although he responded to signals via the display, he received a high bill and queried this with his supplier as he claimed to have always switched when told. The supplier told the consumer to contact the display manufacturer as it may have been a problem with the display not sending the message. The display manufacturer said that he would check the display but the consumer would have to pay for this if there was nothing wrong with it. They suggested that they check that their in home communication system was working appropriately and to check this with the supplier. In short, the consumer was left with a huge bill, but did not know who to contact to resolve it. It was left up to him to find out what the problem was, what rules applied (different in each case as the supply was covered by the energy regulator, the display by the UK Office of Fair Trading and the HAN by the telecoms regulator).

⁵¹ For instance, the role of telecoms regulator will become more important also in the energy sector considering for instance the combination of smart meters and smart home features representing new business opportunities for telecommunications companies.

dealing with products and services so that consumers are not left alone when facing a problem. Therefore, it is important to have a clear responsibility scheme and ADR mechanisms being capable of acting across industry sectors to ensure the efficient treatment and settlement of disputes arising from domestic household energy efficiency programmes involving multiple suppliers from different sectors. This has been also supported by the Energy Efficiency Directive and BEUC encourages Member States to put in place such a mechanism.

Finally, it is also crucial to ensure that consumers receive timely information about the ADR schemes, as foreseen in the Consumer Rights Directive. Particularly in this sector, consumers need information about the ADR available before the dispute has arisen.⁵²

BEUC demands:

- National authorities should control that company complain handling is not used to impede consumers from exercising their rights.
- Member States should ensure that independent ADR schemes are available to address consumer complaints in the energy market, including the settlement of disputes involving suppliers from different sectors.

END

⁵² Even if there would be an obligation to first try to resolve the dispute with the company in question.

- 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 - Kilpailu- ja kuluttajavirasto (KKV)
- FR - UFC - Que Choisir
- FR - Consommation, Logement et Cadre de Vie - CLCV
- HU - National Association for Consumer Protection in Hungary - OFE
- HU - National Federation of Associations for Consumer Protection in Hungary (FEOSZ)
- IE - Consumers' Association of Ireland - CAI
- IS - Neytendasamtökin - NS
- IT - Altroconsumo
- IT - Consumatori Italiani per l'Europa - CIE
- LU - Union Luxembourgeoise des Consommateurs - ULC
- LT - Alliance of Lithuanian Consumers' Organisations
- LV - Latvia Consumer Association - PIAA
- MK - Consumers' Organisation of Macedonia - OPM
- MT - Għaqda tal-Konsumaturi - CA Malta
- NL - Consumentenbond - CB
- NO - Forbrukerrådet - FR
- PL - Federacja Konsumentów - FK
- PL - Stowarzyszenie Konsumentów Polskich - SKP
- PT - Associação Portuguesa para a Defesa do Consumidor - DECO
- RO - Association for Consumers' Protection - APC Romania
- SE - The Swedish Consumers' Association
- SI - Slovene Consumers' Association - ZPS
- SK - Association of Slovak Consumers - ZSS
- UK - Which?
- UK - Consumer Futures

