



Memorandum for
Lithuania's Presidency

Consumer priorities
2013



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Consumer priorities for the Lithuanian Presidency

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Consumer priorities for the Lithuanian Presidency

In this memorandum for Lithuania's Presidency of the Council of Ministers, The European Consumer Organisation (BEUC) presents its consumer policy priorities and urges policymakers to strengthen efforts to pass important consumer files before the end of the current European Parliament's remit.

In the area of financial services, our hopes are for the Lithuanian Presidency to help advance two important legislative proposals. The revision of the **Payment Services Directive** should make payment services in the EU more efficient and contribute to the development of a competitive and well-functioning European payments market to the benefit of all consumers. A legislative proposal on **payment accounts** intends to give all EU citizens access to a basic payment account, ensure bank account fees are transparent and comparable and make switching bank accounts easier. When it comes to **depositor guarantees** reassurance is needed that deposits up to €100,000 will not be used to rescue failed banks. Deposits of more than €100,000 should be last in line when banks are bailed in.

The recent PIP breast implants scandal and the emergence of new technologies are two of the challenges facing **medical devices** legislation. They also highlight loopholes which put consumers' health at risk. We hope the Lithuanian Presidency will demonstrate a strong commitment to the revision of the current laws as proposed in September

2012 and will improve the quality and safety of the medical devices sector, thereby restoring consumer confidence.

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

During the Lithuanian Presidency a highly important revision of air passengers' rights will be on the agenda, namely the EU's **Air Passenger Rights Regulation**. This initiative will update and modernise EU consumer protection. We hope the Presidency will promptly begin negotiations on this dossier. In the area of package travel, we expect a review in July and hope work to develop modern legislation will start quickly.

On February 13, 2013, the European Commission published a **Product Safety and Market Surveillance Package** consisting of a draft regulation for market surveillance of all non-food products, a proposal for a Consumer Product Safety Regulation and a multiannual market surveillance

framework plan. Strong guidance on this issue by the Lithuanian Presidency can help prevent consumers being exposed to otherwise avoidable health and safety risks due to unsafe consumer products on the European market.

We have high expectations for a European Commission proposal on **antitrust damages actions** which is expected in summer 2013. We hope the Lithuanian Presidency will lead the negotiations aiming to overcome the various legal and procedural national differences, thereby making European victims' right to redress a reality. Though we are very disappointed that after many years and much compiled evidence the European Commission will only propose a non-binding initiative on **collective redress**, we hope the principles in the recommendation will meet consumers' needs and expectations and go beyond what already exists in some Member States.

In the area of food, we hope that the Lithuanian Presidency will make the revision of the regulation on **Official Controls** a priority. A speedy adoption of this review can help restore consumer trust in food and the food chain.

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

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

We wish Lithuania a most successful Presidency.



I Payment account package

Background

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

In May 2013 legislation was proposed by the European Commission to give all EU citizens access to a basic payment account; ensure payment account fees are transparent and comparable; and make switching payment accounts easier.

This initiative is highly important for several reasons: the Commission's recent monitoring report of implementation of the code of conduct on bank account switching revealed numerous shortcomings; 2011's attempt to adopt another self-regulation measure on transparency and comparability of personal current bank account fees failed due to banks' incapability of meeting the requests by both consumers and the European Commission. In addition, according to recent data, 10% of all EU consumers - i.e. 58 million Europeans aged 15 or above - do not have a bank account.

We hope that the Lithuanian Presidency will give high priority to the Commission's proposal.

Our demands

- Ensure every consumer has the right to a basic payment account, i.e. not only the financially excluded. A basic payment account should be available to all consumers.
- Ensure consistency between the anti-money laundering Directive (AMLD, adopted on April 5, 2013) and the EU legislative proposal on payment accounts so that the AMLD provisions are not used by financial institutions as a means to exclude financially less valuable consumers; harmonise national interpretations of AMLD at national and cross-border level within the EU.
- Ensure information on payment account fees is transparent and comparable across financial institutions to enable consumers to shop for better deals and spur competition in the market by:
 - developing glossaries of terms covering all the terminology linked to current accounts;
 - fully standardising the presentation of the lists of fees;
 - preventing banks from levying any fees and charges not stated in the lists of fees;
 - developing regularly updated independent price comparison websites, accessible to all consumers;
 - providing annual fee statements to consumers and ensuring appropriate enforcement and monitoring.
- Remove all technical and legal obstacles to bank account switching to enable consumers to easily switch their bank accounts from one bank to another. In particular,
 - set up an account number portability system to achieve a seamless and hassle-free switching experience or at least an automatic re-routing system of direct debits and standing orders from the old account to the new one;
 - provide better information and training of bank staff to ensure a smooth consumer switching experience across financial institutions.

Documents

- 'Transparency and comparability of payment account fees' project – BEUC requests ([X/2011/054](#))
- BEUC response to the public consultation on Payment Accounts ([X/2012/042](#))



Deposit Guarantee schemes

Background

The financial crisis and the recent decisions to restructure the Cypriot banking industry have shown that protecting consumers' deposits is essential to restore consumer confidence in the banking sector and ultimately ensure its stability. Proposals to utilise deposits when banks fail have added to this uncertainty. Two important legislative initiatives are still pending at Council level:

The Deposit Guarantee Schemes (DGS) legislation serves a crucial function – to ensure protection of deposits while providing financial systems with security to prevent bank runs. The European Commission's Directive proposal of July 2010 contains many advances on the current legislation. However, there is room for improvement. Evidently, too much emphasis has been placed on the stability of the banking sector, as opposed to increasing consumer safeguards by harmonising useful protection measures. Protecting investor assets from investment firm or bank fraud or mismanagement is important for restoring retail investor confidence in financial services. The European Commission proposal on Investor Compensation Schemes (ICS) contains many improvements towards ensuring consumer compensation for fraud compared to the current legislation.

Negotiations on both the DGS and ICS proposals have been stalled at Council level for a long time. Therefore, we call upon the Lithuanian Presidency to overcome the deadlock in the Council and find a position which emphasises the interests of European consumers.

Our demands

A. Deposit Guarantee Schemes

- BEUC supports the European Commission proposal to abolish compensation mechanisms between the liabilities of the depositor and his deposits; protection of the accrued, but not credited, interests; compulsory ex ante funding of the DGS.

- The guarantee limit should be per depositor and per brand, not per bank license.
- Minimum harmonisation is needed for temporary higher balances and the circumstances which lead to protection should be extended.
- Repayment of depositors should not be privileged over interventions to permit deposit transfers to another institution or to prevent failure.
- If the repayment does not occur within 7 days, the depositor should be entitled to early repayment.
- There should be no time limit on claiming repayment. Each DGS should settle a provision for all depositors whose identity is known, but who have not yet contacted the DGS.
- Deposits up to €100,000 should not be used to rescue failed banks. Deposits of more than €100,000 should be last in line when banks are bailed in.

B. Investor Compensation Schemes

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

Documents

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



Enhance investors' protection: KID (PRIIPS) & Insurance Mediation Directive

Background

The complexity and long-term nature of investments make it difficult for the retail investor to assess their suitability before a lengthy period of time has passed after deciding to invest.

The lack of comparability between different retail investments makes it impossible for the non-expert investor to make an informed decision regarding their investments. The mis-selling of long-term investment products is very harmful to consumers who, for instance, will not have sufficient revenue upon retirement.

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

We ask the Lithuanian Presidency to consider these proposals a priority and focus on the consumer protection aspects as described below.

Our demands

- The duty to act honestly, fairly and professionally in accordance with the best interests of clients should be a general principle applicable to all financial services, irrespective of the type of financial product.
- BEUC welcomes the consumer protection improvements stipulated in the proposed Regulation on KID and asks for the following:
 - A highly standardised Key Investor Information document is essential to better inform consumers and make comparing easier. In order to achieve this, the KID should be compulsory for all savings and investment products and not only for packaged investment products;
 - Consumers need information from the distributor and not only from the manufacturer of a financial product. In order to make an informed choice and compare investment products, consumers must receive information on the real costs of their investment which includes the remuneration of the financial intermediary and the tax regime applicable to the investment products being recommended.
- BEUC welcomes the IMD proposal, as the harmonisation of sales rules for all types of insurances (including life insurance) is necessary to avoid loopholes in consumer protection and avoid regulatory arbitrage from the financial industry. This proposal needs to be improved on the following points:
 - All intermediaries selling insurances on an ancillary basis should fall under the Directive's scope and should comply with all consumer protection provisions;
 - Information about the insurance product should be given through a standardised information sheet;
 - Ensure full consistency between the rules under MiFID and IMD as regards investment products;
 - Avoid conflicts of interest and in particular ban contingent remuneration linked to any targets related to the activities run by the intermediary including sales volume and number of claims reported by clients;
 - Not only should remuneration linked to a contract be disclosed but all remuneration (including that in kind) linked to the mediation activity.

Documents

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

IV

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

Background

Retail payment services are ubiquitous in consumers' daily lives. There are several ongoing initiatives in the payments area. Following the Commission's Green Paper 'Towards an integrated European market for card, internet and mobile payments', the Commission's next steps were announced in the Single Market Act II: namely the revision of the Payment Services Directive and a proposal for multilateral interchange fees to make payment services in the EU more efficient.

In parallel, the SEPA (Single European Payments Area) project continues to develop. As part of the revision of the Payment Services Directive, the European Commission is expected to announce new SEPA governance rules as requested by the Council and the European Parliament.

We hope the Lithuanian Presidency will begin negotiations within the Council as soon as legislation is proposed by the Commission (expected June 2013) and focus on consumer protection aspects and more effective competition rules. We hope the new rules will contribute to the development of a competitive and well-functioning European payments market to the benefit of all consumers.

Our demands

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

Documents

- Factsheet on Multilateral Interchange Fees ([X/2013/025](#))
- BEUC response to the Commission Green Paper consultation ‘Towards an integrated European market for card, internet and mobile payments’ ([X/2012/022](#))

V

Markets in Financial Instruments Directive (MiFID)

Background

Investing is becoming increasingly a necessity for most consumers, not only society's most privileged members. The mis-selling of long-term investments is therefore highly prejudicial to consumers who do not have sufficient revenue upon retirement or need to pay for post-secondary studies of their children. The proposals to review MiFID were released in October 2011. The European Parliament voted in plenary in October 2012 and a common approach is now pending in Council.

The European Commission proposal contained some improvements such as strengthening the corporate governance of the management level of financial firms and new rules to avoid conflict of interest in the area of independent financial advice. The European Parliament unfortunately missed an opportunity to introduce a comprehensive ban on advice which would have substantially reduced the risk of miss-selling due to conflicts of interest.

We urge the Lithuanian Presidency to finalise the Council's general approach and start triologue negotiations with the European Parliament.

Key consumer aspects to be decided in the negotiations

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

Documents

- BEUC position paper on Markets in Financial Instruments (X/2012/006)



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I Revision of the Regulation on Official Controls

Background

On May 6, 2013, the European Commission published a package of measures to strengthen the enforcement of health and safety standards for the whole agri-food chain. This package included the proposal on official controls. While the proposals aim at the reduction of administrative burdens for industry by abolishing information obligations, it also calls for a more risk-based approach to controls across the chain. While BEUC agrees with this approach, it is vital for transparency and clear communication when evaluating risk.

Another issue up for discussion is the financing of official controls. While up to now, only certain parts of the chain were subjected to fees, the intention is to require all food operators to pay with the exception of micro-enterprises. BEUC supports the proposal to extend the fees system to other parts of the chain as it will provide the financial means for competent authorities to continue with independent inspections of food businesses. However, we question the exemption of micro-enterprises to fees. We also support provisions to permit increased transparency on inspection reports whether it be by publishing inspection reports or providing information to consumers on the performance of food operators via schemes such as 'score on the door' or 'smileys'. Not only is this providing useful information to consumers, but we also believe it can act as an incentive to food businesses to perform better.

It is clear that, over the last months, consumer confidence in food and the food chain has, once again, been seriously dented. The horsemeat scandal demonstrated just how long and complex the food chain has become and, while this time it was not a food safety issue, highlighted just how costly this can be for consumers, the food industry and Member States. A speedy adoption of this review by the European Parliament and Council provides an opportunity to take steps to prevent such a scandal from occurring again.

Our demands

- More unannounced independent inspections looking at food authenticity in addition to food safety.
- Tougher enforcement with clear disincentives for illegal practices and tough penalties for those prosecuted.
- A requirement for the food industry to improve traceability and regularly test its products.
- Greater transparency on how and who decides on risk.
- Greater transparency to the public on how food businesses are performing through publication of inspection reports (e.g. on the internet), adoption by more Member States of schemes such as score on the door or smileys.

Documents

- EU to tackle food fraud – press release ([PR2013/007](#))

Background

Recent years have seen a growing interest on the part of European consumers to know the origin of the food they buy. In response, some industry operators have recognised the marketing potential this provides and now communicate the origin of their products. Indications such as 'made in', 'product of', etc. are multiplying on food labels as well as the use of flags, symbols or pictures which can indirectly imply or suggest a particular food's origin (sometimes in a confusing way).

While the origin must always be labelled for some foods – olive oil, fish (unless it is canned or prepared), beef (fresh, chilled, frozen or minced), fresh or frozen poultry of non-EU origin, wine, most fresh fruit and vegetables, honey and eggs. For all other foods origin labelling is only voluntary. This means that currently origin information is largely missing on foods such as meat products (e.g. ham and sausages), yoghurts and cheese, kitchen staples (e.g. oil, flour, sugar and pasta), biscuits and confectionery, or ready meals.

The new EU food labelling legislation which will apply as from December 2014 aims at increasing transparency about the origin of food sold on the EU market:

- Origin labelling will become mandatory on fresh, frozen and chilled meat of pig, poultry, sheep and goat. However, the content of the information to appear on the label is yet to be decided (place(s) of the animal's birth and/or rearing and/or slaughter?).
- When the origin of a food is voluntarily declared by the manufacturer, consumers will have to be informed of whether the food's primary ingredient(s) have a different origin. However, what should be considered as the 'origin' of these primary ingredients is still open for discussion (place of farming or country of last substantial processing?).
- The European Commission will have to produce a series of reports and studies looking at the feasibility of extending mandatory origin labelling to additional categories of food (e.g. milk, meat used as an ingredient in processed foods).

Our demands

- Origin labelling should become mandatory for all meats (including when used as an ingredient in processed foods), milk (including when used as an ingredient in dairy), unprocessed foods (e.g. pre-cut fruit and vegetables), single-ingredient foods (e.g. flour, sugar, oil) and ingredients that represent more than 50% of a food.
- Origin labelling on food should be at the country level at least.
- Rules for origin labelling on meat of pig, poultry, sheep and goat should follow those already in place for beef (i.e. 'origin' covering the place(s) of birth, rearing and slaughter).
- The origin of a food's primary ingredient(s) should be defined as the place of farming of the raw materials (e.g. wheat for flour used in a cake; sugar beets/canes for sugar used in chocolate; milk for cheese or pig for ham used on a pizza).

Documents

- Where does my food come from? – BEUC consumer survey on origin labelling of food ([X/2013/006](#))
- Origin labelling on food – BEUC factsheet ([X/2013/005](#))



Review of the food hygiene package

Background

The European Commission is currently reviewing the EU's hygiene laws on provisions related to meat inspection, mechanically separated meat (MSM), good food safety practices and cold stores, amongst others. Following on from the impact assessment carried out on the current hygiene package, the Commission is due to make proposals related to the review during the second half of 2013. While it has been determined that no fundamental overhaul is required, a number of improvements have been suggested.

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

Our demands

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

Documents

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

IV

Cloning and Novel Food

Background

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

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

BEUC supports plans by the European Commission to come forward with specific legislation establishing a temporary ban of the cloning technique and food from cloned animals.

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

Our demands

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

Documents

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



Health and nutrition claims & nutrient profiles

Background

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

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

The purpose of regulating claims is to eliminate unsubstantiated and misleading claims and only allow claims that are scientifically proven and that consumers can trust. It also ensures that companies which make scientifically substantiated claims can benefit from their investments. The adoption of the so-called 'Article 13' list of general function health claims goes some way to achieving this objective. The list of permitted claims came into force in December 2012. We urge Member States to ensure the list is enforced in order that consumers can begin to trust in the claims used on food products.

We also ask the Council to encourage the Commission to give the green light to the European Food Safety Authority (EFSA) to continue with its assessment of claims relating to botanicals. We would be very concerned if the Commission were to make a special case for these products and allow them to bear claims based on 'traditional use' rather than providing the sound scientific evidence to justify their claims (as has been the case for all other claims). Such a move would result in consumers continuing to be misled about the purported benefits of these products and also risks opening the door to challenges from other companies whose claims have already been rejected by EFSA.

Our demands

- Claims relating to the botanical substances should be assessed by EFSA as a matter of urgency in the same way as all other general function health claims.
- Nutrient profiles, a vital and a necessary part of the Health Claims Regulation, will help consumers to make an informed choice as they should ensure that claims only appear on the healthiest products. They were due to be developed by the European Commission by January 2009. However, over four years later we are still awaiting a proposal. BEUC therefore calls on the European Commission to come forward with its proposal for nutrient profiles as soon as possible. We ask that such profiles be robust, scientific and fit for purpose i.e. they prevent consumers from being misled about the qualities of a food through the use of claims.
- Member States should ensure the enforcement of the Article 13 list and make sure rejected claims have been removed from the market.

Documents

- Brochure: No Special Treatment for Botanical Claims! (X/2012/38)
- BEUC factsheet Nutrition & Health Claims (X/2011/025)
- BEUC factsheet on Nutrient Profiles (X/2011/024)

 For more information: food@beuc.eu



I Data protection

Background

Digital Information & Communications Technologies (ICT) and new services benefit consumers but also represent a major challenge to the protection of their personal data. ICT often leads to a proliferation of the information collected, stored, filtered, transferred or otherwise retained. The risks to privacy therefore multiply.

In January 2012, the European Commission adopted a proposal for a Regulation on Data Protection which will replace the current Directive. The proposal aims to ensure a uniform set of rules across Europe, while strengthening the rights of individuals and facilitating the flow across borders of personal data. The introduction of an explicit transparency obligation; the data minimisation principle; the establishment of the right to data portability; the horizontal breach notification obligation; the introduction of 'privacy by design' and 'privacy by default' as mandatory principles; the strengthening of sanctions for data protection infringements are positive elements of the draft Regulation.

The proposal strikes the right balance between the need for an effective system of data protection and businesses not being confronted with excessive administrative burdens. And yet, less administrative burden should not result in weaker protection of personal data nor limit the liability of companies vis-à-vis data subjects.

Consumer confidence is essential to economic recovery. A solid framework for data protection would help boost consumer confidence, especially in the complex online environment.

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

Our demands

- The definition of personal data should remain broad and flexible in light of the rapidity of ICT developments. Pseudonymised data is, by definition, personal data as it relates to an identifiable individual and therefore falls within the scope of the draft Regulation.
- The scope of ‘legitimate interests’ as a ground for processing should not become a catch-all category. It can only be used as a last resort i.e. when no other legal grounds are available and the data controller should prove that its interests override those of the data subject.
- As regards the principle of purpose limitation, the European Data Protection Board should be entrusted with the task of defining criteria to assess the compatibility of further processing with the original purpose for which data was collected.
- When subject to profiling measures, consumers should be informed of the possible consequences or effects this could have on them. Consumers should also be able at all times to object to the processing of their personal data for profiling purposes. Furthermore, the legitimate interests of the controller cannot be accepted as a legal ground for profiling.
- A dual system of notification of data breaches needs to be maintained, according to which all breaches must be notified to the data protection authorities while only those breaches which adversely affect the protection of personal data and privacy should be notified to individuals.
- The appointment of a lead Data Protection Authority and the establishment of a ‘one stop shop’ should not result in forum shopping. To mitigate this risk, the powers of the lead authority should not be exclusive.
- Judicial collective actions for compensation for harm suffered from data protection infringements should be introduced.

Documents

- BEUC key demands on the Proposal for a General Data Protection Regulation ([X/2013/027](#))
- BEUC position paper on Data Protection ([X/2012/039](#))



Net neutrality

Background

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

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

The adoption of transparency and information disclosure requirements cannot be the sole remedy, particularly in a market where competition is seriously hampered by barriers to switching.

The European Commission is expected to adopt a Recommendation in the second half of 2013. This is disappointing as relying solely on transparency requirements and market forces will lead to the development of a multiple-tier internet to the detriment of citizens and consumers, and the competitive digital Single Market. In light of the many reported violations of net neutrality, it is now clear that we need timely and evidence-based action.

Therefore the Lithuanian Presidency should reiterate the Council position in favour of an open and neutral internet and maintain pressure on the European Commission to protect and restore net neutrality across Europe.

Our demands

- The internet must be kept neutral and open. It must be maintained that all end points connected to the internet are reachable without any form of unlawful restriction.
- Define the principle of net neutrality.
- Develop a definition of legitimate and illegitimate traffic management; traffic management should only be allowed as narrowly tailored deviations from the general rule. These deviations must be justified either on grounds of verifiable and exceptional technical necessity or to address a transient network management problem which cannot otherwise be addressed.
- Prohibit the non-discrimination between internet traffic streams unless done on legitimate traffic management grounds and in particular prohibit violations of the 'end-to-end' principle. Define a clear set of ISP obligations regarding the neutrality and Quality of Service of broadband internet. Accessible, complete information on traffic management practices and justifications must be published and easily available to end-users.
- An independent institution such as National Regulatory Authorities to pro-actively monitor the Quality of Service of fixed and wireless networks.
- National data protection regulators review the use of Deep Packet Inspection (and re-use of associated data) to assess compliance with the EU's data protection and fundamental rights framework. By default, only header information should be used for traffic management purposes.
- Ensure an internet connection which is free from discrimination as to the type of application, service or content.
- Enable consumers to access content, use services and run applications of their choice.
- Safeguard that consumers can use any communication method to reach any destination from any point on the internet without restrictions.

Documents

- Call for action 'Time to truly protect net neutrality in Europe' ([X/2013/018](#))
- Public consultation on Net Neutrality – BEUC response ([X/2012/077](#))



Collective management of European copyright

Background

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

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

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

As the proposal is in first reading at the European Parliament, the Lithuanian Presidency should guide the negotiations to ensure strict requirements are imposed on all collective management entities to ensure transparency and predictability for all stakeholders, facilitating the licensing of content and the emergence of new services.

Our demands

- Supervision: the supervision of collecting societies should not be left to internal bodies, but rather entrusted to independent authorities.
- Voting rights: the proposal introduces a two-tiered system of members with regards to voting rights, which is against the European Court of Justice's GEMA I decision.
- Financial management: the pay-out period should be reduced to three months from the moment the rights revenue was collected, while the five-year grace period after which undistributed amounts will remain with the collecting society should be deleted and replaced by an obligation to provide the money to a fund managed by independent authorities.
- Tariffs: tariffs should not be excessive in relation to the value of the service provided and they should be reasonable in relation to the economic value of the service provided.
- Transparency: the same obligations should cover both off and online uses and should not discriminate between users and rights holders.
- European licensing passport: the model put forward with regards to multi-territorial licensing of online uses is insufficient and will lead to further market consolidation.
- Extended collective licensing: a system based on extended collective licensing has the potential to provide an appropriate solution to the complexity of rights' clearance in mass-use situations to the benefit of right-owners, users and the society at large.

Documents

- BEUC position paper on the proposal for a Directive on collective management of copyright and multi-territory licensing of online music works ([X/2013/001](#))
- BEUC IPR Strategy: How to Make IPRs Work for both Creators and Consumers ([X/2011/034](#))



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Consumer contracts



I The Common European Sales Law for business to consumer contracts (CESL)

Background

A proposal for a Common European Sales Law regulation (CESL) introducing a '28th regime' of law, covering business to consumer (b2c) contracts was adopted by the European Commission in October 2011. It consists of a set of rules which co-exist alongside national law and which can be "chosen" by the parties as the legal basis for the contract.

It would set aside the consumer specific regime of Private International Law (the Rome I Regulation) and circumvent the application of the relevant national, mandatory consumer protection provisions.

BEUC is not in favour of the introduction of an 'optional' regime for consumer contracts. There is no need to deviate from the traditional means of regulating consumer contract law. This 28th contract law regime would rule out the application of national mandatory consumer rules and prompt lower standards of protection than those currently enjoyed in key consumer law areas in many countries. It would give the trader the choice as to what level of protection the consumer benefits from.

Importantly, it would be confusing for consumers and businesses to deal with different regimes of contract law (national and European) thereby rather than facilitating cross-border commerce, it would become more complicated and costly for consumers and businesses alike.

Because consumers are much better protected by solid legal rights enshrined in national law than by an ‘optional’ measure offered or withheld from them by the trader, BEUC is in favour of reviewing and further harmonising the few remaining consumer contract law elements relevant for the Single Market, i.e. the rules for legal guarantees and for digital content products, instead of pursuing an ‘optional’ approach.

In the European Parliament, proposals have been made to reduce the scope of the Regulation to e-Commerce contracts (more broadly known as distance selling contracts) only. BEUC believes such a reduction in scope would not help make this optional instrument more acceptable. Rather it underlines its redundancy because of the imminent application of the 2011 Consumer Rights Directive which significantly increases harmonisation of the most important elements of consumer contracts and online contracts in particular. This will be implemented by the end of 2013.

Currently, the Council is continuing to examine the provisions of Annex I of the proposed Regulation. We hope the Lithuanian Presidency will not try to rush into an agreement with the European Parliament, but take up some fundamental questions such as CESL’s relationship with the Rome I Regulation and its scope given the imminent implementation of the Consumer Rights Directive.

Our demands

- European legislators should thoroughly consider whether there is a need at all for this costly and time-consuming initiative, whether its objective of facilitating cross-border business for consumers cannot be met by much more effective, cheaper, swifter, less intrusive measures such as developing a European code of conduct for e-commerce transactions and the speedy implementation of the Consumer Rights Directive.
- The European Parliament’s ‘health check’ of the Commission’s Impact Assessment confirmed the Commission’s methodology to be dubious and in the most essential parts the quality and credibility of the data are questionable. We hope the Council will consider its results too.
- The Commission does not take into account that under current Conflict of Law rules, businesses operating in Europe do not have to adapt to 27 Member States’ laws, but rather they are free to choose their preferred national jurisdiction as the basis for a cross-border contract with a consumer.

- The proposed CESL, which aims to override EU private international law, is incompatible with Article 6(2) of the Rome I Regulation which aims to guarantee the application of higher consumer protection standards. Furthermore, on a technical level, the proposed CESL cannot work properly: for even if the CESL is chosen by the trader, the consumer-specific rules of the Rome I Regulation on the applicable law would still come into play, but then in an unclear and arbitrary manner. The proposal would drastically increase legal uncertainty, not decrease it, as we have shown in Annex B of our position paper.
- BEUC's analysis (Annex A of our position paper) shows that the level of protection in the proposal's annex is not truly high. It does not match higher standards in numerous Member States on issues such as unfair contract terms or legal guarantees (e.g. the burden of proof, payment use).
- Digital content is an area in which the current situation is causing detriment to consumer rights, as clearly shown by two recent Commission studies. More legal certainty and modern consumer protections are needed at EU level. The CESL proposal includes modern rules in this field, but they will only be applicable if businesses deem them self-advantageous. Instead, BEUC calls for a non-optional legislative Directive to harmonise contract laws for digital products.
- BEUC supports the proposal made in the European Parliament to turn the Regulation into a normal non-optional Directive limited to legal guarantees and including rules for digital content. This would continue the successful harmonisation process for consumer contract law elements useful for the development of the Single Market. Instead of introducing a new era of optional regulatory EU tools inappropriate for consumer contracts, we call on the Commission to continue modernising consumer law by traditional methods – using full and minimum legislative harmonisation as appropriate – and completing the review of the consumer law acquis as originally envisaged.
- A review of the 1999 Consumer Sales Directive also including provisions for digital content should be the next step.

Documents

- Factsheet on Common European Sales Law ([X/2011/068](#))
- Contribution to European Parliament hearing, March 2013 ([X/2013/020](#))
- Letter to European Parliament on Impact Assessment health check ([X/2013/035](#))
- BEUC - Ecommerce Europe 'Joint call by consumers' organisations and e-commerce businesses to reject the Commission's proposal for a Common European Sales Law regulation', letter sent to the members of the IMCO and JURI committees of the European Parliament on 10 June 2013 ([X/2013/036](#))
- BEUC's contribution to the Parliament's Legal Affairs Committee workshop on unfair contract terms ([X/2012/055](#))
- The European Commission's proposal for a Common European Sales Law – BEUC position ([X/2012/014](#))
- BEUC comments on some elements of the European Commission's Impact Assessment on the proposed regulation for a Common European Sales Law ([X/2011/119](#))

Air Passengers' Rights legislation

Background

In spring of 2012, the European Commission undertook a public consultation on the revision of Regulation 261/04 on compensation and assistance to passengers denied boarding, affected by cancellation or long flight delays. BEUC responded, highlighting existing shortcomings in the application and scope of the Regulation. A legislative revision was proposed in March 2013.

The practical application of Regulation 261/04 has created many problems, mostly due to gaps in its scope, often biased interpretation by the airline industry and some of the more 'controversial' provisions.

Last year, the European Parliament adopted recommendations calling for better application and enforcement of passenger rights legislation, as well as improvement of the rights in all modes of transport (European Parliamentary Resolutions of March 28, 2012 and October 23, 2012). Those recommendations include very valuable proposals which should be duly considered during negotiations on the new Commission's work.

In addition, the proliferation of unfair contracts terms in air transport contracts are a longstanding consumer issue. In recent years, a series of national judgments have declared many of the contract terms used by European airlines in their contracts to be unfair. As such, BEUC calls for the establishment of a blacklist of unfair terms in air transport contracts. Regarding passenger protection in the case of airline insolvency, despite findings in a 2012 European Commission study identifying significant passenger detriment, the European Commission still has not brought measures to address these problems.

We welcome the majority of measures in Regulation 216/04's update, but deplore that some existing rights have been weakened and that some European Court of justice rulings were not codified. Thus a chance remains to improve the proposal as regards passenger protection and we hope that the Lithuanian Presidency will place high importance on this proposal.

Our demands

- The future Regulation should not weaken the existing level of passenger protection when flights are cancelled or delayed. BEUC believes the proposal clarifies a number of situations detrimental to consumers when travelling by air. In particular rights of passengers who have missed connections and or faced with long delays.
- The protection should be extended to passengers travelling on flights coming into the EU and operated by non-EU carriers; this is particularly important for code-sharing with airlines based outside the EU.
- The rights of passengers to receive assistance in extraordinary circumstances should not be subject to limits, be they monetary or temporal as it is precisely in extraordinary circumstances (which can last a significant length of time) that passengers are most in need of protection.
- Passengers' right to compensation after long delays should emulate the Court of Justice ruling in the Sturgeon judgment. The Court ruled that passengers whose flights are delayed by 3 hours or more have the right to compensation. This was confirmed by the Court of Justice in two other recent judgments of October 23, 2012 and February 25, 2013 (cases C-581/10, C-629/10 and C-11/11).
- The occurrence of "technical problems" should not be considered "extraordinary circumstances" as is often done in an attempt to exempt the airline from paying compensation to affected passengers. On this point, the judgment of the European Court of Justice in the Wallentin-Hermann case should be duly incorporated in the regulation.
- New passenger rights should be added: such as those of transferability of tickets and the right of withdrawal from early bookings.
- A 'blacklist' of unfair terms in air transport contracts (on the basis of existing court cases) should be established. The European Parliament has also called for such a list.
- The obligation of airlines to advertise the final price of the ticket at all times from the beginning of the purchasing process should be tightened. The practice of 'unbundling' ancillary services (or drip-feed pricing) should be addressed: check-in, a boarding pass and at least one checked baggage should be included in the advertised ticket price.
- An EU-wide guarantee scheme to protect buyers of seat-only tickets against airline insolvencies should be established.
- Airlines should be obliged to adhere to Alternative Dispute Resolution (ADR) systems in order to solve consumer complaints.

Documents

- Revision of Regulation 261/04 on the rights of air passengers in the event of denied boarding, cancellation and long delays – BEUC’s response to the Commission’s public consultation ([X/2012/037](#))
- Forthcoming revision of the legislation – Synopsis of BEUC’s position ([X/2012/053](#))
- Public consultation on passenger protection in case of insolvency – BEUC response ([X/2011/048](#))
- Public Consultation on Air Passengers’ Rights –BEUC response ([X/2010/013](#))
- Synopsis of BEUC’s concerns on air passengers’ rights in the EU ([X/2011/070](#))
- Protection of air passengers in case of insolvency of airlines ([X/2011/105](#))



Revision of the Package Travel Directive

Background

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

Since the 1990s, the dramatic increase in internet sales, the advent of online travel agencies and the evolution of consumer expectations and preferences have fundamentally changed the travel market. Many new travel services and products currently offered to consumers fall outside the scope of the existing Directive and leave them unprotected. Moreover, consumers do not distinguish between the 'classic' packages and the new products available on the market.

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

Early in 2013, BEUC reacted robustly to the Commission's announcement that the Directive might not be revised and that it could even be repealed without replacement. We then urged the Commission to put forward a new proposal revising the existing Directive as a matter of urgency.

In May 2013, the European Commission announced it would adopt a revision proposal before summer 2013. We hope that the Lithuanian Presidency will proceed swiftly with the negotiations once it is adopted.

Our demands

- BEUC advocates a broad review of the scope of the Directive, covering not only new selling methods such as ‘dynamic packages’ (where consumers individually compile their own travel arrangement) and internet ‘click-through contracts’, currently not covered by this Directive.
- BEUC suggests that any trader who sells or organises the services of another provider should be liable for the fulfilment of the contract and the provision of the services agreed. A trader can be either a travel agency, an online travel agency, a tour operator or even a hotel or airline.
- The sale of stand-alone services (of only hotel, only accommodation, only car rental) via an intermediary (online agency, portal, airline) should also be covered by the Directive.
- The new Directive should include rules on the respective liabilities of intermediaries (online travel agencies, online platforms) and service providers.
- The new Directive should clarify that moral damages (loss of enjoyment) also qualify for compensation due.
- Prices should be all-inclusive and fixed (price modifications once the contract is concluded should be prohibited).
- Consumers should be able to cancel the contract by paying reasonable compensation and clear guidelines to calculate it (proportionate to the price of the travel and based on the time of cancellation in sliding scales) should be provided.
- Particularly with early bookings, consumers should be able to withdraw from the contract without penalty if the contract was concluded or negotiated at a distance (including online). There is no valid reason for exempting travel services from the right of withdrawal granted to consumers in other distance contracts.
- The insolvency protection system should not only cover reimbursement or return, but also the possibility to continue travel already started.
- All service providers should be obliged to adhere to Alternative Dispute Resolution (ADR) systems in order to solve consumer complaints.

Documents

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

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I Making the internal energy market work for consumers

Background

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

To achieve an internal energy market which also benefits European consumers, the complete transposition of the Third Energy Package is a fundamental step. Regrettably, some Member States broke the 2011 deadline for implementation and in many countries where the Package has been transposed it is too soon to evaluate what impact this legislation has had on the national market. That is why both the European Commission and the Council of the European Union need to keep national energy retail markets under close supervision and act promptly where needed.

The Commission's Communication 'Making the Internal Market Work' adopted in November 2012 is an important step towards creating an internal energy market by 2014. Unfortunately however it fails to undertake thorough analysis of the situation facing EU energy consumers. When reporting on progress made in completing the internal energy market we hope the Lithuanian Presidency will take account of the realities facing European energy consumers. Urgent, ambitious actions are needed to create truly competitive national energy markets as well as mechanisms to enforce existing legislation on consumer rights.

Our demands

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

Documents

- BEUC and CEER Joint Vision for Europe's Energy Customers ([X/2012/106](#))
- BEUC response to CEER's discussion paper on a 2020 Vision for Europe's Energy Customers ([X/2012/057](#))
- BEUC presentation on Energy Retail Markets – A Snapshot From a Consumer Perspective ([X/2012/079](#))
- BEUC response to CEER's public consultation on the Guidelines of Good Practice on Retail Market Design with a Focus on Supplier Switching and Billing ([X/2011/094](#))
- BEUC response to CEER's public consultation on Advice on Price Comparison Tools ([X/2012/003](#))
- BEUC position paper on the Energy Efficiency Directive ([X/2011/115](#))

Smart grids and meters (roll-out of smart technologies)

Background

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

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

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

Our demands

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

Documents

- Factsheet Smart Meters ([X/2013/073](#))
- Smart Energy Systems for Empowered Consumers – ANEC/BEUC position ([X/2010/044](#))
- 'Empowering Consumers through Smart Metering'. Research conducted by Gregoire Wallenborn and Frederic Klopfert, Université Libre de Bruxelles ([X/2012/030](#))
- BEUC position paper on Future Smart Energy Markets ([X/2012/80](#))

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I

Medical devices

Background

Medical devices – from contact lenses to pacemakers to pregnancy test kits – are features of many consumers’ daily lives and this broad range of products contribute significantly to people’s health and well-being.

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

The recent PIP breast implants or ‘metal-on-metal’ hip implants scandal and emerging technologies have challenged the current framework, while highlighting loopholes which put consumers’ health at risk.

The EU exploratory process on medical devices (2009-10) and the conclusions of the Council of Ministers on innovation in the medical device sector (adopted June 2011) highlighted potential adjustments of the current regulatory framework but mainly focused on enhancing the innovation and competition in the medical devices industry.

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

Our demands

- The proposal falls short in terms of pre-market assessment requirements. We ask for a more thorough pre-market assessment for high-risk devices and more clarity on borderline products (e.g. food supplements, medicines, herbal preparations).
- Other demands include:
 - All medical devices on the market must have a positive risk/benefit ratio and bring therapeutic benefit to patients;
 - The definition of performance should be adapted to include the assessment of clinical efficacy;
 - Manufacturers should be required to produce more and better clinical data and conduct randomised controlled trials whenever possible to demonstrate a medical device is safe and effective before being placed on the market;
 - A centralised pre-market assessment for a limited number of high-risk devices done by a new medical devices committee within the European Medicines Agency (EMA);
 - Improve the functioning of the notified bodies promoting specialisation and excellence;
 - Apply a consistent risk-based approach for the classification of all devices;
 - Set up a multidisciplinary expert group with binding power for a consistent classification of borderline products across the EU;
 - Provide consumers with high quality, complete, understandable and user-tested information for all devices;
 - Guarantee meaningful involvement of consumers in market surveillance;
 - Provide the competent authorities with adequate resources to ensure proper enforcement.

Documents

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



eHealth

Background

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

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

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

The Council is expected to adopt Council Conclusions on the Action Plan. We hope that the consumer perspective will be placed at the centre of the discussion in order to facilitate the uptake of eHealth solutions.

Our demands

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

Documents

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



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Consumer Redress



I Collective Redress

Background

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

A European collective redress procedure is essential to enable groups of consumers to secure compensation for losses caused by the same trader, by gathering their claims in a single action. Currently, national systems across EU Member States vary significantly. The integration of European markets and the subsequent increase in cross-border activities highlight the need for EU-wide, consistent redress mechanisms.

Since 2005, four consultations have been conducted on this issue and in February 2012, the European Parliament adopted a report recognising the benefits of collective redress and welcoming the Commission's work towards a coherent European approach. A recommendation by the European Commission on group actions is now expected in 2013, as part of the package of initiatives on redress. Although we are very disappointed that after all these years and evidence compiled only a non-binding initiative will be proposed, we encourage Member States to push forward with developing national collective redress systems. We hope that the principles enshrined in the European Commission's recommendation will meet consumers' needs and expectations and go beyond of what exists in some Member States already.

Our demands

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

These include:

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

Documents

- Old Myths and Recent Realities brochure ([X/2013/008](#))
- Factsheet Consumer Redress ([X/2011/096](#))
- Public consultation on Collective Redress – BEUC response ([X/2011/049](#))
- List of Potential Cross-Border Collective Cases ([X/2011/011](#))
- Country by Country Guide to Group Action ([X/2010/067](#))
- Brochure – 10 Golden Rules on Group Action ([X/2008/031](#))



Antitrust damages actions

Background

Competition infringements which result in consumer detriment can occur every day – but the consumer victims are rarely compensated. Since its creation in 2004, the European Competition Network (network of European national competition authorities) has tackled more than 600 cases of competition law infringements; more than half of these cases related to cartels and certainly had a direct impact on consumers' pockets.

However, almost no compensation claims have been taken by private individuals or consumer organisations. This is despite the jurisprudence of the European Court of Justice which has acknowledged the right of any person who has suffered harm because of an infringement of European competition rules to obtain redress before national courts.

The Commission is planning to publish its proposal on antitrust damages actions in 2013. Undoubtedly the most sensitive question in the negotiations will be the possibility to claim damages via a collective redress procedure. We strongly support this possibility, as individual actions by consumers are unrealistic in most antitrust damages cases.

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

Our demands

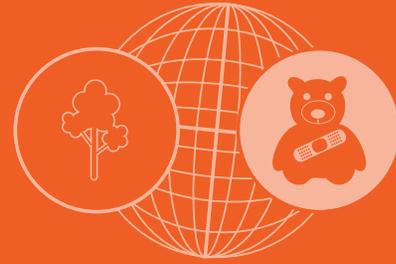
- Consumer associations should be recognised, across the EU, as qualified entities to bring damages claims on behalf of the victims of anti-competitive behaviour.
- Both opt-out and opt-in procedures should be available.
- Final decisions of National Competition Authorities shall be considered irrefutable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

Documents

- BEUC response to the White Paper on Damages Actions for Breach of EU Antitrust Rules ([x/047/2008](#))



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I Revision of the General Product Safety Directive

Background

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

The European Commission published a product safety and market surveillance package on February 13, 2013 consisting of a proposal for a Regulation on Market Surveillance (MSR), a proposal for a Regulation on Consumer Product Safety (CPSR) which will revise the General Product Safety Directive (GPSD) and a multi-annual Action Plan on market surveillance.

Many of BEUC's concerns have been addressed by the European Parliament in its resolution of March 2011 and the European Commission in the proposed legislation. For example to allow the adoption of product-specific implementing measures for certain product categories which present a risk to consumers.

This package will feature highly on the agenda of the Council of the EU and European Parliament during the Lithuanian and Greek Presidencies as a first reading agreement is aimed for by Spring 2014. We hope the Lithuanian Presidency will do its utmost to ensure consumer protection will be the top priority during the Council negotiations.

Our demands

- BEUC calls for the precautionary principle to be made a cornerstone of both the regulation on consumer product safety and market surveillance. Policy makers need to be able to act on a preventive basis in case of danger or the absence of final scientific proof. We insist that for the management of risk the final decision on an ‘acceptable’ level of risk must remain a political responsibility. This principle should be clearly re-introduced in the regulation.
- Equipment on which consumers ride or travel e.g. an amusement park should be included in the scope of the CPSR.
- Product-specific legislation which addresses environmental issues such as the EU Ecolabel Regulation, the EU Ecodesign Directive and the EU Energy Label Directive should be included in the scope of the MSR.
- Business secrets cannot prevail over the need to inform consumers without delay of serious risk. Market surveillance authorities need to adequately warn consumers without delay and publish all relevant information needed to identify a product and the risk involved.
- Penalties need to be proportionate to the infringement, not the size of the company.
- An EU-funded, accident statistics system and a European complaints handling and reporting point should be set up.

Documents

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



Nanotechnologies and nanomaterials

Background

Nanotechnologies are newly emerging technologies and nanomaterials are materials with novel properties due to the tiny size of such particles. Some uses could benefit consumers' health and safety, increase energy efficiency, make medical treatment more effective and improve manufacturing. However, BEUC is concerned about the potential adverse effects of nanomaterials on human health and the environment, in both the short and long term.

In this context, we are alarmed by the increasing use of nanomaterials in consumer products sold on the European market without prior risk assessment. We are particularly concerned about products with which consumers come in direct contact with on a daily basis (e.g. cosmetics and food products).

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

In October 2012, the European Commission published the second regulatory review on nanomaterials, accompanied by a staff working document which identifies the uses and types of nanomaterials. Our demands for more market transparency and for a mandatory reporting scheme on the use of nanomaterials in consumer products have not yet been taken on board. Moreover, despite admitting that REACH currently inadequately covers nanomaterials the Commission does not foresee any change in this regulation.

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

Our demands

- A review and, if necessary, adaptation of all relevant legislation (REACH and product safety legislation) should be undertaken in order to adequately address the potential risks of nanotechnologies.
- The development of adequate safety and risk assessment methodologies should be promoted, taking into account all characteristics of nanomaterials.
- Safety assessment and approval should be imposed for all nanomaterials used in consumer products or in products that can have important impacts on the environment. The 'no data, no market' principle should prevail.
- Manufacturers should label consumer products containing nanomaterials, as in the new regulation for cosmetic products. An inventory of products on the EU market containing nanomaterials should be established.
- Misleading claims are currently being made on products marketed as containing nanomaterials, resulting in a need for regulation.
- Funding and research should be prioritised towards the environmental, human health and safety aspects of nanomaterials.
- A public debate on nanotechnologies needs to be launched across the EU.

Documents

- 'Small is beautiful, but is it safe?' – ANEC/BEUC position paper ([X/2009/043](#))
- Very small and everywhere - A technological magic silver bullet or a serious safety risk? – BEUC brochure ([X/2012/44](#))



Chemicals which disturb the hormonal system

Background

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

Endocrine disrupters (EDC) are associated with common diseases such as obesity, diabetes, cardiovascular diseases, cancer and infertility.

Exposure to multiple chemicals in everyday life is of particular concern, as the EU regulatory framework largely neglects this 'chemical cocktail effect' and assesses safety on a chemical-by-chemical approach.

The issue has been recognised at EU level. In spring 2012, the Environment Council called for hormone disrupting chemicals to be made a priority in the 7th Environment Action Programme. In May 2012, the Commission published a Communication on the combination effects of chemicals. In 2011, the Commission started a review process of its EU strategy on endocrine disrupters and the European Parliament adopted an own initiative report on protecting public health from endocrine disrupters in March 2013.

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

Our demands

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

Documents

- ‘Top 10 Actions MEPs can undertake to lower the exposure of consumers and of the environment to Endocrine Disrupting Chemicals’ ([X/2011/040](#))
- Endocrine Disrupting Chemicals Factsheet ([X/2011/039](#))
- ‘BPA should be phased out from consumer products’ – BEUC Position paper ([X/2011/038](#))

IV

CO₂ emission targets for cars

Background

In July 2012, the European Commission proposed a mandatory CO₂ emission limit of 95 grams per kilometre (g CO₂/km) for new cars to be achieved by the year 2020. Most cars run on oil-based fuel and oil is an increasingly scarce and expensive resource. This obvious equation offers a bleak consequence for consumers: driving a car will become increasingly unaffordable.

With expenditure on transport playing an important part in private households' budgets, this is a serious concern to many consumers. A 2011 survey by our UK member Which? found that 91% of consumers were worried about fuel prices and a German 2012 survey indicated that 94% of German consumers value fuel consumption as a very important or important factor when buying a car. Not only will driving a car become more expensive, but consumers are more dependent on this mode of travel than ever before.

The emission target of 95g CO₂/km will reduce fuel costs and lead to fuel savings – two big concerns of EU consumers. Therefore tighter CO₂ emission targets for passenger vehicles will not only reduce the impact on the environment, but also help consumers achieve significant cost savings – a win-win situation for consumers and the environment.

We expect that Ireland, the holder of the EU presidency from January-June 2013 will be able to seek a decision on the proposal before the end of June 2013. In case no agreement can be found at first reading, we call on the Lithuanian Presidency to ensure a swift adoption process within its presidency and to prevent the proposal from being watered down during the legislative procedure.

Our demands

- The gap between fuel consumption measured under official EU tests and fuel consumption experienced by consumers under real-world conditions needs to be closed. Therefore we support the introduction of a better, harmonised testing standard – The World Light Duty Test Procedures (WLTP) – by 2016 at the latest, provided that it genuinely reflects real world conditions and does not allow for loopholes. As it will take some time for the new

test to be introduced we also support the review of the test procedures of the current testing standard (NEDC) as an immediate action or by 2014 at the latest. In addition, we feel there is a need to significantly strengthen both compliance testing and sanctions by authorities in case of non-compliance.

- ‘Super credits’ allowing car manufacturers to count low emission cars (e.g. electric cars) as more than one vehicle in their overall fleet should be abolished. They discourage manufacturers from achieving significant improvements in fuel efficiency for their conventionally fuelled car fleet.
- To protect consumers from further increases in fuel prices and ensure manufacturers have sufficient preparatory time, we see worthwhile value in introducing an indicative 2025 target of 70g CO₂/km in the revision of the regulation subject to confirmation of its feasibility on the basis of an updated impact assessment at a later stage. The Environment Committee voted in favour of a target with an indicative range of 68g to 78 CO₂/km as average emissions for the new car fleet which is a welcome step in the right direction.
- We suggest using footprints (calculation: wheelbase x track width) as the parameter for determining emission targets in order to encourage manufacturers to invest in weight reductions. Using weight as the parameter, as suggested by the current proposal, might have the unintended negative consequence that manufacturers increase the weight of cars in order to improve compliance. By making use of footprints as the parameter for determining the limit values, the necessary CO₂ reductions can be achieved in a more economical way and the costs passed on to car buyers are likely to be lower. Therefore we support a full switch to the footprint-based system from 2016 onwards, but also see value in the compromise of providing industry with the option of making use of either a mass or footprint-based metric from 2020 onwards and fully change to a footprint utility parameter for the 2025 target.

Documents

- ‘Good for the environment and good for your pocket: Consumer benefits of CO₂ emissions targets for passenger vehicles’ – BEUC position paper ([X/2012/047](#))
- CO₂ emissions targets for passenger cars for 2025: delivering value to consumers – BEUC position paper ([X/2013/019](#))
- BEUC factsheet: CO₂ emissions of cars ([X/2012/074](#))

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BEUC The European
Consumer
Organisation

The Consumer Voice in Europe

- AT - Verein für Konsumenteninformation - VKI
- AT - Arbeiterkammer - AK
- BE - Test-Achats/Test-Aankoop
- BG - Bulgarian National Association Active Consumers - BNAAC
- CH - Fédération Romande des Consommateurs - FRC
- CY - Cyprus Consumers' Association
- CZ - Czech Association of Consumers TEST
- DE - Verbraucherzentrale Bundesverband - vzbv
- DE - Stiftung Warentest
- DK - Forbrugerrådet - FR
- EE - Estonian Consumers Union - ETL
- EL - Association for the Quality of Life - E.K.PI.ZO
- EL - 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



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The Consumer Voice in Europe

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