



The Consumer Voice in Europe

European Commission's Voluntary Model for Consumer Information of Digital Content and the Guidelines on the Implementation of the Consumer Rights Directive

BEUC's preliminary comments

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Ref.: BEUC-X-2014-006 - 07/02/2014

1. Model for Consumer Information of Digital Content

General comments

- BEUC welcomes the European Commission's initiative to make contractual information more accessible to consumers with the use of visual elements, like those presented at the Workshop held on 11 November 2013 on the Consumer Rights Directive.
- We firmly believe that graphical support /icons can be good information tools, however, they need to be user tested. We hope that the Commission will still take the time to submit the model to such an exercise.
- The legal consequences of the use of this model should be clarified. Can a trader who uses this model for the mandatory information requirements be submitted for example to an injunction procedure because of unlawful provision of information?
- Our contribution to the workshop in form of a PPP is attached in annex; we ask you to consider it as an integral part of these comments.

Specific comments

- It would be useful to also include the information about the right of withdrawal in case of a purchase of on-line digital content, in particular as regards the loss of this right under the conditions stipulated in the CRD.
- Regarding the issue of what are "optional costs", it would be necessary to await rulings of the CJEU as regards the implementation of the provision on the so-called "button solution". Our German member informed us in this context about a case which an e-commerce company lost against the Bavarian consumer service. The company had not indicated the costs that were to be paid once the gratuitous testing period of a specific category of membership elapsed. This question is also particularly relevant in so-called "in-app" purchases, despite the fact that in such instances, no further costs would occur without further action from the consumer side.
- Regarding the information on the **functionality aspects** of the digital content, we very much welcome the broad concept that you use for "functionality" including e.g. language, duration, file type, size, resolution, access type, access conditions, updates, tracking, internet connection, geographical restriction, digital rights management, additional purchases needed etc. This concept is not clear in the text of the directive and should be inserted also into the guidelines.
- Regarding the information on digital rights management, we would like to underline the potential problems with this information item resulting from the still not harmonized issue of exemptions to copyright in favor of the consumer. Particularly, the exemption of private copying is of high relevance when it comes to the use of digital content and the possibility to make back-up copies, or copies for private use with the aim, for example, of reproducing it on another device. As known from several studies, restrictions to the use of digital content are often contractually (through the so-called 'EULAs')

and/or technologically (via technical protection measures) limited though not necessarily legally justified. The mere fact that consumers have to be informed about what they can or cannot do does not imply that they enjoy the benefits that they are entitled to under copyright legislation given the non-mandatory nature at EU level as well as in almost all Member States. Furthermore, the information to be displayed in the model will most probably vary considerably according to the national copyright legislation and the supplier's contractual conditions.

- With a view to a broader approach to this issue, we would ask you not to use systematically the wording "no copies, no reproduction", (which is used on all types of digital content in the PPP in the model templates) but rather to include other aspects of DRMs such as "up to xy reproductions" or "playability of xy hours" etc.
- In relation to DRM it should also be clarified whether the DRM tool uses data tracking functions (see also in the respective text of the CRD).
- What is missing is the information about the I-net connection requirements in the case of a download or streaming (for example: what speed is required for the I-net connection? Does the consumer receive a copy or is it only streaming?).
- On the information about **interoperability with hardware and software**, it would be important to clarify to what extent the supplier of digital content must inform consumers about any lack of interoperability. For example, if a consumer purchases an e-book reader, the pre-contractual information might not indicate that he or she would have to purchase all e-books from the same supplier since his or her device would not read other formats. This is also not clear from the text of the Directive and should be part of the guidance.
- Additionally, BEUC believes that **digital content supplied in exchange of a non-monetary payment** should also be included in this information scheme. Consumers when accessing this type of digital content usually give away personal data or accept being exposed to advertising. Thus, it would be useful to make the information model available also to providers supplying content not provided in exchange of a monetary payment.
- Finally, this proposal, despite the fact of being limited to digital content products, should be considered also for all contracts concluded over the internet, with the appropriate adaptations.

2. Guidelines on the Implementation of the Consumer Rights Directive

- BEUC considers that the guidelines will be a very useful tool to ensure a correct implementation of the Directive. As the end of the directive's transposition period has already elapsed it would be very important to reinforce efforts to co-ordinate with Member States in order to achieve the most coherent approach on the issues of the Directive, which would require clarification to avoid legal uncertainties and possible lacunas. We would very much welcome a second round of consultation on the draft TEXT (and not only on a power point presentation) of the guidelines.
- The CRD obligation to inform consumers about the main characteristics of the product raises questions. From the text of the Directive this information would not apply to digital content but is limited to 'goods' and 'services' (Article 5(1)(a) and 6(1)(a)).
- Likewise, it seems that the traders' obligation to pre-contractually inform on the total price is inapplicable to a digital product Article 5(1)(c) and 6(1) e).
- Another example includes the obligation of article 8(2) to place an "activating button", in case the order implies an obligation to pay. The text of the directive is not clear if this is a mandatory requirement or not (the English version of the article uses the conjunction "if", which gives the idea of being an 'optional' features). According to the feedback received from our members, so far only the French and Luxemburgish law proposals have regulated this obligation as a mandatory requirement.
- It would also be important to clarify, when business are submitted only to the limited information requirements.
- Additional guidance on the definition of the scope would also be needed, in particular regarding the question of the application to non-monetary contracts.
- BEUC supports the comments made by our Luxembourg member ULC - which were already sent to the Commission - as regards the need for guidance on the relationship between the e-commerce directive and the CRD when it comes to the process of making an offer/placing an order.
- Additional information should be made available (which could be done in the guidelines or separately) about the sanctions established by the Member States in the national implementing laws for breaches of the law, in particular as regards pre-contractual information requirements.

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