

The Consumer Voice in Europe

EUROPEAN ELECTRONIC COMMUNICATIONS CODE

BEUC key demands for trilogue negotiations on consumer protection



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Why it matters to consumers

In an ever more interconnected world, consumers spend increasing amounts of time and money online, connecting with others and leading digital lives. Access to affordable, high-quality internet connections and communication technologies have become a prerequisite for all consumers to be able to participate in the digital society.

Key demands for trilogue negotiations on the European Electronic Communications Code – consumer protection¹

The European Parliament and the Council have entered negotiations on the European Commission's proposal on a European Electronic Communications Code (EECC). BEUC would like to provide the European legislator with a set of recommendations to ensure a positive outcome for consumers.

Adopt Article 92a as proposed by the European Parliament's ITRE Report on intra-EU international calls and messages

Electronic Communication Service (ECS) definition:

1. Provide a distinction between the three types of service (internet access service, interpersonal communication service, conveyance of signal).
2. Maintain the third category of services (conveyance of signals) within the definition of ECS to make sure all the necessary protective provisions can apply to them too.
3. Delete "*and where the provider of the service has substantial control over the network used for enabling the communication;*" from the definition of number-based interpersonal communications services (NBICS) as proposed by the European Parliament.
4. All communication services, whether they are the main service or ancillary in the context of a broader service, should be bound by the principles of confidentiality (in the e-Privacy Regulation) and security of communications (Article 40 in EECC).

Regulation of Over-The-Top (OTT) players:

1. Ensure that number-independent interpersonal communication services (NIICS) fall within the scope of the proposed Digital Content Directive.
2. e-Privacy Regulation covers all types of ECS, including ancillary services.
3. Adopt the European Parliament's proposed Article 95, paragraph 1, subparagraph c, indent ic.
4. Maintain Recital 18 on counter-performance of contracts beyond monetary payments.

Universal Service:

1. Article 79 should be based on the Parliament's paragraphs 1 and 2: the internet access service (IAS) should be defined through minimum levels of quality and bandwidth that such services must deliver to reflect the average bandwidth available to the majority of the population.
2. Member States must continue having flexibility about the financing of the Universal Service regime, including through a sector fund.

¹ Our UK member Which? is not a signatory to this paper.

Level of harmonisation for Title III: end-user rights

1. Modify Article 94 to make the EECC Directive minimum harmonisation.
2. If the Directive is not switched to minimum harmonization by default, the following **exceptions to the full harmonisation regime must be adopted**. These exceptions would allow Member States to go maintain or adopt consumer protection provisions beyond what is in the EECC:
 - a. Article 95, paragraphs 1, 2 and 6 (European Parliament version)
 - b. Article 96, paragraph 1 (European Parliament version)
 - c. Article 98, paragraph 1 (Council version)
 - d. Article 98, paragraph 4: general opening clause and opening clause on calculation method (European Parliament version).
 - e. Article 99: requires an opening clause for Member States to be able to decide on additional switching principles where necessary.
 - f. Article 100: important to maintain the general opening clause (European Parliament version).

Article 98 – contract duration and termination:

1. Delete “unless proposed changes are exclusively to the benefit of the end-user” in paragraph 3.
2. Based on the European Parliament version, adopt Article 98, paragraph 4 that enacts the principles indicated below.
3. Adopt paragraph 3a as proposed by the European Parliament.

Article 99 - switching:

1. Expand the scope of paragraph 1 to ensure switching provisions apply to all ECS except number-independent ICS.
2. Adopt paragraph 2a as proposed by the European Parliament so consumers can keep their number for 6 months between two contracts.
3. Adopt paragraph 5a as proposed by the European Parliament so switching and porting takes place respecting consumers’ best interests.
4. Adopt paragraphs 6a, 6b and 6c as proposed by the European Parliament to protect consumers from abuses, delays and failures when switching and porting numbers.
5. Maintain the obligation on transferring providers to maintain the service in case the switching or porting fails in Article 99, paragraph 5.

Article 100 - bundles:

1. Adopt paragraph 1 as proposed by the European Parliament to make sure that the entire Article 99 – not just paragraph 1 – applies to bundled contracts.
2. Adopt paragraphs 2a and 2c as proposed by the European Parliament to make sure consumers can cancel parts of a bundled contract without penalty.

Article 25 – Alternative Dispute Resolution:

1. Adopt paragraph 1 as proposed by the European Parliament.

Article 40 - Security of Communications:

1. Adopt paragraphs 1, 1a and 3 as proposed by the European Parliament.

Article 55 – Wi-Fi Networks:

1. Adopt paragraph 1a as proposed by the European Parliament
2. Modify paragraph 2 to apply IMCO Amendments 115, 116, and 117.

1. Introduction

Telecom markets remain an important sector of concern for all European consumers, as general satisfaction with telecom services remains very low. For example, the European Commission's latest Consumer Market Scoreboard² found that from all 29 surveyed markets, telecom markets (fix and mobile telephony, internet access and digital TV) are the worst performing markets in Europe with the highest share of consumers that have experienced problems and have suffered detriment.

The European Electronic Communications Code (EECC)³ is a good opportunity to ensure consumers' interests in the sector are protected and promoted. In a time when consumers are supposed to embrace the digital revolution and communicate with each other using different types of digital services, and considering the complex nature of modern digital communications markets and services, it is essential to maintain a specific set of rules that guarantee a high-level of protection for all consumers and respond to their concrete needs. Horizontal consumer protection laws play an important role but will not be in itself be sufficient to address those needs.

2. An upgraded consumer rights framework for the digital communications sector

The EU's updated rules for digital communications should regulate any type of service that enables real-time communications over digital networks, whether they are transmitted over the internet or not. Not all types of communication services require the same regulatory measures because the problems that need to be addressed are not always the same. The new legislative framework should be sufficiently detailed to address different types of communication services differently, whether they are provided as a managed service (Voice over IP) or over the internet (so called Over-The-Top or OTT services).

Importantly, the proposed European Electronic Communications Code is not the only necessary instrument to ensure a comprehensive, balanced and future-proof framework to protect consumers of digital communications services. As we highlight below, the Digital Content Directive (DCD)⁴ and the proposed Regulation on e-Privacy⁵ must complement the EECC when regulating basic rights for users of online communication apps.

2.1. Getting the definition of electronic communications services right

The proposed definition of *electronic communications services* (ECS) is important because it will determine the type of communication service that is covered and which provisions in the EECC apply to each type of communication service. Importantly, other instruments such as the DCD and the e-Privacy Regulation currently under co-legislative procedure might make their scope dependant on the definition of ECS that the EECC establishes.

BEUC demands regarding the definition of ECS:

1. Maintain a distinction between the three types of service (internet access service, interpersonal communication service, conveyance of signal) to provide the necessary granularity needed for the legal framework.

² 12th edition of Consumer Markets Scoreboard, European Commission 2016

³ Proposal for a Directive establishing the European Electronic Communications Code -COM/2016/0590 final 2 - http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=comnat:COM_2016_0590_FIN

⁴ Proposal for a Directive on Contracts for the supply of digital content, COM(2015) 634 final

⁵ Proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications, COM(2017) 10 final (e-Privacy Regulation)

2. Maintain the third category of services (conveyance of signals) within the definition of ECS to make sure all the necessary protective provisions can apply to them too. These services are essential in the context of machine-to-machine communications as the Internet of Things develops and important consumer protection provisions (eg: confidentiality and security of communications) must apply to them too. Additionally, this category also includes Digital TV services which are one of the most popular telecom services and shall therefore keep key consumer protection provisions applicable to them.
3. Delete *“and where the provider of the service has substantial control over the network used for enabling the communication;”* from the definition of number-based interpersonal communications services (NBICS) as proposed by the European Parliament. This would unacceptably restrict the scope of application of key consumer protection provisions to services provided only by network operators, leaving out a considerable part of the telecoms market as well as online services that the framework deals as equivalent to telecom services.
4. All communication services, whether they are the main service or ancillary in the context of a broader service, should be bound by the principles of confidentiality (in the e-Privacy Regulation) and security of communications (Article 40 EEC).

Regarding the proposed exception for communication services that are merely a “minor ancillary feature that is intrinsically linked to another service”, the proposed Directive includes a Recital (Recital 17) that aims to clarify what should be considered and what shouldn’t. Inserting such an exception can pave the way to numerous interpretation problems. For example, as BEREC recognizes⁶, it is unclear why social networks would be entirely excluded from the scope of communication services when they can often be used as an interpersonal means of communication between a limited set of persons, just as other digital communications applications.

2.2. Achieving a consumer friendly regulation of online apps (OTTs)

The proposed EEC Directive excludes number-independent ICS such as WhatsApp and Skype from most of its provisions, and importantly from the consumer rights chapter where important provisions on contract termination, switching and transparency are regulated. With exceptions, these provisions remain mainly designed for the more traditional telecommunication services.

One notable exception is the European Parliament’s proposal in Article 95, paragraph 1, subparagraph c, indent ic, which mandates all providers of digital communications to specify in their contracts:

(ic) without prejudice to Article 13 of the Regulation 2016/679, information on what personal data is required before the performance of the service or collected in the context of the provision of the service,

This complements the General Data Protection Regulation and adds a transparency obligation for providers of OTT services to disclose to consumers what personal data is collected and processed in exchange for the service and for the service to function properly.

Beyond this additional transparency element in Article 95, it is crucial that number-independent ICS fall within the scope of the Digital Content Directive currently under

⁶ BEREC high-level Opinion on the European Commission’s proposals for a review of the electronic communications Framework, BoR (16) 213

negotiation, as it is the adequate instrument to address many of the consumer protection issues linked to this type of service. In existing EU law, there are no European-wide contractual rights for consumers in cases where online communication services are of poor quality or malfunction. By including OTTs in the scope of the proposed DCD, consumers will enjoy the necessary conformity rights specific to the online world.

This demand is also consistent with the fact that it would be very difficult for consumers to distinguish between OTTs and other digital content and services when it comes to consumer protection: why would consumers have rights when it comes to over-the-top video-on-demand services like Netflix but not for over-the-top communication services such as Skype or WhatsApp? In both cases consumers provide a counter-performance, be it data or money. A different treatment would not be justified and therefore the DCD needs to be amended by expressly including communication OTTs into its scope.

Even if OTT services are often said to be “free”, that is very rarely the case. OTT services normally operate over a contract where the counter-performance is based on the monetisation of the consumers’ data. In these cases, a contractual relationship exists where the OTT service is delivered against types of counter-performance which need to be recognized in horizontal EU consumer law as well as in sector-specific provisions. Recital 18 of the proposed Directive collects the most widely used business models and must be maintained.

BEUC demands regarding the regulation of OTTs:

1. Ensure that number-independent ICS such as WhatsApp fall within the scope of the proposed DCD⁷.
2. Make sure that the proposed e-Privacy Regulation covers all types of ECS⁸, including social networks as well as services where the communication service is considered an ancillary feature.
3. Adopt the European Parliament’s proposal in Article 95, paragraph 1, subparagraph c, indentic to ensure consumers get information from OTT providers about the data that is being collected to provide the service and the one that is strictly necessary for the service to function adequately.
4. Recital 18 on counter-performance of contracts beyond monetary payments is very important and must be maintained.

3. Guaranteeing a high level of protection for all consumers of ECS

The last legislative review of consumer rights in the telecommunications sector was finalised in 2008. Since then, digital communications services have greatly evolved, and so have consumer habits, needs and preferences. Today’s EU rules are therefore in need

⁷ This could be done by clarifying in article 3(5) point b of the proposed Digital Content Directive that number-independent interpersonal communication services are covered by the rules of the Directive, despite the general exclusion of electronic communication services.

⁸ The scope of the e-Privacy Regulation should cover all electronic communication services namely for the applicability of the principle of confidentiality of communications. Certain provisions should also apply to other types of services. For further details on BEUC’s positions on the proposed e-Privacy Regulation, please see our separate position paper here: http://www.beuc.eu/publications/beuc-x-2017-059_proposal_for_a_regulation_on_privacy_and_electronic_communications_e-privacy.pdf

of a substantial review to make sure they reflect the reality in the market and provide a protective framework that will stand the test of time.

3.1. Articles 79 – 86: The Universal Service Obligation regime is still necessary

The Universal Service Obligations (USO) regime is necessary to make sure all consumers, especially those in vulnerable situations, are not left behind and can reap the benefits of the digital economy. The USO regime should ensure that access to basic broadband is available for the entire population, and at affordable levels for the most economically disadvantaged part of the population.

The definition of “functional internet access service” based on a list of online services it should be able to deliver (Annex V) is likely to be problematic. Firstly, it is unclear what “functional” means in this context as it is not defined elsewhere in the Directive. Secondly, categorising internet services (many of which are hybrids between two or more categories) with generic wording will not provide consumers the necessary legal certainty as to the minimum set of services they should be able to access with their internet connection. Thirdly, it must be clear for providers of internet access services that the services provided through the USO regime must comply with all related net neutrality obligations under Regulation 2120/2015.

Instead, the method to define “functional internet access service” should be to make reference to a minimum set of Quality of Service characteristics, including minimum bandwidth, which reflects the average available bandwidth to the majority of the population in the country.

This minimum set of QoS characteristics could be defined at national level and then updated year on year as the average use of the population evolves too. This method of defining “functional internet access service” would ensure that Member States can define the adequate level of QoS and bandwidth that is consistent with the average use of its population, thus ensuring that all consumers have access to what is standard basic broadband in that Member State. In addition, having that QoS and bandwidth requirement evolve ensures that consumers on USO service will not be left behind as the average use of the Member State evolves.

Member States should be allowed to decide which financing mechanism they prefer to finance the USO regime, including a sector fund. We regret that the only financing option for the USO regime proposed by the Directive is charging the cost of the USO on public funds. This could be problematic because all citizens would pay for the USO regime, while the most economically disadvantaged consumers would possibly not even profit for the services.

BEUC demands regarding Universal Service:

1. The co-legislators should base themselves on Article 79, paragraphs 1 and 2 from the European Parliament report. The USO regime should provide available and affordable “internet access services”. It shall then be for Member States to decide how to define the minimum levels of quality and bandwidth that such services must deliver to reflect the average bandwidth available to the majority of the population. Such minimum levels shall be adapted to the national average use at least on a yearly basis.
2. Member States must continue having flexibility about the financing of the USO regime. Article 85 must be amended to allow Member States to decide whether to finance their USO regimes through the public budget or through a sector fund.

3.2. Article 94: Harmonisation of consumer protection rules – minimum harmonisation needed

Full harmonisation of important consumer rights related to transparency of information, contract termination, switching, etc is problematic for consumers in telecom markets for several reasons:

1. Telecommunications markets remain highly national in nature and therefore characterised by country-specific structural market problems that cannot be solved by one-size-fits-all solutions.
2. Full harmonisation has a negative impact on consumers' rights in those Member States where national legislation provides for more protective measures than those guaranteed by EU law. These additional protective measures would have to be removed if the proposed Directive is not adapted adequately.
3. Full harmonisation of consumer protection rules would hinder the ability of national governments and regulators to react quickly to problematic developments in their markets. Full harmonisation prevents the design of tailored consumer rights within each Member State when necessary.
4. Full harmonisation of consumer protection leads to the *fossilisation* of rights as it takes years if not decades before the legal framework can be modified again. In a highly dynamic sector such as the digital communications sector, such inflexibility could be very detrimental for consumers.

The main argument in favour of full harmonisation, i.e: help build a Single Market for telecommunications by reducing fragmentation for businesses, fails to observe consumers' most important needs. In addition, there is a presumption that the existing fragmentation due to additional protections in some Member States generates significant additional compliance costs for service providers. This presumption has not been adequately substantiated to justify the need to fully harmonise consumer rights in the sector.

The existent minimum harmonisation approach has benefited consumers

Specific protective measures in national legislation exist precisely because the current EU legal framework follows a minimum harmonisation approach and has therefore allowed Member States to respond to national specificities as markets and consumer needs have evolved.

In response to market failures and unfair practices towards consumers, Member States have established numerous different protective measures which have proven to effectively address consumer problems and have a beneficial impact on the market, making it more transparent and fair.

Such highly successful national specific measures include:

- In France, Belgium and Austria, consumer-friendly regimes to allow early contract termination without penalties.
- In Austria, default consumption limits to protect consumers from bill shocks.
- In Austria, in justified cases such as when operators unilaterally change terms and conditions, the right to terminate the contract without penalties or compensations for subsidised equipment.
- In Austria, the power to NRAs to review the terms and conditions proposed by telecom providers before they can be put to the market.
- In Germany, specific transparency measures like obliging service providers to always inform consumers about the termination date on the monthly bill.

- In Germany, information sheets that providers are obliged to provide to consumers.
- In Germany, if the switch fails, the transferring provider has the obligation to take up the service and consumers shall only pay 50% of the price for the service

The proposed EECC Directive would preclude many of these specific rights and measures which means that **Member States would have to abolish many essential consumer rights**, which have delivered clear benefits to consumers and are necessary for a well-functioning market. **This cannot be an option for the EU co-legislators.**

Minimum harmonisation is still the most future proof solution

Against this background and taking into account this fast changing and technically complex sector, the best approach for consumers would be to allow Member States to continue building on top of the common EU rules to cater national specificities and react to developments in the future. This is also echoed by BEREC, which believes that minimum harmonisation is the right approach to allow Member States and NRAs to “respond to technological change and changing consumer needs and priorities”.⁹

If no default minimum rule, then “mixed” targeted harmonisation at highest level

If the EECC Directive’s Title III on consumer rights is to remain full harmonisation by default, then it is imperative to adopt a mixed targeted harmonisation approach where the necessary opening clauses are inserted to ensure that additional protective measures enacted by Member States are not affected. This is the only way for consumers not to risk losing existing rights and allow Member States to react to developments in the market on key rights.

BEUC demands regarding the level of harmonisation:

3. Modify Article 94 to make the EECC Directive minimum harmonisation.
4. If the Directive is not switched to minimum harmonization by default, the following opening clauses must be adopted:
 - a. Article 95, paragraphs 1, 2 and 6 (European Parliament version)
 - b. Article 96, paragraph 1 (European Parliament version)
 - c. Article 98, paragraph 1 (Council version)
 - d. Article 98, paragraph 4: general opening clause and opening clause on calculation method (European Parliament version).
 - e. Article 99: requires an opening clause for Member States to be able to decide on additional switching principles where necessary.
 - f. Article 100: important to maintain the general opening clause (European Parliament version).

3.3. Article 98: Fair and easy conditions for contract termination

For consumers to reap the benefits of competition in digital communications markets, it is essential that contracts can be easily terminated without burdensome procedures nor unjustified costs.

Article 98, paragraph 1 – duration of contracts

Regarding the **duration of contracts**, the proposed EECC Directive removes the existing obligation for providers to offer at least one 12-months contract. In some countries, there is no minimum duration period and consumers can switch after one day. In countries such

⁹ BEREC high-level Opinion on the European Commission’s proposals for a review of the electronic communications Framework, BoR (16) 213

as Denmark, 6-month contracts are already the norm today, and a 2015 study¹⁰ shows that 68% of Danish consumers that switched got a better deal than they had before.

Member States with shorter contract duration periods and/or more flexible contract termination regimes tend to have more fluid markets with higher switching rates and decreasing prices. This legislative reform needs to ensure the situation is improved, not worsened, in every single Member State.

Limits on the duration of contracts have been a successful way to enable consumers to switch providers when they are dissatisfied, a trend which itself has helped reinforce competition in the market as providers try to win consumers away from their competitors. It would be a significant step backwards if service providers started to lock in their customers into contracts to deploy physical infrastructure that go beyond the maximum 24 months' period.

Article 98, paragraph 3 – unilateral changes to the terms and conditions

When service providers unilaterally change the terms and conditions of a contract, consumers should always automatically get the right to terminate the contract free of charge. The inclusion of the exception “unless the proposed changes are exclusively to the benefit of the end-user” in Article 98, paragraph 3 is problematic because it should not be the service provider nor any other party who should decide what is to consumers' benefit. This exception should therefore be deleted.

Some countries such as Austria have adopted additional protective measures whereby in cases like unilateral changes of terms and conditions, service providers cannot demand any additional payments, including the service fee until the end of the contractual period and as well compensation for subsidised equipment.

Article 98, paragraph 4 – early termination of the contract

To discourage consumers from switching providers before the contract ends, providers often insert **clauses that penalise the termination of a contract**. This practice acts as an important barrier to switching and must be eliminated from the market.

Only if the service provider includes subsidised smartphones or other equipment as part of the offer, it could be justifiable for the provider to give consumers a disincentive to switch in the form of a termination penalty. If the contract only includes the provision of the ECS and no subsidised equipment is attached, no termination penalties should be allowed.

Numerous countries have already mechanisms whereby consumers can terminate their contracts early without facing any particular penalties, following different types of termination regimes aimed at making it easy for consumers to switch if they are dissatisfied or have found a better offer.

Article 98, paragraph 4 should be maintained as in the European Parliament's report with an important modification: “at the moment of the contract conclusion” should be changed to “at the moment of contract termination”. It would not make any sense if consumers had to pay the “remaining pro rata temporis value” of the subsidised equipment at the moment when the contract is concluded. Rather they should pay the remaining value of the subsidised equipment at the moment the contract is terminated.

¹⁰ The Danish Competition Authority (KFST), 2015 - <http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2015/20150704%20Forbrugeradfaerd%20paa%2013%20markeder.pdf>

Last but not least, it must be clearly specified that an automatic renewal (paragraph 2) or a unilateral change of terms and conditions (paragraph 3) does not affect consumers' termination rights in paragraph 4.

Important additional paragraph 3a missing: non-conformity of performance

In cases where there are discrepancies between the actual performance of an ECS and the performance to which the operator is bound by the contract, this should amount to non-conformity of performance and entitle consumers to exercise their legal remedies. This protective measure has already been implemented into EU law for internet access services¹¹ but it should apply to all ECS¹². As part of such remedies, it should always be possible to terminate the contract free of charge, including any due compensations for subsidised equipment. We therefore call on co-legislators to maintain the European Parliament's paragraph 3a.

BEUC demands regarding Article 98 - contract duration and termination:

1. Delete "unless proposed changes are exclusively to the benefit of the end-user" in paragraph 3.
2. Based on the European Parliament version, adopt Article 98, paragraph 4 that enacts the principles indicated above.
3. Adopt paragraph 3a as proposed by the European Parliament.

3.4. Article 99: Easy switching procedures

The procedure to switch between different providers must be as simple and straight forward as possible for all telecom services: fixed and mobile telephony, Digital TV, and internet access.

An important principle to ensure this is the winning-provider led switch principle. In many EU countries, it is already the case that when a consumer decides to change provider, he or she will only have to deal with the new provider, and does not have to deal with the provider he or she is leaving behind. This principle should become the norm in all EU countries.

The rights of consumers during the switching process must also be guaranteed at all times. Article 99 of the proposed EEC Directive contains important safeguard mechanisms to ensure that. For example, a new mechanism that is important to maintain is the obligation for the transferring provider (the one the consumer is switching away from) to reactivate the service if the switch fails. In some countries such as Germany, the reactivated service has to be sold at a 50% discount. Rules that go further than the EU proposal such as this one must continue to be possible.

It is unacceptable that paragraph 1 of Article 99 would only apply to internet access service and not to other ECS. This would imply that consumers of telephony and Digital TV services

¹¹ See Article 4, paragraph 4 of Regulation 2120/2015 on open internet access.

¹² During the work on the Regulation to establish a Telecom Single Market, both the European Commission proposed (Article 28, subparagraph 5 of original TSM proposal - <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013PC0627&rid=2>) and the European Parliament accepted (article 36, paragraph 11 of EP report - <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0281>) a provision to ensure consumers are protected in cases of non-conformity of performance. There is no reason why these protective measures are no longer necessary for ECS other than internet access services and must therefore be inserted into the EEC Directive.

they have today under the current framework. This should therefore be amended to make sure such paragraph applies to all ECS except for number-independent ICS.

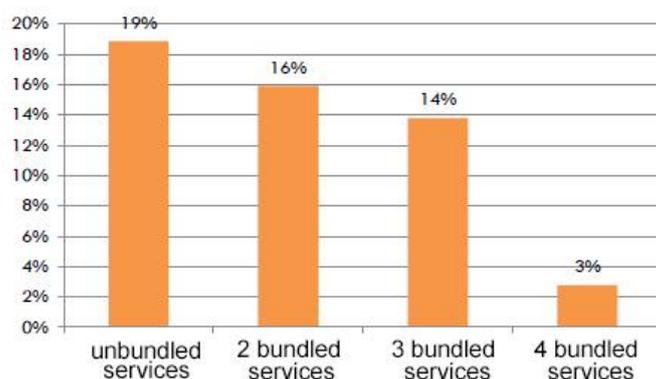
BEUC demands for Article 99 - switching:

1. Expand the scope of paragraph 1 to ensure switching provisions apply to all ECS except number-independent ICS.
2. Adopt paragraph 2a as proposed by the European Parliament so consumers can keep their number for 6 months between two contracts.
3. Adopt paragraph 5a as proposed by the European Parliament so switching and porting takes place respecting consumers' best interests.
4. Adopt paragraphs 6a, 6b and 6c as proposed by the European Parliament to protect consumers from abuses, delays and failures when switching and porting numbers.
5. Maintain the obligation on transferring providers to maintain the service in case the switching or porting fails in Article 99, paragraph 5.

3.5. Article 100: Rules on bundled contracts are of crucial importance

The practice of bundled contracts is commonplace in many EU markets. Providers of ECS bundle 3 or even more services (for example: mobile, fix and Digital TV) together into a single contract. This practice has brought benefits to consumers mainly in terms of overall price because the price of bundle is usually cheaper than the sum of the price of the services bought individually.

Yet bundles often be used by providers of ECS to erect unjustified barriers to switching or even to lock-in consumers into their contracts. The graph below from the Belgian regulator BIPT shows how the more services are bundled together, the lower the switching rate.



Consumers should be able to cancel part of a bundled contract without any penalties. Similarly, consumers should be able to modify or renew part of a bundled contract without impacting the rest of the services that are being bundled, unless they provide their explicit consent for the provider to do so.

BEUC demands regarding Article 100 - bundles:

1. Adopt paragraph 1 as proposed by the European Parliament to make sure that the entire Article 99 – not just paragraph 1 – applies to bundled contracts.

2. Adopt paragraphs 2a and 2c as proposed by the European Parliament to make sure consumers can cancel parts of a bundled contract without penalty.

3.6. Article 25: Alternative Dispute Resolution

It is important that sector-specific rules on Alternative Dispute Resolution (ADR) are in line and interpreted according to Directive 2013/11/EU. It is therefore important to maintain a reference to such Directive in Article 25 of the proposed EECC Directive.

Article 25 of the EECC Directive must be applicable to all ECS, and therefore not exclude number-independent interpersonal communications services. Second, it must make it mandatory for providers of ECS to participate in the ADR scheme.

BEUC demands for Article 25 on ADR:

1. Adopt Article 25, paragraph 1 as proposed in the European Parliament's report.

3.7. Article 40: Security of communications

The security of communications is an essential pillar of consumer protection and must be guaranteed for all types of electronic communication services. Security of communications can be necessary to guarantee consumers' fundamental rights to privacy, integrity and personal security.

Already in today's markets where consumers use communication services constantly, the security of their private communications needs to be safeguarded. As goods and individuals get increasingly interconnected with the advent of the Internet of Things, the security of communications is becoming an ever increasingly fundamental principle for consumers. To best achieve this, where possible communications should be encrypted end-to-end by default.

In addition, when there is a breach of security, providers of ECS should not only notify authorities but also notify consumers affected by the breach as soon as possible once they become aware of the breach.

BEUC demands regarding Article 40 Security of Communications:

2. Adopt the European Parliament's Article 40, paragraphs 1, 1a and 3.

3.8. Article 55: Sharing of consumers' private Wi-Fi networks

It is becoming a commonplace practice for providers of fixed internet access services to install additional Wi-Fi networks on consumers' home equipment to offer all their customer base additional internet access points.

While this practice may bring benefits to consumers as they can use numerous additional access points, it is essential to get the rules of this practice right to make sure consumers are always strongly protected. To achieve this:

1. It is imperative that such additional Wi-Fi networks are only installed on consumers' private equipment if they have provided their explicit consent.
2. Consumers should not experience any change in the bandwidth available to the service they are paying for.

3. It must be clarified that the consumer who owns or rents the equipment on which the additional Wi-Fi network is installed and who pays for the internet access service that is being shared is under no circumstance whatsoever responsible nor liable for any use that another person might do while connected to their Wi-Fi network.

The European Parliament's IMCO Report included clear provisions to guarantee the above consumer protection principles. Unfortunately, these provisions were not included in the European Parliament's final report and should therefore be reinstated through trilogue negotiations.

BEUC demands regarding Article 55:

3. Maintain the reference to article 12 of the e-Commerce Directive (European Parliament version, Article 55 paragraph 1a).
4. In addition, modify Article 55, paragraph 2 to apply IMCO Amendments 115, 116, and 117 to make sure consumers benefit from the above key protections.

4. Building a Single Market for consumers

The telecoms regulatory framework remains based on distinct national markets, a fact which creates tangible obstacles to the cross-border provision and consumption of services. These obstacles represent barriers to a real single market for EU consumers. Although telecom markets remain fragmented, steps towards the establishment of a single market for consumers can be taken today.

First, services such as phone calls, SMS and access to the internet should be usable seamlessly across the EU, without any geographical discrimination. Consumers should be able to travel freely within the EU without having to pay additional costs if they cross a border. This is the reality for most consumers since June 2017 when rules on Roam Like at Home became the default practice, but it remains to be seen if it will effectively deliver the end of roaming fees for all consumers.

Second, a single market in the digital communications sector also means that consumers can use telephony and messaging services from their home country to call and text any other EU country without discriminatory pricing just because the service crosses a geographical border.

International calls and messaging inside the EU – a rampant market failure

Unfortunately, this is not the case today. A market scan of 13 EU Member States done by BEUC members in July 2016 showed that when consumers pick up their phone and call or text to a different EU country, they are often charged unjustified, abusive prices¹³.

Our research showed that the average retail price for an international call inside the EU is almost 60 eurocents/minute, and they can be as expensive as 1.99 euros/minute. In contrast, as explained by BEREC¹⁴, the average cost for mobile providers to deliver that same minute of voice communication in July 2016 was 1.14 eurocents/minute. In practice, this means that mobile providers are making an average of over 5000% profit margin for each international call.

¹³ for more information, see our factsheet here - http://www.beuc.eu/publications/beuc-x-2017-007_international_calls.pdf

¹⁴ BEREC's latest termination rates data - http://berec.europa.eu/document_register/subject_matter/berec/reports/6603-termination-rates-at-european-level-july-2016

The market for international SMS is not better. BEUC's members' research found that on average international SMS are priced over 24 cents/SMS, while mobile providers face an average cost of 2.2cents/SMS for delivering each message. That's an average profit margin of approximately 1000%.

The above scenario creates **surrealist consequences for both consumers and mobile providers:**

1. **The roaming paradox:** In many cases, if a consumer wants to make an international call, it is cheaper for him to cross a border into a neighboring country and place the call from there while roaming. The price there would range from 0 to 3.2 eurocents/minute. For example, it would be cheaper for a Belgian consumer living in Gent to cross over to Lille if he wants to call a friend in Italy.
2. **The termination rates paradox:** Depending on to which countries consumers place international calls, it might be cheaper for their mobile provider to place a call to another country than to place a call to a different provider in their same country. For example, if a Belgian consumer calls a friend in Belgium, the mobile provider will face a 1.18 eurocent/minute cost (Mobile Termination Rate in Belgium). If the Belgian consumer instead calls a friend in Malta, his provider would face a 0.4 eurocents/minute cost (Mobile Termination Rate in Malta, 66% cost savings for the operator).

Unlike roaming which only affects those consumers with the capacity to travel across the EU, abusive pricing of international calling and texting affects potentially every single EU consumer who wants to reach a person, organization or company in a different Member State. Without these abusive prices, not having to fear a bill shock, consumers would not hesitate to use their mobile phones across borders. Mobile providers would therefore also benefit from such an increased demand for their services.

Are Internet-based calling apps such as Skype, WhatsApp or Viber valid alternatives? Not really.

1. Online apps require having an internet connection, which is not always the case for all consumers and not always available if the signal is not good enough.
2. Online communication services do not guarantee the quality of communications, and [statistics from the telecom industry](#) show consumers know they do not work as well as a traditional call and therefore prefer telecom services as the safest option.
3. Online services are not interoperable with each other so consumers need to ensure the other person is in the same app as they are before they can communicate.
4. Online apps will not allow consumers to call companies or other organizations in another country: how can a consumer in Latvia contact an online clothes shop in Germany via WhatsApp? How can an Austrian consumer contact an airline in Spain through FaceTime?

The solution is rather straight-forward and does not entail regulating prices

Telecom rules should draw inspiration from general Single Market principles of non-discrimination for cross-border services. The rule would be very simple: the price of a telecommunication service cannot be different depending on whether the service is delivered domestically or whether it crosses a border and terminates in a different EU country. **But telecom companies are still 100% free to fix the price they want.** If

justifiable, objective additional costs exist for mobile providers, they can recover the additional costs and make a reasonable profit margin on top.

This would mean consumers can stop worrying about country codes and where their friends and family are. As long as the party they want to call or text is inside the EU, EU consumers will know that affordable, reasonable prices will apply.

Similar precedents exist: for example, the Single European Payments Area (SEPA) Regulation establishes that the price of a cross-border bank transfer inside the SEPA Area shall be the same as a domestic bank transfer, whatever the price is.

BEUC therefore strongly supports the inclusion of Article 92a as proposed by the European Parliament to establish a non-discriminatory principle as described above.

END



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