

The Consumer Voice in Europe

THE EU-UK RELATIONSHIP AFTER BREXIT: SECURING POSITIVE OUTCOMES FOR CONSUMERS

Consumer checklist



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1. Priorities for a future relationship that secures positive outcomes for consumers

1.1. Introduction

It is not yet clear what the nature of the relationship between the EU and the UK will be after exit day as well as at the end of the potential post-Brexit transition period. The publication of the EU draft withdrawal agreement brought some clarity on the timeline of the process and the general principles. However, there are still several possible open scenarios for the future relationship, from a situation with no withdrawal deal and no transition period to one with a deal and transition period followed by a trade agreement. From the consumer perspective, no matter what shape or form the relationship takes, consistent principles must be established in order to secure positive outcomes for consumers.

The development of this new relationship will be a unique process, since the starting point is an integrated market where EU and UK consumers enjoy a comprehensive and harmonised legal, supervisory and enforcement framework. Attention will need to be paid to the potential risks to consumers of a more disintegrated approach, as well as to the opportunities that could be linked to these new developments.

This paper outlines recommendations to place consumers at the heart of the Brexit negotiations. We expect the design of the future relationship to impact both parties. Yet the scale of challenges and opportunities will be felt more strongly in the UK than in the EU27. This is the case for sectors such as financial services, food and air transport.

More specifically, the changes that UK consumers will experience with the exit from the EU call for the rapid creation of structures and procedures by UK policy-makers. This is necessary to take on the responsibilities that were previously taken care of by the EU system. That is why some UK consumer organisations have prepared a Consumer Charter¹ addressed to the UK government.

1.2. The consumer perspective in the future relationship

1.2.1. The Need for participation by consumer representatives

There is currently no EU structure that allows for stakeholder participation in the design of the new EU-UK relationship. An Expert Group on Trade Agreements, recently set up by the European Commission, does however include consumer representatives. This is a forum to discuss consumer issues in the context of trade negotiations and could be tasked with discussing the consumer implications of the future relationship. However, given the timeline, its format, frequency of meetings and rules of procedures do not allow for meaningful input by consumer representatives on upcoming negotiations on the future relationship between the UK and EU.

It is regrettable that the existing stakeholder advisory group in the UK does not include consumer representatives. This risks that the specific impact of negotiation approaches upon consumers will be ignored.

¹ Which? Consumer Charter for Brexit <https://campaigns.which.co.uk/brexit/>

BEUC recommends that:

- The EU Expert Group on Trade Agreements discusses the post-Brexit EU-UK relationship– and grants specific attention to the implications and provisions that are relevant for consumers. Another option could be to set up a dedicated advisory group lead by the article 50 task force;
- Any existing or future UK stakeholder advisory in the context of the negotiation of a new relationship includes consumer representatives;
- Joint stakeholder briefings are organised to inform stakeholders and allow negotiators to hear their concerns and recommendations.

1.2.2. The Need for a consumer impact assessment of different scenarios

Until now, negotiators have demonstrated very limited foresight in tackling the specific consumer implications of Brexit, both for EU and UK consumers. As a first step, communication about these implications and their safeguards must be upgraded, particularly concerning the following aspects:

- Both EU and UK institutions must commit to better communications about the consumer implications of Brexit. This includes communicating about the consequences of the different scenarios upon which the future EU-UK relationship might be defined.
- Some consumer questions arising from Brexit need to be addressed *before* the withdrawal date. For example, the legal status of contracts signed before, and performed after, the UK's withdrawal need to be clarified in the Withdrawal Agreement. Proper communication about these transitional questions must be organised.
- It is crucial that (coordinated) points of contact are identified for information requests or complaints voiced by consumers on the topic of Brexit.
- There are also risks that consumers' long-term savings investment and insurance products will be impacted and this needs to be properly addressed.

1.3. Consumer access and choice of goods and services

The option for EU and UK consumers to buy products and services from both sides of the Channel – without delays and at an affordable price – should be maintained. Ideally, an agreement should enable this to be as free and frictionless as possible, while ensuring the necessary consumer protections. This includes the energy and aviation sectors.

A coherent and efficient system of import checks needs to reassure consumers that the safety of the products imported from the other side corresponds to national standards with minimum disruption. This is particularly crucial in sectors that impact consumers' everyday lives, such as food.

Affordable access by consumers to these imported products will also depend on the inclusion of sound provisions related to customs procedures² in the trade deal defining the future relationship, as well as on preventing the reintroduction of tariffs and quotas between the UK and EU.

² Reference to customs procedures in this section relate to administrative formalities linked to the import of products. Border controls related to safety of products are mentioned under section C.

1.4. Securing high levels of consumer protection

Consumer protection should be defined as a key objective in the new EU-UK relationship. Specific consumer provisions could be gathered within a dedicated consumer chapter. Under this chapter, the EU and the UK would:

- Ensure that their domestic policies and laws provide for, and encourage, high levels of consumer protection and strive to continue to improve these policies and laws.
- Recognise that it is inappropriate to weaken or reduce the levels of protection in domestic consumer protection laws in order to encourage trade or investment.
- Recognise the right of the other party to set and regulate its levels of domestic consumer protection, and to adopt or modify relevant policies and laws.
- Acknowledge the importance of the precautionary principle for consumer protection, as well as the current approach to risk analysis.
- Ensure a high level of protection for personal data and privacy of consumers by means of strong safeguards.

1.5. Securing tangible positive consumer outcomes

It is important to secure or safeguard tangible benefits for EU & UK consumers so that the consequences linked to the divergence of a Single Consumer Market are minimised. The following initiatives are crucial in this respect:

- Bring down the *high cost of telecommunication services* for consumers travelling or communicating with people in partner countries. A reference in the EU/UK trade deal to continued co-operation in this area, including on wholesale prices is needed to reduce international telecom (roaming) fees. This would be a positive step to make sure consumers experience the concrete benefits of the relationship when they travel.
- *Safeguard the security of the energy supply* that keeps homes across Europe connected at an affordable price. Energy is an essential service. Consumers on both sides of the Channel are dependent on the network interconnections and trading rules established under the Internal Energy Market framework. A commitment should be included in the EU/UK trade deal to maintain the integrity of the electricity and gas markets. This includes the single electricity market between Ireland and Northern Ireland.
- *Eliminate unjustified geoblocking between partners*. This would mean that consumers can purchase goods and services as well as access digital content from companies established abroad, without any discrimination based on nationality, place of residence, or IP address.
- Ensure agreement is reached on enabling *continued consumer access to a choice of affordable flights* between the UK and EU, as well as to non-EU destinations.

- To underpin the above it will be necessary to *lay down a framework that will allow consumers to be properly informed about their rights* and be provided with solutions, such as online dispute resolution mechanisms, if something goes wrong following a purchase. This framework will also be important in areas such as aviation (addressing any gaps in relation to Regulation 261) and with regards to maintaining the European Health Insurance Card for UK and EU consumers when travelling. It should also play a wider role in protecting *consumers from fraudulent and misleading practices* when they engage in e-commerce.

1.6. Maintaining cooperation between regulators to keep consumers safe

It has been indicated that all cooperative enforcement mechanisms set up within the EU to protect consumers, their safety, and their health³, may no longer apply to the UK upon withdrawal. The scope of intervention (as well as the resources) of the EU agencies and networks could therefore be disrupted beginning on the date of the withdrawal. The possibility that this may lead to a weakened market surveillance system, both in the EU and UK, must be assessed and addressed. This also applies to co-operation on aspects such as competition policy and enforcement of consumer rights and risk assessment.

Consumers must be safe and should be able to trust their domestic markets as well as imports from the UK and/or EU. It is therefore key that agencies and regulators have a legal framework and the resources to continue ensuring that faulty and dangerous products do not enter our markets.

To this end, alert systems must continue to operate. Dialogues on market surveillance and enforcement (including intelligence, the sharing of best practices, the communication of research results, and so forth) must be put in place. In particular, there is a strong need to continue and develop cooperation in the context of the TRACES⁴, RASFF, RAPEX, CPC networks, but also continue dialogues on issues such as antimicrobial resistance and sustainable consumption.

In order to prevent any disruption, BEUC recommends addressing possible cooperation mechanisms before the UK's exit from the EU in the withdrawal agreement and not only in the agreement on the future relationship. The withdrawal agreement should provide for:

- The establishment of a very strong system of regulatory cooperation as of day 1 of withdrawal, both between national authorities and between UK authorities and the EU agencies. The following principles should apply:
 - Consumer protection and consumer welfare should be defined as overarching objectives of the cooperation and should be at least on equal footing with the objective of trade facilitation.
 - Any regulatory cooperation dialogues must involve the relevant regulators and sector specialists to ensure consumer concerns are fully captured.
 - Regulatory cooperation should never impede parties' authorities from fulfilling their mandates and shall be accompanied by guarantees to prevent delays in legislating in the public interest.
- A clarification on the applicability of regulations that apply to cross-border situations existing at the time of withdrawal, including on judicial cooperation.

³ Consumer Protection Cooperation Network, Art. 29 Working Party (future European Data Protection Board), European Competition Network, Rapid alert system RAPEX (non-food), Rapid alert system RASFF (food and feed).

⁴ Trade Control and Expert System.

1.7. Consumer redress

It is crucial that the future relationship recognises the possibility for consumers to have ways to enforce their rights across borders, both in or out of court, in particular when it comes to cross-border e-commerce.

2. The transition period – consumer demands

2.1. Need for clarity

EU-UK negotiations are ongoing, but many questions remain about the legal situation at the date of withdrawal, the end date of the potential transition period and the application of the agreement about future relationship.

2.2. The current landscape

On the basis of documents made available, EU and UK consumers can be partly reassured that the UK's EU (Withdrawal) Bill seeks to transfer EU law to the UK statute books. Furthermore, the EU draft withdrawal agreement makes it clear that all EU rules will continue to apply during the transition period, meaning from exit day until 31 December 2020. However, what the situation will be on exit day will depend on whether 1) the UK EU (Withdrawal) Bill has been adopted, 2) the EU-UK withdrawal deal being agreed on and/or 3) if there will be a transition period. Presuming that both the UK's EU (Withdrawal) Bill and an ambitious EU-UK withdrawal agreement are agreed, this means that on exit day consumer legislation will remain the same in the UK. Further to this, the transposition of EU law into UK law will ensure continuity in various other areas meaning that:

- All goods that were put on the market before the UK's exit/the end of the transition period will continue to be monitored according to the existing market surveillance procedures;
- All contracts that were concluded before the withdrawal /the end of the transition period (hotel booking, e-commerce, or offline contracts) and that fall within the scope of the Rome I and Brussels I provisions on applicable law and competent courts, will follow these provisions as they did before;
- At the time of the UK's exit/end of the transition period, all existing rights based on EU legislation will remain valid for domestic situations in the UK. For example, a UK consumer with a valid product liability claim towards a UK producer after the UK's exit/the end of the transition period would not lose the right for judicial redress based on this claim, even if the case were brought to the courts after the withdrawal/the end of the transition period.

However, there is an important limitation to the reassurance provided by the UK's EU (Withdrawal) Bill and the draft EU withdrawal agreement: it is not possible to know whether or when UK legislation maintaining the EU regulatory framework will be amended. One should expect that in the medium term, regulatory divergences will appear. This needs to be addressed in the agreement on the future relationship. It is important there is clarity on issues such as market surveillance cooperation in this period.

There are several key issues and questions that arise from this, such as:

- As the withdrawal date approaches it is important *for authorities and consumers to know whether the EU regime continues to apply in practice*. This raises questions such as: how can one determine the date that a product was placed on the market, and who is the responsible importer in the EU for a UK product?

Frederik from Belgium usually orders online from a UK-based website. Currently, he has a right of withdrawal of 14 days. Can he still rely on such a right in 2020? How will he be made aware of changes in the UK legislation?

- This *need for certainty* extends to provisions concerning services, some of which lead to a medium-term or long-term relationship between companies and consumers. These services include for example: travel and holiday bookings and financial services. Certainty is also needed before the date of withdrawal, for example regarding the extent to which consumers benefit from the UK's Financial Services Compensation Scheme (FSCS) and have recourse to the Financial Ombudsman Service (FOS). The FSCS and the FOS offer protections for clients of UK financial services firms, but there is limited coverage for certain EU27 firms carrying out business in the UK. It is not yet clear how redress rights will be affected.
- There are no provisions concerning services, with the consequence that the situation is unclear for UK firms carrying on business in the EU.
- While the UK's EU (Withdrawal) Bill provides for the integration of EU legislation that will – at least for the moment – also be valid post-Brexit, it is not clear how this translates into practice for the following:
 - **EU-wide implementation, supervision, enforcement and case law:** The EU legislation that would be integrated into domestic UK legislation often comes with EU-wide implementation, supervision and enforcement mechanisms, such as EU agencies, networks of regulators, under the final judiciary control of the Court of Justice of the EU. The participation of the UK in these mechanisms needs to be clarified to ensure the application of consumer protection provisions. Likewise, the future application of existing case law needs to be clarified.

Other issues that could quickly impact consumers include:

- **Roaming regulation:** Will UK consumers benefit from the ban of roaming charges when travelling in the EU? And will EU consumers have reciprocal benefits? If the UK keeps EU legislation upon withdrawal/after the end of the transition period, wholesale caps will remain valid, but will operators still be required to offer EU/UK consumers Roam-like-at-home?

If I were to travel from my home country France to London in April 2019, do I have to pay roaming charges similar to those when travelling to Switzerland?

- **Air passenger rights:** the UK Bill may be understood as extending to all consumers travelling from a UK airport, with any EU or British company – although this is not clearly mentioned. Situations where a flight originates in a third country and lands in the UK are not clearly covered, irrespective of whether it is operated by a UK or EU airline.

I live in Manchester and like flying Lufthansa (LH). Will I still be able to book flights operated by LH after exit/end of the transition period, will I be covered in case of delay or cancellation happening in the EU? What if the incident takes place in Morocco on a line Casablanca-Manchester?

- **Coverage of mandatory car insurance:** Currently, coverage taken out in an EU country is valid in all EU countries. So, what happens after the withdrawal/the end of transition period? Is an EU consumer travelling to the UK still covered? And how will UK coverage extend to EU countries? Mutual recognition of driver's licences will no longer be automatic either. Will people need an international driving licence?

I live in Birmingham and intend to travel by car to Spain during the summer of 2019. Will my domestic car insurance cover my liability in case of an accident in Spain?

- **Standardisation process:** In theory, standardisation bodies are private bodies, where UK representatives could retain membership. This means that the standardisation work could be kept aligned. It would require political will and, where relevant, a change of statutes of the standardisation bodies.
- **Single euro payments area (SEPA) regulation:** Without an agreement in place, the UK becomes a third country and participation in SEPA will not be automatic. This will affect credit transfers and direct debit (for payments in euros).

Looking at the future consumer framework more generally it is important to consider the status of:

- **Judicial arrangements:** The UK may still offer small claims procedures, enforcement orders and Brussels I rules (on competence of the court of the consumer's residence) to EU consumers under its Withdrawal Bill. But this remains to be clarified and confirmed. And what about claims of UK consumers against EU providers?
- **Online dispute resolution (ODR) platform:** Will this EU platform, which manages cross-border consumer complaints via the alternative dispute settlement (ADR) system, continue to integrate the UK?
- **Access to cross-border healthcare:** The joint EU-UK document, on citizens' rights, remains incomplete on this, particularly in relation to the European Health Insurance Card (EHIC). So far, it is only agreed that UK residents in the EU, and vice-versa, will continue to benefit from the system at the time of withdrawal/after the end of the transition period.

- **Legal status of financial services delivered before Brexit on the basis of passporting:** What happens to these contracts on the day of the Brexit? What happens to contracts that EU consumers have engaged in under these passporting architecture?

Ian and Rosy live in London and plan their summer holiday in Cyprus with a tour operator for January 2019. In April 2019, the hotel they booked goes bankrupt. Will they still be able to benefit from the guarantee scheme provided by the Package Travel Directive to get their money back?

Certainty is also needed on EU legislation currently being implemented, such as:

- The Package Travel Directive
- General Data Protection Regulation (GDPR)⁵
- Security of network and information systems

END

⁵ The implementation is scheduled for the following months.



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