

The Consumer Voice in Europe

CEER PUBLIC CONSULTATION ON THE DRAFT GUIDE ON BUNDLED PRODUCTS

BEUC response



Contact: Monika De Volder – energy@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • consumers@beuc.eu • www.beuc.eu
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Why it matters to consumers

Bundled products are commonplace for many consumers in different sectors. It's likely that there will be more bundled offers in the energy sector if energy profits decrease and when new services and products reach the market. Bundled products are not always the best deal though, so it is important that consumers receive all necessary information, are able to compare and can easily switch. It should also be clear who to contact when something goes wrong with any service within the bundle.

General remarks

BEUC, The European Consumer Organisation welcomes the opportunity to provide comments on the draft Guide on Bundled Products prepared by the Council of European Energy Regulators (CEER).

Although bundled offers can provide good deals, they can also lead to complex contracts, higher bills and lock-in situations. Services provided in a bundle can be unfavourable to consumers as they may not be suitable or provide the best deal reflecting the particular needs of the consumer. With new players and new, smart technologies, the number of bundled products is expected to increase.

Consumer organisations in several countries have registered an increasing number of bundled offers on the energy market. The bundles offered include parallel services such as telecoms but also all sorts of services from insurance to gift cards. In many cases, additional products or services are not provided by the energy retailer, but by other service providers, and therefore raise questions around the role of different regulators and enforcement of different laws.

The National Regulatory Authorities (NRAs) should step up their effort in addressing these emerging products. BEUC therefore welcomes CEER's consultation and while we generally agree with the principles outlined in CEER's draft Guide, we provide further recommendations on how to strengthen these principles.

NRAs and relevant authorities should monitor bundled offers, check if they provide benefits to consumers, especially in terms of economic, social and environmental sustainability and intervene where needed. For instance, consumers should be able to easily compare bundled offers via comparison tools, switch from each individual service separately and terminate the contract with the provider of the bundled offer at any time and at no cost in case a contract is extended without the customer's consent. At the same time, overlap of competences between NRAs or other bodies should be addressed.

Feedback to the questionnaire

1. General issues

1.1. Do you agree in general with the 10 principles proposed in our draft Guide on Bundled Products for companies, and the 5 principles proposed for regulatory authorities?

BEUC generally agrees with the draft principles and provides several recommendations below on how to strengthen these principles. Bundled products are becoming commonplace in different sectors. In the energy sector, more bundling is expected especially when energy profits decrease and when new services and products reach the market. Bundled products are not always the best deal so it is important that consumers receive all necessary information, are able to compare and easily switch. It should also be clear who to contact when something goes wrong with any service within a bundle. Therefore, BEUC was advocating for the inclusion of bundled products in the revised Electricity Directive.

1.2. Do you think our proposals make appropriate use of principles and adopt the right amount of prescription? Have we gone too far, or not far enough to protect consumers while allowing companies in various sectors to be innovative in the bundled products they offer?

See BEUC response on particular principles.

1.3. Do you think there are any areas of particular risk to customers that are not already addressed in this draft Guide on Bundled Products?

More attention should be paid to tying. For instance, in financial services we make a distinction between tying (take it or leave it) and bundling (consumer can also buy the individual items of a package separately). In case of tying, the bank could tell the potential borrower that if s/he doesn't take an insurance or bank account together with a mortgage credit, s/he will not obtain the credit. BEUC has been advocating against tying in financial services as it restricts consumer freedom, choice, switching, and market competition and we are concerned that bundling could have the same effects on consumer choice and competition. Sectoral financial legislation (on bank account, credit, insurance, investments) contains provisions on tying, but it is very fragmented and poorly designed. For example, the Mortgage Credit Directive forbids tying, but then it introduces several exemptions, which makes the general ban on tying meaningless.¹

1.4. Do you agree with the proposal that there be a single point of contact so as to avoid ping-pong in the case of a customer having a problem with the bundled product? If not, what workable alternatives do you suggest?

See BEUC response in point 2.2.

¹ For more information, see BEUC response to ESAs consultation on cross-selling in 2016: https://www.beuc.eu/publications/beuc-x-2015-027_fal_response_to_consultation_of_the.pdf

1.5. Can you provide best practice cases of regulatory treatment of bundled products?

For instance, the Portuguese National Regulatory Authority (NRA) first recognised the need to address bundles with a Recommendation in 2017.² In October 2017, some rules on bundled services were included in the NRA Regulation for Commercial Relations. These rules mainly address: a definition of bundled services, an obligation for suppliers to clearly inform consumers when selling bundled services, an obligation for suppliers to inform consumers that bundled services are independent from the energy supply and cannot interfere with the energy supply, an obligation for suppliers to make available and auditable all information related to bundled offers and a need to report information to the NRA on the bundled offers available.

2. BEUC comments on principles for companies offering bundled products

2.1. Simplicity for informed customer choices - getting it right.

First of all, BEUC supports the principle of simplicity for informed consumer choice and believes there should be more focus on proper implementation of this principle. BEUC has been calling for better information on offers, contracts and bills under the Clean Energy for All Europeans package. In the past, BEUC also engaged with the main industry associations in order to improve comparability of energy offers. BEUC and industry associations agreed on the list of key information to be provided in a short, easily understandable, prominent and accessible manner.³ The use of a common methodology was also discussed. However, this self-regulation exercise did not lead to expected results and confirmed the need for regulatory intervention.

Secondly, in addition to the main characteristics of all services within the bundled product, consumers should also be informed whether services are carried out by a provider different from the provider as stipulated in the contract. Our members reported cases where the service provider was not identified in the contract. For instance, the retailer presented the contract to the consumer but in fact, the contract was also with the insurance company. In another case, a consumer had a contract with a supplier which covered also electric service assistance. This additional service was provided by another company, but the consumer did not have any specific information about this service provider. This has raised questions regarding the liability of the energy retailer and the specific service provider and who should be responsible in case of non-compliance.

Thirdly, any subscription to additional products and/ or services provided or distributed by the supplier as a bundled offer should not re-start the contract period of the initial contract unless the final customer explicitly consents. When the initial contract is changed, consumers should not only be informed, but they should also have the right of withdrawal from the contract if they do not accept the change to the initial contract (as already set in existing legislation).

² For more information, please, see: https://www.ceer.eu/documents/104400/6120855/ERSE+Recommendation+on+Additional+Services_EN.pdf/3db08f45-485f-e32a-3c20-a791a6ed0f80

³ https://www.beuc.eu/publications/beuc-x-2016-043_joint-statement-improved-comparability-of-energy_offers-beuc-eurelectric-eurogas.pdf

A standardised summary of the contract would help consumers to easily understand what they sign up to. For instance, in Portugal consumers receive a standardised contract summary chart which also includes bundled services. However, Portuguese consumer group and BEUC member DECO points out that included information is only related to the service specification and its cost and therefore, the summary needs to be improved. Moreover, we observe good practice with regards to the harmonised terminology and presentation format in financial services: Article 3 of the Payment Accounts Directive says that terminology for the 10-20 most used services linked to payment (bank) accounts must be standardised. This list must be included in banks' tariff brochure. Besides that, Articles 4 and 5 harmonise the presentation format of the tariff brochure and of the fee statement that the consumer must receive at least annually.

2.2. Clear liability principles where there are multiple parties/contracts involved in the bundled product.

BEUC supports a single point of contact per bundle with a clear liability - there should be a clearly defined single contact point and customer support so that consumers can easily access it for troubleshooting and getting answers to their questions. It should not be up to the consumer to identify where the fault comes from and thereby which entity they should contact (e.g. for services, equipment, software) – i.e. the energy supplier should be responsible towards the consumer, even if it is only to receive the complaint/request and then forward it to the responsible entity. The last CEER proposal for consumers to contact multiple parties is therefore unclear - why would the principle of single contact point limit the consumer's choice and why would the consumer need to contact other parties? Consumers just need to solve their problems quickly, and the single contact point is the right approach.

It is also worth looking at the example in the area of financial services where the revised Payments Services Directive (PSD2) has brought some new payment service providers under its scope, e.g. Payment Initiation Services (PIS). PSD2 provides that if there is a payment incident involving a PIS, the consumer will get an immediate reimbursement from his/her bank, and then the bank and the PIS will sort out the issue among themselves. In case the PIS is responsible for the payment incident, it will reimburse the consumer's bank. This provision is very important to avoid a ping-pong exercise between the consumer and different service providers.

2.3. Signposting of the responsible (in-house or external) complaint handler in case something goes wrong.

While we generally agree with this principle, we recommend amending CEER's Guide as follows:

- It is important that consumers know who to contact i.e. not only the case/complaint handler of the bundled product but also the independent Alternative Dispute Resolution (ADR) body. The term 'complaint handling' usually refers to customer service inside the company while consumers should also be informed about independent ADR. We therefore suggest replacing 'ombudsman' by 'independent ADR' as not all of them are called 'ombudsman'.
- Consumers should be informed which entity is responsible for dispute settlement (including the contact details of the ADR body). However, when the trader provides information to consumers about the ADR body, the trader also needs to clearly inform the consumer whether this trader will participate in the ADR procedure. Otherwise the information about the existence of the ADR body can be misleading for the consumer.

- As energy is an essential service, BEUC has been calling for mandatory participation of energy companies in out-of-court dispute resolution procedures and in this respect, we welcome the recently agreed revised Electricity Directive. We have been also advocating for mandatory participation of those parties offering bundled products and contracts with energy components. For instance, BEUC's member organisation, DECO, stressed that even though the participation in out-of-court dispute resolution procedures is mandatory for energy suppliers in Portugal, there is a lack of regulation with regards to bundled offers in order to understand in which cases a claim can be considered as related to energy supply (e.g. when the consumer does not pay the bundled service and the supplier cuts the energy supply – can it be considered in the scope of mandatory arbitration?).
- Lastly, we agree that it is not for companies to decide which regulator has jurisdiction. Therefore, NRAs, ADR bodies and other relevant authorities need to clarify who among themselves is best placed to handle different types of bundled products and make sure companies and consumers are informed.

2.4. Transparency is key.

BEUC agrees with the principle. For more information, see also BEUC response to point 2.1.

2.5. On billing, the provider who sends the bill should be subject to appropriate consumer protection legislation and directly linked to the bundled services contracted.

BEUC agrees with this principle.

2.6. On payments for bundled-only products, it must be clear in advance of signing the contract whom the customer pays and what payment method(s) may be used.

Providers should offer the possibility to pay bundled services separately from the other components on the bill. This is supported for instance by complaints received by BEUC's member organization, DECO – consumers were not satisfied with the bundled service, so they requested the cancellation of the service. However, the supplier did not respond to their request and continued charging for the bundle. Since consumers were charged for the energy supply via the same bill, they didn't have the option of not paying for the bundle and feared disconnection.

2.7. Respecting good guidance principles for price comparison tools should equally apply in the case of bundled products.

First of all, it should be clarified who this principle is addressed to. The guidance on comparison tools should be respected not only by companies but all parties operating comparison tools. The recommendation for companies should be to provide full information on their bundled products.

Secondly, BEUC has been advocating for the inclusion of bundled offers in comparison tools. It may be challenging to compare the nature of bundles that would consist for instance of gas, electricity, mobile contracts, insurance, maintenance contracts and different gadgets such as a battery, boiler, mobile phone, intelligent lighting system etc. However, there is at least one aspect that is standardised and comparable when it comes to bundled offers: its price and its reflection on the energy price (for instance, there is a discount of 15% on energy price if the consumer subscribes to a 12-month maintenance plan service). Consumers should be able to compare its impact on the final price they pay and therefore, should have the option to choose the comparison with or without the

bundled offer. In case comparison with bundled offers is included, there could be a warning information on the extra cost the tariff may have according to the bundled offer. For instance, the Portuguese NRA's comparison tool displays a warning message informing that the price shown in comparison tool involves contracting a bundled offer that costs x€ per month or year. The comparison tool by the Portuguese consumer organisation DECO includes the value of the bundled contract in the final price of the energy offer (in the cases that the bundled contract is mandatory in order to have that specific price). Some comparison tools in Denmark also allow comparison of terms and conditions of bundles.

Moreover, with regards to complex bundled offers which are currently difficult to compare due to their nature as mentioned above, we believe that these offers should be transparent and displayed in comparison tools in a way that allows consumers to make a well- founded choice.

Finally, we support CEER's effort to address bundled offers and call on CEER to provide recommendations on how to display bundled products in a way that allows consumers to compare these offers in an objective and easily understandable way via comparison tools.

2.8. The right to information about the contract conditions.

All parties involved in the bundle should align (not seek to align) the duration and the conditions for termination of the different elements of the bundle. Providers of bundled services should give consumers the possibility to cancel or switch individual parts of the bundled contract to prevent lock-in situations when one renewed service automatically renews other services in the bundle. For instance, even though there is no minimum term contract for the energy supply, bundled services can include such a minimum term. This can result in a barrier to switch since the bundled service implies that the consumer must keep the energy supply contract for a certain period (i.e. hidden minimum term contract).

2.9. No disconnection of essential services.

BEUC agrees with this principle but believes that disconnection of essential services should be addressed by the legislation.

2.10. No dispute resolution fee.

The ADR Directive prescribes that Alternative Dispute Resolution should be for free or at a nominal fee for consumers. Therefore, the same principle should apply for bundled offers.

3. BEUC comments on principles for regulators overseeing and regulating sectors with bundled products

3.1. Establish rules in general consumer law governing bundled products across all sectors.

A consistent approach across sectors would be beneficial for consumers. At the same time, BEUC has been calling for the inclusion of bundled offers in the Clean Energy for All Europeans package.

The need for further rules is also clear in other sectors e.g. in financial services, the European Supervisory Authorities called on the European Commission to harmonise sectoral provisions, stressing that sectoral financial legislation is fragmented when it comes to tying/bundling provisions.⁴

3.2. Protect essential services.

See BEUC response above (e.g. on points 2.6 and 2.9).

3.3. Strengthen the right to exit bundle products.

Switching fees should not be allowed. When terminating a fixed term contract before its maturity, termination fees should be proportionate and should not exceed the direct economic loss to the supplier. The burden of proof should be on the supplier. In case of bundled investment in equipment, the economic loss should be determined based on whichever amount is smaller, either the pro rata temporis residual value of subsidised equipment bundled with the contract at the moment of the contract conclusion or the remaining part of the service fee until the end of the contract.

3.4. Monitor bundled products.

National Regulatory Authorities should monitor the number of customers on bundled contracts, and whether consumers are benefiting from bundled offers when compared to having contracts for each product separately, including economic, environmental and social benefits. This data should be publicly available.

3.5. Cooperate across sectors with relevant authorities.

BEUC agrees that regulators, ADR bodies and other relevant authorities should work more efficiently across sectors. This requires better coordination and information sharing among NRAs, consumer authorities and other relevant authorities especially where cross-cutting issues related to bundled products arise. Each regulator should have a clear scope and remit and NRAs should agree on who is best placed to handle particular type of bundled product. The burden should not be on the consumer to find out what authority is in charge; s/he should be assisted in identifying the right interlocutor (e.g. by a one stop shop).

Finally, in addition to the example of the ombudsmen cooperation, the UK Regulators Network (UKRN) could also be considered.⁵

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⁴ More information is available at: <https://www.eba.europa.eu/documents/10180/15736/ESAs+letter+to+European+Commission+on+cross-selling+of+financial+product...pdf>

⁵ UKRN is formed by 12 of the UK's sectoral regulators and its objective is to facilitate cooperation and communication between its members to promote better outcomes in economic regulation for consumers and the economy. More information is available at <http://www.ukrn.org.uk/>



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