

The Consumer Voice in Europe

DRAFT IMPLEMENTING REGULATION ON A CONTRACT SUMMARY TEMPLATE FOR ELECTRONIC COMMUNICATIONS SERVICES

BEUC's feedback



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Why it matters to consumers

Contracts with electronic communication service providers can be complex for consumers. This complexity has proven to put consumers in a difficult and disadvantageous position towards operators and impedes easy comparison of offers from the same or other providers. BEUC welcomes contract summary templates because, if designed with consumers' needs in mind, they can help consumers compare offers, including bundled offers, more easily and choose the best deal.

Summary

On 12 August 2019, the European Commission published a [draft Implementing regulation and an annex on a contract summary template](#) for electronic communication service¹ providers subject to public consultation. BEUC – The European Consumer Organisation welcomes the opportunity to provide feedback.

Given the very detailed position paper provided by BEUC to DG CNECT², the participation to a workshop organised by the Commission and the exchanges at several occasions with DG CNECT, it is very disappointing that many of BEUC's recommendations have not been taken into account in the drafts. After analysing these documents, BEUC concludes the Commission's draft needs to be improved. The proposed template would fail to fulfil its legislative objective and is, in our opinion, not a proper implementation of the respective provisions in the [European Electronic Communications Code](#) ("EECC" or "The Code"). Therefore, BEUC urges the Commission to follow our [recommendations](#) for consumer-friendly contract summary templates in the Code, i.e.:

1. Learn from other sectors, particularly consumer law, financial services and energy; and from Member States in which contract summary templates in the telecoms sector exist;
2. Issue dedicated templates for different electronic communications services, while ensuring the same principles apply to all templates;
3. Ensure a consistent and prescriptive approach to guarantee that consumers can truly compare and take decisions without being misled;
4. Deliver consumer protection by default and by design;
5. Clarify what durable medium to use;
6. Ensure timeliness and accessibility of the templates;
7. Work on promotion, close supervision and strong enforcement.

¹ With the exception of "transmission services used for the provision of machine-to-machine services".

² BEUC's recommendations for consumer-friendly contract summary templates in the European Electronic Communications Code, 3 May 2019, https://www.beuc.eu/publications/beuc-x-2019-030_beucs_recommendations_for_consumer-friendly_contract_summary_templates.pdf

1. General comments

- **Overall, BEUC urges the European Commission to substantially change the draft implementing act and its annex.** At the moment, the template would not allow consumers to compare contract summaries – which is, however, the main purpose of having a template in the first place. Contrary to other existing information sheets,³ the draft template does not allow for easy comparability. It is also very permissive and lacks clarity on numerous points. A more detailed template, [as BEUC recommends](#), would bring more transparency and contribute to greater competition between providers. The Code is clear that the contract summaries should "facilitate choice", "facilitate comparability and reduce compliance cost" (recital 261).
- **BEUC reiterates its demand for several templates** because of the differences between services included in Article 102 EEC (landline, mobile, pre-paid services...) and because the Code requires the Commission to adopt several implementing acts. **If one single template is presented, more instructions are needed as to how the template needs to be filled in by providers to adapt it to different services.**
- **BEUC demands the Commission to use prescriptive, unambiguous and consistent language**, as Article 102.3 EEC establishes ("providers... *shall* duly complete that contract summary template with *the required* information", emphasis added). Otherwise, the objectives of having contract summaries (consumer choice, comparison and compliance cost reduction) cannot be fulfilled. This means, for example, that "**could**", "**can**" and "**should**" **must be replaced by "must" and "shall"**. The Commission should provide stricter mandatory criteria for the presentation and quality of essential information.⁴

Even with a strict model, our German member vzbv reports that "some providers try to deviate from the given design or disregard other specifications, such as the easily accessible access for consumers". Consumers in Germany have difficulties in finding the Product Information sheets in the websites of the providers. In addition, information obligations in providers' shops are generally not met. This type of issues cannot be solved without unequivocal instructions and a clear enforcement strategy.

- The Commission should **provide instructions about the durable medium and the provision of the contract summaries** so consumers easily identify and access them and can refer to them in the future. In this regard, we refer to the recommendations already conveyed to the Commission earlier this year.⁵
- In line with the Code, the draft Implementing regulation should be clear that contract summaries **must be provided for free.**
- The Commission must **be more specific, particularly about bundles.**

³ Ibid, pp. 2-6.

⁴ For more information, see Fitness Check of EU Consumer Law - Additional BEUC Policy Demands, 25 April 2017, pp. 9-13

https://www.beuc.eu/publications/beuc-x-2017-040_csc_fitness_check_of_consumer_law_policy_recommendations.pdf

⁵ Ibid, pp. 9-10.

- **Consumer testing is missing.** Without consumer testing the Commission cannot know how consumers will understand the contract summary/summaries and how to address challenges consumers may encounter. If due to time constraints consumer testing cannot be carried out before the adoption of the implementing act, the Commission should at least foresee the commission of a consumer testing study before the EECC is reviewed.
- The draft Implementing Regulation should also establish instructions about **promotion, supervision and enforcement.** In this regard, we refer to our position paper.⁶

2. Specific comments

Below, we provide specific input on provisions that BEUC believes would benefit from improvements.

2.1. Contract summary format

- We agree that the headings need to be "clearly distinguishable" (recital 4). However, for consistency and prevention of non-compliance, **the Commission should choose a specific legible font type, size and colour for headings in a binding manner.** This is what the Commission has done, for example, in its Implementing Regulation (EU) 2018/34 establishing the Fee Information Document⁷ (see in particular Article 1.2).
- BEUC asks the Commission to **reconsider that "the relevant elements under each heading should be presented in short sentences or in table format, where possible" (recital 4).** It shouldn't be a choice between short sentences and a table format. The Commission must choose a suitable format following existing experience and a consumer testing exercise. Even if the contract summary appeared in the form of a table, short sentences should still be used. In any case, the Commission must not provide vague exceptions like "where possible". When would respecting the format requirements not be possible? If due to time constraints consumer testing cannot be carried out before the adoption of the implementing act, we at least hope that the Commission foresees a consumer testing exercise to prepare for a potential review of the contract summary template.
- It is welcome that "decorative fonts" must be avoided (recital 5). However, **the Commission should choose a specific legible font type, size and colour in a binding fashion.** Recital 5 recommends resorting to "commonly used fonts" and states that the font size must be of at least 10 points. However, as the draft implementing Regulation rightly points out, the character height has an influence on the perception of the font size. Even a 10-size font risks not being accessible for people with sight disabilities, old people, etc. See for example, the differences between the following font types (all in font size 10):

⁶ Ibid, pp. 11-13.

⁷ Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R0034&from=EN>

Verdana
Arial
Times New Roman

Gabriola
Arabic Typesetting

BEUC recommends the Commission to choose a sans-serif font because they are easier to read for consumers with dyslexia or with visual disabilities.

Similar recommendations than in recital 5 appear in the last part of **Article 2.2 of the draft Implementing Regulation**, which **must also be amended**, as per our explanation above. In addition, the Commission should not include that “[i]n exceptional and duly justified circumstances the font size may be reduced”. This will likely lead to non-compliance, lack of accessibility for all and enforcement problems.

- We welcome that recital 5 of the draft implementing Regulation asks for “easy readability”. However, **we strongly disagree with recital 5 and Article 2.3 allowing providers to use colours and visuals**. This adds white noise that is unnecessary and makes the comparison of different contract summaries very difficult.
- **Recital 7 and Article 2.3 allows for graphics, symbols and imagery. BEUC strongly recommends the Commission to reconsider it.** If allowed, these have to be standardised – as the Commission has e.g. done in its Implementing Regulation (EU) 2018/34 –, not allow every operator to have different visuals. It cannot be up to the provider to choose. Otherwise, the contract summaries will be turned into a marketing tool, not a contract summary which is a part of a contract.
- BEUC recommends adding that **the logo must be the only possible way for the provider to personalise the template.**
- We strongly advise the Commission to change Article 2.1 of the draft implementing Regulation. When would it be justified to exceed one page? Recital 261 EECC is clear that one A4 page should be the ideal length. Longer length is allowed for bundles. **We advise the Commission to limit the number of characters and to fix one page (A4) as the suitable length** to avoid non-compliance by providers.
- The Annex should specify that **the contract summary must be dated** (not just “may”), so it is clear that the conditions applicable to the contract were established that date and cannot be modified unless both parties expressly agree.
- (missing element) **The forms must be provided in the languages of the Member State where the consumer resides.**

2.2. Characteristics of the service and equipment

- The Commission should be more specific about the terminal equipment description. We would like the Commission to follow BEREC’s recommendation to include the “brand, type, included in the bundle or purchased/rented separately with the applicable once off/monthly charge”.⁸

⁸ BEREC's response to the Commission request for BEREC input for the contract summary template under Article 102(3) of the EECC, 30 May 2019:

- In case of bundles, the draft implementing act should require providers to inform consumers what element comes first.

2.3. Speed of the internet access service and remedies in case of problems

BEUC requests the Commission to change the corresponding section in the draft Annex and the last part of recital 14 (starting from “The summary should include the normally...”) primarily for two reasons:

- First, it contradicts both Article 4 of Regulation (EU) 2015/2120 and Article 102.3 f) EECC. For fixed internet access services, Article 4 of Regulation 2015/2120 is clear that providers must include the “***minimum***, normally available, ***maximum and advertised*** download and upload speed”. For mobile internet access services, the law is also clear that “they must provide a maximum data transfer rate for download ***and upload***” (emphasis added to show what the annex in the section is missing). A summary of this provision cannot imply omitting essential information for the consumer.
- Second, the same article establishes that providers must indicate “how significant deviations from the respective advertised download and upload speeds could impact the exercise of the end-users’ rights”. However, this does not mean that “**where justifiable, a range of speed can be given**”, as the draft annex suggests. This sentence clearly contradicts the law, so it **must be deleted**.

On the other hand, **speed is just one quality of service parameter that matters**. Article 102.3 EECC requires to include a “summary of the information required” in Article 4.1 d) and e) of Regulation 2015/2120. Article 4.1 e) clearly states that providers need to inform consumers about the remedies available in case of problems with the “**speed or other quality of service parameters and the performance**”. To avoid legal uncertainty and ensure consumer needs are put at the centre of the contract summary, the corresponding section in the draft Annex and recital 15 should be more specific, the same way as Article 4.1 of Regulation 2015/2120. This is also BEREC’s recommendation.⁹

2.4. Prices

Recital 12 and the “prices” section in the Annex are generally welcomed, but some improvements are needed.

- **We would suggest changing “monthly price” for “billing period” in both the Annex and recital 12 of the draft Implementing Regulation. In addition, the billing period must be specifically outlined in the contract summary.** In fact, there are contracts that can be paid weekly or in other periods. For example, our German member vzbv has noticed that for pre-paid services, some providers offer 28-day tariffs. Therefore, the total amount that the consumer would pay per month is higher.
- **If discounts are provided, the provider must not only specify the duration of such offer, but also the price that applies after the minimum contract term (if different) and after the duration of the offer.**

https://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/8582-response-to-the-commission-request-for-berec-input-for-the-contract-summary-template-under-article-102-3-of-the-eccc

⁹ Ibid.

- **Explicit mentions to bundles are missing in the Annex.** In this regard,
 - BEUC endorses BEREC’s recommendations to **include the total cost of the contract**. As BEREC highlights, "single play products often have multiple discounts over different periods of the duration of the contract. It is difficult for the customer to determine the total cost for the life of the contract. How much is the customer contracted for? This is further complicated in a bundle."¹⁰
 - BEUC urges the Commission to include that providers must **be clear not only about the prices of the terminal equipment, but also of “any kind of device offered in the bundle** with the electronic communications service [...].“As BEREC recommended, the contract summary must also “include the **prices at which the consumer could buy the elements of the bundle**, including any terminal equipment, separately from the provider”.¹¹

2.5. Duration, renewal and termination

- Currently, the draft Annex only refers to the provision of information “on the duration of the contract in months”. However, sometimes contracts last shorter or longer than a month and consumers have faced problems in that regard (e.g. surprises in the bill). **Providers should be clear about the duration of the contract and billing periods**, in line with recital 13 of the draft implementing act.
- The Commission must add a provision stating that when certain offers require a **minimum contractual period, providers must clearly inform which minimum period is required** to, e.g. benefit from a promotion. This is in line with BEREC’s recommendations.¹²
- **The corresponding section of the draft annex would benefit from greater specification regarding termination conditions.**
 - While the draft annex includes “early termination”, BEUC strongly advises the Commission to include a provision requesting providers to **inform consumers about the conditions and procedure for terminating a contract, including whether any penalties are applicable**. This is essential information for consumers and in line with BEREC’s recommendations.
 - For the interest of clarity of consumers’ rights, we urge the Commission to change “It shall not include, and it will be without prejudice to, other grounds for termination provided by Union or national law such as in the event of a lack of conformity” into “**Providers must inform consumers about which other grounds for termination are possible under Union or national law such as the event of a lack of conformity**”. To seek redress, it is fundamental that consumers are aware of their rights.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

- **Conditions for terminating the bundles and elements of the bundle must be included.** Currently, nothing is mentioned about it, contrary to BEREC's recommendations.

2.6. Features for end-users with disabilities

We are of the opinion that the current template format disadvantages consumers with disabilities.


In this regard, BEUC would like to reiterate its recommendation¹³ to **render contract summaries accessible by default, not upon request.** This would render the contract summaries in line with Directive (EU) 2019/882, as recital 2 of the draft implementing regulation clearly stipulates. The implementing regulation would benefit from **referring to the harmonised accessibility requirements for ICT products and services ([European Standard EN 301 549](#))**.

2.7. Other relevant information

The section "Other relevant information" in the annex must be deleted. If there are additional information elements required by EU law, these must be included in the template in the order desired. Otherwise, this obligatory information will be placed at the end with no consistency across offers and services, preventing easy comparison.

3. Conclusion

In conclusion, unless the draft texts are changed, the objectives for having contract summary templates in the electronic communications sector risk not being fulfilled and the efforts put by Commission services could be counter-productive.



For more information, please check [BEUC's Recommendations](#) for consumer-friendly contract summary templates in the European Electronic Communications Code.

END

¹³ BEUC's recommendations for consumer-friendly contract summary templates in the European Electronic Communications Code, 3 May 2019.



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