

The Consumer Voice in Europe

SEVEN RECOMMENDATIONS TO SECURE POSITIVE OUTCOMES FOR CONSUMERS AFTER BREXIT

Careful implementation of the withdrawal agreement & ambitious
future relationship for consumers



Contact: Léa Auffret - trade@beuc.eu

BUREAU EUROPEEN 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 • www.beuc.eu

EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2019-094 - 18/12/2019

Summary

Consumer organisations in the EU and in the UK take note of the upcoming ratification of the withdrawal agreement. The revised protocol on Ireland/Northern Ireland will require careful implementation. Safeguards will need to be put in place to maintain consumer safeguards. The transition period is designed to give time to both the EU and the UK to define their new relationship. Public interest groups such as consumer organisations should be involved in both the implementation process of the withdrawal agreement and the definition of this new relationship.

The revised political declaration provides a basis to better understand what the new partnership could look like. The development of this new relationship will be a unique process. Its starting point is an integrated market where EU and UK consumers enjoy a comprehensive and harmonised legal, supervisory and enforcement framework. Any disintegration could bring risks to consumers. Therefore, any future relationship needs to put consumers and their interests at its centre. The ultimate goal should be to make the future relationship work for consumers in the EU and in the UK. This will require both sides to find ways to keep our rules as close as possible and to continue the cooperation between our authorities.

This paper outlines **seven recommendations** to secure positive outcome for consumers in the implementation of the withdrawal agreement and in the future relationship:

- 1. Inform consumers about what Brexit means for them**
- 2. Protect consumers when implementing the withdrawal agreement**
- 3. Make consumer protection a key objective of the future relationship**
- 4. Ensure consumer choice of goods and services**
- 5. Maintain regulatory dialogues to preserve consumer safeguards**
- 6. Assess the impacts on consumers**
- 7. Involve consumer organisations and be transparent**

IMPLEMENTING THE WITHDRAWAL AGREEMENT

1. Inform consumers about what Brexit means for them

The most pressing need for consumers is to understand what Brexit means for them. During the transition period, consumers will continue to rely on their current levels of protection on both sides of the Channel. The European Commission, EU member States and the UK government now need to prepare a plan to inform consumers about the changes they will experience **when the transition period ends**:

- *If the agreement on the future relationship is not concluded by then:* Consumers, like companies, need to be prepared. They should be able to rely on clear and practical information. They should for instance know what were to happen if their travel plans are disrupted and they have to call on passenger rights. What about buying online from a trader located on the other side of the Channel? Is there a risk to take out financial services or what about food safety standards?
- *If the agreement on the future relationship is concluded by then:* Consumers should be informed in a very clear manner about what the future deal will entail for them. Even a very ambitious agreement will not replicate the rights consumers have been used to. Any changes must be clearly communicated to people. For instance, they might have to pay mobile phone roaming charges when travelling. Passenger rights might also diverge after some time. Another example is in case of a dispute with a UK online trader, EU consumers might not be able to sue in their country of residence.

We recommend preparing documents such as short and clear **factsheets** to inform consumers, as well as having a targeted **communications campaign** to reach consumers. A good example to build upon on would be the factsheet on consumer rights that the EU published in March 2019¹.

2. Protect consumers when implementing the withdrawal agreement

The revised **protocol on Ireland/Northern Ireland** includes safeguards to protect the integrity of the single market. We welcome the intention to keep the current levels of consumer protection make sure that products from third countries will comply with EU and UK rules. However, the changes negotiated in the revised protocol are quite significant. It will require a **careful preparation and implementation** to preserve the current levels of consumer protection when the transition period ends.

Already now, unsafe products circulate in the single market. Indeed, **BEUC members conduct tests which regularly reveal the presence of goods in the single market that can harm consumers**. For example, recent tests of eight BEUC members uncovered

¹ EU factsheet on EU consumer rights in the event of “no deal” https://ec.europa.eu/info/sites/info/files/factsheet-consumer-rights-no-deal_en.pdf

dangerous toys on the market². Also, our Belgian member Test-Achats /Test-Aankoop discovered unsafe phone chargers³ and our UK member Which? found faulty smoke detectors⁴. Other tests by consumer organisations showed an increasing number of imported goods that **do not comply with EU rules** such as the ban of certain allergens and the mandatory list of ingredients in cosmetics⁵. The implementation of the Ireland/Northern Ireland protocol must include proper controls to ensure consumer safety, compliance with EU rules and consumer protection enforcement.

Customs and market surveillance authorities both in the EU and the UK will need to be properly equipped to implement the Ireland/Northern Ireland protocol. UK customs will have an important role and increased workload in this context. They will be required to check if imported products comply with UK rules but also in some cases with EU rules. This will be the case of imported products arriving in Northern Ireland and considered “at risk” of entering the EU market.

UK customs must therefore have sufficient resources and trained staff to prevent dangerous and non-compliant goods from reaching consumers. It will be important to reassure the public about the means that have been put in place by UK customs following the European anti-fraud office (OLAF) report in 2017⁶. This report flagged weaknesses of UK customs processes that led to a mass value added tax fraud in relation to textile and footwear imported from China into the EU via the UK. New cases of fraud could emerge, not only concerning VAT but also as regards product safety and compliance with consumer protection rules in general. It is positive that the revised protocol on Ireland/Northern Ireland contains safeguards to ensure proper EU oversight of the controls that UK customs will perform. **EU authorities** will therefore need additional financial and human means to fulfil this mission.

The **joint committee** of the withdrawal agreement will also play an important role. It will adopt by the end of the transition period a decision defining the criteria under which goods could be considered **at risk of entering the EU market via Northern Ireland**. If considered as such, UK customs would be required to check these goods according to EU rules. This decision will have a direct impact on the enforcement of EU consumer law. It also matters for the safety of the products consumers will buy. The implementation of the withdrawal agreement should therefore be **monitored by EU, UK institutions and civil society**. There should be clear transparency rules about the implementation mechanisms of the agreement. As the decisions of the joint committee will have a significant impact on EU and UK citizens, it should gather experts from various fields.

² A research conducted by 8 BEUC members in 2018 exposed illegal levels of a harmful substance, boron, in over 4 slime pots out of 10. <https://www.beuc.eu/press-media/news-events/dangerous-slime-toys-consumer-groups-ask-eu-keep-kids-safe>

³ Test-Achats/Test-Aankoop, BEUC Belgian member, tested 51 usb phone chargers in 2018. 49% were not compliant with EU safety rules. <https://www.test-achats.be/hightech/gsm/news/chargeurs-usb-bon-marche-danger>

⁴ Which, BEUC UK member, tested in 2019 the 4 most popular smoke detectors available online. All failed the smoke detection tests. <https://www.which.co.uk/news/2019/05/revealed-the-terrifying-smoke-alarms-that-will-fail-when-you-need-them/>

⁵ Result of a [mystery shopping](#) conducted by Forbrugerrådet Tænk, BEUC Danish member, on cosmetics in April 2018. Out of 39 cosmetics ordered, 21 were not displaying the mandatory ingredient list and 1 contained banned allergens.

⁶ OLAF press release about operation OCTOPUS in 2017: https://ec.europa.eu/anti-fraud/media-corner/news/28-09-2016/la-douane-et-lolaf-presentent-les-resultats-de-loperation-octopus_en

Preparation should start promptly to make sure that customs authorities will continue to cooperate after the transition period. Such cooperation should also involve other authorities working on market surveillance and consumer protection enforcement.

BEUC recommends that:

- UK customs have **enough resources** to perform robust checks and train agents.
- There is sufficient budget available on the EU side to conduct the oversight of UK customs controls in cases where these have to be performed under EU law.
- Mechanisms are established during the transition period to preserve the **cooperation between customs, market surveillance, enforcement and data protection authorities**.
- **Advisory groups** in the EU and in the UK are established to monitor the implementation of the withdrawal agreement. The advisory groups should provide guidance to the joint committee of the withdrawal agreement. They should for instance provide advice about what should be the criteria to define when goods are at risk of entering the EU market via Northern Ireland. Balanced representation is a must and should include consumer organisations.
- **Cross-cutting expertise within the joint committee** is ensured. Representatives from the EU and the UK should include experts from various fields, notably on customs but also on consumer protection, compliance and consumer protection enforcement.
- The withdrawal agreement is implemented in a **transparent manner**. Agendas and minutes of the meetings of the different committees must always be made public.

NEGOTIATING THE FUTURE RELATIONSHIP

3. Make consumer protection a key objective of the future relationship

Consumers in the EU and the UK have benefited from a common protection floor. When the transition period ends they may experience changes when they shop or travel. A future EU-UK relationship agreement must address this. For example, it should pave the way for specific consumer protections. To make sure that this intention will materialise, consumer protection should be defined as a key objective of the agreement.

Include a consumer chapter in the agreement: Such chapter should compile different aspects that define how the agreement would benefit consumers while protecting them at the same time. To illustrate what this could look like, we developed a [model consumer chapter](#) in a separate position paper. This model was originally designed for EU trade agreements. It could therefore fit into the EU-UK comprehensive and balanced free trade

agreement foreseen in the revised political declaration. However, the future relationship between the EU and the UK cannot be compared to a usual trade agreement. It should make sure that the current common floor of consumer protections will be upheld on both sides and that it can be built upon.

The consumer chapter should:

Secure high levels of consumer protection: specific consumer protection 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;
- Commit not 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 consideration of the hazard-based approach;
- Ensure a high level of protection for personal data and privacy of consumers. The possibility of an adequacy decision could be explored, so long as the UK would provide an essentially equivalent protection to that foreseen in the EU.

& deliver tangible positive consumer outcomes: It is important to secure tangible benefits for EU and UK consumers so that the consequences of the divergence of the UK from the EU single market are minimised. The following initiatives are crucial in this respect and could be integrated in the consumer chapter:

- **Preserve affordable access to telecommunication services** for consumers travelling or communicating with people in partner countries. The future agreement should create the conditions to enable consumers to continue to enjoy telecommunication services across the channel. 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 agreement to renew the integrity of the electricity and gas markets. This includes the single electricity market between Ireland and Northern Ireland.

- **Eliminate unjustified geoblocking:** 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 an 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 redress and 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). It should also play a wider role in **protecting consumers from fraudulent and misleading practices** when they engage in e-commerce.

4. Ensure consumer choice of goods and services

EU and UK consumers should be able to buy products and services from both sides of the Channel without encountering delays and at an affordable price. Ideally, an agreement should enable this to be **as free and frictionless as possible, while maintaining the necessary consumer protections**, especially in the sectors of food and product safety, energy and aviation.

Access to products and services must be based on trustworthy safety net that requires robust import checks There should be a continued **strong cooperation at local and cross border level between customs, market surveillance and enforcement authorities**. It is very important to prevent dangerous and non-compliant goods to reach consumers both in the EU and in the UK.

The future relationship should provide for a baseline of **zero tariffs and quotas** so consumers will be able to choose from a large variety of products, at affordable prices. The EU and the UK must avoid that consumers are hit by unexpected high custom duties when buying online from traders located on the other side of the channel. Information to consumers about the total costs of online transactions is also indispensable.

5. Maintain regulatory dialogues to preserve consumer safeguards

It is crucial for EU and UK consumers to be able to continue to rely on their current high standards of consumer protection. These standards are a starting point that should be able to go forward in the future. In the previous, sections, we highlighted the importance of cooperation between regulators to prevent faulty and dangerous products from entering our markets. It is also important for regulators on both sides to rely on sufficient resources to protect consumers.

There should be a **regulatory cooperation mechanism** established in the future agreement, as planned in the political declaration. This mechanism should be managed by regulators in parallel of the trade discussions. They should cooperate on areas of mutual interest, on a voluntary basis. Consumer protection and consumer welfare should be defined as overarching objectives of this cooperation. It should prevent a weakening of market surveillance. 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.

This can be done by establishing mechanisms that will allow the existing regulatory cooperation between the EU and the UK to continue through the future relationship. This should include ways to preserve the cooperation in the context of the trade control and expert system (TRACES), the rapid alert system for food and feed safety (RASFF), the rapid alert system for product safety (Safety Gate), the consumer protection cooperation network (CPC), and on issues such as antimicrobial resistance and sustainable consumption. The EU and the UK should explore means to continue the cooperation between the UK and key EU agencies and bodies related to consumer protection, such as EFSA, EMA, ENISA, EBA, ESMA, EIOPA and BEREC.

We specifically call on the EU and the UK to also include a strong mechanism to continue the cooperation on **enforcement of consumer rights**. Strong protections cannot protect consumers if they are not properly enforced. UK consumer groups have identified strong enforcements issues related to Brexit and are calling on the UK government “for fundamental reforms to ensure consumers are properly protected from online scams, rip-off prices and unsafe products”⁷.

We welcome the work that has been done on the revised political declaration about open and fair **competition**. The UK and the EU should work closely to tackle anti-competitive practices harming consumers on both sides of the channel. They should notably focus on non-competitive subsidies as they could lead to a race to the bottom between the EU and the UK. We therefore recommend accompanying the foreseen strong competition rules by a continued cooperation between competition authorities.

6. Assess the impacts on consumers

The EU and the UK need to evaluate what will be the impacts on consumers of an agreement defining their future relationship. Such assessment should go further than the impacts on prices and choice. There should be a quantitative and qualitative analysis of the effects on consumers. For example, what will be the impacts on their rights, the safety of their food and products? What will happen in energy and telecom markets?

⁷ Which? report Creating a successful enforcement system for UK consumers:
<https://www.which.co.uk/policy/consumers/3851/ukenforcementsystems>

The assessment should reflect the fact that high consumer protection standards contribute to enable trade flows rather than creating barriers. It should help negotiators decide which scenario will be the best to protect consumers while making sure they will benefit from this new framework of their relationship.

7. Involve consumer organisations & be transparent

The level of transparency provided by the EU during the Brexit negotiations was unprecedented. It allowed stakeholders and citizens to know what was being negotiated on their behalf. We expect the same level of transparency for the future relationship and encourage the UK government to match it. Consumer organisations will need access to consolidated negotiating texts to provide constructive recommendations and inform consumers.

In the EU, consumer groups are represented in the Expert Group on Free Trade Agreements. This group is tasked to advise the EU on its trade and investment policy. In the UK, the consumer group Which? is member of the Strategic Trade Advisory Group. Until now, the future relationship between the EU and the UK has not been discussed in these advisory groups. It is important for both sides to consult with stakeholders, including consumer groups, before deciding on their negotiating strategies for the future relationship.

BEUC recommends that:

- An **EU-UK trade advisory group should be set up on both sides**. Members of these groups should have access to draft positions and be able to propose amendments to negotiators. Like during the withdrawal negotiations, there should be an access to consolidated texts.
- Alternatively, the EU Expert Group on Trade Agreements and the UK Strategic Trade Advisory Group could be a basis for negotiators to seek stakeholder's guidance. However, it will be less efficient than the option above as experts will not practically be able to enter into the necessary details.
- **Joint stakeholder briefings** should be organised to inform stakeholders and allow negotiators to hear their concerns and recommendations.

END



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

The content of this publication represents the views of the author only and it is his/her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.