

The European Consumers' Organisation



The Consumer Rights Directive

Decision
Makers'
Guide

How to get it right

INCLUDES 10 WAYS TO IMPROVE



Consumer Rights Directive proposal & how to make it work

INTRODUCTION



Why a Consumer Rights Directive?

The EU has a longstanding tradition of developing consumer protection policy and legislation, while setting strong protection standards. Indeed, such legislation is a cornerstone of the European project. There are few rights which citizens employ more frequently, and value so highly, as their consumer rights.

The proposed Consumer Rights Directive was presented by the Commission in October 2008. It merges 4 existing Directives, namely Unfair Contract Terms, Sales and Guarantees, Distance Selling and the Doorstep Selling Directives, into a single 'horizontal' Directive.

Consequently, this proposed legislation is one of the most important in recent EU history and certainly in the legislature of the current European Parliament. It carries extensive and daily ramifications for the purchase rights of all Europeans. The proposed Directive would provide the legal regime for almost all consumer purchase contracts, be they of a domestic or a cross border nature, when shopping in the grocery store around the corner or online from across the EU by internet.

Yet, in its proposal, the Commission has turned the current minimum level of protection in the existing Directives into the maximum level of protection. This approach leads to a reduction of consumer protection throughout the EU, in particular in the 'older' Member States.

BEUC, the European Consumers' Organisation and its 43 national member organisations believe there are fundamental flaws in the current Commission proposal and substantive changes need to be made before this piece of legislation deserves its name. We must get it right.

Lost in Harmonisation?

The most pressing concern with this Directive and in greatest need of scrutiny, is the application of full harmonisation. Full harmonisation is suggested throughout the text and is justified by claiming it would bring about a simpler EU system with legal clarity. However, there is a poverty of evidence to support such a claim.

The consequences of full harmonisation are twofold:

- It standardises all relevant laws and protections among Member States to the stated level in the Directive
- Member States are then prohibited from introducing future legislation which would exceed the harmonised level

The impact of full harmonisation as proposed by the Commission would be a dilution of present consumer law and constraining national legislatures from enacting needed laws in the future. Aside from these two key problems with such an approach, there are many other fundamental flaws with the concept of a full harmonisation of contract law in Europe.

What would happen and what to do?

Economically, there is no evidence to suggest full harmonisation would boost cross-border commerce – as is the Commission's priority. Moreover, the clear lack of consumer confidence in shopping online from another country cannot be remedied by imposing the same rules across the EU (and in doing so taking away many well established consumer rights around Europe).

Legally, the goal of a 'single set of rules' is highly unlikely to be achievable. Full harmonisation may seem an attractive concept at first sight. But applying it to consumer contract law which is inseparably linked to national civil law, with many national particularities, is bound to fail. More probable is voluminous litigation on delineation issues and the creation of new legal uncertainty, as was seen with the recently implemented Unfair Commercial Practices Directive.

The adoption of full harmonisation would require many Member States to reduce robust and long-standing consumer laws to the weaker level of the Directive. By creating a legislative limit, it would prove inflexible to consumer behaviour and markets which modernise constantly and rapidly.

On the contrary, minimum harmonisation at a high level of consumer protection, coupled with full harmonisation only of specific, technical rules e.g. formal requirements, length of the withdrawal period, the definition of 'consumer' etc., is both fitting and practical.

Consequently, the most appropriate way forward in reviewing the EC consumer law acquis would be the application of a 'mixed' or 'differentiated' approach for harmonisation, which applies minimum harmonisation as the basic rule, but allows for full harmonisation according to the principles as explained above.

'Future proof' law?

The Consumer Rights Directive will undoubtedly determine the daily transactions of consumers in the EU for the generations to come, but the proposal in its present form does not provide a framework to make consumer legislation future proof. Particularly in the field of digital products (e.g. purchases of downloaded content like music, films, software, games, etc.).

Whilst the proposed Directive is promoted as a means to boost e-commerce and online shopping, it basically contains nothing to adapt the legal environment to new technologies. BEUC therefore calls for a) the introduction of provisions to entitle consumers to a guarantee for digital products b) the necessary information supplied before the purchase c) protection from unfair contract terms in 'end user license agreements' commonly used in the digital environment.

If the EU wishes to stimulate cross-border trade, it must enact laws which empower consumers also with regard to new technologies and new business models. The EU must inspire consumer confidence, not drain it. What is needed is higher and more effective protection, not the same low level of protection established everywhere as a standard. The driving force behind this crucial piece of legislation must be the daily rights of European consumers, not sellers. With this in mind, we call on the European Parliament and the Council of the EU, to focus their efforts on improving the proposed Directive.

Please find enclosed a list of our 10 foremost concerns.



10 issues of concern - how to improve the proposed Directive

Below are BEUC's principal concerns. We ask MEPs to create a workable and equitable Directive by amending appropriately.



> **Contract Information Requirements:** An unchangeable list of information requirements would oblige Member States to repeal existing national laws that provide for more extensive information requirements, specific or general.

IMPROVE

> **Contract Formalities:** The proposal's list of formal requirements for concluding 'distance' and 'off-premises' contracts is insufficient. Existing national requirements may have to be repealed and Member States will lose the authority to address problems with new market practices as previous.

IMPROVE

> **The Right of Withdrawal:** Protecting the consumer's right to cancel a contract appropriately is essential. The proposal mainly restates the existing minimum rules, but now Member States will lose the ability to improve those rules at national level.

IMPROVE

> **Delivery of Goods:** The rules laid down in the proposal are impractical.

IMPROVE

> **Legal Guarantees:** The proposal sees a significant reduction of consumer guarantee rights (such as refund, replacement, return etc.) in many Member States. Important characteristics of guarantee rights would be negatively affected.

IMPROVE

> **Unfair Contract Terms:** The lists of unfair terms are too short, unchangeable and reduce many Member States' protections.

IMPROVE

> **Joint Liability:** The joint liability for defective goods of both the trader and producer would boost consumer confidence.

INCLUDE

> **Payment Means:** The consumer's choice between different means of payment should be insured.

INCLUDE

> **Duration of Contracts:** 'Locking in' consumers to long term contracts, with unfair notice periods to cancel or change contractor/provider, should be prohibited.

INCLUDE

> **Digital Products:** Should establish modern consumer protection rules for digital products bought online e.g. music, software, videos.

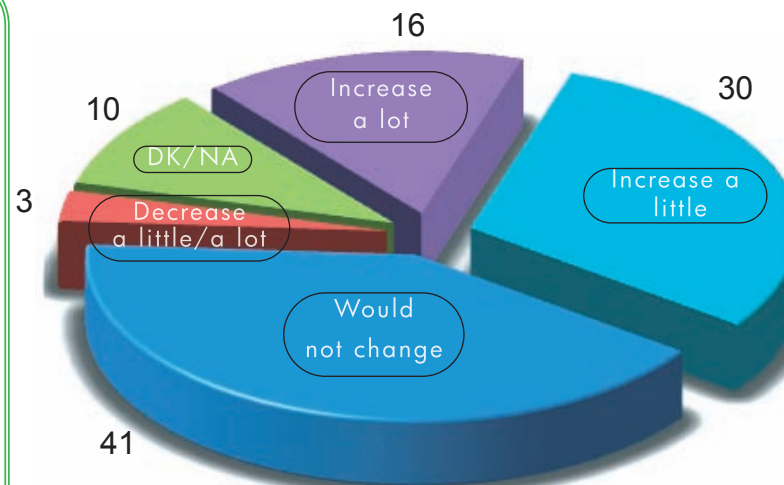
INCLUDE

Low consumer confidence across EU borders

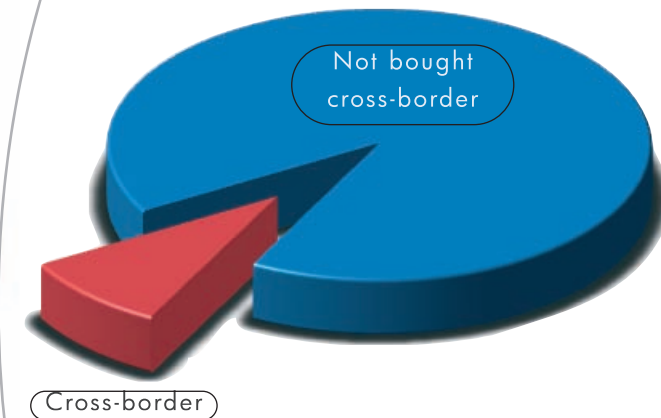
Is the Consumer Rights Directive the correct cure?

There are many reasons that discourage consumers from making online cross-border purchases**. For example:

- Consumers are concerned about payment security and privacy issues (31% unwilling to disclose card details on the internet).
- Consumers may prefer to shop in their own language.
- Consumer do not have access to internet.
- Consumers simply prefer to shop in physical stores.
- Consumers are concerned that products purchased in another country are more likely not to be delivered and are reluctant to pay higher delivery charges.
- Cross-border enforcement and redress is perceived as a major inhibiting factor. 71% of consumers think that it is harder to resolve problems such as complaints, returns, price reductions, or guarantees when purchasing from providers located in other EU countries.



According to the Commission's Eurobarometer, 74% of traders said that harmonised laws would make little or no difference to their cross-border activities.*



At the time of survey, only 9% of EU consumers made cross-border purchases.*

Consumer confidence in shopping cross-border online is still low. Clearly something should be done to address and improve this.

But, is the full harmonisation of consumer contract law, as proposed by the Consumer Rights Directive, the right answer?

A look at the facts above indicates clearly not, either from a consumer or business perspective.

* = Statistics quoted from the Commission's 2008 Flash Eurobarometer (no.224)

** = Statistics quoted from the EC staff working document report on cross-border e-commerce (2009) SEC 283 final

lossary - Some terminology explained

Review of the Consumer Acquis

Launched by the Commission in 2004. It encompasses 8 of the main consumer protection Directives. The overarching aim of the Commission's review is to achieve a real consumer Internal Market striking a fair balance between a high level of consumer protection and the competitiveness of enterprises, while respecting the principle of subsidiarity.

Minimum harmonisation

Minimum harmonisation standardises the regulatory level (in the case of this proposed directive, consumer protection level) at a basic standard which Member States *must* implement. However, if their national laws exceed this standard they do not need to reduce. Crucially, Member States are free to improve upon or exceed this level of protection in future legislation.

Full (or Maximum) harmonisation

Full or maximum harmonisation means that Member States cannot deviate from the standard set. Should current law exceed this level, they must comply by repealing such measures in order to get in line. They are also unable to exceed the level in future laws or introduce any new rules in the field covered by this EU legislation.

Right of Withdrawal

This entitles consumers who bought a good or service in an off-premises or 'distance' situation to cancel the contract within a fixed time period ('cooling-off' period) after the purchase.

'Cooling off' period

The time period within which a consumer is entitled to use their right of withdrawal.

'Off-premises' contract

Any sales or service agreement concluded away from the company's premises e.g. in the street, on your doorstep, etc. Also known as 'direct selling'.

'Distance' contract

Any sales or service agreement concluded while seller and consumer are not simultaneously physically present. Sales by phone, post and the internet comprise the vast majority of such contracts.

Unfair contract terms

Terms which are prohibited when forming contracts. They create an imbalance of power between the rights and obligations of the contracting parties (in this case, consumer and seller).

Lack of conformity

When a good or service either does not fit the purpose for which it was bought (e.g. it has a defect) or does not match the description provided in the contract or pre-sale statements.

Formalities

(focussing on 'distance' and 'off-premises' contracts)

Articles 10 and 11 of the Commission proposal establish certain formal requirements of presentation which distance and off-premises contracts must respect. Such requirements exist in many Member States and are essential in ensuring the consumer has well-presented, appropriate information before making their choice to contract.

In principle, they are to be welcomed at EU level. However, our analyses show that full harmonisation applied to these provisions could jeopardise national requirements not represented in the proposal (e.g. French law on contracts concluded by telephone, Belgian law on the requirement of an order form for all contracts).

In practice, this approach means that those countries with stronger protections on how contracts must be presented would have to reduce their protection level. Member States will also lose their ability to react to new market practices by imposing other formalities.

It is necessary to ensure relevant information reaches the consumer before any obligations are imposed on them. In off-premises contracts (also known as 'direct selling'), an amendment should clarify that the order form has to be provided to the consumer in all circumstances and prior to the conclusion of the contract. This aids an informed decision by the consumer.

Also, the formalities required to conclude distance contracts need to be tailored to the modern digital environment. Particularly to tackle certain commercial practices detrimental to consumers which are becoming common practice on the internet.

For example, people in many countries have been victims of costly and deceptive contracts that have become known in the media as 'internet cost traps'. In such cases, the consumer is unaware the offer being made (for horoscopes, ring tones, cooking recipes, etc.) is not for free and find themselves bound to a regular, expensive subscription for such services.

To combat these practices it is necessary to reinforce the business's obligation to inform about the requirement to pay. Only when the consumer has confirmed their awareness of this aspect, should the contract be valid.

IF PROPOSAL ADOPTED:

Alex, a teenager is surfing the internet and clicks on an advertising banner that offers ringtones for mobile phones. As requested, he fills in a form thinking that he is simply downloading a free ring-tone, but in fact he has accepted unknowingly a costly monthly subscription.

The proposal does not address this issue.



I nformation requirements

IF PROPOSAL ADOPTED:

Martine, an elderly French lady, buys a popular magazine from a direct-selling company. When it arrives, Martine is disappointed with its quality.

As she knows her rights, she asks for a cancellation. But upon contacting the company, they tell her she must pay for and receive the magazine even if she is disappointed. With the proposal she has no withdrawal right when it comes to publications.

Furthermore, the proposal does not require the trader to inform the consumer about the non-existence of the right of withdrawal.



Before any contract can be concluded, consumers need to be appropriately informed as to the features of the good/service they want to buy and conditions of the contract. This is a fundamental contribution to an informed decision before payment.

Articles 5 and 9 of the Commission proposal establish a general list of information requirements which must be provided by the trader before concluding any sale or service contract. Member States cannot either maintain or introduce further information obligations in their laws than those provided for in the proposal.

Listing information requirements is essentially a positive step. But the exhaustive character of the lists in the proposal are problematic. Current national legislation affording higher protection must be repealed and Member States will be unable to react to future problems.

Crucially, another consequence of imposing an exhaustive list of information obligations on contracts is that Member States are free to adopt further information requirements for contracts between businesses, but not between business and consumers.

With contracts for services in certain key sectors (e.g. social services, health services, financial services, real estate agents' services, legal advisor services, etc.), many Member States have put in place information obligations which exceed the proposal.

In contracts for the sale of goods, the proposed list falls short of certain national requirements that, for instance, regulate the safe use of certain products. It follows that these would have to be repealed.

Moreover, setting in stone a closed list of information requirements would conflict in certain Member States with a required general information obligation. An exhaustive list of information requirements would eradicate these wider information duties that exist in national law. Therefore, Member States should retain the authority to add general or specific information requirements to the proposed lists.

Finally, some important information requirements are omitted from the Commission proposal and should be added. For example:

- Information on the absence of the right of withdrawal
- The costs of return of the good in case of withdrawal
- The period of time within which an offer is available
- The telephone number of the trader

Right of Withdrawal

When consumers buy goods or services at a distance (e.g. via internet, catalogues, etc.) or are approached at home by a trader, rules are needed to ensure the circumstances surrounding the purchase are not used to the consumers' detriment.

The right of withdrawal entitles consumers who bought a good or a service in an off-premises or 'distance' situation to cancel the contract within a fixed time period ('cooling-off period') after the purchase. This right is an essential basis of consumer legal protection. It becomes all the more important in cross-border contexts, such as shopping online or over the phone.

Positively, the Commission proposal extends the duration of the right of withdrawal from 7 to 14 (calendar) days. However, the level of consumer protection of the proposed rules (Articles 12–20) is too low if it were to become the European standard and must be increased:

- For clarity's sake, the starting point of the cooling-off period should be similar for both off-premises and distance contracts.
- By beginning too early, the proposed start of the 'cooling-off' period would reduce consumers' current rights in many countries. This is particularly evident with 'off-premises' contracts, where the consumer does not have a chance to inspect goods in person before delivery, or when the necessary information has not been communicated before the conclusion of the contract. The cooling-off period should start when the information on the right of withdrawal has been given to the consumer or when the good has been delivered, whichever is the latest.
- Should the seller omit information on the right of withdrawal, the proposal extends the period for withdrawal only to 3 months. BEUC considers this much too short - a high level of consumer protection calls for a longer extension. The current Directives provide a higher level of protection and many countries have a longer or even unlimited extension. Therefore we call for a minimum period of 1 year.
- The exercise of the withdrawal right is subject to formal obligations to the consumer in the Commission proposal. Yet, the exercise of this essential right should facilitate and favour the consumer. BEUC proposes that, for goods, the sending back of the item should qualify as withdrawal and the cost for the return of the goods should be borne by the trader, at least for items whose return is expensive.

Unsatisfactorily, the proposal maintains most of the exemptions from the right of withdrawal contained in the current Directives. However the Commission has not carried out any impact assessment on the appropriateness of such exemptions. BEUC considers that at the very least, the following exemptions should be deleted in order to engender a modern Internal Market citizens can trust:

- Internet auction sites
- Accommodation, transport and car rental
- Newspapers and magazines

IF PROPOSAL ADOPTED:

Lars, a Danish consumer, is approached at his Copenhagen home by a direct selling company. He buys a photography portfolio worth €200. Upon delivery one month later, he realises that the quality of the photographs are not very good and he wishes to return it for a refund via his right of withdrawal, which in Denmark is valid from receipt of the item.

Under the Commission proposal, he would be unable to cancel the contract as the 'cooling-off' period of 14 days begins from the time of purchase.



Delivery of goods

IF PROPOSAL ADOPTED:

Teresa from Portugal, buys a gift online for a friend's birthday. To receive it in time, she buys it well in advance and is told the gift will arrive 1 day before the birthday. She waits patiently, but the item does not arrive. Nonetheless, her friend decides to postpone the party as she would like to receive the good first.

The current proposal is not practical as Teresa would not have the possibility to choose between a later delivery or the cancellation of the contract. Thus if she wished to give the product to her friend at a later date, she would not be able to do so.



Problems with delivery are very often reported as the main reasons for consumers' complaints in e-commerce. The Commission's Eurobarometers have repeatedly shown this. This is why, for the first time, it proposes EU wide rules on delivery periods and delivery failures such as late delivery (Article 22).

Whilst we welcome the Commission's stated intention to provide consumers with efficient remedies in the occurrence of problems with product delivery, BEUC does not believe the rules actually proposed are practical or suitable to help consumers deal with delivery issues.

- The default rule for delivery according to the proposal is set at 30 days. This is the rule currently applicable to distance contracts. Clearly it is much too long to apply to all purchases, as is put forward in this Directive. In the vast majority of ordinary face to face sales, delivery occurs either immediately or in any case earlier than in 30 days. We thus support the inclusion of an obligation to deliver without undue delay and before 30 days.
- Should a good be delivered late, the proposal stipulates that the consumer must receive a refund of the money paid within one week of delivery. Aside from the fact the rule does not say anything about the fate of the contract (is it terminated or not?), it is not necessarily in the consumer's interest to be refunded automatically as soon as the deadline for delivery expires. It is only consumers who knows if a later delivery would still be useful or acceptable to their own individual and varied needs. Therefore, consumers should have the choice whether to accept a later delivery or to cancel the contract

Legal guarantees

When a product turns out to be defective, consumers should have the right to choose the remedy which is most appropriate and suited to their particular needs. They need to rely on the right to a legal guarantee which is easily enforceable and practical, especially if they have made a cross-border purchase.

Yet, regrettably when it comes to legal guarantees (Articles 24–28), which is a core element of building consumer confidence, the Commission proposal puts traders in the driving seat and worse, would take away longstanding and well functioning consumer rights in many Member States.

Of major significance is the fact that the proposal does not allow the consumer to freely choose among the available remedies. Instead, it maintains the priority order of remedies in the current Directive. The first choice is limited to either repair or replacement, and allows for the cancellation of the contract or reduction of the price only at a later stage. Of even greater concern, the initial choice between repair and replacement is given to the trader, not to the consumer - a dramatic reduction in consumer rights in all Member States.

Moreover, the proposed Directive would take away long established consumer rights in many Member States. Essential existing remedies such as the UK and Irish 'right to reject' would no longer be available to consumers, yet perversely, would still be accessible for business in their commercial dealings with other businesses. An important number of countries (including Greece, Slovenia, Portugal, Lithuania and Latvia) who currently give the consumer an initial 'free choice' of all four remedies, including cancellation of the contract would have to abrogate those rights.

A lessening of essential national consumer rights must not be the result of EU legislation which is supposed to increase consumer confidence. If consumers are entitled to a legal guarantee, it should be they who have the first choice between all available remedies, eventually subject to certain conditions. After all, it is the seller who is in breach of the contract.

Furthermore, it is essential that the right to a guarantee can actually be exercised by consumers: the question of who must prove a product defect existed at the time of purchase is a crucial one. The proposed rule is that for 6 months after purchase the consumer can benefit from the guarantee without providing evidence of defect, is not sufficient. Practical experience shows that after this 6 month period, the right to a guarantee is often rejected by traders and consumers would have to pay for costly expert advice, which is often not an option financially for most people.

Therefore, we propose to extend the period of the presumption of the defect to 1 year.

IF PROPOSAL ADOPTED:

Björn from Sweden buys a DVD player which stops working after 1 year. He takes it to the shop, but they refuse to provide any guarantee, claiming the player was not defective when sold and that Björn has badly used it and is therefore himself responsible for the defect.

In order to make the shop accept his right to a guarantee, Björn would have to provide an expert opinion that proves the defect was already inherent in the product at the time of purchase. Such a technical opinion would nearly cost as much as a new CD player.



Unfair contract terms

IF PROPOSAL ADOPTED:

Josef, an Austrian law student, is shocked when his electricity company announces a 20% price increase next month. The contract states they can raise prices "according to market developments without further justification". He seeks advice and learns the increase is most likely unjustified in national law. Price increase clauses are only fair if listed in the contract, justified by facts and do not depend on the discretion of the business.

Under the proposed Directive, Josef could not maintain the initial price, instead is obliged to cancel the contract.

The European solution is clearly unsatisfactory. It obliges the consumer to change supplier, maybe repeatedly. The national protection would be repealed.



Articles 30-39 of the proposal regulate unfair terms used in contracts. They do not introduce any significant additions to the still operating Unfair Contract Terms Directive of 1993. The big difference is that Member States will be unable to maintain their more protective rules or introduce improvements to those in the fully harmonised proposal. This is particularly bad for consumers in Member States with a long and rich tradition of legal and judicial oversight of unfair contractual terms.

The consequence of a change of approach from minimum to full harmonisation, would be counterproductive and detrimental.

National legislatures would no longer be allowed to prohibit unfair contract terms not expressly named in the proposal's lists. On a practical level, what is currently unfair in some Member States for consumer contracts, may no longer be so.

Furthermore, it is important to understand that the law on unfair terms is 'principle based' and evolves constantly, mainly on the basis of national case law and developments in business practices.

Significantly, business will neither benefit from full harmonisation, as judges will continue to apply general rules of national civil law. Consequently, greater legal clarity as hoped by the Commission will not be gained, but rather, more uncertainty. National case law will vary among countries and legal ambiguity will be created long term.

Regarding the transparency of small print in contracts, the current Directive is somewhat improved. However, breaches of traders' transparency obligations should qualify legally as 'unfairness'. Many consumer complaints focus on the comprehensibility and accessibility of contractual terms. All too often, print is intentionally far too small or obscurely placed in the document or website. Thus, the prohibition of Member States providing further regulation on the presentation of terms should be deleted (Article 31.5).

A modern piece of consumer legislation should ensure rules on unfair contract terms fully apply to digital products (e.g. software, music, films, etc). This is crucial as goods are increasingly bought in digital format. Such contracts often contain clauses unfairly limiting the use of the purchased content. Therefore, it should be made explicit that digital contract conditions can be fully scrutinised for unfairness and are not covered by exceptions (Article 31.3).

Joint Liability of Producer and Trader

When a consumer buys a good which turns out to be defective, the Commission proposal makes only the trader liable for the consumer's remedy. This means that the consumer could by no means turn to the producer to use his legal guarantee rights if the product shows a defect.

Yet in an Internal Market, the direct liability of the producer would greatly contribute to boosting consumers' confidence in the products and services available to them across the EU.

Under the proposed Directive, consumers who buy a defective product across a border (e.g. on the internet or whilst on holiday in another EU country), would have to send the faulty good back to the foreign seller in order to use their guarantee rights. Even if the producer of the good has an outlet in the consumer's home country, the consumer does not have the right to request a repair or replacement from the producer.

Even worse, if the good is repaired by the seller in the foreign Member State, but still does not work properly or returns still defective, a consumer would have to send the good backwards and forwards across the EU several times, regardless of the distance a producer is situated from the consumer's home.

This is certainly not the way the Internal Market should work for consumers. Therefore, BEUC strongly advocates the introduction of liability of the producer to the consumer for defective products.

Such joint liability has been discussed at EU level for many years and we are disappointed that the Commission, which was previously supportive of such a regime, has not taken the opportunity to propose putting in place this concept which would provide tangible benefits to consumers.

The direct liability of the producer already exists in many countries and there is no demonstrable evidence of a detrimental effect on markets.

IF PROPOSAL ADOPTED:

Lukas is a German consumer who buys a computer whilst on holidays in the UK. Back home he realises the screen does not work properly and requires repair. He brings the PC to a branch of the producer based in Germany, but is very disappointed when the producer rejects any obligation to fix the defect.

Unsatisfactorily, Lukas is referred back to the shop in the UK as the only legally responsible party. He would be obliged to return to the UK or send the PC by post to the UK to ask for a remedy.



Payment methods

IF PROPOSAL ADOPTED:

Karin is looking for a flight from her native Madrid to London. She finds a low price ticket offer with a reputable airline on its website. She is delighted to find a ticket for "€30 incl. charges".

When just about to pay, she realises the price is only if she pays with a particular credit card, one which she does not have. She will be charged €10 extra (more than 30% of the advertised price) for using other means. Furthermore, Karin does not have the possibility to pay by cash at the airline's ticket desk, at the airport or in a bank.



It is essential for consumers to have the choice between different means of payment, especially when buying at a distance. It is important to note that not every consumer has access to electronic means such as a credit/debit card or online banking.

In many instances, when consumers buy online, traders do not allow enough choice of ways to pay for goods. If they do, often some options are overcharged. These charges function as a penalty if consumers do not choose the means preferred by the trader.

The Commission's proposal does not address these unfortunate practices. Considering the importance and prevalence of the issue, BEUC recommends to include certain rules allowing consumers to choose the most suitable means of payment for them and not be charged disproportionately for opting so.

- The proposal should require the trader to provide a variety of different and equal means of payment to the consumer. These should include electronic (i.e. by credit or debit card) and non-electronic means of payment.
- The trader should not be permitted to charge the consumer a discriminatory fee for the use of alternative means of payment in cases of distance contracts.
- The consumer should for example be allowed to pay by cash at a bank or at another contact point of the trader in the Member State of the consumer.

Duration of contracts

Currently, many service providers, for example gyms and sports clubs, telephone networks, internet service providers, magazine subscriptions, etc. only offer long term contracts to consumers limiting the possibility for consumers to end the contract before a certain time has elapsed.

Due to a lack of transparency in the contract terms, consumers often do not realise that they will be bound by the contract for a long time and that it will be impossible to end the contract. Or worse, the cancellation is sometimes stated as not permitted.

The increasing length of contracts, in particular subscriptions to services which capture consumers in a contract with the same provider and service, is detrimental for competition and ultimately has a harmful effect on prices and the quality of services.

Despite its increasing relevance in a marketplace dominated by services, the issue of the duration of contracts is not tackled in the proposal of the Commission.

BEUC proposes to regulate the issue by limiting the maximum initial contracting period to 12 months, during which the consumer should be able to cancel the contract and change provider if desired, dependant on reasonable advance notice.

IF PROPOSAL ADOPTED:

Frank from Holland wants to get in shape for the coming summer. So, he joins a gym. 2 months later, he is unhappy with the poorly maintained facilities and he does not like the atmosphere.

However, his contract stipulates he must pay for a minimum period of 1 year. The current proposal does not address the ever increasing problems of consumers being trapped in long duration contracts.



Digital products

IF PROPOSAL ADOPTED:

Tomasz, a young man from Poland, buys expensive software online from a popular internet store. Once downloaded, he tries to use it, but discovers that it does not work properly.

As the Commission does not propose legal guarantees for digital products, Tomasz is left without a clear idea of what to do. There is no legal certainty or European safeguards such as replacement or cancellation of the contract in such circumstances. For consumers, unclear rights often turn into no rights.



The purchase of digital goods has become a frequent practice in Europe. Millions of consumers buy online music, films, software, ringtones, games and books etc. in digital format. The frequency of sales of digital products increases continually.

Despite the Commission's stated aim to boost cross-border e-commerce via this proposal, this legislation includes nothing in this respect. Therefore, it does not provide the solid legal framework necessary to make consumers feel secure buying digital products across the EU.

Given that the proposed Directive will be the legal base for consumers' digital purchases for many years to come, it is crucial that this essential flaw of the proposal is addressed. According to BEUC's analyses, important improvements can be achieved with only a few amendments to the text of the proposed Directive.

The main issue to amend is the current limitation of the scope of the proposal. At present, it only covers 'tangible moveable items' which means only digital data burned onto a physical medium (CD or DVD) would be included. This is ineffective because what consumers increasingly buy and what are designed precisely for cross-border purchase are digital goods transferred directly to the PC of the consumer via the internet.

Due to this limitation, the Commission proposal will not solve the typical problems with digital goods bought online faced by consumers. Common problems include goods which simply do not work or do so imperfectly, are not interoperable with hardware and legitimate expectations not being met. In such scenarios, the current proposal does not offer any help. Consumers are left with unclear, often as yet unestablished, national law. This is self-evidently a legal uncertainty, which clearly works to the detriment of European consumers.

BEUC proposes that products purchased in digital format, e.g. an mp3 song, as they have the possibility of permanent use similar to the physical possession of a good, should be treated as a tangible good and thereby provide a set of guarantee rights throughout the EU.

Moreover, traders' information obligations set out elsewhere in the proposal are not fit for digital goods. Specific information requirements need to be added that allow consumers to receive sufficient and clear information on restrictions of use of digital goods stemming for example from technical measures, or the lack of interoperability between commonly used hardware and software.

National examples

Just a few examples of what will happen in various Member States if the proposal is adopted unamended:

...In **France** consumers would lose their right to pay for the goods purchased in off-premises situations only at the end of the cooling-off period. In **Ireland**, to exercise the right of withdrawal consumers would need to comply with new formal requirements which complicate the consumer's use of the right of withdrawal and currently do not exist. In **Romania** to get their money back in case of a withdrawal, consumers would have to wait until the trader receives the returned goods. In **Slovakia**, some consumers would no longer receive information on the business number of the provider before concluding the contract. In **Slovenia**, consumers who have purchased a defective good, will lose their right to choose the remedy which suits them best. Consumers in **Hungary** would lose their right to withhold a portion of the price until repair or replacement has been completed. In the **UK**, consumers would lose their right to reject the good if it turns out to be defective after they bought it. In **Portugal**, consumers would no longer be able to benefit beyond 6 months from the guarantee and burden of proof for product defects at time of delivery. In **Spain**, the list of unfair contract terms will be significantly reduced and in **Austria** extensive special consumer information requirements would have to be repealed. Consumers from **Luxembourg** would be prevented from the right to a guarantee of hidden defects, even a long time after the purchase. In **Finland**, the guarantee for the lifetime of the product would be reduced to two years. Similarly, in **The Netherlands** where the trader is liable for non-conformity during the entire life-expectancy of the good, **Dutch** consumers would see this right taken away. In **Lithuania**, consumers could no longer ask for their money back if the good they bought is delivered in a defective condition. In **Germany**, consumers would be prevented from using the right of withdrawal when buying periodicals and magazines on the telephone. **Estonian** consumers could no longer withdraw from the contract for a magazine subscription signed on their door step. In **Malta**, the lack of information on the right of withdrawal would no longer be a ground to declare the contract void and the same situation would occur in **Belgium**. In **Bulgaria**, consumers would be obliged to accept the remedy chosen by the trader in case of lack of conformity and in **Italy**, consumers buying second-hand cars from dealers could be less protected. In **Denmark**, the period for the legal guarantee for second-hand goods would be reduced and in **Greece** the consumers could lose the right to a temporary replacement if repair takes longer than 15 days. **Cypriot** will no longer be able to request that the availability of spare parts, accessories and specialised technicians are taken into account in assessing the conformity of a product. The pre-contractual information requirements would be reduced in the **Czech Republic**. In **Latvia**, consumers would lose the right to a legal guarantee if they did not notify the lack of conformity within 2 months - when it is currently not necessary to do so. In **Poland**, consumers would suffer from reduced protection in relation to the rules on the burden of proof with defective products and in **Sweden** consumers would lose the current protection they enjoy related to unfair contracts - the adequacy of the price can be scrutinised by a judge and the contract can be declared void on that basis...



Notes





The Consumer Rights Directive Proposal

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Contact BEUC's
consumer contract expert team
for further information

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+32 (0) 2 743 15 90
consumercontracts@beuc.eu
www.beuc.eu



The European Consumers' Organisation

Bureau Européen des Unions de Consommateurs

Rue d'Arlon 80

B-1040 Brussels

Tel: +32 (0) 2 743 15 90

Fax: +32 (0) 2 740 28 02

E-mail: consumercontracts@beuc.eu

www.beuc.eu

43 BEUC national members across Europe

Arbeiterkammer (AT)
Verein für Konsumenteninformation (AT)
Test Achats - Test Aankoop (BE)
Българска национална асоциация на потрибителите - BNAP (BG)
Fédération Romande des Consommateurs (CH)
ΚΥΠΡΙΑΚΟΣ ΣΥΝΔΕΣΜΟΣ ΚΑΤΑΝΑΛΩΤΩΝ (CY)
Sdružení Obrany Spotřebitelů České Republiky (CZ)
Czech Association of Consumers (TEST) (CZ)
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Kuluttajat-Konsumenterna ry (FI)
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Organisation Générale des Consommateurs (FR)
UFC - Que Choisir (FR)
Consumer Focus (GB)
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Ένωση Καταναλωτών η Ποιότητα της Ζωής - ΕΚΠΟΙΖΩ (GR)
Γενική Ομοσπονδία Καταναλωτών Ελλάδος (GR)
Κέντρο Προστασίας Καταναλωτών - ΚΕΠΚΑ (GR)
Országos Fogyasztónvédelmi Egyesület (HU)
Hrvatski Savez Udruuga za Zaštitu Potrošača - "Potrošač" (HR)
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Neytendasamtökin (IS)
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Union Luxembourgeoise des Consommateurs (LU)
Latvijas Patērētāju interešu aizstāvēšanas asociāciju (LV)
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Ghaqda Tal-Konsumaturi (MT)
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Federacja Konsumentów (PL)
Stowarzyszenie Konsumentów Polskich (PL)
Associação Portuguesa para a Defesa do Consumidor (PT)
Asociația pentru Protecția Consumatorilor din România (RO)
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BEUC activities are partly funded from the EU budget