



The Consumer Voice in Europe

Consumer Agenda

BEUC note on the Commission Communication

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Background

1. The European Commission presented a new consumer policy strategy, entitled 'The Consumer Agenda' at the end of May 2012. For the first time, an EU consumer policy strategy is qualified as a strategic initiative in the Commission's work programme, which is a promotion in terms of the importance placed on it.
2. The European Parliament adopted an own initiative report in November 2011 providing timely input to the Commission's work. BEUC welcomed the Parliament's report as it calls for a horizontal and holistic approach to consumer interests and highlights many of the most relevant consumer concerns.
3. In parallel BEUC submitted its 'EU Consumers' 2020 Vision'¹ which aimed at feeding into the Commission's preparatory work for the Consumer Agenda and was presented to the European institutions on May 10th, 2012 on our 50th anniversary conference.

¹ BEUC/X/2012/033, accessible at www.beuc.eu

General comments

1. BEUC welcomes that the European Commission for the first time has taken a **holistic approach** in this Agenda, by taking into account (nearly) all policy areas that are important for consumers in the Single Market. The Agenda aims to increase consumer confidence by boosting consumer safety; enhancing consumer knowledge of their rights and the tools to make informed choices; stepping up enforcement and providing means of redress and aligning consumer rights and policies to changes in society and economies.
2. By gathering **previously scattered EU initiatives** under the umbrella of this Consumer Agenda, the Commission gives a strong signal of higher standing for consumer needs and expectations in EU policy making.
3. The Commission has presented a long list of initiatives, but obviously, the proof of the pudding will be in its eating: What counts for European consumers is the **final outcome of the Agenda's legislative and non-legislative initiatives**. Consequently, all EU legislation with an impact on consumer welfare should be based on a high level of consumer protection while meeting the needs and expectations of European consumers.
4. In our **2020 vision paper**, BEUC has identified the principles that should guide a **consumer strategy**: European Consumers should
 - a. Have straightforward, meaningful choices in fair and competitive markets and can exercise them;
 - b. Get access to, and better value, from all goods and services, including basics such as health, energy and food;
 - c. Benefit fully and safely from advances in technology;
 - d. Have the knowledge and awareness to exercise their rights;
 - e. Have access to impartial information and advice;
 - f. Are given adequate and efficient tools to obtain redress for loss or harm;
 - g. Find sustainable choices to be the easy and affordable ones;
 - h. Trust that EU policymaking takes full account of their interests;
 - i. Benefit from a strong and influential consumer movement at national and European Union level.

5. We call for a more nuanced approach in relation to the concept of the **"empowered consumer"** which is a leitmotiv of the current EU policy. "Empowering "consumers is often used and understood as a concept restricted to informing and educating consumers. The risk is that this assumed "power" can in reality in many markets become "disempowerment" of consumers, who - despite of the lack of transparency, of competition and of redress tools - are made responsible for finding the best offer and for protecting themselves against unfair practices. The simple fact that in all markets, but particularly in universal services markets, consumers need to be protected by "default" measures, such as clear and solid rights and transparent market conditions, risks to be neglected.
6. BEUC very much welcomes that the scope of the Agenda embraces (nearly) all relevant policy areas. Yet it is regrettable and not comprehensible why the European Commission didn't include **health services** into the Agenda, which are an important element of consumer policy: Health services do bear the typical characteristics of other consumers' service, they are provided to consumers, consumers pay for them, information is a key feature to design this policy etc. Health policy thus should be included into the Agenda as a consumer relevant policy.
7. Consumer policy is one of the very few Union policies which are directly tangible by European citizens/consumers. Its reach out capacities is big but so far has not been sufficiently employed by the EU institutions. Consequently consumer policy should be recognised an **essential part of the EU's economic policy**. This aspect should be highlighted in any initiative aimed at generating consumer confidence and consumer rights.
8. The four main objectives of the Consumer Agenda are a logical continuation of the previous consumer strategy. They have been already in the focus of consumer policy since many years, yet much more needs to be done to achieve **satisfactory results and a coherent and targeted EU policy** is urgently needed to progress consumer welfare in all areas defined.
9. In the context also of the respective European Parliaments resolution, BEUC underlines that the **specific needs of consumers who belong to a vulnerable consumers group** should be identified and integrated more systematically and regularly into European and national policy making, and that also the perception of the "average" consumers - as opposed to the "vulnerable" consumers - requires re-thinking and adaptation to a modern and behavioural economics based approach. This aspect should be more prominently inserted into the European's Commission's policy agenda and related measures.

Comments on the Implementation of the Consumer Agenda

10. The Agenda is regrettably not putting a lot of emphasis on the European Commission's governance in relation to stakeholders: how to consult with stakeholders, how to ensure proper input into their policy making apart from data gathering, how to deal with the consumer angle in impact assessments. We suggest that the agenda should include a commitment of the European Commission to regularly consult stakeholders on all its envisaged initiatives including "soft law" such as guidance etc, in particular consumer organisations.
11. It is surprising in this context that on several subjects in the Consumer Agenda of high importance to consumers the European Commission announces that it will work together with traders to encourage business self-regulation. BEUC underlines, that self-regulation in the field of consumer protection, done by the industry without the involvement consumer organisations, cannot be a means to achieve public policy objectives. We ask the European Commission to adapt a more inclusive governance approach and to ensure that consumer organisations can provide their input and expertise when such measures are elaborated. In any case, self-regulatory measures should be regularly monitored and their efficacy be measured in order to step in with legislation where necessary.
12. The Commission should report once a year to the Parliament and the Council on how consumer interests have been taken into account with EU policy making and how the outcomes have delivered to consumers.
13. The Commission should propose a clear evaluation methodology for assessing the implementation of the consumer agenda, including success indicators.

Specific comments on the four objectives for consumer policy

Reinforcing safety

The Commission has set two objectives in this field:

- improving the regulatory framework on product and service safety and enhancing the market surveillance framework;
 - reinforcing safety in the food chain.
14. BEUC underlines the need for a better market surveillance system in Europe as we are only as strong as our weakest entry point to the single market. It must be ensured that the level of enforcement is the same across the EU and that market surveillance activities are effective across the EU as indeed unsafe consumer products, including products bearing the CE mark, are still found on the EU market posing avoidable risks to health and safety.
 15. Thus BEUC welcomes that the European Commission will propose a legislative "product safety package" consisting of a Single Market surveillance instrument for all non-food products, a proposal for a new General Product Safety Directive (GPSD) and a multiannual market surveillance framework plan.

16. Some Member States seem to have reduced controls in the time of financial crisis. We insist that market surveillance authorities must be enabled also in the future to take off products which are potentially dangerous on the precautionary principle even if no clear legal rules exist, e.g. as can happen when hazardous chemicals are found for which no threshold values exist but nonetheless a health hazard cannot be excluded.
17. Beuc together with other stakeholders also from the business side jointly calls for the establishment of an EU-wide accident and injury data collection system to underpin evidence based policy making.
18. The Revision should provide for more clarity on how the various EU legislations dealing with product safety interact with each other. In particular, manufacturers' responsibilities need to be strengthened and clarified.
19. Child-appealing products should be explicitly addressed and the prohibition of food-imitating products should be maintained.
20. In relation to food safety and in particular food hygiene, from a consumer perspective, the most pertinent points relate to meat inspection, mechanically separated meat and the application of specific hygiene rules at the retail level. In the interest of consumer safety (and consistency), the specific hygiene requirements of Regulation 853/2004 should be applied at the retail level as it is increasingly common for retail to cut, slice and re-wrap meat that is then sold at a 'self-service' counter

Enhancing knowledge

The Commission has set the following two objectives under this heading:

- improving information and raising awareness of consumer rights and interests among both consumers and traders;
 - building knowledge and capacity for more effective consumer participation in the market.
21. As illustrated in BEUC's 2020 vision paper (see footnote 1), it can be noted that empowering consumers is the holy grail of current EU strategy and research. Tools such as 'real choices, accurate information, market transparency and the confidence that comes from effective protection and solid rights' are necessary. If the 500 million EU consumers have all that, they can influence markets with their collective power. The reality, however, as our members tell us, is rather different. Numerous elements converge to disempowered consumers by making it impossible for them to understand and act on the information they receive.

22. This increase in disempowerment, the reverse of what official strategies aim for, is compounded by the fact that current policy initiatives do not necessarily take into account the different information needs of people according to their particular conditions or vulnerabilities. Ultimately, this 'confuseopoly' makes choices difficult, as there are so many dimensions to consider for each product and service. The 'right' choice is not an easy one. Searching for and receiving the necessary information — if it's available — is not only complicated, but demands a great deal of time, which most consumers in their hectic daily lives cannot and do not want to spend. Being a well-informed consumer increasingly becomes a full-time job.
23. Though we welcome that the European Commission in its Agenda announces several information campaigns for consumers and that, for the first time, it underlines the need to train businesses, BEUC insists that a modern consumer policy must take into account that information proliferation does not automatically lead to 'better' consumer decisions.
24. Consumer policy measures must therefore aim to improve consumer knowledge, for example, by providing 'choice filters' (something that consumer organisations are very good at providing for their members).
25. Moreover, more research needs to be undertaken to ensure that consumer information reaches out to consumers, is understood and can generate real knowledge.
26. The need of consumers to have access to independent advice, not only to generally distributed information, is increasingly important in many key policies, such as financial services, energy consumption and sustainable product and services offers is essential and more importance should be given to this aspect.
27. Likewise, the simplification of highly complex products, such as financial services but also the simplification and need for standardisation of information in general is a topic of great relevance to consumers and should be taken into account by a modern consumer strategy.

Improving enforcement and securing redress

The Commission has set the two following objectives:

- effectively enforcing consumer law, focusing on key sectors;
 - giving consumers efficient ways to solve disputes.
28. BEUC acknowledges the initiatives taken by the Commission to ensure enforcement of consumer law. A new "governance" of EU law enforcement is needed, focusing on co-operation between national authorities but also between private enforcement protagonists, for example by national consumer organisations in a co-ordinated manner. In this context we call on the European Commission to re-consider providing support to consumer organisations' work in this field, such as the Cojef project (Consumer Law Enforcement Forum , more information accessible at <http://cojef-project.eu/>) , which has been very successful but its prolongation has been rejected by the European Commission.

29. We hope that initiatives are taken at EU level concerning the knowledge and the understanding of EU law to ensure that, through training programmes and relevant information, traders are increasingly aware of consumer rights and respect them when designing their standard contracts and preparing their marketing tools;
30. However, it is profoundly disappointing, that after all these years still no measures have been taken by the Commission to make concrete progress on **collective redress** and that rather than finally acting appropriately, it seems that again no binding measures will be taken which would provide solid redress rights to European consumers. The lack of commitment and even strategic delay on this issue is a real eyesore in the Commission's consumer agenda and policy.
31. The future measures to establish **alternative dispute resolution** systems across the EU which will be adopted very soon, are very welcome but this cannot replace the need for collective judicial proceedings.
32. In relation to updating the **guidelines on misleading and unfounded environmental claims**, BEUC doubts whether it is enough to rely on guidelines, which do not have any legally binding effect. We consider that in this field, more stringent measures are necessary, for example the establishment of a black list of claims, which cannot be used.

Aligning rights and policy to societal change and making it relevant to daily life

To address important economic and societal issues, the Commission has set the following objectives:

- 7. adapting consumer law to the digital age;
 - 8. promoting sustainable growth and supporting consumer interests in key sectors
33. The **online purchase of digital content** is a source of opportunity for both businesses and consumers as it is an important element of the Digital Single Market. However, consumer detriment regarding the purchase of digital content is currently very high. For instance, an empirical report conducted for the European Commission estimated such detriment to be in the region of €64 billion per year in the EU.
 34. This immense consumer damage has to do to a significant degree with the fact that European consumer protection legislation is only very partially applicable to such transactions and national legislation has not adapted to these types of products. This has led to legal uncertainty, a lack of consumer confidence and fragmentation of the Internal Market.
 35. Legal uncertainty and the absence of European rules are felt particularly with regard to the question surrounding the consumer's rights against a defective digital product: for example, are consumers entitled to claim a replacement or a refund?

36. Consumers face additional difficulties because of overly complex, unfair terms and conditions which are often presented as 'licence agreements', suggesting that limitations on use and technical protection measures have total precedence over legitimate consumer expectations and the balance of the parties' rights.
37. Unfortunately the European Commission in relation to consumer contracts intends to rely on business self-regulation through optional legal systems for consumer contracts which would co-exist in parallel with national laws and can be chosen by the trader or not.
38. This approach has been adopted in the proposed European Common Sales law and has now been announced also to ensure safe and fair contracts for **cloud computing**.
39. This is another serious flaw of the current European Commission's consumer policy because it would not oblige trader to use modern legislation, but give the choice to avoid it. What consumers need however is solid legislation applicable to all contracts and not dependant on an opt-in or opt-out basis by business.
40. The European Commission should urgently change its policy.
41. Moreover, the Consumer Agenda regrettably does not address two major consumer issues.
42. It is in particular regrettable that no measures have been taken in relation to the further harmonisation of **copyright** exceptions, as due to this lack of harmonisation particularly as regards private copying , the Digital Single market is still no reality for consumers and its functioning is seriously hampered. Instead of concentrating on the enforcement of the intellectual property rightholders by reviewing the Intellectual Property Rights Enforcement Directive 2004/48 (IPRED), it should focus on reviewing the directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) in order to update the list of copyright exceptions and limitations, which hampers the smooth functioning of the digital single market for consumers.
43. **Net neutrality** is one of the fundamental principles of the internet and it has significantly enhanced citizens' participation in society, access to knowledge and diversity, while promoting innovation, economic growth and democratic participation. Yet, the principle of net neutrality is being constantly violated throughout Europe, in fixed and mobile internet markets alike. A large number of network operators are using their power as regards the control of traffic in order to block the transmission of data, prioritise their own services at the expense of their competitors, restrict the use of certain applications or charge online service providers a premium to guarantee fast delivery of their content. The European Commission should urgently address this problem;

Comments on certain other sectors listed in the Consumer Agenda

Below we refer to the most important points of a selection of EU policies

Air transport

44. The European Commission should come forward with a legislative proposal requiring airlines to guarantee the protection of all passengers in case of airlines insolvencies as well as to act against the proliferation of unfair contract terms in air transport contracts, the lack of transparency of ticket pricing and the difficulties consumers have in obtaining redress by obliging airline companies to adhere to Alternative Dispute Resolution (ADR) systems and even to the decisions made by the national air travel authorities.

Sustainability

45. A consumer strategy should more look at how the demand side for sustainable products can be strengthened. This requires a policy mix of mandatory minimum requirements (e.g. Ecodesign requirements) for more products, mandatory information (e.g. through the Energy Label) and voluntary instruments (e.g. the Ecolabel). On the production side, more needs to be done to ensure that consumers will be offered more sustainable products at affordable prices. Moreover, the work with retailers should be intensified and instruments should be put in place which allows comparing the environmental performance of retailers.

Energy

46. The complete and efficient transposition of the third energy package is a fundamental step to achieve the completion of the internal energy market by 2014. The third energy package is yet another attempt towards the full liberalisation of energy retail markets, but it remains to be seen whether it is capable in itself of providing for the effective competition that delivers healthy markets for European consumers.
47. In many Member States a choice between different suppliers of energy is not an option yet for consumers due to a lack of competition. Affordability of services, quality complaint handling, comparability of offers and prices, easy switching of suppliers and the transparency of tariffs and contract terms are still to be achieved across Europe. In this respect, consumer rights need to be strengthened and guaranteed.
48. It is of utmost importance that vulnerability in the energy sector is properly addressed and that Member States transpose the relevant provisions contained in the third energy package helping vulnerable consumers in their country.

Food

49. Efforts need to be stepped up to create an environment which makes the healthier choice the easier and more affordable choice when it comes to choosing food. The 2006 health claims regulation will hopefully soon show clear results as the end of the transition period for such not admitted health claims expired in December 2012). Member States should ensure that rejected claims have been removed from the market.
50. On the other hand, nutrient profiles, a vital and a necessary part of the Health Claims regulation, should help consumers to make an informed choice as they should ensure that claims only appear on the healthiest products. They were due to be developed by the European Commission by January 2009. However, four years later and we are still awaiting a proposal. BEUC therefore calls for the European Commission to come forward with its proposal for nutrient profiles as soon as possible. We ask that such profiles be robust and scientific and to be fit for purpose i.e. that they prevent consumers from being misled about the qualities of a food through the use of claims.
51. Finally, there is a need for more comprehensive policies that cover all forms of marketing and advertising of less healthy foods to children up to 16 and an increase in healthier food promotions in stores. The consumer agenda should address this issue.

Financial services

52. The world economic crisis has more than ever highlighted the regulatory gaps in protecting consumers of retail financial services. While the Consumer Agenda lists a number of relevant initiatives that are already in the pipeline, much more needs to be done in order to enhance the control over market behaviour of financial institutions and to provide consumers with market surveillance resources and policies that match their specific needs for protection. Consumer interests must also be granted due consideration in the area of payments, be it cards, e-payments or m-payments. Unfair commercial practices in the financial sector need to be tackled more proactively, such as bundling and tying practice. Finally, consumers are in need of a policy framework granting them independent financial advice in order to assist them, especially in the more long-term financial decisions they have to take. More generally, it is crucial that the consumer voice is appropriately listened to in the different for that make and implement financial services policy at EU level. (European Commission expert groups, EBA, ECB, EIOPA, ESMA).

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