BEUC The European Consumer Organisation

The Consumer Voice in Europe

Mr Carlos Romero Duplá
Permanent Representation of Spain to the EU
Horizontal Working Party on Cyber Issues

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28 November 2023

Subject: The Cyber Resilience Act must include strong provisions to ensure consumer products are made and kept secure throughout their use

Dear Mr Romero Duplá,

We are writing on behalf of **BEUC – The European Consumer Organisation** ahead of the upcoming Cyber Resilience Act (CRA) trilogue meeting scheduled for November 30. As the trilogue negotiations reach their last stages, we call on you to ensure that the final agreement guarantees a high level of consumer protection and leads to substantial improvements in the cybersecurity of connected devices.

The CRA is a crucial piece of legislation for consumer protection, answering longstanding concerns by consumer groups regarding connected devices. Overall, we welcome the improvements suggested by co-legislators to the European Commission proposal. For example, the Council position to **introduce a clear risk methodology for critical products** (Art. 6), the proposal from Parliament to establish an **'Expert Group on Cyber Resilience'** (new Art. 6(a)) and to **expand the list of critical devices** to include key **consumer products** (Annex III). We also welcome the agreement in both positions to **add the CRA to the Annex of the Representative Actions Directive**, which will allow consumers to collectively seek legal remedies.

However, there are aspects of significant concern which remain ahead of the upcoming trilogue, notably the proposal from Council to **reduce – instead of expand – the list of critical products in Annex III** (removing essential products for internet security, such as **internet routers**) or the proposal to require **manufacturers to handle vulnerabilities and provide security updates** only for a **limited support period**, instead of throughout the entire expected lifetime of their products (Art. 10(6)). We also highlight the overall lack of mechanisms for **consumer representation and redress.**

The co-legislators must be ambitious in their approach on these three key issues, or the CRA will not meet its stated objective of introducing a higher level of cybersecurity for connected devices that better protects consumers and their fundamental rights.

In particular, the final compromise on the CRA must include the following:

1. Manufacturers should monitor and address security vulnerabilities during a product's entire expected lifespan (Art. 10).

One of the key objectives of the CRA proposal is to ensure that connected products **are both made secure and remain secure** from the moment they are placed on the market and for the duration of their expected lifetime. For BEUC, **the principle of 'continuous conformity' is key**: manufacturers must be responsible for ensuring that their products are adequately and regularly updated with vital system updates throughout their expected lifespan in line with consumer expectations, and not only up to a maximum of five years as initially proposed by the Commission.

There is a **direct correlation** between the **longevity of a product and the continuous provision of updates**, both in terms of security and functionality. When manufacturers cease to provide such updates, a product's lifespan is artificially reduced: without regular security updates, the product becomes unsafe to use; without functionality updates, the product becomes unable to perform essential functions and rapidly becomes obsolete.

As further elaborated in BEUC's trilogue recommendations, the introduction of **a separate 'support period'** would most likely incentivise manufacturers to set artificially low support periods, which would be **lower than the actual expected product lifetime**. Ultimately, this would make products safer for a lesser period of time than what is expected by users**. At the very least**, any potential **'support period' must reflect as closely as possible the expected product lifetime** and the **consumer expectations for product use**.

We also encourage co-legislators to ensure that the **CRA is harmonised** with the most recent **legislation on Ecodesign requirements**[1], which **introduced a minimum support period of five years** for devices such as smartphones and tablets. Unlike the original Commission proposal, such a **period of five years would be appropriate as a minimum period, but never as a maximum threshold** under the CRA.

2. The list of 'critical products' must be expanded and include consumer products (Art. 6, Annex III)

Co-legislators should **expand the list of critical products in Annex III** to ensure that **key consumer devices** of sensitive nature **are included. At the very least,** the categories of ***home automation systems, security devices, connected toys and products for children***, as well as ***personal health appliances and wearables*** must be **considered as critical products.**

BEUC members have consistently exposed how critical vulnerabilities in these devices can be easily exploited and pose higher risks to consumers. When attacked, they can be instrumental in **harming users' health and safety or impact their fundamental rights** like privacy and data protection. For instance, **connected products for children** pose especially significant risks, given their unfettered access to the interior of the family home and their direct access to children. We urge the co-legislators to move in this direction to include consumer products.

3. Strengthening consumer representation and redress (new Art. 6a, Art. 41)

BEUC strongly encourages legislators to support the European Parliament's proposal to **establish an "Expert Group on Cyber Resilience"** which expressly includes civil society and consumer organisations. Given the technical challenges ahead for the implementation of the CRA, we consider that it is fundamental for the Commission to rely on an inclusive, representative body providing expert advice in the preparation of delegated acts and issue non-binding opinions advising the Commission on key issues.

We also call on legislators to support the European Parliament's proposal to require **market surveillance authorities to create a mechanism to receive consumer complaints** (art. 41(8a)). Establishing an independent mechanism is crucial to allow consumers to directly report vulnerabilities, incidents, and threats to authorities. Moreover, this would be a **useful mechanism for market surveillance authorities** to receive information about relevant incidents directly from consumers and the organisations that represent them, thus creating synergies with civil society which contribute to improve overall market surveillance and enforcement.

We thank you in advance for taking our considerations into account and call on the Council to strive for a compromise that ensures that the CRA adequately protects and benefits European consumers.

[1] Commission Regulation (EU) 2023/1670 of 16 June 2023: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2023_214_R_0003&qid=1693469612388

For more information on our positions, please see BEUC's position paper with our full recommendations for the trilogue negotiations here.

We remain at your and your colleagues' disposal for any question, comment or suggestion you may have.

Yours sincerely,

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