



CONSUMERPRO

BOOSTING PROFESSIONALS
IN CONSUMER PROTECTION

Digital Rights

Theoretical background document

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INTRODUCTION TO THE THEORETICAL BACKGROUND DOCUMENT



Dear Reader,

This theoretical background document is part of the training resources developed for Consumer Pro, an EU initiative that aims at making consumer organisations and other actors in consumer policy better equipped to protect consumers in their country.

The goal of this document is to provide you and your teams with useful and relevant information on digital rights. Its content has been prepared by BEUC policy experts in digital rights, from a European perspective and in order to provide you with the keys to:

- Quickly train your teams of practitioners,
- Easily find pertinent information,
- Enable your staff to better inform consumers about their rights, and,
- Raise the awareness of your national ministries and authorities about digital rights.

This theoretical background document forms part of a series of training resources. There are complementary theoretical background documents on General Consumer Law and Sustainability.

About Consumer PRO

Consumer PRO is an initiative of the European Commission under the European Consumer Programme and implemented by BEUC – the European Consumer Organisation. Its aim is to build capacity of European consumer organisations and other actors in consumer policy through non-formal education. The project covers the EU Member States, Iceland and Norway.

For more information, please write to Info@consumer-pro.eu.



1. DATA PROTECTION

1.1. Introduction and history of Data Protection consumer policy

The protection of natural persons in relation to the processing of personal data is a fundamental right in the European Union. Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU) provides that everyone has the right to the protection of personal data concerning them. In addition, Article 7 of the Charter of Fundamental rights states that everyone has the right to respect for his or her private and family life, home and communications.

The General Data Protection Regulation (GDPR) is the law that regulates the processing of personal data in the EU. It requires organisations, both public bodies and companies, to use consumer's personal data in a transparent and fair manner. It strengthens your rights and applies to all organisations which process the personal data of individuals who are in the EU, irrespective of where the organisations are based.

The rules on ePrivacy (currently the ePrivacy Directive, which is under review) protect the confidentiality of electronic communications and also contain specific protections for consumers against unsolicited commercial communications sent via electronic communication services.

1.2. Why Data Protection matters to consumers

Although beneficial to consumers, digital information technologies and the emergence of **new online services** also represent a **major challenge to the fundamental rights of privacy and personal data** protection. The business models that currently dominate the digital world are based on tracking and analysing consumers' every move. Companies utilise the information they gather to build user profiles, which are traded online and used to deliver behaviourally targeted advertising. These profiles could also be used to discriminate consumers and influence their behaviour. It is important to ensure that consumers can remain in control of their personal data and benefit from innovative digital products and services without having to give up their privacy.



1.3. Main challenges concerning Data Protection consumer policy

It is very difficult for consumers to be able to control what happens with their data in practice. Their rights are very often not being respected and they are often forced to accept giving up their privacy if they want to use digital products and services.

Consumers are under constant commercial surveillance and their personal data is exploited by a myriad of companies, many of which they have never even heard of. Privacy policies are vague, long, complex and very hard to understand and the consumer has no choice but to agree. Consumers are often given an illusion of control and in those cases where they are asked for their



consent, this becomes a systematic, meaningless “tick the box” exercise on the part of the consumer.

The GDPR was meant to address many of these issues. However, almost two years after it entered into application, there have been no significant changes in business practices. The level of compliance with the new regulation seems low and enforcement is for the moment lacking. Data Protection Authorities are having difficulties to cope with all the complaints they are receiving and the new enforcement architecture, built around a cooperation and consistency mechanism to ensure the coherent interpretation and application of the law across the EU, is taking time to take off.

Another issue is that the reform of the ePrivacy rules, which are meant to complement the GDPR and further protect the confidentiality of communications, is pending since more than two years and still there is no agreement in sight. (For more info about the ePrivacy Regulation see BEUC factsheet here)

1.4.Key consumer rights and obligations in a nutshell

The GDPR requires organisations, both public bodies and companies, to use consumer’s personal data in a transparent and fair manner. It contains a series of [principles that govern](#) the use of personal data:

It also gives consumers a [series of rights](#) to ensure they can be in control of their data. Among others, consumers have the right to:

- Be informed, in a clear and easy-to-understand manner, about how their personal data is being used. This must specify which data is used, by whom and for what purposes.
- Access the data that organisations hold about them and obtain a copy of the data.
- Rectify their data if it is inaccurate.
- Get organisations to delete their data.
- Ask organisations to stop using their data, either temporarily or permanently.
- Receive their data in a commonly used format, so they can take it and use it somewhere else.
- Contest automated decisions based on their personal data that affect them in a significant manner (e.g. being denied a loan).
- Be informed if their data is lost or stolen.
- Lodge a complaint with their national data protection authority or bring a company to court
Laws and Regulations at EU and national level

1.5.Laws and Regulations at EU and national level

- [EU Charter of Fundamental Rights](#)

- [Regulation \(EU\) 2016/679](#) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR).
- [Directive 2002/58/EC](#) concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) – Amended by [Directive 2009/136/EC](#)
- [Guidelines, recommendations and best practices from the European Data Protection Board](#)
- [Opinions from the European Data Protection Supervisor](#)
- [Example of Code of Conduct: Federation of Direct Marketing](#)

At national level

Note to trainers: Check your national data protection law which implements the GDPR at national level. You should also check whether your national Data Protection Authorities (DPA) have issued specific guidelines, recommendations or decisions on the basis of the GDPR

1.6. Case law

For a repository of Data Protection Authority and Court decisions, as well as articles about the GDPR, visit: www.GDPRHub.eu

On the official EU Law Portal: [Eurlex](#) file on GDPR. This is a list of ECJ cases and preliminary questions that relate to the GDPR: find the list of case law under “*document information*”.

1.7. What can consumers do if they have a problem?

If the consumer considers that their rights under the GDPR have been violated there are two options:

- Filing a complaint with the national data protection authority. You can find the full list [here](#)
- File an action directly in court against a company/organisation. This doesn't stop the consumer from lodging a complaint with the national Data Protection Authorities if they wish.

Also, if the consumer believes that the Data Protection Authorities has not handled his complaint correctly or if he is not satisfied with its reply or if it doesn't inform them with regard to the progress or outcome within 3 months from the day the complaint was lodged, he can bring an action directly before a court against the DPA.

Public authorities

At national level:

The national ministries in charge of data protection (normally this would be the ministry of justice), which set the national policy on the topic and should ensure the implementation of the GDPR at national level.

In addition to the national Data Protection Authorities, other public bodies worth considering are:

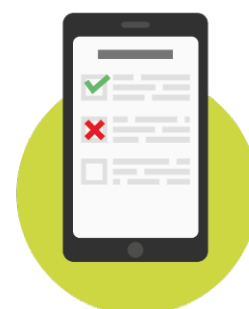
- At European Level:
- The European Commission, which is in charge of ensuring that Member States correctly implement the GDPR and also has the power to “activate” certain provisions of the GDPR via delegated acts (e.g. for the creation of standardised “privacy icons”).
- The [European Data Protection Board](#) (EDPB), which gathers all the national Data Protection Authorities. Its main task is to ensure the consistency in the application and interpretation of the GDPR.
- The [European Data Protection Supervisor](#) (EDPS), which oversees the respect of people’s personal data by the EU institutions and advises the Institutions on data protection matters.

Alternative Dispute Resolution (ADR)

Out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to personal data processing can be established via codes of conduct adopted by industry bodies (Article 40 GDPR), without prejudice to the rights of data subjects to lodge complaints with their Data Protection Authority and to seek judicial remedies in Court.

1.8. Further resources – factsheets, publications, links

- [European Commission website with information about GDPR](#)
- [European Commission GDPR Library - Infographics, factsheets and other materials aimed at citizens and businesses](#)
- [BEUC Factsheet – What does EU data protection law mean to you?](#)
- [AccessNow – User guide to data protection in the EU: Your rights and how to exercise them](#)
- [Fundamental Rights Agency – European Data Protection Handbook](#)
- Guides published by Data Protection Authorities at national level (for [example here’s the guide published by the UK ICO](#))
- [Factsheets](#) published by the European Data Protection Supervisor (EDPS)
- [The History of the GDPR](#) and a [Glossary](#) (EDPS)



2. PLATFORMS

2.1. Introduction and History of Platforms consumer policy

Consumers buy more and more services and products online, particularly through platforms.

In the early years of e-commerce such purchases took mainly place on websites of companies who also had brick-and-mortar shops on the high streets. Today, consumers' purchasing behaviour is radically changing: more and more people order services and products through online marketplaces which are shipped onto European consumers directly from outside the EU.

Purchases are not only made through e-commerce platforms such as Amazon Marketplace, AliExpress, wish.com or EBay but also through social media such as Instagram.

For example, in 2017 approximately 100 million sales were dispatched from China to Germany. This is 40 million more than in 2016. Tremendous increases have also been reported in other European countries.

In addition, scams are on the rise with regards to web shops being set up in the EU by sellers pretending to be European companies but who are in reality ordering on platforms from China themselves and selling on these products to consumers for a higher price than for example on wish.com. This has been observed in Denmark and in France¹.



There is reasonable concern that many of these products are not complying with European laws and technical standards which are in place to protect consumers' rights, health and the environment. While manufacturers and distributors with a seat in the EU can be held liable for product safety and compliance, this is often not the case for producers who have no seat in the EU as the intermediaries, i.e. the e-commerce platforms, deny taking responsibility for compliance.

2.2. Why Platforms matter to consumers

Shopping, connecting with friends and family, sharing experiences, watching a movie, listening to music, reading a book, booking a trip, cooking a new recipe, planning a night out, moving around a city, asking for your neighbours' help, and looking for information on the web; these are just some basic examples of activities that millions of consumers carry out every day. For each and every one of these activities, there is one or multiple online platforms that facilitate these services.

¹<http://www.leparisien.fr/economie/consommation/achats-en-ligne-attention-aux-derives-du-dropshipping-16-01-2020-8237226.php>

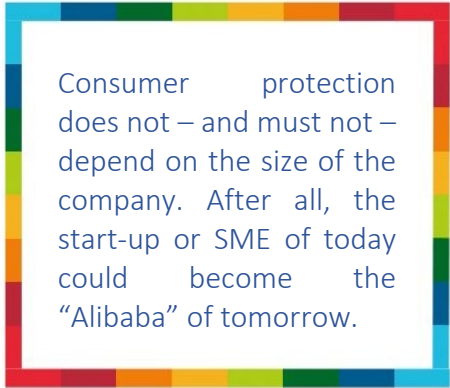
Consumers have embraced the surge of the platform economy, which presents numerous benefits as well as challenges for consumer protection.

2.3. Main challenges concerning Platforms

Generally, when the eCommerce Directive was adopted, platforms like Google, Amazon or Booking.com were in their infancies. Many other intermediaries did not even exist. For example, Facebook and Shopify were launched in 2004. Etsy was founded in 2005; Airbnb in 2008. Instagram, Wish and AliExpress saw the light in 2010.

Over the past 20 years, the business models of some of these and other companies changed. The market power dynamics have also changed.

The European digital market landscape has experienced “*datafication*” (the transfer of information into data, and this being the base of digital business models); a multiplication of platforms; a proliferation of the collaborative economy²; and a diversification of service providers in terms of functions, vertical integration and size. Yet, every single company has to play by the rules. Consumer protection does not – and must not – depend on the size of the company. After all, the start-up or SME of today could become the Alibaba of tomorrow.



Consumer protection does not – and must not – depend on the size of the company. After all, the start-up or SME of today could become the “Alibaba” of tomorrow.

Many platforms have reinvented themselves. Some no longer limit themselves to their initial role of information or trusted intermediaries (e.g. comparison or ranking platforms like Yelp) but enable transactions to be concluded on the platform. These are business models that make the platform fall under the category “*online marketplace*”³, which is the current focus of consumer protection organisations. This type of platform is defined under the Omnibus Directive⁴ as “*a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers*”. Having said that, often the role of the platform is not limited to enabling the conclusion of a contract between sellers and buyers, but it also includes other services such as payment services, fulfilment services, returns processing and complaints handling⁵.

² http://www.beuc.eu/publications/beuc-x-2016-030_gbe_collaborative_economy_beuc_position.pdf

³ Vzbv study, https://www.vzbv.de/sites/default/files/downloads/2020/02/12/vzbv_gutachten_verbraucherrechtliche_plattformhaftung.pdf, p. 17.

⁴ Article 2(1)(n) of the Unfair commercial practices Directive, as amended by Directive 2019/2161”, <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

⁵ Vzbv study, https://www.vzbv.de/sites/default/files/downloads/2020/02/12/vzbv_gutachten_verbraucherrechtliche_plattformhaftung.pdf, p. 18.




Other platforms have acquired multiple roles. There are “*hybrid platforms*”, which can combine different intermediary functions or vertically-integrated platforms. The latter do not only act as intermediaries, but also compete with traders, either directly or via affiliated companies. For example, Amazon is a seller, an online marketplace, a cloud computing company, a video-sharing platform, a publisher, an advertising company, a manufacturer of connected devices and an artificial intelligence company.

Consumer organisations advocate for adjustments in the legislative framework to address this new market reality.

Specific challenges

Challenge #1. Spread of a wide range of illegal content.

Digital services have – to some extent – become an enabler for widespread consumer law violations; a revenue stream for the sale of advertising or promotion of dangerous, unsafe, illegal products online. For example⁶:

	<p>BEUC’s UK member Which? found Christmas tree lights sold online that could catch fire or electrocute consumers⁷.</p>
	<p>The Danish Consumer Council revealed cosmetics in wish.com not to comply with EU law</p>
	<p>More recently, six BEUC members found that two-thirds out of 250 products bought from online marketplaces failed safety tests, with consequences such as electric shock, fire or suffocation.⁸</p>

Challenge #2. Confusion between online marketplace activities and other platform activities.

⁶ See examples at https://www.beuc.eu/publications/beuc-x-2019-072_new_evidence_from_beuc_member_organisations_regarding_dangerous_products_available_online.pdf

⁷ <https://www.which.co.uk/news/2019/12/these-christmas-tree-lights-bought-online-at-ebay-wish-and-aliexpress-could-catch-fire-or-electrocute-you/>

⁸ <https://www.beuc.eu/publications/two-thirds-250-products-bought-online-marketplaces-fail-safety-tests-consumer-groups/html>

The debate to reform the e-Commerce Directive is to some extent focusing on issues like hate speech, terrorist content, copyrighted material, freedom of speech or single market considerations. While these are important issues, the EU should also not lose sight of specific consumer protection problems. It is necessary to ensure consumers who buy products or services through online marketplaces⁹ are fully protected.

It is necessary to distinguish between the sale of illegal products and other activities, e.g. posting comments on social media. While in the latter case there are clear freedom of expression considerations, in the former case the main issue at stake is far from freedom of speech, but rather a product safety and a consumer protection issue.

Challenge #3. The eCommerce Directive does “*not apply to service providers established in a third country*”¹⁰.

Some providers established in third countries are exploiting the territoriality limitations of the Directive – creating an unfair and uneven playing field.

Challenge #4. The way the eCommerce Directive regulates hosting providers is being used by some platforms – including (but not only) online marketplaces – to either shield themselves from any accountability or not to take any meaningful action for fear of liability.

Challenge #5. Current legislation has gaps to regulate online marketplaces. Little attention is given to online marketplaces’ enrichment from illegal content.

Challenge #6. The new rules may act as a barrier for Member States to correctly address public interest objectives.

For example, in case C-390/18¹¹, the CJEU ruled Airbnb to be considered as an information society service (Art. 2.a) of the eCommerce Directive). Since France failed to notify the Commission about a law requiring an estate agent’s professional license to companies like Airbnb, it cannot impose this obligation on Airbnb, as this would breach Article 3.4 b) of the eCommerce Directive. This case showed that the e-Commerce Directive, in putting the internal market first, creates problems for Member States to adopt laws and policies to protect consumers. It is important however to note that the ruling does not mean that Governments cannot impose such measures on companies like Airbnb. The CJEU was clear that the notification obligation in the eCommerce Directive “*is not intended to prevent a Member State from adopting measures falling within its own field of competence and which could affect the freedom to provide services, but to prevent a Member State*

⁹ Defined by the EU Omnibus Directive as “*a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers*”. Having said that, often the role of the platform is not limited to enabling the conclusion of a contract between sellers and buyers, but it also includes other services such as payment services, fulfilment services, returns processing and complaints handling.

¹⁰ eCommerce Directive, recital 58.

¹¹ <http://curia.europa.eu/juris/documents.jsf?num=C-390/18>

from impinging on the competence, as a matter of principle, of the Member State where the provider of the information society service concerned is established."

Challenge #7. Lack of proper oversight and enforcement.

Digital markets evolve at a fast speed and competent authorities do not seem to cope, have all expertise or resources needed to monitor and tackle the problems of the market.

2.4. Key consumer rights and obligations in a nutshell

The **e-Commerce Directive** has been one of the cornerstones of the internet for a long time. The e-Commerce Directive established the country of origin principle with some important exceptions (notably consumer contracts), key information obligations towards the recipients of services (e.g. consumers), liability exemptions and limitations for online intermediary service providers, amongst other provisions:

- **Article 1 – 3 : General provisions**
- **Article 4 – 15 : Principles**
 - Section 1: Establishment and information requirements
 - Section 2: Commercial communications
 - Section 3: Online contracts
 - Section 4: Intermediary liability
- **Articles 16 – 20 : Implementation**
- **Articles 21 – 24 : Final provisions**

Where to find the most important provisions in the e-Commerce Directive?

- **Main objective:** internal market and freedom to provide information society services (Article 1).
- **Other objectives** include "*legal certainty and consumer confidence*" (Recital 7), ensuring a high level of consumer protection and protection of minors (Recital 10)
- **Scope:** without prejudice to consumer protection (Article 1)
- **Definitions** (Article 2)
- **Basic information** to consumers & other recipients (Articles 5, 6, 10)
- **Rights when placing orders online** (Article 11)
- **Intermediary liability principles** (Articles 12-15). The most important principles here are:
 - Hosting providers are not liable for third-party content as long as upon knowledge, they expeditiously remove or disable access to illegal content (Article 14)
 - Prohibition for Member States to impose a general monitoring obligation on providers (Article 15)
- **Codes of conduct** (Article 16)

- **Alternative dispute settlement** (Article 17)
- **Court actions** "*to terminate any alleged infringement and to prevent any further impairment of the interests involved*" (Article 18)
- **Member State cooperation** (Article 19)
- **Sanctions** (Article 20)

Since the adoption of the eCommerce Directive in 2000, digital services have evolved, raising new challenges. For example, the safe harbour principle is giving some platforms a free space not to be held liable. Some digital service providers are not taking meaningful responsibility or giving consumers proper redress if something goes wrong. Similarly, some voluntary initiatives have delayed much-needed regulatory action. This may be done via the Digital Services Act.

Consumer PRO has also developed two other documents on the topics of consumer law and of sustainability that can complement this document in a useful way.

2.5. Laws and Regulations at EU level

REGULATION / DIRECTIVE	DATE OF APPLICATION	REVIEW / EVALUATION: TYPE OF MEASURE	DUE DATE	COMMENT
eCommerce Directive	17/01/2002 (transposition)	EC re-examination report (Art. 21)	Before 17/07/2003, and thereafter every two years	No formal evaluation is known to us since 2012 . The Commission's 2017 sector enquiry may be interesting from a competition perspective.
		Digital Services Act (DSA)	- March 2020: consultation	DSA to be presented as a package. It will certainly include a reform of the eCommerce Directive and it may include ex-ante regulation for market dominant platforms (tbc). Key topics for the eCommerce Directive reform: liability and responsibility of intermediaries, the country of origin principle, procedures for notice and action, transparency requirements, enforcement and coordination between Member States.
			- End 2020: EC proposal and impact assessment	
Platform to Business Regulation (P2B Regulation)	12/07/2020	EC guidelines on ranking transparency requirements (Art. 5)	12/07/2020 (tbc)	12/12/2020 – stakeholder event to feed into the guidelines.
		EC to encourage codes of conduct (Art. 17)	No date	An analysis of their functioning will be part of the review.
		EC review report (Art. 18)	13/01/2022 and every three years	
Omnibus Directive	28 November 2021 (transposition) 28 May 2022 (application)	Article 7 – Transposition	Article 6 – Reporting by the Commission and review. Report to be published by EC by 28 May 2024, DQ of food and doorstep selling measures.	



2.6. Case law

- **Re: P2B Regulation:** no case law as it will only become applicable as of 12 July 2020. Interesting to follow Spotify's competition complaint against Apple:
https://www.europarl.europa.eu/doceo/document/E-9-2019-002996_EN.html
- **Re: Omnibus Directive:** no case law yet as it will only become applicable as of 28 May 2022. Check the consumer law theoretical background document to find out about case law of other consumer law instruments.
- **Re: eCommerce Directive:** - see annex I for complete list of cases.

2.7. What can consumers do if they have a problem?

- Go back to the seller/platform directly (this step is not obligatory).
- Alternative Dispute Resolution (ADR) possible (this step is not obligatory).
- Member State competent authorities: it varies from country to country and from topic to topic.

National authorities

Please insert a list/links of the competent authorities in your country.

2.8. Further resources – factsheets, publications, links

- European Commission presentation about the instruments and objectives followed in the E-Commerce Directive (see [here](#))
- BEUC position paper Ensuring consumer protection in the platform economy: ([here](#))
- BEUC position paper Collaborative economy ([here](#))
- BEUC position paper on the Digital Services Act ([here](#))

3. TELECOMMUNICATIONS

3.1. Introduction & History of Telecommunications Consumer Policy

Telecom markets remain an important sector of concern for all European consumers, as general satisfaction with telecom services remains very low. EU rules were recently updated via the European Electronic Communications Code (EECC) and the Body of European Regulators for Electronic Communications (BEREC)'s Regulation. This reform will greatly improve consumers' protection, if well implemented in and enforced by Member States. BEREC's guidelines are an important tool to interpret the rules in a consistent manner.

3.2. Why telecommunications matter to consumers

In an ever more interconnected world, consumers spend increasing amounts of time and money online, connecting with others and leading digital lives. Access to affordable, high-



quality internet connections and communication technologies have become a prerequisite for all consumers to be able to participate in the digital society.

3.3. Main challenges within Telecommunications

Telecom markets are still very difficult for consumers and the number of complaints remains very high. This is indicated by the European Commission's own Consumer Markets Scoreboard (2018) and consumer complaints received by consumer organisations.

- The 2018 Commission [Consumer Scoreboard](#) found "*persisting problems in telecommunication markets*". "*The high incidence of problems remains by far the weak point of this sector.*" "*The share of consumers reporting problems (16.9% on average) in these markets is the highest among all services markets surveyed, notably so for internet services (20.3%). This results in the highest consumer overall detriment across all sectors.*" In other words, telecom markets cause the highest share of consumer detriment of all services. Cf.
- The Commission even has a Market Performance Indicator, which indicates how well a market performs according to consumers. The Commission found that "*all six market clusters that are comparable to 2015 show an improvement in the average MPI score, except for the Telecoms*" market cluster, which shows a slight decrease. cf. [here](#) page 9

Specific issues include, but are not limited to:

- High prices and differences across countries

A European Commission study on retail prices of mobile broadband offers found that, despite decrease of prices, some countries are still expensive, notably Hungary, Portugal, Cyprus, the Czech Republic, Greece, and Slovakia.

- Lack of competition in all countries

In The Netherlands Consumentenbond complains about the duopoly of two operators: KPN and VodafoneZiggo. They both have their own network and operate on the fixed and mobile market. Price raising happens every year.

For further information, please check¹²:

<https://www.consumentenbond.nl/alles-in-1>

¹² The links present under this section in the theoretical background documents are a selection of articles from European consumer organisations, therefore in the national language. Please use a translation tool if you would like to find out more information.

<https://www.consumentenbond.nl/mobiel-abonnement>

<https://www.consumentenbond.nl/alles-in-1/prijsverhoging-bij-de-provider>

<https://www.consumentenbond.nl/alles-in-1/content-strijd>

<https://www.consumentenbond.nl/nieuws/2018/openstellen-netwerk-vodafoneziggo-goed-nieuws-voor-consumenten>

- Unfair contractual terms.

For more information, please check:

<https://www.euroconsumatori.eu/articolo/1246-iliad-predisporre-modifiche-richieste>

<https://www.euroconsumatori.eu/articolo/1224-iliad-aeci-invia-esposti-antitrust-agcom-privacy>

<https://www.euroconsumatori.eu/assets/admin/docs/6TRYvqSHAe-ILIAD%20-%20ESPOSTO.pdf>

<https://www.euroconsumatori.eu/articolo/1246-iliad-predisporre-modifiche-richieste>

- Misleading and unfair commercial practices.

For example, advertising of smartphones for "free", while they are not:

<https://www.consumentenbond.nl/nieuws/2019/telecomaanbieders-schikken-in-zaak-over-gratis-mobieltjes>

- Hiding essential contract conditions in contract legalese

- Abusive unilateral change of contractual terms

<https://www.deco.proteste.pt/casa-energia/tarifarios-tv-net-telefone/noticias/operadoras-podem-ter-ganho-50-milhoes-de-euros-com-subida-ilegal-de-preco>

- Activation of unsolicited services

SMS-generated subscriptions for different kinds of unwanted services promised as "free".

- Mis-selling of contracts to vulnerable consumers (e.g. to elderly people)

- Switching providers.

As vzbv highlights, "[i]n 2015, the German Regulatory Agency in charge, the Federal Network Agency (Bundesnetzagentur), registered around 178,000 consumer enquiries and complaints regarding telecommunications issues. Around half of these related to switching providers."



https://www.vzbv.de/sites/default/files/downloads/2017/04/25/17-03-28_vzbv_short_position_paper_eecc_en_final.pdf, cf. Federal Network Agency: Annual Report 2015, 2016

- Service interruptions

- Quality of service.

<https://www.quechoisir.org/dossier-qualite-du-reseau-t499/>

- Digital divide, particularly between rural and cosmopolitan areas. Some households do not have an internet connection at all.

<https://www.clubic.com/connexion-internet/actualite-852316-fracture-numerique-qualite-connexions-ufc-choisir-etat-lieux-internet-fixe-france.html>

- Net neutrality violations:

https://www.beuc.eu/publications/beuc-x-2019-075_berecs_public_consultation_on_its_draft_updated_net_neutrality_guidelines.pdf

- Unsolicited communications.

https://www.beuc.eu/publications/beuc-x-2017-059_proposal_for_a_regulation_on_privacy_and_electronic_communications_e-privacy.pdf (pp. 12-13)

- Lack of consumer rights awareness (e.g. <https://www.econsumer.eu/>) or willingness to complain if something goes wrong. <https://www.ocu.org/consumo-familia/derechos-consumidor/noticias/reclamaciones-consumo>

- Enforcement, e.g. against zero rating offers <https://epicenter.works/document/1522>

3.4. Key consumer rights and obligations in a nutshell

1. EECC: upgrade of EU consumer rights and electronic communication providers' obligations (over-the-top providers included):

- Summarised list of the most important new benefits for consumers:
 - Intra-EU calls and SMS: from 15 May 2019, intra-EU calls will be capped at 19 cents/minute and SMS at 6 cents/SMS.
 - The Universal Service Obligation is now focused on broadband internet access, which should mean that all consumers, including those in

economically vulnerable situations, shall have affordable internet access at a decent quality.

- Information and transparency requirements have been updated and now include some of our additions, including on data as a counter-performance.
- Consumers will now have stronger rights when terminating a contract.
- Consumers will also be protected when they purchase bundled contracts.
- Telecom operators will have to compensate consumers for undue switching delays.
- All digital communications services (including online apps) must comply with the principle of security of communications.

The worst deregulatory scenarios in the market regulatory regime were averted. NRAs will still have sufficient powers to enforce competition in the market, including now also in situations of oligopolies.

- Key articles for consumer protection: articles 99-116 EEC
- Example: electronic contract summary: the European Commission adopted its Implementing Regulation establishing a contract summary template for electronic communication services that has the following benefits for consumers:
- More specifications for bundles and an established order of presentation have been added (in the Services and terminal equipment section).
- All relevant internet access speeds have been included. A summary of national remedies available should also be provided not only for speed failure, but also for other quality of service parameters' failures.
- More clarification on the duration and termination section.
- *"The required information should be provided directly in the summary and not by reference to other sources of information"*.

Clarifications that Member States can maintain or introduce in their national law provisions related to aspects not covered by Article 102 of the European Electronic Communications Code (e.g. language, how the template needs to be provided for, promotion, close supervision and enforcement, etc).

2. Net neutrality: Since May 2016 EU law stipulate that all internet traffic must be treated equally.

The 'net neutrality' principle means internet access providers can no longer slow down, block access to, or otherwise discriminate against certain applications or services.

Art. 3.3 of Regulation 2015/2020 ensures net neutrality:

"Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and



irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used."

3. Roaming: suppression of roaming charges since 2017 with some caveats.

- The default rule is that consumers must be able to use their domestic mobile plans while they travel inside the EU without any additional surcharge. This means that in principle, consumers can use the same number of minutes, SMS and gigabytes of data while in another EU country. Exceptions do apply in some cases. Mobile providers have the possibility (but not the obligation) to attach so-called fair use policies to their contracts. The objective is for these fair use policies to define the way in which their customers can use their domestic mobile plans while travelling with the RLAH regime.
- In its review report in November 2019, the European Commission confirmed that roaming rules are a success story both at retail and wholesale level. The Commission found that *"compared to the year before the abolition of roaming"*, we have
 - 10x times higher mobile data use while travelling in the EU
 - 12x times during holiday period
 - 3x higher volume of phone calls.
- *"The report concludes that the competition dynamics in the roaming market are not likely to change in the near future, which means that the current retail and wholesale regulation is still necessary. The current rules for roaming should continue to apply in the coming years to ensure that citizens can benefit from roaming at no additional cost within the EU. The Roaming Regulation is currently in force until June 2022"*, the Commission added.

4. Intra-EU communications: the EU capped the price for calls to another EU country at 19 cents and at 6 cents for SMS since 15 May 2019. FAQ: <https://ec.europa.eu/digital-single-market/en/news/international-calls-within-eu>



3.5. Laws and regulations at EU level

REGULATION / DIRECTIVE	DATE OF APPLICATION	REVIEW / EVALUATION: TYPE OF MEASURE	DUE DATE	COMMENT		
TELECOMMUNICATIONS						
BEREC Regulation	20/12/2018	Intra-EU communications' caps (Art. 50 = Art. 5a, Regulation 2015/2120; Recitals 42-52)	European Central Bank to review limits in currencies other than the euro	15 May 2020 (and every year)	15/05/2019application and 14/05/2024expiry	The ECB will use the reference exchange rates published on 15 January, 15 February and 15 March of the same year.
			Update to the 6/03/2019 BEREC Guidelines on intra-EU communications	Plenary 3 2020 (30/09/2020 -2/10-2020)		
			1st BEREC's Intra-EU communications benchmark report	Plenary 3 2020 (30/09/2020 -2/10-2020)		
		BEREC to set up information and comms system (Art. 41)	21/06/2020			
		Commission evaluation report (Art. 48) – proposal of amendments or repeal possible.	21/12/2023 (every 5 years)		Need to keep pushing for national prices = intra-EU prices. At least ensure continuity of the measure & lower caps.	
European Electronic Communications	21/12/2020 (transposition)	Member States to notify the Commission of measures with a stricter/lower level of protection of end-users (Art. 101)	21/12/2019	There are exceptions to Art. 101 (maximum harmonisation).		

Code (EECC) ¹³	Deadline to apply different measures of protection (Art. 101)		21/12/2021	
	EC Implementing Act on contract summary template (Art. 102)		21/12/2019	Adopted
	BEREC Guidelines on network termination point (Art. 61)		21/06/2020	Consultation until 21/11/2019.
	BEREC Guidelines on Quality of Service Indicators (Art. Art. 104)		21/06/2020	
	BEREC report on universal service – Member States’ best practices on adequate broadband access (Art. 84)		21/06/2020	Report to be updated regularly “to reflect technology advances and changes in consumer usage patterns”.
	BEREC Guidelines on Very High Capacity Networks (Arts. 76, 82, 61(3) and Art. 80)		21/12/2020; update on 31/12/2025	
	NRAs to notify the EC the undertakings with universal service obligations (Art. 121)		21/12/2020	Any changes shall be notified immediately.
	Delegated acts (Art. 117)	EC report on delegation of power	9 months before 19/12/2023	Delegation powers can be revoked at any time by the EP <u>or</u> the Council.
		Deadline for delegation	19/12/2023	
		DA on EU termination rates (Art. 75)	31/12/2020	EC consultation out; BEREC benchmarking report by plenary 2 (10-12 June, 2020); BEREC input by plenary 3 (30/09-2/10/2020)
		DA to amend Annexes V, VI, IX, X and XI (Art. 116)	19/12/2023	
	EC ‘may’ adopt implementing acts with ENISA opinion on the security measures to be adopted by providers. They “shall be		No date	

¹³ Note the EECC replaces four EU Directives (on [the Framework](#), [Access](#), [Authorisation](#) and [Universal Service](#)).

		<i>based on European and international standards to the greatest extent possible, and shall not prevent Member States from adopting additional requirements". (Art. 40, recital 316)</i>			
		BEREC Opinion on specific review for end-user rights (Art. 123)		21/12/2021 & every 3 years	Important. Following BEREC's Opinion, the EC can submit a legislative proposal (Art. 123(2), no date).
		Review procedures (Art. 122)	EC report on the functioning of the Directive.	21/12/2025 & every 5 years	Legislative proposal possible. EC to take into account BEREC's Opinion.
			EC report on the scope of universal service	21/12/2025 & every 5 years	
			BEREC Opinion on national implementation, functioning of general authorisation & impact on the internal market.	21/12/2021 & every 3 years	
Regulation (EU) 531/2012 (Roaming Regulation, recast)	1/07/2012 (entry into force) - 30/06/2022 (expiry)	Regulation 2015/2120 (RLAH)	BEREC guidelines on wholesale and retail	27/03/2017	- EC interim report (12/12/2018) - BEREC Opinion on the functioning of roaming rules (13/06/2019) - EC review report of the fair use policy and the sustainability derogation (26/06/2019) - EC first full review report at retail and wholesale level (29/11/2019)
			Review clause (Art. 9)	30/04/2019 & every 4 years	
		Regulation 2017/920 (Wholesale Roaming)	EC report on wholesale caps	15/12/2019 & every two years	
		EC Implementing Regulation 2016/2286 (derogations, fair policies)		6/2019	
		Annual EC Implementing Regulation setting the weighted average of maximum mobile termination rates for calls received		2/1/2019 (entry into force)	

		Review (Art. 19)	Interim report	By 15/12/2018	
			Full report (retail and wholesale) - BEREC to be consulted by EC and BEREC to report regularly	By 15/12/2019 & every two years	
Regulation 2015/2120 (net neutrality)	30/04/2016	BEREC net neutrality guidelines, to be updated in 2020.		Plenary 2 (10-12/06/2020)	BEUC replied to the 2019 consultation.
5G Recommendation	26/03/2019	Member States' report on EU coordinated risk assessment of 5G networks security		9/10/2019	
		Council conclusions on 5G		3/12/2019	
		NIS Cooperation Group - Toolbox to mitigate measures to address the identified cybersecurity risks at national and EU level.		31/12/2019	
		Member States' assessment – in cooperation with the EC – on the effects of the Recommendation to determine if further action is needed.		1/10/2020	This assessment should take into account the outcome of the coordinated European risk assessment and the effectiveness of the measures.



3.6. Case law

- **EECC:** no case law yet. The transposition deadline is on 21 December 2020. You may want to check national court rulings and case law related to the previous Directives.
- **BEREC Regulation:** Telefonica and Deutsche Telecom lodged cases [T-161/19](#) and [T-162/19](#) asking for annulment of Art. 50 of the BEREC Regulation (i.e. the deletion of the intra-EU communications caps). The General Court did not admit the cases due to lack of standing.

See the General Court orders (subject to appeal):

- a. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=222645&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3195961>
 - b. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=222642&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=3196047>
- **Net neutrality:**
 - a. Two pending CJEU cases ([C-807/18](#) and [C-39/19](#)) before the Court of Justice of the European Union (CJEU) seeking to clarify how the [Open Internet Regulation](#) applies to zero rating.
 - b. There have been several national regulatory authorities and court decisions. Check in your country.
 - **Roaming rules:** see, e.g. [http://curia.europa.eu/juris/celex.jsf?celex=62008CJ0058&lang1=en&type=TXT&ancre=https://en.wikipedia.org/wiki/R_\(Vodafone_Ltd\)_v_Secretary_of_State_for_Business,_Enterprise_and_Regulatory_Reform](http://curia.europa.eu/juris/celex.jsf?celex=62008CJ0058&lang1=en&type=TXT&ancre=https://en.wikipedia.org/wiki/R_(Vodafone_Ltd)_v_Secretary_of_State_for_Business,_Enterprise_and_Regulatory_Reform)

3.7. What can consumers do if they have a problem¹⁴?

- **Go back to the provider directly.** A contact point needs to be assigned in the contract and the contract summary (Article 102 EECC).
- **Consumer organisations** can be an intermediary between the consumer and the provider. This is quite useful if you need to navigate a complicated system, e.g. like in Spain: <http://noclamesreclama.org/seccion/telecomunicaciones/como-reclamar>
- **Out-of-court dispute settlement** (Article 25 EECC): Member States are obliged to assign a competent authority, NRA or independent body responsible for ADR of end-user rights chapter of the EECC. Check Member State telecoms act/EECC transposition law.
See also
<https://ec.europa.eu/consumers/odr/main/?event=main.home2.show&lng=EN>
- **Court.**

¹⁴ Complaint mechanisms vary from country to country. Some consumer organisations are even part of an ADR body (e.g. in Croatia and Denmark).

3.8. Further resources – factsheets, publications, links

- BEUC materials: <https://www.beuc.eu/digital-rights/telecoms-single-market>
- BEREC documents have useful data and guidelines to interpret and help ensure a consistent application and enforcement of legislation:
https://berec.europa.eu/eng/document_register/welcome/
- On roaming: <https://ec.europa.eu/digital-single-market/en/news/end-roaming-charges-how-europeans-have-been-using-mobile-communications-while-travelling>
- On intra-EU communications caps:
<https://ec.europa.eu/digital-single-market/en/intra-eu-communications>
<https://www.youtube.com/watch?v=WCSkZnZ6Q9E&feature=youtu.be>
- On net neutrality: <https://www.youtube.com/watch?v=UVWCaS3B9L4> (Burger King's ad to explain net neutrality with whoppers)
https://www.beuc.eu/publications/beuc-x-2019-075_berecs_public_consultation_on_its_draft_updated_net_neutrality_guidelines.pdf
- Check our members' telecoms sections. E.g. OCU's tool to compare offers:
<https://www.ocu.org/tecnologia/telefono/calculadora/ahorrador-telefonico/?landingpage>



4. ANNEX - LIST OF ECOMMERCE DIRECTIVE CJEU CASE LAW

From section 2.6 Platforms – Case law, which is [listed by the EU](#):

- Interpreted by [62006CA0275](#)
- Interpreted by [62006CJ0275](#)
- article 5.1 PT C) Interpreted by [62007CA0298](#)
- A05P1LC Interpreted by [62007CJ0298](#)
- Interpreted by [62007CO0557](#)
- article 14 Interpreted by [62008CA0236](#)
- A14 Interpreted by [62008CJ0236](#)
- article 14 interpretation requested by [62008CN0236](#)
- article 14 interpretation requested by [62008CN0237](#)
- article 14 interpretation requested by [62008CN0238](#)
- Interpreted by [62009CA0108](#)
- Interpreted by [62009CJ0108](#)
- A14P1 Interpreted by [62009CJ0324](#)
- A14P1LB Interpreted by [62009CJ0324](#)
- A03 Interpreted by [62009CJ0509](#)
- A03P4 Interpreted by [62009CJ0509](#)
- interpretation requested by [62009CN0108](#)
- article 12 interpretation requested by [62009CN0323](#)
- article 12.1 interpretation requested by [62009CN0323](#)
- article 13 interpretation requested by [62009CN0323](#)
- article 13.1 interpretation requested by [62009CN0323](#)
- article 14 interpretation requested by [62009CN0323](#)
- article 14.1 interpretation requested by [62009CN0323](#)
- article 14.1 interpretation requested by [62009CN0324](#)
- article 3.1 interpretation requested by [62009CN0509](#)
- Interpreted by [62010CJ0070](#)
- A03P1 Interpreted by [62010CJ0292](#)
- A03P2 Interpreted by [62010CJ0292](#)
- Interpreted by [62010CJ0360](#)
- interpretation requested by [62010CN0070](#)
- interpretation requested by [62010CN0360](#)
- A02LA Interpreted by [62013CJ0291](#)
- A12 Interpreted by [62013CJ0291](#)
- A13 Interpreted by [62013CJ0291](#)
- A14 Interpreted by [62013CJ0291](#)
- article 02 interpretation requested by [62013CN0291](#)
- article 12 interpretation requested by [62013CN0291](#)
- article 13 interpretation requested by [62013CN0291](#)
- article 14 interpretation requested by [62013CN0291](#)
- A02LA Interpreted by [62014CJ0484](#)
- A02LB Interpreted by [62014CJ0484](#)
- A12P1 Interpreted by [62014CJ0484](#)
- A12P3 Interpreted by [62014CJ0484](#)
- A14P1LB Interpreted by [62014CJ0484](#)
- article 12 1 interpretation requested by [62014CN0484](#)
- article 2 B interpretation requested by [62014CN0484](#)
- Interpreted by [62015CJ0339](#)
- Interpreted by [62015CJ0434](#)
- Preliminary question submitted by [62015CN0339](#)
- article 2 point (a) Preliminary question submitted by [62015CN0339](#)
- Preliminary question submitted by [62015CN0434](#)
- article 3 paragraph 2 Preliminary question submitted by [62015CN0434](#)
- article 3 paragraph 4 Preliminary question submitted by [62015CN0434](#)
- Preliminary question submitted by [62016CN0265](#)
- article 12 Preliminary question submitted by [62017CN0521](#)
- article 13 Preliminary question submitted by [62017CN0521](#)

- article 14 Preliminary question submitted by [62017CN0521](#)
- A15P1 Interpreted by [62018CJ0018](#)
- A02LA Interpreted by [62018CJ0390](#)
- A03P4LB Interpreted by [62018CJ0390](#)
- article 14 paragraph 1 point (a) Preliminary question submitted by [62018CN0018](#)
- article 15 paragraph 1 Preliminary question submitted by [62018CN0018](#)
- article 8 Preliminary question submitted by [62018CN0296](#)
- article 3 Preliminary question submitted by [62018CN0390](#)
- Preliminary question submitted by [62018CN0512](#)
- article 3 Preliminary question submitted by [62018CN0649](#)
- article 14 paragraph 1 Preliminary question submitted by [62018CN0682](#)
- article 14 paragraph 1 Preliminary question submitted by [62018CN0683](#)
- A08 Interpreted by [62018CO0296](#)
- Preliminary question submitted by [62019CN0062](#)
- article 2 point (a) Preliminary question submitted by [62019CN0062](#)
- article 3 paragraph 2 Preliminary question submitted by [62019CN0062](#)
- article 3 paragraph 4 Preliminary question submitted by [62019CN0062](#)
- article 4 Preliminary question submitted by [62019CN0062](#)
- article 14 paragraph 1 Preliminary question submitted by [62019CN0442](#)
- article 14 paragraph 3 Preliminary question submitted by [62019CN0442](#)
- article 15 paragraph 1 Preliminary question submitted by [62019CN0442](#)
- article 13 paragraph 2 Preliminary question submitted by [62019CN0500](#)
- article 14 paragraph 3 Preliminary question submitted by [62019CN0500](#)
- article 12 Preliminary question submitted by [62019CN0500](#)
- article 12 paragraph 3 Preliminary question submitted by [62019CN0500](#)

- article 13 Preliminary question submitted by [62019CN0500](#)
- article 14 Preliminary question submitted by [62019CN0500](#)
- article 14 paragraph 1 Preliminary question submitted by [62019CN0500](#)
- Preliminary question submitted by [62019CN0723](#)

END

