

Consumer priorities 2014





# Italian Presidency of the European Union BEUC priorities

## Introduction

In this preliminary version of the memorandum for the Italian Presidency of the Council of Ministers, The European Consumer Organisation (BEUC) presents its consumer policy priorities and urges policymakers to strengthen efforts to focus on consumers' concerns and expectations when passing the listed proposals.

In particular, the memorandum draws the attention to the following issues:

- **Package travel:** The legal protection for holiday makers who book travel packages online needs to be modernised;
- Common European Sales Law: The need for this so-called 'optional' regime needs to be thoroughly assessed as it will make cross-border trade more costly and complicated for consumers and business alike;
- **Product safety and market surveillance:** Consumers' exposure to unsafe products needs to be minimised and market surveillance improved;
- **Payment services:** Enhance consumer rights and protection, as well as market competition;
- Official controls: Improve controls to increase consumer trust in their food;
- **Data Protection:** An update of EU's personal data protection rules should strengthen citizens' protection and control over their own data.

Other important initiatives concern the telecommunications market, air passenger rights, food cloning, insurance mediation, and medical devices.

We hope that under the Italian Presidency progress will be made on all these initiatives with the aim of delivering clear benefits to European consumers.

We wish Italy a most successful Presidency.

## Our key priorities

## Package travel Directive

Since the 1990s, the dramatic increase in internet sales, the advent of online travel agencies and the evolution of consumer expectations and preferences have fundamentally changed the travel market. Many new travel services and products currently offered to consumers fall outside the scope of the existing Directive and leave them unprotected. Moreover, consumers do not distinguish between the 'classic' packages and the new products available on the market.

In July 2013, the European Commission adopted a proposal for a review of the Directive. The new proposal provides for a few improvements but also shows some important gaps and flaws which need to be remedied in the legislative process. The scope of the proposal does not provide for a high level of protection in particular as regards on line purchases; moreover the principle of full harmonisation might have a negative impact on national laws which provide for a high level of protection than the proposal.

Unfortunately, the first reading opinion adopted by the European Parliament on 12 March 2014, does not improve the Commission proposal but even represents a step backwards in particular as regards the scope. We deplore that the definition of online click-through packages was weakened and that the border line between 'packages' and 'linked travel arrangements' has been blurred.

We urge the Italian Presidency to aim at truly improving the proposed Directive for European consumers, which requires a wide scope of application of the specific protections and a mixed harmonisation approach rather than full harmonisation only.

- BEUC supports a definition of a 'package travel' covering new selling methods such as tailor-made packages, dynamic packages (where consumers individually compile their own travel arrangement) and online 'click-through' combinations of travel services. The definition of 'package' should include purchases made through linked on line booking processes where any booking data are transferred between the different service providers, not only when the name or the credit card details are transferred.
- A mixed harmonisation approach to the new Directive (combining minimum and full harmonisation rules rather than full harmonisation only) should be considered while assessing its impact on current national laws.
- Packages and assisted travel arrangements covering a period of less than 24 hours as well as occasionally organised, should be included in the Directive, not excluded as proposed.
- The definition of "assisted travel arrangements" (ATA) should include the protection against insolvency of any relevant service provider.
- Retailers selling assisted travel arrangements and standalone services should be obliged to provide the consumer with relevant information about the service sold, confirm the bookings and be liable for any errors occurring in the booking process.
- Both the organiser and the retailer should be jointly liable vis-à-vis the consumer for the performance of the 'package' contract (joint liability).

- No price increases should be allowed after the conclusion of the contract; alternatively the price increase should be capped at 3% of the price of the package and be notified at the latest 40 days before the date of departure; no price increase should be allowed for late bookings (4 months before departure).
- In case of alteration of the contract conditions by the organiser, the acceptance or refusal by the consumer should be explicit (not tacit).
- The consumer should have the right to cancel the contract without paying compensation for reasons of force majeure in the traveller's private sphere (e.g. illness, accident, death in the family).
- The limitation of the obligation to provide care/assistance (Article 11.5) should be deleted.
- The right to compensation should not be excluded if the consumer does not notify a lack of conformity immediately on the spot.
- The prescription period for introducing claims in court should not be shorter than 3 years (Member States being able to provide or maintain longer periods in their laws).
- The consumer should have the right to withdraw from a distance selling contract within 48 hours after the booking; in case of contracts concluded off-premises, a 14 day right of withdrawal should be introduced as stipulated for package holidays in the doorstep selling Directive (Directive 85/577/EEC). There is no valid reason for exempting travel services from the right of withdrawal granted to consumers in other distance and off-premises contracts.

## Common European Sales Law (CESL)

A proposal for a Common European Sales Law regulation introducing a '28th regime' of law, covering business to consumer (b2c) contracts, was adopted by the European Commission in October 2011. It consists of a set of rules which co-exist alongside national law and which can be "chosen" by the parties as the legal basis for the contract. A first reading opinion of the European Parliament was adopted in February 2014.

BEUC is not in favour of the introduction of an 'optional' regime for consumer contracts. It would be confusing for consumers and businesses to deal with different regimes of contract law (national and European) thereby rather than facilitating cross-border commerce, it would become more complicated and costly for consumers and businesses alike. The approach of the European Parliament to reduce the scope of the proposal to distance-selling transactions is not a viable solution neither as in business to consumers contracts the recent Consumer Rights Directive already fully covers most of the relevant contract law elements.

In light of the profound concerns of consumer organisations – which are shared by online traders - on this instrument, we urge the Italian Presidency to ensure that the questions of such an instrument's necessity and its lack of added value for 'business to consumer' contracts will be given close attention in the deliberations.

### Demands:

- European legislators should thoroughly consider whether there is a need at all for this costly and time-consuming initiative, whether its objective of facilitating cross-border business for consumers cannot be met by much more effective, cheaper, swifter, less intrusive measures such as developing a European code of conduct for e-commerce transactions and the speedy implementation of the Consumer Rights Directive.
- The European Parliament's 'health check' of the Commission's Impact Assessment confirmed that the Commission's methodology to be dubious and in the most essential parts the quality and credibility of the data are questionable. We hope the Council will consider its results too.
- The European Parliament's first reading opinion which suggests reducing the scope of CESL to cross-border distance selling contracts only highlights the fact that CESL would duplicate existing EU consumer law, such as the 2011 Consumer Rights Directive which already fully harmonises the main elements of distance selling contracts.
- The Commission does not take into account that under current Conflict of Law rules, businesses operating in Europe do not have to adapt to 28 Member States' laws, but rather they are free to choose their preferred national jurisdiction as the basis for a cross-border contract with a consumer.
- The proposed CESL, which aims to override EU private international law, is incompatible with Article 6(2) of the Rome I Regulation which aims to guarantee the application of higher consumer protection standards. BEUC's analysis shows that the level of protection in the proposal's annex is not truly high. It does not match higher standards in numerous Member States on issues such as unfair contract terms or legal guarantees (e.g. the burden of proof or payment use). As such, the first reading opinion of the European Parliament on CESL would lead to a reduction of consumer protection in several Member States;
- Digital content is an area in which the current situation is causing detriment to consumer rights, as clearly shown by two recent Commission studies. More legal certainty and modern consumer protections are needed at EU level. The CESL proposal includes modern rules in this field, but they will only be applicable if businesses deem them selfadvantageous. Instead, BEUC calls for a non-optional legislative Directive to harmonise contract laws for digital products.

Instead of introducing a new era of optional regulatory EU tools inappropriate for consumer contracts, we call on the EU institutions to continue modernising consumer law by traditional methods – using full and minimum legislative harmonisation as appropriate – and completing the review of the consumer law *acquis* as originally envisaged.

## Product safety and market surveillance

Unsafe consumer products, including products bearing CE marking, are often found on the EU market requiring recall. They pose an avoidable risk to health and safety.

An update of the 2004 General Product Safety Directive is currently under revision by two new regulations on consumer product safety (CPSR) and market surveillance (MSR) adopted in February 2013.

Many of BEUC's concerns have been addressed by the European Commission in the proposed legislation for example to allow the adoption of product-specific implementing measures for certain product categories which present a risk to consumers.

As a better legal framework is needed to enhance consumer safety in the internal market, we see an urgent need for the EU institutions to complete the work on the product safety and market surveillance package. However, as there is a currently a stalemate in the Council, the Italian Presidency has a crucial role to play in unblocking the impasse. We urge the Presidency to try to achieve the best protection for European consumers.

- BEUC calls for the precautionary principle to be made a cornerstone of both the regulation on consumer product safety and market surveillance. Policy makers need to be able to act on a preventive basis in case of danger or the absence of final scientific proof. The final decision on an "acceptable" level of risk must remain a political responsibility. This principle should be clearly re-introduced in the regulation.
- The CPSR must remain a safety net to cover possible gaps in sector specific legislation.
- Equipment on which consumers ride or travel e.g. at an amusement park should be included in the scope of the CPSR.
- Product specific legislation which addresses environmental issues such as the EU Ecolabel Regulation, the EU Ecodesign Directive and the EU Energy Label Directive should be included in the scope of the MSR.
- Business secrets cannot prevail over the need to inform consumers without delay of serious risk. Market surveillance authorities need to adequately warn consumers without delay and publish all relevant information needed to identify a product and the risk involved.
- Penalties need to be proportionate to the infringement, not the size of the company.
- An EU-funded, accident statistics system and a European complaints handling and reporting point should be set up.
- Whenever a product features child-appealing characteristics, the product must be safe for children to use or to come into contact with, under all conditions of use.

## Payment Services Directive & Multilateral Interchange Fees Regulation

From a consumer point of view, payments do not constitute the final goal, but are the means to achieve other objectives. Consumers should be able to rely on a wide range of secure, efficient, cheap and convenient payment options for both face-to-face and remote transactions.

In July 2013, the European Commission adopted proposals for the review of the Payment Services Directive (PSD2) and the Regulation on multilateral interchange fees (MIF) for card payments. The aim is to adapt the legislation to new market developments, foster competition through creating a level playing field for all payment service providers, and improve consumer rights and protection. The European Parliament's Economic and Monetary Affairs Committee reports adopted in March have introduced more consumer-friendly amendments and the plenary vote is scheduled for April 2014. BEUC calls on the Italian Presidency to take these reports and our demands into account:

- Ensure that the negative scope of the PSD2 is subject to minimum harmonisation.
- Ban surcharges at EU level: surcharging has been proven harmful to consumers and inefficient to incentivise the use of cheaper means of payments.
- Provide direct debit users with an unconditional refund right for authorised and unauthorised transactions.
- Enshrine in law the limitation of the consumer liability for unauthorised payments and clarify the interpretation of 'gross negligence'.
- Ensure that payment services providers (PSP) refund the amount of the unauthorised transaction on the same day as it has been made aware of the transaction.
- Ensure that consumers' security credentials are not accessible to third party payment providers happens is not detrimental to the security of a payment.
- Ensure that consumers are notified whenever there has been a breach putting their personal data and security features at risk (mandatory data breach notification obligation); ensure PSPs regularly provide data on payment related fraud competent authorities.
- Provide host state supervisors with powers to take measures when a PSP originating from other country does not comply with its duties and responsibilities.
- Adopt the interchange fee caps proposed by the Commission (0.2% and 0.3% for debit and credit cards respectively), with an option for Member States to adopt lower caps.
- Prevent any attempts by PSPs to circumvent the rules established by the MIF Regulation, including through non-EU issuance of payment cards.

## Official controls in food

The European Commission's plans on the review of official controls, adopted in May 2013, provide an opportunity to take steps to restore consumer confidence in food and in the food chain. A risk-based approach to controls (provided it is fully transparent), their financing borne by all food operators (without exempting micro-enterprises) to ensure competent authorities are sufficiently resourced, and tighter sanctions to deter fraud are a good basis for this.

The European Parliament will vote on this proposal in April 2014.

#### Demands:

- Ensure the impartiality, quality and consistency of controls and the independence of the authorities in charge of them.
- More unannounced independent inspections looking at food authenticity (e.g. checking if veal is veal and not horse meat) in addition to food safety.
- Tough penalties for those prosecuted.
- Food industry should also improve traceability and regularly test its products.
- Greater transparency to the public on how food business are performing through publication of inspection reports (e.g. on the internet) and adoption by more Member States of schemes as "scores on the door" or smileys.
- Improved co-operation and co-ordination both between Member States themselves and between Member States and the Commission.

## **Data protection Regulation**

In January 2012, the European Commission adopted a proposal for a Regulation on Data Protection which will replace the current 1995 Directive. The proposal aims to ensure a uniform set of rules across Europe, while strengthening the rights of individuals and facilitating the flow across borders of personal data. We welcome the numerous positive elements of the proposed Regulation.

Consumer confidence is essential to economic recovery. A solid framework for data protection would help boost consumer confidence, especially in the complex online environment.

BEUC calls upon the Italian Presidency to intensify the work on the proposed Regulation to ensure that the new rules are adopted by the end of 2014. Europe can become the global leader by adopting strong and future proof data protection rules. The report of the European Parliament, adopted in March 2014, provides a firm basis for agreement between the legislators.

- The definition of personal data should remain broad and flexible in light of the rapidity of ICT developments. Pseudonymised data is, by definition, personal data as it relates to an identifiable individual and therefore falls within the scope of the draft Regulation.
- The scope of 'legitimate interests' as a ground for processing should not become a catchall category. It can only be used as a last resort i.e. when no other legal grounds are

available and the data controller should prove that its interests override those of the data subject.

- As regards the principle of purpose limitation, the European Data Protection Board should
  be entrusted with the task of defining criteria to assess the compatibility of further
  processing with the original purpose for which data was collected.
- When subject to profiling measures, consumers should be informed of the possible consequences or effects this could have on them. Consumers should also be able at all times to object to the processing of their personal data for profiling purposes.
   Furthermore, the legitimate interests of the controller cannot be accepted as a legal ground for profiling.
- A dual system of notification of data breaches needs to be maintained, according to which all breaches must be notified to the data protection authorities while only those breaches which adversely affect the protection of personal data and privacy should be notified to individuals.
- Judicial collective actions for compensation for harm suffered from data protection infringements should be introduced.

## Telecom Single Market

The European Commission's proposed Regulation to reform EU's telecommunications legislation, issued in September 2013, is an ambitious initiative. It offers a good opportunity to remove barriers in this market by creating a truly Single Market for European consumers while updating and improving consumer protection in the sector. However, it carries the risk of significantly impacting the degree and quality of competition across Europe, both in fix and mobile markets. It is therefore crucial that the proposed measures are carefully analysed as regards their impact on consumers. The European Parliament will vote on the proposed legislation in April 2014.

- A Single Market of telecoms for consumers means that cross-border services inside the EU, such as international long distance calls and roaming, should be offered at the level of domestic prices. The phase out of roaming charges can be gradual but it should happen at a faster pace than what is intended and must be applicable to all European mobile consumers. Any limitations to the general principle must be carefully analysed.
- A thorough analysis of the impact of the proposed measures on domestic retail markets must be carried out, since companies will naturally tend to increase them to balance off the decrease in revenue. Measures to avoid or reduce the impact of this increase must be included.
- The provisions on end-user rights, such as on termination of contracts, notice periods or compensation for subsidised equipment, for example, must be significantly improved. An update of the Universal Services Directive is preferable to a Regulation in order to respect national specificities and allow Member States to have more flexibility to respond to new abuses which may arise in future.

- The Articles which guarantee the access to an open and neutral Internet must be significantly improved. The prohibition on discrimination between internet traffic must apply to all traffic, not just parts of it. The definition of 'specialised services' must be made clearer to ensure that internet content is not separated and sold at a premium rate. The provisions which aim to shield the best-efforts Internet market from unwarranted access from specialised services need to be strengthened.
- Further analysis is needed on how the proposed Regulation affects investments in broadband infrastructure, and how it can be ensured that sufficient broadband investments are dedicated to services that allow access to the Internet.

## Air passenger rights

The existing air passenger rights regulation has helped improve the status of passengers by granting basic rights. However, the enforcement of these rights has been toothless and incoherent. Problems remain widespread and consumer complaints about poor compliance have risen steadily.

Passengers are often left with the sole "alternative" of taking legal action against non-compliant airlines, but few are able to do so. The volume of cases before the Court of Justice of the European Union (CJEU) in recent years clearly shows the need to clarify fundamental aspects of the regulation and ensure passengers can enforce their rights more easily. Therefore it is crucial these rulings are codified in EU law.

BEUC gave a qualified welcome to the European Commission proposal for the review of Regulation 2610/04 on air passenger rights. The European Parliament's first reading opinion adopted on 5 February 2014 provided for significant improvements to the Commission proposal on all the issues at stake. The main achievements are the prohibition of the no-show clause on all return flights and the exclusion of most "technical problems" from the scope of "extraordinary circumstances" as well as more re-routing opportunities for instance after a delay and a missed connection. The Commission proposal was also improved on the right to accommodation and the right to compensation for long delays.

We urge the Presidency to work to ensure that the best outcome can be secured for European consumers, by drawing on the progress made by the European Parliament.

- Airlines should compensate passengers after 3 hours of delayed arrival (Sturgeon ruling).
- The general right to accommodation in extraordinary circumstances needs to be maintained or only reduced following the European Parliament's first reading opinion (5 days of accommodation).
- The new Regulation should include an outright ban on airlines denying boarding on a connecting or return flight where passengers have not taken/missed the outbound leg (prohibition of the no-show clause).
  - Re-routing should be granted as soon as possible and involve alternative means of transport (the 12 hours timescale should be deleted); the right to re-routing should also be granted to passengers who suffer a long delay.
- Most "technical problems" should not be considered as "extraordinary circumstances".

- A mandatory guarantee to reimburse and repatriate passengers in instances of insolvency should be introduced, as required in the EP Resolution.
- Passengers should have the right to transfer their tickets to another person in case they are prevented from travelling (as for package travellers).
- The prices of air tickets advertised by airlines should include the following minimum services: checking-in, provision of boarding pass and 1 item of checked luggage.
- Aside from one item of hand luggage, passengers should have the right to carry their essential items and the airport retail purchases.
- The right of passengers to file complaints with airlines should not be subject to time limits.
- Airlines should be obliged to adhere to Alternative dispute resolution systems (ADR).

## Cloning

In December 2013, the European Commission published two proposals dealing respectively with the use of the cloning technique for food production purposes and the placing on the market of food from cloned animals. Whilst prohibiting the cloning of animals for food supply in the EU, the proposals do not address the critical issue of food from cloned animal offspring, though the latter is the most likely to end up on consumers' plates.

An overwhelming majority of European consumers do not want cloning to be used for food production. If food from cloned animals, their offspring or descendants were to end up on their supermarkets' shelves, they have clearly spoken out for it to be labelled so they can make an informed choice.

- Consumers should be able to decide for themselves whether or not to eat food derived from cloned animals, their offspring or descendants.
- A full, compulsory traceability system of clones and their offspring should be established as well as labelling rules for food derived therefrom.
- As long as such traceability system is not in place, there should be a ban on the use of the cloning technique for food purposes as well as on the import of live clones (incl. embryos) for breeding purposes, clones' reproductive material, live offspring and descendants from cloned animals and food from such animals.
- Ongoing trade negotiations should not be an obstacle to adopting EU legislation on cloning that meets consumers' demand for transparency on how their food is produced.

## Insurance Mediation Directive

The existing Insurance Mediation Directive contains principles that each Member State has implemented in substantially different ways and some important matters do not fall within its current scope: insurance products directly sold by insurance undertakings and insurance products sold on an ancillary basis are not regulated; lower standards for the sale of life insurance products with investment elements (e.g. unit-linked contracts) than to non-insurance investment products (regulated under the Markets in Financial Instruments Directive (MiFID)), which leads to inconsistency across sectors as market participants are offering insurance-based investments in place of other investments.

BEUC welcomes the IMD proposal, as the harmonisation of sales rules for all types of insurance (including life insurance) is necessary to avoid loopholes in consumer protection and avoid regulatory arbitrage from the financial industry.

In 2012 the Commission adopted a proposal for a revision of the Insurance Mediation Directive (IMD2). The goal of the Commission's proposal is to upgrade consumer protection in the insurance sector by creating common standards across insurance sales and ensuring proper advice. The European Parliament adopted a first reading opinion in February of 2014.

We urge the Italian Presidency to begin negotiations on this text and finalise negotiations by the end of 2014.

#### Demands:

- All intermediaries selling insurance on an ancillary basis should fall under the Directive's scope and should comply with all consumer protection provisions.
- Information about the insurance product should be given through a standardised information sheet.
- Ensure full consistency between the rules under MiFID and IMD as regards investment products.
- Avoid conflicts of interest and in particular ban contingent remuneration linked to any targets related to the activities run by the intermediary including sales volume and number of claims reported by clients.
- Not only should remuneration linked to a contract be disclosed, but all remuneration (including that in kind) linked to the mediation activity.

## Medical devices regulation

Consumers use medical devices in their daily lives and this wide range of products contributes significantly to people's health and well-being. The Commission proposals on this issue adopted in September 2012 represent an important step in strengthening the post-market surveillance system, but additional measures are needed to improve the pre-market assessment and to ensure speedy access to safer and innovative devices for consumers.

The European Parliament introduced significant improvements to the Commission proposal in October 2013 and the text was referred back to the Committee in order to start negotiations with the Council. Despite the fact that that agreement has not yet been reached the Parliament will

vote on this proposal in April 2014. We urge the Italian Presidency to ensure substantial progress is made on this file.

- Manufacturers should be required to produce more and better clinical data and whenever
  possible conduct randomised controlled trials to demonstrate that a medical device is
  safe and effective before being placed on the market,
- All clinical investigations should be registered and all results made public,
- A centralised pre-market assessment should be established for a limited number of high risk devices and be entrusted to a new medical devices committee within the European Medicine Agency (EMA),
- Apply a consistent risk-based approach for the classification of all devices,
- Set up a multidisciplinary expert group with binding power for a consistent classification of borderline products across the EU,
- Provide consumers with high quality, complete, understandable and user tested information for all devices,
- Guarantee the meaningful involvement of consumers in market surveillance and clarify the means for consumers to report incidents.