



The European Consumers' Organisation

BEUC/X/001/2005

18 January, 2005
Contact : Cornelia Kutterer
Email : cku@beuc.org
Lang : EN/FR

BEUC response to the Commission Communication

“Challenges for the European Information Society beyond 2005”

BEUC, the European Consumers' Organisation, is the representative organisation of 37 independent national consumer organisations from countries of the EU, EEA, and other European Countries. BEUC has a long-standing interest in Information Society policies, given its importance for the consumer-citizen.

Bureau Européen des Unions de Consommateurs, Avenue de Tervueren 36, bte 4, B-1040 Bruxelles
Tel: +32(0)27 43 15 90, Fax: +32(0)27 40 28 02, consumers@beuc.org, <http://www.beuc.org>

Europäischer Verbraucherverband
Europese Consumentenorganisatie
Organización Europea de Consumidores
Organização Europeia de Consumidores
Organizzazione Europea dei Consumatori

Neytendasamtök Evrópu
Európai Fogyasztók Szervezete
Evropska potrošniška organizacija
Den Europeiske Forbrugerorganisasjonen

Euroopan Kuluttajaliitto
Europejska Organizacja Konsumentcka
Ευρωπαϊκή Οργάνωση Καταναλωτών
Den Europæiske Forbrugerorganisation
Den Europeiska Konsumentorganisationen

According to you, what are the main technological, economical and societal developments that public authorities have to take into account while preparing the Information Society policy initiative for the next five years?

A broad range of more and more interdependent public policy issues (for example, health, safety, environment, cultural diversity, and consumer protection) are relevant for ICTs. At the same time, there is almost no area within the consumer field which is not affected by the development of modern information and communication techniques. The effects are already - and will be in the future - of technical, economical, societal and ecological nature. In addition, the existing legal framework – the enabling environment - must be considered when preparing sustainable IS policy initiatives.

➤ **Technical development**

Convergence of media and infrastructure

Convergence of media and the digitalization of content enable consumers to enjoy various kinds of services through the same infrastructure. We regard this as a positive development but it also offers new techniques to address and target consumers in unprecedented ways, in particular in the field of advertising. This might lead to negative consequences for consumers which need to be taken into account when defining new policies.

Telephony

Mobile and Internet telephony have in the long run the potential to substitute 'classical' fixed telephony. As such, they constitute the main development in the ICT. Internet Protocol (IP) and IP networks have been used mainly for data communications including email and transfer of files, and to access the World Wide Web. The use of IP technology to deliver 'voice' is finally starting to be commercialized. Mobile commerce, although often confined to 'niche' markets, is emerging with rapid growth. The new generation mobile telephones (UMTS) and "hybrid digital nets" (i.e. combined use of mobile telephone and digital broadcast networks) could have important implications for consumers/users. However, the market for 3G services remains largely untested. Emerging uncertainties must be addressed, for example, regarding the disclosure of information: the consumer must be able to make a distinction between the cost of the product or service offered ('content', 'data') and the 'communication cost'. The disclosure of a mere 'total' cost will not be conducive to transparency of prices and tariffs. Other aspects include the actual quality of the service (the ability to have access to 'premium' or 'data' services in particular), security of payment transactions, liability for unauthorised payment transactions and in case of theft or loss, notification and burden of proof in these respects, protection of minors, privacy, etc.

RFID

Radio frequency identification, or RFID, is growing out of its infancy. The use of radio waves that automatically identify people or objects, and perhaps other information, through a microchip that is attached to an antenna will be of interest to an increasing number of applications. RFID is used for everything from tracking animals and goods in the supply chain to controlling access to clubs (including the payment systems for the drinks consumed). While merits of RFID may exist, potential adverse effects of 'disruptive' technologies on competition, data protection, and privacy need to be taken seriously.

➤ **Economic development**

The Lisbon strategy

It is often perceived that consumer protection constitutes a particular challenge in view of the distinctive priority that the Commission attributes to the Lisbon strategy. BEUC emphasizes that consumers play an important role in the success of the Lisbon objectives. The consumers' contribution to the economics of

the Lisbon strategy shall not be underestimated considering the significant economic impact of consumer behaviour. Without adequate protection consumers will not embrace and trust ICTs, and as a result the goals of the Lisbon strategy will not be achieved.

Media concentration

The current trend of concentration of ownership and converging markets of communication technology and media content makes it indispensable to focus on potential adverse consequences resulting there from. The impact of convergence on media economics as well as on human rights, free speech, and pluralistic democracy must be thoroughly scrutinized and given priority.

Intellectual property and competition

Competition and intellectual property law and policy in the knowledge-based economy are crucial for consumer welfare. However, these policies are often at odds. If the balance is not rightly achieved, the consequences will be negative for innovation and to the detriment of consumers. The potential clash of competition policies and intellectual property policies should be addressed on a broader scale, in particular in regard to high-tech industries. An independent review of the impact of intellectual property laws on competition should be set up. A cost benefit analysis should inquire the effects of intellectual property legislation, including patents, trademarks, designs, and copyright to determine whether the intellectual property system is meeting the needs of an Information Society and the needs of business and consumers while maximising the benefits of competition.

Economical burden

Rationalization by enterprises and public authorities using modern ICT must not put additional economic or organizational burden on users/citizens. For instance, whilst banks gain high profits through efficient networks and communication systems – such as online-banking - they are not necessarily willing to invest in more secure systems – this might make it comparatively easier to abuse security leaks within online-banking systems. This has a detrimental impact on consumers' confidence in this area, and to e-commerce. If consumers seek to protect themselves, they might be forced to search individually and frequently for the latest anti-virus software, firewalls and encryption systems. Much too often consumers cannot enjoy the major benefit of digital delivery of content - its cost efficiency.

➤ **Societal development**

Ageing population, social inequalities

The challenges of ageing population and social inequities play an important role in the Information Society. Information and communications technologies can serve to entrench and broaden existing social and economic inequities if appropriate policies are not adopted.

Social behaviour in cyberspace

The Internet environment is a borderless public environment where people can meet in chat-rooms while being in the comfort of their own home. Yet, there is a high risk that people, in particular children, become "atomized in a virtual world" or lose the "feeling for reality". The difference from face to face interactions is often underestimated. Social behaviour may change considerably in an anonymous world. Users risk becoming victims of threats, harassment, or bullying.

Internet offers highly sophisticated services and products, especially in the entertainment sector. The quality is compelling for many adolescents and gives the video game industry a powerful position in their lives. Studies show that excessive exposure to video games, in particular ones with violent content, can adversely affect the behaviour and the learning ability of their users. These negative effects need to be taken seriously.

Self-censorship

Restrictions on the freedom of expression are often applied in the combat against illegal content on the internet. However, the prevention of harmful content may conflict with the protection of freedom of expression and the right to access information. Monitoring, filtering and blocking of information often lack transparency, which brings about a risk of self-censorship.

➤ **Regulatory framework**

The European regulatory framework for electronic communications networks and services

Electronic communications are fundamental for the emergence of new and better services for consumer, increased consumer choice, greater accessibility of products at affordable prices and the possibility for consumers to compare, to obtain more information, and to express their views. The need for a comprehensive regulatory framework - properly enforced - is essential to improve the functioning of the internal market, to guarantee basic user interests and to enable new and better services for citizens.

In the latest annual report on the implementation of the EU electronic communications regulatory package, however, a number of remaining difficulties are still to be tackled. Competition is still weak in a number of segments - in the local loop of fixed telephony in particular. A certain number of issues (regulatory bottlenecks and/or barriers to entry) remain in the mobile telephony sector also. Concerns persist, inter alia, as to the high level of international roaming charges. The regulatory package is so far not properly implemented. Many Member States have, for example, failed to transpose the 2002 e-Privacy Directive.

Implementing existing EU legislation is essential to enable consumers to benefit from a competitive consumer market in driving down prices for consumers and businesses.

Internet Governance

Internet standards bodies, for example the Internet Corporation for Assigned Names and Numbers (ICANN), the World Wide Web Consortium (W3C), or the Internet Engineering Task Force (IETF) play an important role in the governance of the Internet. They have broad control over resources and functions that are critical for its operation. It is essential that these bodies have limited mandates and are fully accountable to the public. All decision-making on Internet standards must be open and accessible and allow participation and scrutiny by all stakeholders, particularly from consumer organisation and civil society.

Do you agree with these 8 clusters as the most relevant and comprehensive for the strategy up to 2010? Do you identify others? What would be your Top 3 priority clusters and why?

BEUC agrees that promoting a wider take-up of ICTs depends on the capacity to address many issues to which the use of these technologies gives rise. Yet, the communication – arguing for bringing ICT closer to citizens’ needs and expectations – also serves to highlight that Europe still faces a number of problems, many of which have been identified long ago, but have so far not been successfully resolved.

We broadly support the Commission in its approach to embrace a wide variety of issues when creating a future Information Society policy. BEUC considers all eight clusters to be key components of an Information Society that is designed to meet the social, economic, and cultural potential of modern information and communication technologies. In this current communication, we deplore the lack of ecological sustainability as an important policy goal. Energy consumption of ICTs and the massive growth of electronics waste cause great peril for humans and the environment. Electronics waste is often disposed of in poor countries. On the other hand, ICTs offer great potential for sustainable development. We urge the Commission to take this issue on board.

Of the above-mentioned clusters, we wish to emphasize the three following:

➤ **eInclusion and Citizenship**

Affordable access

The availability of electronic information and communication technologies (ICTs) is of little benefit if the price of access is beyond the reach of certain segments of the population. Affordable access in remote areas remains a high priority in achieving an Information Society for all.

It is generally accepted to maintain or introduce universal service obligations in order to avoid exclusion from the Information Society. As ICTs develop, the concept of “universal service” evolves. The periodic review of the scope of universal service obligation is due at the latest on 25 July 2005. We encourage the Commission to come forward with a report in due time. If we seek a shift from ‘access for all’ to ‘knowledge for all’, broadband access may need to be considered as a universal service.

Digital divide

The most important aspect to be considered is the risk of broadening the “digital divide”, not only in respect of ‘have’ and ‘have-nots’ but also in respect of the age of different users groups (old and young) or in respect to disabled persons. Gender inequality and broader social inequality must be adequately considered. Elderly people and people with disabilities are often confronted with difficulties in using today’s mainstream consumer products and services. Gender inequality and broader social inequality must also be adequately considered in order to reinforce the social aspects of an Information Society for all. ICT must be easy to use for all intended user groups. It must be provided that technological protection measures do not constitute obstacles to access for people with disabilities.

It must also be avoided that citizens who do not want or cannot use modern media or new IT facilities will find no conventional alternatives to digital economic acting with public authorities.

➤ **Trust and dependability**

While consumers continue to lack confidence in the e-commerce market and new technologies there is little doubt that this trust and confidence is prerequisite if these technologies are to meet their potential, and that such trust and confidence cannot be achieved without effective consumer protection. Indeed, the

fast rising lack of trust due to fraudulent activities - identity fraud, phishing and other criminal activities, the blockage of email systems with spam, high incidences of viruses and worms, the hacking of personal computers, the exposure of children to intolerable material, and the lack of effective data protection in the online environment - have been major factors inhibiting the growth that information communication technologies can bring.

The following issues must be addressed by future Information Society policies to build a reliable and trustworthy infrastructure:

Consumer protection

Consumer protection legislation, enforcement, and redress are essential elements to build consumer confidence and trust in the online environment. The European law *acquis* provides for general consumer protection law, for example, the unfair contract terms directive or the proposal on unfair commercial practises, or technology-specific legislation, for example the e-commerce directive, both applicable to on-line transactions. This *acquis* must be regularly reviewed and challenged against new developments in ICTs to ensure that consumer protection remains and achieves a high level of consumer protection as foreseen in Art. 153 EC. It seems to us that existing consumer protection legislation cannot cope with certain new business models in the digital content delivery market, for example, in respect to Digital Rights Management. A particular concern in this context is dynamic pricing, *i.e.* the ability of the company to adjust prices to specific consumers.

Consumer confidence in making purchases online depends in part on the liability limits and redress mechanisms applicable to the payment mechanism they are using. Payment system operators should limit consumer liability and offer comprehensive redress mechanisms. Also, a payment service provider should be responsible for executing a payment order according to the mandate given by the Payment Service User. The consumer is not in a position to prove either a technical deficiency in the system operated by the service provider, or negligence on the part of the service provider. The burden of proof should be assigned to the party in a better position for producing proof.

Building trust through 'soft law' may complement but should never replace legislation. It can help to construct a trustworthy environment. Trustmarks play an important role therein. We welcome the long-awaited Commission staff working document on trustmarks "Consumer Confidence in e-Commerce: lessons learned from the e-confidence initiative" of 8 November 2004. The Commission finally takes this crucial element of consumer confidence up again. BEUC awaits further steps to update and finalise this EU code of best practices in e-commerce.

The European law *acquis* is also challenged by the universality of the Internet. In order to provide a solid basis for consumer trust and confidence in the electronic marketplace, it is essential that legislation, enforcement and redress be addressed through international cooperation and regulatory frameworks. Access to justice is one element of consumer protection; in a global world of e- and m-commerce, it becomes crucial. Consumers who transact from their home jurisdictions should not be denied the right to litigate disputes regarding those transactions in the courts of their home jurisdictions. The proposed Hague Convention on Jurisdiction and Foreign Judgements in Civil and Commercial Matters is an important milestone in enabling protection that consumers need in a connected world. We urge the Commission to re-launch the negotiations of the Hague Convention and provide that it promotes and protects the consumer interest in access to justice appropriately.

Unsolicited commercial email, Viruses/worms, phishing

While still one of the most widely used services in the information age, electronic mail suffers from the rampant abuse by those promoting products and services or by those engaging in fraudulent activities. Studies indicate that a skyrocketing proportion of email messages are unsolicited and unwanted and that consumers are often misled by "junk e-mails". Many emails contain false or misleading header or "from" line information. Server overload or even server breakdown triggered through mass e-mails harms Internet providers but will ultimately be charged to consumers through increased end consumer prices.

Increasingly, large volumes of junk e-mail interfere with critical computer systems and endanger public safety. The odds of downloading a computer virus over the Internet, triggering worms or opening doors to Trojan horses have increased significantly. Indeed, the number and sophistication of phishing scams sent out to consumers is continuing to increase dramatically. This fraudulent activity may become a major obstacle in building consumer trust in e-commerce.

Protection of children

The key benefit of ICTs, the increased scope that they offer for free expression of ideas and open access to such information - is challenged through inappropriate, illegal or harmful content and activities. Misleading marketing to children, unrestricted access to material that incites violence, hatred, or otherwise conflicts with the values of the parent, and problems such as paedophiles posing as children are of particular concern.

Data protection

The Internet and ICTs open the doors to infringement of data protection and privacy in unprecedented formats. For example, the potential ubiquity of RFID technology is of great concern to consumers. Other technologies, such as DRM, may have equally negative effects on data protection and privacy. Often, consumers are forced to sign their statutory rights away to gain access to services. Our consent-based regime needs to look at different solutions to encounter these tendencies.

Credibility of online information

Modern ICTs make it easy and more convenient for people to communicate and to search for information. Important decisions - about health or financial affairs - are based upon the result of that research while the reliability of online information is often impossible to be assessed. The risk for consumers/citizen to be misled by inaccurate or deceptive information on the Internet is therefore high. Measures need to be taken to improve the credibility of online information, as well as to educate consumers about the risks of reliance upon this information.

➤ Content and Services

The development of attractive content and services for consumers to embrace high-speed access to the Internet plays an important role in the take-up of broadband. If European consumers do not obtain added value in broadband access, there is no reason for them to subscribe to it.

BEUC supports the vision of 'any content, anytime, anywhere'. The convergence of media makes this vision a necessity for consumers to benefit from developments in ICTs.

For this to be achieved, it is necessary to create a regulatory system which incites creativity and invention and enables competition to the benefit of consumers. For this reason, an environment that balances exclusive rights with the need for society to benefit from legitimate uses of digital content must be put in place. Some of these issues arise in other forums or consultations. However, they cannot be ignored when talking about an Information Society. The current IP regime should be measured against its impact on the European high-tech business. Their economic activity has substantially added to the growth of the Information Society and should not be burdened by shifting costs to it which will eventually be charged to consumers. The review of the IP law acquis should therefore concentrate on economic analysis with the aim to remove existing overprotection rather than adjusting the acquis to the copyright directive only. The potential shifting of costs of content protection to the consumer electronics and information technology industries poses a challenge. Only a balanced system provides sufficient protection and keeps access open. We need to avoid over-protection, adjust rather than merely expand protection, and use built-in flexibility to balance concerns of content industries with fundamental user convenience and justified expectation in consumption scopes.

The effects of overly restrictive existing intellectual property laws may also limit research into new innovative services. Innovative services, however, are crucial for consumers to embrace ICTs and finally to achieve an Information Society.

On current terms, technical protection measures make a bad situation worse. We therefore welcome the Commission's effort in providing a platform for stakeholders to discuss Digital Rights Management. We urge the Commission to continue the High Level Group on DRM in order to obtain further progress in the fourth aspect, *i.e.* consumer acceptance, which has not been adequately addressed. We also reiterate that further work needs to be done on "migration to legal services" and "levies" as these parts were not part of the consensus reached. BEUC, as the only consumer representative in that group, did not support these two parts of the final report. A consensus thereon was thus not achieved despite the continuing claim of a consensus paper by industry participants. Built on the consensus achieved on interoperability, it is now necessary to proceed with this issue with a wider group of stakeholders.

Supporting the preservation of digital material and the availability of public domain works is essential to increase available digital content. Libraries and archives have an important role to play in these two aspects of achieving a knowledge and information society for all and in bridging the digital divide. BEUC also supports fair access to digital material for educational and other socially necessary purposes. Governments should actively support the digitalization of publicly available material. Public domain content may stipulate competition and encourage content owners to improve their services.

We support to enhance awareness of copyright issues. However, this should be done in a balanced way. Information on copyrights of works must include information on its restrictions as well as on its duration. While the latter is easily (or not so easily) determinable, the debate on restrictions of copyrights, in particular on their scope and enforceability, has just started and will accompany us for quite a while.

In each of your top 3 priority areas, what are the priority actions to be launched by national policy agendas or by EU level initiatives (regulation, legislation, pilot projects, raising awareness,)?

We support that the identification of pathways towards these aims should be based on continuity rather than radically new targets. The Commission communication "eEurope 2005 Action Plan: An Update" of 17 May 2005 thus serves as a bridge between eEurope 2005 and a potential eEurope 2010.

The enabling environment for future Information Society policies should be supported by several actions:

➤ **General actions**

Consumer representation and financing

Governments should include consumer representatives in policy-making and decision-making processes at both the national, European and International levels, where consumer interests could be affected, and actively seek out consumer input where they are receiving input from business interests on particular issues in which the consumer interest may conflict with the business interest.

Formal and informal standards development bodies working on ICT-related standards and technical specifications should operate according to principles of transparency and openness, and should ensure that the consumer interest is properly represented at all stages of their work. Governments should fund consumer representation in ICT standardization processes.

The Commission and the member states shall give independent consumer organizations clear powers and financial support so that they can better and more efficiently help and protect consumers using the facilities of the Internet and in eCommerce.

Regulation

It is crucial to remove the remaining obstacles to a comprehensive regulatory framework for electronic communications in order to enable the full potential of the digital market for consumers. Legislation must be timely implemented by Member States and constantly challenged against the continuous development of technology. Revision deadlines should always be adhered to in due time. Governments should cooperate in bilateral and multilateral forums to harmonize existing regulation on the highest possible standard.

Fact-based decision-making

Having in mind new techniques like localization, mobile payment or RFID, combined with internet services, politics should in any case look into technological, economic and social consequences of such techniques prior to their market introduction. Scientific studies should be carried out in that respect. If risks for society will be greater than the advantages for business, adequate precautions and legal restrictions must be put in place. In any event, decisions should be always based on serious economic studies (see for example the UK-House Report on open access publishing).

Benchmarking, exchange of best practices

When benchmarking and exchange of best practice are applied they should be extended to collaboration on International level. However, the positive outcome of benchmarking may be outweighed by burdensome and expensive procedures. The Commission should investigate whether other means could add to the effectiveness.

Transposing results into real solutions and awareness

Funded projects on ICT policies should be transposed into real solutions. It is not always clear what the added value of a specific project is if the Commission does not come forward with respective conclusions, recommendations, or legislative initiatives.

➤ **eInclusion and Citizenship**

By 2005, the Commission intends to reassess the eInclusion priorities and set specific targets. BEUC welcomes the public consultation that started on 10 January 2005 to make ICT products and services more accessible.

Here, we will point out to some key elements:

- The revision of universal services should be undertaken in the light of the necessities to enable broadband access for all.
- The Digital Divide Forum should be continued.
- Governments should in any event support the delivery of ICT services via public access sites in each community (as far as this has not been achieved through Public Internet Access Points)
- ICT standards should be developed on the concept of 'Design for all': i.e., designing for as many people as possible while acknowledging that there is a minority of disabled people with severe impairments who need adaptations or specialist products.
- E-learning is a prerequisite for a knowledge based society. It is necessary to focus on eSkills and eEducation to enable citizens to benefit from network availability. Age-specific training should be supported.
- Stakeholders should work together to develop and implement media campaigns designed to enable and empower individual users of ICTs.

eGovernment, eHealth, eLearning – closely linked with eInclusion - must be strengthened across Europe. The use of ICT not only will improve the quality of services, but represents an efficient tool for governments to become more transparent and efficient. Most government web-sites are one-way channels. Appropriate ways to communicate with citizens and to integrate democratic methods into service delivery need to be researched.

➤ **Trust and dependability**

Consumer protection

The European consumer protection law acquis is currently being revised and complemented, for example by the unfair commercial practice directive. Additionally, the Commission should consider specific research, and eventually legislation, on the protection of consumer rights in the digital environment and in particular in the light of new business models. Some projects, such as for example the "indicate" project on consumer acceptance of DRM, could be useful indicators to consider whether (or not) consumer protection law can adequately protect consumers in the digital environment.

Governments should protect the right of consumers to access the justice system in their home jurisdiction. We therefore believe that the Hague Convention should return to its original objectives.

Other aspects include:

- Consumers should be entitled to rely upon "chargeback" remedies as a key element of fostering confidence in the online environment.
- Educational courses on information technology at schools and universities should include consumer and private protection as a key element.

- Governments should provide capacity-building and training services to small enterprises and content providers, focused on the implementation of guidelines and best practices for consumer protection online.
- Test methods should be standardized so as to provide data to consumers for easy comparison before purchase, (e.g. data on energy consumption, cost, necessary equipment/knowledge, restrictions, safety, and instructions).

Security

We welcome the conclusions adopted on 9 December 2004 by EU Telecommunications Council on unsolicited communications for direct marketing purposes which ensures that further action in the fight against spam are taken. However, many suggestions have been put forward on the fight against SPAM, but less have been truly successful. The Commission should deliberate on a specialized (central) office with technical competence and legal power to track and persecute spammers (like the US FTC does successfully) and impose pressure on countries not willing to cooperate. Governments should cooperate in the cross-border enforcement of laws restricting the use of e-mail for commercial solicitation. Efforts to develop and distribute effective filtering tools should be encouraged and continued.

To improve the security of mobile payment, research should be undertaken on secure, effective and user friendly verification systems which can be used instead of PIN.

Protection of children

Strategies to minimize those risks should be undertaken. Information campaigns could support schools, adults, and children about how to curtail abuse and make public information on the risks of online activity. We welcome the decision of the European Parliament and of the Council establishing a new multi-annual Community programme on promoting safer use of the Internet and new on line technologies for the period 2005-2008. We welcome in particular the extension of that programme to other media, such as videos and its focus on end users: parents, educators and children. The pending proposal on the protection of minors and human dignity and right of reply will be of added value in responding to new challenges both in quantitative (more "illegal" content) and qualitative terms (new platforms, new products) which technological developments bring in this field.

Data protection

Voluntary efforts by businesses to establish and respect best practices of privacy protection should be encouraged, but self-regulation should not substitute for regulatory standards in this area. Enforcement remains a particular concern. The Commission should investigate whether particular consulting processes could be established in respect to recommendations issued by the Article 29 Working Group Party. We welcome the Council recommendation to bring forward speedily the assessment of the e-Privacy Directive. We also urge the Commission not to delay the assessment of the Work programme for a better implementation of the Data Protection Directive in order to propose legislative improvement if and where necessary.

Online credibility

Online businesses should be encouraged to improve the credibility of the information they provide. Best practice projects could be a mean to further improve legislative obligations.

Content and services

We support the continuation of the High Level Group on DRM (see also suggestions under consumer protection). Further research should be undertaken in regard to the role of libraries and access to information.

Please indicate if you agree to your contribution being published on our website?

YES.

END