



The Consumer Voice in Europe

European Commission orientation debate on the Digital Single Market

(Letter sent to Mr. Andrus Ansip, Vice-President of the
European Commission on 23 March 2015)

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Brussels, 23 March 2015

Re: Orientation debate on the Digital Single Market - 25th of March

Dear Vice-President Ansip,

I am writing to you on behalf of The European Consumer Organisation (BEUC) in view of the March 25th orientation debate among the College of Commissioners for preparing the Digital Single Market Strategy.

BEUC is convinced of the potential of a consumer-driven Digital Single Market, but there are currently many bottlenecks preventing consumers from making the best of it and contributing to the growth of Europe's digital economy.

Despite an increasing number of consumers getting online, they still face barriers caused for example by business practices which segment the market, a lack of harmonised rules for the on-line purchase of digital content/services and inadequate enforcement of existing legislation.

Key EU laws are being negotiated by the EU legislators, such as the General Data Protection Regulation and the Telecom Single Market proposal. It is essential that the European Commission supports a high level of consumer protection in these negotiations in order to consolidate consumer confidence and trust when online.

We have identified a set of measures which we ask you to include when defining the European Commission's Strategy for the Digital Single Market.

Copyright reform

A dynamic and fast evolving market - such as that of online content - requires a flexible legal framework that meets consumers' expectation in the digital environment. The Copyright Directive dates back to 2001, a time preceding mass distribution of copyrighted content over the internet. As a result, everyday activities such as backing up and domestic copying legally bought music, films and e-books to play on a different devices could be legal in one country and illegal in another due to the Member States discretion with exceptions and limitations. Furthermore, any notion of consumer rights is absent from the existing copyright framework.

In order to address these concerns, the European Commission should include the following measures in the forthcoming revision of the Copyright Directive:

- Pursue the **harmonisation of copyright exceptions and limitations**;
- **Copyright exceptions should be made mandatory** and immune to overrule in contractual terms and conditions and technical protection measures;
- **Apply the principle of exhaustion** to digital works to enable consumers to lend/resell them. This would thereby create a secondary market for digital content and provide consumers with more choice of legal content;
- Reform the current system of **copyright levies** and progressively phase them out. No levy should apply for works freely distributed by authors or when there is no or minimal harm to the rightholder for the act of private copying. In addition, there should be an obligation to disclose the private copying fee that is included in the price of the medium or equipment.
- **Enforcement of copyright rules** should be proportionate and respect users' fundamental rights and freedoms. Any restrictions of user's rights must be foreseen by law.

Consumer protection in online purchases

The Consumer Rights Directive is applied law since June 2014 and covers key elements of online consumer contracts. It is a major piece of legislation for consumer protection, based on full harmonisation. .

Additionally, the Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) proposals will be applicable as of 2016/2017 and hopefully help consumers and business to address cross-border e-commerce disputes.

Last week, BEUC wrote to several Commissioners concerning the future initiative on on-line and digital purchases. Please find the letter attached for your information.

BEUC believes the modified proposal for the Common European Sales Law must involve substantial changes, both in the nature of the instrument and its content, in order to complement the rules of the Consumer Rights Directive.

To this end, **BEUC supports a combination of legislative and non-legislative initiatives** which would help develop a level playing field for e-commerce in the Digital Single Market while ensuring higher standards of consumer protection under the Rome I regulation are not withheld. They include:

- **A legislative proposal on digital content and services** to complement the Consumer Rights Directive, one which is not "optional" EU law;
- **Launch a voluntary initiative for a European model contract** for online purchases sponsored by the European Commission, endorsed by businesses and BEUC;
- **Link this to the ODR platform and the ADR schemes** which will soon be operational. This would be a very interesting illustration of a holistic approach and smart regulation;
- **Also link this to the European trustmark discussion**, which has been ongoing for years;
- **Continue evaluation of the Legal Guarantees Directive and the Unfair Contract Terms Directive**. Propose a review where relevant after thorough assessment;

- **Explain the impact of the Rome I Regulation**, for example via an interpretative guideline to clarify for SMEs what their concrete obligations are in relation to cross-border selling to consumers. Following the ECJ cases on the Brussels I Regulation, the European Commission should present its report on the impact of Article 6 on consumer contracts of Rome I, which was due in 2013.

Data Protection

The ongoing reform of the Data Protection framework is a major component to ensure trust for consumers in the Digital Single Market. A robust data protection legal framework would help boost consumer confidence, particularly in the complex online environment. Innovation on a large scale will only occur if people trust the way their data is handled. We are worried about the recent partial agreements of the Council of ministers and would urge the European Commission to do its utmost to maintain a high and efficient level of protection for citizens and consumers;

Pending approval of the new rules, **the European Union should not commit to addressing the issue of international data flows in the EU-US Transatlantic Trade and Investment Partnership (TTIP). Negotiators should leave data flows and data localisation out of the trade negotiations.** It is impossible to address the issue of data flows when data protection legislation in the US and EU are starkly different and unbalanced. A trade agreement cannot resolve the fact that the two systems are highly divergent and incomparable, nor should it be used to circumvent the legislative process.

Telecoms

With the Connected Continent proposal, the European Union has a unique opportunity to build the grounds for a real **Telecoms Single Market** conceived and tailored for the development of its digital economy and society, where the rights and freedoms of citizens, consumers and SMEs are thoroughly protected. Without a real Telecoms Single Market (TSM) as a founding pillar, the Digital Single Market will not flourish.

Political ambition is needed to take measures that: **protect and foster the open internet** as the platform for the DSM to operate in, **eliminate outdated geographical barriers such as roaming** thereby ensuring the mobility of users and businesses, **update the legal framework (Universal Service Directive)** so that it truly protects and empowers consumers in the digital era.

Online discrimination and Geo-blocking

Notwithstanding the principally borderless nature of the internet, consumers find that some businesses have actually re-introduced territorial barriers by way of technology. Businesses may either refuse on-line access to consumers depending on their country of residence or apply dissimilar conditions depending on where the consumer lives (i.e. price discrimination for the same service in different Member States).

Therefore, the European Commission must ensure appropriate implementation of **article 20.2 of the Services Directive** which forbids discrimination in the provision of services on the basis of nationality and/or place of residence. Additionally, it is necessary to **clarify the objective reasons which could justify territorial discrimination.**

Furthermore, '**geo-blocking' on the basis of the consumer's country of internet protocol (IP) address needs to be urgently addressed.** Consumers should be able to access legal offers across Europe without technological restrictions.

The points raised above are all indispensable for a vibrant and consumer-oriented European DSM. We hope you will take these considerations into account when deciding on the Commission's strategy. .

Please be informed that we have sent this letter also to First Vice-President Timmermans, Commissioner Bieńkowska, Commissioner Vestager, Commissioner Jourová & Commissioner Oettinger.

Yours sincerely,

Monique Goyens
Director General

c.c.

Kamila Kloc - Deputy Head of Cabinet
Laure Chapuis - Member of Cabinet
Jorgen Gren - Member of Cabinet
Jasmin Battista - Member of Cabinet