

60 YEARS YOUNG
YEARS STRONG

BEUC The European
Consumer
Organisation

The Consumer Voice in Europe

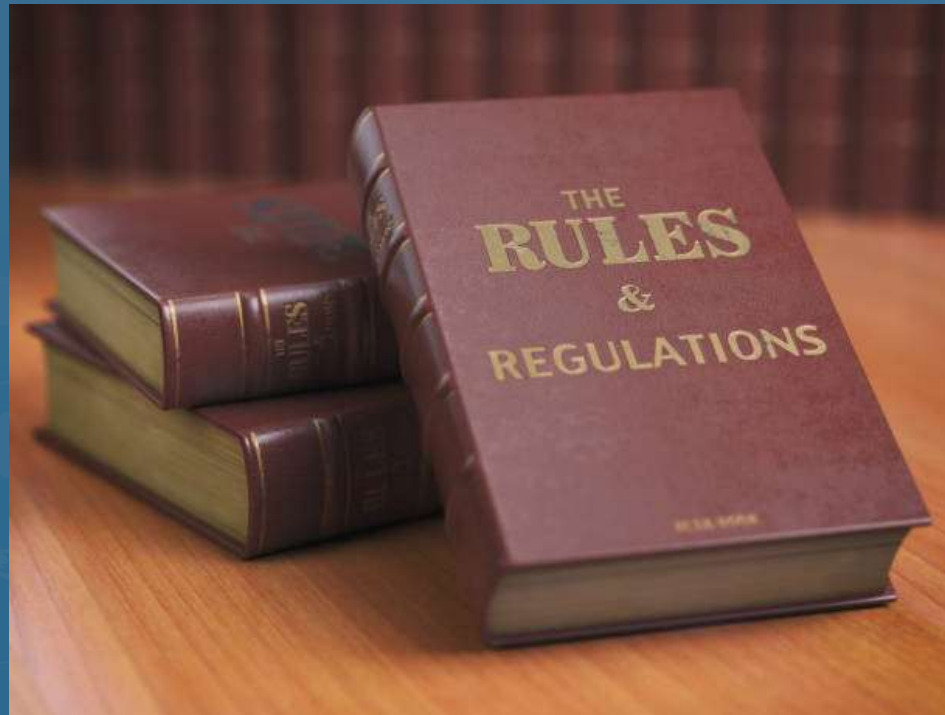
Challenges for consumers in electronic communications and digital services

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1. Consumers and electronic communications



1.1. BEUC GENERAL COMMENTS

- **Welcome the EECC positive impact for consumer protection**

Expectations that EECC should go a long way to improve consumer rights in the sector.

- **Regrets its delayed transposition in most EU Member States**

EECC has a very short period of application given the transposition delays by Member States.

- **Considers it is still too early to fully evaluate the applications of the EECC**

More time needed to fully assess all issues of implementation and enforcement of EECC

- **Cautions over negative effects on consumer rights from full harmonisation**

Consumer rights should not be diminished in Member States with higher levels of consumer protection as a result of the EECC.

1.2. CHALLENGES REMAINING: DIGITAL DIVIDE

- **Accessibility**

Lack of access to digital technologies and internet, differences in coverage, penetration and speed

- **Affordability**

Lack of affordability of digital services and internet by consumers, especially those most vulnerable

- **Literacy and skills**

Lack of digital literacy and basic digital skills



Lack of access to digital technologies and internet: differences in coverage, penetration and speed

- Ensure universal access to internet services for EU citizens
- Improve connectivity by developing sustainable digital network infrastructures: fixed and mobile internet broadband connectivity but also high capacity wi-fi connectivity.
- Rollout of 5G as unique opportunity to improve accessibility, better quality of service for consumers
- Open internet, without discrimination (e.g. geoblocking), as pre-condition for a healthy, fair digital economy and society.

Connectivity – including via new technologies like 5G – should also deliver for consumers not just businesses

- **BEUC members raised concerns how 5G is being deployed and marketed in their countries (for instance, Germany, France, Belgium, Spain, etc.)**
- **NRAs must ensure operators translate improved connectivity into provision of stable, non-discriminatory, secure internet access services to all consumers, regardless of their geographical location**

Accessibility is not enough: accessible should mean affordable

- Better, quality connectivity should also be affordable to consumers, especially those more vulnerable
- Socioeconomically vulnerable consumers face lack of affordable digital technologies and internet services
- EECC's Universal Service Obligations (USO) ensure no consumers are left behind in access to basic broadband, with affordable access for the most economically disadvantaged
- Public authorities must ensure operators effectively translate improved, stable, and secure connectivity into the provision of affordable, non-discriminatory internet access services to all consumers, especially those most vulnerable

LITERACY AND SKILLS

Empowering consumers cannot be achieved by digital skills alone

- Digital tools and services must be user-friendly and fair by design
- The burden should not rest exclusively on information and thus on consumers, ensuring inclusiveness
- Consumers must be enabled to freely choose online services and protect themselves more easily against abusive practices, scams, fraud attempts
- More accessible means to defend consumer rights online: accessible, affordable complaints handling, redress mechanisms
- Consumer rights should be protected from consequences of digital transformation, digitisation of public services, especially rights to privacy, personal data protection

1.3. CHALLENGES EMERGING: EECC

Consumer organisations have already identified increasing issues during EECC market and implementation phase:

- **Information and transparency requirements** (e.g. in Greece, contract summaries being provided only in the contract itself, deterring consumers from comparing offers)
- **Provider switching** (e.g. in Portugal, consumers deterred by very long contracts and very high penalties for early contract termination – three times higher than neighbouring Spain).
- **Competition and take-up of very high-capacity networks** (e.g. in Denmark, regulated prices of access to fibre, cable well above market prices. Price hikes towards internet providers means consumers face 20% or more retail price raises).

1.4. CHALLENGES EMERGING: ROAMING

New Roaming rules a positive development, however:

- Quality of service like at home: BEUC members continue to receive consumer complaints
- Phase-out of 2G/3G technologies to potentially impact more vulnerable consumers
- Roaming agreements with third countries in EU neighborhood should be pursued (e.g. Ukraine)
- End intra-EU communications surcharges

2. Consumers and digital services: the DSA



EUROPEAN COMMISSION

Brussels,
15.12.2020

COM(2020)
825 final

2020/0361(CO
D)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

**on a Single Market For Digital Services (Digital Services Act) and amending
Directive 2000/31/EC**

(Text with EEA relevance)

[SEC(2020) 432 final] - [SWD(2020) 348 final] - [SWD(2020) 349 final]

2.1 CONTEXT

- In a world of digital communications services, EECC cannot be the only instrument to ensure a legal framework to protect consumers.
- Since 2000 (e-Commerce Directive), the online market reality has changed, multiplication of platforms and digital service providers.
- Explosion of illegal activities online, especially on online marketplaces (scams, frauds, trade of illegal and unsafe products).
- Online advertising based on tracking and profiling users.
- Unfair commercial practices, “dark patterns” to mislead consumers.
- Lack of clear rules and level-playing field for all companies.
- Lack of effective enforcement and adequate ways of redress for consumers to complain to platforms or public authorities.

2.1. CONTEXT

DSA updates and adds new obligations, particularly for online platforms, to e-Commerce Directive, which is unable to cope with recurring problems consumers face on online markets.

BEUC members have constantly raised the alarm:

- Dangerous products sold on popular e-commerce sites: in **average two-thirds of products** bought from online marketplaces **fail safety tests and/or do not comply** with legal standards.
- Fraudsters can easily create fake ads within hours. rogue advertisements trick victims out of money and personal data;
- Traders manipulate consumers with fake reviews;
- Online platforms fail to take effective action to prevent harm to consumers, **especially minors**.

2.2 DSA OBJECTIVES

DSA introduces new common rules on the provision of intermediary services online that, among others:

- **Ensure a safer, more predictable and trusted online environment**
- **Protect consumers and their fundamental rights online**
- **Advance the EU single market for digital services**
- **Provide legal certainty and end legal fragmentation**
- **Increase transparency and accountability of digital service providers, especially online platforms**
- **Introduce harmonised obligations tailored to certain, specific categories of providers of intermediary services**

2.3. DSA RULES IN A NUTSHELL...

- Online intermediaries need to have a more active role to tackle illegal content (products and services included)
- Additional transparency and due diligence obligations for online platforms to comply with
- “Know-Your-Business-Customer” obligation to improve traceability of traders present on online platforms
- Additional obligations for very large online platforms and search engines (≥ 45 M EU users)
- Two-tier enforcement framework: at EU and national level
- Strengthened means of redress for consumers

2.3. DSA RULES IN A NUTSHELL...

Asymmetric approach: rules depend on role, size, and impact of the online intermediary services providers:

- **Intermediary services** (offering network infrastructure e.g. Internet access providers, domain name registrars)
- **Hosting services** (e.g. cloud, webhosting services)
- **Online platforms** (including online marketplaces, app stores, social media platforms).
- **Very large online platforms / search engines** reaching more than 45M EU consumers)

2.4. DSA SHORTCOMINGS

Rules depending on strict enforcement to protect consumers:

- **No positive liability regime for online marketplaces**, but an limited obligation to improve trader traceability: “Know-Your-Business-Customer” obligation.
- **Absence of “random checks” obligation** for online marketplaces to check the products they offer on their platforms
- **“Ban” on dark patterns**
- **No ban on targeted advertising**: platforms are only banned on presenting advertising based on profiling to minors and if using sensitive data.

2.5. ENFORCEMENT

National Enforcement

- Retains 'country of origin' principle
- Enforced by 'Digital Services Coordinators'

EU-level Enforcement

- VLOP/VLOSE, ≥ 45 million EU users
- **European Commission:** exclusive powers to designate and enforce VLOP/VLOSE's **special obligations**.

Consumer concerns

- **National level:** 'enforcement bottlenecks'
- **EU level:** lack of resources for appropriate timely enforcement; Commission supervision applies only for large players

2.6. WAYS OF REDRESS

Consumers will have clear rights and effective means to seek redress in case of non-compliance with any of the obligations set out in the DSA.

- **Art 20: Internal complaint-handling mechanism:** consumers can complain directly to the platform
- **Art 21: Out-of-court dispute settlement:** certified mechanisms to settle disputes between providers and consumers.
- **Art 53: Right to lodge a complaint** before your Digital Service Coordinator (which then may be transferred to the DSC of establishment of the company).
- **Art 54: Right to compensation:** consumers can seek compensation against any damage or loss suffered due to the infringement of DSA obligations.
- **Art 86: Representation:** consumers have a right to mandate an NGO (consumer organisations included). Their complaints should have priority.
- **Art 90:** DSA is added to the annex of the **Representative Actions Directive**

3. Lessons to be learnt



3. LESSONS TO BE LEARNT

- **Enforcement is key:** effective implementation of new rules requires collaboration and cooperation amongst all relevant stakeholders and active coordination between competent authorities at national level.
- **Close cooperation between national market authorities and consumer protection organisations should be encouraged.** This would result in better market screening and increased awareness and would ultimately help prevent violations of legal obligations.
- **Build a 'virtuous cycle':** synergies between public and private enforcement and clear communication channels between users and national authorities. **Consumers and organisations that represent them** should have access to clear complaint mechanisms to report possible cases of non-compliance to the attention of national authorities.
- **When prevention is not possible, redress must be available:** consumers need effective complaint procedures and civil law remedies that allow them to seek redress for any loss or damages.

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