

# Review of the horizontal Consumer Protection Legislation



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## ETNO

The European Telecommunications Network Operators' Association (ETNO) represents 41 major companies, which provide electronic communications networks over fixed, mobile or personal communications systems across 35 countries. ETNO is Europe's leading trade association for telecoms. More information about ETNO can be found at: [www.etno.eu](http://www.etno.eu).

## ETNO WELCOMES THE REVIEW PROCESS AS WINDOW OF OPPORTUNITY

ETNO welcomes the comprehensive assessment of current consumer protection rules, which provides a window of opportunity for the establishment of more efficient and future proof consumer protection standards. The dynamic development of the digital market and the digitisation of the offline world require a principles-based and consistent horizontal regulation that ensures similar consumer protection standards for all services and addresses also newly emerged risks. For ETNO members, this refers to communications as well as to other services.

We recommend to start the review process with the very basic, but most important question: Which rules provide an adequate protection of consumers in the current and future dynamic service markets? Each proposed adjustment of rules shall firstly be assessed *from a consumers' point of view* (i.e. what problem does it solve, how does the consumer benefit, whether the rules are clear and easy to understand, etc.).

ETNO fully supports the purpose of the REFIT exercise, since a profound assessment is urgently required. This exercise that consists of identifying excessive regulatory burdens, overlaps, gaps, inconsistencies and cumulative impact of various laws must be as broad as possible. Against this target, the Consumer Rights Directive (CRD) and its broad scope is particularly important. The European Commission's intention to review the CRD only after the assessment of the other mentioned directives appears as significant challenge to establish consistent rules. Overall, we urge the European Commission to consider that the results of this reform should be driven by its objectives and not the process.

We welcome that, beyond the highlighted directives, the European Commission also takes into consideration other ongoing legislative procedures, for example, the draft directive

concerning digital content<sup>1</sup>. Moreover, the need for further legislative actions at EU level and a possible codification of a single EU instrument is considered. From ETNO's point of view, this is crucial to address newly emerged risks for consumers and to better address market realities. Equally important is the anticipation of established specific consumer regulation, such as applied to telecoms. While the European Commission wants to consider the interplay between general and specific consumer protection, ETNO would like to stress that a truly holistic assessment must not be limited to horizontal rules. Accordingly, the ongoing parallel review of consumer protection rules applied to telecoms<sup>2</sup> needs to be taken into account as far as possible. This requires not only a close coordination within the European Commission but also between the different European bodies.

ETNO is committed to play an active role in the process of review of consumer rules and to share telecoms' views in further detail. This shall contribute to a forward-looking legislative approach that builds consumers trust, which is the basis for a flourishing European Economy.

## **MARKET DEVELOPMENTS DEMAND PROFOUND REVIEW**

The digital market and the digitisation of the offline economy is characterised by high dynamics, which have led to an enormous choice and variety for consumers.

New IP-based services have become substitutes for more traditional communications or media services. For example, for most consumers it does not make a difference if a message is transmitted as SMS or via other messaging services. Beyond the mentioned variety and convergence, services are increasingly bundled or integrated in only one single offering. Consequently, legacy services categories have often become outdated and related service-specific rules are no longer fit for purpose, creating uncertainty and high burden for providers, as well as confusion for customers. Rather than trying to face new market realities through a fragmented patchwork of service-specific regulations, a broader and more flexible approach is required.

Besides the great benefits for consumers, innovative services have also brought new risks which require new or adjusted rules. This refers to, e.g., new switching barriers, payment with personal data instead of money or a lack of consumer-friendly transparency. Gaps in consumer protection have also emerged due to a lack of law enforcement towards all market players, e.g. irrespective of their location.

Furthermore, new factors which are detrimental for effective competition have to be considered. Effective competition is a precondition for market output that is beneficial for consumers, e.g. in regard to choice. In this scope principles such as non-discrimination, interoperability or avoidance of market entry barriers can be crucial.

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<sup>1</sup> "Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content"

<sup>2</sup> Particularly in regard to the Universal Service Directive and the consumer protection rules included in the ePrivacy Directive.

## KEY PRINCIPLES TO BE CONSIDERED IN THE REVIEW PROCESS

ETNO believes that a broad and profound assessment of the consumer protection acquis is required, based on the following high-level principles. They should form the basis for an efficient and future-proof framework, encompassing all services.

As described above, the consumer protection acquis needs to be principles-based and move from sector-specific to horizontal legislation or, only where strictly necessary, to service specific legislation. Only this can effectively address the described market realities and ensure efficient and future proof protection standards across the digital market.

1. Same service, same rule, same protection: The same consumer protection rule needs to be applied to services that are the substitutable from the consumers' point of view – in a technology-neutral way, irrespective of the provider or of the business model.
2. Same consumer protection standards across the digital market: A future principles-based regulation applied equally to similar concerns in any area of the converging digital market would ensure consistent protection standards. These regulatory principles should also form the basis for any service-specific rule.
3. Specific rules only where indispensable: The specific characteristics of some services can still require specific rules – applied selectively and in a proportionate way, and only where clearly indispensable. This includes to preserve established standards that end-users rely on and are highly valued. Each service-specific rule should be attributed to a regulatory principle, included in horizontal legislation.
4. Ensure efficient, consistent and future-proof protection standards: Reassess in detail which rules currently applied to services are still required, delete outdated rules, adjust to new risks and, finally, apply updated rules consistently in the digital market. In principle, wherever a currently lighter protection standard is continuously applied, only this rule should be applied to all service providers. This efficient consumer protection has to be proportionate, by effectively addressing identified consumer concerns, whilst avoiding unnecessary costs for industry.
5. Proportionate geographic harmonization: EU-wide harmonisation of efficient consumer protection standards would facilitate cross-border commerce, but it must be implemented in a proportionate way.