Sustainable Consumption and Consumer Protection Legislation

How can sustainable consumption and longer lifetime of products be promoted through consumer protection legislation?

The original full in-depth analysis analyses the current state of play of on-going EU and national consumer protection legislation and gives recommendations on legal developments which would enhance sustainable consumption. This crucial need to refine environmental measures through consumer protection law arises from the EU and Member States’ commitments to environmental targets. The in-depth analysis thus pinpoints the gaps in the current framework and examines national measures in place in order to provide advice on reforms which would help the EU attain its environmental objectives by contributing to a more sustainable consumption and a longer lifetime of products.

Background

Following its commitment to environmental objectives such as the UN 2030 Agenda for Sustainable Development and the Sustainable Development Goal (SDG) 12 - “Ensure Sustainable Consumption and Production Patterns”, the EU has taken major steps to reform its legislation in order to reach its environmental targets. The most recent examples being the European Green Deal and the New Circular Economy Action Plan. To ensure that efficient actions are taken to attain sustainable consumption objectives, the in-depth analysis insists on the need to implement measures at the different stages of the lifecycle of products (conception, marketing, contractual and waste stages) as they all constitute different challenges and opportunities.

Firstly, the design of a product represents over 80% of its environmental impact, meaning that a strong framework concerning product conception is key. On the other hand, the marketing stage is linked to consumer information and thus entails raising awareness of citizens concerning the environmental impact of the products they use. Although there are voluntary schemes of EU ecolabels under Regulation (EC) 66/2010 and actions exist to tackle greenwashing under the Unfair Commercial Practices Directive 2005/29/EC (UCPD), the lack of harmonisation between EU and national legislations jeopardises the efficiency of the current framework. Improvements can also be made at EU level regarding mandatory information for consumers. The third regulated aspect of products is the contractual stage, currently governed by the Sale of Goods Directive (EU) 2019/771 and the Consumer Rights Directive 2011/83/EU, which respectively focus on guarantees, the hierarchy of remedies and on rights of withdrawal. The in-depth analysis however argues that these measures do not stimulate consumers enough in choosing the most sustainable remedy and that efforts must be made to ensure that e-commerce is regulated by an eco-friendly framework.
The final part of the in-depth analysis concerns products’ waste stage, which is governed by the Waste Framework Directive 2008/98/EC and other sectorial rules which set targets on collection and recycling activities and which promote repair, reuse and recycling. These are guided by the “polluter-pays” principle.

Key findings

After reviewing the state of play of EU consumer protection legislation and analysing practices in place at national level, the in-depth analysis proposes the following reforms to promote sustainable consumption:

- Firstly, legislations concerning all stages of the lifecycle of a product should be reviewed to ensure that they are in line with the new Circular Economy Action Plan objectives.

- Secondly, concerning the conception stage, the EU should (1) develop more ecodesign requirements on material efficiency aspects such as durability, repairability, upgradeability, recycling and ban access to inherently unsustainable products, (2) extend the scope of the Ecodesign directive and other ecodesign regulations to other products with strong environmental impacts, (3) step-up market surveillance authorities on ecodesign requirements to ensure that requirements are respected by European and imported products, and (4) further develop standards concerning durability and resource efficiency (e.g.: common chargers for mobile phones and similar devices).

- Thirdly, the reforms concerning the marketing stage should (1) reinforce the Ecolabel Directive to increase citizens’ environmental awareness and (2) extend its scope to services to anticipate the servitisation of the economy, (3) blacklist “greenwashing” through the UCPD and require the use of Product Environmental Footprint (PEF) / Organisation Environmental Footprint (OEF) methods to substantiate green claims in order to step-up enforcement, (4) blacklist cases of premature obsolescence in the UCPD, (5) add repairability and durability to the list of mandatory precontractual information or develop repairability and durability under the Energy Labelling Regulation, (6) develop a standardised criteria to measure a product’s expected life in order to improve product durability information, and (7) follow France and Belgium’s example by introducing an obligation to provide information on the availability of spare parts.

- Fourthly, at the contractual stage, the EU should (1) extend the two-year guarantee period in place by linking it to the average expected lifetime of goods, (2) stimulate the offering of a commercial lifespan guarantee by imposing on manufacturers an obligation to provide information on lifespans, (3) rethink the hierarchy of remedies under the SGD to ensure that repair is favoured over replacement by prolonging the guarantee period after repair and requiring producers to certify that essential parts are available, (4) ensure access to repair and maintenance information, (5) explore the possibility of mandatory European legislation on Product Service Systems (PSS) / services contracts and the possibilities of standardisation and the development of standard contracts for PSS, (6) ensure that e-commerce is green by stimulating sustainable delivery and return options or by prohibiting free returns, and (7) step-up market surveillance activities to ensure that EU and imported products comply with EU consumer law and standards.

- Finally, the waste stage should be reformed to ensure that it is in line with the EU Circular Economy Action Plan objectives by (1) refining the waste management hierarchy and focusing on repair, reuse and recycling, (2) narrowing the definition of “waste” in the legislation, (3) extending and strengthening the producer liability as part of the “polluter-pays” principle and (4) investigating the effect of modulation of the financial contribution to Producer Responsibility Organisations.