



Position paper on Sustainable Consumption

BUSINESSEUROPE is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and actively campaigning on the issues that most influence their performance. We speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.

Business supports the 2020 European Consumer Agenda and the EU Green Deal and is committed to the transition to a climate-neutral economy by mid-century. BusinessEurope would like to set forth its vision for sustainable consumption in the coming years whilst taking the opportunity to provide comments on recent related initiatives (e.g., empowering consumers in the green transition, eco-design regulation) as well as on upcoming ones (e.g., right to repair and environmental claims) on aspects related to EU consumer law and policy.

The present paper is divided into general messages and specific chapters addressing some of the main EU initiatives around sustainable consumption.

Main messages

- ⇒ European companies are **supportive of strengthening the role of consumer policy in the green transition.**
- ⇒ 80% of product's environmental impacts are determined at the design phase¹ which is why **we particularly support the Eco-design and sustainable products proposal.**
- ⇒ There are potential **overlaps** in proposed and upcoming consumer initiatives that need to be avoided, particularly on information requirements. They need to be compatible including with legislation that is already in force.
- ⇒ The EU should avoid **unproductive regulatory fatigue** and administrative burden and instead focus on making the requirements harmonised. Several recent consumer

¹https://joint-research-centre.ec.europa.eu/scientific-activities-z/sustainable-product-policy_en#:~:text=It%20is%20estimated%20that%20over,throughout%20their%20entire%20life%20cycle.



directives have yet to be fully transposed into national systems (e.g., omnibus directive and sales directive) and new rules are being devised in other areas that already cover the issue of sustainable consumption (e.g., batteries regulation, energy efficiency directive).

- ⇒ Providing consumers with information on the environmental performance of a product has the potential to further increase the demand for “*green products*” and consequently support companies’ investments into innovation. Nevertheless, **overload of consumer information** should be avoided: different access rights shall be granted based on the need of the different players - B2C, B2B, B2Gov - and “**need to know**” **principle** should be followed.
- ⇒ Any changes to labelling requirements, including environmental claims, need **sufficiently long transition periods** so that these are implemented properly.
- ⇒ Achieving the goals of **sustainable consumption requires combined efforts**, not only relying on businesses, but also from authorities when it comes to better enforcement, and consumers whose behaviour can be nudged to make more sustainable choices and better handling and maintenance of products to ensure their good functioning and durability.
- ⇒ Businesses are willing and ready to share their experiences in dialogue with decision-makers and consumers. It is key to ensure inclusiveness and **cooperation with the business community** in all these sustainable consumption initiatives, as business possesses important expertise on consumer markets and on which solutions (legislative or other) could better fit the market.
- ⇒ European Consumer policy should also be used as an **enabler for businesses to better take advantage of the benefits of operating in the single market** and as means to further deepen the latter. Whilst pursuing sustainability objectives, other important aims of EU Consumer policy should not be overlooked:
 - fighting legal fragmentation and gold-plating.
 - reducing administrative burdens.
 - work on tools that benefit support awareness around EU consumer rules among both businesses² and consumers and extend it to areas of circular economy and sustainable consumption in general.
 - appreciating the benefits of self-regulation and encouraging these practices which go beyond static rules and allow for innovative, effective and swifter solutions to today’s multiple societal challenges.

² Several business organisations (amongst which BusinessEurope) worked together to produce an awareness tool – Consumer Journey (link [here](#)) – to guide businesses through the different moments of the purchasing experience on effective ways to pass on (mandatory and other useful) information to consumers.



1. On the proposal on empowering green consumers in the green transition (comments)

It is important that **rules around sustainable consumption are modernised, harmonised and co-ordinated** with other rules and proposals, in particular with the proposed regulation on eco-design and sustainable products.

A growing number of member states have introduced, or plan to introduce, legislation to address sustainable consumption and circular economy issues leading to the **risk of fragmentation** of the internal market and ultimately jeopardising the goals of this proposal. In the absence of harmonised rules to ensure that consumers are informed about the environmental durability or repairability of a product, manufacturers and sellers operating across borders may face different legal systems that they must comply with, increasing their costs to meet requirements and limiting their ability to compete on equal terms. This legal fragmentation also prevents the effective and consistent application and enforcement of consumer protection throughout the EU. In addition, it can hamper the ability of consumers to make sustainable choices because information in different member states leads to different interpretations. An example is the **proliferation labels** that can differ from member state to member state for the same product which leads to more burdens on companies and confusion for consumers.

It should be stressed that **information about product capacity and service life is not always easy to predict** many years in advance and that maintaining and providing large quantities of spare parts will drive up costs ultimately factored in the price of consumer goods. A mandatory requirement to provide information on the estimated lifespan of products will increase costs while lacking reliability because most of the information relates to how a product is used, cleaned and maintained by the consumer. **Durability or longevity of products is due to various natural and artificial aspects**, for example material composition, functionality, repair costs and consumption patterns. In addition to the quality of a product, its longevity is also affected by how it is used. Manufacturers may communicate details on recommended use and care of a product but have no control over how consumers actually use the product or follow the service advice. A product's purpose, area of use and how it is used greatly affects how long a product retains its function. These limitations have to be considered when drafting EU rules in this area.

The proposal foresees **additional information obligations on traders** the impact of which, in some instances, can be questionable. Mandatory information requirements are not a full proof instrument to protect consumers nor to steer their behaviour. There are various behavioural biases at play that significantly limit the effectiveness of information, such as the difficulties of information overload, overoptimism, inertia and the inclination of consumers to ignore information when they expect that it will give them negative feel-



ings. Additionally, there is a risk that consumers will no longer take notice of any information at all and as a result would also ignore important information such as on product safety or energy performance of the product³.

Many consumers are not willing to pay for products that perform better. Others are willing to pay a little more, but perhaps not enough to cover the price increase associated with improved environmental properties, etc. **Consumers often make purchasing decisions based on price and ignore the total long-term costs of their choices.** For example, life cycle calculations show that higher initial prices for sustainable products are an important obstacle to the purchase of these products, even if they provide long-term savings compared to other products.⁴

The Consumer Rights Directive⁵ provides extra protection to consumers when shopping at a distance by awarding a 14-day right of withdrawal. Considering the **environmental impact of returns within the e-commerce**, a reflection regarding the extent of (and exceptions to) the right of withdrawal could be considered. A critical assessment of the right of withdrawal seems necessary to oblige traders and consumers to take into account of the environmental impact of their behaviour. For example, it is worth considering a further extension of the exceptions to the right of withdrawal in cases where the right of withdrawal is exercised in such manner that it makes it impossible to resell goods as new (e.g., after excessive use of a good).

It should **be clarified in the proposal that the rules will be of application to products and services sold and provided as of the entry into force** of the national transposing measures (not to products already placed on the market before).

It is also important to be **granted sufficient time to implement new obligatory measures.** A lot of packaging material is made months in advance. From an ecological point of view, we should not oblige manufacturers to dispose of already prepared packaging materials.

We reiterate the importance to have clarity on how the current proposal, the Eco-design for sustainable products proposal, and forthcoming proposals on regulating green claims and the right to repair relate to each other as they all seem to **overlap in terms of requirements**, namely on information to be provided to consumers.

Specific remarks on a few key provisions of the proposal

The proposal foresees a **ban on displaying a sustainability label** that is not based on a certification system or established by public bodies whilst what really matters is that a label should be based on clear, objective and verifiable criteria. The rationale of this ban

³ Terry, Evelyne and Van Gool, Elias, The Role of European Consumer Regulation in Shaping the Environmental Impact of e-Commerce (November 18, 2020). EuCML 2021(3), p. 89-100., Available at SSRN: <https://ssrn.com/abstract=3732911> or <http://dx.doi.org/10.2139/ssrn.3732911>

⁴ Kaenzig, J. and Wüstenhagen, R., 'The effect of life cycle cost information on consumer investment decisions regarding eco-innovation', Journal of Industrial Ecology, Vol. 14, No. 1, 2020, pp.121-136.

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0083>



should be better explained. This ban is also problematic if no adequate certification systems yet exist for the issues addressed by the label. We agree though that the “verifier” should be trustworthy, and therefore subject to some sort of quality certification, not the label as such, as this will stiffen innovation (labels need to exist before they can be certified, not the other way around). It is also important to consider that (existing) certification schemes come with substantial cost. For instance: recurring auditor fees, innovations in materials and production lines in the whole supply chain, recurring costs for companies of preparing all necessary documentation and other internal audit costs, amending internal procedures, instructing, and training of personnel, adjusting packaging materials which needs to be done months in advance. Earlier studies on certification schemes, show that such costs are disproportionately high for SMEs, resulting in certification schemes being largely inaccessible for SMEs. To enable the green transition, it is important to bring sustainability closer to businesses. Instead of banning sustainability labels, we believe the Commission should support businesses in their sustainability transition - by allowing innovative, efficient, and reliable alternative approaches to increase the sustainable supply across the board. Before – if ever- introducing a ban on non-certified labels, an assessment needs to be made of the necessity of certified labels (including an assessment of alternatives as well as the true effects of such certified labels on consumer recognition).

For the sake of legal certainty, it would be better to specify when it comes to **considering any generic environmental claim as unfair**, maybe with a specific list of concrete situations that would be proven misleading.

We support adding **an environmental claim about the entire product** to the annex of the UCPD **when that claim actually only concerns a certain aspect of the product**.

There is a need for clarification of the proposed **independent monitoring systems in Art. 6 (2)**. This should not be understood necessarily as an independent monitoring system by third parties. For companies with already established internal processes, this requirement could be unnecessary and overly burdensome, causing high costs without offering any real value. Rather, it makes sense for the company using the respective environmental statement to keep the corresponding internal evidence and to be able to proof it at any time upon request.

New addition in Arti.6(2) of advertising benefits for consumers that are considered as a **common practice in the relevant market as a misleading action: market practices** can change quickly and determining that a certain practice exist can sometimes be subjective. If, as proposed, advertising benefits beyond legal requirements that could be considered market practices would become a misleading practice companies could invertedly be placed in a difficult situation that they cannot predict beforehand. This part of the proposal should be reassessed and redrafted.

It should be **clarified that the specification of the claim does not necessarily have to be made on the same medium as the claim itself**, as the Commission currently proposes in Article 2 q) of the Unfair Commercial Practices Directive (UCPD) (i.e., the trader should be able to provide it digitally/on the company’s webpage).



In Article 2 (amendments to article 5 of the Consumer Rights Directive) **the proposal foresees that the trader discloses (negative) information** when there is no producer's guarantee of durability for energy using goods. Although traders should be free to do so, having a requirement for absence of information does not follow the logic of EU consumer law rules such as the Consumer Rights Directive and Sale of Goods directive which provide for mandatory disclosures on things that exist such as commercial guarantees. The added value of this requirement is questionable and should be better justified.

On the reparability score

- ✓ There is unclarity on **how the reparability score** is to be drafted and by whom. Business must be involved in this process.
- ✓ It would be **preferable that such score would first be applicable to targeted families of products** (that require more priority) and leave it open to a later stage the potential and justified inclusion of further categories.
- ✓ Also, if such tools are devised there should be **enough time given to businesses to integrate and apply the score**. Hence, they should not be integrated in ongoing initiatives until the empower consumers legislation enters into force.

The degree of reparability of a product and who is best placed to perform this will likely be subject to the forthcoming right to repair proposal. It should be stressed that there can be many reasons why a consumer is not the best placed to repair a product (such as safety reasons; and not having the necessary tools/equipment; and/or necessary expertise/craftmanship).

2. On the future right to repair initiative

Ensuring that **products can be repaired in the long run increases their longevity** and promotes reduction of waste. It also allows for reuse and for returned products to be sold as refurbished, which is a growing business model.

It should not be forgotten that the **right to repair is already enshrined in EU legislation since more than 20 years**. In an event of non-conformity which is proven to have already existed at the moment of sale, under the sales of Goods Directive consumers are - in the first instance - already entitled to remedies consisting of repair or replacement. Only when repair is too costly and disproportionate, can the trader opt for replacement. Any initiative on a right to repair should consider circularity, safety, intellectual property rights and be in alignment with the Sales of Goods Directive. As the Sales of Goods Directive has recently been updated, opening up this Directive would be too premature.

Reparability is not an absolute. If not feasible or disproportionate, other options need to be considered.



Any measures adopted at EU level to encourage repairability should ensure:

- ✓ That the **promotion of repairability at EU level** implies making it attractive to both businesses that will explore new business models and consumers that will feel further motivated to opt for repair which is not always the case. Research conducted by the Swedish Retail Research Institution⁶ during December 2021 and January 2022 about when consumers want to replace a broken product says:
 - Almost half buys a new one
 - Close to 1/3 used the legal guarantee
 - Only 16% repaired the product
 - Only 1 out of 5 wanted to repair the products themselves.
 - More than 50% of consumers are not willing to pay more than 10% of the price of the products for the service of repair

Furthermore, a study of the [German Environment Agency](#)⁷ revealed that **one third of products are discarded by consumers while still working**.

A majority of consumers would like manufacturers to be forced to facilitate repairs but this becomes a minority if this means having to pay higher for products.⁸

- ✓ For certain products the trader should have a say on who can repair their products as this ensures continuous quality and safety. **Health and safety of consumers should not be put at risk**. In particular, for products that deal with heat, electricity, chemicals, mechanical stability or require water- or air tightness, it is important that repairs are conducted in the appropriate conditions by capable and qualified repairers. Some product groups even require authorized repairers as well as testing after a repair is performed (e.g., electrical and electronic products that fall under the Low Voltage Directive 2014/35/EU and the Electromagnetic Compatibility Directive 2014/30/EU). Therefore, it should be recognised that **not all repairs can be carried out safely and successfully by consumers themselves**. When this is the case, the right to repair should be tailored to match appropriate repairs with appropriate providers.
- ✓ It is important that consumers are **informed of the risks associated with repairs** carried out by independent non-professional repairers who are not trained in repair. Not only physical safety, but also **privacy and cybersecurity** concerns should be considered. Particularly where third-party repairs are concerned, sufficient safeguard must be put in place.
- ✓ The same awareness should be made for **the risks of self-repair by consumers**.

⁶ <https://handelsforskningsinstitut.se/en/rapporter/>

⁷ [Lifetime of electrical appliances becoming shorter and shorter | Umweltbundesamt](#)

⁸ Eurobarometer 2228 / 503: <https://europa.eu/eurobarometer/surveys/detail/2228>



- ✓ It should be kept in mind that for certain goods repairs will not be the most environmentally friendly option. In fact, **the most effective remedy for defective products differs per situation and per product**. A broader strategy, that also gives manufacturers and sellers the flexibility to offer replacement (including the replacement of defective products with refurbished ones) should be elaborated.
- ✓ The **way products are used, handled and maintained has a strong impact on their durability**. According to Special Eurobarometer 503⁹, “attitudes towards the impact of digitalisation on daily lives”, the most common reason for buying a new electronic device is damage to the old one by the consumer himself. It is important that **consumers follow the operational instructions of products provided by the trader to prevent damages and ensure longevity**.
- ✓ The **perception of longevity and durability of products by consumers can sometimes influence less effective sustainable choices**. The assumption that longer product lifetimes are better is not always correct, even in terms solely of environmental goals. This has been largely concluded in a recent European Parliament Study on “Promoting product longevity” from March 2020¹⁰. Making choices solely on the assumption that more durable products are more sustainable than others can be misleading and therefore also serve as an obstacle. Therefore, reparability is a goal but not an absolute one.
- ✓ **Reactivating the legal guarantee period after repair (one of the suggestions in the Commission Inception Impact Assessment) is not an effective solution**. The current minimum two-year legal guarantee for products that covers defects at the time of delivery is appropriate given that if there are defects with products, the vast majority of those defects appear within the first year after the purchase. EU co-legislator agreed on keeping this time limit in the recent revision of the sales directive. It is important not to mix up the legal guarantee of conformity of a good with the guarantee attached to its repair, which is a provision of services. The legal guarantee of conformity aims to guarantee consumers defects that existed at the time of delivery of the goods. The guarantee on the repair is attached to the operations that are carried out on the repaired good. These two guarantees come into play at times different and are of different nature: the first at the time of purchase, the second during use.
- ✓ The **EU should not consider unlimited guarantee via repair** as this would be disproportionate and economically unfeasible for the majority of companies, in particular small and medium-sized ones, as an extension of the guarantee period would not lead to an extended expected lifetime of products, and would not sub-

⁹ <https://europa.eu/eurobarometer/surveys/detail/2228>

¹⁰ [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648767/IPOL_STU\(2020\)648767_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648767/IPOL_STU(2020)648767_EN.pdf)



stantially change the number of defects identified. Additionally, the possible negative impact on consumer sense of care (handling products according to the trader/manufacturer instructions and conducting proper maintenance) should not be neglected.

- ✓ The future EU initiative on right to repair should not lead to a situation where the repair costs beyond a legal of commercial guarantee period are borne by the manufacturer or trader, unless they choose to do so on a voluntary basis/as part of their business model.
- ✓ If time limits around availability of spare parts are considered in such an initiative those should be reasonable as it is **not sustainable nor proportionate to produce and store spare parts for an indefinite amount of time.**
- ✓ **Making the shift toward more reuse, refurbishment, remanufacturing before recycling is often more viable economically.** There are still obstacles to ensure this. For example, in one member state due to the implementation of the of the waste Framework Directive (2008/98/EC) faulty goods are mandatorily classified as waste, and consequently become owned by the local government/municipalities.
- ✓ **Enable sellers to replace defective products with refurbished ones could be a valid solution.** Having more guidance at EU level on the notion of refurbished goods is essential (it can mean different things such as repackaged good without accessories and official boxes; product in new condition or cleaned to look like new; repaired product and rendered new) which is why we support the clarification attempt via the Eco-design proposal. For example, it is important to ensure that the essential characteristics of the products are kept.
- ✓ Access to information on repairability may be granted if it does **not infringe commercial sensitive information and other IP rights**, which would put European companies at a disadvantage in relation to other competitors.
- ✓ A **tailored approach is necessary** to be able to distinguish between more easily repairable products, products that require specialised repair services and complex professional use machines that require very specialised operation and service. These cannot be treated in a similar way.
- ✓ That incentives are in place to ensure that enough manpower specialised in repairing and reconditioning is available, for example through **education in technical areas.**



3. Greenwashing or misleading environmental claims

Greenwashing harms the functioning of the internal market because it allows products and businesses to gain an unfair advantage over competitors by intentionally providing unfounded or misleading information.

Because many businesses conduct life cycle analyses to assess the environmental impact of certain products, these businesses are exposed to **unfair competition** from businesses that provide false or misleading information without any justification.

Greenwashing may also stimulate the import, private import and production of unsustainable products through **supply chains in third countries** where lower environmental or consumer protection rules apply¹¹.

Greenwashing is broadly regulated at EU level in the UCPD which has recently been revised by the Omnibus directive. The Guidance of the European Commission on the implementation/application of Directive 2005/29/EC on unfair commercial practices has been updated and national authorities have started to adopt several measures following the new framework and respective interpretations. More recently, with the proposal on eco-design and sustainable products, the EU is to set sector-specific rules with regard to product performance and consumer information (via the Digital Product Passport) and set eco-scoring mechanisms for selected sectors.

Nevertheless, until the end of the year, the Commission plans to release yet another piece of legislation that aims at tackling business-to-consumer claims and information, i.e., the **“Regulation on substantiating environmental claims using the Product Environmental Footprint (PEF) and the Organization Environmental Footprint (OEF)”**. With the latter initiative there is a risk of duplication with UCPD and ESPR. Thus, in the spirit of “better regulation” (“creating legislation that achieves its objectives while being targeted, effective, easy to comply with and with the least burden possible¹²”), any additional legislation needs to be carefully considered and “substantiated”.

¹¹ A report from Postnord 2020 shows that 68 % of EU consumers that buy cross-border have purchased products offered from China, compared to 13 % in 2014. See page 14 in the report [E-commerce in Europe 2020](#).

¹² “Better Regulation Guidelines”, Commission Staff Working Document, November 2021, p.5 (accessed via: https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf).



4. Regulation on Eco-design for Sustainable Products¹³

BusinessEurope welcomes the European Commission's efforts to establish a functioning EU market for secondary raw materials and circular products. The proposal for a Regulation on Eco-design for Sustainable Products (ESPR) is a unique opportunity to reach this objective by removing current questions of inconsistencies between the EU and the national levels. The ESPR proposal rightly maintains the principles of the current Eco-design Directive, which has proven to be effective, including setting tailored requirements per product group and in coordination with relevant experts and stakeholders

In **10 specific areas, the proposal needs further work** for better enforceability:

- Require information on substances of concern based on their relevance, usefulness, and information demand in the value chain.
- Set up a Digital Product Passport which is strictly relevant to circular economy purposes, protects confidential business information and relies on good quality, consistent, comparable and interoperable data.
- Establish a strong inclusion of key stakeholders, notably from the industry, in policy making process, including by means of the Eco-design Forum and appropriate consultations, and immediately set up a dialogue with EU's major trading partners.
- Set up comprehensive assessments based on impact focused LCA approach for the development of eco-design requirements.
- Ensure policy coherency of scope and requirements between the ESPR and other EU legislations.
- Base performance requirements and compliance methods on harmonised European or international standards. The Commission should issue common specifications only in exceptional instances.
- Avoid requiring third-party conformity assessments, as unnecessary and costly.
- Define products to be prioritised according to their environmental and economic potentials.
- Gradually implement requirements on destroyed goods.
- For legal clarity, harmonise definitions with existing legislations and initiatives.

It is paramount that this and other sustainable consumption related initiatives fit well together without major overlaps (e.g., in terms of information requirements). ***

¹³ More in depth analysis and proposals for improvements can be found in BusinessEurope comments paper on the ESPR proposal here: [Eco-design for Sustainable Products Regulation - a BusinessEurope position paper | BusinessEurope](#)