

## INCEPTION IMPACT ASSESSMENT

Inception impact assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	Empowering the consumer for the green transition
<b>LEAD DG (RESPONSIBLE UNIT)</b>	DG JUST/E.1
<b>LIKELY TYPE OF INITIATIVE</b>	Legislative
<b>INDICATIVE PLANNING</b>	Q2 2021
<b>ADDITIONAL INFORMATION</b>	<i>Circular economy action plan (COM/2020/98 final)</i>

### A. Context, problem definition and subsidiarity check

#### Context

Consumers and businesses are increasingly interested in the environmental performance and climate neutrality of products (both goods and services). However, studies and surveys show that European consumers often lack the basis they need to make informed choices<sup>1</sup>. In order to enable them to play an active role in the 'green transition', the Circular Economy Action Plan (CEAP)<sup>2</sup> announces an initiative to improve consumer information and strengthen consumer protection against commercial practices that run counter to Green Deal and CEAP objectives, e.g. 'greenwashing' and early obsolescence<sup>3</sup>.

This consumer law initiative is one of the policy actions announced in the Green Deal<sup>4</sup>. It will be developed in close coordination with CEAP initiatives focusing on the substantiation of environmental claims using product and organisation environmental footprint (PEF/OEF) methods<sup>5</sup> and with the 'sustainable product policy' initiative to make products fit for a climate-neutral, resource-efficient and circular economy<sup>6</sup>.

Together, these initiatives will seek to establish jointly a coherent policy framework whereby sustainable goods, services and business models become the norm and consumption patterns are more sustainable. They should significantly reduce the environmental footprint of products consumed in the Union and contribute to the EU's objective of climate neutrality by 2050.

#### Problem the initiative aims to tackle

'Green markets' for sustainable goods and services (i.e. products) are growing<sup>7</sup>, but restricted consumer demand means that their potential is under-exploited<sup>8</sup>. Despite consumers' willingness to make more sustainable choices

<sup>1</sup> Special Eurobarometer 501 (March 2020)  
<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getSurveydetail/instruments/special/surveyky/2257>;  
*Consumers' engagement in the circular economy*, EU-wide consumer behaviour study (October 2018)

<sup>2</sup> [https://ec.europa.eu/info/live-work-travel-eu/consumers/sustainable-consumption\\_en](https://ec.europa.eu/info/live-work-travel-eu/consumers/sustainable-consumption_en)

<sup>3</sup> COM/2020/98 final, adopted by the Commission on 11 March 2020.  
<https://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=COM:2020:98:FIN&from=EN>

The CEAP stresses that, to enhance consumers' participation in the circular economy, the Commission will propose a revision of EU consumer law to ensure that consumers receive trustworthy and relevant information on products at the point of sale, including on their lifespan and the availability of repair services, spare parts and repair manuals. The Commission will also consider further strengthening consumer protection against greenwashing and premature obsolescence, and setting minimum requirements for sustainability labels/logos and information tools used by consumers to assess the sustainability of products.

<sup>4</sup> [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en)

<sup>5</sup> The scope of the initiative on substantiating environmental claims through PEF/OEF could include business-to-business information in addition to business-to-consumer information, and relate to obligations beyond the seller's. An inception impact assessment will be published in due time.

<sup>6</sup> In 2021, to make products fit for a climate-neutral, resource-efficient and circular economy, reduce waste and ensure that the performance of front-runners in sustainability progressively becomes the norm, the Commission will propose a sustainable product policy legislative initiative, *inter alia* to extend the ecodesign framework to the broadest possible range of products. Priority will be given to product groups with the greatest environmental impact and circularity potential, e.g. electronics, ICT and textiles, but also furniture and high-impact intermediary products such as steel, cement and chemicals.

<sup>7</sup> The environmental goods and services sector grew by 29% in 2008-2017 (Eurostat).

<sup>8</sup> See, for example:  
*Consumers' engagement in the circular economy*;

in their everyday life, their effective and active role in the green transition is limited by a number of factors (which also affect the functioning of the internal market):

### 1. Consumers often lack reliable and relevant information at the point of sale on:

- products' sustainability, e.g. environmental characteristics, expected or guaranteed lifespan, etc.;
- the availability of repair services, spare parts and repair manuals; and
- software updates/upgrades<sup>9</sup>.

Under existing policy instruments<sup>10</sup>, making information on products' environmental performance available is voluntary and/or limited to certain product categories and/or features. The Union consumer protection rules (namely the Unfair Commercial Practices Directive 2005/29/EC - UCPD) and the Consumer Rights Directive 2011/83/EU - CRD) lay down the key information requirements that consumers must be provided with to make an informed transactional decision. However, these rules do not expressly require information on products' environmental characteristics, lifespan or reparability.

### 2. Consumers have to contend with commercial practices that cause confusion and misinformation, or breed mistrust and dampen their interest in purchasing sustainable products:

- a) early failure (particularly of durable consumer goods), i.e. goods are purposely designed not to last as long as the average consumer would expect<sup>11</sup> or fail due to poor manufacturing, choice of materials, etc. ('planned/premature obsolescence')<sup>12</sup>;
- b) vague, misleading or unfounded information on products' environmental characteristics ('greenwashing')<sup>13,14</sup>; and
- c) the proliferation of sustainability logos, labels, trust marks, quality marks, claims, etc signalling economic, social and environmental virtues, and online information (e.g. mobile applications comparing the carbon footprints of selected products) that, differently from greenwashing, are difficult to interpret or verify<sup>15</sup>.

### 3. Effective enforcement of existing consumer protection rules in these areas is difficult

The broad scope of the current Union consumer law (e.g. the UCPD) allows national authorities to take action against unfair commercial practices that harm consumers' economic interests. However, in the absence of specific rules in the areas covered by this initiative, they can only act on the basis of a case-by-case assessment of individual cases. This makes it difficult to address the issues effectively.

In particular, effective enforcement is affected by the lack of:

- a) a common set of consumer information requirements (as provided for in the UCPD and the CRD) as regards products' environmental characteristics, lifespan and reparability; and
- b) specific rules and guidance on early failure and greenwashing.

These issues also hamper a Union-wide enforcement collaboration under the existing cooperation framework.

These are the problems in terms of consumer policy. Given the close links between production and consumption, in particular in the quest for product sustainability, similar problems could be identified in the context of product, industry, environment and climate policies. This is why the CEAP provides for a comprehensive package of initiatives. This initiative aims to address the issues from the perspective of consumer law and protection, but it will take full account of other CEAP initiatives and the solutions that emerge from them.

### Basis for EU intervention (legal basis and subsidiarity check)

A legislative initiative in this area would aim to ensure a high level of consumer protection (in line with

*Socio-economic analysis of the repair sector in the EU* (2018), study by Deloitte, SERI and IEEP for DG ENV

[https://ec.europa.eu/environment/circular-economy/pdf/sustainable\\_products\\_circular\\_economy.pdf](https://ec.europa.eu/environment/circular-economy/pdf/sustainable_products_circular_economy.pdf)

*Study on socioeconomic impacts of increased reparability* (2016), study by Deloitte for DG ENV

<https://publications.europa.eu/en/publication-detail/-/publication/c6865b39-2628-11e6-86d0-01aa75ed71a1>

<sup>9</sup> *Consumers' engagement in the circular economy;*

*Environmental claims for non-food products* (July 2014); [https://ec.europa.eu/info/publications/environmental-claims-non-food-products\\_en](https://ec.europa.eu/info/publications/environmental-claims-non-food-products_en)

<sup>10</sup> In particular, the EU Ecolabel Regulation (EC) No 66/2010 and the Energy Labelling Regulation (EU) 2017/1369.

<sup>11</sup> [https://www.beuc.eu/publications/beuc-x-2018-057\\_premature\\_obsolescence.pdf](https://www.beuc.eu/publications/beuc-x-2018-057_premature_obsolescence.pdf)

<sup>12</sup> Under the CEAP, restricting single use and countering premature obsolescence is one of the sustainability principles to be introduced by a legislative initiative extending scope of the Ecodesign Directive beyond energy-related products or, where appropriate, by complementary legislative proposals. Policy options for solving early product failure would have to be coherent with policy options to be developed under these other legislative initiative(s).

<sup>13</sup> *Environmental claims for non-food products* (July 2014), study for DG JUST;

[https://ec.europa.eu/info/publications/environmental-claims-non-food-products\\_en](https://ec.europa.eu/info/publications/environmental-claims-non-food-products_en)

<sup>14</sup> Claims relating to impacts covered by environmental footprint methods will be covered by the initiative requiring companies to substantiate environmental claims based on PEF/OEF methods.

<sup>15</sup> See footnote 13. There are currently 463 ecolabels worldwide (<http://www.ecolabelindex.com/>).

Article 169 TFEU) and of further integration of the internal market for sustainable products; it would therefore be based on Article 114 TFEU.

The lack of specific Union rules on key sustainability information for consumers, the general nature of Union rules protecting consumers against unsustainable commercial practices such as early product obsolescence and greenwashing, and the resulting enforcement problems in their combined effect hamper consumers' effective and active involvement in the green transition. In the absence of a uniform and binding regulatory framework at Union level, some Member States have started or are planning to adopt their own legislation. As a result, consumer information requirements (where they exist) tend to vary, which affects the integrity of the internal market and blocks economies of scale, in turn impacting the availability and affordability of sustainable products. Also, Member States acting alone are unable to ensure consistent enforcement or protection against unfair commercial practices across the Union.

## B. Objectives and policy options

The objective of this initiative is to empower consumers to play an active role in the green transition by making informed decisions based on trustworthy and relevant information that draws their attention to more sustainable products. It also aims to protect consumers better against certain unsustainable commercial practices and to improve enforcement. It will therefore help to establish a level playing field for sustainable products across the internal market.

Various options will be considered in synergy with those under other CEAP initiatives (in particular the PEF/OEF environmental claims initiative and the sustainable product policy initiative) and existing tools such as energy labelling and the EU ecolabel.

### Option 0: Baseline ('business as usual')

In the absence of harmonised rules for mandatory (i.e. material) consumer information on product sustainability, such as environmental characteristics, durability and reparability (problem 1), individual businesses will remain free to decide what, if any, information they provide, depending on their marketing strategies or competitive position. Early failure (problem 2a) can be tackled as an unfair commercial practice under existing consumer law (UCPD<sup>16</sup>) for failing to provide material information, subject to a case-by-case assessment of its impact on the average consumer. The proliferation of product signage (problem 2c) and greenwashing<sup>17</sup> (problem 2b) can also be tackled under the UCPD on a case-by-case basis, with the help of existing and possible future guidelines. The consistency and effectiveness of Union-wide enforcement against misleading practices (problem 3) will depend on the readiness of individual Member States to coordinate their action and on industry self-regulation.

### Option 1: Amend existing consumer protection legislation

This option involves targeted amendments of existing EU consumer legislation (UCPD and possibly CRD), e.g. to require that consumers be provided with information on products' environmental characteristics, durability and reparability (problem 1)<sup>18</sup>. Early obsolescence (problem 2a) and greenwashing (problem 2b) could be tackled under the UCPD (cf. option 0), but the UCPD could be rendered more effective e.g. by including on its 'blacklist' a number of unfair practices in the area of 'green' advertising claims and/or product obsolescence. However, the UCPD's principles-based approach and focus on prevention mean that this option will not involve laying down detailed new information requirements. Other potentially unfair practices, including unreliable voluntary labels/logos and information tools (problem 2c), will continue to be assessed, case by case under existing legislation, as misleading action or omission of material information. Overall, amendments and possible additional guidance will establish additional rules addressing the problems that have been identified. This will also facilitate efficient and consistent enforcement and closer coordination in Union-wide enforcement under the consumer protection cooperation framework (problem 3).

### Option 2: A new stand-alone consumer protection instrument

This option involves establishing a uniform regulatory framework with a scope exceeding that of the current EU consumer protection instruments. As compared with option 1, it would be possible to specify in more detail the information on products' sustainability (e.g. environmental characteristics<sup>19</sup>, durability and reparability) to be provided to consumers as part of the material information at the point of sale (problem 1). Unlike option 1, this option could involve laying down further requirements to make the information accurate and easy for consumers to understand and act upon, including criteria to ensure the transparency and reliability of labels/logos or online IT tools (problem 2c). Greenwashing (problem 2b) and early product failure (problem 2a) could be defined and

<sup>16</sup> Misleading environmental claims on food and feed can also be prohibited by Regulation (EU) No 1169/2011 on the provision of food information to consumers and Regulation (EU) No 767/2009 on the placing on the market of feed, respectively.

<sup>17</sup> The same is true for unfounded claims in relation to social or ethical aspects. These can also be tackled case by case under UCPD.

<sup>18</sup> The current conflict resolution rules will continue to apply. Therefore, in the event of conflict with other (existing or future) EU rules specifying in more detail the material consumer information on products' environmental characteristics, those rules take precedence (subject to their particular scope).

<sup>19</sup> This will be done in close coordination with the legislative initiative on substantiating environmental claims using the PEF/OEF.

prohibited, and rules could be adopted for reporting them. By going beyond the current principles-based approach, this option would produce a more uniform framework, facilitating more effective and consistent enforcement by Member States and Union-wide coordination under the consumer protection cooperation framework (problem 3). The new instrument would take precedence over the general consumer law provisions (UCPD and CRD) that will continue to apply to situations not covered by this instrument. In the event of conflict with other EU rules (e.g. on substantiating green claims under the sustainable product policy initiative or regulating specific aspects of products' environmental characteristics, of material consumer information or of unfair commercial practices), those rules would take precedence (subject to their particular scope).

Option 2 has two sub-options: a minimum harmonisation or a maximum harmonisation instrument.<sup>20</sup>

The **impact assessment** will explore all these options and identify a preferred option (or mix of elements from all options) that best addresses the problems and promises to achieve the overall objective of the initiative.

## C. Preliminary assessment of expected impacts

### Likely economic impacts

The initiative will benefit consumers, particularly those who want to play an active role in the green transition, by enabling them to choose greener, more sustainable products and protecting them better against certain unsustainable commercial practices. This should strengthen demand in the developing green markets. EU operators involved in the production and sale of sustainable products will benefit from a clearer, more uniform regulatory framework and from a level playing field, opening up opportunities for growth across the internal market. The green transition will be accelerated and expanded as a result of measures on supply (e.g. through ecodesign<sup>21</sup> and sustainable product promotion) and demand (e.g. as part of the green post-COVID-19 recovery) stimulating more environment- and climate-friendly, durable and repairable products, leading in turn to lower greenhouse gas emissions, less waste and reduced recycling costs. Household consumption will thus make a stronger contribution to the Green Deal objectives. Clear harmonised rules in an EU-wide level playing field will support innovative businesses and deter non-compliant operators (including from elsewhere) from targeting the EU market.

The impact assessment will gauge additional compliance costs for operators and possible benefits in the form of lower compliance costs and other costs (e.g. linked to disputes) for companies operating across the EU. Investment opportunity and scaling-up costs will be reduced thanks to the EU-wide legal framework. The harmonisation should also lower transaction and market access costs.

The impact assessment will take account of the effects of the COVID-19 crisis.

### Likely social impacts

The initiative will empower consumers in the context of the green transition and increase the private sector's and the general public's contribution to the Green Deal and CEAP objectives. This should amplify the environmental and social benefits (e.g. as regards public health, etc.) yet further. It could also inform future consumer empowerment initiatives on labour standards and decent work conditions along the supply chain.

### Likely environmental impacts

The initiative will encourage a shift to more sustainable consumption patterns and reduce environmental impacts from products consumed in the Union. It will also foster incentives for more environment-friendly production patterns, including circular production. It will contribute to the overall objective of EU climate neutrality by 2050.

### Likely impacts on fundamental rights

Any future proposal will be in accordance with Article 38 of the Charter of Fundamental Rights, whereby the EU must ensure a high level of consumer protection. The Charter also covers environmental protection.

### Likely impacts on simplification and/or administrative burden

Depending on its exact content, the initiative may entail additional administrative burdens for businesses and public administrations. Clarifying and harmonising the rules on aspects of environmental information on consumer products could facilitate consumers' access to effective remedies and reduce the number of complaints and claims for damages. As the rules provide more clarity and practical detail, enforcement authorities and national courts will find them easier to apply, so consumer protection will be more efficient and effective overall (lower

<sup>20</sup> This choice will determine whether Member States will be able to go beyond the requirements in the new instrument and set stricter consumer protection rules at national level.

<sup>21</sup> [https://ec.europa.eu/growth/industry/sustainability/ecodesign\\_en](https://ec.europa.eu/growth/industry/sustainability/ecodesign_en)

costs and faster dispute resolution).
<b>D. Evidence base, data collection and ‘better regulation’ instruments</b>
<b>Impact assessment</b>
<p>The impact assessment will assess the impact of the initiative as regards:</p> <ul style="list-style-type: none"> <li>• consumers enjoying more robust rights to better information and stronger protection against unfair commercial practices, which will help them make informed choices and play an active role in the green transition; and</li> <li>• commercial operators (producers, retailers, repairers, etc.) being required to provide consumers with more and better information and to comply with new obligations harmonised across the Union. This will also create an EU-wide level playing field, support innovative businesses and deter non-compliant operators.</li> </ul>
<b>Evidence base and data collection</b>
<p>A number of studies will feed into the impact assessment:</p> <ul style="list-style-type: none"> <li>• <i>Study to gather evidence on ways to empower consumers to play an active role in the green transition</i>, ongoing preparatory study (JUST/2019/CONS/FW/CO01/0094 (2019/10));</li> <li>• <i>Consumers’ engagement in the circular economy</i>, EU-wide consumer behaviour study contracted by DG JUST (October 2018)<sup>22</sup>;</li> <li>• <i>The durability of products</i>, DG ENV-contracted study (April 2016)<sup>23</sup>;</li> <li>• <i>Analysis and development of a scoring system for repair and upgrade of products</i>, JRC (2019)<sup>24</sup>;</li> <li>• <i>Consumer study on the impact of reparability information formats on consumer understanding and purchase decisions</i>, ongoing study contracted by DG ENV;</li> <li>• <i>Environmental claims for non-food products</i>, study contracted by DG JUST (2014)<sup>25</sup> and an ongoing follow-up study (also contracted by DG ENV) on green claims for food and non-food products;</li> <li>• <i>Socio-economic impacts of increased reparability</i>, study contracted by DG ENV (2016)<sup>26</sup>; and</li> <li>• a Eurobarometer survey accompanying the CEAP<sup>27</sup>.</li> </ul>
<b>Consultation of citizens and stakeholders</b>
<p>Dedicated stakeholder consultations have taken place recently (e.g. Consumer Summit, 30-31 January 2020<sup>28</sup>) and more will be carried out (e.g. for the preparatory study).</p> <p>A public consultation on the future Consumer Agenda (including this initiative) will be launched shortly following this inception impact assessment. It will run for 14 weeks (to allow more time in the light of COVID-19) and people will be able to reply in any of the 24 official EU languages. A synopsis report on the results of all consultation activities will be published on the consultation page once they have all been completed.</p>
<b>Will an implementation plan be established?</b>
<p>An implementation plan will be drawn up to ensure timely and consistent implementation of the new rules in all Member States. This could include a network for exchanging information and best practices on transposition, bilateral/multilateral expert meetings with Member States, interpretative/guidance documents, etc.</p>

<sup>22</sup> This study found that providing information on product durability and reparability was highly effective in shifting purchasing decisions towards products with greater durability and reparability;

[https://ec.europa.eu/info/sites/info/files/ec\\_circular\\_economy\\_final\\_report\\_0.pdf](https://ec.europa.eu/info/sites/info/files/ec_circular_economy_final_report_0.pdf)

<sup>23</sup> <https://op.europa.eu/s/npTE>

<sup>24</sup> [https://publications.jrc.ec.europa.eu/repository/bitstream/JRC114337/jrc114337\\_report\\_repair\\_scoring\\_system\\_final\\_report\\_v3.2\\_pubsy\\_clean.pdf](https://publications.jrc.ec.europa.eu/repository/bitstream/JRC114337/jrc114337_report_repair_scoring_system_final_report_v3.2_pubsy_clean.pdf)

<sup>25</sup> [https://ec.europa.eu/info/publications/environmental-claims-non-food-products\\_en](https://ec.europa.eu/info/publications/environmental-claims-non-food-products_en)

<sup>26</sup> <https://publications.europa.eu/en/publication-detail/-/publication/c6865b39-2628-11e6-86d0-01aa75ed71a1>

<sup>27</sup> Special Eurobarometer 501 (March 2020);

<https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getSurveydetail/instruments/special/surveyky/2257>

<sup>28</sup> <https://icfnext.swoogo.com/european-consumer-summit-2020/461779>