

Position Paper

On the EU initiative on „Strengthening the role of consumers in the green transition”

24 August 2020

[EU Transparency Register Number: 31200871765-41]



1. Background

The German Retail Federation (Handelsverband Deutschland, HDE) is thankful for the opportunity to comment on the EU initiative on „Strengthening the role of the consumers in the green transition” as part of the roadmap published by the European Commission on 23 June 2020.

With the envisaged initiative, the EU Commission aims to "improve consumer participation in the green transition by providing trustworthy information" and strengthen consumer protection against alleged practices "such as greenwashing and premature obsolescence." A key goal of the EU consumer policy review is to enable consumers to play a more active role in the shift to a more sustainable economy.

To improve consumer involvement in the EU's new action plan for the circular economy, the Commission intends to propose a revision of EU consumer legislation to ensure that consumers receive reliable and relevant information about products, including information on their lifespan and on the availability of repair services, spare parts and repair instructions. The Commission wants to consider further strengthening consumer protection against greenwashing and premature obsolescence and to set minimum requirements for sustainability labelling and information tools.

2. Position

We support the Commission's goal of promoting a more sustainable economy and more conscious consumption (see also examples from the retail sector on page 10). However, we consider the existing consumer law instruments to be absolutely sufficient for this purpose and see no need for a renewed adaptation of EU consumer law.

Many of the regulatory ideas raised would have far-reaching effects on the day-to-day business of the retail companies concerned. Not least, a large number of SMEs would be exposed to enormous additional bureaucracy and the associated costs. Particularly against the backdrop of the current crisis - the long-term extent of which cannot be assessed yet - this initiative has the potential to place an excessive burden on already struggling companies. Presumably, the Commission has postponed the legislative proposal due to the current pandemic and the macroeconomic consequences by six months to the 2nd quarter of 2021. This additional time should be used carefully to develop an appropriate impact assessment, in accordance with the better regulation rules, which evaluates the different, possible options to achieve the intended objectives.

Furthermore, we believe that neither (voluntary) guarantees by producers/retailers nor legal guarantees are generally suitable to promote or even guarantee sustainable consumption. Sustainable consumption depends primarily on consumer behaviour. Therefore, consumer law is not the appropriate instrument to meet this challenge and pave the way for a "circular society".

a) Revision of EU consumer law



According to the roadmap, almost all of the envisioned proposals under the initiative would involve amendments to existing EU consumer law directives. Specifically, at a minimum, they would likely involve Directive 2005/29/EEC on Unfair Commercial Practices, the Consumer Rights Directive 2011/83/EU and the new EU Sales of Goods Directive 2019/771/EU. However, all of these key directives have just been revised or re-written. They have not even been transposed into national law yet, let alone applied by market participants. Therefore, it would be premature to amend these directives again, because it is currently completely unknown how the most recent amendments will actually play out in practice.

Therefore, it is necessary to wait and see how the recent changes work in practice and to evaluate them carefully before revising them again now - within this very short time frame of 3-5 years. In addition, some of the proposals raised in the roadmap and the current discussion have been extensively discussed and ruled out in recent legislative processes (e.g., lifetime guarantees for products). Discussions on these issues have been brought to a conclusion and a (different) compromise has been reached. It is unclear why the legislator would change its position on these issues again after such a short time, especially before the new rules have even come into force.

The new EU Sales of Goods Directive and the recent Omnibus Directive in consumer law have also significantly strengthened consumer rights and raised the level of protection (extension of the period for shifting the burden of proof from six to twelve months, introduction of an update obligation, introduction of fines of at least 4 percent of turnover for infringements, etc.). Should the Commission come to the conclusion in its impact assessment that consumers in the EU are not sufficiently informed about their (new) rights (we cannot confirm this for Germany, see below) or do not exercise their existing rights in everyday life, the entry into force of the revised rules would be a good opportunity to draw attention to the new rights instead of overriding the rules again. For example, an information campaign could be recommended to this end, which at the same time could also raise awareness for the purchase of sustainable products.

b) Need for further adjustment (or lack thereof)

The results of a representative study¹ commissioned by HDE and conducted by the Allensbach Institute for Public Opinion Research show that consumers' experience of using their guarantee rights or goodwill exchanges in Germany is overwhelmingly positive. According to the study, a large majority of consumers surveyed are aware of the existing legal regulations and at the same time believe that they are adequately protected as customers when exchanging or returning products. 71 percent of consumers consider the current level of protection offered by the guarantee law to be sufficient. Only 13 percent see a need for action by the legislator.

The Commission's considerations are thus not in line with real consumer interests. This is also because, according to the survey, the vast majority of consumers are not prepared to pay a higher price for an extension of the guarantee period for products. This is especially true for people with lower

¹ The study was initially conducted in 2015 and repeated again in 2019, confirming the results: https://einzelhandel.de/index.php?option=com_attachments&task=download&id=10375



household incomes. In various scientific studies (e.g. Eger, Thomas: Einige ökonomische Aspekte der Europäischen Verbrauchsgüterkauf-Richtlinie und ihrer Umsetzung in deutsches Recht), however, it is assumed that an extension of the guarantee period is necessarily associated with cost effects. In addition, a majority of respondents conclude that retailers also comply with the legal requirements.

This shows that, from the customer's point of view, there are sufficient options for remedying a defect in a product, be it via the legal guarantee or a goodwill exchange. Against this background, we see no need to create additional instruments such as a "lifetime guarantee" or a right to repair, as customers already receive satisfactory support from retailers. Thus, this initiative contradicts the wishes of the vast majority of consumers.

c) Life cycle of products & "planned obsolescence"

We reject any kind of lifetime guarantee due to fundamental considerations. It would lead to considerable legal uncertainties and a large number of undesirable effects. How long a product will function properly depends elementarily on the frequency, intensity, etc. of use. Therefore, it is not possible to give a blanket figure or guarantee of the life cycle in years.

The attempts to justify the lifetime guarantee indicate that the aim is to enforce a longer life cycle of products and an improvement of the product quality. However, this is not the original intention of guarantee law, which is only intended to ensure a defect-free delivery of a product. The legislator is therefore mixing up the separate issues of legal guarantee with legal warranty requirements. This must be rejected for systematic legal reasons.

Furthermore, there may be an attempt in the background to prevent the often-claimed "planned obsolescence" of products, although its existence could not be proven by a comprehensive investigation by the German Federal Environmental Agency² (a new study by the European Parliament comes to a similar conclusion³). In fact, this study showed that increasingly shorter life cycles of goods are often not product-related, but determined by product innovation and consumer preferences. For three quarters of the consumers surveyed, the desire for a better appliance - and not the allegedly short life cycles - is therefore the primary consideration, even in the case of large household appliances such as refrigerators.

If the "usual life cycle" were to become the yardstick for the existence of defect claims, no seller would know in everyday business practice whether a product is defective or not, because a usual service life is not known for every product, especially in the case of technical products. Technical developments are rapid and new products are frequently launched on the market. This legal uncertainty would also worsen the position of the consumer. Apart from this, with the passage of time the likelihood increases

² <https://www.umweltbundesamt.de/en/press/pressinformation/lifetime-of-electrical-appliances-becoming-shorter>

³ "The literature on planned obsolescence focuses on suppliers who intentionally supply products with a short lifetime in order to sell replacements to consumers. The degree to which this is actually the case is largely unknown." [https://www.eu-parl.europa.eu/RegData/etudes/STUD/2020/648767/IPOL_STU\(2020\)648767_EN.pdf](https://www.eu-parl.europa.eu/RegData/etudes/STUD/2020/648767/IPOL_STU(2020)648767_EN.pdf)



that a product's inoperability is not caused by a design-related defect, but rather excessive use or an operating error.

If the determination of the life cycle were not to be arbitrary or politically motivated, a longer period of time would first have to be waited in which the normal life cycle for each product is determined individually. Legislators would be permanently occupied with defining the usual life cycle of products, and companies would have to cope with a great deal of bureaucracy. In addition, such requirements would represent a considerable encroachment on the freedom of companies to develop and design products and would restrict the choice available to consumers, some of whom, depending on their intended use, would deliberately choose a low-priced product for which they have lower expectations.

In addition, there are serious concerns, particularly from a competition perspective. More outspoken manufacturers would have to conduct extensive and cost-intensive tests to determine the product life cycle. Since these tests also take a lot of time, innovation would be slowed down because it takes more time to develop a new product. Unfair competitors making a random, made-up claim could cut costs, possibly claim longer life cycles and get products to market faster, thus gaining a competitive advantage. Since the claims could not be investigated by the authorities or competitors due to the high costs associated with lifetime testing, the risk for suppliers behaving unfairly would be low. The benefit for consumers would be equally low. If the "usual" life cycle of a product were to become the benchmark and had to be guaranteed by all suppliers, this would automatically lead to a constantly increasing minimum life cycle until, at the end of this process, all products have reached a uniform maximum life cycle period. As a result, the diversity of the product range and supply would be reduced and competition negatively impaired.

The imposition of mandatory manufacturer warranties on life cycles would also be unlikely to have a positive impact on healthy competition. On the contrary, without a possible review of market surveillance, fair competitive conditions cannot be guaranteed. There will be inequalities in the market because no method of control is available. Furthermore, free competition would be further hindered as the warranty could no longer be used as an additional service by manufacturers or distributors to differentiate themselves from their competitors.

Finally, the mere fact that consumers use certain products for as long as possible is not automatically good for the environment. Old but still functioning white goods, for example, tend to be relatively inefficient in terms of energy consumption or CO₂ emissions - no matter how durable they are. In certain cases, it may make sense to replace these products with more environmentally friendly and resource-efficient equipment, rather than continuing to use them when they have a high-energy consumption. A recent study by the European Parliament even concludes that extending the life cycle of a product type that is in the midst of a significant improvement in its environmental efficiency can delay the introduction of improved products, sometimes with negative environmental impacts⁴.

⁴ [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)



Finally, another study by the German Federal Environmental Agency⁵ concludes that "the instrumentalization of legal guarantee obligations to exert blanket pressure on the retailer/manufacturer side for longer life cycles [is] structurally unsuitable, inefficient, and accompanied by such serious fairness and sustainability deficiencies that it should be discouraged."

d) Consumer information

We consider the legal standards - especially from the Consumer Rights Directive - as well as the numerous voluntary initiatives to inform consumers – particularly on sustainability aspects of products - to be absolutely appropriate and sufficient. In addition, at least in Germany, there are many opportunities to obtain information from third parties, e.g. through the generally recognized services and advice offered by test organizations such as 'Stiftung Warentest'. In addition, it is still unclear what is meant by "information on the environmental and sustainability characteristics of products", as this information can be provided via a wide range of indicators, such as the common, sometimes product-specific seals and labels, e.g., the EU eco-label, the energy consumption label, the FSC certification or the Blue Angel.

Additionally, the roadmap also addresses the topic of security updates for products. Here, we already have a final regulation in the aforementioned new EU Sales of Goods Directive, which states that the seller is obliged to provide updates within a "reasonable period of time".

Regarding alleged greenwashing in product communication, we believe that so-called "environmental claims" or "green claims" are sufficiently regulated in the Unfair Commercial Practices Directive 2005/29/EC. It was not until 2016 that the guidelines to this directive were updated, with a particular focus on the issue of green claims. A multi-stakeholder group had even been set up specifically to address this issue and draw up corresponding recommendations⁶. Finally, the fines for violations of these regulations were recently raised to a minimum of 4 percent of the annual turnover by the Omnibus Directive and harmonized throughout the EU. This has already tightened the rules in this area. If there is a deficit in the enforcement of the regulations, this can by no means be addressed by a renewed tightening of the legal basis.

If manufacturers or distributors were forced to make a mandatory statement about the life cycle of a product, this would (as already mentioned above) lead to severe distortion of competition. Scientific verification of this statement is not possible (without disproportionate) effort. How should market surveillance authorities conduct tests of actual life cycles? How would life cycles be measured in the first place? Any statement about life cycles would have to be backed up by scientific and verifiable data - which would be very costly for manufacturers willing to provide them. However, market surveillance would not be able to effectively verify and enforce the regulations - especially against non-EU distributors.

⁵ https://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte_72_2015_staerkung_eines_nachhaltigen_konsums_im_bereich_produktnutzung_0.pdf (p. 219)

⁶ https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/unfair-commercial-practices-directive_en



Information on spare parts and accessories can ultimately only be provided by the manufacturers of the products. Retailers do not know which parts the manufacturer offers in addition to the product. However, the rationale behind the regulation is also to be questioned in principle. Consumer protectionists also note that the consumer is now exposed to an information overload. Nevertheless, the information obligations of retailers and manufacturers continue to increase. There is therefore a danger that consumers will no longer take any notice of any information at all and as a result will also ignore important information (e.g. on product safety). Insofar as the consumer has a specific interest in replacing parts or accessories, there are already numerous information options available today.

e) Reparability, spare parts, "right to repair"

HDE rejects a right to repair that goes beyond the right to rectify a defective item under guarantee law. As described in detail above, consumers in Germany are satisfied with the existing options for guarantee or goodwill exchange.

In addition, according to the Commission's own studies, most product defects occur within the first six months (71%), within the first year (87%) or within the first two years (96%) after purchase⁷. After more than five years, only 1% of total defects were discovered. Accordingly, there is no need for a lifetime guarantee, as the vast majority of cases are covered by the protection provided by existing guarantee regulations. There is also no need for a "right to repair", since in these 96% of cases consumers have the right to have the product defect remedied (by subsequent delivery or repair, with the consumer basically having the right to choose). In this context, it should also be noted that consumers often prefer subsequent delivery to repair, as this allows them to receive a defect-free (and often entirely new) product much more quickly.

For safety reasons, in particular electronic or otherwise complex products should not be repaired by consumers. In many cases, a specialist is needed for good reasons. Therefore, "reparability" is an aspect that must be seen in product-specific terms and can by no means be generalized across different product categories. Even within a certain product category, the possibility for a layperson to perform a repair can vary greatly, such as with bicycles. Moreover, certain information on reparability and availability of spare parts may also constitute trade secrets that a company competing based on innovation has good reason to be unwilling to share.

If, contrary to the HDE's position, regulation is nevertheless deemed necessary for political reasons, the issue should be addressed on a product-specific basis, e.g. via the EU legal framework for ecodesign. This is also the conclusion of the study by the European Parliament⁸. Here, regulations have already been enacted for various product groups, such as refrigerators, washing machines or

⁷ <https://op.europa.eu/en/publication-detail/-/publication/a8d7ca32-772c-11e7-b2f2-01aa75ed71a1/language-en/format-PDF> (Seite 149 f.)

⁸ "The Ecodesign framework is the most promising in terms of promoting product longevity, and should be the preferred mechanism": [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)



dishwashers, to promote reparability and thus extend life cycles⁹. Accordingly, manufacturers or importers of the product groups listed must ensure that certain spare parts - depending on the product - are available for a period of up to ten years.

f) International competition

Finally, there is the question of how to ensure reparability and availability of spare parts for products from third countries such as China, or how to effectively verify sustainability claims. It is unlikely that a responsible body can be found for this within the EU, and it is strongly suspected that a Chinese supplier will simply ignore EU regulations.

There would then be just another set of rules that would simply not be enforceable against sellers from third countries. As a result, prices for EU products would continue to rise due to the additional requirements, further exacerbating the already pronounced competitive disadvantage for EU players. Any new, complex and burdensome regulation will make compliance more difficult and costly for European suppliers, with a negative impact on the competitiveness of EU-based companies vis-à-vis retailers based outside the EU.

Market imbalances would occur because market surveillance would not be able to conduct reliable testing for sustainability, environmental, or durability claims. The costs of unfair competition and the consequences for free competition would have to be borne by market participants, who will pass them on to consumers.

Online retail is one of the sectors of the European economy with (currently still) considerable growth rates. Nevertheless, this growth is fragile. We should therefore refrain from stifling growth with burdensome regulatory measures, especially against the backdrop of the current crisis.

g) Destruction of goods

Should the topic of destroying returns, surplus stock or goods in general also be discussed in the context of this initiative, we refer to our [detailed position paper on this issue](#). There are a number of legal provisions with which the legislator at national and European level contributes to the creation of unsaleable stocks of goods. Examples of this are the VAT obligation for donations in kind, the consumer withdrawal right even for goods that have been used excessively, bureaucratic burdens for empty cartons due to the rules of the EU Timber Regulation, as well transitional periods for new legal requirements for products or their labelling which are missing or too short.

For example, the Commission had originally proposed a very good approach as to how the withdrawal right could have been adapted within the context of the recently adopted Omnibus Directive. Unfortunately, this idea, which aimed to prevent abuse of the withdrawal right (i.e. ordering a product, actually using it, not just trying it, and returning it) did not find a majority in the European Parliament.

⁹ <https://ec.europa.eu/energy/en/regulation-laying-down-ecodesign-requirements-1-october-2019>



From HDE's perspective, it would therefore be desirable for the bodies involved in the legislation to ensure that the scope of goods that have to be destroyed is not unnecessarily increased by the current legal framework. Instead, legal regulations that contribute to unsaleable inventories or hinder reuse in sales or as donations in kind should first be eliminated before creating new legal obligations for retailers.

Ultimately, this is a problem on a very small scale. For example, 79% of returned products are resold as A-goods and 13% as B-goods¹⁰. Only 3.9% of returns have to be disposed of, often because the products are damaged, spoiled or dirty and therefore cannot be reused. Several large online retailers - such as Otto¹¹ or Zalando¹² - confirm this.

h) Sustainable alternatives

As HDE, we can point to numerous examples from our members of how the sustainability and environmental compatibility of products is promoted even without legal obligations and in competition. For example, [Otto](#), [Media Markt](#) or [Tchibo](#) offer the possibility of renting instead of buying various goods, from washing machines to toys to baby clothes. Further examples can be found in our brochure "[Sustainable Action - retail sector's contribution to the 2030 Agenda](#)".

¹⁰ https://einzelhandel.de/index.php?option=com_attachments&task=download&id=10433 (p. 44)

¹¹ <https://www.otto.de/newsroom/de/kundenfokus/retouren-faq>

¹² <https://corporate.zalando.com/de/newsroom/de/news-stories/zalando-erfuellt-geplante-obhutspflicht-schon-heute>