



6 October 2020

The New Consumer Agenda: open public consultation

A New Consumer Agenda

BusinessEurope welcomes the opportunity to provide its input to the New Consumer Agenda public consultation. Beyond replying to the online form, BusinessEurope has prepared this position paper to be able to develop its comments and arguments around the main issues covered by the public consultation.

Issues emerging from the impact of Covid-19

*1 Have you been confronted to any of the issues below? If so, what are in your views the key issues that EU and national consumer policies should be better prepared to respond to?

- Online frauds and scams: the COVID-19 crisis showed how rogue traders can take advantage of consumers' fears and use digital means to advertise fake websites, sell products with false health claims, or use pressure selling to obtain excessive prices
- Breaches of product safety rules in online trading

*2 EU rules give passengers and travellers the right to reimbursement in money for cancelled package travel and transport services. Reimbursement of the full amount of the ticket or package travel price is due within 7 days (air or waterborne), 14 days (bus/coach; package travel) or 1 month (rail). This applies also in case of cancellation due to extraordinary circumstances.

Do you think that in a situation where worldwide travel restrictions have caused almost a standstill of travel, such as during the Covid-19 pandemic, specific rules should apply, such as longer reimbursement deadlines or reimbursement in the form of vouchers?

- Yes, specific rules should apply for unprecedented situations such as worldwide travel restriction

If yes, which rules should apply?

- Longer deadlines for reimbursement



- Transport service providers and package travel organisers should be able to issue travel vouchers instead of reimbursement in money
- Other

Please specify

It is imperative to have specific rules or temporary adjustments to applicable legislation on common rules for compensation in case of travel cancellations by passenger transport operators, which could allow them to provide appropriate alternative solutions that could help soften the massive economic damage in the sector and keep also cargo carrying capacities as much as possible. This way, a drain of liquidity can be halted, and transport operators can regain footing needed for the business survival and investments in efficient technologies. In the absence of alternative solutions, and subsequent defaults, ultimately the consumer interests will be harmed, as travelling choices will be reduced and prices go up.

*3 Currently, different deadlines apply for reimbursement for cancelled package travel and transport services. Moreover, insolvency protection exists for package travel, but not for individual transport services (e.g. a flight). Do you consider that the EU rules on passengers' and travellers' rights in the passenger rights Regulations and the Directive on package travel should be more aligned?

Don't know

*4 Consumer rights in cases when services (including accommodation services and sports and cultural events) are cancelled, in situations like the Covid-19 pandemic, are currently regulated at national level (with the exception of, for example, in the fields of passenger rights and package travel). Should the EU harmonise these consumer protection rules for cancellation of services?

Don't know

Please note that certain aspects *are* harmonised at EU level through the Services Directive 2006/123/EC (Article 21), touching upon the rights of service recipients. These should be duly taken into account.

Medium-long term priorities for future EU consumer policy strategy

*5 The New Consumer Agenda aims to put forward a common vision of consumer policy priorities for the Union and the Member States. Which should in your view be the main priorities in the coming years?

- Co-operation with non-EU countries
- Better alignment between EU consumer policy and Member States' priorities
- Other



Please specify

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. The new Agenda should include these objectives by focusing as well on: reducing administrative burdens; fighting legal fragmentation and gold plating; practising continuous evaluation of existing EU consumer rules (many of which recently adopted or being implemented) and, if needed, correcting any inconsistencies also in view of the technological development; achieving a coherent interpretation, implementation and enforcement of those rules, including creating a level playing field with third countries, targeting rogue traders and a good understanding of how the rules apply to new market realities and players; ensuring coherence with other EU policies and rules; working towards information and training of businesses around consumer issues; appreciating (not overlooking) the benefits of self-regulation and encouraging these practices; ensuring that both businesses and consumers can better benefit from digitalisation.

*7 In the digital environment traders can easily reach many consumers at once and with personalised offers. However, consumers are increasingly exposed to many challenges, such as unsafe products or unfair commercial practices online. How could one best ensure that consumers have the same protection online and offline?

Improved information on consumer rights in European SMEs and industry

Other

Please specify

This resembles a “predetermined question”, that intends to steer towards a specific outcome. Many of the options above have been addressed by EU legislation in the past years and we are still evaluating their impact. According to COMs own Fitness Check report from May 2017, the share of consumers who think businesses comply and respect consumer legislation increased from 58% in 2012 to 76% in 2016 (figure 4, p. 18) and the share of consumers who have trust in buying online from other EU countries increased from 38% to 58% from 2013 to 2016 (figure 5, p. 19).

The recently adopted New Deal for Consumers, UCPD and the GPRD already offer solutions to grant further protection to consumers in relation to most of the issues above.

On personalised offers, it should be noted that throughout Europe, many consumers actively seek membership benefits in different membership / loyalty clubs to receive customised offers according to their wishes. Recent research shows that using customised advertising reduces the flow of sales offers and contributes to reduce consumption of unwanted goods. To make this kind of services that consumers desire possible, the companies need to gather personal data. It should be an active choice made by consumers who desire this kind of services and not a regulatory



decision. Evidence shows that consumers are willing to share their personal data in exchange for personalised offers (see, Hitting the Mark - Global ecommerce benchmark report 2020 by DotDigital, page 12). One could also say that targeted advertisement nudges consumer to buy according to his interests and not overbuying things which he/she does not require.

Also noteworthy is the approach of Member States to market surveillance. The legislative framework is in place, and the same rules on compliance of products apply online and offline; the success largely depends on the risk analysis and resources dedicated to market surveillance by Member States, and their swift cooperation.

The future Consumer Agenda should rather take into account the fact that consumers increasingly buy products which are offered by non-EU marketplaces and non-EU traders of which it may be difficult or impossible to determine upfront whether the products are compliant with EU law and if consumer rights are respected. These issues must be handled in terms of enforcement and redress. EU-based retailers should not have to compete with rogue traders offering non-compliant products and that do not maintain high standards for consumer protection.

*8 Vulnerable consumers are particularly at risk to suffer from unfair practices. Which sources of vulnerability do you consider as particularly relevant?

Other

Please specify

Vulnerable consumers are already a specially protected group by EU legislation (e.g. art. 5(3) of the Unfair Commercial Practices Directive), which might affect the added value of responses to this question, given that respondents are not informed about what legal status quo is.

*9 If you are sufficiently aware of public enforcement procedures in your country /sector, which are, in your opinion, the main barriers to an effective enforcement of consumer rights (including product safety rules)?

at most 3 choice(s)

Limited cooperation between competent authorities at national and EU level

Limited cooperation between competent authorities in different sectors

Other

Please specify

It is important to highlight that the revised Consumer Protection Cooperation Regulation (adopted in 2017) has been in full application since beginning of 2020 and has provided a direct increase of powers and of means of cooperation between



national consumer authorities in the Member States. The benefits of such new rules are still to be analysed before considering a newer revision. The same counts for new consumer enforcement instruments such as the Representative Actions Directive (soon to be formally adopted), where it would be important to do an early assessment of potential changes in the EU litigation landscape produced by this new instrument.

As mentioned above, the future Consumer Agenda should take into account (and address) the difficulties of enforcement and redress against non-EU consumer platforms that are being used by illegal players to flood the EU with non-compliant products and without following the EU's high standards in terms of consumer protection.

*10 How can the Commission help consumer organisations and other stakeholders be better involved in policy-making and implementation at the EU level?

- Capacity-building through better access to participatory e-tools (e.g. sharing information, good practices, etc.)
- Giving them more wide-spread and formal consultative role at the EU level
- Other

Please specify

There is a need for a more balanced participation of consumer and business organisations in policymaking, giving them more widespread and formal consultative role at the EU level.

It is key to ensure inclusiveness and cooperation with the business community in the EU Consumer policy-making process, as business also possesses important expertise on consumer markets and on solutions (legislative or other) could better fit the markets. And businesses are willing and ready to share their experiences.

Empowering consumers in the green transition

1 Amidst an ever-growing interest in environmental performance and climate neutrality, studies show that consumers increasingly [look for more sustainable consumption patterns and choices but face obstacles](#). Which of the obstacles in the list below would you consider as most relevant for enhanced consumer participation in the circular economy and towards more sustainable consumption behaviour?

- Lack of knowledge of how to adopt more sustainable consumption behaviour
- Perceived higher prices of environmentally-friendly products compared to less environmentally-friendly alternatives
- Other



Please specify

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 2020. 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.

We also note the challenges encountered by consumers affected by information overload that are not reading the information since it is too overwhelming. Also, the proliferation of logos and labels around sustainability can sometimes become confusing and less reliable. The most important with delivery of information is that the consumer gets a chance to take note of the information, for example on issues around elements such as the lifecycle of a product and its recyclability, to understand it and form its 'greener' choice. In this regard, it is important to leverage the potential of digital technologies since it can help increase the transparency for the consumer of a product. Companies should nevertheless have the flexibility to choose the most effective means ("how") to deliver the information.

An obstacle not listed above but important is a negative consumer bias towards non- ownership business models (e.g. product as service) which have good potential to help meet sustainability goals. Consumers may think that it is cheaper to buy and own a product than to rent or lease it for several years. What they forget is that under subscriptions, the repair is free as well as maintenance and other advice-use services that they would not get indefinitely if they own the product themselves. This bias (leading to slow uptake of non-ownership models) may have two effects. First, assets are not replaced in time by updated assets with new technologies and usually higher capabilities, and maintenance is not carried out at the exact moment necessary to guarantee the optimal operation, which would be the case for leased assets. Secondly, there is a risk of inadequate management of the processes of maintenance, repair and updating of assets, because when the above-mentioned processes are carried out by the consumer himself, the application of standardised regulations that supervise all applicable processes cannot be guaranteed.

Lack of harmonisation around recycling rules can also be listed an obstacle, for example: information about correct recycling; how many times a product can be recycled.



2 [Research](#) shows that the price-quality ratio is the most important driver and simultaneously barrier for consumer engagement in the circular economy, followed by convenience. This also applies on purchasing durable consumer goods (such as household appliances, ICT, electronics and other items that have no expiration date).

In your opinion, which of the following information could be most useful for consumers to choose sustainable products and to enhance consumers' participation in the circular economy?

Other

Information on reparability of products: 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.

Any measures adopted at EU level to encourage reparability should ensure that:

i) reparability is not an absolute. It can be that for environmental, energy efficiency, or cost reasons, repair is less optimal than other forms of consumer redress enshrined in EU law; The right to repair must be decided case by case with regard to if it is reasonable and motivated. All measures should be proportionate, feasible, cost-efficient, effective, and not undermine competition in the EU.

ii) for certain products, the trader must have a say on who can repair their products as this ensures continuous quality and safety.

iii) access to information on reparability may be granted if it does not infringe business secrets and other IP rights, which would put European companies at a disadvantage in relation to other competitors. A tailored approach might be necessary for complex professional use of machines that require specialised operation and service.

iv) the safety and health of consumers is not put at risk. For some products that deal with heat, electricity, or chemicals it is important that repairs are done in the appropriate conditions by capable repairers.

v) incentives are in place to ensure that enough manpower specialised in repairing and reconditioning is available, for example through education in technical areas.

vi) suitable EU definitions are found. A 2019 JRC study on [“Technical Reports Analysis & Development of a Scoring System for Repair and Upgrade of Products”](#), shows that there are at least 12 different initiatives on measuring reparability, as well as national initiatives. To avoid confusing consumers, fragmenting further the Single Market and endangering competition, it might be necessary to find a clear EU definition and a harmonised criterion to measure and verify the environmental labelling of products to establish proper incentives for selling into the EU market.



vii) if labels are designed, they need to be easily understood by the consumer to indicate whether a product can be repaired easily at low cost or not. We already know the challenges with consumers that are not reading the information since it is too overwhelming.

On information around product lifespan

Lifetime of a product is almost always connected to how the product is used (handled) and how often. Various other natural and artificial aspects also affect the lifetime, e.g. material composition, functionality, repair costs and consumption patterns. Introducing such information requirements would raise many questions: What standard would be able to calculate this in order to help a trader supply reliable information to the consumer? What would be the level of accountability for such information? Who would be accountable (seller, manufacturer, the standard body)? What would be the burden of proof (e.g. regarding the type of use and maintenance of the product)? Which obligations for the consumer to ensure proper handling of the product?

The manufacturer can convey the recommended use and care of a product but has no control of how the consumer de facto uses the product and whether he follows any service advice. How the product is used greatly affects how long it retains its function, which needs to be considered in discussions about information requirements on lifespan. The price-quality ratio is important, but studies show that consumers say they are willing to pay more for higher quality and better durability; but then they do not act as said, being persuaded by low prices to disregard circular economy credentials. One of the findings in the research abovementioned (https://ec.europa.eu/info/sites/info/files/ec_circular_economy_executive_summary_0.pdf Page 2) is that consumers were generally willing to engage in circular economy practices, but actual engagement was rather low. These issues show that there is a gap between consumers' willingness to engage and their actual engagement.

4 While reparability is highly relevant to help European businesses and consumers to make the transition to a stronger and more Circular Economy, studies show that the high cost of repair and spare parts appears to be a barrier to higher repair rates across the EU.

a) If you tried unsuccessfully to repair recently purchased products yourself, what were the reasons for the lack of success?

Other

Please specify



This question is incomplete as there are relevant elements not asked that would be required to obtain useful data, namely: which category of product is meant? Would it have been **safe** for the consumer to repair it himself? Did the consumer have the respective expertise and tools to repair? what was the nature of the unexpected failure? What was the price category of the product (e.g. high-end, low-end)? How old was the product when the failure happened (and was it within or after the guarantee period)? If after the legal or commercial guarantee period was passed did the consumer contact the trader and how did the latter react? Was this a first failure with that product category or product from a specific manufacturer?

b) If you tried to have recently purchased products repaired by professional repair services, what were the reasons for the lack of success?

Other

Please specify

Some necessary (preceding) questions would have been to ask consumers would they even consider repairing a product themselves? Which ones? And to what extent the price of the product - and the price difference between repairing and buying a new product - would affect this decision? Otherwise, it is difficult to extract meaningful data.

5 Many consumers want to be empowered with rights and access to reliable information to be able to play their role in the green transition to the full extent. Which measures in the list below would you consider as most effective to achieve this goal?

Providing a greater transparency and reliability for IT tools (e.g. consumer apps) providing advice for a more sustainable consumer behaviour

Raising awareness about the role of consumers on circular economy and green transition

Other

Please specify

Getting the right information to consumers on durability and sustainability. Consumers benefit the most from further information on the sustainability features of their products if such information:

- Does not lead to an overdose of information and is presented in a way and in the appropriate moment that the consumer can absorb. This information should also be easily accessible, and up to date (e.g. through digital means).



- Does not set unrealistic or disproportionate expectations. For example, it is not always possible to assess life-expectancy of all products given it depends on many factors (e.g. due to the way they are handled, material composition, functionality, repair costs and consumption patterns).
- Does not place traders at a disadvantage by obliging them to share their business secrets with the wider public (including competitors).

Several business organisations (amongst which BusinessEurope) worked together to produce an awareness tool – Consumer Journey (https://ec.europa.eu/info/sites/info/files/sr_information_presentation.pdf) – to guide businesses through the different moments of the purchasing experience on effective ways to pass on (mandatory and other useful) information to consumers. These types of tools need to be promoted and encouraged when it comes to information on circular economy and sustainability.

It should be noted that several of the measures mentioned above (e.g. information on software/updates) are already covered to some extent by existing EU rules.

6 Which of the following would be in your view most effective in improving the enforcement of EU consumer laws in the interest of enhanced participation of consumers in the green transition?

- Require national enforcement bodies to prioritise (e.g. by allocating more resources) enforcement of provisions that enhance the participation of consumers in the circular economy
- Strengthen cooperation between public authorities and businesses allowing for swift removal/correction of misleading claims/information and ensuring that consumers are informed and/or proposed adequate remedies
- Other

Please specify

Many EU measures have been taken recently that address many of the points above: Omnibus directive on transparency and penalties; representative actions directive; ADR directive and ODR regulation; revised CPC regulation.

It would also be important not to overlook the problems relating to consumer indirect imports (e.g. from China) of products via online platforms (mainly based in China) that do not live up to EU-legislation, harming the competitiveness of law-abiding EU companies. EU consumer protection laws impose a number of obligations on products circulating in the EU. These include amongst other rules related to their safety, labelling, marketing, environmental footprint and health effects. EU law also bans a number of goods and components due to their hazardous effects. One of the similar traits of foreign e-commerce platforms is the fact that through them millions of



small packages carrying low-value goods enter the European market. These packages are often non-compliant with EU law as they are covered in tape, with no or little information on the goods contained herein, no return address and often ticking the customs declaration as a 'gift'. With consumers increasingly 'importing' goods via e-commerce platforms, the risks associated with consumer wellbeing, the environment as well as the risks on fair competition increase substantially. To date, an unacceptable number of products and services offered through e-commerce platforms and originating from China do not comply with EU law. Five National consumer associations have recently come up with a study on products bought from certain third-country based platforms where 2 in 3 products presented risks <https://www.test-achats.be/hightech/internet/news/achats-sur-internet>.

BusinessEurope suggests a set of measures to tackle this issue in its China and the EU paper from 2020:

https://www.business europe.eu/sites/buseur/files/media/reports_and_studies/the_eu_and_china_full_february_2020_version_for_screen.pdf (see, page 92)

Some below further information regarding some third country platforms:

https://www.beuc.eu/publications/beuc-pr-2020-025_dangerous_goods_on_eu_market_call_for_improved_product_safety_law_.pdf

<https://www.which.co.uk/news/2019/11/dangerous-toys-and-killer-car-seats-listed-for-sale-at-marketplaces-like-amazon-and-ebay/>

<https://www.toyindustries.eu/press-release-eu-toy-safety-toy-industry-calls-for-eu-rules-to-enforce-online-marketplaces-to-weed-out-illegal-traders/>

<https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/04-politik/wiggin---danish-chamber-of-commerce---online-marketplaces-19-may-2020.pdf>

General Product Safety Directive

1 In your view, to what extent are current EU safety rules for non-food consumer products covered by the GPSD adequate to protect consumers?

BusinessEurope is preparing a separate detailed response on GPSD but as preliminary conclusion we find that the current main elements of the GPSD generally work well and are fit for purpose. On the functioning of RAPEX / Safety Gate, which in essence is a good tool, we find that it should contain more information to explain how and why a serious risk occurs as now products are quite easily classified as a presenting a serious risk. It is key that market surveillance efforts are concentrated on products that present the biggest risk to consumers.



Standardisation mandates, including those under the GPSD, should leave sufficient room for market relevance. Development of mandates and publication of the reference in the Official Journal of the European Union (OJEU) should happen in a timely manner.

2 Are you aware of any problems related to the implementation of EU safety rules for consumer products covered by the GPSD?

Product safety rules are not appropriately enforced

Please explain and substantiate your answers

In general (not only for the GPSD), but there is also lack of resources at market surveillance authorities and a lack of harmonised methodology across the EU, which distorts the playing field for compliant manufacturers. See question 11.

There need to be a better balance between market surveillance of online vs brick-and-mortar retailing based on risk. Especially goods sold via online marketplaces from third country sellers to EU consumers, need stricter surveillance.

New technologies and product safety

Emerging technologies such as Artificial Intelligence (AI), Internet of things (IoT), and connected devices pose new challenges to product safety and its rules.

3 Do you think that the safety of products involving new technologies is adequately regulated?

Don't know

Please explain

AI is already regulated in several policy areas at European and national level. These existing frameworks should be used first in a manner that promotes innovation whilst taking society with it. Only hereafter should we determine what legal gaps exist on the basis of demonstrable evidence to bring new provisions forward. We accept that further legislation could be required in areas where on the basis of evidence current law does not sufficiently answer societal questions that may become ever more apparent as AI develops. No existing technology or future innovation can demonstrate 100% safety. We aim to find a level of risk that is acceptable to society. We should recognise that provisions should instead find optimum safety levels to enable Europe to benefit from the use of AI and enter global markets as leaders. Therefore, the scope of any new requirements should take a risk-based approach and only set market access requirements for "high-risk" AI. This should be defined following the Commission's current cumulative approach with a focus on (a) AI systems in certain high risk sectors; and (b) where the intended use of such AI systems involves the highest and most significant widespread material risks that are likely to arise.



4. When incorporated into a physical product, software can malfunction and cause a safety issue. When considering whether a product is safe, should the definition of a product in the GPSD specifically encompass also the software incorporated into it?

Other

Please explain

As the GPSD is a 'safety net', it is important that the Directive contains definitions that are sufficiently broad to capture any product that is not covered by more specific pieces of legislation, including the definition of 'safety'.

5 How important do you think it is that products that could be modified via software updates/downloads or machine learning are required to remain safe throughout their lifetime?

Rather important

6 Products incorporating AI applications can evolve via machine learning and other techniques, even after they have been acquired by consumers, potentially posing safety risks. In your opinion, at which moment of the lifecycle of the product should manufacturers have safety obligations?

Other

Please explain

The risk assessment and conformity procedure should only be done before placing the product on the market. If substantial modifications to the product can be done or if the product is handled differently than described by the manufacturer in the instructions' manual, the user become responsible for carrying out a new risk assessment and conformity procedure.

Enforcement of safety rules

Member States' authorities are responsible for enforcing the law and to take actions ensuring the safety of products placed on the market. The GPSD contains rules under which such authorities operate. For harmonised products the rules on enforcement have recently been revised in a new market surveillance regulation [12].

11 What are the main challenges for enforcement?

Member States' authorities do not have enough resources

Not enough cooperation among market surveillance authorities in the EU



Enforcement actions against economic operators outside the EU are difficult

12 Do you think that products covered by the GPSD should only be placed on the EU market if there is an economic operator established in the EU who is responsible for product safety purposes?

No

If yes, what kind of responsibilities should they have?

The emphasis should be on post-market surveillance and enforcement rather than ever-stronger pre-market requirements. Development of guidance on Article 4 from Regulation 2019/1020 shows how difficult this provision would be in practice. In particular for small, low-value products that pose no or an inherently low risk, this would be a disproportionate requirement, let alone the trade policy repercussions (similar measures by the markets key for the EU growth).

Coherence of the product safety regime

Different rules and requirements apply to harmonised products (e.g. toys) and non-harmonised products (e. g. childcare products).

15 Do you experience problems with the divergence of rules between harmonised and non-harmonised products?

No

Please explain how

Divergence of rules between harmonised and non-harmonised products is not a problem in itself. The EU does not need to harmonise everything, and the core principles of the Single Market – harmonisation and mutual recognition – still stay fully valid on the equal footing. The EU should put its efforts on enforcement
