



Council of the
European Union

Brussels, 1 April 2022
(OR. en)

Interinstitutional File:
2022/0092(COD)

7808/22
ADD 4

CONSUM 78
MI 246
COMPET 203
ENER 118
ENV 313
SUSTDEV 75
DIGIT 73
CODEC 421
IA 36

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 31 March 2022

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.: SWD(2022) 86 final

Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information

Delegations will find attached document SWD(2022) 86 final.

Encl.: SWD(2022) 86 final



Brussels, 30.3.2022
SWD(2022) 86 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

**Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL**

**amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for
the green transition through better protection against unfair practices and better
information**

{COM(2022) 143 final} - {SEC(2022) 166 final} - {SWD(2022) 85 final}

Executive Summary Sheet

Impact Assessment on the initiative aimed at empowering consumers for the green transition

A. Need for action

What is the problem and why is it a problem at EU level?

This impact assessment shows that consumers:

- lack **reliable information** about the sustainability of products (environmental characteristics, lifespan, reparability)
- face **misleading commercial practices** (early obsolescence of products, greenwashing by organisations, lack of transparency and credibility of sustainability labels and digital information tools).

These run counter to the objective of the European Green Deal, which is to engineer a switch to a more environmentally sustainable economy and society – a ‘green transition’.

These problems disadvantage:

- **consumers**, by leading them to make sub-optimal choices, reducing their trust in the environmental information currently available and preventing them from actively contributing to the green transition.
- **companies** that offer truly sustainable products, compared to those that do not. And some companies also risk unnecessarily high compliance costs as EU countries start to introduce different national solutions to the problems identified above.

Finally, the impacts of non-sustainable consumption choices on the environment are not currently being adequately addressed. The assessment identifies two main drivers:

1. a **market failure**, due to insufficient economic incentives for companies to provide information on the sustainability of products or to put an end to the practices identified
2. insufficiently adapted **EU rules**, making it difficult for national authorities to effectively address the problems they identify.

What should be achieved?

The initiative aims:

1. to ensure the smooth functioning of the EU’s single market, for the benefit of both consumers and traders
2. to promote the role of consumption in achieving the EU’s climate goals and protecting the environment.

On the demand side, the initiative should reduce consumer disadvantage, increase consumer trust and empower consumers to play an active part in the green transition. On the supply side, it aims to ensure a level-playing field and legal certainty for companies.

The specific objectives are to:

1. enable consumers to make informed purchasing decisions (promoting sustainable consumption),
2. eliminate practices that mislead consumers away from sustainable consumption choices
3. ensure a better and more consistent application of the EU rules.

What is the value added of action at the EU level (subsidiarity)?

Consumer protection falls within the joint remit (‘shared competence’) of EU governments and the EU, so the EU has the powers to act if needed.

The initiative aims to address problems which are widespread and have the same causes across the EU. As EU

countries are unilaterally developing specific legislation to address the problems, EU-wide action through this initiative would reduce legal fragmentation in the single market and the consequences in terms of barriers to cross-border trade and uneven levels of consumer protection.

Finally, climate change and environmental degradation do not stop at national borders: unsustainable consumption in one country can affect other countries. So combined action at EU level could tackle this more effectively for the EU as a whole.

B. Solutions

What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?

The assessment identifies a number of preferred policy options that would ensure this initiative is consistent with other initiatives currently in preparation (the ‘Green Claims’ initiative and the ‘Sustainable Products’ initiative).

The following preferred options are self-standing and in several instances provide for general rules that the other two initiatives will usefully complement:

1. Providing information on the existence (or absence) of a producer’s commercial guarantee of durability and the period of time during which free software updates are provided;
2. Providing a reparability score, or other relevant repair information, where applicable/available;
3. Banning certain practices associated with early obsolescence
4. Providing rules to ensure the fairness of environmental claims, including via banning certain greenwashing practices,
5. Providing rules to ensure the transparency and credibility of sustainability labels and sustainability information tools.

How?

- Options 1 and 2 will be achieved via targeted amendments of the Consumer Rights Directive (Directive 2011/83/EU).
- Options 3, 4 and 5 will be achieved via targeted amendments of the Unfair Commercial Practices Directive (Directive 2005/29/EC)

Which products?

- For Option 1, for all goods, except for software updates which are only relevant for certain goods. Furthermore, it was decided that traders should provide information on the absence of a producer’s guarantee of durability for energy-using goods only. .
- For Option 2, no product scope was defined (the measure will apply wherever the information in question is required to be made available under applicable law).
- Similarly, for Options 3, 4 and 5, no product scope was defined, as these measures will apply to certain commercial practices, regardless of the product in question.

What are different stakeholders' views? Who supports which option?

Consumer associations are generally supportive of the preferred policy options. In the case of options 1, 3 and 4, they would prefer more ambitious measures than those proposed.

Business associations see selected options 1 and 4 as effective but also point to the moderate costs they would generate. There is some resistance from them on option 3, due to the perceived high costs. However, they are the stakeholder group most likely to consider option 5 as effective.

National authorities generally support the various selected options, but particularly options 3, 4 and 5, as these would facilitate their enforcement work.

C. Impacts of the preferred option

What are the benefits of the preferred options?

Consumers – overall they would benefit quite considerably.

They would be able to **make better decisions** thanks to the:

- better availability and reliability of information at the point of sale describing the existence and length of a producer’s commercial guarantee of durability and the period of timing during which free software updates are provided
- availability of a reparability score or other relevant repair information.
- action to tackle greenwashing, early obsolescence and the use of sustainability labels and digital information tools that are not transparent or credible.

Their **rights would also be protected** better:

- they would be able to see more easily which products have an extended producer’s commercial guarantee of durability and choose this if it meets their needs.
- they would be misled less by spurious environmental claims and unreliable/intransparent sustainability labels and digital information tools.
- products they buy would not fail earlier than the consumer expects.

Environment

Consumers would be more likely to choose products that are sustainable (produced with lower environmental impact, expected to last longer and be repaired more often than they are now).

Business

There would be fewer potential barriers to cross-border trade caused by unilateral measures put in place by individual EU countries. Options 3, 4 and 5 in particular would lead to a level-playing field as they aim to eliminate unfair practices used by some market operators.

What are the costs of the preferred options?

Additional costs for businesses will come from providing information on commercial guarantees of durability, free software update periods and repairs.

These should however be limited and – even though likely to be passed on to consumers – are not expected to impact demand negatively, especially as consumers will be much keener to pay for products that last longer or are easier to repair.

Addressing greenwashing and early obsolescence will also lead to further costs, but mainly for those companies who currently engage in these practices. Those that do not will actually benefit from the level-playing field, as practices will be cleaned up in this respect.

Providing rules to ensure the transparency and credibility of sustainability labels and sustainability information tools will lead to increased costs for the organisations running them. These are likely to be passed on to the businesses who apply for such labels, but they may also decide to apply for fewer labels in the future.

National authorities will incur costs linked to enforcing the new obligations. However, some have pointed out that clearer rules on greenwashing and early obsolescence may actually lead to savings for them, given the difficulties and resources required to enforce the current rules.

Note also that combining the various options should generate certain economies of scale as regards enforcement costs and costs for businesses (e.g. costs for familiarisation with the new measures and internal inspections).

What are the impacts on SMEs and competitiveness?

In line with the existing EU consumer law, no exemptions are provided for small, medium or micro enterprises, as this would be contrary to the general purpose of consumer protection rules. It would also be contrary to the interests of SMEs, as consumers would have a lower level of protection and thus less trust when buying from them.

SMEs would therefore incur the costs mentioned above. However, they would also benefit from fairer practices on the market, leading to a level playing field, as well as reduced barriers to cross-border trade, avoiding a potential patchwork of different legislation across the EU as different countries apply different solutions.

Will there be significant impacts on national budgets and administrations?

National administrations will incur additional costs linked to enforcing the new rules, although options 4 and 5 could actually lead to savings, and certain economies of scales exist in combining the selected options.

The selected options also rely on the improvements created by recent legislative changes on enforcement.

Will there be other significant impacts?

No other significant impacts have been identified, including on countries outside the EU.

The options have also been assessed for their consistency with other legislation and related initiatives in preparation and this aspect has been taken carefully into account when selecting the preferred options. All selected options have been designed to complement existing legislation and facilitate enforcement.

Proportionality?

As indicated above, we have identified a number of preferred policy options ensuring this initiative is consistent with the green claims and sustainable products initiatives that are currently in preparation.

The options selected are considered proportionate in light of the current consumer detriment, the expected gains in consumer welfare, the costs to be incurred by businesses and administrations, and the expected positive impacts on society through the reduction in CO2 emissions and other environmental impacts.

Options generating very high costs for business have either not been selected or were discarded at an early stage.

D. Follow up

When will the policy be reviewed?

In addition to regular monitoring, we are proposing to report on how well the initiative is working 3 years after being implemented.