

Initial opinion

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND COUNCIL amending Directives 2005/29/EC and 2011/83/EU regarding greater consumer influence in the green transition through improved protection from unfair commercial practices and information

Svensk Handel, (the Swedish Trade Federation), a business and employers' association that represents 9,000 small, medium-sized and large businesses that employ approximately 300,000 people, would like to communicate the following in response to the above referral:

General comments

Svensk Handel is grateful for the opportunity to comment on the proposals for greater consumer influence in the green transition through improved protection from unfair business methods and improved information.

Svensk Handel supports the aims of the Commission's initiative to amend two directives that protect consumer rights at Union level - (Directive 2005/29/EC on unfair commercial practices and Directive 2011/83/EU on consumer rights) - to take action against false environmental claims, and to contribute to more sustainable consumption and a circular green economy as well as harmonised rules in the EU. This will ensure better and more uniform application of EU consumer law. At the same time, there is a significant risk that the introduction of environmental information requirements in Directive 2011/83/EU will result in information overload for consumers and place considerable burdens on traders.

Svensk Handel believes that trade plays a key role in the circular economy. We also believe that consumers have a crucial role here because trade is a consumer-driven industry in which consumer demand shapes retailers' offerings.

Svensk Handel members argue that it should be easier to make sustainable choices as a company and as a consumer, and generally view the proposed changes and clarification of the rules positively. At a conceptual level, it can be noted that the Commission uses concepts other than those used in practice in this area. It is important that new concepts such as "social consequences" or "an established practice in the relevant market" are clearly explained to avoid confusion. Point 10 states that "excellent environmental performance" may be demonstrated in accordance with officially recognised eco-labelling schemes in member states, or by taking into account optimal environmental performance for a given environmental aspect in accordance with other applicable Union legislation. It is also stated that the excellent environmental performance in question should be relevant to the claim. We request clarifications here on how such assessments would be conducted.

This is important because the restrictions that the changes in the law entail would make it completely impossible to conduct so-called green nudging - a practice that can help consumers make sustainable choices.

Competition does not currently take place on equal terms because misleading practices, "green washing" and incomplete information for consumers damages the internal market. This is because products with lower requirements in terms of durability and life cycle are usually cheaper to manufacture and can therefore compete with other goods at a lower price, as consumers are unaware of the differences in the service life and quality of goods. This also creates negative incentives for businesses to develop products that last longer.

Svensk Handel believes that the most effective protection for consumers is that legislation is harmonised and that the application of laws takes place in a uniform manner in all member states, which also facilitates cross-border trade.

Harmonised rules are one of the key issues in the promotion of circular material and product flows within the bloc. Considerable differences between countries' legislation create obstacles to efforts to increase circular flows. This also makes it difficult for consumers to absorb information.

Svensk Handel would like to emphasize the importance of the rules providing intended protection for consumers; at the same time, traders from different member states must be able to compete on equal terms. The same rules and conditions shall apply to all businesses, even small ones, to operate and compete in the common European market. It is important to ensure that the regulations do not become unnecessarily burdensome for businesses.

Rules that apply to European businesses must also be applied when businesses outside the EU sell directly to European consumers. Multiple studies have shown that products from countries outside the EU fail to meet EU environmental and safety standards, for example by containing prohibited substances or levels of substances. The Commission and member states must take steps to ensure a level playing field by verifying that third country businesses contribute to European EPR systems and comply with EU acquis.

Svensk Handel also believes that market surveillance and supervision need to be improved, especially the supervision of products from third countries sold to consumers in the internal market. This should be taken into account when drafting rules in this area.

Comments on the proposals

Svensk Handel believes that it is important that rules in the area of consumer law are modernised, harmonised and co-ordinated with the Initiative for Sustainable Products (SPI). It is important to avoid double regulation and different requirements in different regulatory frameworks or the provision of information in parallel tracks as this creates additional administrative work for businesses, which ultimately affects consumers.

A growing number of member states have introduced, or plan to introduce, legislation to address these issues. These legislative initiatives may result in improvements, but they will also lead to non-uniform rules in the EU, exacerbating unequal competition in the internal market and restricting cross-border trade.

In the absence of harmonised rules to ensure that consumers are informed about the environmental durability or repairability of a product, manufacturers and sellers operating across borders may face different legal systems that they must comply with, increasing their costs to meet requirements and limiting their ability to compete on equal terms. This legal fragmentation also prevents the effective and consistent application of consumer protection throughout the EU. In addition, it makes it difficult for consumers to make sustainable choices because information in different member states can mean different things. A typical example of this is labelling, an area where EU member states have expressed a desire to take the lead. This means that a company must have different labels on the same product based on the country in which the product is sold, and that consumers cannot be sure which symbol they should look for to obtain certain information.

Svensk Handel is questioning a ban on displaying a sustainability label that is not based on a certification system or established by public bodies. Svensk Handel believes that a label should be based on clear, objective and verifiable criteria. Clear and simple labelling makes it easier for trading companies to provide a good selection of eco-labelled products and enables consumers to more easily make informed, sustainable choices.

Svensk Handel would like to highlight the importance of Sweden not over-implementing, i.e., setting stricter requirements for implementation, application and interpretation of the rules than required by EU law. This would hamper the competitiveness of Swedish businesses in relation to other businesses within the EU and globally. This also causes greater legal fragmentation and creates uncertainty for consumers. The focus should be that it is the minimum level of EU legislation that shall apply in implementation and application. In cases where it is judged that there is reason to go beyond EU requirements, this must be justified and clarified and the effects of doing so carefully analysed.

A key driver of the green transition is the provision of financial incentives for producers to provide reliable information on the environmental sustainability of their products, including longevity and repairability. In addition, clarity in the EU legal framework is required to define the information that consumers should be given about the environmental sustainability of products.

Svensk Handel would also like to point out that the requirement to provide correct information to consumers presupposes transparency on the part of manufacturers and other economic actors in the supply chain. There is therefore a need for the mandatory exchange of B2B information, which must be made possible. Balance in the supply chain is important, as sustainability in trade depends on manufacturing and producers. Putting the burden on retailers to control manufacturers, as a second regulatory authority, would create an unfair burden for suppliers in the supply chain that are unable to influence product development. So, it is important to divide and place the responsibility and information obligation in a proportionate way in the supply chain.

Svensk Handel questions whether retailers are required to provide information in cases where manufacturers do not provide information about commercial guarantees for the sustainability of energy-consuming goods. This information requirement should be imposed on manufacturers.

Svensk Handel would like to stress the importance of understanding that information about product capacity and service life is not easy to predict many years in advance and that maintaining and providing large quantities of spare parts will drive up costs. An obligation to provide information on the estimated lifespan of products will increase costs while lacking reliability because all information relates to how a product is used by the consumer.

When it comes to longevity, this is due to various natural and artificial aspects, for example material composition, functionality, repair costs and consumption patterns. In addition to the quality of a product, its longevity is also affected by how it is used. Manufacturers may communicate details on recommended use and care of a product but have no control over how consumers actually use the product or follow any service advice. How the product is used greatly affects how long it retains its function, which needs to be taken into account. A product's purpose and area of use are decisive for whether a specific product's service life needs to be taken into account and, if so, what is most suitable for the product from a holistic perspective.

Manufacturers and traders have an incentive to provide consumers with reliable information on the environmental characteristics, service life and reparability of their products in cases where the expected benefits in terms of increased demand outweigh the costs of providing that information or where they are required to provide such information. However, there are insufficient or non-existent incentives to provide consumers with this type of information when it is unclear to consumers who the actual seller is, for example when goods are shipped as private imports from manufacturers in third countries via online marketplaces.

Greenwashing harms the functioning of the internal market because it allows products and businesses to gain an unfair advantage over competitors by providing unfounded or misleading information. Because many businesses conduct life cycle analyses to assess the environmental impact of certain products, these businesses are exposed to unfair competition from businesses that provide false or misleading information without any justification. Greenwashing may also stimulate the import, private import and production of unsustainable products through supply chains in third countries where lower environmental or consumer protection rules apply.

Assessing the environmental impact of products and their lifespan can be burdensome and expensive. In addition, there is no harmonised approach for this and if requirements are imposed on the application of more than one method, this will lead to duplication of work and extra costs for businesses conducting cross-border trade. Similarly, this may undermine the

comparability of products and the reliability of assessments in the eyes of consumers, competitors and other organisations.

Many consumers are not willing to pay for products that perform better in these ways. Others are willing to pay a little more, but perhaps not enough to cover the price increase associated with improved environmental properties, etc. Consumers often make purchasing decisions based on price and ignore the total long-term costs of their choices. For example, life cycle calculations show that higher initial prices for sustainable products are an important obstacle to the purchase of these products, even if they provide long-term savings compared to other products.¹

Finally, Svensk Handel wishes to emphasize the importance of this legislation, the legislative proposal on Ecodesign for sustainable products, and forthcoming proposals on regulating green claims and the right to repair, which will also regulate what information is to be provided to consumers. It should be clear how these different regulations relate to each other. It should be easy for businesses to do the right thing.

This opinion has been decided by Svensk Handel's Head of the Policy Department, Mats Hedenström. The rapporteur was policy expert Jolanda Girzl. Lawyer Sofia Stigmar and policy expert Stefan Kvarfordt also participated in the latter stages of drafting this opinion.

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