

Position Paper on the New Consumer Agenda

The Swedish Trade Federation is a member-driven employer and business association representing 9 000 companies of all sizes engaged in retail and wholesale, both offline and online. Our members employ approximately 300 000 people. Here follow our main comments on the New Consumer Agenda.

The Swedish Trade Federation acknowledges new trends in consumer behaviour

- E-commerce has gained additional momentum and developed during the crisis of Covid-19. Innovative business models have been introduced to meet new consumer demands. Also, new age groups have found their way to e-commerce, especially people above 70. This creates new opportunities for both consumers and businesses.
- Increased use of online sales channels, where consumers buy products offered by non-EU marketplaces and non-EU traders.
- Over 60 percent of the companies have experienced that customers have become more interested in sustainability issues over the past year. Also, the proportion of companies that work actively with sustainability issues has increased and corresponds to 8 of 10 trading companies.¹
- At the same time, there is both a lack of will and knowledge of how to adopt more sustainable consumption behaviour. Research shows:
 - That consumers say that they are willing to pay more for higher quality. However, in practice low prices many times take precedence over for example CE credentials.² Consumers tend to buy after price, not due to environmental issues.
 - That consumers are generally willing to engage in circular practices, but actual engagement was rather low. This shows

¹ Svensk Handels hållbarhetsundersökning 2019, HANDELSFÖRETAGEN OCH KONSUMENTERNA BREDDAR HÅLLBARHETSENGAGEMANGET 2019 Svensk Handels hållbarhetsundersökning Nu prioriteras en hållbar e-handel och en hållbar konsumtion <https://www.svenskhandel.se/globalassets/dokument/aktuellt-och-opinion/rapporter-och-foldrar/hallbar-handel/svensk-handels-hallbarhetsundersokning-2019.pdf>

² Behavioural Study on Consumers' Engagement in the Circular Economy, Executive Summary October 2018 https://ec.europa.eu/info/sites/info/files/ec_circular_economy_executive_summary_0.pdf

that there is a gap between consumers' willingness to engage and their actual engagement, they do not act as said.³

- We also find that decisions to repair instead of replacing products are easily disrupted if arranging repair requires more effort.⁴
- New shopping habits show that many consumers take advantage of the right of withdrawal by returning products. Driving the goods back and forth costs money and means unnecessary emissions. There is also a risk that seasonal goods will not be sold again due to the handling time.
 - Also, for example many garments sent back under the right of withdrawal are used and cannot be sold as new. In some cases, there are no other options for the seller other than to discard the goods, as the opportunity to donate the goods many times is not available due to tax reasons. In Sweden, companies are obliged to pay taxes on goods they wish to donate.

Initiative from Swedish Retailers

In the era of green transition businesses really want to meet consumers' expectations and contribute to a more climate friendly retail industry. We see great initiatives from retailers and have collected some inspiring examples from companies operating in Sweden⁵:

- ***Offering repair services for old clothes:*** Lately the clothing industry has been making great changes to improve its climate and environmental footprint. There are companies that try to make repairs easier and more accessible for consumers by offering repair services within the store. The clothes get repaired during the visit, which saves time for the consumer.
- ***Makeover of old furniture:*** A new concept that is being tested in Sweden by some furniture retailers is remaking of old sofas, tables, chairs and other furniture. They then either resell them, or the same consumer can get back their old furniture but in a new and more modern look.

³ Behavioural Study on Consumers' Engagement in the Circular Economy, Executive Summary October 2018 https://ec.europa.eu/info/sites/info/files/ec_circular_economy_executive_summary_0.pdf

⁴ Ibid.

⁵ The Swedish Trade Federation is producing a report on the retailer's contribution to the circular economy. We have interviewed 10 members, who highlight different circular business models. These cases will soon be published on the website www.svenskhandel.se.

- ***Leasing of products you don't use every day:*** A great initiative that has been launched in several Swedish stores is the leasing of products that the consumers do not use in their everyday life. Examples include tools, grinding machines, chainsaws and gardening equipment.

Main priorities

- The retailer/manufacturer should unilaterally decide on the terms and conditions for their commercial guarantees.
- No new rules if it is not a market failure, evaluate the new legislation impact.
 - The recently adopted New Deal for Consumers, UCPD and GPRD, together with existing consumer acquis, already provide a well-developed framework for the protection of EU consumers.
 - The revised Consumer Protection Cooperation Regulation (adopted in 2017) has been in full application since the 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 are still to be analysed.
- To reach a fully functioning single market for businesses, consumer legislation needs to be fully harmonised.
- Consumer law is not the right tool to achieve environmental objectives. Instead encourage and facilitate business initiatives and information campaigns both for consumers and traders to promote sustainable consumption.
- Support system for retailers
 - There is a need for a more balanced participation of consumer and business organisations in the policymaking. Businesses should be equally involved as consumer organisations. One option is having a platform for consumer and industry representatives to collect and share experiences.

Prioritised topics

The Swedish Trade Federation supports fair and balanced pro-market rules for the single market. We also believe that a level playing field can only be ensured if rules are implemented and effectively enforced equally throughout the EU, including those companies outside the EU offering their services in the single market.

As a consumer facing sector, consumer welfare is a natural part of any successful retail business. The Swedish Trade Federation is therefore committed to continually working on and contributing to a fair environment with consumer rules which benefit both businesses and consumers.

Here follows an overview of the most important parts of the new consumer agenda for the Swedish commerce sector:

Information about durability etc

- The assumption that longer product lifespan is better is not always correct, even solely in terms of environmental purposes.⁶ The perception of longevity and durability of products by consumers can sometimes influence less sustainable choices.
 - Consumers affected by information overload are not reading information or do not understand the meaning of the information since it is too overwhelming.
 - Instead, information that is already mandatory needs to be easier to give and general information and education should be easily accessed by consumers.
 - The proliferation and amount of sustainability logos and labels can become confusing and lose their purpose as a guidance aid.
 - There is a need to clarify and safeguard certification processes for logos and labels.
 - There is no reason to have mandatory logos if the consumer does not understand what it stands for.
 - There is a need to clarify what should be categorised as environmentally friendly and which parameters this assessment is based on.

Product lifespan

- A product's lifespan almost always depends on 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. The manufacturer can convey the recommended use and care of a product but has no control of how the

⁶ 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.

consumer de facto uses the product and whether the consumer follows any service advice.

- Some important questions need to be answered before introducing information requirements on product lifespan:
 - What standard can calculate the lifespan 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 standardising body)?
 - What would be the burden of proof (e.g. regarding the type of use and maintenance of the product)?
 - Which are the obligations of the consumer to ensure proper handling of the product?

Repairability

- Measures adopted at EU level to encourage repairability⁷ should ensure that:
 - The right to repair must be decided case by case depending on the kind of product and with regards to if it is reasonable and motivated, reparability should not be 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 trader should have the right to decide which redress is most suitable from an environmental perspective, because the trader most likely have more insights and information about the process and its environmental footprint based on the specific products.
 - All measures should be proportionate, feasible, cost-efficient, effective and not undermine competition in the EU.
 - For certain products the trader must have a say on who can repair their products, as this ensures continuous quality and safety.
 - For some products, such as for example cars, certain parts of the maintenance, repairs and updates should not be performed by the consumer. These services need to follow standardised procedure in order to ensure the continued

⁷ 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 repairability, 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.

functionality and safety and should instead be left to professionals.

- Access to information on reparability can only 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. What information that is shared with repair service providers must therefore be assessed on a case by case basis.
- The safety and health of consumers should not be put at risk. For some products that deal with heat, electricity, chemicals or other dangerous conditions, it is important that repairs are done in by professionals.
 - We therefore support a mandatory legal requirement stating that the consumer needs to contact the trader and assert her-/himself about the terms and conditions for repairs for the specific product before attempting to repair it.

Misleading claims and marketing

- A ban on reducing the lifespan of products in the UCPD must be written so the burden of proof is not too high for the seller. If the product was not defect intentionally, there should be no liability for the seller. A product can break down and have a shorter lifespan than expected without it being on purpose.
- Only punish intentional misleading information that aims to deliberately reduce the lifespan of a product with the purpose of increasing the replacement rate.
- The same rule should apply to green washing. Only intentional misleading green washing statements should be punished. Otherwise we risk creating an environment where businesses do not dare to marketing green and good initiatives.

Legal Guarantee

- During the last 10 years we have seen failed attempts to fully harmonise legal guarantees in Europe⁸, last solution found (revised sales directive of 2019) was to keep the minimum threshold of 2 years.
 - We therefor question if Member States can agree on the legal guarantee based on lifetime on a product per product basis, without

⁸ See ECC-Net report page 96. https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/garanties_update_2019.pdf

creating even more fragmentation and jeopardising the internal market further in the future.

- There are research results showing that most of the faults (original faults/errors) appear within the first 6 months, and more than 90 percent in the first two years.⁹ It would therefore be an ineffective measure to connect the legal guarantee with the estimated lifespan of a products. It would however be costly, as sellers and manufacturers would need to cover the additional risk through increased consumer prices.
- The liability for the legal guarantee must be linked to the purchase agreement.
- It is important that European legal guarantee provisions are enforceable against businesses established outside the EU targeting EU consumers.

Enforcement

- The success largely depends on the risk analysis and resources dedicated to market surveillance by Member States, and their cooperation.
 - It is important to consider that the number of products offered to EU consumers by non-EU marketplaces and non-EU traders are increasing rapidly. It may be difficult, or even impossible, to determine upfront whether the products are compliant with EU law and if consumer rights are respected.
 - Address the difficulties of enforcement and redress against non-EU consumer platforms that are gaining market shares in the European market. They are currently flooding the EU with non-compliant products and without following the EU's high standards in terms of consumer protection. Marketplaces should therefore be held accountable within the framework of the DSA.¹⁰ As long as this is not remedied it is impossible for EU retailers to compete on equal terms. 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.

⁹ Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU, December 2015 https://ec.europa.eu/info/sites/info/files/legal-guarantees-final-report_en.pdf

¹⁰ The position of the Nordic Commerce Sector- Revision of the E-commerce directive/Digital services act <https://www.svenskhandel.se/globalassets/dokument/aktuellt-och-opinion/nyheter/2020/nordisk-position-for-okat-plattformsansvar.pdf>

- Enforcement authorities in all Member States need to have access to high-tech tools to support screening of markets, investigation and enforcement. Currently the availability of these tools differs in the Member States.
- It is important to develop the cooperation between competent authorities in different sectors at national and EU level.
 - As sales increase rapidly from non-EU marketplaces and non-EU traders, there is also a need to develop and increase cooperation with International Consumer Protection and Enforcement Network ICPEN.

Challenge with imports via online markets places from third country sellers

It is important to handle the problems relating to private imports of products by consumers from third country traders (mainly based in China) via online platforms. 3rd country traders that often do not live up and respect EU-legislation, harming the competitiveness of law-abiding EU companies but also harming consumers. Consumers should be able to trust internet as a sales channel from which they can safely shop from.

EU consumer protection laws impose many obligations on products circulating in the EU, related to their safety, labelling, marketing, environmental footprint and health effects. EU law also bans several goods and components due to their hazardous effects. This is further developed in our Nordic Position Paper.¹¹

Millions of small packages containing low-value goods enter the European market every year through online marketplaces. With consumers increasingly 'importing' goods this way the risks associated with consumer wellbeing, the environment as well as the risks related to fair competition increase substantially. To date, an unacceptable number of products and services offered through online marketplaces and originating from China do not comply with EU law.¹² Different

¹¹ The position of the Nordic Commerce Sector- Revision of the E-commerce directive/Digital services act <https://www.svenskhandel.se/globalassets/dokument/aktuellt-och-opinion/nyheter/2020/nordisk-position-for-okat-plattformansvar.pdf>

¹² Five National consumer associations have recently came 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.buinessurope.eu/sites/buseur/files/media/reports_and_studies/the_eu_and_china_full_febbruary_2020_version_for_screen.pdf (see, page 92)

organisations have found for example toys for sale on these platforms which have already been flagged by Safety Gate, (EU's rapid alert system for dangerous products), despite marketplaces claiming to have dedicated teams and technological systems to monitor listings.

Svensk Handel's suggestions for a sustainable and future proof Consumer Agenda

- Alignment with already existing consumer law UCPD, GDPR and the New Deal for Consumers legislative proposals that covers the Unfair commercial practices directive, Unfair contract terms directive, Injunctions directive, Consumer rights directive and Price indication directive.
- GDPR interpretations
 - Regarding personalised offers¹³, it should be noted that many consumers actively seek membership in different loyalty clubs in order to receive customized offers.
 - Using customized advertising reduces the flow of sales offers and contributes to reduced unplanned purchases and consumption of unwanted goods. To make this kind of services possible, the companies need to gather personal data. It should be an active choice done by consumers who desire this kind of services and not decided by regulation.
 - " Shoppers are willing to share personal data such as date of birth, phone numbers, and social media profiles in exchange for personalized experiences."¹⁴
- Harmonised rules
 - Important to fully harmonise the legal guarantees to make it easier for consumers to know and enforce their rights and for sellers to sell all over Europe with the same rules.

Some other relevant sources of information below: 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/ties-safety-gate-press-release/>

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

¹³ dotdigital.com <https://dotdigital.com/pages/hitting-the-mark/> Page 12.

¹⁴ Ibid.

- We do see some tendency for non-harmonised rules during the implementation in different member states. For example, we see examples where member states implement 30 days of right of withdrawal.
- Practical
 - Several business organisations worked together to produce an awareness tool – Consumer Journey¹⁵ to guide businesses through the different parts of the purchasing experience on effective ways to pass on information to the consumer. These types of tools need to be promoted and encouraged when it comes to information on circular economy and sustainability.

Conclusion

The new Consumer Agenda should be used as an enabler for businesses to better take advantage of the benefits of operating in the single market and being able to offer goods and services to consumers all over Europe. It is important to ensure that Europe has a safe and fair online market for consumers and businesses customers to continue benefitting from. To make this possible there is a need to focus on:

- harmonising the rules regarding legal guarantees,
- reducing administrative burdens,
- fighting legal fragmentation, diverging approaches and gold plating in the EU,
- practising continuous evaluation of existing EU consumer rules (many of which are recently adopted or being implemented), also carefully assess the interaction with existing regulation.
 - Research the level and resources of enforcement before introducing new rules.
- correcting any inconsistencies in view of the technological development,
- achieving a coherent interpretation, implementation and enforcement of those rules,
- balancing market surveillance of online vs brick-and-mortar retailing based on risk,

¹⁵ RECOMMENDATIONS for a better presentation of information to consumers, July 2019
https://ec.europa.eu/info/sites/info/files/sr_information_presentation.pdf

- creating a level playing field with 3rd countries, also targeting rogue traders,
 - Introduce liability for active online marketplaces
- 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 the benefits of self-regulation and encouraging these practices,
- ensuring that both businesses and consumers can better benefit from digitalisation.

It is also important to ensure inclusiveness and cooperation with the business community in the EU Consumer policymaking process. Business organisations possess important expertise on consumer markets, and this could be better used by giving them a more widespread and formal consultative role at the EU level.

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