

## **Response by the Danish government to the initiative “Empowering the consumer for the green transition”**

1. September 2020

European consumers will be a driving force in EU's green transition. The Danish government thus welcomes the Commission's initiatives to empower consumers for the green transition. It is important that new initiatives go hand in hand with an ongoing focus on ensuring effective consumer protection during the transition.

We support the Commission's continued focus on enhancing active consumer behaviour and encourage the Commission to build new consumer initiatives in order to support this development. We specifically encourage the Commission to focus on behavioural knowledge and evidence when it comes to EU's marketing law.

The following remarks encompass the Danish position on the inception impact assessment:

### ***1. Consumers often lack reliable information at the point of sale***

Providing information about products' sustainability can be an effective way to make it easier for consumers to make more “green” consumption decisions. It is, however, important that there are specific requirements for the provided information in order for the information not only to be accurate and relevant, but easy for consumers to understand and act upon, i.e. by enabling comparisons between products. Information, which does not fulfil these criteria, might add to consumer confusion and mistrust in green marketing and dampen their interest in purchasing sustainable products.

#### *Including information on lifetime energy costs*

An example of information that is relevant and easy to act upon for consumers is lifetime cost on energy consuming products.

A yet to be published study by the Danish Competition and Consumer Authority shows that if consumers have to buy heavy energy consuming machines, such as dryers, they would choose more energy efficient machines, if informed about the total cost of ownership including lifetime energy costs. This means that even though all the machines were marked with the European energy label, adding lifetime energy costs motivated a more sustainable consumer behavior. The study stresses that consumers in general do not automatically consider future expenses in a purchase situation. However, the study also shows that the challenge of encouraging consumers to consider future expenses can be overcome in cases of heavy energy consuming machines by presenting the information on lifetime energy con-

suming cost in the purchase situation. It could thus be considered to examine further the benefits of including requirements of such information in potential new regulation.

#### *A Green European Market based on PEF/OEF and type I ecolabels*

The format, in which the information is presented, can also influence the effect the information has on consumer understanding. Different presentation formats for the Product Environmental Footprint (PEF)<sup>1</sup> are currently being tested by the Commission and we find that the findings should also feed into the impact assessment.

We find that the PEF should be included in the Commission's impact assessment as the basis for companies' green claims. Also, type I ecolabels such as the EU's own ecolabel and the Nordic Ecolabel could contribute to companies' green claims in relation to the properties of the specific products and services.

We encourage the Commission to prepare the necessary Product Environmental Footprint Category Rules (PEFCRs)<sup>2</sup> if PEF and OEF (Organization Environmental Footprint) are to play the intended role in the green transition. PEF and OEF are mentioned in several Commission proposals but there are currently not many category rules (PEFCR) developed, as these are necessary to introduce PEF and OEF. The PEFCR calculations could eventually allow the European Commission, public authorities and the private sector to benchmark and communicate a so called PEF profile to consumers.

#### *Period of liability*

The Commission's Action Plan on Circular Economy, including the expected revision of the Sale of Goods Directive, are relevant in terms of an increased focus on product lifespans. It could be examined whether a longer period of liability for the seller could be introduced, including for products with a longer life expectancy (in addition to the minimum of two years as prescribed by the Sale of Goods Directive). The examination should also include cases where the seller markets the product as having a long life expectancy. The Danish Government notes that the Sale of Goods Directive is currently being transposed into national law by all of the member states.

Moreover, the impact assessment should examine the connection between the length of the period of liability for the seller, the length of the so-called presumption rule/reversed burden of proof and the proportion/number of repairs. As proposed amendments to the existing rules should be based on

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<sup>1</sup> [https://ec.europa.eu/environment/eussd/smgp/communication/product\\_information.htm](https://ec.europa.eu/environment/eussd/smgp/communication/product_information.htm)

<sup>2</sup> Product Environmental Footprint Category Rules aim at identifying the most relevant environmental impact categories and activities along the life cycle for a respective product category.

empirical research, we encourage the Commission to examine whether and to what extent a "right to repair" could have a green impact and a waste reducing effect and thus contribute to a circular economy.

In line with our position on DG ENER's Sustainable Products Policy Initiative (revision of the ecodesign directive), we find that it – depending on the results of the empirical study - might be useful to have a general and proportionate requirement for upgradeability and reparability for products placed on the EU market.

### *Chemicals*

The transition to a more circular economy requires a coherent approach to product regulation with common principles which are generally based on the PEF in combination with zero tolerance regulation for certain types of chemicals. In order to protect consumers and increase their ability to make informed choices, a future consumer policy should therefore include the possibility to declare or label problematic chemicals in relevant products.

### *Market Surveillance*

Effective EU-wide market surveillance in accordance with the Market Surveillance Regulation can - by removing bad products from the market and thereby incentivize companies to produce better products - support product durability, reusability, upgradeability and reparability for the benefit of consumers and companies.

Today, there are product categories that only a few countries have the budget to control, or products that are often order-produced or only produced in small numbers. This complicates the market monitoring process, which in some cases leads to several product categories avoiding testing unless the Commission bears the cost of the test. An example of this problem is power transformers.

## ***2. Consumers have to contend with commercial practices that cause confusion and misinformation, or breed mistrust and dampen their interest in purchasing sustainable products***

The increasing consumer demand on green and sustainable products incentivize businesses to innovate more sustainable goods. However, this development also creates challenges, when an increasing number of traders market their products as green and sustainable. Some traders might even market their products more environmentally friendly than they really are (greenwashing). This results in an uneven level playing field for companies with real green claims and a decrease in consumer welfare.

In order to facilitate a green transition it is necessary to make it easier for traders to navigate within the area of green marketing. Furthermore, consumers should be able to trust information by traders in order to make sustainable choices.

International behavioural studies (e.g. Chen & Chang, 2013<sup>3</sup>) have shown that misleading sustainable marketing weakens the overall consumers trust in green marketing. In this regard, it is important to note that objectively correct and reliable information could also mislead consumers, if it does not provide relevant or useful information for the consumers. Consequently, it might misrepresent the products' environmental performance<sup>4</sup>. Guidelines on what can be seen as relevant and useful information within green marketing would make it easier for traders to navigate within the area, improve effective enforcement on greenwashing, and thereby improve consumer trust in green marketing.

#### *Labeling of green products*

We welcome the Commission's intention to develop a framework for sustainability labels so that they are more equitable and uniform across the internal market. Consumers who want to make climate and environmentally friendly choices should have this option. However, it is important that a standard is created that is useful to both consumers and producers to ensure that the labeling schemes are in fact fair and informative for the consumer, and to prevent producers from having to live up to disparate climate requirements from different labeling schemes.

We support the initiatives for the promotion of green products inspired by the European Energy Label and the European Ecolabel. The energy label is mandatory for a number of energy-related products that are placed on the market, while the EU Ecolabel is a voluntary scheme. However, it should be noted that it will be a financial burden to require documentation for a mandatory sustainability label and a possible PEF label, as it will require an LCA (life cycle assessment), or similarly, which can be costly.

In addition to EU and national ecolabels, labelling of chemicals of concern in relevant products are an important tool for the protection of consumers and for strengthening the basis for their informed choices.

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<sup>3</sup> Chen, Y. S., & Chang, C. H. (2013). Greenwash and green trust: The mediation effects of green consumer confusion and green perceived risk. *Journal of Business Ethics*, 114(3), 489-500.

<sup>4</sup> For instance, if accurate and documented reductions in the carbon footprint of the packaging of a product, which accounts for an insignificant share of the products total carbon footprint, is used to market the product "green", consumers might be misled into thinking that the product is "greener" then it actually is.

### ***3. Effective enforcement of existing consumer protection rules in these areas is difficult***

Even though the Unfair Commercial Practices Directive (UCPD), including the blacklist, already apply to green claims, effective enforcement is challenged as enforcement authorities are overloaded with highly complicated documentation when they take up cases.

When combatting misleading green marketing, the Commission should not propose a ban on green claims in the UCPD blacklist. There are already certain provisions in the existing blacklist applicable to green claims; i.e. provisions establishing the unfairness in displaying trust marks, quality marks or equivalent without having obtained the necessary authorisation. Instead, the Commission should focus on updating the guidelines to the UCPD on green claims. Updated guidelines will improve effective enforcement on greenwashing and make it easier for traders to navigate.

Further, a proposal on companies substantiating green claims against a standard methodology, as proposed in the Green Deal, is a promising idea worth looking further into. Here, the PEF methodology and life cycled based Type I ecolabels as the EU Ecolabel and the Nordic Ecolabel can be relevant to include. The Danish Consumer Ombudsman has created guidelines to prevent misleading claims.

#### ***Objectives and policy options***

Both consumers and traders must contribute to reaching the climate targets set out by the EU. It is important to encourage traders to provide goods and services that actually are more beneficial to consumers, and regulatory efforts must not have a discouraging effect on consumers. Traders competing to deliver sustainable solutions for consumers is an important driver in the green transition.

Traders should in different ways, be encouraged to take actions for sustainability and they should always be able to truthfully inform consumers about their investments and achievements in this area. Consumers can on the other hand contribute to reach climate and green targets by strengthening the demand on green products and services and in turn support the trader's green transition.

The Danish Government find that the Commission's impact assessment is an important first step to encourage this development. It is important that new initiatives go hand in hand with an ongoing focus on ensuring effective consumer protection during the transition. Therefore, we support the Commission's continued focus on enhancing active consumer behaviour and encourage the Commission to build new consumer initiatives in order to

support this development. Such initiatives should always be based on empirical research to ensure their green impact.