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REGULATORY SCRUTINY BOARD OPINION

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 SWD(2022) 85 SWD(2022) 86





Brussels, RSB

<u>Opinion</u>

Title: Impact assessment / Empowering consumers for the green transition

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The European Green Deal sets out the need for reforms to achieve climate neutrality by 2050, and a clean and circular economy. This includes changing production and consumer behaviour. This initiative aims to empower and support European consumers to play an active role in this green transition. It tackles consumers' lack of information for choosing more environmentally sustainable products. It also strives for better protection against greenwashing, early obsolescence of consumer goods and non-transparent voluntary sustainability labels.

This impact assessment examines options for reaching these objectives through general consumer law, complementing technical or sector-specific instruments. Two related initiatives are being prepared in parallel: the Green Claims and the Sustainable Products initiatives.

(B) Summary of findings

The Board acknowledges the comprehensive revision of the report following the initial RSB opinion.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) Although this initiative intends to set the overall framework for empowering, consumers to play an active role in the green transition, the report does not explain why it does not cover all environmental sustainability issues.
- (2) The structure of the options is not always clear. Most options do not seem to be real alternatives, but are complementary and could be combined. It is not clear why the report considers such combination of options for some problems only. The report does not propose any options to tackle the lack of reliable information on the environmental characteristics of products.
- (3) The report does not clearly demonstrate the proportionality of the preferred option. It is not clear that the preferred option proposes the best possible

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This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

1. The report should justify why it complements the Green Claims initiative only for claims on durability and reparability. It should explain why it does not cover other environmental sustainability issues that are not included in the Green Claims initiative, such as recycled content, biodegradability, biodiversity, etc. As the support study only covers circular aspects of sustainability, it is not a sufficient basis to justify the chosen approach.

2. The report should better justify why it uses an environmental sustainability concept for most of the problems, while the market already uses wider sustainability concepts, including social and ethical aspects.

3. The report should clarify which options are complementary and which are mutually exclusive and why. It should explain why it proposes a combination of complementary options only for some of the problems. The report should consider possible options to address the lack of reliable information on the environmental characteristics of products. The other parallel initiatives also do not provide solutions as the Green Claims initiative only covers voluntarily provided information and the Sustainable Products initiative only covers selected product sectors. This leaves a considerable gap that is not tackled.

4. The report should clarify which role the 'digital product passport', as proposed in the Sustainable Products Initiative, will play for disseminating information that is required by the current initiative. It should explain how general information obligations can be implemented through a sector-specific tool, and why this is the optimal solution.

5. The report should provide a clearer justification for the choice of the preferred sub options especially when the highest ranking sub options were not selected. Given the low Benefit Cost Ratio, the report needs to strengthen its justification for why the preferred option is considered the most proportionate as well as best possible solution.

6. The impacts of options in terms of enforcement (who and how) should be clarified. Resource estimates should be clarified and made proportionate to the task. The preferred option on sustainability labels (minimum criteria) may have large impacts given the long list of criteria envisaged and the large number of sustainability labels across the EU. The ban of vague claims may be legally straightforward, but it is not clear on which criteria enforcers will be able to make distinctions between legal and illegal claims. It is also not clear what the resource requirements for authorities verifying claims are and whether it is realistic to assume that these will be provided. The report should better explain why it considers impacts on third countries as minor.

7. The report should explain why it uses the 2025-2040 appraisal period. For all quantitative estimates, which have been calculated without accounting for the Sustainable Products and Green Claims initiatives, caveats will have to be made in cases, where these would affect the outcomes.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Empowering consumers for the green transition
Reference number	PLAN/2020/7019
Submitted to RSB on	4 August 2021
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

1. Summary of costs and benefits

All figures presented below are for the entire period 2025-2040 for the entire EU-27, explaining the high values.

I. Overview of Benefits of the Preferred Options for the period 2025-2040						
Description	Amount	Comments				
	(present value of the total monetisable direct bene					
	existence and length of a producer's commercial during which free software updates will be provide					
nsumer welfare	~EUR 2 355 - 3 555 million	Main beneficiaries: consumers				
Reduction of CO2 emissions	~EUR 8 - 13 million	Main beneficiaries: society Emissions reduced during production, based on products lasting 1 year longer.				
Option 1.3.E: Provision of	Repair Scoring Index, or other relevant repair inf basis	formation on a where applicable/available				
Consumer welfare	Not possible to assess	Main beneficiaries: consumers				
Reduction of CO2 emissions	Not possible to assess	Main beneficiaries: society				
Option 2.1.B: Ban of certain identified practices associated with early obsolescence						
Consumer welfare	~EUR 1 800 – 2 250 million	Main beneficiaries: consumers				
Reduction of CO2 emissions	~EUR 77 - 90 million	Main beneficiaries: society				
Option 2.2.C: Ban of gene	ral /vague environmental claims + Prohibition of minimum set of criteria	environmental claims that do not fulfil a				
Consumer welfare	~EUR 3 735 – 8 870 million	Main beneficiaries: consumers				
Option 2.3.B: Prohibition of credibility requirements	sustainability labels and digital information too	ls not meeting minimum transparency and				
Consumer welfare	~EUR 4 500 – 6 610 million	Main beneficiaries: consumers.				
Total benefits of all preferred options together						
Consumer welfare	~EUR 12 390 – 19 285 million					
Reduction of CO2 emissions	~EUR 80 - 103 million					
TOTAL	~EUR 12 470 – 19 388 million					

II. Overview of Costs of the Preferred Options for the period 2025-2040							
		Citizens/Consumers ¹		Businesses ²		Administrations ³	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Option 1.2.C: Informati on the existence and length of a commerci al guarantee and on the period of time during which free software updates will be provided	Direct costs			Total: ~EUR 500 - 525 million Per company: ~EUR 3219 - 3455	Annual (average in the period 2025- 2040): ~EUR 42 – 55 million Annual per company (average in the period 2025- 2040): ~EUR 277 - 363 Total (present value for 2025- 2040): ~490 – 645 million	Total: EUR ~0.1 million Per Member State: ~EUR 3 300	Annual (average in the period 2025-2040): ~EUR 1.3 – 2.2 million Annual per Member State (average in the period 2025-2040): ~EUR 48 900 – 81 350 Total (present value for 2025-2040): ~15 – 27 million
by manufact urers	Indirect costs			-	-	-	-
Option 1.3.E: Provision of Repair Scoring Index, or other relevant repair informatio n on a where applicable /available basis	Direct costs			Negligible, assuming full economies of scale (e.g. costs for familiarisation)	Negligible	Negligible assuming full economies of scale with the option 1.2.C (e.g. costs for familiarisati on)	Negligible assuming full economies of scale with the option 1.2.C (e.g. monitoring, inspections)
	Indirect costs			-	-	-	-
Option 2.1.B: Ban of certain identified practices associated	Direct costs			Total: ~EUR 167 – 170 million Per company: ~EUR 1099 – 1 119	Annual (average in the period 2025- 2040): ~EUR 88 – 125 million	Total: ~EUR 0.3 million Per Member State: ~EUR 9 870	Annual (average in the period 2025-2040): ~EUR 8 – 9 million

¹ Businesses may decide to pass on some of the costs linked to the initiative to consumers. However, the extent of that is not possible to quantify.

² Administrative burdens for the two first measures and compliance costs for the three last ones.

³ Enforcement costs.

with early obsolesce			Annual per company		Annual per Member State
nce			(average in the period 2025- 2040): ~EUR 528 - 825		(average in the period 2025-2040): EUR 0.33 – 0.34 million
			Total (present value for 2025- 2040): ~1 023 – 1 460 million		Total (present value for 2025-2040): ~103 – 104 million
	Indirect costs	-	-	-	-
Option 2.2.C:Ban of general /vague environme ntal claims + Prohibitio n of environme ntal claims that do not fulfil a minimum set of criteria	Direct costs	Total: ~EUR 2 2 625 – 2 680 million Per company: ~EUR 373 – 380	Annual (average in the period 2025- 2040): ~EUR 58 – 70 million Annual per company (average in the period 2025- 2040): ~EUR 8 – 10 Total (present value for 2025- 2040): ~675 – 820 million	Total: ~EUR 0.12 million Per Member State: ~EUR 4 270	Annual (average in the period 2025-2040): ~EUR 0.43 – 0.74 million Annual per Member State (average in the period 2025-2040): ~EUR 16 000 – 27 200 Total (present value for 2025-2040): ~EUR 7 – 12 million
	Indirect costs	-	-	-	
Option 2.3.B: Prohibitio n of sustainabi lity labels and digital informatio n tools not meeting minimum transpare	Direct costs	Total: ~EUR 618 - 620 million Per company: ~EUR 87 – 88	Annual (average in the period 2025- 2040): EUR ~260 – 300 million Annual per company (average in the period 2025- 2040): ~EUR 37 – 43	Total: ~EUR 0.13 million Per Member State: ~EUR 4 450	Annual (average in the period 2025-2040): ~EUR 1.2 – 1.29 million Annual per Member State (average in the period 2025-2040): ~EUR 44 500
ncy and credibility requireme nts	Indinact costs		37 – 43 Total (present value for 2025- 2040): ~EUR 3 022 – 3 500 million	4 430	- 47 677 Total (present value for 2025-2040): 14 - 15 million
Total	Indirect costs Direct costs	- Total:	- Annuel	- Totel	- Annual
Total costs for		<u>Total</u> : ~EUR 3 910 –	<u>Annual</u> (average in the	<u>Total</u> : ~EUR 0.62	<u>Annual</u> (average in

all preferred		3 995 million	period 2025- 2040): ~EUR	million	the period 2025-2040):
options		<u>Per company:</u>	447 – 551	<u>Per</u>	EUR 12 –
together		~EUR 556 –	million	<u>Member</u>	13.5 million
		568		State: EUR	
			<u>Annual per</u>	21 900	Annual per
			<u>company</u>		<u>Member</u>
			(average in the		<u>State</u>
			period 2025-		(average in
			2040): ~EUR		the period
			64 – 79		2025-2040):
					EUR 441 800
			<u>Total (</u> present		- 502 200
			value for 2025-		
			2040) <u>:</u> ~EUR 5		<u>Total</u>
			210 - 6 425		(present
			million		value for
					2025-2040):
					EUR 139 –
					158 million



Brussels, RSB

Opinion

Title: Impact assessment / Empowering consumers for the green transition

Overall opinion: NEGATIVE

(A) Policy context

The European Green Deal sets out the need for reforms to achieve climate neutrality by 2050, and a clean and circular economy. This includes changing production and consumer behaviour. This initiative aims to empower and support European consumers to play an active role in this green transition. It tackles consumers' lack of information for choosing more environmentally sustainable products. It also strives for better protection against greenwashing, early obsolescence of consumer goods and non-transparent voluntary sustainability labels.

This impact assessment examines options for reaching these objectives through general consumer law, complementing technical or sector-specific instruments. Two related initiatives are being prepared in parallel: the Green Claims and the Sustainable Products initiatives.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) It is unclear how this initiative relates to existing consumer legislation and forthcoming proposals on environmentally sustainable products. It does not sufficiently explain how these measures will complement each other and how overlaps will be avoided.
- (2) The report does not sufficiently demonstrate the size of the problem and its relation to sustainability objectives. The scope of concerned products is unclear.
- (3) The report is not sufficiently precise on the content and foreseen functioning of the options. The justification for favouring some options over others is not always clear.
- (4) The analysis fails to draw clear conclusions for political decision-making.

(C) What to improve

(1) The report should better situate this initiative in relation to the policy framework for sustainable products and relevant consumer legislation. It should describe its links with existing legislation and upcoming initiatives, in particular the green claims and sustainable products initiatives, and initiatives on food sustainability. The report should clearly demonstrate how these measures complement each other, that there is no risk of overlap, and that this initiative does not prejudge upcoming proposals.

(2) The report should better explain and justify the scope of the initiative. It should specify which products are covered, and how the initiative links to *lex specialis* rules. It should clarify why it focuses on some aspects of sustainability, such as durability and reparability, but not recycling. It should clarify how the narrowing down of the scope of the preferred option to durability and reparability avoids overlap with other initiatives like the Sustainable Products Initiative.. The report should justify why it uses different definitions for sustainability within the initiative, which in their turn differ from definitions that are likely to be used by other related initiatives. This seems in contradiction with the intention to reduce the proliferation of sustainability claims.

(3) The report should better demonstrate the size of the problem. It should explain how the evidence from consumer surveys and behavioural insights justifies the intervention and makes the case that better information can actually change consumer behaviour. For instance, why is there a need to regulate sustainability labels if only few consumers identified this as an obstacle to adopting more sustainable consumer behaviour? How is enhanced consumer information expected to be effective if the perceived higher price of environmentally-friendly products is the main obstacle that prevents consumers from adopting more sustainable behaviours? The report should overall be clearer on how the problems relate to sustainability objectives (e.g. lifespans, repair, software updates).

(4) The report should better describe the options, setting out their relevant scope. It should consider a broader set of options, including self-regulation. The report should clarify to what extent the options are mutually exclusive or complementary. It should be transparent about the extent to which some of the options are reliant on what will be decided in the other initiatives and how coherence will be ensured. It should explain if any alternative combinations of measures were considered, and, if so, why they were discarded.

(5) The report should expand on how the options cover green attributes, durability and reparability for a broad and evolving set of products, given the wide scope of general consumer law. Illustrative examples would be welcome. The options should be more specific on what, where and when information is to be provided, or explain why this is not possible.

(6) The report should be clearer on how sustainability labels will be designed and the links to the green claims initiative. It should indicate how crucial requirements will be identified, and how more relevant and user-friendly labels will be ensured. It should explain how information obligations will be enforced and misrepresentation of product information sanctioned.

(7) The report should better justify the proportionality of the options and why some are retained over others, especially where estimates point to lower net benefits. It should provide clear explanations of the quantitative estimates.

(8) The report should draw clear, well-argued conclusions, either by presenting a preferred option, or a set of clearly defined alternative policy packages, on which basis policy makers can take an informed decision.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Empowering consumers for the green transition		
Reference number	PLAN/2020/7019		
Submitted to RSB on	6 January 2021		
Date of RSB meeting	3 February 2021		