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Contribution of Consumer Protection to Sustainable Consumption

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Consumer Protection Tools and Sustainable Development

Introduction: from consumerism to sustainable consumption

1. Consumerist-type societies are principally influenced by the paradigms of productivism, materialism and individualism. These generate a large ecological footprint and a global ecological deficit. Sustainable development goals force us to transform these production and consumption patterns so that they become sustainable. More than just a need, there is an obligation to build up bridges between consumer protection policy and sustainable development. Consumer protection tools must be reviewed, assessed and amended for that purpose.

Two preliminary remarks:

- (i) The debate is not only instrumental but forces us to revisit the fundamental rationales and objectives of consumer protection policy. Long-term qualitative and collective values, such as sustainable development, healthy environment and quality of life, are to prevail over short-term quantitative and individual interests, such as the protection of purchase power and the benefit of a lower price. Free consumer choice is no longer established as an absolute and key principle on the marketplace, since sustainable development will impose legitimate constraints on consumer choices.
- (ii) It is also important to note that the promotion of sustainable consumption patterns cannot be separated from similar changes in production paradigms. Indeed, it would be both useless and unfair to require consumers to be more responsible, to change their behaviour if the production pattern itself remains unchanged, unsustainable, irresponsible?

It is our deep conviction that there are obvious converging interests between sustainable development policy and consumer protection policy. By placing emphasis on the long-term and collective needs of citizens and society at large, sustainable development gives consumer policy the opportunity for a salutary change¹.

2. Consumer protection tools and sustainable development interact in many different areas. Within the limits of this contribution, I will comment on three initiatives only:
 - (i) Regulating the lifespan expectancy of consumer products and product obsolescence.
 - (ii) Broadening the concept of product safety to also cover risks of hazards to the environment.
 - (iii) Informing consumers about the impact of products or consumption patterns on sustainable development and the environment.

A. Regulating the lifespan expectancy of consumer products and product obsolescence

3. The following main measures can be suggested to remedy the obsolescence of consumer products. They are all needed and at the same time complementary.
 - *To develop a standardized evaluation method for measuring the lifespan of products and setting sustainability criteria* (such as robustness, strength, repairability, recyclability, dismantability) *and to promote certification and consumer information schemes to attest the conformity of the product with such sustainability standards*. In this respect, the development of a nomenclature of consumer products will be necessary; among existing nomenclatures, the United Nations Standard Products and Services Code (UNSPSC) could best serve as source of inspiration.²
 - *To provide for the legal obligation of manufacturers, importers and distributors to guarantee the durability of the product for a fixed period after being made available on the market*. The obligation is to make available on the market products whose expected lifespan will have to be reached under normal conditions of use and maintenance.

Implementing regulations will determine the expected lifespans of products; by default, the requirement of durability could be two (2) or three (3) years following the purchase by the consumer. The occurrence of a defect or failure within the period fixed or, failing that, the

¹ Bourgoignie Th., Protection du consommateur et développement durable: consommateur souverain, pollueur, responsable ou victime? In: Brovelli G, Sancy M (eds), *Environnement et développement durable dans les politiques de l'Union européenne, actualités et défis*, Presses Universitaires de Rennes, Rennes, 2017, p.165 to 177; Bourgoignie Th., Droit de la consommation: une mutation salutaire. In: *Liber Amicorum Jean-Luc Fagnart*, Anthémis, Louvain-la-Neuve, 2008, p.845 to 866.

² Online: <www.unspsc.org>.

period of two or three years, will create a presumption of nonconformity of the product with the obligation of durability. It will then be up to the economic operator to prove the abnormal nature of the use or improper maintenance of the product by the user.

In all jurisdictions worldwide, legal or implied warranty obligations require that a product sold to the consumer can be used for a ‘reasonable period’ or “reasonably expected duration”. However, it is our opinion that this reasonableness standard does not help meeting the goal of sustainability and does not bring legal certainty on the matter. The above suggested implied warranty scheme is close to the provisions of the European Directive 2019/771 of 20 May 2019 on certain aspects concerning contracts for the sale of goods³.

The feasibility of introducing one or more fixed guarantee periods should be explored. Criteria used to define the lifespan expectancy of products shall differ depending on the product categories and the sales price ranges of the product⁴.

- ***To provide for the legal obligation of manufacturers, importers and distributors to guarantee the repairability of the product for a certain number of years***, to be fixed by implementing legislation or, failing that, a period of two or three years beyond the expiry of the expected lifespan of the product.

This requirement will result in ensuring the availability of essential spare parts, access to repair services or after-sales service. The adequacy of the planned services will be assessed according to the nature of the product, the duration of use and the cost of the services.

Accompanying measures could be to reduce the cost of repair services (via a reduction in the taxation of the service) and to promote self-repair.⁵

³ *Official Journal of the European Union* of 22 May 2019, L 136, p.1. This Directive repeals Directive CE1999/44 of 25 May 1999 on some aspects of sale and guarantee of consumer goods. The Directive provides for an implied warranty of 2 years; main amendment is the extension of the presumption of conformity from 6 months, as previously provided, to 1 year (Article 11).

⁴ Work on the lifespan expectancy of products has been carried out in several countries. For example, see the guidelines published by two Dutch professional organizations (UNETO and VNI) in the field of electrical and electronic products; see also the reports published in 2012 and 2016 by the French Agence de l’Environnement et de la Maîtrise de l’Energie (ADEME) on the lifespan of consumer products. Also, Libaert Th, Haber J-P (2014) *Pour une consommation plus durable: la durée de vie des produits de l’industrie et l’information du consommateur au service d’une confiance retrouvée (avis d’initiative)*. European Economic and Social Committee CCMI/112 EESC-2013–1904, Brussels. Online: www.eesc.europa.eu/?i=portal.fr.ccmi-opinions.27387.

⁵ Conseil national de la consommation (2015) *Avis du Conseil national de la consommation sur la durée de vie des produits*. Paris, p.16. On line: www.economie.gouv.fr/files/files/directions_services/cnc/avis/2015/Avis_sur_la_durabilite_des_produits.pdf.

- **To provide adequate information to consumers** at least on the following three (3) elements:
 - ✓ the expected lifespan of the product;
 - ✓ the respective start dates, durations, scopes and terms of the implied or legal warranty associated with the product and of the additional and extended commercial guarantees, if any, that will apply within the expected lifespan of the product;
 - ✓ the arrangements for having access to spare parts or to repair and after-sales services.

- **To sanction planned obsolescence.** There is more and more a consensus that planned obsolescence of products should be sanctioned.

Planned obsolescence is defined as techniques or processes set up at the design or production stage of the product, with the purpose of reducing the lifespan of the product. It is about deliberately reducing the duration of product usage⁶. In France, Article L 213–4-1 of the Consumer Code defines planned obsolescence as a set of techniques by which the economic operator who places the product on the market deliberately reduces the lifespan of the product to force or induce consumers to replace it. Planned obsolescence is erected as a crime punishable by law.

An alternative, and probably more effective sanction, would be to hold planned obsolescence as an unfair commercial practice against consumers, punishable by administrative (including an order to end the practice), civil (reimbursement of the price paid by the consumer, injunction for cessation) and criminal sanctions then limited to most serious cases or in case of repeated practice.

B. Broadening the concept of product safety to cover risks of hazards to the environment

4. Another crossroad between consumer protection and sustainable development can be found in the area of product safety.

Most commonly, the scope of application of the laws on general product safety recently adopted in many jurisdictions worldwide is limited to hazards or risks to the health, physical integrity or property linked to the use of the product; potential or actual, short-term or long-term risks to the

⁶ Among others, see Slades G., *Made to break. Technology and obsolescence in America*, Harvard University Press, Cambridge, 2007.

environment are not included. The issue is most relevant regarding products such as chemicals, pesticides, plastics and cosmetics as well as new production processes such as genetically modified organisms and nanoparticles.

It is recommended to define the concept of safety in the broadest manner, *to include products found to be “unsafe” for the environment*, even if their negative impact on human health is not or has not been yet confirmed.

C. Informing consumers about the impact of products or consumption patterns on sustainable development and the environment.

5. Precontractual disclosure requirements help the consumer in making rational and adequate choices. In a post-consumerist model, as said before, consumer choice is guided not only by his/her individual needs, but also by other general or collective interests, among which sustainable development.

Traditionally required information concerns the price of the product, the identity of the producer, importer or distributor, the main product characteristics, its composition, instructions for use and warnings, and certain terms of the contract whose communication to the consumer is made obligatory prior to the conclusion of the contract. Information about the environmental impact of products and production or consumption patterns must be given a similar and equivalent attention.

Namely, this calls for:

- *The prohibition of deceptive or misleading environmental or sustainable development claims.*
- *Specific sustainable development-related disclosure requirements:* for example, on energy efficiency, waste disposal and recyclability of the product.
- **General precontractual obligation to inform:** adding “information on the environmental impact of products” to the scope of application of the provision commonly found in framework consumer protection laws worldwide that obliges the economic operator to give the consumer, prior to the formation of the contract, useful information concerning any element which the consumer has an interest in knowing.