

EU LEGISLATIVE PROPOSALS TO INVOLVE CUSTOMERS IN THE GREENING OF THE ECONOMY¹

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Abstract: *The EU is aware that advancement of sustainability via the multi-stakeholder model is feasible only with the active involvement of all stakeholders, including European consumers. Consequently, the EU policy and law pendulum has swung from the state, government and businesses to consumers, i.e. the information about the sustainability of businesses and their products cannot be reduced only to CSR and ESG reports, but has to be conveyed, with an appropriate content and in appropriate format, to consumers. Since a European consumer should be not only homo economicus and consumus but as well homo responsabilis, the European Commission has brought forth four legislative proposals changing the business-consumer landscape. This quartet targets product passports, empowering consumers for green transition, right on the repair of goods, and green claims and is to be applied to all European businesses. The aim of this paper is (i) to anchor this quartet in the light of the given six priorities, European green deal strategies and the B2C regime in the EU and (ii) to map how it evolves to contribute to the transformation of the consumer in the homo responsabilis. This points to new legislative trends and provides guidance to businesses to modify accordingly their product and customer approaches.*

Keywords: *EU, consumers, green claims, green transition, ecodesign*

I. INTRODUCTION

Almost three decades ago, the European Commission brought forth a legislative package regarding the promotion of integration, competition and consumer protection, including the Directive 2005/29/EC concerning unfair business-to-consumer (“B2C”) commercial practices in the internal market, i.e. the Unfair Commercial Practices Directive (“UCPD”).² The UCPD proved to be a strong instrument, especially considering its full harmonization nature, to protect consumers against a myriad of unfair commercial practices.³ This regime was further complemented by Directive 2009/125/EC on ecodesign (“Ecodesign Directive”)⁴ and Directive 2011/83/EU on consumer rights (“Consumer Rights Directive” or “CRD”).⁵ After the EU endorsement of the UN Resolution A/RES/71/1 Transforming our world: the 2030 Agenda for Sustainable development (“Agenda 2030”) with its 17 Sustainable Development Goals (“SDGs”) and 169 targets,⁶ the environment focus became reinforced⁷ and it was then clear that the multi-

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² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

³ MacGREGOR PELIKÁNOVÁ, R. Harmonization of the protection against misleading commercial practices: ongoing divergences in Central European countries. *Oeconomia Copernicana*. 2019, Vol. 10, No. 2, pp. 239–252. <<http://orcid.org/0000-0001-9628-7146>>.

⁴ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products.

⁵ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

⁶ MacGREGOR PELIKÁNOVÁ, R. Corporate Social Responsibility Information in Annual Reports in the EU – Czech Case Study. *Sustainability*. 2019, Vol. 11, p. 237. <https://doi.org/10.3390/su11010237>.

stakeholder approach⁸ and cross-sector co-operation⁹ prevails as well regarding the internal single market.¹⁰ Consequently, European businesses are expected to accept their social responsibility (“CSR”),¹¹ even if its meaning remains ambiguous.¹² To overcome it, CSR is visualized as the famous four-layers pyramid with one responsibility on each layer (economic, legal, ethical and discretionary philanthropic responsibility),¹³ and make genuine efforts to engage in the creation of common (shared) economic and societal values (“CSV”).¹⁴ Such a partnership with external stakeholders, such as customers, needs to be achieved by a transparent communication of genuine information¹⁵ and by a mutual respect.¹⁶ The EU policies and law and their interpretation should facilitate this.¹⁷

Around the time of Agenda 2030, the European Commission of Jean-Claude Juncker was primarily concerned with businesses, their shareholders and investors, see the Directive 2014/95/EU on non-financial reporting (“NFRD”)¹⁸ and the Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial service sector (“SFDR”)¹⁹ with its anti trade-offs drive²⁰ in both the banking and financial sectors.²¹

⁷ KLIMEK, L. European Legal Approach to Combat Environmental Crime. *The Lawyer Quarterly*. 2023, Vol. 13, No. 1, pp. 57–77.

⁸ Van TULDER, R., Van MIL, E. *Principles of Sustainable Business. Frameworks for Corporate Action on the SDGs*. London and New York: Routledge, 2023.

⁹ Van TULDER, R., KEEN, N. Capturing Collaborative Challenges: Designing Complexity-Sensitive Theories of Change for Cross-Sector Partnerships. *Journal of Business Ethics*. 2018, Vol. 150, No. 2, pp. 315–332. <<https://doi.org/10.1007/s10551-018-3857-7>>.

¹⁰ BALCERZAK, A. P., MacGREGOR PELIKÁNOVÁ, R. Projection of SDGs in Codes of Ethics – Case study about Lost in Translation? *Administrative Sciences*. 2020, Vol. 10, No. 4, pp. 1–18, paper 95.

¹¹ MATUSZEWSKA-PIERZYŃKA, A. Relationship between corporate sustainability performance and corporate financial performance: evidence from U.S. companies. *Equilibrium*. 2021, Vol. 16, No. 4, pp. 885–906. <<https://doi.org/10.24136/eq.2021.033>>.

¹² HAHN, T. et al. A Paradox Perspective on Corporate Sustainability: Descriptive, Instrumental, and Normative Aspects. *Journal of Business Ethics*. 2018, Vol. 148, pp. 235–248.

¹³ CARROLL, A. B. Carroll’s pyramid of CSR: taking another look. *International Journal of Corporate Social Responsibility*. 2016, Vol. 1, p. 3. <<https://doi.org/10.1186/s40991-016-0004-6>>.

¹⁴ KRAMER, M. R., PFITZER, M. W. The Ecosystem of Shared Value. Business and society. The ecosystem of shared value. *Harvard Business Review*. 2016, Vol. 94, pp. 80–89.

¹⁵ MacGREGOR PELIKÁNOVÁ, R. et al. Sustainable And Responsible Creation Of Shared Values In The Fast Fashion Industry – I Will Believe It When I See It. *Visions for Sustainability*. 2024, Vol. 21, No. 8873, pp. 1–29.

¹⁶ MacGREGOR, R. K., SROKA, W., MacGREGOR PELIKÁNOVÁ, R. The CSR Perception of Front-line Employees of Luxury Fashion Businesses. *Organizacija*. 2020, Vol. 53, No. 3, pp. 198–211. <<https://doi.org/10.2478/orga-2020-0013>>.

¹⁷ MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. The Covid-19 As Interpretation Instrument for the Content of Corporate Social Responsibility and its Reporting in the EU. *The Lawyer Quarterly*. 2021, Vol. 11, No. 2, pp. 305–322.

¹⁸ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

¹⁹ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability related disclosures in the financial services sector.

²⁰ RUBÁČEK, F. et al. The sustainability of ESAs triumvirate for sustainability-related disclosures in the financial sector – all for one and one for all. *Acta Universitatis Lodzianis. Folia Juridica*. 2023, Vol. 105, pp. 123–143.

²¹ BALCERZAK, A. et al. The EU regulation of sustainable investment: The end of sustainability trade-offs? *Entrepreneurial Business and Economics Review*. 2023, Vol. 11, No. 1, pp. 199–212. <<https://doi.org/10.15678/EBER.2023.110111>>.

However, a set of crises accelerating pre-existing trends²² and the arrival of the new European Commission of Ursula von der Leyen, with its Guidelines for the next European Commission 2019–2024: A Union that strives for more (“Political Guidelines”),²³ moved the EU policy and law pendulum further towards consumers. The sustainability terminology is becoming standardized by the Regulation 2020/852 on framework to facilitate sustainable investment and to avoid green-washing (“Taxonomy Regulation”)²⁴ which is strongly pro-European Green Deal oriented²⁵ and fiercely tackles advanced sustainability misinformation, in particular disinformation.²⁶ In addition, a progressively growing pool of European businesses has to inform about their sustainability and their environmental, social and governance strategies (“ESG”), see Directive 2022/2464 on corporate sustainability reporting (“CSRD”).²⁷ However, this is definitely not all, sustainability (as opposed to waste and negative life cycle impacts) and the proper functioning of the internal single market require an active engagement of customers²⁸ who are able to make real informed choices²⁹ reflecting all competitiveness factors linked³⁰ to the business conduct³¹ as well as the product itself.³²

The “average” EU consumer should not only be *homo economicus* provided with relevant information and ready to make the “hard criteria” calculation (get the biggest quantity in the best quality for the lowest price),³³ but as well consider “soft criteria” not easily convertible in finances – sustainability.³⁴ The double materiality informing – communi-

²² D’ADAMO, I., LUPI, G. Sustainability and resilience after COVID-19: A circular premium in the fashion industry. *Sustainability*. 2021, Vol. 13, No. 4, p. 1861.

²³ VON DER LEYEN, U. Political Guidelines for the next European Commission 2019–2024: A Union that strives for more. My agenda for Europe. In: *europarl.europa.eu* [online]. [2023-12-12]. Available at: <<https://www.europarl.europa.eu/resources/library/media/20190716RES57231/20190716RES57231.pdf>>.

²⁴ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

²⁵ MacGREGOR PELIKÁNOVÁ, R., RUBÁČEK, F. Taxonomy for Transparency in Non-Financial Statements – Clear Duty With Unclear Sanction. *Danube*. 2022, Vol. 13, No. 3, pp. 173–95. <<https://doi.org/doi:10.2478/danb-2022-0011>>.

²⁶ BALCERZAK, A. et al. The EU regulation of sustainable investment: The end of sustainability trade-offs? pp. 199–212. <<https://doi.org/10.15678/EBER.2023.110111>>.

²⁷ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

²⁸ CERCHIA, R. E., PICCOLO, K. The Ethical Consumer and Codes of Ethics in the Fashion Industry. *Laws*. 2019, Vol. 8, No. 23.

²⁹ PLANK, A., TEICHAMNN, K. A facts panel on corporate social and environmental behavior: Decreasing information asymmetries between producers and consumers through product labeling. *Journal of Cleaner Production*. 2018, Vol. 177, pp. 868–877.

³⁰ STANIČKOVÁ, M., MELECKÝ, L. Threats and challenges for the competitiveness of the European union: What are the perspectives for cohesion among the member states? *The European Union: Policies, Perspectives and Politics*. New York: Nova Science Publishers, Inc., 2020, pp. 63–84.

³¹ BABRI, M. et al. An Updated Inquiry into the Study of Corporate Codes of Ethics: 2005–2016. *Journal of Business Ethics*. Vol. 168, pp. 71–108.

³² GALLARDO-VÁZQUEZ, D., VALDEZ-JUÁREZ, L. E., CASTUERA-DÍAZ, A. M. Corporate Social Responsibility as an Antecedent of Innovation, Reputation, Performance, and Competitive Success: A Multiple Mediation Analysis. *Sustainability*. 2019, Vol. 11, No. 20, p. 5614. <<https://doi.org/10.3390/su11205614>>.

³³ MacGREGOR PELIKÁNOVÁ, R., ČÍSAŘOVÁ, J., BENEŠ, M. The misleading perception of the purpose of the protection against misleading advertising by the EU law and its impact in the Czech Republic. *The Lawyer Quarterly*. 2017, Vol. 7, No. 3, pp. 145–161.

³⁴ HÁLA, M. et al. Negative Determinants of CSR Support by Generation Z in Central Europe - Infodemic Gender-Sensitive Impacts in a ‘COVID-19’ Era. *Central European Business Review*. 2023, Vol. 13, No. 2, pp. 1–26

cations how the sustainability affects the business (“outside-in” perspective) and how the business affects the society and its environment (“inside-out” perspective) needs to be expanded and communicated to a strong and independent consumer in a transparent and “customer-friendly” form.³⁵ The regime and framework should induce and support it.³⁶ Indeed, the proper functioning of the single internal market requires that such a B2C regime is approximated, harmonized, if not unified, across the EU.

The primary EU law, in particular the Treaty on EU (“TEU”),³⁷ the Treaty on the functioning of the EU (“TFEU”)³⁸ and the Charter of fundamental rights of the European Union (“Charter”),³⁹ along with the secondary EU law, in particular Regulations and Directives on B2C, are now considered in the light of the Political Guidelines, and in particular the first of these six priorities, the European Green Deal.⁴⁰ The secondary EU law is to be modified to support the greening of the economy by an informed, strong and responsible consumer. The need to balance all three sustainability pillars⁴¹ remains obvious⁴² and the focus on the environmental pillar is closely and pragmatically scrutinized.⁴³

Recently the European Commission has ushered in two sets of legislative proposals to change the B2C landscape in this direction. In March 2022, the European Commission put forward two proposals leading to general framework changes, i.e. the Proposal for a Regulation for ecodesign for sustainable products (“Ecodesign Regulation” or “ESPR”)⁴⁴ replacing the Ecodesign Directive from 2009⁴⁵ and bringing forth the digital product passport, and the Proposal for a Directive amending the UCPD from 2005 and Consumer Rights Directive from 2011 in order to empower consumers for a green transition (“Green Empowerment Directive”).⁴⁶ One year later, in March, 2023, the European Commission

³⁵ TUREČKOVÁ, K. et al. Society 4.0: general economic implications. *Journal of European Economy*. 2023, Vol. 22, No. 2, pp. 146–157. <<https://doi.org/10.35774/jee2023.02.146>>.

³⁶ MacGREGOR PELIKÁNOVÁ, R., MacGREGOR, R. K. The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská. *Central European Business Review*. 2020, Vol. 9, No. 3, pp. 74–108.

³⁷ Consolidated Version of the Treaty on European Union (OJ C 202 7.6.2016, p. 13).

³⁸ Consolidated Version of the Treaty on the Functioning Of The European Union (OJ C 202 7.6.2016, p. 47) 1.

³⁹ Charter of Fundamental Rights of the European Union (2016/C 202/02).

⁴⁰ Communication from the Commission COM/2019/640 final The European Green Deal. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0640&qid=1694878065652>>.

⁴¹ MENSAH, J. Sustainable development: Meaning, history, principles, pillars, and implications for human action: Literature review. *Cogent Social Sciences*. 2019, Vol. 5, No. 1.

⁴² PURVIS, B. et al. Three pillars of sustainability: in search of conceptual origins. *Sustainability Science*. 2019, Vol. 14, No. 3, pp. 681–95.

⁴³ HUTTMANOVA, E., VALENTINY, T. Assessment of the Economic Pillar and Environmental Pillar of Sustainable Development in the European Union. *European Journal of Sustainable Development*. 2019, Vol. 8, No. 2, pp. 289–98.

⁴⁴ COM(2022) 142 final Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0142&qid=1702989236340>>.

⁴⁵ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products.

⁴⁶ COM(2022) 143 final 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 final. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0143>>.

brought out two proposals leading to the addition of special frameworks, i.e. the Proposal for a Directive on the right on the repair of goods (“Repair Goods Directive”)⁴⁷ and Proposal for a Directive on substantiation and communication of explicit environmental claims (“Green Claims Directive”).⁴⁸ The legislative process regarding this quartet is not completed, but already the fact that such a quartet is advanced provides strong indices. Hence, the aim of this paper is to anchor this quartet within well mapped EU strategies and law (II.) and to map how it evolves to contribute to the transformation of the consumer in the *homo responsabilis* by general (III.) as well as special measures (IV.). In order to achieve it, the data from European Commission Websites and EurLex is to be identified, subjected to a thematic content analysis⁴⁹ with a qualitative focus⁵⁰ with both inductive and deductive features, predominantly teleologically interpreted. The processed results are to be critically juxtaposed in the context and to be glossed.⁵¹

II. EU STRATEGIES AND LAW FOR SUSTAINABILITY IN B2C

Current EU strategies and law focus on sustainability and B2C, in particular EU strategies as reflected by the six common priorities want to employ a multi-stakeholder model for sustainability (II.1) and both primary and secondary EU law (II.2.) and create a strong consumer who has the potential to be an active player in this multi-stakeholder model.

II.1. EU strategic framework – priorities and the European Green Deal

The Political guidelines as the top strategic framework instrument for 2019-24 brought out six common priorities and, as is obvious from their mere recapitulation in Table 1, each of them is at least partially and/or indirectly relevant for sustainability and B2C.

⁴⁷ COM(2023) 155 final Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules promoting the repair of goods. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0155%3AFIN>>.

⁴⁸ COM(2023) 166 final Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on substantiation and communication of explicit environmental claims (Green Claims Directive). In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0166%3AFIN>>.

⁴⁹ KRIPPENDORFF, K. *Content Analysis: An Introduction to Its Methodology*. Thousand Oaks: Sage Publications, Inc., 2003.

⁵⁰ KUCKARTZ, U. *Qualitative Text Analysis: A Guide to Methods, Practice and Using Software*. Thousand Oaks: Sage Publications, Limited, 2014.

⁵¹ MacGREGOR PELIKÁNOVÁ, R., RUBÁČEK, F. *Taxonomy for Transparency in Non-Financial Statements – Clear Duty With Unclear Sanction*. pp. 173–195. <<https://doi.org/10.2478/danb-2022-0011>>.

Tab. 1 Political guidelines 2019-24 and their six priorities

	Priority	Description
P1	A European Green Deal	Europe aims to be the first climate-neutral continent by becoming a modern, resource-efficient economy.
P2	A Europe fit for the digital age	The EU's digital strategy will empower people with a new generation of technologies
P3	An economy that works for people	The EU must create a more attractive investment environment, and growth that creates quality jobs, especially for young people and small businesses.
P4	A stronger Europe in the world – multilateralism and a rules-based global order.	The EU will strengthen its voice in the world by championing multilateralism and a rules-based global order.
P5	Promoting our European way of life	Europe must protect the rule of law if it is to stand up for justice and the EU's core values.
P6	A new push for European democracy	We need to give Europeans a bigger say and protect our democracy from external interference such as disinformation and online hate messages.

Source: prepared by the Author based on Political Guidelines and <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024_en>.

Due to the massive endorsement and its exponentially growing implications,⁵² the first of these priorities, the European Green Deal, plays clearly the principal role. Therefore, in order to fully appreciate the EU strategic setting for sustainability and B2C, the strategies and sub-strategies and plans for P1 are to be considered, see Table 2.

Tab. 2 European Green Deal and its nine strategies, sub-strategies and plans

EGD1	Biodiversity strategy for 2030
EGD2	Chemicals strategy
EGD3	New circular economy action plan (CEAP)
EGD4	Environment action program to 2030
EGD5	Forest strategy
EGD6	Plastics strategy
EGD7	Soil strategy
EGD8	Textiles strategy
EGD9	Zero pollution action plan

Source: prepared by the Author based on <https://environment.ec.europa.eu/strategy_en>.

⁵² KOWALSKA, A., BIENIEK, M. Meeting the European green deal objective of expanding organic farming. *Equilibrium*. 2022, Vol. 17, No. 3, pp. 607–633. <<https://doi.org/10.24136/eq.2022.021>>.

Manifestly, the most relevant for sustainability and B2C in general is EGD3, while special aspects are covered among others, by EGD6, EGD8 and EGD9.

II.2. EU legal framework – both primary and secondary sources for sustainability in B2C

Regarding the EU primary law with a focus on sustainability and B2C, the most relevant is the TEU, TFEU and Charter, while regarding the EU secondary law, it is the UCPD, Ecodesign Directive and Consumer Rights Directive. They all should recognize and follow fundamental principles, such as the principle of sincere co-operation and the principle of mutual trust.⁵³ Table 3 summarizes their key provisions regarding sustainability and B2C.

⁵³ TOMÁŠEK, M. European Arrest Warrant – Mutual Trust and Mistrust Among EU Member States. *The Lawyer Quarterly*. 2023, Vol. 13, No. 2, pp. 131–142.

Tab. 3 EU law regarding sustainability and B2Cs

TEU	Art. 3	(3) The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, ...
TFEU	Art. 4	(2) Shared competence between the Union and the Member States applies in the following principal areas:(a) internal market;...(e) environment; (f) consumer protection;
TFEU	Art.12	Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.
TFEU	Art. 114	(1) ...adopt the measures for the approximation of the provisions laid down by law,..(3) ..its proposals .. environmental protection and consumer protection,
TFEU	Art. 169	(1) In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, ...
Char.	Art.37	A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.
Char.	Art. 38	Union policies shall ensure a high level of consumer protection.
UCPD	Art. 5	Prohibition of unfair commercial practices. 1. Unfair commercial practices shall be prohibited. ... 4. In particular, commercial practices shall be unfair which: a) are misleading as set out in Articles 6 ...
UCPD	Art. 6	A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way ... deceives or is likely ...
EcoDir	Art.1	(1) This Directive establishes a framework for the setting of Community ecodesign requirements for energy-related products with the aim of ...
EcoDir	Art. 3	Member States shall take all appropriate measures to ensure that products covered by implementing measures may be placed on the market and/or put into service only if they comply with those measures and bear the CE marking.
EcoDir	Art. 5	Before a product covered by implementing measures is placed on the market and/or put into service, a CE marking shall be affixed and an EC declaration of conformity issued ...
CRD	Art. 5	Information requirements for contracts other than distance or off-premises contracts ...
CRD	Art. 6	Information requirements for distance and off-premises contracts ...

Source: prepared by the Author based on EurLex

This review reveals that EU strategies, policies and law have been pushing for relevant information, including sustainability aspects, to be provided by European businesses to European consumers and that the current European Commission, via its six common priorities, would like to move to a higher stage. The pathway to it represents proposals addressing general, as well as special and particular, aspects.

III. UPDATING LAW - GENERAL RIGHT ON PROPER INFORMATION ON PRODUCT SUSTAINABILITY – FAIRLY INFORMED CONSUMER

As stated above, in March 2022, the European Commission decided to update the general framework regarding the information of consumers, which rests on a triad of directives – the UCPD from 2005, the Ecodesign Directive from 2009 and Consumer Rights Directive from 2011. These updates were projected in two proposals leading to general framework changes - the Proposal for Ecodesign Regulation (III.1.) and the Proposal for a Green Empowerment Directive (III.2.).

III.1 The Proposal for Ecodesign Regulation – Digital passports for all goods!

The first proposal regarding the updating of the pre-existing general framework regarding the information for consumers was the most radical, at least based on the format selected. Namely, the European Commission came to the conclusion that no proper information about sustainable products is provided, based on the pre-existing legal framework. Thus, sustainable product choices need to be boosted by a new package of law instruments addressing not only sectoral initiatives (textiles⁵⁴ and construction products⁵⁵) and the fight against unfair practices⁵⁶ but as well by an extended general providing of compulsory (!!!) information – in short, a proposal establishing a framework for setting ecodesign requirements for sustainable products and repealing the Ecodesign Directive.⁵⁷ This proposal should bring a stronger and more broadly applicable sustainability reporting duty imposed on businesses, including the compulsory use of digital product passports. Table 4, below, summarizes the key provisions of this Proposal for a Ecodesign Regulation.

⁵⁴ COM(2022) 141 final EU Strategy for Sustainable and Circular Textiles. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0141>>.

⁵⁵ COM(2022) 144 final Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0144>>.

⁵⁶ COM(2022) 143 final 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. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0143>>.

⁵⁷ COM(2022) 142 final Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC. In: *eur-lex.europa.eu* [online]. [2023-12-12]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0142&qid=1702989236340>>.

Tab. 4 Proposals for a Ecodesign Regulation

Ecodesign Regulation aka ESPR	
Explanatory Memorandum	The main objectives of this regulation are to reduce the negative life cycle environmental impacts of products and improve the functioning of the internal market. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which is to be used for measures aiming at the establishment and functioning of the internal market. The Ecodesign Directive (which the Commission proposes to repeal by this regulation) was itself ...
Preamble	The European Green Deal is Europe's sustainable growth strategy that aims to transform the Union into a fair and prosperous society,. ...To accelerate the transition to a circular economy model, the Commission designed a future-oriented agenda in its Circular Economy Action Plan for a cleaner and more competitive Europe (CEAP), with the objective of making the regulatory framework fit for a sustainable future. ...
Art. 1	This Regulation establishes a framework to improve the environmental sustainability of products and to ensure free movement in the internal market by setting eco-design requirements that products shall fulfill to be placed on the market or put into service. ... This Regulation also establishes a digital product passport ('product passport'), provides for the setting of mandatory green public procurement criteria and creates a framework to prevent unsold consumer products from being destroyed.....This Regulation shall apply to any physical good that are placed on the market or put into service, including components and intermediate products. However, it shall not apply...
Art. 5	Ecodesign requirements ... product aspects: (a) durability; (b) reliability; (c) reusability; ..
Art. 8	... products can only be placed on the market or put into service if a product passport is available ...

Source: prepared by the Author based on the EurLex

This Proposal for a Ecodesign Regulation is based upon Art. 114 TFEU, focuses on the functioning of the internal single market and advances consumer protection/rights in relation to the sustainability as understood by the first common priority, the European Green Deal, and its EGD3 Circular economy action plan. Businesses are to be ordered to fairly inform consumers while using modern digital tools – the idea of a compulsory digital product passport in the form e.g. of a QR code appears customer friendly and effective, efficient and not intrusive.

The timeline is pretty dynamic, since on 11th December 2019 the European Green Deal was adopted, on 30th March 2022 this Proposal for a Ecodesign Regulation was presented and the Open Public Consultation took place between January and May 2023. The European Commission keeps informing and enhancing awareness in this respect, see a set of

special websites,⁵⁸ see e.g. the Press Release “Commission welcomes provisional agreement for more sustainable, repairable and circular product” from 5th December 2023 which has its QR code.⁵⁹ The procedure 2022/0095/COD regarding COM (2022) 142 is challenging, the Council of the EU has been debating it for two years, from April 2022, and the first reading in the European Parliament took place on 23rd April 2024.⁶⁰

III.2. The Proposal for a Green Empowerment Directive – Reparability information is relevant

The second proposal regarding the updating of the pre-existing general framework regarding the information for consumers appears much less radical, because it is a mere update of pre-existing directives – the UCPD and Consumer Rights Directive. However, a deeper study reveals that this Proposal for a Green Empowerment Directive, i.e. empowering consumers for the green transition through better protection against unfair commercial practices and better information, not only significantly extends the pool of unfair commercial practices by anti-sustainability and greenwashing endeavors, but, in addition, it explicitly incorporates the duty to provide durability, reparability, etc. data. Table 5, below, summarizes the key provisions of this Proposal for a Green Empowerment.

⁵⁸ In: *European Commission* [online]. [2024-04-11]. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6257>; <https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/sustainable-products_en> and <https://environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-products-regulation_en>.

⁵⁹ In: *European Commission* [online]. [2024-04-11]. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6257>.

⁶⁰ In: *eur-lex.europa.eu* [online]. [2024-04-11]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52022PC0142&qid=1711403273835>>.

Tab. 5 Proposal for a Green Empowerment Directive

Green Empowerment Directive	
Explanatory Memorandum	The Treaty on the Functioning of the European Union (Articles 114 and 169 TFEU) and the Charter of Fundamental Rights (Article 38) requires a high level of consumer protection in the EU. EU consumer legislation also contributes to the proper functioning of the single market. It aims to make business-to-consumer relations fair and transparent and ultimately support the welfare of European consumers and the EU economy... This proposal aims at enhancing consumer rights by amending two directives that protect the interests of consumers at the Union level: the Unfair Commercial Practices Directive 2005/29/EC 1 and the Consumer Rights Directive 2011/83/EU . . .
Preamble	In order to tackle unfair commercial practices which prevent consumers from making sustainable consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims (“greenwashing”), non-transparent and non-credible sustainability labels or sustainability information tools, specific rules should be introduced in Union consumer law..
Art. 1	Amendments to Directive 2005/29/EC ... environmental claims ... sustainable label .. Article 6 is amended as follows ...” the main characteristics of the product, such as its availability, benefits, risks, execution, composition, environmental or social impacts, accessories, durability, reparability, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product.’ ... ‘(d) making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system; (e) advertising benefits for consumers that are considered as a common practice in the relevant market.’ In Article 7, the following paragraph (7) is added:“7. Where a trader provides a service which compares products, including through a sustainability information tool, information about the method of comparison, the products which are the object of comparison and the suppliers of those products, as well as the measures in place to keep that information up to date, shall be regarded as material.”
Art. 2	Amendments to Directive 2011/83/EU ... durability ... reparability score.. ‘reparability score’ means a score expressing the capacity of a good to be repaired, based on a method established in accordance with Union law” ... here applicable, the reparability score for the goods; (v) when point (u) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.”

Source: prepared by the Author based on the EurLex

The legal basis for this “pro-reparability” proposal is Art. 114 TFEU in connection with Art. 169 TFEU. Indeed, both proposals from 30th March 2022 concerning the general framework regarding the information of consumers, the Proposal for Ecodesign Regulation and the Proposal for a Green Empowerment Directive are based upon Art. 114 TFEU, focus on the functioning of the internal single market and advance consumer protection/rights in relation to the sustainability as understood by the first common priority, the European Green Deal, and its EGD3 Circular economy action plan. The order to provide the digital passport for all tangible (physical) goods of the first proposal is complemented by the demand to address the reparability by the second proposal, which is already progressing in the legislative process. Namely, on 11th May 2023, the first reading occurred in the European Parliament and on 15th December 2023 was issued C/2023/1087 P9_TA (2023)0201 Empowering consumers for the green transition amending this second proposal to make it more specific and so ultimately more effective, efficient and enforceable.⁶¹

The procedure 2022/0092/COD regarding COM (2022) 143 was marked by long debating at the Council of the EU and rather a fast first reading at the European Parliament and culminated, on 28th February 2024, with the signature by the President of the European Parliament and by the President of the Council of the EU,⁶² i.e. this part of the quartet amending the UCPD is to take effect!

In sum, businesses must inform about the sustainability of products and are pushed to avoid waste by arranging for the feasibility of repair. Keeping silence and/or engaging with greenwashing regarding tangible (physical) goods and their tampering with reparability is punishable under the auspices of the EU consumer protection law, i.e. in the B2C context. The current Ecodesign Directive has a long track record and replacing it by the Ecodesign Regulation with an even broader and deeper reach while taking advantage of the extension of the UCPD and Green Empowerment Directive has definitely a strong impact. Nevertheless, this is not enough for the European Commission, which is determined to go further, in particular regarding strengthening the fight against waste and lying.

IV. ADDING LAW - SPECIAL RIGHT ON REPAIR AND SUBSTANTIATION OF GREEN-CLAIMS – FAIRLY ARMED AND COMMITTED CONSUMER

In March 2023, the European Commission brought forth two proposals leading to special framework changes. The general reinforcement of the information duty based on proposals from 2022 is to be further boosted by target instruments fighting against the waste caused by an unavailable repair option and the manipulation and lies caused by greenwashing. The first of these two special instruments is the Proposal for a Repair Goods Directive (IV.1.), which should support the durability and re-use of products. The second is the Proposal for a Green Claims Directive (IV.2), which should fight against greenwashing

⁶¹ In: *eur-lex.europa.eu* [online]. [2024-04-11]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023AP0201>>.

⁶² In: *eur-lex.europa.eu* [online]. [2024-04-11]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52022PC0143&qid=1711404202992>>.

by demanding substantiation (proving out) and communication of explicit environment (green) claims.

IV.1. The Proposal for a Repair Goods Directive - You shall repair!

The subject matter of the first special proposal is to bring a Directive which should improve the functioning of the internal market by laying down common rules promoting the repair of goods purchased by consumers. Namely, even if the defect is not the fault of the seller and even if this might be above and beyond the seller's liability, the repair option should be real and not fictive or illusory. Table 6, below, summarizes the key provisions of this first special regime proposal.

Tab. 6 Proposals for a Repair Goods Directive

Repair Goods Directive	
Explanatory Memorandum	... priority of the green transition, specifically the European Green Deal and its objective of sustainable consumption...When consumer products become defective, consumers often do not seek to repair them, but discard them prematurely, ...
Preamble	it is necessary to lay down uniform rules promoting the repair of goods purchased by consumers
Art. 1	This Directive lays down common rules promoting the repair of goods, with a view to contributing to the proper functioning of the internal market, while providing for a high level of consumer and environmental protection.
Art. 3	Full harmonization. Member States shall not maintain, or introduce in their national law, provisions diverging from those laid down in this Directive.
Art. 4	European Repair Information Form Member States shall ensure that, before a consumer is bound by a contract for the provision of repair services, the repairer shall provide the consumer, upon request, with the European Repair Information Form set out in Annex I on a durable medium within the meaning of Article 2 (11) of Directive 2019/771/EU.
Art. 5	Obligation to repair Member States shall ensure that, upon the consumer's request, the producer shall repair, for free or against a price or another kind of consideration, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfill its obligation to repair.
Art. 6	Information on obligation to repair.

Source: prepared by the Author based on the EurLex

In line with Article 114(3) TFEU, the Commission takes as its basis a high level of environmental and consumer protection, considers the functioning of the internal market and a high level of consumer protection, and adds environmental protection as an ancillary objective. In particular, by promoting sustainable consumption through repair and reuse, this proposed Repair Goods Directive should contribute to a circular economy and the green transition. Plainly, it aims to achieve a moderate level of repair standardization and indirectly motivate the waste avoidance.

Already between April and November 2023, a large number of discussions with the Council of EU occurred and on 21st November 2023 amendments of this first special proposal by the European Parliament were presented by the rapporteur René Repasi from the Committee on the Internal Market and Consumer Protection. These activities testify to the fact that the special right on repair is at the centre of attention and, along with one of the top sustainability evils, if not the very top sustainability evil, is greenwashing. The procedure 2023/0083/COD regarding COM (2023) 155 is subject to discussions and amendments by the Council of the EU and the European Parliament.⁶³

IV.2. The Proposal for a Green Claims Directive – You shall not green claim lie!

The subject matter of the second special proposal is the fight against the greenwashing which is a real and omnipresent problem with disastrous effects for sustainability and generally B2C setting and internal market. Directly in the introduction of this proposal are summarized statistics about 40% of green claims which are unsubstantiated and about 53% of environment claims which are vague and misleading. The answer to this problem is the substantiation. Table 7, below, summarizes the key provisions of this second special regime proposal.

⁶³ In: *eur-lex.europa.eu* [online]. [2024-04-11]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52023PC0155>>.

Tab. 7 Proposal for a Green Claims Directive

Green Claims Directive	
Explanatory Memorandum	In March 2022, the Commission proposed to update Union consumer law to ensure that consumers are protected and to empower them to contribute actively to the green transition. This proposal provides more specific rules (<i>lex specialis</i>) and complements the proposed changes to the Unfair Commercial Practices Directive (<i>lex generalis</i>)... of consumers in accelerating the green transition ... More than 200 environmental labels are used on the Union market ...
Preamble	Claiming to be “green” and sustainable has become a competitiveness factor, with green products registering greater growth than standard products...If environmental claims are not reliable, comparable and verifiable, consumers and other market actors cannot fully leverage their purchasing decisions to reward better environmental performance.
Art. 1	This Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.
Art. 3	<p>Substantiation of explicit environmental claims</p> <p>1. Member States shall ensure that traders carry out an assessment to substantiate explicit environmental claims. This assessment shall:</p> <p>(a) specify if the claim is related to the whole product, part of a product or certain aspects of a product, or to all activities of a trader or a certain part or aspect of these activities, as relevant to the claim;</p> <p>(b) rely on widely recognised scientific evidence, use accurate information and take into account relevant international standards;</p> <p>(c) demonstrate that environmental impacts, environmental aspects or environmental performances that are subject to the claim are significant from a life-cycle perspective;</p> <p>(d) where a claim is made on environmental performance, take into account all environmental aspects or environmental impacts which are significant to assessing the environmental performance ...</p>

Source: prepared by the Author based on the EurLex.

As with the other three proposals, even this one is based upon Art. 114 TFEU and focuses on the functioning of the internal single market and advances special aspects of consumer protection/rights in relation to the sustainability as understood by the first common priority, the European Green Deal, and its EGD3 Circular economy action plan. This Proposal for a Green Claims Directive was a subject of discussions with the Council of the EU in March and August 2023 and is moving towards its first reading. The procedure 2023/0085/COD regarding COM (2023) 166 led to discussions in the Council of the EU in

March and August 2023 and passed to the first reading in the European Parliament in March 2023.⁶⁴

Both special proposals from March 2023 aim to bring *leges speciales* to order businesses to move from illusory general statements to real and controllable action – they must inform about the reparability of their products and their labelling is regulated. They are considered to be a superstructure and so cement the green transition. Consumers should be able to make sense of the many labels on the environmental and other CSR performance of products (both goods and services) and businesses. Products should be repairable, and their labels and claims should be credible and trustworthy, so consumers can make informed purchasing decisions for sustainable, durable, repairable, reusable and re-cyclable products. A well-informed consumer should become a committed *homo responsabilis* who, with both his head (knowledge) and heart (intuitions and feelings), should push for sustainability in a B2C setting.

V. CONCLUSIONS

The pro-sustainable trend became further reinforced in the aftermath of the UN Agenda 2030 in the context of the demand for a shared responsibility and multi-stakeholder approach and a more vigorous implementations of SDGs⁶⁵ in the EU by the current European Commission and its six priorities, including the European Green Deal.⁶⁶

The review of the current EU strategies and law reveals an ongoing drive for a multi-stakeholder pro-sustainability model with a progressively growing involvement of consumers. The analysis of two sets of proposals (Ecodesign Regulation, Green Empowerment Directive, Repair Goods Directive and Green Claims Directive) indicates that the greening of the economy is to be achieved with the active help of informed and committed consumers. The concept of *homo economicus* is to be replaced by *homo responsabilis* and European businesses should provide such a consumer not only with reliable and trustworthy information via digital product passports but, in addition, need to make sure that their products are durable and repairable and there is not even a hint of greenwashing or similar unfair or dishonest practices. These legislative trends provide guidance, if not directly an order (see the proposed move from the Ecodesign Directive to Ecodesign Regulation), to businesses to modify accordingly their conduct, products and even their customer approach. Newly, a European consumer is to be a pro-sustainability informed, armed and committed player ultimately deciding about the destiny of products, businesses and even the entire European Green Deal drive of the current European Commission. So far, neither extensive studies have been completed nor the legislative process re-

⁶⁴ In: *eur-lex.europa.eu* [online]. [2024-04-11]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52023PC0166&qid=1711404622864>>.

⁶⁵ BORCHARDT, S. et al. *Mapping EU Policies with the 2030 Agenda and SDGs* (Luxembourg: Publications Office of the European Union), 2022. In: *dox.doi.org* [online]. [2023-12-12]. Available at: <<https://dox.doi.org/10.2760/110687>>.

⁶⁶ MacGREGOR PELIKÁNOVÁ, R., SANI, M. Luxury, Slow and Fast Fashion – A Case study on the (Un)sustainable Creating of Shared Values. *Equilibrium. Quarterly Journal of Economics and Economic Policy*. 2023, Vol. 18, No. 3, pp. 813–851. <<https://doi.org/10.24136/eq.2023.026>>.

garding the discussed quartet of proposals finalized, and ongoing following and deeper, broader and longitudinal analyses are to be done and published in the future. Nevertheless, even based on this pioneering study it can be suggested that, unless the European Commission completely changes its priorities, European businesses should genuinely do more than merely checking the CSRD scope and issuing various CSR/ESG reports to satisfy the legal duty and to please shareholders and investors, instead, the pendulum is moving further and the ultimate decision-maker should be the responsible consumer provided with the information about the sustainability of conduct and products by businesses. This should complete the process of making all (!) stakeholders responsible and lead to a genuinely sustainable society with a green(er) economy.