

# How EU Consumer Law can contribute to the Great Post-Pandemic Recovery?

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## Editorial

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### How EU Consumer Law Can Contribute to the Great Post-Pandemic Recovery?

2020 was probably one of the most difficult years since the second world war in Europe and across the globe. COVID19 has challenged and changed most aspects of our lives. From working, access to health care, shopping to social interactions, we all had to make efforts and adapt in order to contain the pandemic. With the approval and production of vaccines, a light shines at the end of the tunnel. Nevertheless, it is likely that many things will simply not be the same as before the pandemic. Optimists are saying that the pandemic is providing an opportunity to push the reset button and make things differently, to move towards a more sustainable and equitable society.

One therefore must wonder about the role EU law will play in the post-pandemic recovery. Two phenomena will underprint the future of EU law, first the increased digitalisation of our economy and society and, secondly, the pressing need to start the green transition. Areas like taxation and EU State aid law will certainly have a predominant role in the post-pandemic recovery. The European Commission extended one more time the State aid Temporary Framework until the end of 2021 and some argue that it would need to be extended further in time in so far lockdowns across the EU subsist. Another area of law which is likely to become more important than ever in the coming years is EU consumer law. Consumer law regulates the relationships between professionals and consumers in our social market economy. EU consumer law is rooted in normative principles like fairness and protection of the weaker party, principles that are essential to guarantee that consumers benefit from the digital transformation and to ensure that no one is left behind in the digital and green transition.

In November 2019, the European Commission launched its New Consumer Agenda. The Agenda provides the Commission's vision for EU consumer policy in the next five years and it focuses on five key areas: digitalisation, sustainability, better enforcement of consumer law, protection of certain groups of consumers and international co-operation. This document also analyses the contribution of EU consumer policy to the mitigation of the long-term effects of the pandemic on consumers.

#### Digitalisation and Consumer Law

One of the main tools of consumer law to ensure consumers can make informed consumption choices is mandating information disclosure. However, personalisation technologies are challenging the boundaries of this consumer protection mechanism. Data collection, profiling, targeting, and personalised offers are arguably limiting the ability of consumers to rely on outside options from those

offered by incumbent companies. Interface design and dark patterns are used to steer consumers to take decisions that are in the interests of suppliers but not always in the benefit of consumers. Further to this, the massive shift to online shopping as a result of the lockdowns caused by the pandemic has increased consumer exposure to multiple online unfair practices ranging from misleading claims, price gauging and the sale of unsafe products in online marketplaces.

Thus, what should be the response of consumer law to this new reality? The Unfair Commercial Practices Directive (UCPD) is the instrument designed to protect consumers against unfair, misleading, and aggressive practices. However, as shown in the recent action against the video sharing platform Tik Tok launched by consumer groups in Europe last month under the coordination of BEUC, the European Consumer Organisation<sup>1</sup> (in the form of an external alert to the Consumer Protection Cooperation Network), unfair practices in online ecosystems like social networks take a new dimension by posing challenges not only to the enforcement of consumer law (e.g. misleading advertising by platforms users such as influencers) but also other areas of law such as data protection (e.g. intelligible and complete information regarding personal data processes) and media law (e.g. protection of children against harmful content and inappropriate advertising). The Consumer Agenda indicated that the Commission will analyse whether the UCPD is enough to protect consumers or “whether additional legislation or other action are needed in the medium-term in order to ensure equal fairness online and offline.” First steps to adapt the consumer protection framework have already been taken with Directive 2019/2161 which amended several consumer law directives mainly in order to take account of digitalisation and to improve public enforcement. Complementing this framework, a proposal for a Digital Services Act targeting the role of online platforms as intermediaries has been published in December 2020 together with the Digital Markets Act.<sup>2</sup> The ongoing reform and adaptation of EU law is of course to be welcomed and scholars, consumer organisations, stakeholders and decisionmakers will certainly have a lot to say about the future of consumer law in the era of digitalisation.

### **Sustainability and Consumer Law**

The second big contribution of consumer law in the recovery process from the pandemic will be to the sustainable transition. The climate crisis is calling for strong and decided action. It is necessary to change not only the way we produce but also how we consume. In this transition, consumers will play a central role. Consumers are increasingly sensitive about their impact on the environment, but it is difficult for them to find sustainable products on the market which are also affordable.

Further to this, as shown by a recent ‘sweep’ exercise by the Commission and national consumer authorities the market is flooded with misleading green claims. Greenwashing is therefore perhaps the biggest threat to consumer trust in the green transition and therefore the EU will need to consider more efficient tools to reduce consumers’ exposure to such misleading claims as well as to discourage companies from using them. The Commission is expected to publish this year a proposal on empowering consumers in the green transition. This initiative would aim to ensure that consumers obtain reliable information on products, including their lifespan and repair options, prevent exposure to ‘greenwashing’ as well as setting minimum requirements for sustainability logos and labels. Such a proposal has the potential to becoming a European yardstick for the promotion of environmental features of goods and services, complementing, and addressing the limitations of existing consumer protection instruments.

Finally, the green transition will demand considerable resources from governments and citizens, both as consumers and taxpayers. In subsidising the shift to a more sustainable economy and society, it is essential that the most vulnerable ones are protected and not left behind. Accessibility, inclusiveness, and affordability must be three essential components of the green transition.

1 Cf. BEUC press release, 16.2.2021, “BEUC files complaint against TikTok for multiple EU consumer law breaches”, <https://www.beuc.eu/publications/beuc-files-complaint-against-tiktok-multiple-eu-consumer-law-breaches/html>.

2 See the contribution in this issue by *Podszum/Bongartz/Langenstein* on the DMA.

### The Task ahead

2021 promises to be another challenging year. Vaccination is rolling out slowly but steadily across the EU and hopefully soon governments will be able to ease restrictions. Probably many things will not be the same, but we must embrace change and ensure that the future of EU law is up to that challenge.

As we join the advisory committee of this journal, the EuCML, we look forward to contributing together with the Editors and the fellow advisors in making this a space in which ideas can be shaped and discussed making a humble contribution to the Great Post-pandemic Recovery.

*Caroline Cauffman, Oreste Pollicino and Agustin Reyna\**

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