

# Prevention greenwashing in the Circular Economy: *The role of consumer legislation*

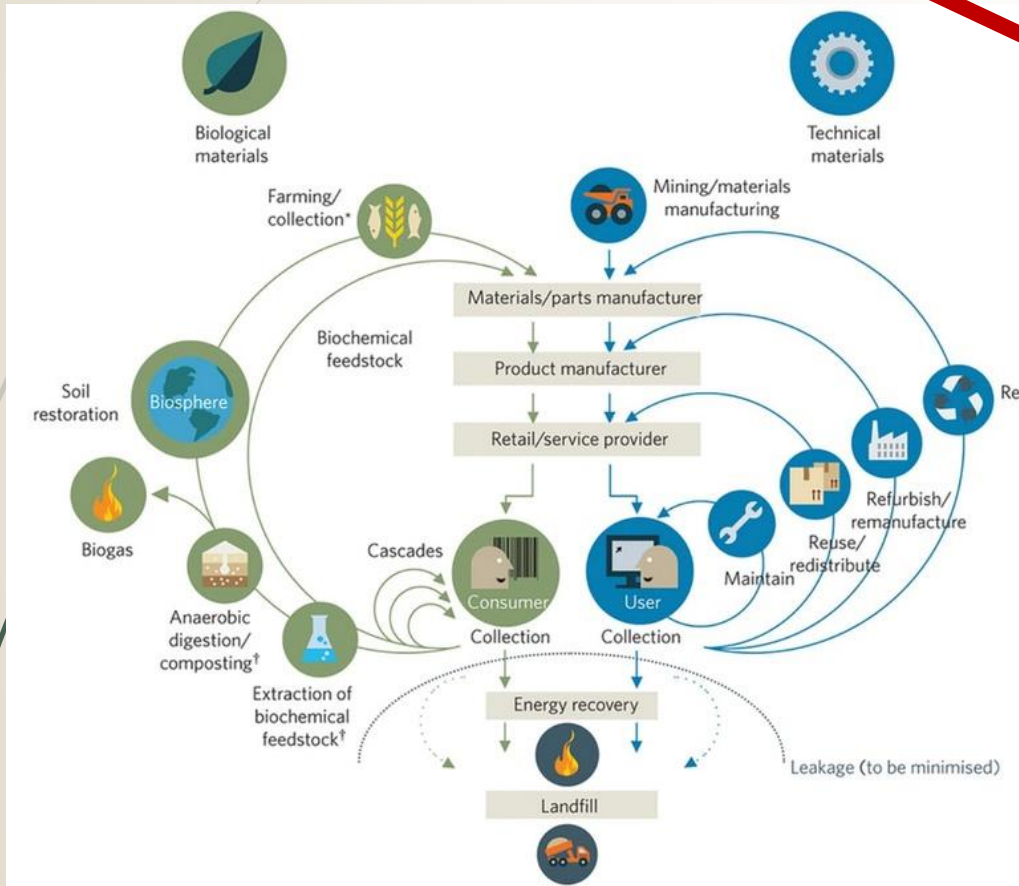
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Oslo, 4 December 2020

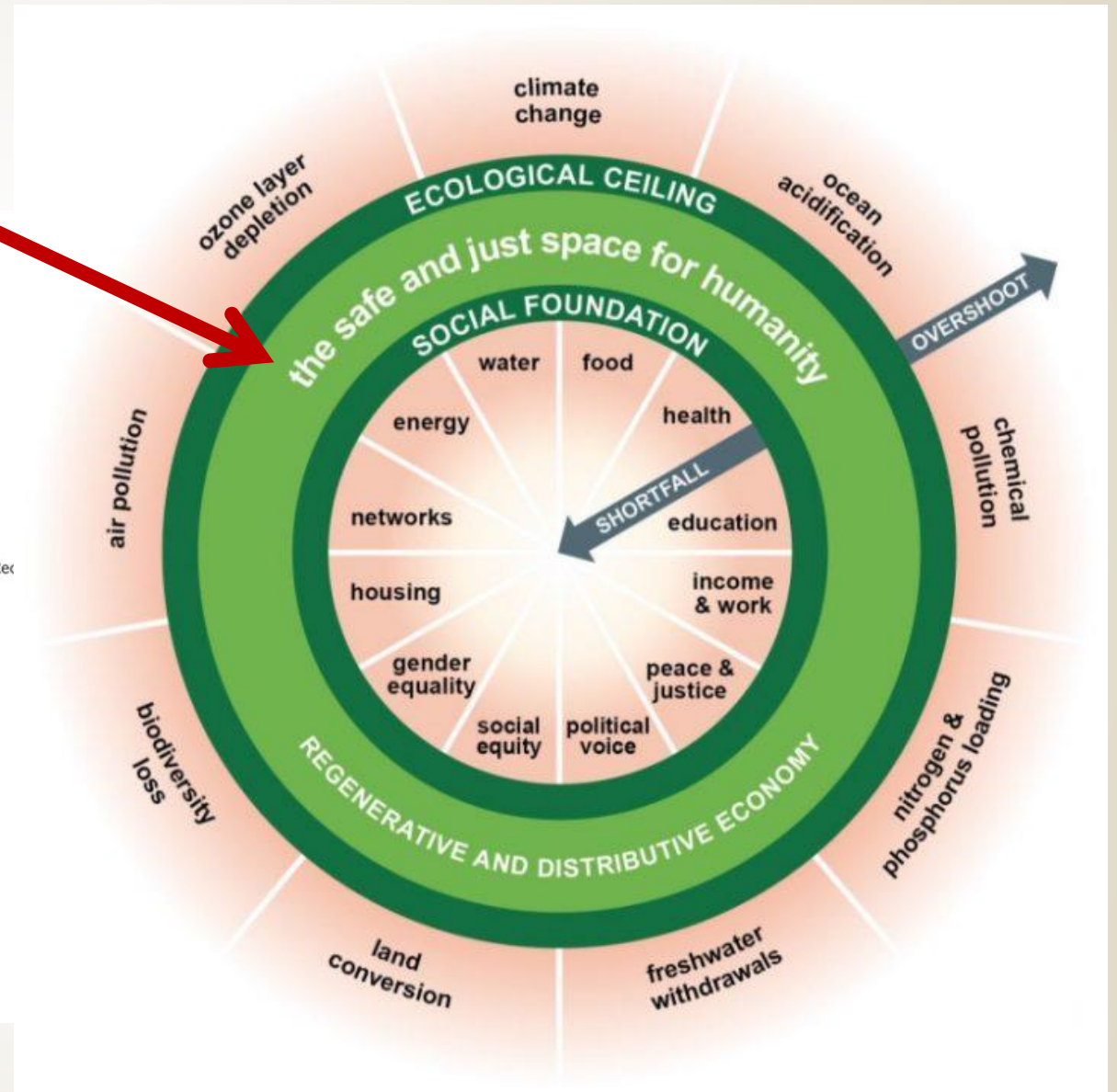
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# Circular Economy



Source: Ellen MacArthur Foundation



Source: Raworth

# Priorities for consumption policies



Source: based on a figure from E. Maitre-Ekern and C. Dalhammar (2019)

# Main obstacles faced by consumers

- Lack of (useful and trustworthy) information
- Bad experience with early failures or misleading information
- Difficulty to access repair: availability and cost
- Throwaway culture
- Lack of access to (or knowledge about) redress

# Examples of commercial practices that create confusion and misinformation

Planned/premature  
obsolescence



Greenwashing



Proliferation of labels,  
logos, and other  
information tools



# DG Just environmental claims study (2014)

- **3 out of 4 products** display an environmental claim or label in the EU
- **60% of EU consumers are receptive to environmental claims** when making their purchase decisions.
- A majority (61%) find it difficult to understand which products are truly environmentally friendly.
- Mistrust in environmental information displayed on products and in advertisements is relatively common. 44% of consumers say they do not trust this type of information

# EU Circular Economy Action Plan COM(2020)98 final

KEY ACTIONS	DATE
<b>A SUSTAINABLE PRODUCT POLICY FRAMEWORK</b>	
Legislative proposal for <b>a sustainable product policy initiative</b>	2021
Legislative proposal <b>empowering consumers in the green transition</b>	2020
Legislative and non-legislative measures establishing a new <b>“right to repair”</b>	2021
Legislative proposal on substantiating <b>green claims</b>	2020
<b>Mandatory Green Public Procurement (GPP) criteria and targets</b> in sectoral legislation and phasing-in <b>mandatory reporting on GPP</b>	as of 2021
Review of the <b>Industrial Emissions Directive</b> , including the integration of circular economy practices in upcoming Best Available Techniques reference documents	as of 2021
Launch of an <b>industry-led industrial symbiosis reporting and certification system</b>	2022

# EU's initiative: strengthening the role of consumers in the green transition

## About this initiative

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<b>Summary</b>	<p>Helping consumers play their part in achieving a more sustainable economy ('green' transition) is a key goal of the EU consumer policy revision (the 'consumer agenda').</p> <p>This initiative mainly aims to:</p> <ul style="list-style-type: none"><li>• ensure that consumers obtain reliable &amp; useful information on products, e.g. on their lifespan and repair options</li><li>• prevent overstated environmental information ('greenwashing') and sale of products with a covertly shortened lifespan</li><li>• set minimum requirements for sustainability logos &amp; labels.</li></ul>
<b>Topic</b>	Consumers
<b>Type of act</b>	Proposal for a directive

Source: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Empowering-the-consumer-for-the-green-transition>



# Timeline

- **Start of initiative:** June 2020
- **Public consultation:** closed 6 October 2020
- **Study by external consultants (ICF and Milieu):** expected by the end of the year
- **Proposal for a directive: 2nd quarter of 2021**

# Key areas for action:

## ➤ **Information:**

- Lifespan
- Repair
- Software update policy

## ➤ **Preventing 'unsustainable' commercial practices:**

- Planned/premature obsolescence
- Greenwashing
- Proliferation of logos

## ➤ **Enforcement**

## Not included in the initiative: **Legal consumer guarantees**

### ➤ **Consumer Rights Directive (EU) 2019/2161**

- Minimum 2-year legal guarantee
- 6-month reversal of burden of proof

### ➤ **SMART Reform Proposals:** <https://ssrn.com/abstract=3596076>

- Guarantee for expected product lifetime
- No reversal of burden of proof
- Priority to repair as remedy

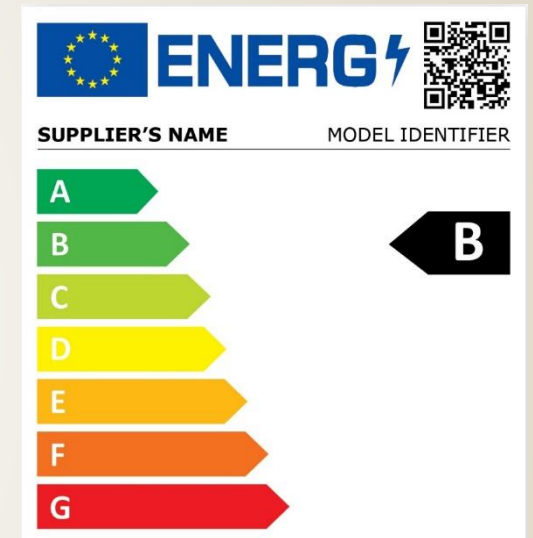
# Existing EU legislation on **information**

## ➤ **Energy labelling Regulation (EU) 2017/1369:**

- Mandatory scheme
- Covers only energy-related products
- Initial focus is energy efficiency, but durability and reparability information are also being introduced

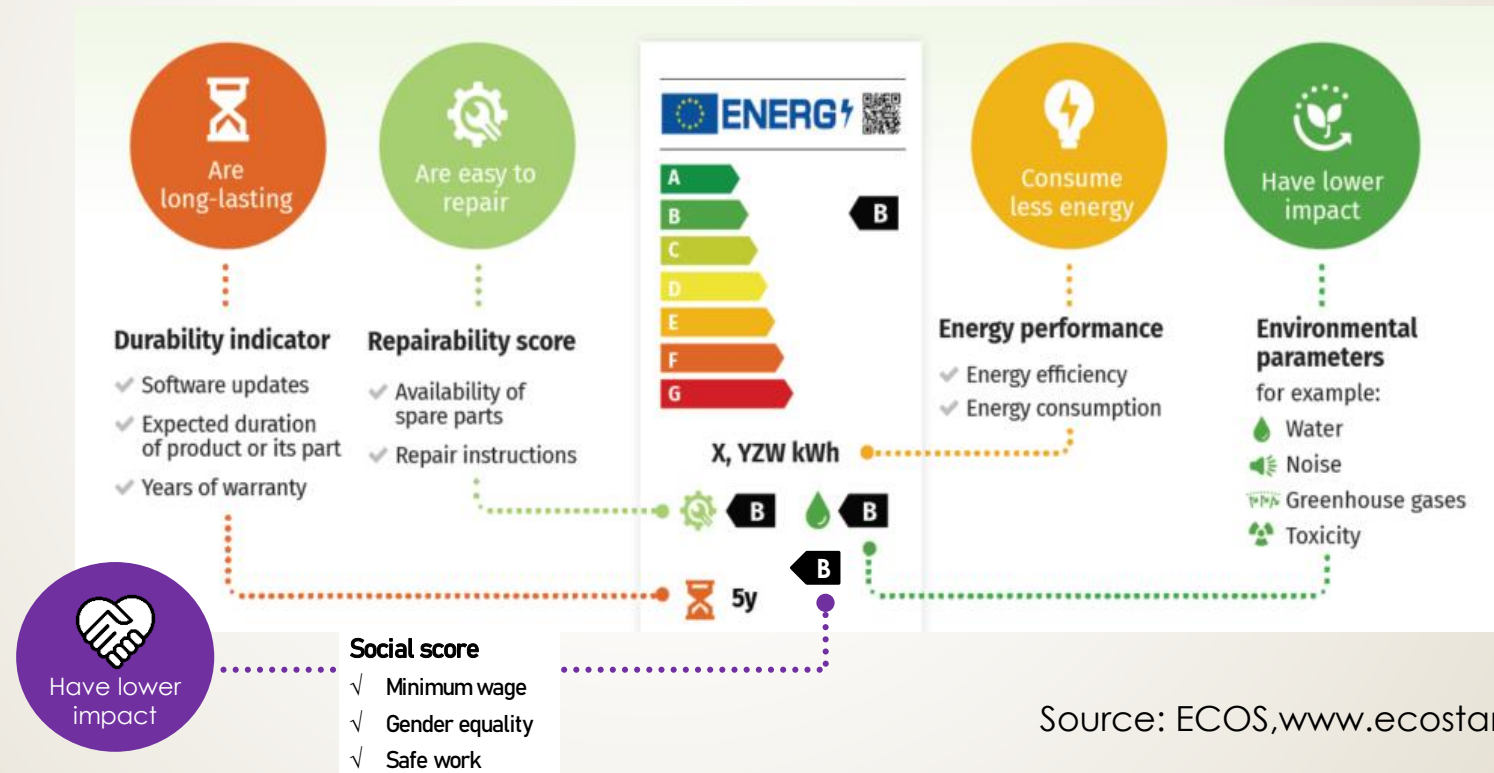
## ➤ **Eco-label Regulation (EC) No 66/2010:**

- Voluntary scheme
- Does not cover medicinal products
- Focus on life cycle stages of specific products with highest environmental impacts



# The future of **energy labelling**?

- Increased focus on durability, reparability and reusability



Source: ECOS, [www.ecostandard.org](http://www.ecostandard.org)

- *Inclusion of other sustainability criteria?*

# Content of a new directive?

## Information

- Mandatory provision of **specific information** at point of sale:
  - Lifespan: guaranteed? Expected? Compared?
  - Repair:
    - Design allowing reparability? Repair score system? Expected price of repair?
    - Availability of spare parts in time? Access to spare parts? Cost of spare parts?
  - software update/upgrade: availability in time? Access? Cost?
- Mandatory provision of **enviromental characteristics** at point of sale:
  - PEF method? ISO standards? Climate impact?

## ...and sustainability due diligence?

- **SMART Reform Proposals:** <https://ssrn.com/abstract=3596076>
- **Right to know** for all citizens
  - Upon request
  - Covering all social and environmental life-cycle impacts
- Corresponding **duty to inform** for producers

# Existing EU legislation on **commercial practices**

- The Unfair Commercial Practices Directive (UCPD) 2009/25/EC
  - business-to-consumer commercial practices
  
- Three-tiered cascade system: Article 5
  1. Unfair practice as per **Annex I**?
  2. *If not*, is it an aggressive or misleading practice as per **Articles 6 to 9**?
  3. *If not*, is it unfair as per the definition in **Article 5(2)**?
    - it is contrary to the requirements of professional diligence, *and*
    - it materially distorts or is likely to materially distort the economic behavior of the average consumer



# How much does UCPD address the problem?

- ▶ **Planned obsolescence** is not considered unfair per se: but failing to inform about it is
  - ▶ Article 7: misleading omissions ('omits information [about] the main characteristics of the product')
  - ▶ Samsung and Apple condemned in Italy and France
- ▶ no specific rules on **environmental claims**: as long as they are not presented unfairly
  - ▶ Article 6: misleading actions ('contains false information and is therefore untruthful')

# Content of a new directive?

## Commercial practices

- Preventing **planned/premature obsolescence**:
  - Add to existing blacklist of UCPD?
  - General prohibition?
  - Information requirement about specific product design or known causes of failure?
- Prohibiting **greenwashing**:
  - Amend UCPD to ban all environmental claims?
  - General prohibition?
  - Ban vague statement ('green', 'sustainable', 'eco', etc.) unless proven by e.g. ISO-type ecolabels)?
- Regulating the use of **labels and logos**:
  - Use of voluntary labels/logos provided fulfilment of minimum set of criteria?
  - Allow self-declaration? Request pre-endorsement?

# France: Law against waste and for the circular economy (2020)

## ► Repairability index:

- Mandatory display for EEE of a simple information on repairability
  - Starting with washing machines, smartphones, laptops, lawnmowers and TVs
  - Scoring system (scale 1 to 10) calculated on basis of 5 criteria categories: documentation; dismantability; spare parts availability; price; specific criterion per product category
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- Draft implementing measures notified to the European Commission, expected entry into force **1 January 2021**

# France: repairability index calculation

Criteria	Sub-criteria	Score of subcriterion /10	Weighting factor of subcriterion	Score of criterion /20	Total criteria scores /100
CRITERION 1 : DOCUMENTATION	1.1 Availability of the technical documentation and other documentation related to user and maintenance instructions	0	2	0	0
CRITERION 2 : DISASSEMBLY, ACCESSIBILITY, TOOLS, FASTENERS	2.1 Ease of disassembly parts from List 2*	0	1	0	
	2.2 Necessary tools (List 2)	0	0,5		
	2.3 Fasteners characteristics parts from List 1** and List 2	0	0,5		
CRITERION 3 : AVAILABILITY OF SPARE PARTS	3.1 Availability over time parts from List 2	0	1	0	
	3.2 Availability over time parts from List 1	0	0,5		
	3.3 Delivery time parts from List 2	0	0,3		
	3.4 Delivery time parts from List 1	0	0,2		
CRITERION 4 : PRICE OF SPARE PARTS	4. Ratio between price of parts from list 2 to the price of the product	0	2	0	
CRITERION 5 : SPECIFIC CRITERION	5.1 Accessibility of usage-counter to consumers	0	1	0	
	5.2 Free remote assistance	0	0,5		
	5.3 Possibility to reset softwares	0	0,5		
<b>reparability index on 10</b>					<b>0</b>

\* list 2: list of a maximum of 3 to 5 spare parts (depending on the category of equipment concerned) whose broken or malfunctioning parts are the most frequent;

\*\* list 1: list of a maximum of 10 other spare parts (depending on the category of equipment concerned) whose good condition is necessary for the operation of the equipment.

# France: repairability index logo



Thank you for your attention! 😊