Consumer trust is essential to enable the green & digital transformation in retail

I. Key messages

1. **Supporting consumer trust** is essential to enable retail to deliver on consumers' expectations of the digital transformation and green transition.

2. **Effective and efficient enforcement** is fundamental to creating a competitive retail sector and a level playing field between EU and third-country traders.

3. **Improving the quality of legislation** to increase trust and compliance, consolidating and simplifying existing rules before making new ones, and striving for maximum harmonisation.

II. Rapidly changing retail landscape and consumer trends

In the past years, the retail sector has accelerated its digital transformation and is at the forefront of the green transition. Consumers demand more sustainable choices and business models, and also want to enjoy the advantages of digital innovations enhancing online and brick-and-mortar sales channels.

Retailers provide an essential service to consumers. We make sure that consumers have access to a wide choice of affordable food and non-food products and ancillary services, also during crises.

Our sector has made an enormous effort responding to the different crises that have rocked the European continent. The COVID pandemic, high energy prices, high inflation and increasing costs. We have seen rapid and extensive regulatory change at the national and EU level, addressing crises but also trying to channel and support the digital transformation and green transition. At the same time, our research with McKinsey shows that the sector faces an investment gap of €600 billion until 2030.[1]

In recent years, we have seen significant consumer behavioural change. Consumer confidence is rising while inflation drops, and consumer purchasing power is recovering.[2] Consumers appreciate more sustainable and healthy products, but at affordable prices. Consumers increasingly see retailers as guardians of ethics and sustainability.[3] This makes clear that looking ahead, both retailers and consumers need support and stability to navigate a rapidly changing environment. Consumer trust will

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[1] Transforming the EU Retail & Wholesale Sector, EuroCommerce & McKinsey, 2022
[2] Household Survey excerpt in Economic Forecast, European Commission, Summer 2023
[3] State of Grocery Retail 2024, EuroCommerce & McKinsey, 2024

be paramount to drive demand and innovation, and enable retailers to meet consumers' and decision-makers' expectations.

III.   Increase consumer trust

Retailers compete fiercely for consumers' favour every day, making them quite aware of what consumers expect and need. To maintain and grow that relationship it is pivotal that consumers understand and trust that their rights are respected, and that they have access to redress, no matter where, from whom, and how they purchase products and services. This trust is the foundation for growth and innovation, as it enables small, new and unknown traders to market their products and services to consumers.

To serve consumers better it is important to understand as best as possible what consumers want. This involves collecting and analysing data that will help to offer more meaningful products or services and increase convenience by reducing time spent and annoyance. This is why retailers often have loyalty programmes and provide personalised offers to customers. It allows them to ensure that their customers get the right offer at the right time, with the right message, and through the preferred channel.[4] Consumers also demand a more personalised approach from retailers and the ones that do this successfully are outperformers in the market.[5,6]

IV.   Consumer information is essential for making informed choices

Retailers communicate with millions of consumers every day through product labels, point of sale information, leaflets, websites, apps and other means of modern communication helping them to make informed purchasing choices. This could be about price, composition, health, sustainability, use, safety, fair trade, guarantees, etc. Some of this information is essential and some of this information is nice to know. Retailers are committed to providing consumers with clear, understandable and reliable information.

Because space on a product is limited (especially smaller products) we need to be mindful of what type of information is essential to the consumer to be able to consume or use the product safely, and what type of information could also be provided in alternative ways e.g. digital applications, QR codes, websites. Currently, consumers (and retailers) are suffering from an information overload which is only adding costs and complexity and does not provide added value to consumers.

Also, not all product information is meant for consumers but instead for other businesses and authorities.[7] It is important that decision-makers and enforcement authorities respect that distinction.

Therefore, we address below several key issues that should be considered in future discussions about consumer information requirements.

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[4] Navigating the market headwinds – The State of Grocery Retail 2022: Europe, EuroCommerce & McKinsey, 2022

[5] During COVID many consumers started to buy or buy more online because many stores were closed or out of safety concerns. Recent figures now show that many consumers buy again in brick & mortar stores. However, the long-term trend remains omnichannel.

[6] Global Powers of Retailing 2023, Deloitte: every large retailer quoted in the report invest heavily in omnichannel and sees this as the future model to engage with customers

[7] For example, the CE marking is a symbol that indicates that a product has been assessed by the manufacturer and meets EU safety, health and environmental protection requirements. This information is meant for competent authorities and not for consumers.

Ensure information is meaningful to consumers & manageable for business

In the past years, many new EU reporting and information requirements have been introduced and more are in the pipeline.[8] The different local authorities that are responsible for the implementation, application and enforcement often do not coordinate and have different views which do not always take into account the perspective of consumers or businesses. This leads to an information overload for consumers, due to which they are not able anymore to comprehend the information offered and miss out on what is really relevant. This massive and diverging regulatory overload may even make certain consumers vulnerable if they cannot understand and process all the data. It is important to assess which information is essential and which information is nice to know, and could also be provided in other ways (e.g. digital tools) but still accessible to all consumers. Of some new reporting obligations it is unclear whom it is meant for, and if it will ever be used.[9]

At the same time, also businesses are increasingly burdened. Information is often not static, but it changes due to a change in suppliers, composition, seasonality, sales or production location, change in the way of working, (local) legislation, etc. It is more and more difficult to keep track of new obligations if every 1 or 2 years new ones are added, and the cumulative burden of compliance is steeply increasing. Frequent legal changes also lead to overlapping information requirements that have to be provided in different formats. [10]

As more and more consumers rely on digital tools to find information and buy products, we believe that digital information channels provide retailers with alternatives to satisfy consumers' demands for more information. We would encourage a more coordinated EU-level approach to providing information through digital tools, focussing on making it easier for businesses and consumers. Importantly, clarity is needed on the responsibilities and obligations of different supply chain operators regarding the provision, security, access and quality of this information and responsibilities should match the role of the operator e.g. retailers often depend on producers providing certain information who made the products they sell.[11]

1. *For the next mandate, we would recommend that the EU institutions map all existing consumer information requirements in all EU legislation, and based on that mapping discuss with stakeholders how to ensure consumer information remains meaningful, understandable and manageable.*

2. *EuroCommerce encourages the Commission to develop a coordinated and uniform EU-level approach to providing consumer information, including via digital tools, with all relevant stakeholders.*

Digital Product Passports could modernise access to information

Digital Product Passports (DPPs) are an excellent opportunity to modernise and digitalise product information for consumers, authorities, operators, etc. DPPs are an opportunity to streamline information provisions and simplifying and enhancing traceability. DPPs should be founded on open and international standards, interoperability, and proportionality. To gain experience with DPPs and avoid overambitious goals, we propose to start by including step-by-step only already existing legal

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[8] E.g. Empowering Consumers for the Green Transition, Promoting repair and reuse of products, Digital Services Act, Corporate Sustainable Reporting Directive, Corporate Sustainable Due Diligence Directive, Deforestation Directive, Green Claims, Ecodesign for Sustainable Products, AI Act, Sale of Goods, Digital Content, Textile labelling, etc

[9] E.g. several reporting obligations under the DSA, Deforestation Regulation

[10] Corporate Sustainable Reporting Directive and Corporate Sustainable Due Diligence Directive

[11] Also see chapter '**Ensure clear and balanced roles and responsibilities of every supply chain actor**'

information requirements e.g. Ecodesign. The DPPs will require sharing data along the supply chain. To protect trade secrets and intellectual property rights access should only be on a need-to-know basis, modifications should be kept track of, and each operator should be responsible for information linked to its role in the supply chain and liable for the information provided.

> *3. We recommend that the EU institutions explore together with stakeholders how Digital Product Passports can complement consumers' access to information.*

Ensure clear and balanced roles and responsibilities of every supply chain actor

Every business in the supply chain can only be liable or responsible for what is within its sphere of control and activities. This seems logical, but due to the increasing complexity of EU law we regularly see proposals put forward by legislators that do not allocate responsibilities to the person best placed or a mix-up of different legal concepts.

In **EU Consumer** Law retailers are covered by the concept of trader, which is the economic operator that sells directly to a consumer. However, this could also be a producer (in the role of a retailer) or other service providers like booking, rental and gaming websites. In this sense, a pure retailer is dependent on the producer to ensure a product is compliant and all the relevant information is correct. We now sometimes see that this is not well-clarified in (proposals of) new consumer legislation.[12]

On occasions, we see a mismatch between EU Consumer and **EU product law.** In the latter we have the so-called hierarchy of economic operators: the producer, the authorised representative, the importer, the fulfilment service provider and the distributor (i.e. retailer and wholesaler). In EU product law, the producer has the ultimate responsibility to ensure a product placed on the EU market is safe, the distributor is for instance obliged to make sure all the mandatory information is attached to the product but is not responsible for its veracity. An interesting mix is the recent proposal on promoting repair and reuse. It borrows elements from the product law hierarchy but places producer obligations on distributors, it copies the definition of producer of the proposed Ecodesign for Sustainable Products Regulation (product law), while the purpose in repair is not for competent authorities to identify the responsible operator on the Union market, but for the consumer to identify who should provide repair. These seem all small mismatches, but the purpose of e.g. the Market Surveillance Directive was to streamline obligations so economic operators did not have to check +30 pieces of EU product law to understand what their obligations were. Now, this is slowly undermined again and mixed with consumer law.

> *4. We recommend being mindful of the differences between EU Product Law and Consumer Law, and to ensure legal consistency and simplicity to increase legal certainty and keep the compliance burden for businesses as limited as possible. Clear and consistent legislation is also in the interest of consumers.*

Prevent fragmentation of the Single Market via national rules

We regularly see that at national level Member States introduce new consumer information requirements which fragment the Single Market. These often undermine or pre-empt a harmonised approach at EU level (e.g. French AGEC law and implementing acts like the French Triman logo, Romanian Nutri-score label ban, French and Belgian reparability index), infringe the free movement of goods and create additional costs for businesses that have to relabel or repackage products and adjust

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[12] Information about the commercial guarantee for durability of the producer in Empowering Consumers for the Green Transition; who is responsible for dual quality products under the Unfair Commercial Practices Directive.

their operations. These rules are not always properly notified,[13] justifications are often vague or opaque (e.g. public health, sustainability), lack a proportionality assessment and do not allow operators enough time to implement the measures. Frequently such national measures are challenged in court.

Also, the Commission should assess the impact of national and regional mandatory labelling initiatives on the functioning of the Single Market, and not undermine the free movement of goods and reduce consumer choice and increase costs.

In the end, the above leads to fragmentation and ultimately the consumer will have to pay a higher price, without receiving any benefits from it. On top, retailers are quite aware of what is driving consumers and are much better able to provide via a voluntary approach relevant information at the right time and place.

> 5. *We recommend that Member States refrain from introducing unnecessary, diverging and disproportionate national consumer information requirements, notify any draft rules according to the procedure set out in the Single Market Transparency Directive, and that as appropriate the Commission acts decisively in its role as 'Guardian of the Treaties'. We encourage EU level harmonisation where appropriate and possible, and allow for a flexible approach elsewhere.*

V.   Increase awareness among consumers and businesses

Consumers and businesses are not always aware of all their rights and obligations. There are many different rules and criteria, varying per sector, type of player, sales channel or product and service. These rules are about non-contractual, pre-contractual, contractual, legal guarantee, commercial guarantee, after-sale, redress, etc. As new consumers and businesses enter the marketplace all the time, it is important to have continuous awareness campaigns and accessible, understandable and meaningful information and procedures, including easy-to-use tools, checklists, and templates. For instance, the Single Digital Gateway and Your Europe could be relevant tools here: supporting local websites, authorities or other credible sources that help consumers and businesses to find the information they seek. But also, campaigns linked to sustainable aspects (e.g. promoting more sustainable choices like repairing or reducing food waste) are crucial to meeting EU public policy objectives.

> 6. *We recommend that the European Commission and Member States, with the support of other stakeholders, develop continuous awareness campaigns and tools for consumers and businesses regarding their rights, obligations and achieving relevant EU policy objectives.*

VI.   Need for effective and efficient enforcement

Enforcement is one of the cornerstones of the Single Market. Effective enforcement is the basis for trust between Member States, for trust between businesses and consumers, and for trust between businesses. It is important that all businesses targeting consumers in the EU comply with the relevant rules and rogue players in or outside the EU cannot take advantage of lacking enforcement, this will ensure a level playing field and fair competition.

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[13] Member States should notify national technical product rules 3 months before adoption following the procedure in the Single Market Transparency Directive. Also, when measures with equivalent effect are part of an administrative decision.

Consumers need to be able to trust that the products they buy are safe and compliant and that they can exercise their rights as appropriate. Retail has an important role here as the interlocutor between producers and consumers. We service consumers by checking whether legally required labels accompany the product and provide advice and redress to consumers. We work together with our suppliers and competent authorities and we can facilitate recalls of products.

New digital challenges & level playing field

Digital is creating new challenges as the recent debates on digital fairness have uncovered. This concept assumes that basically all consumers are vulnerable when they are in an online environment and consumer protection rules should be further strengthened.[14] However, in our view, it is yet unclear whether existing EU rules are fit for purpose due to the lack of enforcement. Many cases have been brought forward by different stakeholders,[15,16,17] but it is not clear why current rules would not be fit for purpose as EU consumer law is already quite detailed and extensive, and because of its principle-based nature also new misleading practices should be covered. If lacking enforcement is the problem more rules will not make a difference.

Our understanding from the debates on digital fairness in recent years is that many of the examples brought forward are not about retail, but about social media, gaming, booking and rental websites. It is also not clear how often certain practices would take place and what is the impact.[18] The solutions proposed are often to amend horizontal EU consumer law, which applies to all traders: including the 3.7 million retailers in the EU. It seems grossly unfair to burden millions of businesses with new rules that are not relevant to them and only increase compliance costs and complexity. So, the risk is that all retailers and other traders in the EU will be confronted with higher regulatory requirements. This will unlikely solve the problem with a smaller group of rogue traders that try to circumvent any new requirements by default.

In effect, this will increase the price gap between compliant and non-compliant products and services, which in turn may make it more tempting for consumers to opt for the cheaper non-compliant version. In some cases, like in the European Parliament's study on personalised pricing[19] examples of the bad behaviour by third-country operators are used to argue there is a problem in the EU, while the problem here is caused by third-country players targeting EU consumers. Interestingly, we hear and see that national authorities often do not cover third-country traders because they think it is not possible or too difficult to enforce EU rules. Instead, they focus only on players established in their territory, even while third-country traders can have significant market share online. The solution here is better enforcement of third-country operators not increasing the burden for EU-based retailers.

Another issue that is closely linked to creating a level playing field for all businesses targeting consumers in the EU is ensuring that the rules are enforceable. It is often overlooked in existing and new rules how rules will be enforced over all players. For instance, in the proposal on promoting repair and reuse of products new obligations are introduced for sellers and manufacturers, but many non-food products are produced outside the EU. So, who will ensure that in the future consumers that directly import products[20] can have these repaired when there is no EU producer and there are no

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[14] Towards European Digital Fairness - Response paper for the REFIT consultation, 2023, BEUC
[15] "Dark patterns" and the EU consumer law acquis, 2023, BEUC
[16] Behavioural study on unfair commercial practices in the digital environment : dark patterns and manipulative personalisation : final report, 2022, DG JUST
[17] Personalised pricing, 2022, EP
[18] One example was that traders would place products in consumers' online shopping basket that they had not selected themselves. This could indeed be an unfair practice, but consumers could simply exercise their right of withdrawal and send it back.
[19] idem
[20] Purchased directly online from a third-country trader

spare parts, repair manuals or responsible operators? We believe that all consumers deserve effective enforcement, not only the ones shopping on local websites. This lack of achievable enforcement makes again compliant products again a bit more expensive than non-compliant products, and may increase the purchase of non-reparable products by consumers because they will be cheaper.

> 7. *We urge the Commission and Member States to improve enforcement of existing rules and to test whether existing rules are fit for purpose against new unfair practices.*
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> 8. *We urge the Commission and Member States to consider in future assessments which traders are breaching EU consumer protection rules, to prevent unnecessary new rules on traders that are or strive to be compliant.*
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> 9. *We urge EU legislators to ensure that when reviewing or creating new rules they make sure that these are enforceable over all players targeting consumers in the EU to ensure a level playing field.*

Enhancing compliance

Anticipating the review of the Consumer Protection Cooperation Regulation in the next mandate, EuroCommerce believes that the CPC network can play a more important role in enforcing EU consumer law cross-border and against non-compliant third-country traders. Trade associations could play a more supportive role in identifying systemic infringements of EU consumer rules. However, such a role should be linked to a structural dialogue with CPC authorities and other stakeholders about where there is high non-compliance in the market with certain provisions or where new misleading practices arise.

In addition, to increase compliance by traders, trade associations could work together with CPC authorities to have a more structured approach to enforcement actions. This could entail a pre-determined enforcement priority agenda where for instance every six months CPC authorities would focus via joint actions on compliance with specific provisions of EU consumer law e.g. Product Indication Directive, right of withdrawal, pre-contractual information, etc. Trade associations would inform their members what the focus would be of enforcement authorities and together with CPC authorities increase awareness among trades of how to be compliant by organising campaigns, workshops, etc. This step-by-step approach could immensely improve overall compliance in several years.

> 10. *We recommend setting up a structured dialogue between CPC authorities, traders and other stakeholders:*
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> • *to identify areas of systemic infringements where overall stronger enforcement is needed;*
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> • *to develop an EU enforcement and compliance priority agenda, where CPC members commit to focusing on a different priority area every six months, accompanied by compliance awareness campaigns for traders by CPC authorities and trade associations.*

This could fit into a wider preventive agenda where the focus of enforcement authorities would shift more to supporting traders on how to be compliant than to penalise traders. Ultimately, the goal should be to have a high level of compliance with EU law. It would help businesses to absorb all the many new rules we discussed before. This will increase consumer trust and support a level playing field in the EU. This should be supported by a clear risk-based approach. Authorities should deploy their scarce resources where the risk for consumers is high and where rogue traders are active. The latter

should be subject to high fines, and not the traders that strive to be compliant but do not have the knowledge or resources to do so.

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11. We recommend Member States to focus more on helping traders to be compliant and take a risk-based approach focussing on catching rogue traders.

VII.   Improve quality of legislation

We are concerned about the regulatory tsunami in the past years in the EU. Retailers (and wholesalers) are subject to many different EU rules: legislation on food and non-food products, consumer protection, digital, sustainability, taxation, supply chains, payments, etc. This leads to a high cumulative burden for retailers.

We also see that the quality of legislation is lacking and better regulation principles are not respected. The role and responsibilities (i.e. what we can do) of retailers are often misunderstood, rules are very prescriptive, instead of harmonising rules at EU level minimum harmonisation is codified, reviews of legislation lead to new layers and more complexity, an endless list of new and sometimes overlapping information and reporting requirements without coherence is introduced, new impactful requirements are added by the Council or EP without any assessment, proposals that are clearly linked are not coordinated and concluded at the same time.[21]

EuroCommerce has been spending more and more of its resources in the past years to support members with the implementation of new rules, instead of working on new upcoming policy issues.

It is becoming almost impossible for SMEs and even compliance teams from large retailers to keep up with the change, and to understand what a priority is and what is not. Even though this issue is beyond EU consumer law the Commission, the Council and the European Parliament must keep, and make it, manageable for all retailers to implement the new rules.

In particular for EU consumer law, we believe that amending every few years the rules is an unworkable pace for businesses to comply with. Every new rule seems to add an additional layer of complexity, and there is no focus at all on further harmonisation, streamlining and simplifying the rules.

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12. We urge the EU institutions to make quality of legislation a priority, by taking into account (better):

- *Every EU initiative should be accompanied by an impact assessment and competitiveness check;[22]*

- *Preparation of an impact assessment of every amendment with a high impact;*

- *Coherence and coordination between different policy fields and align legislative agendas;*

- *The overall (new) regulatory burden in certain sectors and make the implementation and anticipation of new rules manageable;*

- *Maximum harmonisation where appropriate and possible by default;*

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[21] Price Indication Directive, Promoting repair and reuse, Ecodesign for Sustainable Products Legislation, DSA, Empowering Consumer for the Green Transition & Green claims, Modernisation of Consumer Law Directive, withdrawal button in Financial Services Directive, Waste Framework Directive and Waste criteria for textiles, etc.
[22] Long-term competitiveness of the EU: looking beyond 2030, COM(2023) 168 final

- *How to streamline and simplify existing rules.*

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EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 27 countries and 5 million companies, including leading global players and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of business and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.