

Consumers and the Green Transition Between Saying and Doing: Promising Consumer Empowerment while Restricting Consumers' Choices Is Dangerous¹

Lucila de Almeida

Fabrizio Esposito

Abstract. To deliver the Green Transition, the European Commission is just asking consumers to make green choices when they want. At the same time, EU legislative measures force consumers to take responsibility by restricting their freedom of making environmentally unsustainable choices. This mismatch is undesirable. The article first shows the existence of this mismatch and then explains why it is undesirable. The mismatch is shown with a discourse analysis of the main Commission's Communications concerning the Green Transition and a comparison with the related Directives and Regulations and their respective proposals for review. To investigate the negative consequences of this mismatch, the article identifies two mechanisms that reduce the effectiveness of the measures implementing the EU Green Deal because of the mismatch. The article concludes with the modest recommendation of a more transparent explanation of the role consumers have to play to achieve the Green Transition.

1. Introduction

The European Green Deal is the EU's main policy strategy that aims the transform of the EU economy to a sustainable economic model. Several initiatives are and will be put in place to implement this ambitious plan, which was announced with an emphatic narrative. "This is Europe's man on the moon moment", said European Commission's President Ursula Von der Leyer when she presented the Green Deal to EU MPs.²

This emphatic language makes perfect sense. An appropriate narrative can guide and coordinate individual actions and contribute to achieving policy goals.³ More technically, public narratives can create focal points. Research shows that focal points are a powerful tool for the coordination of

¹ The authors wish to thank Eva van der Zee and Kai Purnhagen for the invitation to join the Conference on "Sustainable Development and the Law: Potential and Challenges of Using Behavioural Insights" held on 23 and 24 September 2021, and the participants for the fruitful discussions – in particular Josephine van Zeven, Anne van Aaken and Samuel Becher. Sydney Delissen provided excellent research assistance.

² U. von der Leyen, EU Commission President, 'Press remarks by President von der Leyen on the occasion of the adoption of the European Green Deal Communication' (Speech at the European Commission, Brussels, 11 December 2019) https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_19_6749 accessed on 29 October 2021.

³ See https://link.springer.com/chapter/10.1007/978-3-642-31110-9_23 and See also <https://www.imf.org/en/Publications/Departmental-Papers-Policy-Papers/Issues/2019/05/20/Frontiers-of-Economic-Policy-Communications-46816>; <https://onlinelibrary.wiley.com/doi/full/10.1111/puar.13109>

individuals.⁴ In the environmental context, Greta Thunberg is an excellent example of a focal point.⁵ *Fridays for Future* have eventually mobilised millions and millions of people around the globe and contributed to creating the political space for ambitious environmental reforms. Moving from similar considerations, Terzi recommends that policy communication moves away from “messaging arguing that small and easy changes will suffice ..., but rather inspire wide public participation that is commensurate to the epochal challenge we are facing”.⁶

The recent history of the European Union provides another illustrative example of the power of an effective policy narrative. In 2012, the Euro Zone was living through a spinning crisis that was believed to be irreversible.⁷ Mario Draghi gave his famous ‘whatever it takes’ speech, the salient part of which is: “Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough”.⁸ Simply announcing that the ECB would do whatever it takes to save the Euro, by itself, had a remarkable effect on financial markets.⁹ Draghi’s powerful expression has entered into our collective imaginary. To give one example, the English expression ‘whatever it takes’ was added to the Italian Treccani dictionary as a neologism of the Italian language.¹⁰ In sum, policy communication is an integral part of a policy-maker’s normative strategy.¹¹

However, what happens if the propositions of policy communication do not match entirely the normative propositions prescribed in the legislative proposals? This article shows that there is a concerning mismatch between the European Commission’s policy communication regarding, on the one hand, what consumers are expected to do and, on the other hand, the changes envisaged in EU law that will impact consumption patterns and consumers’ lifestyles in the European Union. More precisely, policy communications of the European Commission pledge that EU will empower consumers to make the green choice if they want to do so. However, besides empowering consumers to make the green choice, the present and future EU legislation on production and consumption (will) impact consumers’ lifestyles whether they like it or not. In other words, legislative measures also force

⁴ R. McAdams, *The Expressive Powers of Law* (Harvard University Press, 2015); K. Basu, *The Republic of Beliefs: A New Approach to Law and Economics* (Princeton University Press, 2018); A. Sardo and F. Esposito, “Homo Ludicus: Expected Strategies and Jurisprudence” (2019) 2(19) *TCRS*, pp. 95-121, DOI: 10.7413/19705476006.

⁵ Empirical research has documented the existence of a ‘Greta Thunberg effect’, showing that familiarity with Greta Thunberg positively correlates with willingness to act to reduce global warming. See A. Sabherwal, M. T. Ballew, S. van der Linden, A. Gustafson, M. H. Goldberg, E. W. Maibach, J. E. Kotcher, K. Swim, S. A. Rosenthal & A. Leiserowitz, “The Greta Thunberg Effect: Familiarity with Greta Thunberg Predicts Intentions to Engage in Climate Activism in the United States” (2021) *Journal of Applied Social Psychology*, DOI:10.1111/jasp.12737

⁶ Terzi, pp. 3-4,

<https://reader.elsevier.com/reader/sd/pii/S030142152030598X?token=F4E8CA744A1CC828C7C3BA9BB17C1321AC29F1D43C1FA9C26A84FC770D2A06B6C375827F7B40EF94503C3BFA2FF3F59A&originRegion=eu-west-1&originCreation=20230127093613>

⁷ J. Tirole, “The Euro Crisis: Some Reflexions on Institutional Reform” (2012) 16 *Financial Stability Review*, pp. 225-42.

⁸ M. Draghi, President of the European Central Bank, “Speech by Mario Draghi” (Speech at the Global Investment Conference, London, 26 July 2012) <https://www.ecb.europa.eu/press/key/date/2012/html/sp120726.en.html> accessed on 29 October 2021.

⁹ C. Alcaraz, S. Claessens, G. Cuadra, D. Marques-Ibanez, & H. Sapriza, “Whatever it Takes: What’s the Impact of a Major Nonconventional Monetary Policy Intervention?” (2019) *ECB Working Papers Series* n 2249, p. 2.

¹⁰ *Vocabolario Treccani* (online edn, 2020) <https://www.treccani.it/vocabolario/whatever-it-takes-%28Neologismi%29/> accessed on 29 October 2021.

¹¹ S. Papathanassopoulos, & R. M. Negrine, *Communications Policy: Theories and Issues* (Red Globe Press, 2010).

consumers to take responsibility by restricting their freedom of making environmentally unsustainable choices.

To support the claim, the research compares the relationship between consumers and sustainable consumption as stated in the major policy documents of the Green Deal with the respective legislative reforms. It does so by applying the method of discourse analysis to the main Commission's communications – namely, the European Green Deal, the new Consumer Agenda, the new Circular Economy Action Plan, and the Fit for 55. Next, the research compares the narrative of the Commission with the EU Directives and Regulations that are referred to in these policy documents as means to achieve sustainable consumption, being them in the implementation phase or after the Commission proposal for review. These are the Directive on the Single-use plastics, the Commission proposal for a Regulation concerning batteries and waste batteries, the Commission proposal on a common charger for the mobile phones and portable devices, the reviews of the Energy Efficiency Directive, the Energy Performance of Buildings Directive. Our finding is that the European Union is not only asking consumers to make the green choice if they want to; rather, consumer empowerment is systematically complemented by limiting consumers' freedom of making environmentally unsustainable choices.

The results lead us to conclude that the European Commission is negligently missing the opportunity to create a narrative that functions as a focal point for sustainable consumption; second, and even worse, the lack of this narrative could backfire. With the support of research in behavioral sciences and especially behavioural ethics, this article suggests that the above-mentioned mismatch is likely to trim the Green Deal's sails.

Notably, this claim can also be formulated in terms of legitimacy.¹² The transparency of the policy interventions is an important determinant of its legitimacy, and research shows that the European Commission has been struggling in this regard.¹³ Indeed, the European Environmental Agency recommends to 'engage, and be transparent and accessible' as a way to 'boost public acceptance of environmental measures'.¹⁴

Accordingly, we modestly recommend giving more attention to the sacrifices that consumers will have to make to play their part in the Green Transition. In other words, consumers' responsibility for the environment shall be at the forefront of the EU communication strategy with regard to the role of consumers in the Green Transition. Consumers need to understand that the EU will do whatever it takes to make this policy succeed, and this includes demanding that consumers make sacrifices, such as having to pay more for gasoline or not being able to buy cars with an internal combustion engine in the foreseeable future.

To substantiate its twofold claim, this article is structured as follows. Section 2 introduces the concepts of consumer empowerment, protection, and responsibility. Section 3 documents the dominance of the empowerment narrative in the EU policy documents. On the contrary, it is shown in Section 4 that consumers often see their freedom restricted to reach sustainability goals. Section 5 relies on recent

¹² See with specific regard to the European Union, <https://www.europarl.europa.eu/factsheets/en/sheet/144/communication-policy> XXX.

¹³ Seminal, in this regard, http://info-a.wdfiles.com/local--files/resursi/Curtin.Meijer_Does%20transparency%20strengthen%20legitimacy.pdf; recently, see: <https://www.tandfonline.com/doi/full/10.1080/20508840.2022.2033942?src=recsys>. Using the framework proposed by Andone and Coman-Kund, the problem we identify is related to the content of the communication, which omits elements that are highly consequential in terms of persuasion.

¹⁴ EEA, 'Communication, environment and behaviour. A scoping study on the links between public communication, environment policy implementation and behavioural science', EEA Reports, 13/206, p. 34.

findings in behavioral ethics and consumer behavior research to identify at least two mechanisms that will lead the mismatch between policy communication and legislative measures relating to consumption to have negative effects. Section 6 concludes by discussing the limits of the present research and venues for future investigation.

2. Empowering and protecting to empower versus taking responsibility for the environment

For some time now,¹⁵ the Commission has conceived EU consumer law and policy as fostering consumers' interests in various, interconnected ways. The overall picture can be labelled 'empowerment paradigm', where the overarching objective is empowering consumers. The idea is that consumers are empowered when they "can actively participate in the market and make it work for them by exercising their power of choice and by having their rights properly enforced".¹⁶ Consumers shall be in the "driving seats" of the economy.¹⁷ In this context, consumer empowerment refers directly to those situations where the law focuses on "helping consumers to help themselves".¹⁸ Giving information to make better choices or the right to withdraw from a contract are clear examples of empowering techniques.

On the contrary, consumer protection (*strictu sensu*) focuses more specifically on those decisions where consumers cannot be expected to protect themselves.¹⁹ Core examples in EU consumer law include the protection from unfair contract terms and unfair commercial practices. Here, the law intervenes by prohibiting certain behaviours from traders that would impact consumers negatively. In so doing, protective measures support empowering ones. Consumers know that the law protects them when they cannot protect themselves effectively, so consumers can focus their limited bandwidth on those choice elements that they can actively control. In sum, so far, the objective of EU consumer law is empowering consumers directly via empowering techniques or indirectly by protecting them when they cannot protect themselves.

To fight climate change, more can be asked of individuals in their capacity as consumers, beyond the realms of empowerment or protection. Section 4 demonstrates that, indeed, legal measures are restricting consumers' choices with the purpose of achieving sustainability goals; but Section 3 shows that empowering consumers to make the green choice if they want to is the *leitmotiv* of EU policy communication. European Union legislation, while indeed often empowering consumers, is systematically limiting their freedom of making environmentally unsustainable choices. However,

¹⁵ More at length on this topic, see F. Esposito, & S. Grundmann, "Investor-Consumer or Overall Welfare: Searching for the Paradigm of Recent Reforms in Financial Services Contracts" (2017) *EUI Law Department Research Paper Series* 2017/5; F. Esposito, & A-L. Sibony, "In Search of the Theory of Harm in EU Consumer Law: Lessons from the Consumer Fitness Check", in K. Mathis, & A. Tor (eds.), *Consumer Law and Economics in Europe* (Springer, 2020), pp. 251-281, pp. 266-267 and the sources therein.

¹⁶ Commission, "A European Consumer Agenda - Boosting confidence and growth" COM(2012) 225 final, p. 5.

¹⁷ Commission, "EU Consumer Policy Strategy 2007–2013. Empowering Consumers, Enhancing their Welfare, Effectively Protecting them" COM (2007) 99 final, p. 5.

¹⁸ Commission, "Consumer Policy Action Plan 1999-2001" COM (1999) 696 final, p. 10.

¹⁹ Commission, "Healthier, safer, more confident citizens: a Health and Consumer Protection Strategy" COM (2005) 115 final, p. 3; Id., "EU Consumer Policy Strategy 2007–2013. Empowering Consumers, Enhancing their Welfare, Effectively Protecting them", cit., p. 5.

there is no narrative justifying to consumers the limitation of their freedom complementing the empowerment (and protection to empower) narrative.

For lack of a better term, this article frames the limitation of consumers' freedom as 'responsibility' because it is also consumers' 'job or duty to deal with' climate change.²⁰ This is, at the very least, a future-looking responsibility to deliver a sustainable planet to future generations. To be clear, this responsibility is not about preferring green options. Calling for more green choices would amount to nothing more than strengthening the empowerment narrative. The focus here is on the law imposing sacrifices that consumers ought to accept for the sake of the planet and of future generations. The key legal modality is not that of power, but that of duty. Since individuals, in their capacity as consumers, have a responsibility to keep Earth inhabitable, it is reasonable to impose on them sustainability-oriented positive and negative duties. These duties can have the consumers as their direct addresses, or they can limit consumers' freedom only indirectly by limiting professionals' freedom of economic activity. For example, prohibiting the sale of single-use plastics limits consumers' freedom indirectly because they do not have the option to buy single-use plastics anymore. As we shall see in Section 2.3, the relevant EU legislative interventions rely upon limit systematically consumers' freedom of choice to reach sustainability-related goals.

In sum, consumers have a responsibility to contribute to the Green Transition, and this responsibility justifies the imposition of duties and prohibitions limiting consumers' freedom of choice.

3. Policy documents focus on empowering consumers who want to make green choices

Having clarified the conceptual background of our analysis, we can look into the most recent and relevant official policy communications of the European Commission to identify the narrative adopted by this institution when it refers to the role of consumers or consumer law in the Green Transition. To do so, the research methodology followed three steps. In the first step, we selected four Communications of the Commission, considering their relevance to the EU's ambitions to drive the Green Transition and their relation to consumer policy. The list includes: (i) the European Green Deal, as the EU's main umbrella policy leading the legislative reforms during von der Leyen's Commission, (ii) the New Consumer Agenda, which represents the view of the EU consumer policy from 2020 to 2025, and two other sector-specific policies cited by the latter, more precisely (iii) the Circular Economy Action Plan, and (iv) the Renovation Wave, which is an integrated part of the Fit for 55. The second step concerns the methodology applied to screen the policy documents. We extracted and quantified all the propositions using the words 'consumer' or 'consumption' from these Commission's Communications. Then, the third and final step advanced the classification of these extracted propositions with the purpose of identifying the narrative on the role of consumer law – is the Commission's Communication proposing to pursue legal reforms that tend to empower consumers, protect consumers, or make consumers responsible through restricting their freedom of choice? The

²⁰ Entry 'responsibility', Cambridge Dictionary online: 'something that it is your job or duty to deal with' <https://dictionary.cambridge.org/dictionary/english/responsibility>; entry 'responsibility', Merriam-Webster online: 'something for which one is responsible' <https://www.merriam-webster.com/dictionary/responsibility>; entry 'responsibility', Cambridge Dictionary online: ' . The term 'responsibility' is used in a similar fashion by the European Commission (see, Commission, "'Fit for 55': Delivering the EU's 2030 Climate Target on the way to climate neutrality" COM (2021) 550 final, p. 1) and by H-W. Micklitz, "Squaring the Circle? Reconciling Consumer Law and the Circular Economy" (2019) Journal of European Consumer and Market Law, pp. 229-38, pp. 233 and 235 and ff.

findings are then described below with further explanations about how each policy document is connected with the other.

3.1. European Green Deal

On 11 December 2019, Ursula von der Leyen announced the most ambitious economic sustainable growth strategy of the EU since its foundation, the European Green Deal.²¹ The European Green Deal promised to transform the economic model by boosting the efficient use of resources. In this way, the EU would move to a clean and circular economy, revert biodiversity loss, and cut pollution, thereby becoming the world standard-setter in the fight against climate change. To do so, the Green Deal calls for reforms in various sectors of the economy, notably transport, energy, agriculture building, finance, and industries such as steel, cement, and chemicals.²² The policy considers both production and consumption.

In particular, the Commission's Communication on the Green Deal refers seven times to consumers or consumption throughout its 24 pages. Two out of seven merely emphasise the role of the Union in protecting consumers. The first one strengthens the general commitment to building the Union's "strengths as a global leader on climate and environmental measures, consumer protection, and workers rights".²³ The second one promises secure and affordable clean energy for consumers and addresses the risk of energy poverty.²⁴ In the other three mentions, the Commission presents consumer policies aligned with the idea of empowering those consumers who want to make the green choice. First, the pillar of the clean energy transition in the Green Deal refers to the demand response from consumers, which conveys the idea of providing information to increase consumption when more renewable energy is available.²⁵ Second, the Green Deal also refers to circular economy actions that will enable consumers to choose reusable, durable and repairable products.²⁶ Last, the Green Deal touches upon the farm to fork strategy to emphasise the importance of consumers having enough information to choose healthy and suitable diets and reduce food waste.²⁷

The Green Deal makes two additional references to consumer policies, which are aligned with ensuring effective price signals to consumers. One concerns the effectiveness of the carbon pricing signal,²⁸ while the other focuses on the tax reforms that could send the correct price signal and right incentives for sustainable behaviour by consumers.²⁹ Price signals internalise costs, and when carbon pricing or tax is applied to goods or services with inelastic demand, such as energy consumption in the

²¹ Commission, "The European Green Deal" COM (2019) 640 final.

²² *Ibidem*.

²³ *Ivi*, p. 5.

²⁴ *Ivi*, p. 6.

²⁵ *Ibidem*.

²⁶ *Ivi*, p. 8. At this stage, it is unclear whether food waste will be addressed as a matter of consumer empowerment only or not. It seems that empowerment is at the core of the intervention: "the Commission aims to prevent food waste linked to misunderstanding and/or misuse of [date markings], whilst ensuring that any proposed change meets consumers' information needs and does not jeopardise food safety"; Commission, "Date Marking and Food Waste"(ec.europa.eu) <https://ec.europa.eu/food/safety/food-waste/eu-actions-against-food-waste/date-marking-and-food-waste_en> accessed on 5 November 2021.

²⁷ Commission, "The European Green Deal", cit., p. 12.

²⁸ *Ivi*, p. 5.

²⁹ *Ivi*, p. 17.

Energy Taxation Directive costs tend to be ultimately passed to consumers.³⁰ This means making consumers responsible. However, the policies are not framed in terms of consumer responsibility but rather in terms of producers internalising their own costs.

3.2. The New Consumer Agenda

The magnitude of the European Green Deal has led to a chain of reforms in policies and legal framework in many other areas of competence of the EU. The most prominent one in the field of consumer law and policy is the new Consumer Agenda.³¹ The new Consumer Agenda presents a vision for the EU consumer policy from 2020 to 2025, focusing on five key priority areas: green transition, digital transformation, effective enforcement, specific needs of certain consumer groups, and international cooperation.

The priority on green transition is introduced by this statement: “consumers across Europe are showing a growing interest in contributing personally to achieving climate neutrality, preserving natural resources and biodiversity, and reducing water, air, and soil pollution”.³² In this regard, the challenge of consumer law and policies is “to unlock this potential through measures that empower, support and enable every consumer, regardless of their financial situation, to play an active role without imposing a specific lifestyle and without social discrimination”.³³ The narrative focuses on giving all consumers – independent of their income – the opportunity to make the green choice if they want to. It goes even further by explicitly stating that the green transition should not impose a change in lifestyle on consumers.

The priority on green transition is streamlined in actions four, five and six of the Consumer Agenda. These actions will include new legislation to empower consumers for the green transition with better information on products’ sustainability and better protection against practices such as greenwashing and early obsolescence and the review of the Sales of Good Directives to promote further the right to repair.³⁴ Again, the spotlight is on empowering consumers to make the green choice if they want.

The following statements of the Consumer Agenda are dedicated to listing initiatives that aim to ensure that goods and services offered to EU consumers fit the declared objectives. The list refers to other Commission’s Communications: the new Circular Economy Strategic plan,³⁵ Renovation Wave,³⁶

³⁰ There have been studies on the incidence of a price on carbon that generally found that carbon taxes and tradable emission permits are regressive. In other words, these costs not only tend to be passed to consumers, but they also affect low-income consumers more severely than high-income consumers. See C. Grainger and C. Kolstad. ‘Who Pays a Price on Carbon?’ *Environmental & Resource Economics* 46, no. 3 (2010): 359–76. K. Hassett, M. Aparna M and GE Metcalf. ‘The incidence of a US carbon tax: a lifetime and regional analysis’ . *Energy J* 30(2) (2009). GE Metcalf. ‘ A distributional analysis of green tax reforms’ . *Natl Tax J* 52 (1999):665–681

³¹ Commission, “New Consumer Agenda: Strengthening consumer resilience for sustainable recovery” COM (2020) 696 final.

³² *Ivi*, p. 5.

³³ *Ibidem*.

³⁴ *Ivi*, p. 9.

³⁵ Commission, “A new Circular Economy Action Plan For a cleaner and more competitive Europe” COM (2020) 98 final.

³⁶ Commission, “A Renovation Wave for Europe - Greening our buildings, creating jobs, improving lives” COM (2020) 662 final.

Chemicals Strategy for Sustainability,³⁷ Farm to Fork Strategy,³⁸ EU Biodiversity Strategy,³⁹ among others. For practical reasons, investigating all these documents in this article was not possible. The Circular Economy Strategic plan and the Renovation Wave, which is part of the Fit for 55, were selected in light of their centrality for the green transition and broad scope.

3.3. The New Circular Economy Action Plan

In March 2020, the Commission released the Communication on a new Circular Economy Action Plan as one of the main building blocks of the European Green Deal. The new action plan replaced the first circular economy action plan of 2015 and introduced innovative measures. The most significant changes are the commitment to make sustainability criteria of products a priority in the production of all goods, the empowerment of consumers and public buyers, the reduction of waste, and some specific actions in sectors that use most resources have the potential for boosting circularity, such as electronics and ICT, batteries and vehicles, packing, plastic, textiles, construction and building, food, water and nutrients.

The new Circular Economy Action Plan makes a few references to consumer law and policies: twelve, more precisely. More than half of these references – seven – are found in its session entitled “empowering consumers and public buyers”. As the title suggests, the Commission promises a revision of the EU consumer law to ensure that “consumers receive trustworthy and relevant information on products at the point of sale, including on their lifespan and on the availability of repair services, spare parts and repair manuals”.⁴⁰ The Communication also refers to the importance of further strengthening consumer protection against greenwashing and premature obsolescence, setting minimum requirements for sustainability labels/logos and information tools.

The last four references to consumers can be found in specific-sector action: they all focus on empowering them. For the Commission, the rules for recycling rates of all batteries must “ensure the recovery of valuable materials and guidance to consumers”.⁴¹ Plastics labelling products as biodegradable or compostable must not mislead consumers, leading them to dispose of their waste wrongly.⁴² New ecodesign textile materials should empower private consumers to choose sustainable textile and have easy access to re-use and repair services.⁴³

Finally, waste directives should facilitate consumers involvement, with measures such as common bin colours, harmonised symbols for key waste types, product labels, information campaigns and economic instruments.⁴⁴ Only in the discussion of “well-designed economic instruments” one can read between the lines potential room for consumer responsibility in reference to environmental

³⁷ Commission, “Chemicals Strategy for Sustainability Towards a Toxic-Free Environment” COM (2020) 667 final.

³⁸ Commission, “A Farm to Fork Strategy: For a fair, healthy and environmentally-friendly food system” COM (2020) 381 final.

³⁹ Commission, “Biodiversity Strategy for 2030: Bringing nature back into our lives” COM (2020) 380 final.

⁴⁰ Commission, “A new Circular Economy Action Plan For a cleaner and more competitive Europe”, cit., p. 5.

⁴¹ *Ivi*, p. 8.

⁴² *Ivi*, pp. 9-10. Admittedly, this is a hard case to classify since consumers have a duty to recycle. The measure under consideration is empowering nevertheless because the focus is not on restricting their freedom further; rather, the focus is on making it easier for them to recycle. In light of these considerations, we consider this measure as an empowering one in the binary distinction between empowering and restricting choice.

⁴³ *Ivi*, p. 10.

⁴⁴ *Ivi*, p. 13.

taxation. However, also environmental taxation is sugar coated by a reference to the use of VAT to “promote circular economy activities that target final consumers, notably repair services”.⁴⁵

In light of the above, like the Green Deal and the new Consumer Agenda, the new Circular Economy Action Plan is also committed to the narrative that what is asked to consumers is just to make the green choice if they want to, and the policy will focus on empowering them to this end by informing them about the sustainability of the products, while ensuring that the information is reliable.

3.4. The Fit for 55 and its Renovation Wave

The last and no less important European Commission’s Communication taken into consideration by this study is the most recent one; the Fit for 55. In July 2021, the Commission released a package of proposals aiming to ensure the accomplishment of an ambitious target for reducing net emission in the EU by at least 55% by 2030 compared to 1990, and for being the first climate-neutral region by 2050.⁴⁶ The Fit for 55 is described as “the most comprehensive set of proposals the Commission has ever presented in climate and energy”, laying down the “regulatory foundations for a fair, cost-effective, and competitive way.”⁴⁷

The Fit for 55 is the Commission’s Communication that makes fewer references to consumers when compared to the previously analysed policy documents – six references in total. The data is per se an interesting observation considering the legislative reforms proposed within the packages of the Fit for 55. In fact, the packages include, among others, the extension of emission trading schemes for road transport and buildings, more sustainable energy taxation measures, renovation wave schemes including residential buildings, and energy efficiency measures. Therefore, the effects on consumers and their consumption patterns are unavoidable.

The first reference to consumers by the Fit for 55 states that the green transition “is a collective responsibility and opportunity that must be open to all, whatever innovators and investors, companies and cities, or consumers, households, and individuals”.⁴⁸ Importantly, this is the first time the Commission explicitly underlines the responsibility of consumers, households, and individuals towards climate change. However, immediately after, the Commission emphasises the “shared benefits of more space for nature clean air, cooler and greener towns, and cities, healthier citizens, lower energy use and bills” rather than the responsibilities themselves.⁴⁹

Another reference to consumers that falls in between the lines of consumer responsibility is the affirmation that the application of emission trading to new sectors drives “changes in public and private investment, consumer behaviour and business practice”.⁵⁰ One can expect emission trading schemes to have a negative impact on retail prices, thereby reducing consumers’ ability to purchase. However, there is no reference to consumer responsibility in the more detailed discussion of the Commission’s plans in this regard. On the contrary, the Commission argues the weight of emission trading schemes would be imposed on upstream fuel suppliers rather than individual households or

⁴⁵ *Ivi*, p. 17.

⁴⁶ Commission, “Fit for 55’: Delivering the EU’s 2030 Climate Target on the way to climate neutrality”, cit., p. 1.

⁴⁷ *Ivi*, p. 2.

⁴⁸ *Ivi*, p. 1.

⁴⁹ *Ivi*, p. 1.

⁵⁰ *Ivi*, p. 6.

road transport users.⁵¹ Again, this is a contestable and convenient statement since the internalisation of producers' costs is mainly transferred to consumers' prices, especially in energy markets where demand is inelastic.⁵²

In contrast, the other two references to consumers are about empowering them. For the Fit for 55, "many citizens, especially younger people, are ready to change their consumption and mobility patterns when empowered by the relevant information to limit their carbon footprint".⁵³ The Commission goes even further by saying that "consumer demand for zero-emission vehicles is increasingly sharply already".⁵⁴

The Fit for 55 makes two other implicit references to consumers. One affirms that a socially fair transition must tackle inequality and energy poverty through climate action, which concerns the protection of vulnerable consumers in the energy sector.⁵⁵ The other speaks about the correlation between the reduction of energy consumption and emission and energy costs, whose benefits are perceived by consumers and industries.⁵⁶ In other words, the Fit for 55 states that individual consumers are those who must benefit from the overall reducing energy consumption and expected effect of price reduction, but refrains from saying that the costs of energy efficiency are about to be extended to householders.⁵⁷

3.5. Conclusions

This section searches for references to consumers in the most recent European Commission policy Communications – the European Green Deal, the New Consumer Agenda, the actions plans of Circular Economy Action Plan, and the Fit for 55. The finding is that the Commission endorses three different narratives on the role of consumers and consumer law in the green transition. The upfront is, undoubtedly, empowerment. Consumers are to be welcomed in the green transition as long as they want to take part in it; to this end, they receive accurate information, which enables voluntary choices for more sustainable behaviour. Secondly, the Commission reinforces the primary role of consumer law to protect consumers from, for instance, greenwashing.

Lastly and crucially, policy documents avoid making irrefutable statements that green transition would also create costs for or mandate choices to consumers. Increasing taxes on carbon-intense energy generation or the expansion of emission trading schemes to transportation will imply the increase of the expenses in goods and services that tend to be passed to consumers. Nevertheless, the Commission refrains from discussing explicitly cost for consumers, restriction of freedom, or consumers' responsibility.

As a consequence, the policy narrative built by the Commission becomes detached from the legislative framework, as the subsequent section shows.

⁵¹ *Ivi*, p. 7.

⁵² *Footnote 30*.

⁵³ Commission, "Fit for 55': Delivering the EU's 2030 Climate Target on the way to climate neutrality", cit., p.4.

⁵⁴ *Ivi*, p. 8.

⁵⁵ *Ivi*, p. 4.

⁵⁶ *Ivi*, p. 9.

⁵⁷ I. M. Hoffman, G. Rybka, G. Leventis, C. A. Goldman, L. C. Schwartz, M. A. Billingsley, S. R. Schiller, "The Total Cost of Saving Electricity Through Utility Customer-Funded Energy Efficiency programs: Estimates at the National, State, Sector and Program Level" (2015), Berkely Lab, p. 2.

4. Actual legislation and legislative proposals make consumers responsible

The European Green Deal announced the most ambitious economic sustainable growth strategy of the EU since its foundation. It triggered a series of Commission's Communications listing detailed action plans, such as those found in the Annex of the Circular Economy Action Plan⁵⁸ or the new Consumer Agenda.⁵⁹ An action plan is a list of tasks that the Commission intends to pursue to achieve its policy goals – in our case, the green transition as announced in the Green Deal. The most important tasks are the proposal for new legislation or the review of existing ones, and the reassurance of the implementation of existing legislation recently approved and aligned with the purposes of the Green Deal. Therefore, putting the new European Green Deal in action does not imply that the European Union would substantially expand its competence toward new domains previously untouched by EU law. On the contrary, most of the Commission's action in this area concerns reviewing existing EU secondary laws and strengthening the proper implementation of the existing legal framework.

This section aims to analyse the EU actual legislation and legislative proposals that the Commission considers instrumental to the European Green Deal. More precisely, the aim is to understand whether the measures are consistent with the abovementioned Commission's narrative, in which consumers are mainly expected to make the green choice if they want to, and the Commission is committed to making the choice simple and reliable. As anticipated in the introduction, while the Commission claims the consumers must be empowered to make better choices, in fact, existing and expected EU law instrumental to the Green Transition includes plenty of mandatory measures that restrict the choices of consumers. The implication is that the narrative of consumer empowerment does not fit EU legislation, where empowerment goes hand-in-hand with responsibility.

To be consistent with the research conducted in the Commission policy documents, we have considered Directives and Regulations referred into the detailed action plan of the New Consumer Agenda, the Circular Economy Action Plan, and the Fit for 55. Most proposals for new EU legislative acts or the review of existing ones are expected for 2022. Considering this fact, we adopt the following criteria for selecting the EU legislation. We give priority to Directives or Regulations whose (i) proposals for review have been released already and (ii) existing legislation in which the importance of implementation is reinforced in the actions plans. The list includes the Directive on the Single-use plastics (thereon, the SUPD),⁶⁰ and the Commission proposal for a Regulation concerning batteries and waste batteries⁶¹ connected to the new Circular Economy Action Plan; the Commission proposal on a common charger for the mobile phones and portable devices⁶² for the new Consumer Agenda; and

⁵⁸ Commission, "A new Circular Economy Action Plan For a cleaner and more competitive Europe", cit., Annex.

⁵⁹ *Ivi*, pp. 4, 9, 13-4, 15, 18-9, 20, 21.

⁶⁰ Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment [2019] OJ L 155/1.

⁶¹ Commission, "Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020" COM(2020) 798 final.

⁶² Commission, "Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment" COM(2021) 547 final.

the reviews of the Energy Efficiency Directive⁶³ and the Energy Performance of Buildings Directive⁶⁴ for the Fit for 55.

4.1. Directive on the Single-use Plastics (SUPD)

Among the vast list of actions in the Annex of the new Circular Economy Action Plan mandating the review of existing Directives and proposal of new legislative acts from 2020 to 2022, the Commission, heretofore, has issued only the proposal for a new regulatory framework for batteries, precisely 1 December 2021.⁶⁵ Moreover, the new Circular Economic Action Plan explicitly references the importance of the timely implementation of the SUPD.⁶⁶ This justifies the methodological choice of looking at these two EU legislative acts in detail.

The SUPD is an EU Directive approved in July of 2019 and aims to reduce the long-term impact of certain products in the environment, more precisely, plastic products used once and for a short period. The rationale of the SUPD is relatively simple. The Directive lists ten plastic products—like plastic bags, cups for beverages, cutlery such as plates, straws, stirrers, and cotton bud sticks—and classifies them into five categories, between Parts A to E. Then it imposes different measures for each category of plastic products.

Considering the five categories of single-use plastics, the SUPD relies on measures aligned with the empowerment of consumers to achieve the reduction of its use in only one: those listed in Part D. The plastics listed in Part D are those subject to market requirements, namely “clearly and indelible marking on its packing or on the product itself informing consumers of the [...] (a) appropriate waste options [...]; and (b) the presence of plastics in the product and the resulting negative impact of littering”.⁶⁷

The other four categories are subjected to measures that either restrict their placing on the market or completely ban their commercialisation. Patently, these measures limit consumers’ freedom to choose by imposing mandatory changes in consumption patterns. For the products listed in Part A, Member States should reduce the consumption by 2026, holding a certain degree of discretion to choose different measures, such as national consumption targets or economic instruments that ensure “the single-use plastic products are not provided free of charge to the final consumer”.⁶⁸ The SUPD bans products listed in Part B.⁶⁹ If you no longer find straws, plates, forks, or knives made of plastic in groceries, this is because of the SUPD since these products, among others, are listed in Part B of the Directive. The plastics listed in Part C are subject to restricted design requirements, such as “caps and lids that must remain attached to the containers during the products’ intended use stage”.⁷⁰ Finally, the products listed in Part E correspond to those that require the extension of producers’

⁶³ Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency [2018] OJ L 328/210.

⁶⁴ Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency [2018] OJ L 156/75.

⁶⁵ Commission, “A new Circular Economy Action Plan For a cleaner and more competitive Europe”, cit., Annex.

⁶⁶ *Ivi*, 10.

⁶⁷ Directive (EU) 2019/904, cit., Art. 7(1)(a)(b).

⁶⁸ Directive (EU) 2019/904, cit., Art. 4(1).

⁶⁹ Directive (EU) 2019/904, cit., Art. 5.

⁷⁰ Directive (EU) 2019/904, cit., Art. 6(1).

responsibility,⁷¹ in which producers' responsibility for a product is extended to the post-consumer stage of a product life cycle, such as waste collection costs or cleaning up litter resulting from those products.⁷² The latter are obligations forcing producers to internalise costs that are most likely transferred to consumers.

In line with the findings above, SUPD makes consumers responsible through one of three mechanisms: paying for single use plastics previously offered for free, paying a higher price of goods, thus allowing producers to pass on compliance costs, or restricting consumer choice (because of product bans)..

4.2. Proposal for a Regulation Concerning Batteries and Waste Batteries

The other EU legislation under the new Circular Economy Action Plan is the proposal for a Regulation concerning batteries and waste batteries,⁷³ which aims to repeal the Directive 2006/66/EC on the same subject matter and amend the recent Regulation 219/1020 on surveillance and market products. Considering the fundamental change in the strategic importance of batteries, the Commission proposes to widen the scope for the regulations of batteries, establishing requirements on sustainability, safety, labelling and information to allow placing in the market, as well as the requirements for the collection, treatment and recycling of waste batteries.⁷⁴

The proposal for the new Regulation on batteries and waste batteries is more complex than the SUPD since it regulates the entire battery life-cycle. For current purposes, the proposed EU legislation measures can be divided into four categories: product manufacturing requirements, labelling and information, extension of economic operators' responsibility, and end-of-life management.

The product manufacturing requirements enshrined in articles 6 to 12 and 14 set the sustainable and safety requirement standards that products must comply with, such as the restriction of hazardous substances⁷⁵ and the carbon footprint of electric vehicles and industrial batteries.⁷⁶ The latter are sustainable measures that intend to exclude batteries in noncompliance with the minimum carbon footprint standards in production and distribution, limiting consumers' access to certain products rather than providing them with information to make better choices.

Once a producer complies with the product manufacturing requirements, the measures proposed in article 13 on labelling and information apply,⁷⁷ and, as a result, consumers are empowered to make greener choices. The information to be given is laid down in Part A of Annex VI, and it includes information on the expected lifetime of batteries.⁷⁸ The measures on the extension of economic operators' responsibility and lifetime management establish a number of obligations applied to producers and many actors along the supply chain, such as importers, distributors, service providers, and end-users. In particular, consumers will be obliged to "discard waste batteries only in designated

⁷¹ Directive (EU) 2019/904, cit., Art. 8(1). As discussed in Section 2.2 cost internalizations are measures of consumer responsibility because they force consumers to ultimately have to pay for the waste management activities performed by the producer.

⁷² Directive (EU) 2019/904, cit., Art. 8(1)(b)(c).

⁷³ Commission, "Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020", cit.

⁷⁴ *Ivi*, Art. 1(1), p. 45.

⁷⁵ *Ivi*, Art. 6, pp. 50-1.

⁷⁶ *Ivi*, Art. 7, pp. 51-2.

⁷⁷ *Ivi*, Art. 13, pp. 55-7.

⁷⁸ *Ivi*, Art. 14, p. 57.

separate collection points in accordance with the specific arrangement concluded with producers or a producer responsibility association”⁷⁹ and, conversely, prohibited from discarding batteries in mixed municipal waste.⁸⁰ Suppose the new Regulation on batteries and waste batteries will be approved as it is. In that case, it remains certain that the green transition would indeed impose obligations also on consumers regarding where they can dispose of batteries.

4.3. Proposal for amending the Directive Regulating Common Charger for Mobile Phones and Portable Devices

Like the new Circular Economic Action Plan, many of the action plans listed in the latest Consumer Agenda concerning the green transition have not been implemented yet. On the other hand, the Commission did release a proposal for amending the Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment. This has been known as the proposal for a common charger for mobile phones and portable devices.

The proposal for a common charger for mobile phones and portable devices is brief and straightforward. It aims to mitigate the fragmentation of the market for charging interfaces and charging communication protocols for mobile phones and other similar radio equipment,” which “results in a lack of consumer convenience and an increase in e-waste”.⁸¹ If approved, the use of a single charger would, therefore, protect consumers from the producers’ commercial practices that, to some extent, force them to use variable charges or restrict their choices according to the type of charger. Considering what the protection of consumers means for their empowerment, the measures proposed by the amendment of the Directive 2014/53/EU are aligned with the Commission’s narrative.

4.4. Proposals for the recast of the Energy Efficiency Directive

The last set of actual EU legislation investigated relates to the Fit for 55. Different from the actions plans of the new Circular Economy Action Plan and Consumer Agenda, the Commission already released an entire package of proposals for revision, amendment, or new legislation within the framework of the Fit for 55, all of them to support the EU policies for the reduction of Greenhouse gas emissions (GHG). Among all these Commission’s proposals, two regulate energy consumption directly. These are the proposals for the recast of the Energy Efficiency Directive⁸² and the review of the Energy Performance Buildings Directive.⁸³ 73.2% of the GHG emissions derive from the energy sector,⁸⁴ and its reduction depends on three factors: the electrification of heating and transport, the replacement of fossil fuels by renewable sources, and the improvement of energy efficiency.⁸⁵ The latter is a means to ensure the use of less energy to perform the same task on the consumption side. Given the

⁷⁹ *Ivi*, Art. 51(2), p. 83.

⁸⁰ *Ivi*, Art. 51(1), p. 83.

⁸¹ Commission, “Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment”, cit., Recital 5, p. 12.

⁸² Directive (EU) 2018/2002, cit.

⁸³ Directive (EU) 2018/844, cit.

⁸⁴ The World Resource Institute, “Climate Watch” (2020).

⁸⁵ IRENA, “Global Energy Transformation: A Roadmap to 2050” (2020).

centrality of energy consumption for the green transition, these two proposals have been analysed in detail.

The EU Directives on Energy Efficiency Directive and Performance Buildings aim to ensure more efficient energy use from the consumption side, including both industrial and individual customers. Moreover, both Directives have undergone significant revisions during Juncker's Commission and within the Clean Energy Package. Therefore, the Commission's current proposals mainly intend to impose more ambitious targets than expand the scope of obligations, the reason why we focus primarily on the current legislation in force.

The recast of the Energy Efficiency Directive of 2018 establishes a common framework of measures to promote energy efficiency to ensure reductions of at least 32,5% by 2030. The Commission intends to raise 39% for primary and 36% for final consumption. The Directive mainly relies on three types of measures to accomplish these targets: mandatory obligations addressed to central governments while acting as consumers, obligatory energy efficiency schemes, and alternative policy measures. Central governments' options for purchasing products, services and the use of buildings should stand for high energy performance.⁸⁶ For the obligatory measures schemes, Member States should designate obligated parties, among energy and transport fuel distributors and retail companies, ensuring a certain amount of energy savings by targeting a particular category of final costumers.⁸⁷ The Directive leaves to the Member States to decide which final customers should be subject to the energy efficiency target, but the choice must be non-discriminatory⁸⁸ and "shall take appropriate measures to promote and facilitate an efficient use of energy by small energy costumers, including domestic costumers [...] as part of a national strategy".⁸⁹ In other words, the directive establishes that consumers (domestic customers) have to be included in the national energy efficiency plans. Hence, consumers share the resposibility of reducing their energy consumption.

The Directive also establishes alternative policy measures, which ensure that consumers have access to individual metering systems⁹⁰ and accurate bill information.⁹¹ Different from obligatory energy efficiency schemes, this last category of alternative policies is aligned with the Commission's narrative, as it focuses on consumer empowerment.

4.5. The review of the Energy Performance Buildings Directive

The Energy Performance of Buildings Directive is a complementary instrument to the Energy Efficiency Directive. If consumers must have more efficient energy use, new buildings must comply with high-performance standards,⁹² while existing ones must undergo renovations to comply with minimum standards.⁹³ The Commission has coined the expression "renovation wave"⁹⁴ for the latter obligation – ultimately, a euphemism for an onerous obligation. The Energy Performance of Buildings Directive makes no distinction between residential and non-residential buildings to the long-term renovation

⁸⁶ Directive (EU) 2018/2002, cit., Art. 6(1).

⁸⁷ Directive (EU) 2018/2002, cit., Art. 7a(1)(2).

⁸⁸ Directive (EU) 2018/2002, cit., Art. 7a(1)(2).

⁸⁹ Directive (EU) 2018/2002, cit., Art. 12(1).

⁹⁰ Directive (EU) 2018/2002, cit., Artt. 9a(2) and 9b(1).

⁹¹ Directive (EU) 2018/2002, cit., Artt. 10(1) and 10a(1).

⁹² Directive (EU) 2018/844, cit., Art. 6(1).

⁹³ Directive (EU) 2018/844, cit., Art. 7.

⁹⁴ Commission, "A Renovation Wave for Europe - Greening our buildings, creating jobs, improving lives", cit.

strategy, which should be turned into highly energy efficient and decarbonised buildings by 2050.⁹⁵ The renovation strategy is part of the National Energy Efficiency Action Plan,⁹⁶ and the Member States should ensure consumers' access to financing mechanisms that have support from European funds. However, it does not mean the renovation wave would be costless to consumers. On the contrary, the Energy Performance of Buildings Directive imposes on consumers, either property owners or tenants, the obligation to comply with high-performance building standards and, as a result, bear its costs.

4.6. Conclusions

This section's analysis clearly illustrates that the current and proposed legal measures go beyond empowering consumers to make green choices if they want. Consumers are forced to change consumption patterns when certain products are prohibited from marketing, like certain single-use plastics, or when it faces obligations to either consume less or renovate their residences to do so. Consumer responsibility plays a role in the actual legislation implementing the policy narrative described in Section 2.2, which focuses predominantly on consumer empowerment. Therefore, the mismatch between the Commission's narrative and the existing legislative framework rests proven.

5. Empowerment's Perverse Effect: Unsustainable Good People

So far, this article has shown that there is indeed a mismatch between the European Commission's policy communication and the legislative measures related to sustainable consumption. This section shifts the attention from institutional actors to consumers. The analysis so far does not raise any direct concern with regard to the impact of this mismatch on actual consumption patterns. In fact, if policy communication is inconsequential for consumer decisions, then the mismatch is unlikely to have significant policy implications.

This section claims that, unfortunately, the considered mismatch is likely to obstruct the sustainability goals that the European Union has set for its constituents. This conjecture is supported by research in behavioral ethics and consumer behaviour. In this regard, it should be noted that, to the best of our knowledge, the available evidence in support of this conjecture is not conclusive. A key reason is that empirical research in this field is lacking; for example, a recent systematic literature review focusing on the circumstances under which "sustainability can backfire; it can negatively affect consumer behavior" concludes that "future research could examine which antecedents of sustainable consumption reinforce the inclusion of sustainability in the long term period decision making".⁹⁷

Against this background, one can criticise the Commission's communication strategy from two connected and mutually reinforcing perspectives. First, the just-mentioned body of literature suggests that the failure to 'tell it like it is' to consumers may have suboptimal consequences; second, the fact that what is expected from consumers is not transparently explained causes legitimacy concerns. The two claims are interconnected since one of the reasons why the lack of transparency causes legitimacy concerns is that it fails to foster the Green Transition by not being as persuasive as it could be.⁹⁸

⁹⁵ Directive (EU) 2018/844, cit., Art. 2a.

⁹⁶ Directive (EU) 2018/844, cit., Art. 4.

⁹⁷ P. 1934 and p. 1941,xxx

⁹⁸ This is a widely accepted assumption in the legal literature on the connection between policy communication and legitimacy. Widely accepted See, for example, Iskra, cit., and Iacona and XXX, cit.

In a first approximation, behavioral ethics is the study of the mechanisms that allow people to behave unethically while perceiving themselves as morally correct agents nevertheless.⁹⁹ Behavioral ethics research identifies at least two behavioral mechanisms triggered by the considered mismatch. According to the first mechanism, the present mismatch fails to trigger all possible levers of intrinsic motivation. The (almost paradoxical) consequence is that the mismatch makes policy communication's focus on empowerment futile, at least partially. According to the second mechanism, and more radically perhaps, the empowerment-focused narrative is likely to have perverse effects because it is prone to generate moral licensing – that is, to let consumers believe they are consuming sustainably by selectively and self-servingly focusing on certain choices they make, while blatantly ignoring others, often more consequential.¹⁰⁰ Let us look at these two mechanisms in more detail.

Both mechanisms have a common starting point. The Commission's empowerment-focused narrative is meant to gauge consumers' intrinsic motivation to make the sustainable choice. However, it was shown that, in so doing, the policy communication does more than that, namely it makes consumer empowerment salient to the point that it obscures the many sacrifices that the European Union and the Member States are (legitimately) asking to their citizens in their capacity of consumers. The implication of this focus is creating the expectation that if consumers make the green choice when they want to, they play their part in the collective effort towards a sustainable market economy. In other words, the narrative focuses on turning existing potential demand for green products and services into real transactions.

Taking the unexpressed sustainable consumption as a given is problematic because it misses the opportunity of stimulating consumers' intrinsic motivation to make the green choice. Empowering consumers to make the green choice takes their preferences towards sustainable consumption as a given. It is however the case that such an intrinsic motivation can be increased. This is what the first mechanism is about – 'I have to, so I want to'. More precisely, behavioural ethics shows that intrinsic motivation can be enjoyment- and obligation-based. As Feldman puts it, "Obligation-based intrinsic motivation reflects a sense of moral or civic duty and is not driven by instrumental considerations".¹⁰¹ This distinction illuminates a first reason why the mismatch can trim the Green Deal's sails.

The European Commission's policy communication fails to make any appeal to consumers' 'sense of moral or civic duty' towards the environment and future generations. In so doing, it fails to reinforce consumers' eagerness to make the green choice because it is the right thing to do. In other words, the Communication focuses unnecessarily on the supply of empowering tools without taking the

⁹⁹ For reviews of the behavioural ethics literature, see: O. Sezer, F. Gino, & M. H. Bazerman, "Ethical Blind Spots: Explaining Unintentional Unethical Behavior" (2015) 6 *Current Opinion in Psychology*, pp. 77–81; Y. Feldman, *The Law of Good People* (Cambridge University Press, 2018). For reviews of consumer behaviour research focusing on ethical and sustainable decisions, recognizing the importance of the mechanisms discussed in this section, see XXX.

¹⁰⁰ The terms 'futile' and 'perverse' are used here consistently with A. O. Hirschmann, *The Rhetoric of Reaction: Perversity, Futility, Jeopardy* (The Belknap Press of Harvard University Press, 1991).

¹⁰¹ Feldman, cit. p. 63. See also J. Thøgersen, "Monetary Incentives and Recycling: Behavioural and Psychological Reactions to a Performance-dependent Garbage Fee" (2003) 26(2) *Journal of Consumer Policy*, pp. 197-228; M. Osterloh, B.S. Frey, & J. "Managing Motivation, Organization and Governance" (2001) 5(3) *Journal of Management and Governance*, pp. 231-9.

opportunity of increasing their demand as well. It might be that an empowerment-based narrative fosters enjoyment-based intrinsic motivation.¹⁰²

But the importance of duties to motivate sustainable consumption is also widely recognized. And in the present context it would be easy to leverage obligation-based motivation. All that is needed is giving to consumers the full picture. Obligation-based motivation can be a powerful driver of behaviour – an idea, we submit, that should not sound as surprising for the legal community. Indeed, analyzing the questionnaires of 649 consumers, Lin and Niu found that “social norms ... positively affect their environmental attitudes and behavior”.¹⁰³ Appealing to consumers’ sense of duty seems an approach exactly along these lines. In a widely cited paper, White, Habib, and Hardisty propose to use the SHIFT framework to foster sustainable consumption. The ‘SHIFT factors’ are social influence, habit formation, individual self, and tangibles. Social norms feature prominently among the facets of social influence in their account. At the same time, the individual self is an important factor as well since “[i]ndividuals desire to maintain positive self-views and can reaffirm the positivity of the self-concept through consumption”.¹⁰⁴

XXX moved from the hypothesis that, in relation to sustainable consumption, “obligation-based motivation is particularly relevant”.¹⁰⁵ They successfully tested this hypothesis by connecting the idea of obligation to the idea of self-identity. In SHIFT terms, they connected social influence and individual self. The connection between obligation-based motivation and self-identity allows us to rely on a broader body of literature which explores from different angles a core idea of behavioural ethics studies, namely that we want to preserve the image of ourselves as ‘good people’.¹⁰⁶ For example, Escadas, Jalali and Farhangmehr conducted an extensive study to identify the role of emotions in ethical consumption decisions and found that “[m]ore than feeling positive, consumers want to avoid feeling negative”, a result that can be explained by prospect theory.¹⁰⁷

Ultimately, the picture is one where legal duties contribute to the definition of what it means to be a good person, to the effect that departing from this benchmark imposes emotional costs that have a motivation effect that is demonstrated empirically. By not appealing to the duty to contribute to the Green Transition, the Commission’s communication strategy fails to activate this motivating factor.

The second mechanism – ‘I know I am a good person’ – rests on various concepts used in behavioural ethics literature.¹⁰⁸ The core of the idea is that consumers have ways to see themselves as behaving

¹⁰² E. Ramos-Hidalgo, R. Diaz-Carrion, & C. Rodríguez-Rad, “Does Sustainable Consumption Make Consumers Happy?” (2021) *International Journal of Market Research* <https://doi.org/10.1177/14707853211030482>.

¹⁰³ Lin and XXX, p. 1686. <https://onlinelibrary.wiley.com/doi/epdf/10.1002/bse.2233>. See also Culinberg and Bajde XXX; with a similar methodology, the authors find that the perception of the ‘moral intensity’ of recycling makes it more likely. <https://onlinelibrary.wiley.com/doi/10.1002/cb.1446> Notably, the latter study is presented as an application of one of the eight most used consumer ethics theories, according to the systematic review by Hassan XXX

¹⁰⁴ 27 <https://journals.sagepub.com/doi/pdf/10.1177/0022242919825649>

¹⁰⁵ E. van der Werff, L. Steg, & K. Keizer, “It is a Moral Issue: The Relationship Between Environmental Self-identity, Obligation-based Intrinsic Motivation and Pro-environmental Behaviour” (2013) 23(5) *Global Environmental Change*, pp. 1258-65, p. 1265. For a book-long analysis of this topic, see S-H. Kim, *The Role of Values, Environmental Self-Identity, social Norms, and Intrinsic Motivations in Consumers' Eco-friendly Apparel Purchasing Behavior* (University of Georgia, 2016).

¹⁰⁶ For a review of the literature focusing on this topic in relation to consumption decisions, see Trudel, XXX, pp. 88-90.

¹⁰⁷ 540 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/beer.12237>

¹⁰⁸ As a relatively young field, it is no surprise that the concepts used somewhat overlap with each other.

ethically – as good people – even when actually they are not. In our context, this means seeing themselves as green consumers even when they make plenty of unsustainable choices (self-greenwashing). One way to articulate this mechanism is in terms of self-enhancement; self-enhancement occurs when a consumer can take an unsustainable decision without interpreting it as such.¹⁰⁹ The focus on consumer empowerment actually invites this kind of reasoning: since you are free to make the green choice or not, you are entitled not to make it.

More radically, consumers may also deny the unethicity of their choice. Rosenbaum, Kuntze and Wooldridge found that consumers can deploy at least “eight neutralization techniques to defuse their internal shame and guilt” deriving from unethical consumption.¹¹⁰ The technique that was most commonly deployed is called “denial of responsibility”, which consists in “offenders believing that they are not personally accountable for their aberrant behavior because factors beyond their control motivated them”.¹¹¹ In relation to unsustainable consumption, it is easy to imagine external factors that may justify the choice, such as price, social pressure, and even an unjustified believe that the sustainable product is of lower quality.¹¹²

Moral forgetting can also lead to the same result; simply put, there is a tendency to forget one’s unsustainable decisions over time.¹¹³ Reczek, Irwin, Zane, and Ehrich studied the ability to remember the negative ethical information about a product and concluded that “there is a systematic bias at retrieval to misremember (or forget) negative ethical information regardless of its typicality”.¹¹⁴ For example, someone could fail to recall how often he performs a carbon-intensive activity, such as eating beef. Perhaps the broadest concept to consider here is that of moral licensing, according to which people tend to balance good and bad deeds over time.¹¹⁵ For example, a consumer may think that since she ‘normally’ makes the green choice, this time she is entitled not to make it.

¹⁰⁹ D. Chugh, & M. C. Kern, “A Dynamic and Cyclical Model of Bounded Ethicality” (2016) 36 *Research in Organizational Behavior*, pp. 85-100.

¹¹⁰ 32 <https://onlinelibrary.wiley.com/doi/epdf/10.1002/mar.20379>

¹¹¹ 33.

¹¹² For a list of possible factors with discussion, see Acuti, XXX.

¹¹³ M. Kouchaki, & F. Gino, “Memories of Unethical Actions Become Obfuscated Over Time” (2016) 113(22) *Proceedings of the National Academy of Sciences of the United States of America*, pp. 6166–71; W. Lasarov, & S. Hoffmann, “Social Moral Licensing” (2020) 165 *Journal of Business Ethics*, pp. 45-66; See also, 194 <https://academic.oup.com/jcr/article/45/1/185/4711097> and xxx Meat-related cognitive dissonance: The social psychology of eating animals

Hank Rothgerber, Daniel L. Rosenfeld

First published: 07 April 2021 <https://doi.org/10.1111/spc3.12592> XXX

¹¹⁴ Rebecca Walker Reczek, Julie R Irwin, Daniel M Zane, Kristine R Ehrich, That’s Not How I Remember It: Willfully Ignorant Memory for Ethical Product Attribute Information, *Journal of Consumer Research*, Volume 45, Issue 1, June 2018, Pages 185–207, p. 194, <https://doi.org/10.1093/jcr/ucx120>

¹¹⁵ A. C. Merritt, D. A. Effron, & B. Monin, “Moral Self-licensing: When Being Good Frees Us to be Bad” (2010) 4(5) *Social and Personality Psychology Compass*, pp. 344-57; M. Gholamzadehmir, P. Sparks, & T. Farsides, “Moral Licensing, Moral Cleansing and Pro-environmental Behaviour: The Moderating Role of Pro-environmental Attitudes” (2019) 65 *Journal of Environmental Psychology*.

Setting the nominalistic quibble aside, the point remains that it is well-documented how consumers can be self-serving in evaluating the ethicality – in our case, more precisely, the sustainability – of their decisions.

Against this background, the considered mismatch between policy communication and legislative measures is particularly consequential. Consumers who have made some green choices will be able to perceive themselves as good people and, therefore, complain against those measures that will restrict their freedom of choice for environmental and sustainability purposes. For instance, the yellow vests protests in France 2018 was initially motivated by the rising fuel prices, which in turn was caused by the increase of taxes and the blending biofuel quotas into diesel and gasoline; these measures were justified by the clean transition policies. The origin of the yellow vest protests is a salient example of the magnitude the consumers' negative reaction to the sacrifices imposed by the environmental policies. Similar or worse reactions in the future may be expected and it cannot be ruled out that they will be justified. Hence, every opportunity to foster consumers' acceptance of environment-justified sacrifices should be explored.

Finally, it should be emphasized that the two mechanisms outlined above are connected to each other. Obligation-based motivation would eventually change the benchmark of expected behaviour. Consequently, it would be harder for individuals to consider a green choice as freely made rather than expected, to the effect that moral licensing would be less likely to occur.¹¹⁶ Conversely, raising the reference point would increase the likelihood of moral cleansing, which is a dynamic driver of obligation-based intrinsic motivation resting on the desire to make decisions that are consistent with one's moral self-image.¹¹⁷

At this point, it is useful to consider a possible objection to the present analysis.¹¹⁸ The objection holds that both mechanisms identified in this section presuppose that consumers are aware of the Commission's policy discourse; however, it seems unlikely that this is actually the case. If this is true, it becomes hard to see how curing the mismatch identified in Section 2 would have any effect on consumers' actual behaviour.

In replying, let us accept the empirical intuition that not many consumers are aware of the Commission's policy narrative as articulated in its soft law instruments. However, the Commission has an institutional apparatus in place meant to ensure that its soft law communication eventually reaches consumers, undertakings, etc.¹¹⁹

In particular, a directorate general, DG Communication, exists for the sole purpose of "bring[ing] Europe closer to its citizens".¹²⁰ The core of its communication strategy is "providing information and communication services addressing citizens directly, with messages aligned to the Commission priorities".¹²¹ While the detail of its activities are difficult – ironically – to scrutinise from the outside,¹²² the Commission website exposes again this mismatch between general communication and communication to consumers. One can find a general question about the need for collective

¹¹⁶ See, cit., p. 540 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/beer.12237>

¹¹⁷ Gholamzadehmir et al., cit.; xxx additional references on self

¹¹⁸ See also the discussion in Section 6.

¹¹⁹ See, <https://books.google.es/books?id=b0AaBwAAQBAJ&printsec=frontcover#v=onepage&q&f=false>

¹²⁰ 5, https://commission.europa.eu/system/files/2020-11/comm_sp_2020_2024_en.pdf

¹²¹ Ivi, p. 12.

¹²² No repository of the communication materials produced by DG Communication was found by the authors.

action ([what if we do not act?](#)¹²³); but then, more individualized communication fails to make any appeal to each and everyone's responsibility to make their part.¹²⁴ This is good evidence that since DG Communication picks up on the main 'talking points' identified in soft law documents, once it is established that obligation-based motivation plays little to no role when addressing consumers there, it will not play a larger role down the line.

This is hardly surprising. Since DG Communication has the purpose of making the gist of EU policy known to the public, one cannot expect it to correct the focus of the policy communication, as formulated at the heart of the political activity of the Commission. When addressing the public, DG Communication is expected only to disseminate the political message as previously formulated by the Commission.

Finally, one more radical point seems capable of addressing this objection. Even if little to no consumers were to be positively influenced by the effects of a transparent obligation-based narrative, we submit that a change in the Commission's communication strategy is justified by its narrative of emergency: if this is Europe's (hu)man on the Moon moment, no option should be disregarded simply because it is unlikely to have a major impact. This is particularly the case since it is hard to identify a possible negative impact of a more transparent communication policy. Accordingly, it seems that more transparency is a sound and modest recommendation¹²⁵ regarding the expected role consumers will have to play to ensure the Green Transition.

In sum, behavioural ethics gives us multiple empirically-grounded reasons to believe that, in one way or another, the mismatch between the European Commission's policy communication and the actual legislative measures will trim the Green Transition's sails.

6. Conclusions

This article shows that there is a mismatch between the European Commission's policy communication and the actual legislative measures implementing the Green Deal when it comes to sustainable consumption. The communication focuses on empowering those consumers who want to make the green choice. Legislative measures offer a mix of empowerment-aimed measures and responsibility-aimed measures – *i.e.*, measures that limit consumers' freedom to make the environmentally unsustainable choice.

Two mechanisms identified by behavioural ethics suggest that the policy communication's focus on empowerment trims the Green Deal's sails. The first mechanism – 'I have to, so I want to' – would be activated by a more comprehensive narrative, made of both empowerment and responsibility. This narrative would activate obligation-based intrinsic motivation, increasing consumers' willingness to make the green choice. The second mechanism – 'I am a good person' – implies that failing to communicate to consumers that they share the responsibility to deliver the Green Transition will make

¹²³ See also the video available on the 'Delivering the European Green Deal' webpage: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_en

¹²⁴ See the factsheets on "What's in it for me?", the "Just transition mechanism", and "consumer policy". [what's in for me](#) and [just transition mechanism](#)), and [consumer policyXXX](#).

¹²⁵ See EEA, cit; Iskra, cit.. As a decision to be made under conditions of epistemic uncertainty, our recommendation can also rely on the precautionary principle. In fact, this principle of risk management justifies the choice for the more cautious option, pending the collection of additional evidence.

them react negatively to the sacrifices they will have to incur because of it. Informing them clearly that sacrifices will have to be made will prepare consumers for these changes and reduce their backlash.

Empowering consumers is an important pillar of the Green Transition, but there are plenty of additional questions that become important once the focus moves from empowering only to the dyad empowerment-responsibility. In general terms, the existence of these two different approaches calls for trade-offs. In a system committed to evidence-based regulation,¹²⁶ policy-making will have to try illuminating the benefits and costs of the different alternatives. An interesting question in this regard, that had to fall outside the scope of this article, is to what extent the blinding effect of the policy communication contributes to ignoring relevant responsibility-aimed measures during the legislative process. In parallel, the above analysis leads us to recommend experts as well to pay attention to the possibility of using more pervasively responsibility-aimed techniques.

The evidence supporting the claim that there are the behavioural ethics mechanisms that will lead the mismatch to trim the Green Deal's sails could be reinforced. However, here the guidance of the precautionary principle becomes stronger. Action needs to be taken now. If additional evidence is to be collected, we recommend collecting it already with the aim of testing different possible changes in the narrative – for example, whether a radical change in the narrative would be more effective than a gradual one; whether responsibility and a sense of emergency should be domineering or emphasis shall remain on empowering or there should be a balance; etc.

It is after all the case that 'telling like it is' is a key component of a transparent policy and if there is one concept that EU consumer policy is committed to – well – that is transparency. If this is our generation's 'man on the Moon moment', we believe that telling consumers that the "EU will do whatever it takes to deliver the Green Transition, including asking consumers to make sacrifices" is just a small step for the Commission, but a giant leap for humankind.

¹²⁶ Commission, 'Better regulation: Joining forces to make better laws' COM (2021) 219 final.