

## Public Consultation on the EU's new 'consumer agenda'

### CEER Response for the European Commission

14 October 2020

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This is a response to the European Commission's Public Consultation on the EU's new 'consumer agenda' (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12464-A-New-Consumer-Agenda/public-consultation>). The consultation period was open for 10 weeks. CEER's response is public, and will also be found on the European Commission's website, as CEER submitted the response on 6 October 2020, before the consultation deadline. Per the European Commission, the purpose of the consultation was to cover 'four consumer policy initiatives that the European Commission intends to adopt in 2020 and 2021.' These initiatives were:

- A Commission Communication on a new European Consumer Agenda, and three legislative proposals respectively on:
- empowering consumers in the green transition;
- a review of the Directive on consumer credit agreements for consumers (2008/48/EC);
- a review of the General Product Safety Directive (2001/95/EC).

CEER have responded to the Consumer Agenda section and selected questions from the proposals on empowering consumers. Additionally, a written response is provided.

The consultation consisted of a number of questions via an online questionnaire. The questions and CEER's responses can be found below.

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## Main Issues from a CEER perspective

CEER welcomes the launch of a New Consumer Agenda, addressing the rights and protection of consumers across all sectors. For its part, the energy sector has a number of specificities which have led to a separate body of sector-specific provisions for the protection of energy consumers' rights.

As regards the empowerment of energy consumers to contribute to the green transition, the channels for this to occur are increasing and evolving. Energy efficiency, demand response, decentralised generation, self-consumption and energy communities present concrete opportunities for consumers to engage directly with the energy sector, to influence its shape and size and to contribute to reducing its environmental footprint.

In addition to these specific opportunities, for which the recently approved Clean Energy for All Europeans package establishes a range of enabling rules, energy consumer empowerment in the green transition also depends on the consumer's right to participate in the market by exercising their right to choose a supplier and a product that meets their needs.

Electricity is a product with very specific characteristics: there needs to be a balance between production and consumption at all times, it is hard to store and the physical flow of electricity cannot be controlled by legislation, nor by contracts. While there is a significant difference in environmental impact depending on how electricity is produced (fossil, nuclear, renewable sources), once the electricity has entered onto the grid, it becomes impossible to distinguish where the electricity comes from or how it has been produced. Furthermore, green electricity contracts are sometimes criticised by environmental NGOs and consumer organisations as being insufficiently transparent and sometimes as downright misleading, a form of 'greenwashing'. Indeed, given the relevance of this issue for the energy sector, in 2021 CEER is planning to explore the issue of 'greenwashing' across Europe and suggest good practice solutions for regulating the marketing of green tariffs (also in view of their extension to cover renewable gases such as hydrogen).<sup>1</sup>

With these specificities and changes in mind, CEER and BEUC decided to renew our **Vision for Energy Consumers**,<sup>2</sup> reinforcing its key principles to take into account Europe's evolution towards a sustainable and climate neutral future. Indeed, as we will note in the Vision, tackling climate change will involve a deep transformation of our economy and will significantly influence the way we use and interact with energy in our everyday life, such as to heat and cool our homes, cook our food and fuel our cars. In a decarbonised energy system, future consumers will face changes in how they interact with energy markets and will need to be more flexible in the way they consume (or produce) energy. We strongly believe that core consumer rights must be safeguarded, and adapted, as we embark on this transformation and transition.

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<sup>1</sup> CEER 2021 Work Programme: Public consultation document, Ref: C21-WPDC-33-03, 19 June 2020  
<https://www.ceer.eu/documents/104400/-/-/fc31c56c-a68b-75c9-d069-d6009cca36d7>

<sup>2</sup> Found at <https://www.ceer.eu/1932>

With that in mind, we are updating our Vision for Energy Consumers, setting out six key principles for the protection and empowerment of Europe's energy consumers, in the context of the transition towards a sustainable economy. We call them "**LET'S ASPIRE**": **Long-term Energy Transition for Sustainability: Affordability, Simplicity, Protection, Inclusiveness, Reliability and Empowerment**. We believe our ASPIRE principles are very much in line with the European Commission's New Consumer Agenda, and that they can equally be applied to other sectors covered by the Agenda, as captured in our comments below.

Building on our experience in the electricity and gas markets, CEER is pleased to share its perspective on some key issues to consider when developing horizontal provisions to empower consumers in the green transition.

### General considerations:

- 1) **Information provision is not enough**. Beyond the availability of the information itself, consumers need to be made aware of, and learn how to, process new information, what the information tells them and how they can use the information to their advantage. Providing information must be accompanied with adequate and wide-reaching national and European campaigns to educate consumers to identify, read, understand and use that information in their future decision-making and behaviour. Furthermore, information to consumers needs to be user-friendly in order for consumers to be in a position to make educated choices. Importantly, we should also be aware of overloading consumers with too much information, which may create confusion.
- 2) **Prohibiting 'greenwashing'**. It should not be possible to introduce easy green or climate-neutral (or similar) labelling of "dirty" products and services that do not engage in climate mitigation/adaptation production and/or without the need to pay adequate and reasonable costs/compensations for climate/environmental pollution.
- 3) **Climate impacts in consumption AND production**. Consumer products and services already affect the environment/climate in the production process (from its source, e.g. a mine, to the end-user, e.g. transport/cooling). We already see this in other industries, e.g. the food industry, where companies/retailers provide information on how resource intensive a product is (think CO<sub>2</sub>, water, soil...). Beyond the system of Guarantees of Origin (GOs) for the type of energy consumed, more information should be made available on CO<sub>2</sub> emissions and other environmental/climate impacts in the production of energy, arguably in some areas to a greater amount/potential than in the end-user consumption of these products/services. Consumers need to be informed about both impacts in production and their own consumption to correctly assess their environmental footprint when purchasing and consuming such products/services (towards a fuller product and service cycle climate/environmental assessment).
- 4) **Means to complain and enforce upon malpractice**. In cases of suspected malpractice, consumers need to have the opportunity to raise issues, to complain, and to be a whistleblower. Competent and well-equipped authorities (or responsible third-party bodies) should follow up on suspicions of malpractice.
- 5) **Promoting awareness and vigilance in consumption**. Less consumption of any resources, goods or services is the most sustainable way of living, leaving more for future generations. That is, savings of any kind need to be brought to the fore as the most efficient means for a climate-neutral future.

- 6) **“Efficiency First”**. Consumers need to be better informed about potential and actual rebound effects of increases in efficiency in order to avoid that a “better” product/service leads to an increased consumption of that product/service (which is the equivalent of waste).

**Specifically, for energy (electricity and heat) this could mean:**

- 7) **Information and information campaigning on sources of energy** and how these labels (Guarantees of Origin) are linked to the product/service itself (jointly or freely traded with energy itself). In addition to current legislation, this would mean information including some of the most essential trade properties of GOs and action to empower consumers to make good use of such information.
- 8) **Additional information and information campaigning of climate/environmental impacts** in the production of energy, especially with fossil fuels but also with a view to the opportunity of a critical assessment of “green products and services” (in other words, how green is green?).
- 9) **Promoting additional competence and authority in climate/environmental issues** for energy ADR bodies and national regulatory authorities.
- 10) **Promoting more efficient energy consumption** and the restrictions of known and likely rebound effects and the benefits for consumers and all of society by doing so.

An additional beneficial impact of such design principles is also found in an increased pressure on producers and service companies to fulfil more quickly climate/environmental requirements to a better and faster turn to a carbon-free/climate neutral future.

### **Effectiveness of Guarantees of Origin**

In the energy sector, GOs can play a major role in empowering consumers to make green choices and participate in the green transition. With that in mind, CEER highlights some key considerations towards improving their effectiveness:

- 11) **Reliability**. This element has two sides. The European system mandated by the current Renewables Directive and to be strengthened by the upcoming RED II as part of the Clean Energy Package, is very reliable as regards providing proof of the production of 1 MWh of electricity from renewable sources. The instrument used is the Guarantee of Origin (GO). In most countries, the use of GOs to claim the use of electricity from renewable sources by consumers – most often done by electricity suppliers for their customers – is also very reliable.
- 12) **Trustworthy information**. This aspect is mandated in Europe through the Electricity Market Directive, more specifically Annex II. Again, this legislation will be strengthened soon by the entry into force of the Clean Energy Package. The ‘disclosure’ information that must be provided on the electricity bill is also based on GOs and therefore fully trustworthy. This concerns what electricity comes from renewable sources and therefore green electricity contracts are directly affected. However, the informing of consumers about use made of GOs by their electricity suppliers leaves much to be desired in many cases. As recommendation 3 of the CEER 2015 Advice document suggests, this could be done in a 2-tier information model: level 1 refers to the mandatory information that is already provided on the energy bill (supplier mix, related CO<sub>2</sub> emissions and radioactive waste) as required by European Directives. Level 2 would then provide additional information that is already available on the GO, such as the geographic origin (country or, if applicable, region), the specific renewable energy source(s) and electricity production technology(ies).
- 13) **Perceived greenwashing**. In some cases, there is a mismatch between the expectations of

the customer and the proposal of the supplier. If an electricity supplier offers a green contract and backs up this contract with GOs, it cannot be denied that the customer can claim to use electricity from renewable sources in a reliable way, since the system guarantees that these GOs represent real production from renewable sources and the associated production cannot be claimed by any other consumer in Europe.

- 14) **Additionality.** But the fact that this supplier might not operate or own any renewable production devices might make the customer feel duped and feel that the contract does not make a contribution to the energy transition, as it does not seem to lead to additional investment in renewable production capacity. However, the producer of the electricity from renewable sources was the beneficiary of the GO and should have received payment by the supplier for the transfer of the GOs. Therefore, the value chain extends from the customer through to the producer and hence, the purchase of a green electricity contract should be seen as a signal from the consumer's side of the market to the supply side that there is demand for green electricity. If this demand rises, it will stimulate new investment. CEER feels it would be beneficial if the work of DG JUST would look into how this value chain carries on the signal of the consumers choosing a green electricity tariff through the electricity suppliers onwards to the producers of electricity from renewable sources.
- 15) **GO market functioning.** Low transparency of GO prices may raise concerns. From information available it could be considered that GOs are generally priced quite low<sup>3</sup>, at least for the most widely available types, like hydro-GOs. The reasons for this trend could merit further analysis at EU level.
- 16) **Increased transparency.** CEER feels that electricity suppliers should be much more transparent and inform their customers about the way they operate their green electricity contracts. By providing detailed information on the geographical and technological origin of the supplied electricity, consumers are empowered to choose the product they desire. Some consumers will be happy to buy wind power, but might not consider biomass to be acceptable. Others might show a preference for domestically-produced power and would frown upon GOs that are imported from other countries. It is the role of the suppliers to cater for the preferences of different consumers, not for the consumers to simply accept whichever GOs the supplier decides to use.
- 17) **Consumer empowerment is key.** Rather than legislating or leaving it to NGOs or consumer organisations to decide what is "green enough", CEER feels that customers need to be fully informed, in an easy to understand and accessible manner, in order to empower them to determine what they expect a green contract to be. Not all consumers express the same preferences, therefore there is no one-size-fits all approach possible here.
- 18) **Green labels.** In RED II, it says "The Commission shall adopt a report assessing options to establish a Union-wide green label with a view to promoting the use of renewable energy coming from new installations. Suppliers shall use the information contained in guarantees of origin to demonstrate compliance with the requirements of such a label." CEER welcomes the idea that labels can be creating added value for more demanding customers, as they can convey the concept of additionality through the specific additional criteria that they impose on top of the characteristics of the GOs that underlay them. However, as the CEER 2015 Advice document points out in its recommendation 12, there are already several successful and relevant labels active that help customers to choose the right green electricity contract for them.

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<sup>3</sup> According to the data on the website of NValue, GO prices are on average 17 cents/MWh for 2020, rising to on average 32 cents for 2021.

**What would be required to raise the trust of consumers in green electricity contracts?**

- 19) As the CEER 2015 Advice points out, disclosure is an abstract concept and therefore, hard-to-understand topic, due to the specific characteristics of electricity, combined with the unbundled nature of the tracking instrument, the GO. It would therefore be beneficial that there is information material available (preferably from neutral sources) that can ‘educate’ consumers on how green electricity contracts work and what consumers can and cannot expect from them. Electricity suppliers play an important role, as they bring the disclosure information to their customers through their bills. But they cannot be seen as neutral and therefore, CEER feels that regulators (e.g. through the publication of an annual disclosure report, as suggested in the CEER 2015 Advice document), energy comparison tools (see recommendation 1) and EU-level organisations like the European umbrella organisation for issuing bodies of GOs, the Association of Issuing Bodies, should play a role in informing consumers on this topic.

The New Consumer Agenda initiative aims “to benefit consumers, particularly those who want to play an active role in the green transition, by enabling them to choose greener, more sustainable products and protecting them better against certain unsustainable commercial practices.” CEER can fully relate to this goal and feels that guidelines for electricity suppliers to provide more transparency to their customers, through more detailed disclosure information, is the best way to achieve this goal.

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## Public Consultation Questions

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### I. A New Consumer Agenda

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#### Issues emerging from the impact of Covid-19

**1. Have you been confronted to any of the issues below? If so, what are in your views the key issues that EU and national consumer policies should be better prepared to respond to?**

- Online frauds and scams: the COVID-19 crisis showed how rogue traders can take advantage of consumers’ fears and use digital means to advertise fake websites, sell products with false health claims, or use pressure selling to obtain excessive prices
- Breaches of product safety rules in online trading
- Increased consumers’ financial vulnerability, e.g. need to compensate loss of income by new debt leading to over-indebtedness, inability to make scheduled payments related to rent or mortgages, consumer credit, loans from family or friends, or utility or telephone bills
- Lack of insufficient respect for civil liberties, privacy or EU data protection standards in Member States’ measures dealing with the pandemic
- I never encountered such issues
- Other

**Explanation:** Many EU consumers & companies had difficulties to pay energy bills. Measures included: ban on disconnections, payment plans for accumulated debt, etc.

**2. EU rules give passengers and travellers the right to reimbursement in money for cancelled package travel and transport services. Reimbursement of the full amount of the ticket or package travel price is due within 7 days (air or waterborne), 14 days (bus/coach; package travel) or 1 month (rail). This applies also in case of cancellation due to extraordinary circumstances.**

**Do you think that in a situation where worldwide travel restrictions have caused almost a standstill of travel, such as during the Covid-19 pandemic, specific rules should apply, such as longer reimbursement deadlines or reimbursement in the form of vouchers?**

- No, there is no need for specific rules
- Yes, specific rules should apply for unprecedented situations such as worldwide travel restrictions
- Don't know

**3. Currently, different deadlines apply for reimbursement for cancelled package travel and transport services. Moreover, insolvency protection exists for package travel, but not for individual transport services (e.g. a flight). Do you consider that the EU rules on passengers' and travellers' rights in the passenger rights Regulations and the Directive on package travel should be more aligned?**

- Yes
- No, it is appropriate to have different rules depending on the mode of transport or type of travel
- Don't know

**4. Consumer rights in cases when services (including accommodation services and sports and cultural events) are cancelled, in situations like the Covid-19 pandemic, are currently regulated at national level (with the exception of, for example, in the fields of passenger rights and package travel). Should the EU harmonise these consumer protection rules for cancellation of services?**

- Yes, for all sectors in situations of 'force majeure' (like Covid-19)
- Yes, but only for specific business sectors in situations of 'force majeure'
- Yes, for all sectors for any kind of cancellation of consumer services
- Yes, but only for specific business sectors for any kind of cancellation of consumer services
- No, this should be left to the national level
- Don't know

Medium-long term priorities for future EU consumer policy strategy

**5. The New Consumer Agenda aims to put forward a common vision of consumer policy priorities for the Union and the Member States. Which should in your view be the main priorities in the coming years? (at most 3 choices)**

- Better supporting consumers to adapt to more sustainable and environmentally friendly consumption
- Better supporting consumers to benefit from the increasing digitalisation
- Protecting vulnerable consumers
- More effective enforcement of consumer rights

- Stronger, more rapid and affordable tools to ensure consumers obtain redress when needed
- Co-operation with non-EU countries
- Better alignment between EU consumer policy and Member States' priorities
- Other

**6. Do you have sufficient trustworthy information and/or supporting tools (such as web sites or mobile apps) to shop with confidence for products and services that are truly better for the environment? (at most 3 choices)**

- Yes, I can easily find such information and I often rely on it for green shopping
- No, it is difficult for me to find enough reliable information to choose green products/services
- When I shop, I do not specifically look at the environmental characteristics of the product
- Don't know

**7. In the digital environment traders can easily reach many consumers at once and with personalised offers. However, consumers are increasingly exposed to many challenges, such as unsafe products or unfair commercial practices online. How could one best ensure that consumers have the same protection online and offline? (at most 3 choices)**

- Clearer identification of sponsored content
- Information on how offers, prices and advertisements are personalised
- Improved information on consumer rights in European SMEs and industry
- Preventing the exploitation of consumer biases, especially with data-driven practices
- Giving consumers the choice whether or not to receive personalised marketing and sales content
- Giving consumers better control over the use of their data for marketing and sales purposes
- Establishing clear and effective rules across the supply chain related to the safety of products sold online
- Other

**Explanation:** Data control is crucial to addressing many of these inter-related issues.

**8. Vulnerable consumers are particularly at risk to suffer from unfair practices. Which sources of vulnerability do you consider as particularly relevant? (at most 3 choices)**

- Low income or household purchasing power
- Age
- Place of living
- Social isolation
- Gender
- Personal health situation
- Poor IT literacy
- Poor financial literacy
- Limited Internet access
- Low education level
- Lack of practical knowledge or skills in understanding complex contract conditions and offers

- Other

**Explanation:** Vulnerability is very dependent on national situation and personal health. In energy, most of above sources are highly relevant.

**9. If you are sufficiently aware of public enforcement procedures in your country /sector, which are, in your opinion, the main barriers to an effective enforcement of consumer rights (including product safety rules)? (at most 3 choices)**

- Lack of high-tech tools to support investigation and enforcement
- Lack of sufficient financial and human resources for enforcement authorities
- Limited cooperation between competent authorities at national and EU level
- Limited cooperation between competent authorities in different sectors
- Limited cooperation between competent authorities and consumer organizations
- Lack of systematic screening of markets and consumers' problems
- Lack of specific legal powers for competent authorities (in the case of product safety, lack of mystery shopping and power of blocking websites)
- Don't know
- Other

**Other:** Often, the legal tools are there, but enforcement as such may become the problem, e.g. with companies trying to avoid enforcement, etc.

**10. How can the Commission help consumer organisations and other stakeholders be better involved in policy-making and implementation at the EU level? (at most 3 choices)**

- Capacity-building through targeted training on specific functions (e.g. qualified entities for collective redress, bodies participating in external alerts in the framework of the Consumer Protection Cooperation (CPC) Regulation, etc.)
- Capacity-building through more EU funding in the form of action grants
- Capacity-building through better access to participatory e-tools (e.g. sharing information, good practices, etc.)
- Giving them more wide-spread and formal consultative role at the EU level
- Equip them with tools to engage more proactively with the other stakeholders
- Other

**Other:** Capacity training on specific sectors, which can have complex specificities in terms of policy-making and consumer rights advocacy, e.g. energy sector

## II. Empowering consumers in the green transition

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**1. Amidst an ever-growing interest in environmental performance and climate neutrality, studies show that consumers increasingly look for more sustainable consumption patterns and choices but face obstacles. Which of the obstacles in the list below would you consider as most relevant for enhanced consumer**

**participation in the circular economy and towards more sustainable consumption behaviour? (at most 3 choices)**

- Difficulty to know how long products will function without repair
- Difficulty to know if products can be repaired easily by professional repair services
- Difficulty to know if products can be repaired easily by consumers themselves
- Difficulty to check if products are environmentally-friendly
- Difficulty to verify the reliability of environmental claims (including climate related) on products
- Proliferation and/or lack of transparency/understanding/reliability of sustainability logos/labels on products and services
- Proliferation and/or lack of transparency/understanding/reliability of IT tools (e.g. consumer apps) that provide advice for a more sustainable consumer behaviour
- Lack of knowledge of how to adopt more sustainable consumption behaviour
- Lack of means to easily track consumer's personal environmental footprint
- Unavailability of environmentally-friendly products
- General disinterest in adopting more sustainable consumption behaviour
- Perceived higher prices of environmentally-friendly products compared to less environmentally-friendly alternatives
- Perceived lower quality and performance of environmentally-friendly products compared to less environmentally-friendly alternatives
- Other
- None of the above

**2. Research shows that the price-quality ratio is the most important driver and simultaneously barrier for consumer engagement in the circular economy, followed by convenience. This also applies on purchasing durable consumer goods (such as household appliances, ICT, electronics and other items that have no expiration date).**

**In your opinion, which of the following information could be most useful for consumers to choose sustainable products and to enhance consumers' participation in the circular economy? (at most 3 choices)**

- Information on "guaranteed" products lifespan (should repairs be necessary, they would be at no cost to the consumer)
- Information on "expected" products lifespan without repair (should repairs be necessary after the legal guarantee period, they would be at consumer's expense in this case)
- Information on products lifespan subject to possible minor reasonable repairs at consumer's expense after the legal guarantee period
- Information about the reparability of the product (e.g. availability of repair services, spare parts, repair manuals, repair scoring...)
- Information on the (average) cost of repairs
- Information about software updates or upgradability of hardware and software of the product
- Information (e.g. a label / logo) vouching for the sustainability (i.e. environmental, social aspects included) of the product
- Recommendation about the sustainability (i.e. environmental, social aspects included) of the product by a trusted public or private source (e.g. a public authority, expert, celebrity, friend)
- Information on the product's life-cycle environmental and climate footprint (including resource extraction, manufacturing, transport, use and end of life / recycling)

- Information on product's environmental and climate footprint only during use Information on products social aspects of sustainability, such as respect of human rights and workers' rights
- Other
- None of the above

**Other:** For energy sector, reliable guarantees of origin and accurate information on the energy mix are essential to build consumer engagement.

**5. Many consumers want to be empowered with rights and access to reliable information to be able to play their role in the green transition to the full extent.**

**Which measures in the list below would you consider as most effective to achieve this goal? (at most 3 choices)**

- Providing better consumer information on products' durability (lifespan)
- Providing better consumer information on products' reparability
- Providing better consumer information on software updates/upgrades
- Providing better consumer information on the life-cycle environmental and climate footprint of the product or service (including resource extraction, manufacturing, transport, use and end of life/ recycling)
- Information on product's environmental and climate footprint only during use
- Providing better consumer information on how to operate under extreme climate conditions products destined to be exposed to the elements and used outside
- Providing better consumer information on social aspects of sustainability, such as respect of human rights and workers' rights
- Providing a greater transparency and reliability for sustainability logos/labels (i.e. covering environmental and social aspects)
- Providing a greater transparency and reliability for IT tools (e.g. consumer apps) providing advice for a more sustainable consumer behaviour
- Providing a stronger protection against practices that cause products to fail earlier than can normally be expected (so called "early and planned obsolescence")
- Establish new consumer rights to repair products (including e.g. critical software updates)
- Providing a stronger protection against greenwashing (i.e. claims on environmental qualities of products or services that are exaggerated, too vague, false or impossible to prove)
- Raising awareness about the role of consumers on circular economy and green transition
- Strengthening the enforcement of EU consumer law in these matters
- Other
- None of the above

**Explanation:** More transparency on and trustworthiness of green electricity contracts is needed, including with more protection against greenwashing.

**6. Which of the following would be in your view most effective in improving the enforcement of EU consumer laws in the interest of enhanced participation of consumers in the green transition? (at most 3 choices)**

- Require national enforcement bodies to prioritise (e.g. by allocating more resources) enforcement of provisions that enhance the participation of consumers in the circular economy
- More EU-funded training of enforcement authorities and judges on these matters

- Detailed EU guidance for enforcement bodies against greenwashing and obsolescence practices and on enforcing consumer information rules
- Setting up at EU level an advisory system to ensure sustainability claims on products are based on reliable information
- Assisting national enforcement bodies in tracing the whole value chain to detect false or misleading claims through investments in new technologies (such as Artificial Intelligence systems)
- Introducing at EU level deterrent penalties for providing misleading information to consumers in these matters
- Create an effective tool through which consumers can report to authorities problems experienced – e.g. absence of environmental information, misleading information, etc.
- Strengthen cooperation between public authorities and businesses allowing for swift removal/correction of misleading claims/information and ensuring that consumers are informed and/or proposed adequate remedies
- Other
- None of the above

**Explanation:** In complex (and essential service) markets like electricity, important to promote cooperation with companies, to correct/remove misleading claims.