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Social Economy, Sustainability and the Consumer-Citizen Protection

by:

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On the 9th of December 2021, the EU Commission presented an [Action Plan to boost the social economy and create jobs](#). According to the EU Commission “*Social economy organisations are entities which put social and environmental purposes first, reinvesting most of their profit back into the organisation*” e.g. mutual-benefit societies, cooperatives or charity associations. From a sustainability perspective, one of the important characteristics of the Social Economy is that it relates to Circular Economy and facilitates local production and consumption patterns, creates new business opportunities such as repair and reuse of consumer goods and sharing as well as short supply chains and reduces externalities such as CO² emissions at the transportation stage. The Social Economy is therefore important for the green transition.

Climate change, environmental degradation, and the urgent need to change our consumption patterns are rapidly reshuffling the deck and (finally) challenging the very principles of consumer society and consumer protection as commonly understood since the early 1960s. The (re)development of a Social Economy – especially since the Commission’s 2011 [Social Business Initiative \(SBI\)](#) and 2016 [Start-up and Scale-Up Initiative](#) – can here work as another catalyst of the ongoing paradigm shift towards a conception of Consumer Law that is less individualistic and less focused on the protection of the sole economic interests of the consumer. For Consumer Law(yers) these are exciting yet almost somewhat scary times: will this field of law still exist in a few years? And does Social Economy even need the concept of consumer protection? The goal of this blogpost is to assess very briefly some of the challenges and opportunities faced by Consumer Law considering the Social Economy from a sustainability perspective.

The main challenges in relation to “Social enterprises” are their cross-sectoral nature, the fact that they cover different types of entities and the need to consider different legal forms covered by the Social Economy as a whole. In fact, Social Economy entities and its actors can be active in almost every economic sector. A multitude of laws and policy are potentially relevant. This is one common point with Consumer Law, which is also transversal by nature and characterized by a sectoral approach with the aim to protect the weaker party (only but nevertheless) in the context of a specific commercial – mainly contractual – relation to businesses. Under EU law, outside the scope of the relevant Directives, Member states remain free to strengthen, or not, the protection granted to the “consumer” by national law. As part of the internal market policy, EU (and EC) Consumer Law (in its broadest sense including e.g. Product Liability) was, however, [never strictly limited to minimum harmonisation](#) nor even to the protection of the

consumer in the “[technical sense](#)”. On the other hand, due to its wider cultural and historical development patterns, Social Economy is a typical bottom-to-the-top issue. As stated in the 2021 [Mannheim Declaration](#), “*the development of appropriate legal, regulatory and fiscal frameworks must therefore emerge from the national and local environments in which social economy enterprises and organizations operate*”. The Commission also noted that “*Member States are responsible for putting in place policy and legal frameworks supporting the development of the social economy at national level*”. Social Economy is nevertheless deeply functional too as it aims to steer transformations to a more sustainable economy and world.

A potential challenge that Social Economy poses to Consumer Law relates to the very definition and function of the “consumer”. From being a passive recipient of products in the market, she potentially also becomes a provider or an “internal beneficiary” in a sense outside the “traditional” linear economy. In a similar way as the Sharing and Platform economies a few years earlier, that raises questions on the identification of the “consumer” and, hence, on the scope of the application of protective rules. For example, could (and should) a consumer cooperative be considered as a “consumer” when it purchases furniture for its members acting for private purposes? And how can private use be distinguished from professional use in a consumer cooperative and does such a categorical distinction even still make sense? To give another example, should there be a specific protection for the borrower of a loan aimed at the creation of a social- or microenterprise and, more generally, to what extent is there a need to recalibrate the understanding of consumer-citizen vulnerability as being more collective and *pro futuro* rather than individual and present oriented?

Furthermore – although not exempt from criticism – information still is an important [market-rational welfarism tool](#) to help consumers choose over products and services. This remains the case for the Circular Economy. In its position paper of March 12, 2021 on the Social Economy Action Plan, the non-profit network [RREUSE](#) noted that information on Social Economy products, especially via an European Label, can help to empower consumers to make informed choices. The 2021 Mannheim Declaration puts forward the need to reflect on labels and certification to stimulate the recognition of such products, services and enterprises by consumers too. However, labels alone usually do not permit achieving industrial changes and their proliferation even confuses consumers. With certifications, from a consumer-citizen perspective, the issue is their reliability, the fact that they must be based on objective and easily verifiable criteria as well as their enforcement. The transparency of the Social Economy products *prima facie* faces the same obstacles as “traditional” consumer information and this another point of convergence between the two concepts. Social Economy, however, is a means not only to inform consumers on sustainable products but – and this is key for reaching an effective sustainable consumption – also to promote and stimulate (and in a rather soft way) the marketing of such products *ab initio*. By acting on the cause of unsustainable production patterns rather than to combat their effects at the consumption level, “[sustainable consumer choices would simply not be an issue](#)” anymore.

Finally, Social Economy bears a concrete potential to make the transition from the consumer to a citizen with responsibility for the environment a reality by stimulating consumers to take part in the Circular Economy. Typical Circular Economy goals of durability (lifespan model) and shared use (platform model and product-as-a-service model) of goods can indeed be fostered by Social Economy, especially by consumer cooperatives. As the Commission analyses, partnerships between social enterprises and mainstream businesses could also boost the development of local green deals or green citizenship

action. However, it remains to be seen how developments of Social Economy will impact (or not) Consumer Law, and to what extent. Contrary to traditional Consumer Law, one of the main principles of Social Economy being the primacy of environmental purpose over profit, it seems to me that this debate will have to take place in one way or another.