

# Global Value Chains and Consumer Law

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## A. Introduction

The relation between production and consumption is one of the most significant of our time for a series of reasons. The first one is of economic nature: Gross Domestic Product (GDP), the economic indicator *par excellence*, is defined also as the “the total value of all goods and services produced”<sup>1</sup> in a given market and, in the EU, more than half of it derives from household consumption.<sup>2</sup> This indicates that the EU single market significantly relies on the value generated by consumer transactions of goods and services in the EU. A second, and perhaps more compelling, reason is that patterns of production and consumption represent a challenge for sustainable development and, by extension, for sustainability-related goals. Number 12 of the UN Sustainable Development Goals (SDGs) addresses exactly this issue from the specific perspective of distribution of resources.<sup>3</sup> Since the launch of the UN SDGs, this theme has broadened up as to include considerations on the need to entirely rethink consumerism and consumer economies due to the environmental and social impact of (over)consumption and, connected to that, (over)production. In the EU, this broader debate

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<sup>1</sup>[https://european-union.europa.eu/principles-countries-history/facts-and-figures-european-union\\_en#:~:text=GDP%3A%20as%20one%20of%20the,EU%20is%20€17%20trillion](https://european-union.europa.eu/principles-countries-history/facts-and-figures-european-union_en#:~:text=GDP%3A%20as%20one%20of%20the,EU%20is%20€17%20trillion) (last access 1.7.2025).

<sup>2</sup> [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Household\\_consumption\\_by\\_purpose](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Household_consumption_by_purpose) (last access 1.7.2025).

<sup>3</sup> [United Nations Sustainable Development Goals \(UN SDGs\)](#) (last access 1.7.2025).

can be found in the policy and legislative initiatives that have stemmed from the European Green Deal. The “green” character of this important policy package is indicative of the direction that the EU has given to its promotion of sustainable production and consumption practices. While the environmental impact of consumption and production has received substantial attention by the EU legislator, quests for improving the social aspects of production and consumption have found less space in the policy and legislative debate.

Conversely, such a debate is very rich in civil society, where consumers-activists regularly manifest their complaints against severe abuses taking place in processes of production. These may be workers’ rights abuses, gender-based violence, forced or child labour, health and safety related matters and the alike.<sup>4</sup> In the context of civil-society activism, these quests are directed against corporate actors, typically large multinational or transnational corporations. From a strictly legal point of view, it is difficult, however, for consumers to hold those large corporations responsible for social misconduct in the production due to challenges in the establishment of negligence and causation. The misalignment between the social perception of responsibility and the actual liability borne by (large) corporations for the abuses occurring in processes of production has its root-cause in the specific organizational arrangements of such processes, which take the form of global value chains (GVCs). For this reason, to investigate the relation between consumption and production processes is to analyse the relation between consumers and GVCs. In this exercise, the analysis is guided by the following questions:

Where does the law, both consumer law and laws specifically regulating GVCs, leave consumers and their demands for more socially sustainable production patterns? Are these laws capable to address such societal quests and acknowledge a role for consumers? If the answer is positive, how and to what extent? If the answer is negative, why is this the case and what could/should be done to fill this gap?

In answering these questions, the contribution will be structured as follows: sections B will focus on the quest for sustainable production patterns and, to that end, introduce the concept of GVCs as developed in socio-economic and socio-legal scholarship; it will also explain how,

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<sup>4</sup> A very prominent example in that regard has been the Rana Plaza tragedy that also resulted in claims for consumer boycott towards large corporations.

in this scholarship, the role of consumers has been only marginally touched upon; section C will then focus more specifically on how EU law has approached the regulation of GVCs as a response to specifically demands for sustainability. This analysis will show that, despite the multifaceted integration of GVCs in EU law, there is equally little to no attention given to the role of consumers. Section D will be the mirroring analysis on EU consumer law to assess whether this body of law connects to GVCs by offering actionable tools for enforcing ethical-oriented quest of sustainable and socially responsible consumption and, inherently, production. This analysis will show that the recent amendments introduced by the EU green transition have created a space for green consumer choices related to production. However, these recent developments do not address the complexity of GVCs and, instead, centre on the communicative practices through which a specific corporate actor in the chain – seller or producers – addresses consumers. This leaves consumers with a marginal legal space to become involved in the re-organisation of socially and environmentally problematic systems of global production even in the field of consumer law. The concluding section discusses the remaining possibilities to conceive of a more meaningful consumer involvement in the production. The answer to this question suggests that consumer law might be required to shift from a rights-based to a responsibility-based discourse and from a product- to a production-centric approach.

Before the analysis, a preliminary note and caveat must be made: The chapter will not problematise the image of ethical consumerism and green and social consumption; instead, it takes the willingness of consumers to consume more responsibly as its factual premise. The reasons for this are twofold: First, ethical – specifically green - consumption will be the subject of a separate chapter in this handbook.<sup>5</sup> But second, and more importantly, we start from the normative premise that an ethical orientation of consumerism and a concern of consumers for sustainable production patterns is of relevance for the law because of the need to align the consumer image and consumerism with broader societal demands. Against this background, it seems not too decisive to us whether or not ethical consumerism corresponds to the factual willingness of the majority of consumers and thus has statistical (ir)relevance.<sup>6</sup>

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<sup>5</sup> See in this volume, Marta Santos Silva on Green Consumption.

<sup>6</sup> More on this normative justification has been told by others. Jie Oyuang has rightly pointed out that consumers too are embedded in society and in its social stratifications. The social class to which consumers belong affect their

## B. Global Value Chains

### 1. Global Value Chain Scholarship & The Position of Consumers

Today, processes of production are mainly organised in the form of GVCs. Most generally, value chains are understood as the full range of production steps, involving material, technological and human input, needed to produce, market and distribute a product.<sup>7</sup> Interestingly, by integrating distribution patterns in the definitions of GVCs (also called “downstream value chains”), GVC scholars already emphasise the intrinsic connection between production and consumption. However, as we show below consumers have been conceptualised as more marginal than other, production-related actors (in the “upstream value chain”).

The reference to the global in the GVC terminology indicates not only that value chains are distributed globally but also carries the emphasis on connecting production and consumption processes to specific regional trade patterns, thus discussing the spatial scope of production and consumption.<sup>8</sup> GVCs have transformed the way in which processes of production and distribution are connected, organised and contextualised in the light of the social and spatial implications of their impacts. This double organisational and spatial transformation has been reflected in the orientations of inquiry adopted within socio-economic and socio-legal scholarship with respect to GVCs.

**Economic governance of GVCs:** From the organisational perspective, GVC scholarship links to the tradition of corporate governance and private self-regulation studies.<sup>9</sup> This approach

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capacity to act or react against inequalities and abuses taking place in processes of production. This should not be taken as a justificatory ground for the complicity of consumers in violations of fundamental rights across value chains. Such a reasoning may be considered in and on itself unfair. See, Ouyang, “Embedded Consumer”: Towards a Constitutional Reframing of the Legal Image of Consumers in EU law, *Journal of Consumer Policy*, vol. 47, 2024, pp. 395-423.

<sup>7</sup> Ponte, Gereffi and Raj-Reichert, *Handbook on Global Value Chains*, Edward Elgar Publishing, 2019; Jennifer Bair, *Frontiers of Commodity Chain Research*, Stanford University Press, 2008.

<sup>8</sup> In general, there are two core, partly competing, partly complementary, conceptual approaches in GVCs, the Global Value Chain approach developed most prominently by Gerry Gereffi and the Global Production Network (GPN) approach by Coe and Yeung; Gereffi, Humphrey and Sturgeon, *The Governance of Global Value Chains*, *Review of International Political Economy*, vol. 12, 2005, p 78 ; Yeung and Coe, *Toward a Dynamic Theory of Global Production Networks*, *Economic Geography*, vol. 91, 2014, p 29.

<sup>9</sup> Grundmann, Cafaggi and Vettori, *The Organizational Contract: From Exchange to Long-Term Network Cooperation in European Contract Law*, Routledge, 2016. ; Grundmann, Möslin and Riesenhuber, *Contract Governance*, Oxford University Press, 2015. ; Cafaggi, *Transnational Private Regulation of Environmental Sustainability through*

looks at GVCs as a model of organisation of production from the perspective of transaction-cost and institutional economics.<sup>10</sup> This view of GVCs analyses the factors and the reasons that determine the specific configuration of governance in a value chain and the degree of its leaning towards one end or the other in the spectrum between market and hierarchy forms of business organisation. In this regard, legal scholarship based on this economic tradition looks at GVCs as a form of economic governance. This tradition focuses on the variety and functioning of the coordination mechanisms adopted by firms for contributing to the overall “purpose” of the value chain on the one hand, and for their own economic advantage, through value capturing, upgrading or scaling, on the other hand.<sup>11</sup> From this organisational perspective on GVCs, consumers could potentially be framed as actors participating in the GVC insofar as their consumption contributes to the overall purpose of the production system. However, such a reading is significantly impaired due to consumers’ lacking organisational and governance influence over the chain compared to that of other (business) actors.

**Spatiality of GVCs:** From the spatial perspective, GVC scholars address the relation between the economic organisation and the external “environment”, meant here as including also society at large. In this context, the regional embedding of trade in GVCs proves important. This approach stems from studies of corporate social responsibility and is today mostly rooted in the domain of business and human rights or sustainability studies. The common basis of this line of inquiry in GVC scholarship is the earliest tradition of global commodity chain studies, originated in turn in the literature on World Systems Theory.<sup>12</sup> This line of inquiry challenges the governance-centric economic perspective on GVCs. It also questions the rhetoric fostered by, amongst others, the World Trade Organisation (WTO), the World Bank

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Commercial Contracts. Reassessing Contractual Governance in Global Supply Chains *European Review of Contract Law*, vol. 20, 2024, p. 25.

<sup>10</sup> Fundamentally, Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*, Free Press, 1985.

<sup>11</sup> Gereffi, Lim and Lee, Trade policies, firm strategies, and adaptive reconfigurations of global value chains, *Journal of International Business Policy*, vol. 4, 2021, p. 506; Gereffi, Humphrey and Sturgeon, 'The Governance of Global Value Chains'; Bair and Mahutga, Power, governance and distributional skew in global value chains: Exchange theoretic and exogenous factors, *Global Networks*, vol. 23, 2023, p. 814; Baglioni, Campling and Hanlon, Global value chains as entrepreneurial capture: insights from management theory, *Review of International Political Economy*, vol. 27, 2019, p. 903.

<sup>12</sup> Wallerstein, *World-Systems Analysis: An Introduction*, Duke University Press, 2004.

and the Organisation for Economic and Social Development (OECD),<sup>13</sup> according to which globalised trade through GVCs is assumed to be an enabling factor for the development of less industrialised countries.<sup>14</sup> Instead, the modalities and the extent to which the developmental outcomes meant to be sustained by globalised trade are put into question. The emphasis is on the division of labour across value chains and the power dynamics between actors, regions and countries participating in value chains, both on the production and the consumption side. This leads to what is viewed as a neo-colonial power exercised by Western corporations, countries and consumer sensitivities to the detriment of workers and the environment of less industrialised countries, which are often former colonies.<sup>15</sup> In short, this view portrays GVCs not merely as complex trade structures but as historically grown patterns of extraction that link back to colonial times, with the law not altering but supporting such patterns. In the context of this analysis, consumers do not appear as individuals but as a collective of “Western” forms of consumption that drive extractive models of production. However, the main actors driving the “machine” of neo-colonial extraction are perceived to be the large Western-based multinational corporations.

## 2. Law in GVCs: Private Regulation and Consumer Markets

Despite their different understanding of GVCs, both perspectives have not treated GVCs as a legal concept.<sup>16</sup> The private and transnational character of GVCs makes them hard to confine within the borders of a single autonomous legal order. Their legal basis rests on property and

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<sup>13</sup> Elms and Low, *Global Value Chains in a Changing World*, 2013; WTO, *Global Value Chain Development Report 2017*; World Bank, *Trading for Development in the Age of Global Value Chains*, 2020; OECD, *Trade for Growth and Poverty Reduction: How Aid for Trade Can Help, The Development Dimension*, OECD Publishing, 2011.

<sup>14</sup> In the contemporary turmoil due to the reintegration of tariffs, which come after the disruption years of Covid-19 pandemic and the aggression of Russia against Ukraine, the language of these organisations is changing towards the importance of GVC resilience instead of their developmental goal.

<sup>15</sup> Lichuma, (Laws) Made in the ‘First World’: A TWAIL Critique of the Use of Domestic Legislation to Extraterritorially Regulate Global Value Chains, *Heidelberg Journal of International Law*, 2021; Bose, Decentring Narratives around Business and Human Rights Instruments: An Example of the French *Devoir de Vigilance* Law, *Business and Human Rights Journal*, vol. 8, 2023, p. 18; Mason, Partzch and Kramarz, The Devil is in the Detail—The Need for a Decolonizing Turn and Better Environmental Accountability in Global Supply Chain Regulations: A Comment, *Regulation & Governance*, vol. 17, 2023; Palombo, *Transnational Business and Human Rights Litigation: An Imperialist Project?* *Human Rights Law Review*, vol. 22, 2022; Mak, On the Europeanness of transnational private law: human rights due diligence inside and out, *Maastricht Journal of European and Comparative Law*, vol. 32, 2025, forthcoming.

<sup>16</sup> Eller, Is ‘Global Value Chain’ a Legal Concept?, *European Review of Contract Law*, vol. 16, 2020, p. 3.

contract law through which actors in the chain coordinate their activities. The mixed use of different legal tools designs the contours of value capturing, responsibility and liability dynamics among the actors in the value chain.<sup>17</sup> In the transnational space of GVCs, these traditional private law tools turn into the vehicle of private self-regulation: sustainability and human rights outcomes have been translated into self-regulatory practices significantly relying on privately generated norms, such as voluntary sustainability standards and certification schemes.<sup>18</sup> Hence, private regulation is the dominant regulatory mode for GVCs. It is these private practices that coordinate global value chains and connect them to consumer markets by serving as signals for responsible production patterns. While sustainability standards and certification schemes are not infallible, their market-based nature has made them gain success over time and across industries. Their ever-growing adoption rests on their nature as a market-based solution for preventing and remedying the negative impacts of (global) processes of production in the absence of a global public and mandatory regulation capable of ensuring such outcomes.

However, besides the limitations to their effectiveness, standards and certifications have been criticised on different grounds: first, for not solving the issue related to the allocation of liability among value chains members, which often impedes victims from obtaining compensation when a negative impact occurs; second, for their intensifying effect on the unequal distribution of risks and costs of “irresponsible” behaviour by the value chain’s “anonymous matrix”;<sup>19</sup> last, for their potential misleading effect on consumers when they get employed as a market communication tool. The debate on greenwashing has shed light on the darker side of reliance on sustainability standards, insofar as this practice allows companies to capitalise on green marketing and communication including on participation in private regulatory schemes and certifications while avoiding accountability and the costs of the implementation of such standards.

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<sup>17</sup> Highlighted by the IGLP manifesto that focuses on the constitutive role of the law for value-capture in GVCs, see; The role of law in global value chains: a research manifesto *London Review of International Law*, vol. 4, 2016, p. 57.

<sup>18</sup> Marx and others, *Global governance through voluntary sustainability standards: Developments, trends and challenges* *Global Policy*, vol. 15, 2024, p. 708; UNCTAD, *Voluntary Sustainability Standards in International Trade*, 2022; UNCTAD, *The Future of Sustainable Trade*, 2025.

<sup>19</sup> Teubner, *The Anonymous Matrix: Human Rights Violations by 'Private' Transnational Actors* *Modern Law Review*, vol. 69, 2006, p. 327.

The enabling factor of this connection between private self-regulation and negative impacts of production processes is to be found in the overlay between self-regulatory practices and traditional private law instruments. GVCs are chains or networks where production and distribution are fragmented among participants whose tasks are coordinated most often by means of a contract. Such a contractualization allows companies, leading firms in the value chains, to subscribe and commit to certain sustainability and quality standards whose costs and responsibility is transferred to suppliers, whom in turn may not be situated economically, practically, relationally, culturally well enough to face such responsibility.<sup>20</sup> Consumers, in turn, remain equally dependent on lead firms who communicate the modes and impact of their production mainly through private regulatory tools. GVCs and consumers are thus mainly connected through the mediating role of lead firms and their private regulatory activities.

### C. GVC Laws

Despite the emphasis in the previous section on predominantly private regulation and on the facilitating, rather than regulatory, role of law in governing GVCs, recent developments still suggest a trend towards more active legislative intervention. In this context, the EU has increasingly identified GVCs as regulatory proxies through which to achieve a certain degree of extraterritorial regulatory influence.<sup>21</sup>

**Differentiated approaches to GVCs in EU law:** Despite this ambition to regulate GVCs as a whole, EU law remains fragmented in its approach. There is no single or uniform way for rearticulating the presence of GVCs in (EU) law. This fragmentation manifests itself in many

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<sup>20</sup> This issue is gaining attention under the epithet of “sustainable purchasing practices” and is the core activity of the [“Responsible Contracting Project”](#) (last access 1.7.2025); Maslow and Snyder, *Contracts for Responsible and Sustainable Supply Chains: Model Contract Clauses, Legal Analysis, and Practical Perspectives*, ABA Publishing, 2023; Snyder, Maslow and Dadush, *Balancing Buyer and Supplier Responsibilities: Model Contract Clauses to Protect Workers in International Supply Chains*, Version 2.0 *The Business Lawyer*, vol. 77, 2021 ; Dadush, Schönfelder and Streibelt, *What the EU Corporate Sustainability Due Diligence Directive Says About Contracts*, 2024 . See also below Section D, ii).

<sup>21</sup> Salminen, Rajavuori and Eller, *Global Value Chains as Regulatory Proxy: Transnationalizing the Internal Market Through EU Law in: Anna Beckers and others (eds), The Foundations of European Transnational Private Law*, Hart Publishing, 2024 . The extraterritorial ambition of the CSDDD remains intact, despite reduced in scope, also in the light of the amendments wrought by the Omnibus I simplification package.

ways: The first, and most intuitive, is that, even where EU law seeks to engage with GVCs, it does so through different terminologies. A close reading of recent legislative instruments shows that GVCs are reflected in the notion of “economic operators” in the Product Liability Directive;<sup>22</sup> in the “chain of activities” in both the Corporate Sustainability Due Diligence Directive (CSDDD)<sup>23</sup> and the omnibus-version of the Corporate Sustainability Reporting Directive (CSRD)<sup>24</sup> in the “chain of custody” in both the Deforestation Regulation<sup>25</sup> and the Conflict Minerals Regulation<sup>26</sup>, in the “chain of transactions” in the Consumer Sale Directive (CSD)<sup>27</sup> and more explicitly in the “value chain” in the Sustainable Products Ecodesign Regulation (SPER) or the Critical Raw Material Act.<sup>28</sup>

The variance in terminology reflects the second difference concerning the regulatory entry points through which the law addresses the GVCs. In the two sustainability-related directives – the CSDDD and the CSRD – GVCs are understood through a lead firm model, in which a central undertaking bears responsibility for its upstream and downstream “chain of activities”. Despite changes through the Omnibus package, this approach remains intact with the new rules. In contrast, under the Deforestation Regulation and the Regulation on Banning Products made from Forced Labour<sup>29</sup>, GVCs are treated more as commodity chains, whose normative

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<sup>22</sup> Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC.

<sup>23</sup> Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859. This is one of the legislative texts that is revised by the Omnibus package.

<sup>24</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. This is one of the legislative texts that is revised by the Omnibus package. One of the amendments is the substitution of the term “value chain” with that of “chain of activities” so as to align the CSRD and CSDDD texts.

<sup>25</sup> Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

<sup>26</sup> Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

<sup>27</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, OJ L 136, 22.5.2019 (CSD).

<sup>28</sup> Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020.

<sup>29</sup> Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937, OJ L 2024/3015.

relevance depends on the type of commodity traded, thereby depersonalizing the notion of the GVC and regulating the product rather than an actor. Finally, in the Product Liability Directive, the concept of “economic operators” refers to the variety of actors participating in the value chain; however, unlike the actor-centric constructions of GVCs, the economic operators are understood as a network,<sup>30</sup> situated mid-way between centralisation and decentralisation of their structure and purpose.<sup>31</sup> It is, however, mainly actor- and commodity-centric representations of a value chain that are aimed at addressing the sustainability of production processes and, as such, are more closely aligned with corresponding patterns of sustainable consumption. We will thus focus our core inquiry on these types of GVC rules.

**Actor-centric GVC regulation and consumers:** Building on existing recommendations and practices,<sup>32</sup> the main obligation introduced by the CSDDD is the requirement for corporations falling under its scope to adopt a due diligence process covering activities carried out by both upstream and downstream partners. These activities must be mapped and subjected to a risk assessment addressing their potential and actual adverse impacts on human rights and the environment. The due diligence process is modelled on the “OECD Due Diligence Guidance for Responsible Business Conduct”.<sup>33</sup> The identification of potential and actual adverse impacts must be based on stakeholder engagement, and in addition, corporations must ensure a notification system and complaint procedure along the chain of activities.

This approach to value chains suggests that the companies falling under the scope of the regime are perceived as responsible for and in control of the other value chain participants. This conceptualisation reflects the understanding of value chains as coordinated by a *chain leader*, which, in most consumer markets, is typically a large corporate buyer.<sup>34</sup> The chain leader is identified as the actor exercising a form of coercive power through its superior bargaining position vis-à-vis smaller suppliers.<sup>35</sup> At the same time, the chain leader is

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<sup>30</sup> Quinn and Condon, *Beyond the individual-company: from corporate social responsibilities to corporate social liability* Transnational Legal Theory, 2025, p. 1.

<sup>31</sup> This is the distinction between the different ways in which EU law has institutionalised GVCs, as proposed by Anna Beckers in: Anna Beckers, *Global Value Chains in EU Law Yearb Eur L*, vol 42., 2023, p. 322.

<sup>32</sup> Mainly those emerging from the voluntary implementation of the OECD Guidelines for Multinational Enterprises and the UN Principles on Business and Human Rights.

<sup>33</sup> OECD (2018), *OECD Due Diligence Guidance for Responsible Business Conduct*.

<sup>34</sup> Gereffi and Korzeniewicz, *Commodity Chains and Global Capitalism*, Praeger Publishers, 1994 .

<sup>35</sup> Bair and Mahutga, *Power, governance and distributional skew in global value chains: Exchange theoretic and exogenous factors*; Staricco, *Power and its sources in the governance of global value chains: The Argentina-*

identified as the actor extracting the highest economic value from the value chain, owing to its control over intellectual property rights and research and development capabilities.<sup>36</sup> These considerations explain why large buyers are increasingly required to treat adverse impacts occurring along their value chain as if they fell within *their own* sphere of control and activity, even though this is often not technically the case. The chain leader is also the core actor that provides consumer-centric communication regarding the production process. Through marketing and public statements, it is mainly chain leaders who engage with the consumer market, hereby establishing a key communicative position in the GVC between production and consumption.

**Liability:** From a strictly legal perspective, the connection between actors in a value chain is grounded either in property rights, through share ownership by a parent company in its subsidiary, or, more commonly, in contractual relationships between formally autonomous and legally independent entities. Reconciling this hybrid nature of GVCs, which operate at the intersection of markets and hierarchies,<sup>37</sup> has long posed challenges for formal and doctrinal legal analysis. At the same time, it is precisely within these legal interstices that abuses by large companies, to the detriment of weaker suppliers and workers, have historically been obscured. This difficulty has been partially addressed by the development of doctrines allowing for the lifting or piercing of the so-called “corporate” and “contractual” veils. By means of such doctrines, courts have established the direct liability of certain companies even where the adverse impact was formally caused by a business partner.<sup>38</sup> There

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European Union biodiesel value chain *Global Networks*, vol. 23, 2022, p. 715; Dallas, Ponte and Sturgeon, Power in global value chains *Review of International Political Economy*, vol. 26, 2019, p. 666; Lang, Ponte and Vilakazi, Linking power and inequality in global value chains *Global Networks*, vol. 23, 2022, p. 755.

<sup>36</sup> Exception to this can be found for instance in the fertilizer industry. See: Tups and Dannenberg, Supplying lead firms, intangible assets and power in global value chains: Explaining governance in the fertilizer chain *Global Networks*, vol. 23, 2023, p. 772.

<sup>37</sup> Just to mention a few important works from different scholarly traditions and time: Powell, Neither Market nor Hierarchy *Research in Organizational Behaviour*, vol. 12, 1990, p. 295; Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting*; Gereffi, Humphrey and Sturgeon, 'The Governance of Global Value Chains'.

<sup>38</sup> *Chandler v Cape plc* [2012] EWCA Civ 525; *Lungowe v Vedanta Resources plc* [2019] UKSC 20; *Begum v Maran (UK) Ltd* [2021] EWCA Civ 326.

is, however, no equivalent in relation to consumers being able to pierce the veil and hold lead firms liable on the basis of tort or contract. Consumers remain outside the “liability chain”.<sup>39</sup>

**Stakeholder and complaints:** Such ex-post liability approaches to the adverse effects of production processes – also called “externalities” – are complemented by due diligence regimes, which instead emphasise preventive action against *potential* adverse impacts. Beyond this preventive function, due diligence frameworks also require internal procedures aimed at mitigating and remedying *actual* adverse impacts. Due diligence also entails a form of internalisation by the lead firm, within its own procedural boundaries, of the direct and indirect relationships that it maintains with actors that are legally external to the firm. The most representative elements of this internalisation are the complaint mechanism and stakeholder engagement, both of which are required as a basis for the identification of adverse impacts under the CSDDD and CSRD, as originally adopted in 2024 and 2022, respectively. However, despite obliging firms within GVCs to develop risk-management practices for more socially and environmentally sustainable production, neither the complaint procedure nor stakeholder engagement provide a meaningful avenue for accommodating societal demands, including those of consumers for more sustainably and ethically produced goods. The complaint mechanism is only accessible to victims of negative impacts, thereby excluding any form of consumer participation through this channel. Moreover, stakeholder engagement is not defined clearly in either the CSRD or the CSDDD, leaving the representation of consumers, as well as of other stakeholder groups, contingent on the capacity and willingness of the lead firms to incorporate their perspectives in a substantive and effective manner.<sup>40</sup>

Hence, the actor-centric institutionalisation of GVCs adopted by EU law in its pursuit of sustainable production does not systemically incorporate consumers into the governance framework. Hence, while consumers are formally recognised as stakeholders in processes aimed at promoting sustainable production, and while EU regulation of GVCs extends to, in principle, “downstream” (distribution) activities, the emerging legal framework governing GVCs does not establish any means for providing consumers with effective mechanisms to

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<sup>39</sup> For an attempt to reconstruct liability chains with respect to consumer laws and rights, Sommerfeld, “Eine Haftungskette für die Lieferkette – Subsidiäre Haftung von Wirtschaftsakteuren in derselben Lieferkette”, in: Hanjo Hamann, Miriam Belke, Melih Esmer, Jule Halbach, Jakob Knapp, Zoe Reil, Daniel Verres, Hanes Weigl, Simon Weyhoben (eds), *Blinde Flecken der Zivilrechtswissenschaft*, Nomos, Baden-Baden 2026, forthcoming.

<sup>40</sup> See, for this insight on the broader analysis of different mandatory due diligence rules, Bose, “Are there humans in human rights due diligence?”, SSRN Electronic Library, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5316055](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5316055).

influence the governance and due diligence process for sustainable production. Instead, the main regulatory addressees remain lead firms, which are entrusted with the responsibility of identifying and addressing the negative impacts of production processes, including, indirectly, on behalf of consumers. The marginal role given to consumers in EU legislation relating to GVCs mirrors their limited significance within GVC scholarship. Both the “law and development” and the “governance” traditions tend to position consumers at the periphery of their analytical inquiries. In this body of literature, consumers lack a clearly defined identity and are generally conceptualised as broad “consumer markets”,<sup>41</sup> wealthy or over-consumers<sup>42</sup> or consumer activists.<sup>43</sup> Even in the buyer-driven chains prominently identified by Gereffi,<sup>44</sup> consumers are not treated as ultimate buyers, and, therefore, not as ultimate “drivers” of the chain, capable of directly shaping the organisational set up of transnational production processes.

By not taking consumers into account, GVC-related laws do not themselves establish consumer rights and instead leave the task of connecting consumers to GVCs entirely to consumer law. In this context, the only elements of potential relevance to consumers are the communicative outputs generated by the implementation of obligations under the CSRD and the CSDDD, i.e. sustainability reporting and due diligence policies, insofar as these outputs function as a source of consumer information. By qualifying as consumer information, these sources trigger the application of several consumer laws and related consumer rights, especially the rules on unfair commercial practices and those associated with the “consumer empowerment” strand of consumer law and policy.<sup>45</sup> We will turn to these rules in the following sections.

#### **D. GVCs in consumer law**

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<sup>41</sup> Gereffi and Korzeniewicz, *Commodity Chains and Global Capitalism*.

<sup>42</sup> Tsing, *Supply Chains and the Human Condition Rethinking Marxism*, vol. 21, 2009, p. 148.

<sup>43</sup> Bair and Palpacuer, *CSR beyond the corporation: contested governance in global value chains Global Networks*, vol. 15, 2015.

<sup>44</sup> Gereffi and Korzeniewicz, *Commodity Chains and Global Capitalism*.

<sup>45</sup> See below, section D. i) Consumer empowerment.

In the same way that GVC-related legislation does not take consumers into account, we show in this section that consumer law and the related scholarship does equally not engage consistently with the concept of GVCs. In other words, the concept of GVC is at odds with consumer law. Only after recent amendments has a concept vaguely comparable to GVCs found its way into consumer legislation, most notably in the Consumer Sale Directive (CSD). In this context, it appears under the term “chain of transactions”. This reference, however, remains exceptional and is not accompanied by any broader effort to connect consumers to GVCs, including through considerations of the sustainability of production processes and the concerns of ethical consumers. As will be discussed, the recent amendments wrought by the EU Green Transition were intended to promote sustainable consumption. However, the figure of the ethical consumer, understood as meaningfully involved in the system of globally dispersed production, remains marginal within this transition. While advocates of ethical consumption have mainly relied on the CJEU's *Psagot* judgement<sup>46</sup> to highlight the relevance of consumer interests in ethical consumption, this case has not generated spillover effects in the interpretation of the core directives of general consumer law.<sup>47</sup> Consumer legislation thus remains firmly bound to the image of the average consumer and is oriented on the two traditional paradigms of consumer protection and consumer empowerment.<sup>48</sup> The following two sections examine EU secondary consumer law within these historical paradigms and assess the extent to which their provisions can be mobilised in pursuit of responsible and ethical consumption within GVCs.

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<sup>46</sup> C-363/18, *Organisation juive européenne, Vignoble Psagot Ltd v Ministre de l'Économie et des Finances*, ECLI:EU:C:2019:954.

<sup>47</sup> For an overview of the debate see: Leczykiewicz and Weatherill, *The Images of the Consumer in EU Law: Legislation, Free Movement and Competition Law*, Bloomsbury Publishing, 2018 and contributions therein. More recently the concept of the average consumer has been scrutinised vis-à-vis the concept of vulnerable consumer in the context of digital markets by De Franceschi and Crea, see: Crea and Franceschi, *The New Shapes of Digital Vulnerability in European Private Law*, 2024 and vis-à-vis the notion of the prosumer, see Mak, *Redefining equality in European contract law: protecting consumer interests in a post-consumer society* *European Law Open*, vol. 3, 2024, p. 561. In case law, the recent *Compass Banca* judgement has sparked discussion for its reference to behavioural bias informing decisions of the average consumer, thereby challenging the traditional understanding of the average consumer as the rational *homo oeconomicus*, see: CJEU Case C-646/22 *Compass Banca SpA v Autorità Garante della Concorrenza e del Mercato*, 14.11.2024 ECLI:EU:C:2024:957.

<sup>48</sup> Both traditions are profoundly infused by a right-based discourse. The image of the ethical/responsible consumer would require rethinking and balance this approach with a duty-based discourse, see below section D. III).

## I. Consumer protection

The consumer protection paradigm provides only few substantive elements for constructing the production process within consumer law. Despite not being focused on ethical consumption, from a GVC-informed perspective, it is specifically recently revised Product Liability Directive,<sup>49</sup> that can be relevant. First, it is genuine GVC regulation in recognising the multiplicity of actors involved in producing goods for the EU market and thus connecting liability towards the consumer with the overarching production process<sup>50</sup> Second, it addresses consumer safety through a framework centred on risk, which is similar to how GVC regulation operates.

**Product liability as GVC regulation:** The former aspect is relevant insofar as it represents an initial attempt by EU consumer law to consider the transnational nature of global production processes and the multiplicity of actors involved in them. Product liability thus emerges as a – perhaps the most significant – form of value chain regulation that explicitly includes consumers. This openness to the outside world/outward orientation to the world, however, is not driven by a reconsideration of the consumers’ position vis-à-vis global production processes. Rather, it reflects the EU’s traditional tripartite approach to product safety regulation, whereby the product liability directive complements the General Product Safety Regulation (GPSR)<sup>51</sup> and the Market Surveillance Regulation (MSR).<sup>52</sup> It is probably because of this specific framework that the Directive does not refer, neither explicitly nor implicitly, to the concept of a value chain. Instead, it refers to the collective behind the production process and the product supply as “economic operators”. This category includes the manufacturer of a product or component, a provider of a related service, an authorised representative, an importer, a fulfilment service provider, or a distributor.<sup>53</sup> The Directive establishes a hierarchy

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<sup>49</sup> Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products and repealing Council Directive 85/374/EEC.

<sup>50</sup> Product Liability Directive, n 45.

<sup>51</sup> Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety, amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC.

<sup>52</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

<sup>53</sup> Product Liability Directive, n 45, Article 4(15).

among these actors for the purpose of allocating liability for defective products, thereby providing consumers with an actionable individual and tortious remedy towards specific actors within the global production system. This representation, however, tends to “flatten” the complex image of GVCs into a network of economic operators,<sup>54</sup> who are individually and jointly liable for the same claim vis-à-vis the consumer. Yet, product liability could, in its formal legal construction of GVCs as a network, be an interesting model for developing value chain liability with an inclusion of the consumer.<sup>55</sup>

**Product safety and production risks:** The latter aspect that makes the PLD relevant in discussing responsible and ethical consumption in value chains is its focus on protecting consumers from safety risks, to the point that, following *Boston Scientific*,<sup>56</sup> even risk exposure may give rise to liability.<sup>57</sup> This aspect is important insofar as it aligns with the risk-based approach adopted by the CSDDD for implementing due diligence processes along value chains. However, unlike safety-related risks, sustainability risks generally do not pose an immediate threat to consumers. Responsible consumers are equally concerned with protecting the rights and well-being of others rather than their own, making the PLD model difficult to replicate, *mutatis mutandis*, for the consumer enforcement of sustainability-related risks.

From the above analysis, we can see that the consumer protection paradigm establishes an effective link between consumers and GVCs – labelled as “economic operators” in the PLD – among the various laws examined. The PLD, together with product safety regulation, represents the only clear instance of GVC regulation within consumer law. However, the PLD occupies a distinct place and function in regulating market access for products, a role with no functional equivalent in either EU sustainability-related laws or other areas of GVC or consumer law. Furthermore, its reliance on a right-based discourse makes the safety framework difficult to transpose into sustainability-oriented legislation. As a result, while it

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<sup>54</sup> Beckers, *Global Value Chains in EU Law*.

<sup>55</sup> Sommerfeld, „Eine Haftungskette für die Lieferkette – Subsidiäre Haftung von Wirtschaftsakteuren in derselben Lieferkette“, Manuscript, p. 8 ff.

<sup>56</sup> For an in-depth analysis of the rights-discourse in *Boston Scientific*, see: Condon, *Network Responsibility: European Tort Law and the Society of Networks*, Cambridge University Press, 2022.

<sup>57</sup> Court of Justice of the European Union (CJEU), Joined Cases C-503/13 and C-504/13, *Boston Scientific Medizintechnik v AOK Sachsen-Anhalt*, 5.3.2015, ECLI:EU:C:2015:148.

may serve as an inspiring doctrinal reference point for sustainability advocates, its practical applicability remains restricted/confined to the regulatory objective of safety.<sup>58</sup>

## II. Consumer empowerment

The consumer empowerment tradition is the approach that the EU has explicitly adopted for the promotion of consumer involvement in the green transition.<sup>59</sup> The Directives that can be interpreted as fostering empowerment typically include the Unfair Commercial Practices Directive (UCPD),<sup>60</sup> the Consumer Rights Directive (CRD)<sup>61</sup> and the Consumer Sales Directive (CSD).<sup>62</sup> These Directives are united by their reliance on the information paradigm, which holds that providing consumers with accurate and correctly presented (sustainability) information enables them to maximise their consumption and express their preferences accordingly.

**Unfair commercial practices and GVCs:** The UCPD is the legislative instrument that has traditionally addressed growing consumer concerns about the environmental impact of products. Before adopting the new amendments introduced by Directive (EU) 2024/825, the European Commission had issued a guidance on the interpretation of the UCPD, which established an initial standard for determining the criteria of an acceptable “green claim”.<sup>63</sup>

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<sup>58</sup> The specificity of safety regulations finds its origins in traditional trade law principles. Safety is historically one of the few justificatory grounds for trade limitation. In the EU, safety has played a key role in promoting negative integration since *Cassis de Dijon*. For an overview of trade law principles and rationales, see: Trebilcock and Trachtman, *Advanced Introduction to International Trade Law*, Edward Elgar Publishing, 2025. For the role of safety in the EU integration process, see Purnhagen, *The Politics of Systematization in EU Product Safety Regulation: Market, State, Collectivity, and Integration*, Springer, 2013.

<sup>59</sup> Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information.

<sup>60</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

<sup>61</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

<sup>62</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

<sup>63</sup> Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, 2021/C 526/01.

This has also led to a vivid discussion on how unfair commercial practices can be used for regulating social and green marketing claims.<sup>64</sup>

In this context of making “green” and “social” claims specifically related to the global production, the compliance with voluntary sustainability standards is crucial. However, two major negative implications have emerged from the growing reliance on voluntary sustainability standards over the last decades. The first negative implication concerns the costs of implementing these standards which are often borne by actors in the chain which may not be best positioned to do so. The process of adoption, implementation and verification tends to reproduce and reinforce existing inequalities between actors within the chain, to the detriment of weaker parties who face growing obligations but without the long-term plan to promote structural change or improve their own social and economic conditions.<sup>65</sup> The second negative implication concerns their very impact on consumer behaviour. The proliferation of both private and voluntary standards has led to their oversupply which, together with the fallout from the Dieselgate scandal, has prompted greater scrutiny of their reliability. The results of such scrutiny have revealed that a high number of green claims were insufficiently substantiated even where they were true at all.<sup>66</sup> The result is almost paradoxical: the traditional reliance on consumer information now requires tighter regulation of such information. It appears to move in the direction of the UCPD with an image of a socially and environmentally conscious consumer obtaining a key place in the regulation of private production standards and their reliability. In this regard, the case law on the UCPD has become ever more important in terms of regulating the communicative practices by traders that are related to the sustainability of the production process.<sup>67</sup> Similarly, the amendments to

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<sup>64</sup> See, inter alia, Hilty & Henning-Bodewig (2014), *Corporate Social Responsibility: Verbindliche Standards für das Wettbewerbsrecht*, Springer, Heidelberg/New York 2014.; Beckers, ‘The Regulation of Market Communication and Market Behaviour: Corporate Social Responsibility and the Directives on Unfair Commercial Practices and Unfair Contract Terms’, 54 (2017) *Common Market Law Review* 475-516.; Chambers, *Litigating Corporate Human Rights Information*, 60 (2023) *American Business Law Journal* 111-174.

<sup>65</sup> For empirical evidence, see LeBaron, *The New Gatekeeper: Ethical audits as a mechanism of global value chain governance*, in: Cutler and Dietz (eds), *The Politics of Private Transnational Governance by Contract*, Routledge 2017.

<sup>66</sup> European Commission, *Screening of websites for ‘greenwashing’: half of green claims lack evidence*, Press Release January 2021.

<sup>67</sup> On this relation between unfair commercial practices and sustainable consumption in the UCPD, Beckers “The Communication of Market Communication and Market Behaviour”, *Common Market Law Review* 2017, vol. 52, 475-515, recently on value chain emissions under the UCPD, Verbruggen, “Towards Credible Net-Zero Commitments? On the Role of Unfair Commercial Practices Law in Contesting Global Value Chain Greenwashing”, in: Lafarre, Bose, Verbruggen, Garcia Anton and Rombouts (eds), *Cambridge Handbook of Law and Responsible*

the CRD expand the list of information that consumers must receive by including indications on durability and on the so-called “repairability score”. This development suggests a possible future alignment between the CRD and the new Eco-Design Regulation,<sup>68</sup> which sets minimum sustainability requirements for products placed on the EU single market and are related to production-oriented information.

**Consumer rights and GVCs:** The CSD has also undergone a process of “greening” through two key amendments regarding consumer rights: the introduction, in 2019, of the parameter of objective conformity and the introduction, in 2024, of a consumer right to repair.<sup>69</sup>

With respect to objective conformity, the notion was introduced in Article 7 of the CSD (2019). It complements the traditional requirement of subjective conformity, which has existed since the first version of the directive (repealed in 2021 by Directive 2019/771).<sup>70</sup> The main difference between the two lies in the source of information used to assess whether a sold good is in conformity. While subjective conformity mainly applies to the content of the contract between the consumer and the seller, and thus the information provided by the latter, objective conformity extends to “public statements” including those made by producers along the supply chain through codes of conduct,<sup>71</sup> labels or advertising.<sup>72</sup> Such a requirement transposes into law the scholarly argument that public statements by producers via codes of conduct, CSR policies, labels, and advertisements should have a binding effect.<sup>73</sup> However,

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Business: Legal Strategies for Sustainability in Global Value Chains, Cambridge University Press 2026, forthcoming.

<sup>68</sup> Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products, amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and repealing Directive 2009/125/EC.

<sup>69</sup> Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828.

<sup>70</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

<sup>71</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, Article 7(1)(a).

<sup>72</sup> CSD, n 68, Article 7(1)(d).

<sup>73</sup> Beckers, *Enforcing Corporate Social Responsibility Codes: On Global Self-Regulation and National Private Law*, Hart Publishing, 2015; Rühmkorf, *Corporate Social Responsibility, Private Law and Global Supply Chains*, Edward Elgar, 2015.

the transposition of this argument into law has come with certain limitations. Codes of conduct serve as a basis for objective conformity primarily with respect to the quality and technical characteristics of the product, whereas labels and advertising have a broader scope. Their scope includes “qualities and other features, including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, particularly in advertising or on labelling”.<sup>74</sup> Both the subjective and the objective scope of this provision have elastic boundaries. Consumers may form their expectations on the basis of virtually any public statement released by a wide range of actors for whose claims the seller ultimately remains liable, except for the circumstances listed in Article 7 (2). Such openness provides a plausible entry point for the demands of responsible consumers seeking more ethically produced products. Nevertheless, two caveats should be noted. The first concerns the capacity of public statements to inform reasonable consumer expectations, which presupposes that the statement must not be clearly unrealistic or vastly exaggerated.<sup>75</sup> The second concerns the benchmark for assessing the “reasonableness” of the expectation addressed, which is typically that of the average consumer rather than the responsible or ethical consumer. It thus remains to be seen how strong the connection between sustainable production and consumers will become through the avenue on consumer rights.

**Consumer remedies and GVCs:** The CSD is one of the few EU consumer directives that establishes a clear hierarchy of remedies available to consumers when purchased products do not respect conformity requirements. Scholars have long argued for such remedies to be revised so that they would prioritise and favour repair over replacement.<sup>76</sup> Before the right to repair was introduced, the seller could replace the good instead of having it repaired and, in

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<sup>74</sup> CSD, n 69.

<sup>75</sup> Twigg-Flesner, *Conformity of Goods and Digital Content/Digital Services Catedra Jean Monnet Working Paper*, University of Barcelona, 3/2020.

<sup>76</sup> Terryn, *A Right to Repair? Towards Sustainable Remedies in Consumer Law* *European Review of Private Law*, vol. 4, 2019, p. 851; Mak and Terryn, *Circular Economy and Consumer Protection: The Consumer as a Citizen and the Limits of Empowerment Through Consumer Law* *Journal of Consumer Policy*, vol. 43, 2019, p. 227; Van Gool and Michel, *The New Consumer Sales Directive 2019:771 and Sustainable Consumption - A Critical Analysis* *Journal of European Consumer and Market Law*, vol. 4, 2021, p. 136.

broad terms, replacement, which was broadly considered more favourable to consumers. However, this scheme has also been criticised for encouraging overconsumption and for increasing the environmental burden associated with producing and distributing ever-greater quantities of products in the internal market. By introducing a right to repair, such an impact will arguably be reduced, and, as a positive secondary effect, it will stimulate a secondary market for repair. It also allows responsible consumers to act in accordance with their ethical considerations at least in the post-consumption phase insofar as by prioritising repair over replacement, they can limit the demand for new products. In addition, the right to repair contains a similar network-oriented approach to GVC regulation by allowing the consumer to target directly the manufacturer and other involved production actors in relation to a right of repair.<sup>77</sup>

From a GVC perspective, however, the prioritisation of repair over replacement and the possibility of direct claims has significant implications. Repair work is typically carried out by networks of small and local businesses, which tend to be associated with more equality among the actors of the network and, sometimes, with a stronger social orientation.<sup>78</sup> As repair practices expand and consumer claims can be addressed towards manufacturers to initiate repair, it will be necessary to monitor GVC power dynamics to ensure that these networks are not reshaped into platform alike power dynamics. In this model, large, dominant actors could exert economic pressure and influence over smaller businesses and lead to equally problematic governance models in emerging “repair value chains”.

From the analysis of the consumer empowerment framework, consumer empowerment law is evidently not meaningfully connected to GVCs. While the CSD speaks of a “chain of transactions”, it grants remedies only against the seller, who in turn may be liable for public statements made by actors earlier in the chain. The only explicit reference to GVCs appears in the Eco-Design Regulation, whose operation functions more closely to the General Product Safety Regulation than to traditional consumer legislations.

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<sup>77</sup> Sommerfeld, „Eine Haftungskette für die Lieferkette – Subsidiäre Haftung von Wirtschaftsakteuren in derselben Lieferkette“, Manuscript, p. 10f.

<sup>78</sup> In some sectors the prioritisation of repair over replacement is proving particularly beneficial. For instance, the business for textile reparations tends to employ marginalised and vulnerable subjects such as single or migrant women.

From a subjective perspective, this framework reveals a fragmented understanding of how consumers are linked to production. Both the information paradigm and the reference to the “chain of transactions” position consumers solely in relation to the information provider and/or their direct contractual counterpart, isolating the consumer transaction from the wider set of transactions that constitute the structure of GVCs.

On the substance, two conclusions can be drawn: a) the first is that the information paradigm alone cannot ensure that consumers' sustainable preferences are maximised; b) the second is that the social pillar of sustainability remains largely neglected, insofar as it is less amenable to quantification than other sustainability indicators, such as the “repairability score”.

The outcome is that consumer empowerment now consists of “islands and the ocean”.<sup>79</sup> The “ocean” relies largely on the UCPD, which applies generally to those unfair commercial practices misleading consumers including greenwashing and socialwashing. The “islands” comprise instead of the newer measures designed to support the green transition. Everything outside such “green islands” remains subject to the UCPD and Article 7 (1) d) of the CSD. These provisions require consumers to appeal respectively a (potentially) misleading claim or its omission, or a public statement released by the seller or any other actor in the chain of transactions, subject to the limitations discussed. As a result, when no claim is made about the social impact of production processes, consumers may have no means to express their demand for ethical and responsible consumption. Not only does the information paradigm prove insufficient for genuine consumer empowerment,<sup>80</sup> but the revised notion of objective conformity also seems to prevent consumers from expanding the substantive scope of their sustainability claims beyond the islands of the green transition or the ocean of market communication.<sup>81</sup>

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<sup>79</sup> Michaels, *Of Islands and the Ocean: The Two Rationalities of European Private Law* in: Brownsword and others (eds), *The Foundations of European Private Law*, Bloomsbury Publishing, 2011.

<sup>80</sup> Wilhelmsson and Twigg-Flesner, *Pre-contractual information duties in the *acquis communautaire** *European Review of Contract Law*, vol. 4, 2006, p. 441. On the limited concept of empowerment in EU consumer law, see extensively: O'Reilly, *Empowering consumers through law? Rethinking the concept of EU consumer empowerment*, Doctoral Thesis, Maastricht University, 2023.

<sup>81</sup> Van Gool and Michel, *The New Consumer Sales Directive 2019:771 and Sustainable Consumption - A Critical Analysis*; Beckers, *Environmental Protection meets Consumer Sales* *European Review of Contract Law*, vol. 14, 2018, p. 157.

### III. Consumer Responsibilities

From our analysis so far, it appears clear that empowerment through consumer rights does not enable consumers to express their sustainability and ethical preferences in a genuine bottom-up approach nor to address them within the governance structure of GVCs. On the contrary, in the field of consumer empowerment, the rights-based approach of consumer law has even incentivised over-consumption. In response, some scholars have criticised the extent of consumer rights and have argued for a restriction of such rights, especially when their “abuse” leads to the environmentally and socially detrimental effects of over-consumption. In the past years, Micklitz has taken the lead in suggesting a modular approach for granting access to the full range of consumer rights. In this respect, Micklitz argues for a distinction between vulnerable, confident and responsible consumers where the latter two should bear a duty to behave responsibly and consciously vis-à-vis society and the environment. This modular access to consumer rights is justified insofar as confident and responsible consumers occupy a position in the consumer society for which they can be assumed to be aware of the negative impact produced by certain consumption patterns.<sup>82</sup> Vulnerable consumers would instead benefit from the full range of consumer rights, insofar as their social status may not allow them to behave in a responsible way.<sup>83</sup> The tripartition opens a discussion that is so far purely theoretical, and that requires the unravelling of a series of conceptual knots: what are the criteria for distinguishing between the three categories? Are the criteria entirely contingent or also identifiable a priori? These questions need further discussion before they are amenable to be transposed into concrete legislative interventions. Further elaboration on this topic would, however, benefit from a GVC-oriented contextualisation. Both the rights and the duty-based discourse on consumers tend to picture consumers as individual subjects, carriers of individual claims in one way or another. However, as argued also by Micklitz himself, a discourse on consumer duty needs to be paired with a rethinking of consumers that focuses on them as a collective entity. Consumer duties, more than consumer rights, must be identified

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<sup>82</sup> Micklitz, Bright Side and Dark Side of the Moon: Consumer Rights and Responsibilities under EU Law in: Reisch and Sunstein (eds), *The Elgar Companion to Consumer Behaviour and the Sustainable Development Goals*, Edward Elgar Publishing, 2025; Micklitz, Squaring the Circle - Reconciling Consumer Law and the Circular Economy in: Terryn and Keirsblick (eds), *Consumer Protection in the Circular Economy*, Intersentia, 2019 .

<sup>83</sup> This would therefore respond to the doubts advanced in Ouyang, “Embedded Consumer”: Towards a Constitutional Reframing of the Legal Image of Consumers in EU law, with respect to the responsabilisation of consumers.

in the light of the role that consumption has in our contemporary market society and the effect that it has on (unsustainable) production patterns. It is the collective of consumers that bears the responsibility in the face of other categories of actors. Conversely, individual consumers should be exempted from bearing such duties on the basis of their contingent vulnerable positioning in the broader societal context. To propose such a rethinking process from a consumer law angle is quite a Copernican revolution. We see GVCs as a helpful lens to engage with such an intellectual endeavour insofar as GVCs position consumers as a collective entity whose function in GVCs may stabilise or potentially transform global production patterns.

## **E. Conclusion**

In this chapter we have outlined the relation between GVC and EU consumer law with respect to the transition promoted by the EU and international bodies towards more sustainable economic practices. Our reconstruction has found that GVCs laws and consumer laws mutually disengage with one another. The exceptions to this mutual disengagement are the product safety and liability framework and the UCPD. In product liability consumers hold a claim against the “economic operators”, i.e. actors in a value chain, for product “defects”, i.e. lack of conformity with EU technical standards on safety but related to sustainable consumption. The UCPD in turn does address sustainability as relevant for commercial practices but mainly focuses on the provision of accurate information towards consumers and insofar keeps consumers as passive actors in the GVC.

The disconnect between GVCs and consumers results in leaving the quest for responsible and ethical consumption unmet by existing legislative tools. Consumers hold claims for sustainable products under the Directive on empowering consumers for the green transition only insofar as their expectations have been informed by a public statement or market communication by the seller or trader. Not only does this approach leave consumer demands for ethically made products unmet by legislative tools, but it also fails to acknowledge the functional role that consumers and consumption more broadly play in global patterns of production.

We argue that this conclusion of misalignment between consumers and GVC laws relates to some established categories and dichotomies in the law which need to be rethought. Consumer demands for ethical products require expanding the scope of consumer claims beyond *product* conformity so as to include also *production* processes. This of course requires a fundamental re-thinking of the process/product distinction as characteristic for the post-world war international economic order that shaped both GVC regulation and consumer law. In addition, our contribution invites the reader to take a perspective on consumers and consumer law not only through *individual* rights but also as a *collective* actor playing a specific function in global patterns of production through GVCs; this collective function is played not only within the *domestic* boundaries of the EU but also, and especially, *vis-à-vis* actors who are located outside of the EU but who are connected via *transnational* GVCs to EU consumers and market. When connecting GVCs and consumers, consumption and production must be framed as collective forms of social action that are intrinsically connected. And finally, the acknowledgment of the collective function fosters the *right*-based discourse on consumers to be paired by a complementary rhetoric on consumer *duties* and *responsibilities* towards society. By catalysing societal, economic and political conflicts, the GVC framework offers the opportunity to retrace the contours of the legal dichotomies that impedes a responsive approach by the current legal system to compelling issues of responsible and ethical consumption.