Rethinking the Role of the Consumer in a Global Economy: The Power of Choice as a 'Human Right'?

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Abstract The purpose of this chapter is to reconsider the role of consumers as 'sustainable' consumers (or even 'sustainable' users) in a global economy. The premise upon which the chapter is built is that both the digital and environmental challenges have imposed a shift in the way in which individuals approach consumption. In a circular economy-oriented model, the very notion of consumers seems outdated, as this economic model strives towards the recycling and reuse of goods, challenging the consumeristic approach which has so far characterized most economic models, including the European one. At the same time, said challenges have, in some ways, strengthened the position of consumers and the power that they hold. Indeed, consumers' attention towards the sustainability of certain products, their interest towards the protection of the environment can have an important impact on businesses' compliance with sustainability rules. The power of choice which consumers have can greatly influence and contribute to shifting towards a circular economy model focused on sustainability and environmental protection. Starting from this assumption, the chapter tries to pin-point how consumer protection is (if at all) approached at the international legal level. It reflects on whether it is possible to talk about global consumer law at all, and whether the intersection between consumer rights, the environment, and sustainability has been acknowledged by international legal instruments. The chapter will delve into consumer rights as an innovative way of conceptualising human rights and will try to evaluate whether it is possible to talk about consumer rights as human rights. In this context, particular attention will be devoted to the right of access to information, considered as the backbone of consumers' power of choice. Furthermore, the contribution will try to move a step further and propose a conceptualization of consumer rights which is not only human-centric, rather eco-centric, thus approached in a holistic way, with consumer rights being instrumental in achieving environmental protection and sustainability.

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1 Introduction

The purpose of this chapter is to rethink the role of consumers as 'sustainable' consumers (or even sustainable 'users') in a global economy by looking at the human rights dimension related to consumerism. The contribution investigates an issue which is crucial within the broader context of a sustainable circular economy: is it possible to talk about consumers' human rights? In establishing whether it is indeed possible to assess the emergence of new human rights specifically safeguarding the individual as a consumer, the contribution reflects on that set of rights and, eventually, on whether a right to free, informed, and sustainable choice exists in its own legitimacy, in an attempt to propose the conceptualization of a new catalogue of rights of consumers.

The premise upon which the chapter is built is that both the digital and environmental challenges have imposed a shift in the way in which individuals approach consumption. The very notion of 'consumer' is to be challenged, especially if a change towards a circular economy is to be fostered and promoted. In a circular economy-oriented model, the concept of *consumers* should be considered outdated, as this economic model strives towards the recycling, repair and reuse of goods, challenging the consumeristic approach which has so far characterized most economic linear models, tossing aside the outdated "buy, use, toss" model typical of many economic systems, including the European one.[1] At the same time, said challenges have in some way strengthened the position of consumers and the power that they hold. Indeed, consumers' attention towards the sustainability of certain products, their interest towards the protection of the environment and of non-human animals can have an important impact on businesses' compliance with sustainability rules. The power of choice which consumers have can influence greatly and contribute to shifting towards a circular economy model focused on sustainability and environmental protection.[2] But does that power correspond to an established right?

Starting from the assumption that the very notion of consumer should be challenged in a circular economy-oriented model, the chapter first tries to pin-point how consumer protection is (if at all) approached at the international legal level. It reflects on whether it is possible to talk about global consumer law at all, and whether the intersection between consumer rights, the environment, and sustainability has been acknowledged by international legal instruments. Secondly, the chapter will delve into consumer rights as an innovative way of conceptualising human rights and will try to evaluate whether it is possible to talk about consumer rights as human rights. In this context, particular attention will be devoted to the

[1] In this sense, more in depth about the so-called 'right to repair' see Calabrese (Chap. "Right to Repair Between Intellectual Property and Servitization").

[2] In the same paradigmatic context, for a specific analysis of consumers' powers and responsibilities under EU law see Deana (Chap. "Reshaping Consumer Powers and Responsibilities in the European Union's Transition to a Sustainable Circular Economy"). On the close connection between circular economy, sustainability and environmental protection, see: Backes (2017), Ferrara (2018); Wright and others (2019); Ellen MacArthur Foundation (2021).

right of access to information, considered as the backbone of consumer's power of choice. Disinformation and greenwashing practices, in this sense, constitute obstacles to be overcome and to be tackled with a restrictive approach, though the challenge on a global scale is not to be underestimated. Lastly, the chapter will try to move past the anthropocentric conceptualization of law and human rights, proposing a conceptualization of consumer rights which is not only human-centric, but also eco-centric, thus approached in a holistic way, with consumer rights being instrumental in achieving environmental protection and sustainability and which need to be read in light of the human right to a healthy environment.[3] In doing so, it will focus on the notion of the consumer itself as contradictory in the context of sustainable circular economy.

2 Global Consumer Law: Myth or Evolving Reality?

The global scale and international dimension of consumerism are an apparent fact. The globalisation and digitalization of commerce, leading to an easy access to the international market, in an interconnected world, has enlarged the boundaries of what consumers can reach to the global level, and consequently brought about the issue of their protection as the weaker party as opposed to traders, internationally.[4] Moreover, some recent global consumer law scandals, such as the Apple and Dieselgate cases,[5] urge to reflect on the significance and relevance of consumer protection on a global level, as well as to picture consumer protection more broadly. Notwithstanding the international dimension within which consumers move, the legal response to this issue has been lacking. Other fields, such as economics and political studies, have been more responsive to the phenomenon, but as far as (public) international law goes, the matter has not received the attention it deserves. This becomes even more pressing from a circular economy perspective, which aims at changing the economic model in a contemporary world still heavily anchored to linear logics of consumerism.

Despite the scattered and unharmonized tendency to develop supranational rules for consumer protection, attempts have been more regional than international, with the European Union at the forefront in terms of consumer protection rules,[6] and soft

[3] More broadly in this perspective see De Vido (Chap. "The International Dimension of the Environment as a Legal Entity: The Human Rights of the Sustainable Consumer in an Ecological Perspective").

[4] Durovic and Micklitz (2017, p. 1), see also: Lima Marques (2020).

[5] As reported by Durovic (2020, p. 126).

[6] In addition to Deana (Chap. "Reshaping Consumer Powers and Responsibilities in the European Union's Transition to a Sustainable Circular Economy"), see the specific reconstruction of private international law by Bergamini (Chap. "Dispute Resolution and Private International Law in the Context of Circular Economy: Effectiveness Beyond Alternatives"). See also: Lima Marques (2020).

law attempts at the international level, the most relevant of which is the United Nations (UN) Guidelines for Consumer Protection (hereinafter 'UN Guidelines').[7] This set of principles, which aims at establishing 'the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems',[8] was developed by the UN Conference on Trade and Development (UNCTAD). The Guidelines apply to business-to-consumer (B2C) transactions, including amongst businesses also State-owned enterprises, and from the very beginning, in laying out the objectives, the edited version of 2016 established the close link between consumer protection and sustainability, alongside environmental protection.[9] They also underline the necessity to protect consumers due to the imbalance of power, information, and economic power as opposed to businesses.[10]

As guidelines, the instrument has a non-binding character; they set out standards and good practices to follow, but do not provide legally binding solutions concerning consumer protection. Despite being a soft law instrument, the adoption of the UN Guidelines has helped to generate a consensus around minimum standards of protection for consumers and have been adopted (though on a voluntary basis) by corporations world-wide, probably due to their voluntary commitment basis, as businesses may feel more inclined to decide which practices to follow instead of undergoing their enforcement.[11] The noteworthy role of the UN Guidelines is exemplified by their wide implementation by UNCTAD Member States,[12] not to mention their unanimous adoption,[13] as well as by their attempt at harmonizing practices in an extremely scattered scenario, though some scholars point to the fact that their drafting was framed around other, more advanced regimes—such as the European one—becoming a model to be extensively used worldwide.[14] However, their lack of bindingness is a double-edged sword, with positive implications on one side (indeed, a voluntary basis can enhance implementation) and negative ones, such as the

[7] United Nations Guidelines for Consumer Protection (2016), UNCTAD/DITC/CPLP/MISC/2016/1 (https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf)

[8] UN Guidelines for Consumer Protection (2016, p. 3).

[9] When first drafted in 1985, the UN Guidelines for Consumer Protection did not include sustainability references or provisions dedicated to sustainable consumption. Such modifications were first added in the 1999 revision, during which sustainable consumption was introduced, and later in a second revision in 2016, which added good practices concerning business conduct in B2C relations, as well as provisions concerning dispute resolution and consumer redress. See: Durovic and Micklitz (2017, p. 6).

[10] UN Guidelines for Consumer Protection (2016), secs. I and II (respectively, 'Objectives' and 'Scope').

[11] Durovic (2020, p. 129).

[12] UNCTAD, Report of the Eighth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (2020), TD/RBP/CONF.9/2, para. 1.

[13] De Melo (2020, p. 3).

[14] Durovic (2020, p. 129).

problematic aspect of the enforcement of the standards and principles set out by the UN Guidelines.[15]

As per the scope of the UN Guidelines, the establishment of a common and minimum benchmark for consumer protection was indicated, an attempt in harmonizing standards (which is not a mandatory obligation, though), below which the Member States (MS) should not descend.[16] This benchmark can be found within the 'General Principles' (Sect. 3), that outline the 'legitimate needs which the guidelines are intended to meet',[17] to which corresponds a set of rights of consumers, such as: the right to access to essential goods and services; the right to dispute resolution and redress; the right to privacy and the right to consumer education; and, particularly relevant for the purposes of this contribution, the right to access to adequate information to make informed choices. The principle of promotion of sustainable patterns of consumption is also mentioned by the UN Guidelines, as per the revision they underwent in 2016.[18] With the rights comes also a set of principles for good business practices (Sect. 4), directly targeting businesses' conducts, as opposed to the general principles mentioned above targeting States' behaviour. Such principles include: the fair and equitable treatment of consumers; legal, non-discriminatory and ethical business conduct; disclosure and transparency; education and awareness raising; privacy protection; and easy access to dispute resolution for consumers' complaints.[19]

Alongside the UN Guidelines and the role of the UNCTAD in promoting standards and practices relevant to consumer protection, the role of the Organization for Economic Cooperation and Development (OECD) is noteworthy. The role of the organization has been that of developing policy papers and briefs aimed at supporting the MS in implementing and improving their consumer law provisions, working on issues such as consumer vulnerability[20] and the digital dimension of consumerism.[21] An intergovernmental forum addressing a broad range of consumer issues, the Committee on Consumer Policy (CCP), was also established under the OECD, with a mandate aimed at promoting consumer welfare, particularly focusing on empowering consumers to make well-informed decisions as well as protecting them from misleading, deceptive, fraudulent, and unfair practices. The OECD has also adopted declarations (again non-binding) on consumer issues, such as the 'Declaration on Protecting and Empowering Consumers in the Digital and Green Transitions', where MS of the organization have committed to take action to reduce digital harms targeting consumers (particularly vulnerable ones) and to encourage businesses to act in good faith, paying due regard to consumers interests; as well as

[15] Durovic (2020, p. 130).

[16] Durovic (2020, p. 131).

[17] UN Guidelines for Consumer Protection (2016), sec. III, para. 5.

[18] UN Guidelines for Consumer Protection (2016), sec. III, para. 5(a)–(k).

[19] UN Guidelines for Consumer Protection (2016), sec. IV, para. 11(a)–(f).

[20] OECD (2023).

[21] OECD (2022).

strengthening consumer protection against deceptive and misleading environmental claims; empowering consumers' access to accessible information; and strengthening cooperation amongst the MS to address such issues.[22] However, the outreach of the CCP and of the OECD more in general has been rather limited due to the fact that the organization counts 38 Member States, mostly developed country, hence attracting some criticism for lacking a 'proper global representative character'.[23]

Notwithstanding the initiatives undertaken at the international level by the UN, and by organizations such as the OECD, which, despite a global vocation, have more of a regional focus, it is yet too early to discuss about the existence of an actual global consumer law. Indeed, such attempts comprise mostly (if not only) soft law instruments lacking binding character, which results in different legal regimes applicable to consumers worldwide. Though it was argued that 'the focus of international consumer law should not be on the development of unified substantive rules on consumer protection, but on the securement of adequate enforcement of consumer law',[24] the international legal system has yet to produce a harmonized and uniform system of enforceable rules of consumer law, thus leaving an important legal void in the international legal framework. The need to fill such void became necessary with the development of the international market and the continuously growing interconnection among economic systems, yet it becomes even more apparent and urgent in light of the need to shift the linear economic model to a circular one, as well as of the growing environmental concerns.

3 Human Rights Law as a Possible Avenue to Enhance Consumer Rights?

Despite some noteworthy soft law attempts to tackle the issue, up until the date in which this chapter is being drafted, the legal efforts expressly dedicated to consumer rights are clearly of regional vocation, with the European Union being at the forefront of the matter. Thus, it is not yet possible to draw the contours of an international legal framework for consumer rights. The lacking framework at the international level generates a legal void concerning consumer protection, which could potentially be addressed by human rights. However, in this regard, two sets of questions arise: can consumer rights be construed as human rights? If so, is it worthwhile?

[22] OECD (2024).

[23] Durovic (2020, p. 129).

[24] Durovic (2020, p. 140).

3.1 Consumer Rights as Emerging Human Rights?

Conceptualising consumer rights as human rights has sparked a lively debate in legal scholarship, which saw some initial contributions already in the 1990s,[25] with several scholars arguing in favour of the recognition of a human rights dimension for consumers, not only to ensure legal protection, but essentially because the 'consumer dimension' is a feature characterising everyone living in the twenty-first century.[26] According to De Melo, consumption should be characterised as a universal necessity, thus consumer protection would be 'crucial to achieve and maintain human dignity'.[27] At the international level, human rights do offer a possible framework for the protection of consumers. Indeed, the peculiar aspect of human rights is their justiciability: the possibility to invoke such rights in front of international human rights courts offers a way through which consumer protection can be approached. The question remains as to whether consumer rights can be effectively conceptualized as human rights, if it is possible to conceive a new generation of human rights dealing specifically with consumer rights or if, on the other hand, consumer rights must be anchored to other already existing human rights. In Deutsch's conceptualization,[28] two sets of issues contribute to furthering this argument: a political one and a strictly legal one, which intertwine. Moving from Deutsch's argument, the following paragraphs will retrace and add to the debate concerning consumers' human rights in light of the shift towards a sustainable circular economy.

3.2 The Political Argument

From the political perspective—which also interweaves with socio-economic considerations[29]—protecting consumers on a broader level is essential for the functioning of modern societies. For the purposes of this contribution, it is posited that the protection of consumers is essential not only for the enhancement of the linear model, but even more so for the shift towards a circular economy oriented model.

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[25] Deutch (1994), who spoke of consumer rights as *soft* human rights, focusing on their non-binding character (since at the time the author recognised that it was still too premature to infer that a formal recognition of consumer rights as human rights had been established).

[26] See: Benöhr (2013), De Melo (2020), Lesniewska and Steenmans (2023), Tambussi (2014), Ukwueze (2015), Wacinkiewicz (2013). In particular, De Melo (2020, pp. 11–15) offers philosophical insights as to why consumer rights should be regarded as human rights, aside from the legal arguments in favour of such recognition.

[27] De Melo (2020, p. 3).

[28] Deutch (1994).

[29] For the relevance of a sociological contextualization of the research topics at hand see Marzulli (Chap. "'*Ubi societas ibi ius*': Centering a Sustainable Circular Economy from a Sociological Perspective").

Consumers (or rather 'users' in a circular economy) would be one of the key instruments through which such shift can be achieved, by educating them at orienting their preferences towards goods and services enhancing circularity and sustainability. Moreover, it is possible to argue that being a consumer is a feature that characterizes the lives of a large number of individuals worldwide, not necessarily only those living in Western societies.[30] Notwithstanding the neoliberal and westernized approach to consumption and more specifically towards consumerism, being a consumer is a feature which belongs to every individual as an actor in the economic market(s), thus also displaying the element characterising human rights in general.[31] Therefore, protecting individuals in a specific moment of their lives—when they become involved in consumption choices, approaching the economic market(s)—is a necessity which should not be overlooked. This becomes more pressing when considering the proposed shift towards circularity, which can be enhanced by protecting consumers' rights to make sustainable choices oriented towards a circular economy.

3.3 The Legal Argument

From a strictly legal perspective, having established the universal character of consumer rights, it still remains to be settled, on the one hand, what is the value being protected by recognising consumer rights as human rights, and on the other, if and how consumer rights can be defined as human rights. One of the critiques advanced in this debate is that consumer rights need not be protected as human rights, since the latter are aimed at protecting fundamental values which may be undermined if their boundaries are stretched too far. Yet, it is widely recognised that human rights

[30] Although it can undoubtedly be argued that consumerism is a Westernized concept, which has evolved in Western societies and has been shaped by them, it is also undeniable that this activity affects most individuals living in a globalized society. However, it is necessary to stress that the way in which consumerism has been approached, conceptualized, and enacted is the product of a Western mindset, following the logic of the "take-make-dispose" model, also described as "extract-transform-dispose" if the colonial perspective is added. The logic behind consumerism is, therefore, to be criticized and revisited to foster a change towards a circular economy-oriented model, which approaches consumption in a decolonized, eco-centric, and inclusive way. In addition to De Vido (Chap. "The International Dimension of the Environment as a Legal Entity: The Human Rights of the Sustainable Consumer in an Ecological Perspective"), see Cabrales Salazar et al. (2021).

[31] In support of the universality of consumer protection and, consequently, of their rights, it should be highlighted that the UN Guidelines state within their objectives that such measures are to be enacted 'taking into account the interests and needs of consumers in all Member States, *particularly in developing ones*' (emphasis added: UN Guidelines for Consumer Protection (2016), sec. I, para. 1). Thus, despite the Westernized conceptualization of consumer rights, the UN has recognized that this feature belongs to all individuals, even in developing countries, who may be consumers from time to time, thus underscoring the universal component of consumer rights and protection. See Deutch (1994), Wacinkiewicz (2013), Benöhr (2013).

are not set in stone,[32] and that they are bound to evolve according to how societies themselves evolve and change, with the range of interests protected possibly expanding. Some recent examples can be found in the emergence of a human right to a healthy environment, recognised both at the UN level[33] and by legal scholarship;[34] as well as, for instance, the set of human rights connected to the digital age, such as the right to privacy in the digital age.[35] Whereas some are more linked and find their legitimacy within other previously existing rights, such as the right to privacy in the digital age, the example of the human right to a healthy environment clearly has emerged in its own legitimacy, despite being connected to several others—right to life, right to health, right an adequate standard of living, right to food.

As for their value, consumer rights are inextricably linked with human dignity.[36] This view is shared also by who posits that, in a consumer society, the protection of the individual in their feature as a consumer is 'part of maintaining human dignity. If not given the right to fair trade, the right to a fair contract, and the right of access to courts, a person's dignity is disregarded. At the end of the day, these rights are no less important than other human rights'.[37] To this argument, which dates back to 1994, we would argue that in light of the purpose of shifting away from linear economic models favouring a more sustainable and circular approach to economy, from the consumer to the user, ensuring such protection is pivotal and even more entrenched in dignity. Recognising that consumer rights as human rights ultimately safeguard individuals' dignity meets, according to such line of reasoning, the substantive test for human rights, providing additional support to the theory.[38]

The substantive test alone cannot support the theory; hence, further legal considerations need to and can be advanced to further the human rights dimension of consumer rights. Such proposals revolve around the already mentioned justiciability of human rights and the rebalancing of unequal powers between consumers and corporations. As for the first aspect, the lack of an international legal framework ensuring consumer protection has been mentioned. However, it should be noticed that, as far as activities carried out by consumers having a transnational component

[32] On the matter, see among others: Buergenthal (2006), Charlesworth and Chinkin (2000), Ruggie (2007), Gros Espiell (1979).

[33] HRC (2021), A/HRC/RES/48/13; UNGA (2022), A/RES/76/300. See also the reports by the Special Rapporteur on the human right to a healthy environment (https://www.ohchr.org/en/documents-listing?field_content_category_target_id%5B186%5D=186&field_entity_target_id%5B1281%5D=1281)

[34] See among others: Giorgetta (2002), Boyd (2011), Knox (2020), Knox and Pejan (2018), Cima (2022). Moreover, within the research perspective at hand, see De Vido (Chap. "The International Dimension of the Environment as a Legal Entity: The Human rights of the Sustainable Consumer in an Ecological Perspective").

[35] HRC (2018b).

[36] As highlighted by De Melo (2020).

[37] Deutch (1994, p. 552).

[38] Deutch (1994, pp. 551–554).

go, the field of private international law may fit into the picture.[39] Yet, this instrument is not incompatible with the recognition of consumer rights as human rights, as this offers a further level of protection, which should therefore be developed alongside other instruments for protection. Indeed, access to remedies at the international level and the justiciability of consumer rights in front of human rights courts would allow further safeguarding of consumer rights in cases in which national legal systems fail to do so. In regard to the latter consideration, namely that conceptualizing consumer rights as human rights would allow a rebalancing of powers in a clearly unbalanced position of the subjects involved, a parallel has been drawn between the way in which human rights ultimately aim at protecting individuals from the arbitrary infringements by governments and the relation between consumers and corporations.[40] There is a clear imbalance between the position of consumers and that of corporations (as there is between individuals and governments), and the underlying scope of consumer rights is that of rebalancing such unequal positions, thus adding the equity criterion to support the theory.

Aside from the substantive test, there is also a procedural test for human rights,[41] namely if such rights have been recognised in any legal document. At the international level, as established, there is no formal recognition of consumer rights as human rights, not even within the UN Guidelines, which nonetheless set rights for consumers to ensure their enjoyment of the right to 'just, equitable and sustainable economic and social development'.[42] Moreover, the adoption of the UN Guidelines themselves, though a soft law instrument, does attest to a formal recognition at the international level that consumer protection is not a matter relating to domestic systems only, rather an issue deserving attention at the international level as well.[43]

UNCTAD's Manual for Consumer Protection[44] reports that by 2018, 24 countries provided consumer protection within their constitutions, as well as underscored that 'in many cases, consumer protection has been constitutionally enshrined, and some countries have recognised consumer rights as human rights'.[45] Within the European Union, consumer protection is provided for at Article 169 TFEU, which states that: 'in order to promote the interests of consumers and to ensure a high level

[39] Due to space constraints, the contribution will not venture into detailing the pros and cons of the private international law field in the context of consumer protection, which has been duly acknowledged by legal scholarship. On the matter, in addition to the specific analysis put forward in this research context by Bergamini (Chap. "Dispute Resolution and Private International Law in the Context of Circular Economy: Effectiveness Beyond Alternatives"), see: Lima Marques (2006), Schu (1997), Arroyo (2012).

[40] Deutch (1994, p. 552).

[41] Deutch (1994, p. 557).

[42] UN Guidelines for Consumer Protection (2016), sec. I, para. 1.

[43] See again Deutch (1994).

[44] UN Manual on Consumer Protection (2017), UNCTAD/DITC/CPLP/2017/1, p. 17

[45] Ibid. Mexico, El Salvador, Egypt, Poland and Switzerland are among the countries which have recognized a human rights dimension to consumer rights, though significant differences can be highlighted in terms of content.

of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests',[46] which is to be read together with Article 12 TFEU, stating that in defining policies and activities the EU must take into account consumer protection.[47] Consumer protection is also mentioned within the European Charter of Fundamental Rights, at Article 38, under the Chapter dedicated to 'solidarity', which sets out the requirement for a high level of consumer protection.[48] A growing trend toward the recognition of consumer rights at the constitutional level can be noticed, denoting their acceptance as fundamental rights.

In terms of the positioning of consumer rights as human rights, scholars have posited that they may be considered a special category of human rights;[49] a new (or third)[50] generation of human rights,[51] or simply as new and emerging human rights. The argument advanced for conceptualizing consumer rights as a special category lies in the assumption that they complement the general category of human rights by strengthening the legal protection granted to individuals in their capacity as actors approaching the market(s).[52] However, the 'speciality' argument does not find resonance in legal scholarship, as there are no recognised special categories of human rights. Considering consumer rights as special would attach more of a moral value to them, rather than being a legal attribute. Furthermore, being consumer rights a category in-between economic, social and cultural rights and civil and political rights, it seems that attaching a special attribute to them privileges the feature of the individual as an actor of the market, thus deserving special protection because they are consumers, rather than protecting the individual itself.

As for the argument concerning the generations of human rights, we welcome and share the critique that the 'generational metaphor in human rights law is controversial'.[53] Indeed, fitting human rights neatly into categories is rather challenging, considering that the interconnectedness and link among human rights have been recognised by scholars as well as in the jurisprudence of human rights Courts. To further such an argument, the example of the right to freedom of thought,

[46] Blanke and Mangiameli (2021).

[47] Blanke and Mangiameli (2021).

[48] In this regard see also Benöhr (2013).

[49] Wacinkiewicz (2013).

[50] The characterization of consumer rights as a third generation of human rights was rendered by Deutch (1994), at a time in which there were only two recognized generations of human rights, with some others still forming. For instance, less than a decade later, Charlesworth and Chinkin (2000) described the third generation of human rights as the rights of peoples or collective rights, which include for instance the right to self-determination and the right to development. These were rights which were not yet enshrined in legally binding documents (with the exception of the right to self-determination) but rather within soft law instruments..

[51] Deutch (1994), Benöhr (2013).

[52] Wacinkiewicz (2013).

[53] Charlesworth and Chinkin (2000, p. 204).

conscience, and religion is proposed, which has classically been positioned within civil rights as a 'quintessential individual civil right'.[54] Nonetheless, individuals form their thoughts and beliefs according to their culture, through education, and expresses them through their language, all of which are defined as economic, social, and cultural rights. Digging deeper, culture and education can only be fully enjoyed through an adequate standard of living and health, all of which are, once again, associated with economic, cultural, and social rights.[55] The close connection and interrelation among different human rights are somehow diminished by a neat categorization into different generations.

A similar reasoning can be applied to consumer rights, which furthers the notion that considering them as a new generation of human rights would be detrimental, rather than conceptualizing them simply as emerging human rights. If one were to contemplate the rights which have emerged as a consequence of the principles expressed within the UN Guidelines, such as the right of access to essential goods and services, the right to dispute resolution and redress, and the right to consumer education,[56] as well as the list proposed by Wacinkiewic of possible consumer human rights, such as the right to be informed, the right to safety and health, the right to choose, and the right to a healthy environment,[57] the connection with other already legally recognized human rights becomes apparent. What becomes even more apparent is the difficulty in clearly separating consumer rights from other human rights and placing them into neat and distinct categories.

Having met both the substantive and procedural tests, it is possible to infer that consumer rights may be considered human rights. Though they have not been recognised as such in binding documents at the international level, State practice of providing constitutional protection to consumer rights, as well as the recognition at the UN level and regionally at the EU level of consumer protection, seems to support the trend of recognition of the human rights dimension of consumer rights. This becomes even more necessary if entered into the larger picture of the shift towards a sustainable circular economy, and a human rights-based approach becomes decisive in light of the fact that the consumer may refer to different groups according to their age, their social and cultural background, which may, through an intersectional lens, exacerbate vulnerability conditions in their role as consumers.[58]

[54] Charlesworth and Chinkin (2000, p. 206).

[55] Again, Charlesworth and Chinkin (2000, p. 206).

[56] UN Guidelines for Consumer Protection (2016).

[57] Wacinkiewicz (2013).

[58] See: Federico (2024), OECD (2023). The definition of vulnerable consumer has been offered by a European Commission (2016), in the context of a study which defined the vulnerable consumer as 'a consumer, who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation, or market environment: (1) Is at higher risk of experiencing negative outcomes in the market; (2) Has limited ability to maximise their well-being; (3) Has difficulty in obtaining or assimilating information; (4) Is less able to buy, choose or access suitable products; or (5) Is more susceptible to certain marketing practices'. Along the same line see OECD (2024).

4 The Right to Free, Informed, and Sustainable Choice in Sustainable Consumption

The aim of this contribution is, aside from establishing that consumers' rights can be considered human rights, to assess how the sustainable circular economy dimension affects, if at all, consumers' human rights and whether it is possible to establish that a human right to free, informed, and sustainable choice exists. It was already established that it is difficult and counterproductive to neatly separate human rights into different categories, and this can be found also in the context of consumers' rights, especially if the issue is approached from an eco-centric perspective. Indeed, in order to foster a change which is truly sustainable, consumers' rights need to be thought of with a broader conceptualization, beyond the only-human dimension, and by enhancing a perspective which takes into account the environment as an entity which encompasses also (but not only) humans.[59]

The right to free, informed, and sustainable choice could be located at the intersection of the right to access to information, the right to a healthy environment, and the right to sustainable development. It needs to be established whether such a right has emerged as having its own legal standing or if it has to be derived from one of the aforementioned rights. In order to do that, this Section will first provide a framework for the existence of the right to free, informed, and sustainable choice in the context of circular economy, to later reflect on the pieces of legislation which support its conceptualization.

The right to free, informed, and sustainable choices in sustainable consumption is crucial in circular economy, not only as a catalyst to foster change but also as a pillar of the new economic model and of the protection of the environment. Being able to make decisions which are free, informed, and sustainable is determinant in empowering consumers for the transition to a sustainable circular economy.[60] More specifically, decisions that are: free*,* i.e. not the result of manipulated, greenwashed, and false information, and made on a voluntary basis; informed*,* i.e. meaning that the information is accessible, easy to understand, and that the consumer is aware and educated about the implications of that choice, not only economically but also environmentally and socially;[61] and sustainable*,* i.e. in accordance with the principles of a sustainable, circular economy.

[59] See more specifically De Vido (Chap. "The International Dimension of the Environment as a Legal Entity: The Human Rights of the Sustainable Consumer in an Ecological Perspective").

[60] OECD (2024). See also: Geissdoerfer and others (2017), Lesniewska and Steenmans (2023), Thomas (2020).

[61] In particular, OECD (2024, p. 7), recognized that among the risks faced by consumers, especially in the digital world, there are: 'manipulative, coercive, deceptive, or addictive online design techniques; fake reviews; exploitative personalisation; pervasive and extensive data collection, tracking and sharing; the exploitation of behavioural biases and information asymmetries; algorithmic discrimination; fraud; sophisticated scams; counterfeit goods; and access to unsafe products'. See also: Lesniewska and Steenmans (2023).

In addition, OECD Member States recognised expressly that 'consumers have the power to collectively influence businesses conduct' and that 'evidence indicates that many consumers globally would like to make more sustainable choices to mitigate the pace and gravity of climate change, depletion of natural resources, biodiversity loss, pollution, and other environmental harms, but often face a number of obstacles that prevent them from acting on their preferences and undermine consumer choice'.[62] The necessity to empower consumers for the green transition clearly emerges: the green transition and circular economy go hand in hand, with consumer empowerment and the circular economy serving as both pillars and catalysts for the green transition. In short, one cannot be achieved without the other. Consumers' choices weigh not only in terms of the inner workings of international and internal markets, but also in terms of fostering chances. For instance, consumption is among the leading causes of biodiversity loss, habitat fragmentation, deforestations, and non-human animals' extinctions.[63] Changing consumers' habits, empowering their ability to make sustainable choices is not only a necessity concerning circular economy, but an environmental urgency.

To empower consumers to make those decisions, the European Union adopted Directive (EU) 2024/825, amending Directive (EC) 2005/29 on empowering consumers for the green transition. Within the Impact Assessment Report which accompanied the proposal, the Commission highlighted how supplying reliable information for consumers to facilitate buying environmentally sustainable products was an important concern addressed by the proposal, alongside their protection against unfair commercial practices.[64] Indeed, the specific aims of this Directive are to enable informed purchasing decisions by consumers to foster sustainable consumption by providing better information, and, on the other hand, to eliminate misleading practices, guaranteeing better protection against unfair conducts. All in all, what these two aims entail is the protection of the right to make choices in consumption.[65] Free, informed, and, in the context of the green transition, sustainable choices. The same underlying goal of protecting consumers' right to choose is enshrined in Directive (EU) 2011/83, also known as Consumer Rights Directive.[66]

Within the EU Framework, which, as mentioned, is at the forefront in terms of protection of consumers, it is also in the final phases of negotiation the so-called 'Green Claims Directive',[67] a piece of legislation whose overall aim is to protect consumers from further aspects of greenwashing.[68] The underlying goal of this proposal too is the protection of consumers' choices, of their ability to make free

[62] OECD (2024, p. 5).

[63] Shoreman-Ouimet and Kopnina (2015), Ellen MacArthur Foundation (2021).

[64] European Commission (2022).

[65] See again European Commission (2022); see also Caterina (2012).

[66] Directive (EU) 2011/83 on consumer rights.

[67] Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims, (COM) 2023 166 final.

[68] On this perspective, see Nemes et al. (2022).

choices which are not manipulated by unfair practices or unreliable or false information. This proposal would not only protect consumers in their purchasing choices but would also foster their education as sustainable consumers, since information should be accessible and verifiable, thus allowing for the creation of the appropriate conditions for them to understand and decide on their own terms.

In a 2020 resolution concerning the European Green Deal, the European Parliament had stressed the importance of empowering consumers to act as well-informed consumers, in an effort to enhance the shift towards a green and sustainable economy, and also to ensure that 'consumers are provided with transparent, comparable, and harmonised product information, including the labelling of products, based on solid data and consumer research, to help them make healthier and more sustainable choices'.[69] Accessing information is therefore key to the protection of consumers' choices. In this sense, it can be affirmed that the right to information is a human right which assumes significant relevance in the context of consumer rights and the circular economy. The right to information is the backbone of consumer protection, aimed at rebalancing the inherent vulnerability of consumers and the asymmetry between consumers and market operators.[70]

The right to information is also a pillar in the context of environmental protection. The UNECE Convention on access to information, public participation in decision-making and access to justice in environmental matters of 1998 (Aarhus Convention)[71] enshrines such right and encapsulates the significance of having access to information—reliable and verifiable—when it comes to environmental matters. Worthy of notice is that within the Preamble of the Convention 'the importance of adequate product information being provided to consumers to enable them to make informed environmental choices' is recalled, and that, when dealing with the collection and dissemination of environmental information, it is provided for Parties to 'develop mechanisms with a view to ensuring that sufficient product information is made available to the public in a manner which enables consumers to make informed environmental *choices*'.[72]

The crucial role of accessing environmental information is also recalled at UN level within the Framework Principles elaborated by the Special Rapporteur on the human right to a safe, clean, healthy, and sustainable environment in 2018.[73] The aim of the report was to provide guiding principles concerning the human right to a healthy environment, setting out State's obligations under human rights law in relation to the enjoyment of a safe, clean, healthy, and sustainable environment.[74] Specifically, Framework Principle Number 7 states that 'States should provide

[69] European Parliament Resolution of 15 January 2020 on the European Green Deal, 2019/2956/(RSP). See also the relevant Briefing by European Parliament (2024).

[70] Benöhr (2013, p. 157).

[71] Further on this Convention see De Vido (Chap. "The International Dimension of the Environment as a Legal Entity: The Human Rights of the Sustainable Consumer in an Ecological Perspective").

[72] Art. 5(8) Aarhus Convention (emphasis added).

[73] HRC (2018a).

[74] HRC (2018a), para 7.

public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request'.[75] State parties are therefore required not only to collect information, which is reliable, but also to share it in a manner which is accessible both in terms of costs and of understandability, while also being time efficient. Receiving such information is fundamental for individuals to be able to make informed decisions about their lives and to be aware of their rights and how environmental decisions may impact them. At the basis of this framework principle lies the necessity to protect individuals' ability to make choices: not any choice, but informed and free choices.

Despite the existence of the aforementioned legal documents enshrining those rights, which at their core entail the protection of individual's choices, it seems premature to state that a right to make free, informed, and sustainable choices in sustainable consumption exists on its own. This stems from the fact that the existence of this right has not emerged expressly within pieces of legislation, even though, as mentioned, it is possible to infer that the safeguarding of the right to choose in consumption is at the core of the relevant Directives at the EU level. Furthermore, advancing the argument that this right has emerged as custom, even a regional one, is a difficult task as well, one which cannot easily be solved within these pages, but which would deserve some deeper considerations. Surely, Member States of the EU, by adopting said Directives, had to comply with the obligations and regulate their conduct to favour and safeguard consumers' choices; yet, it seems hazardous to state with clarity that such conduct was followed by *opinio juris* in that regard.

However, the interconnectedness of human rights is well established: human rights reinforce one another and can integrate one another. Hence, the right to free, informed, and sustainable choice could be derived from other existing rights, starting from the right to information in the context of consumer's rights, if read in light of the already existing rights to sustainable development and the right to a healthy environment. The protection of free, informed, and sustainable choices is also crucial for the enjoyment of the right to a healthy environment, given the profound impact that consumption choices have on the environment.[76] It is also a catalyst for the right to sustainable development,[77] in light of the weight that consumption choices have on economies, markets, and societies.

[75] HRC (2018a), paras 17–19.

[76] See further De Vido (Chap. "The International Dimension of the Environment as a Legal Entity: The Human Rights of the Sustainable Consumer in an Ecological Perspective"). See also Ellen MacArthur Foundation (2021).

[77] On the existence of the right to sustainable development, see: Moellendorf (2011), Sengupta (2001), Uvin (2007), Singh (1987).

5 The Elephant in the Room: Sustainable Consumers, a Legal Oxymoron?

The transition towards a sustainable circular economy is a process that exceeds law. Though changes in legislation at the national, regional, and international levels are necessary to promote and enhance such transition, they are but a starting point. What is needed, aside from legal changes, is a shift in paradigm in terms of how we approach, behave, and shape our consumption patterns. This is why consumer education and measures aimed at raising awareness are crucial and should be considered as obligations for States stemming from the right to free, informed, and sustainable choice.

Moving towards conclusions, a crucial point deserving further reflection, alongside legal considerations, is the role of the consumer itself. The interrelation between consumers, sustainability, and the circular economy has been a *leitmotiv* within these pages. This, however, begs the question of whether, for the purpose of shifting towards a sustainable circular economy, it is still possible and even useful to frame individuals within such an economic model as 'consumers'. Furthermore, the 'merely human' dimension also needs to be questioned in the effort to shift towards a sustainable circular economy.[78]

The image of the consumer is not anchored to a fixed concept. In light of the emergence of online platforms for trade, scholars proposed the notion of 'prosumer', a conflation of the terms 'producer' and 'consumer', which refers to those 'natural persons not acting in the course of a business or profession' who 'can move to the supply side of the market',[79] thus becoming so-called prosumers. Furthermore, bringing sustainability within the economic models' discourse has necessarily challenged not only the way in which economic models themselves are conceived, but also the actors who approach them, i.e. individuals. To that extent, authors began discussing about the responsible consumer,[80] who is able to make sustainable choices because they are informed and because asymmetries and imbalances in information gathering are addressed and lowered; while others have proposed the concept of the sustainable consumer,[81] a key figure in the shift towards sustainable consumption. Furthermore, the figure of 'the ethical consumer' was put forth in order to explore the behaviour, discourses, and narratives surrounding the concept of ethical (and unethical) consumption, and how, if at all, ethical consumers actions have an impact on their social and political contexts.[82]

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[78] For complementary critical appraisals in this sense see Marzulli (Chap. "'*Ubi societas ibi ius*': Centering a Sustainable Circular Economy from a Sociological Perspective") and De Vido (Chap. "The International Dimension of the Environment as a Legal Entity: The Human Rights of the Sustainable Consumer in an Ecological Perspective").

[79] Mak (2022).

[80] Menghini et al. (2013).

[81] Zoboli (2021), Kostadinova (2016), Mak (2022).

[82] Harrison et al. (2005).

The notion of sustainable consumption was proposed a few years after the adoption of the Brundtland Report which defined the concept of sustainable development.[83] It was elaborated in 1994 at Oslo Symposium on Sustainable Consumption as 'the *use* of services and related products which respond to basic needs and bring a better quality of life while minimizing the use of natural resources and toxic materials as well as emissions of waste and pollutants over the life cycle of the service or product so as not to jeopardize the needs of future generations'.[84] Worthy of notice here is the choice of the term 'use'. Sustainability seems to strive in the direction of *using* rather than *consuming*, the latter entailing the handling of a product which, after a certain period, will no longer be used and hence disposed of, i.e. consumed, in a 'buy-use-toss' logic, which is at the basis of the consumption-linear economic model.

Therefore, in light of the need to move towards a sustainable and circular economic model, which sets aside the logic of 'buy-use-toss' and 'consumerism', the term 'sustainable consumer' seems to be contradictory, as well as conflicting with the purpose of the sustainable circular economy altogether. Rather, the term 'user' could be applied and preferred to underscore the need to set aside consumeristic logic and favour a more responsible, informed, and sustainable approach towards purchases. This would be a first step in changing individuals' behaviours, which are crucial for a sustainable circular economy, and even more so for a broader approach which is not only focused on the individual and which does not view nature only as a resource to be turned into a product. Indeed:

'Circular economy strategies are decisive for restructuring the take-make-dispose model through the active participation of all actors of supply chains and consumers. To achieve this purpose, it is necessary to review the Western model of take-make-dispose, and the negative effects caused by the current economic model based on "extract, transform, and disposing" and the consumer market trends threaten the stability of the economies and the integrity of natural ecosystems, […] it becomes essential to activate the transition toward a new productive model that reduces pressure on the environment, and that is capable of transforming economic and social development focused on consumption and waste. Hence, a critical understanding of the Western way of life is necessary. One which, in terms of decolonial thinking, implies looking deeply at reality and the possibility of developing a pedagogy that harmonizes the being, knowledge and doing of man oriented towards preservation and conservation environmental care'.[85]

[83] WCED (1987), Report 'Our Common Future' (http://www.un-documents.net/our-common-future.pdf) was the first to formulate the notion of sustainable development as meeting the needs of the present without comprising those of future generations, which in its original conceptualization did not focus only on economic terms.

[84] See (with emphasis added) Roy (2021); for a comment see Kostadinova (2016).

[85] Cabrales Salazar et al. (2021).

6 Conclusion

In his report of 2018 on the human rights obligations relating to a safe, clean, healthy, and sustainable environment, the HRC Special Rapporteur David Boyd quoted, in turn, the worldwide-known French author Victor Hugo, who said 'it is impossible to resist an idea whose time has come'.[86] Boyd continued: 'The interdependence of human rights and the environment is an idea whose time is here'.[87] Building on this consideration, we would further expand this concept also to sustainability, circular economy, the environment, and human rights and their interdependence. To foster change that is effective, the circular economy discourse cannot be approached with a monolithic and narrow perspective, but rather it must take into account that changing the economic model at the basis of our society implies—and goes hand in hand with—changes in law and in societies, which affect humans, non-human animals, and the natural environment alike.

This contribution has tried to offer a possible avenue to promote change at the international level, so far lagging behind both in terms of a shift towards a circular economy and the protection of consumers' rights, by suggesting that consumers' rights could be considered as human rights. This would allow access to remedies at the international level as well as promote a human rights-based approach in the shift towards a sustainable circular economy.

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[86] HRC (2018a), para 20.

[87] HRC (2018a), para 20.

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