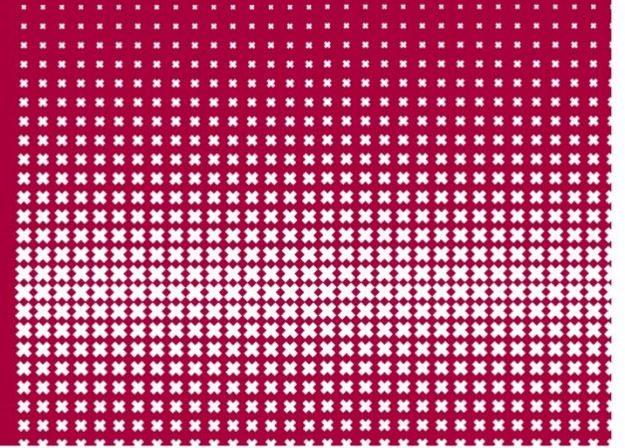




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# Consumer social responsibility: role of consumers in energy transition

10 October, IAS

# “Consumer centred clean energy transition”



- Urgency of reducing carbon footprint and diminish rootcauses of declining climate
- Unsustainable consumption – socially responsible consumer behaviour is key
- Decentralized energy system -RES
- Recent cost-reduction in renewable energy technologies enables consumers to increasingly produce their own renewable energy

# Active energy consumer

- From a centralized and largely fossil-fuel based, highly monopolistic and vertically integrated system delivering electricity to passive consumers

towards

- More decentralized power system, which relies on **small-scale generation from renewable energy sources requiring active participation of consumers** by smarter demand response management of their own energy use and/or by becoming producers themselves
- BUT positive attitude v. actual behaviour consumer
- Dynamic pricing demand flexibility targeted at large consumer
- Consumption is socially embedded – unsustainable institutional framework



# Consumer centred energy transition

- Consumers are the drivers of the energy transition – socially responsible choice makers
- Responsibility of consumers?
- Question effectiveness and legitimacy of “consumer centred” laws and policies?
- Critique: single focus on consumer as rational utility maximizing agent –neglect complexity of consumption influenced by social norms and institutional setting
- “Consumer scapegoatism”
- Economic growth, competitive markets sovereign consumer v. sustainable consumption, degrowth
- Role of law? – constraint - facilitator





## Role of law

- Law shapes social context of consumer behaviour by assigning rights and obligations to various actors constrain or facilitate consumption
- Enable or disable consumer choices
- Create and sustain sustainable infrastructures that structure the way we consume
- Legal framework of energy markets

# Current EU and national laws

- Consumer as active responsible agent Dir. 2019/944 Article 2
- Power and mandate to lead shift to sustainable energy
- BUT laws policies regulating position consumer inherently market based
- (EU) Consumer law is “consumerist” – free choice – internal market building (eg economic growth)
- Energy law since 1990s developed on the basis of liberalization and market building – consumer choice and switching!
- Stark contrast with strong sustainability



# Who is the active energy consumer?

- Article 2 (6) Directive 2019/944
  - Active customer: “a customer or a group of jointly acting customers who consume, store or sell electricity generated on their premises, including through aggregators, or participate in demand response or energy efficiency schemes provided that these activities do not constitute their **primary** commercial or professional activity.”
- Energy Efficiency Directive:
- Renewable self-consumer: “a type of active customer who consumes, stores and delivers [renewably generated] electricity on the same geographically-confined site, without the use of the public grid”.



# Directive 2019/944

- Chapter III: “Consumer empowerment and protection”
- **Dynamic price contract** (Article 11): an electricity supply contract between a supplier and a final customer that reflects the price at the spot market Article 2 (11)
- Article 18, right to frequent billing + billing information, correct, clear, concise, presented in a way that facilitates comparison
- Article 17, **demand response**, Article 15, self-generation and self-consumption of electricity
- Article 19 it entitles every consumer to request a **smart meter** equipped with a minimum set of functionalities





# Dutch Electricity Act

## De nieuwe Energiewet wordt het wettelijke fundament van de energietransitie

### **Bescherming huishoudens**

De nieuwe Energiewet biedt alle eindafnemers, in het bijzonder huishoudens, zelfstandigen en kleine bedrijven, meer rechten en bescherming. Zoals betere contractuele bescherming ten aanzien van transparante voorwaarden, opzegging, facturering en klachtenbehandeling. En over het aanbieden van dynamische energiecontracten. Daarnaast bevat de nieuwe Energiewet meer maatregelen om te voorkomen dat malafide energieleveranciers een vergunning krijgen. Daarvoor wordt onder meer de bevoegdheid van de Autoriteit Consument en Markt om dit te toetsen uitgebreid.

### **Actieve deelname aan de markt**

Daarnaast biedt de nieuwe Energiewet afnemers van elektriciteit de ruimte om, zelfstandig of in groepsverband, actief deel te gaan nemen aan de energiemarkt. Dat kan bijvoorbeeld door deelname aan een energiegemeenschap (zoals een energiecoöperatie) die zelf geproduceerde elektriciteit verkoopt en levert. Of door deelname aan marktdiensten rondom vraagrespons, waarbij afnemers hun energieverbruik aanpassen op basis van de actuele marktprijzen.



# ”Average consumer”

## Normative concept of the consumer

Implemented in Directive 29/2005, applied very differently in the CJEU case law:

‘...an average consumer, [who] is reasonably well informed and reasonably observant and circumspect’.

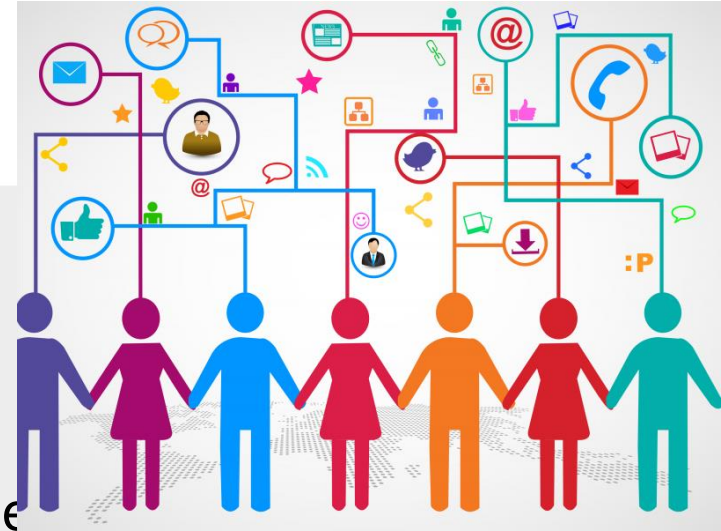
- But CJEU’s interpretation of Directive 93/13 on unfair contract terms: “the consumer is in a weak position *vis-à-vis* the seller or supplier as regards both its bargaining power and his level of knowledge.”
- Negative v. positive harmonization
- Free movement judgments v. unfair contract terms jurisprudence

# ”Average consumer” In economic regulation

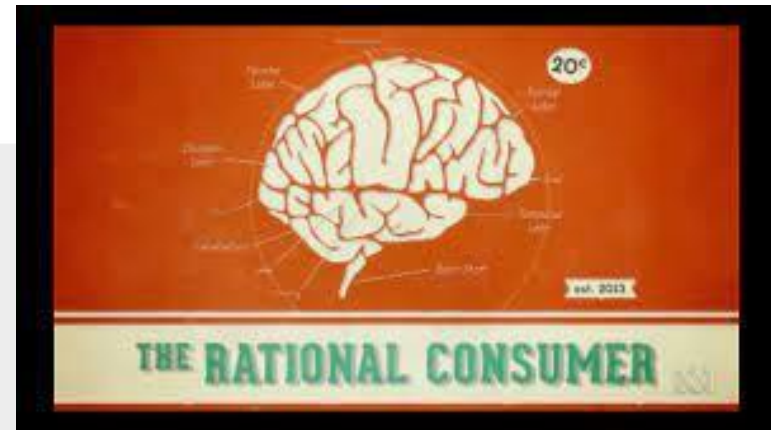
- the average energy user, the telecom customer
- user of postal services

## Economic regulation

- Neoclassical model of the consumer: behavior and responsiveness
- Consumers have stable and consistent preferences; engage in optimal search activity; select the lowest price and highest quality products including by switching suppliers when it is optimal to do so and have certain abilities when it comes to processing information
- Consumers behave in ways that **maximize utility** subject to a specific budget constraint, respond in predictable ways to changes in price and other relevant variables

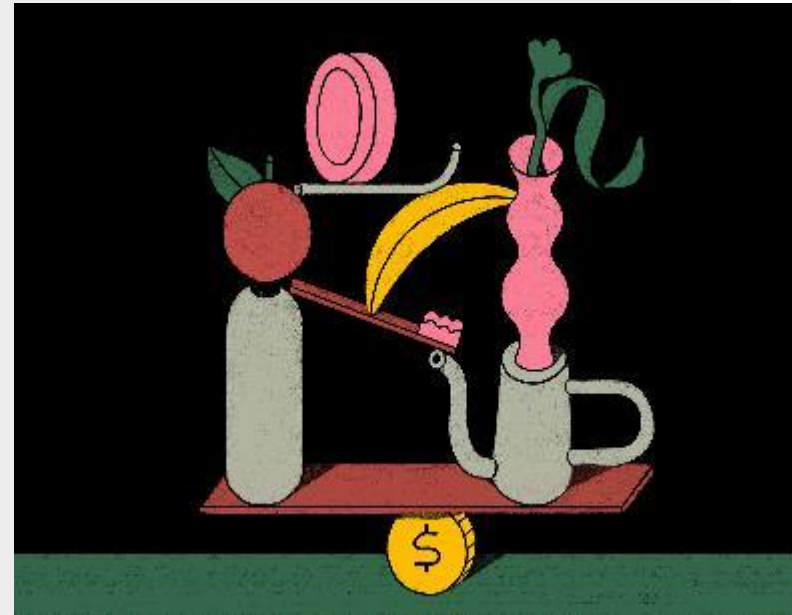


- Paradigm of active and rational consumer and relying on information provisions are ineffective + insufficient to empower consumer to steer markets towards sustainability
- Behavioural science: nudges
- Stronger steering – coercive measures eg restricting consumer choice, strong economic incentives
- Socially shared practices
- Actual context and processes energy use in everyday life
- Cooking, heating, commuting to work
- Consumption part of a larger system of investment, production, trade embedded in social, economic and cultural context



# Consumer responsibility towards sustainable consumption

- So far most EU energy and consumer rules (Dir.93/13 etc.) focus on information provisions ->rational cons
- Nudges?
- “Consumer scapegoatism”? – “locked in” by circumstances
- What is the role of law in steering consumers towards more active/responsible/sustainable behaviour?
- Social practices theory for law



# What is the change needed?

- Consumer law (competition law and many other fields and economic system) supports consumption (assist infrastructures and human behaviour) not a way of consumption
- Regulatory model - way economy is structured needs to change
- Co-create responsibility, shared responsibility between governments consumers and other institutions
- “Strong sustainability”