

Legal strategies to close the loops

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Why is closing the loops an issue? Because the circular economy chain has some weak links where the circularity can be broken. When this happens, the production-consumption process becomes linear again and all the effort invested on maintaining the products and materials in circulation is lost. Breaking the chain means that the time and energy invested in collection, transport, cleaning and repairing services was useless.

Where does the chain break? The chain always breaks in the weakest link. My argument is that the weakest link on the chain is not the economic operators, it's the consumers.

The economic operators, who carry out their productive activities under the strong surveillance of the public authorities, have targets to meet, thresholds to observe, activities to perform. Since they are regulated activities, better or worse, they play their role in maintaining circularity and they can even be obliged to adapt their business-as-usual economic model to become even more circular. If they don't, they can lose their licence to produce or to be on the market.

But the consumers... they don't lose their "licence to consume". Therefore, changing consumer behaviour requires a large spectrum of legal strategies.

Between the hard approach (imposing mandatory obligations, supervising and sanctioning) and the soft approach (passing on information to the consumers on the correct behaviour and hoping for the best) there is an array of instruments that can be mobilised to trigger the desired behaviour.

Many of these instruments are not suited for controlling citizen's attitudes towards products and waste. It is not the case that it is impossible to know whether consumers are contributing for separate disposal or they are throwing away their waste. With the IoT and geolocation we have the technical solutions to know if the products are following the right path towards recycling, repair or reuse. The major obstacle to this solution is not technical, is not economic (the cost of IoT technologies)... it's democratic. Are we prepared to live in a society where we are controlled 24/24 hours on what we buy, use and throw away and where the minimal wrong gesture gives rise to an automatic sanction (For instance are we prepared to accept a system as the one developed in São Paulo, Brasil, where cameras are installed in the buses using an advanced face identification system to identify faces and detect frauds in using the passes? Or in China where illegal waste disposal is controlled using surveillance cameras with the same software?) A society where individual freedoms are compressed, and people are controlled for the common good resembles very closely George Orwell's story – the Big Brother.

Alternatively, the acceptable solution is using softer instruments which can be divided in two categories: classical instruments and novel instruments.

Classical economic instruments: instruments to make people pay for what they throw away or receive money for what they reuse, repair, refurbish, remanufacture, recycle.

Classical informative instruments: instruments to display much more clearly the interdictions (no disposal on the toilet, no disposal on mixed waste) and the desired behaviours (dispose separately in the collection system, compress the bottle, etc). In Portugal, the Resolution of the Council of Ministers no. 100/2017 approves the National Environmental Education Strategy and

one of the 3 thematic axes is to “Make the economy circular” (the others are to decarbonize society and to value the territory).

The novel instruments are based on behavioural science. It is now well known that people are not machines, responding automatically to stimulus. In many cases, economic stimulus or informative stimulus may not be enough to change behaviours.

Tobacco smoking is the best example to illustrate the non-causal relation between more information and higher price as drivers for change.

Why? Because a number of conscient and inconscient factors contribute to behaviours: habits, inertia, comfort, dependence, preferences, laziness, deep and rooted beliefs, cultural bias... and even social status.

This is why money and information are not everything. Consumers are nor automats. They are not ‘consomats’. If we want big behavioural changes it is important to change the setting, to create conditions for change. Shat conditions? Infrastructural conditions, institutional conditions, notoriety conditions and shaming conditions.

The first make it easier to do the right thing.

The second makes it harder to do the wrong thing.

The third makes doing the right thing a good self-promotion option (similar to advertising).

The fourth makes doing the wrong thing a bad visibility option.

What is the role of law regarding these conditions?

Law can make the conditions for behavioural change mandatory. Beyond taxes and information, novel behaviour inducing instruments must be taken into account:

Gamification strategies (the recycling game for children based on a free app; for adults the take back machine that resamples a slot machine in a casino, making the gesture of recycling gratifying in itself).

Nudge instruments to push the citizens, towards the desired behavioural pattern. Nudge consists in making it easier to do good than to do wrong. For instance:

- a) physical availability and proximity of recovery installations to receive used products.
- b) bureaucratic procedures for dissuading the desired behaviour (for instance, the obligation to fill a form every time a consumer buys a new smartphone and he has to explain why he is buying another one when he had bought one 6 months ago)
- c) public lists of the best recyclers or the worst recyclers.
- d) default regimes to put the consumers in the desired track (in after-sale responsibility, mandatory repairing instead of replacing EEE).

These instruments intended to push the consumers towards the desired options may require some mandatory tasks to be performed by the economic operators (printing logos, accepting recyclables, etc.)