TÜRKİYE
ESNAF VE SANATKARLARI KONFEDERASYONU
AB - DIŞ İLİŞKİLER MÜDÜRLÜĞÜ

Sayı : 35002545-749-23/45 03.04.2023
Konu : AB Yeşil Aklamanın Önlenmesi ve Tamir Hakları Mevzuat Taslakları Hk.

BİRLİK VE FEDERASYONLARA 2023/45 SAYILI GENELGE

Konfederasyonumuza T.C. Ticaret Bakanlığı Uluslararası Anlaşmalar ve Avrupa Birliği Genel Müdürlüğünden intikal eden "AB Yeşil Aklanmanın Önlenmesi ve Tamir Hakları Mevzuatı Taslakları" konulu yazıda;

Döngüsel Ekonomi Eylem Planı kapsamında, Avrupa Komisyonu tarafından 30 Mart 2023 tarihinde açıklanan Sürdürülebilir Ürün İnisiyatifi kapsamında, sürdürülebilir ve döngüsel ürünlere ilişkin AB düzeyinde ortak kurallar getirilmesi amaçlanırken, ürün içeriğine ilişkin doğru bilgilerin tüketiciye sağlanması ve yeşil aklamanın *(green washing*) önlenmesi amaçlandığı;

Bu çerçevede, Komisyon tarafından Yeşil Dönüşümde Tüketicinin Güçlenmesine Yönelik Bir Direktif taslağı açıklanmış olup, taslak kapsamında tüketicilerin satın alacakları ürünün çevresel ayak izine, dayanıklılığına, tamir edilebilirliğine, geri dönüştürülebilirliğine ilişkin yeterince bilgilendirilmeleri ve Tüketici Hakları Direktifi ile Haksız Rekabet Direktifinin revize edilmesi teklif edildiği;

Öte yandan, Avrupa Komisyonu tarafından 2020 yılında yapılan bir çalışmaya göre, AB pazarında bulunan ürünlerde bulunan çevresel beyanların %53,3'ünün belirsiz, dayanaksız ve yanlış yönlendirici olduğu tespit edilmiştir. Gönüllülük esasında ürünlere koyulan çevresel beyanlara ilişkin AB düzeyinde kural bulunmaması yeşil aklamaya sebep olarak tüketicileri yanıltmakta ve gerçekten sürdürülebilir ürünler açısından dezavantaj duğurduğu ifade edilmektedir;

Bu kapsamda, çevresel beyanların ispatlanmasına ve tebliğine ilişkin olarak Avrupa Komisyonu tarafından 22 Mart 2023 tarihinde Yeşil Beyanlar Direktifi Taslağı (*Directive* on *Substantiation and Communication of Explicit Environmental Claims- Green Claims Directive*) yayımlandığı ifade edilmekte;

Taslak kapsamında eko-etiket, organik gıda gibi AB mevzuatı ile düzenlenenler haricinde düzenlenmeyen alanlarda yer alan gönüllü beyanların ispatlanması ve tebliğine yönelik asgari gereklilikler getirilmekte olup, beyanların 'geri dönüştürülmüş plastikten üretilmiş tişört', '%30'u geri dönüştürülmüş plastikten üretilmiş ambalaj' gibi daha spesifik olarak ifade edilmesi gerekmektedir;

Bu kapsamda, yeşil beyanların ispatlanabilmesine için beyanın bilimsel ve teknik bilgiye dayanması; yaşam döngüsü analizi kapsamında ürün performansına ve diğer alanlara etkilerinin gösterilmesi; bir mevzuatın zorunlu gerekliliği olmadığının gösterilmesi; ürünü diğer ürünlere göre çevresel olarak daha iyi yaptığının kanıtlanması; sera gazı emisyonlarındaki azalmayı şeffaf bir şekilde raporlaması; doğru birincil ve ikincil bilgiye dayanması gibi gereklilikler getirirken, yeşil beyanların tebliğinde geniş kapsamlı tebliğlerden kaçınılması, gerekli durumlarda tüketicilerin ürün kullanımı ile nasıl bir çevresel fayda oluşturduğunun açıklanması, beyana ilişkin tüm doğrulayıcı belgelerin

Tunus Cadddesi No: 4 06680 Bakanlıklar/ANKARA info@tesk.org.tr www.tesk.org.tr tesk.evrak@hs01.kep.tr
Tel: 0312 418 32 69 Faks: 0312 425 75 26 Bilgi İçin: yusufmalbant@tesk.org.tr
7941076656bc4021b815dc6deec2380d

sağlanması gibi kriterler getirildiği ifade edilmektedir;

Ayrıca, halihazırda 230 farklı çevresel etiket olduğu göz önüne alınarak, taslak kapsamında tüketici açısından kafa karışıklığının önlenmesi amacıyla fazla etiket çeşidinin önüne geçilecek, AB düzeyinde belirlenenler hariç ulusal düzeyde yeni etiketleme getirilmesi yasaklanacak, yeni getirilecek özel etiketler ise ancak mevcut etiketlerin gerekli ihtiyacı karşılamadığının ispatlanması ile ön-onay sürecinden geçmeleri durumunda kullanılabileceği belirtilmektedir;

Buna ek olarak, Komisyon tarafından açıklanan Ürünlerin Tamirine İlişkin Ortak Kurallar Direktifi *(Directive on Common Rules Promoting the Repair of Goods)* taslağı ile elektrik süpürgeleri, tablet ve akıllı telefonlar gibi ürünlerin yasal garanti kapsamında daha maliyetli olmadığı sürece yenilenmek yerine tamir edilmesi zorunlu hale gelirken, garanti süresi geçtikten sonra tüketicilerin ucuz ve kolay tamir imkanlarına ulaşmalarını sağlayacak kurallar önerilmiştir. Bu çerçevede,

- Ürünlerini tamir etmek isteyen üreticilerin kolaylıkla ilgiliye ulaşmalarının sağlanması, üreticilerin sürdürülebilir iş modelleri geliştirmeye teşvik edilmesi,

- Tüketicilerin kendi tamir etmeleri gereken ürünlere ilişkin önceden bilgilendirilmeleri,

Çevrimiçi tamir platformu ile tüketiciler ve tamircilerin eşleşmesinin sağlanması,

Tüketicilerin tamir koşullarına ve fiyatların ilişkin karşılaştırma yapabilmesi için Avrupa Tamir Bilgi Formu kurulması,

- Tamir hizmetleri için AB kalite standardı belirlenmesi gibi öneriler getirildiği ifade edilmektedir;

Bir örneği de ilişikte yer alan yazının ve eklerinin birliğinizce incelenerek bağlı odalarınıza duyurulması hususunda bilgilerinizi ve gereğini rica ederiz.

e-imzalıdır

Dr. Murat CANGÜL
Genel Sekreter

e-imzalıdır

Bendevi PALANDÖKEN
Genel Başkan

T.C. TİCARET BAKANLIĞI ULUSLARARASI ANLAŞMALAR VE AVRUPA BİRLİĞİ GENEL MÜDÜRLÜĞÜ
Tarih: 28/03/2023
Sayı: E-79668890-740-00084034483

T.C.
TİCARET BAKANLIĞI
Uluslararası Anlaşmalar ve Avrupa Birliği Genel Müdürlüğü

Sayı : E-79668890-740-00084034483
Konu : AB Yeşil Aklamanın Önlenmesi ve Tamir Hakları Mevzuat Taslakları

DAĞITIM YERLERİNE

Malumları olduğu üzere, Döngüsel Ekonomi Eylem Planı kapsamında, Avrupa Komisyonu tarafından 30 Mart 2023 tarihinde açıklanan Sürdürülebilir Ürün İnisiyatifi kapsamında, sürdürülebilir ve döngüsel ürünlere ilişkin AB düzeyinde ortak kurallar getirilmesi amaçlanırken, ürün içeriğine ilişkin doğru bilgilerin tüketiciye sağlanması ve yeşil aklamanın (*green washing*) önlenmesi amaçlanmıştır.

Bu çerçevede, Komisyon tarafından Yeşil Dönüşümde Tüketicinin Güçlenmesine Yönelik Bir Direktif taslağı açıklanmış olup, taslak kapsamında tüketicilerin satın alacakları ürünün çevresel ayak izine, dayanıklılığına, tamir edilebilirliğine, geri dönüştürülebilirliğine ilişkin yeterince bilgilendirilmeleri ve Tüketici Hakları Direktifi ile Haksız Rekabet Direktifinin revize edilmesi teklif edilmiştir.

Öte yandan, Avrupa Komisyonu tarafından 2020 yılında yapılan bir çalışmaya göre, AB pazarında bulunan ürünlerde bulunan çevresel beyanların %53,3'ünün belirsiz, dayanaksız ve yanlış yönlendirici olduğu tespit edilmiştir. Gönüllülük esasında ürünlere koyulan çevresel beyanlara ilişkin AB düzeyinde kural bulunmaması yeşil aklamaya sebep olarak tüketicileri yanıltmakta ve gerçekten sürdürülebilir ürünler açısından dezavantaj doğurmaktadır.

Bu kapsamda, çevresel beyanların ispatlanmasına ve tebliğine ilişkin olarak Avrupa Komisyonu tarafından 22 Mart 2023 tarihinde Yeşil Beyanlar Direktifi Taslağı (*Directive on Substantiation and Communication of Explicit Environmental Claims- Green Claims Directive*) yayımlanmıştır.

Taslak kapsamında eko-etiket, organik gıda gibi AB mevzuatı ile düzenlenenler haricinde düzenlenmeyen alanlarda yer alan gönüllü beyanların ispatlanması ve tebliğine yönelik asgari gereklilikler getirilmekte olup, beyanların 'geri dönüştürülmüş plastikten üretilmiş tişört', '%30'u geri dönüştürülmüş plastikten üretilmiş ambalaj' gibi daha spesifik olarak ifade edilmesi gerekecektir.

Bu kapsamda, yeşil beyanların ispatlanabilmesine için beyanın bilimsel ve teknik bilgiye dayanması; yaşam döngüsü analizi kapsamında ürün performansına ve diğer alanlara etkilerinin gösterilmesi; bir mevzuatın zorunlu gerekliliği olmadığının gösterilmesi; ürünü diğer ürünlere göre çevresel olarak daha iyi yaptığının kanıtlanması; sera gazı emisyonlarındaki azalmayı şeffaf bir şekilde raporlaması; doğru birincil ve ikincil bilgiye dayanması gibi gereklilikler getirirken, yeşil beyanların tebliğinde geniş kapsamlı tebliğlerden kaçınılması, gerekli durumlarda tüketicilerin ürün kullanımı ile nasıl bir çevresel fayda oluşturduğunun açıklanması, beyana ilişkin tüm doğrulayıcı belgelerin sağlanması gibi kriterler getirilmiştir.

Adres: Söğütözü 2176. sok No:63 06510 Çankaya Ankara
Telefon No: 0312 204 90 23 Faks No: .
e-Posta: berrakt@ticaret.gov.tr
İnternet Adresi: www.ticaret.gov.tr
KEP Adresi:

Ayrıntılı bilgi için:
ELİF BERRAK TAŞYÜREK
Ticaret Uzmanı
Telefon No: 0312 204 90 23

Ayrıca, halihazırda 230 farklı çevresel etiket olduğu göz önüne alınarak, taslak kapsamında tüketici açısından kafa karışıklığının önlenmesi amacıyla fazla etiket çeşidinin önüne geçilecek, AB düzeyinde belirlenenler hariç ulusal düzeyde yeni etiketleme getirilmesi yasaklanacak, yeni getirilecek özel etiketler ise ancak mevcut etiketlerin gerekli ihtiyacı karşılamadığının ispatlanması ile ön-onay sürecinden geçmeleri durumunda kullanılabilecektir.

Buna ek olarak, Komisyon tarafından açıklanan Ürünlerin Tamirine İlişkin Ortak Kurallar Direktifi (*Directive on Common Rules Promoting the Repair of Goods*) taslağı ile elektrik süpürgeleri, tablet ve akıllı telefonlar gibi ürünlerin yasal garanti kapsamında daha maliyetli olmadığı sürece yenilenmek yerine tamir edilmesi zorunlu hale gelirken, garanti süresi geçtikten sonra tüketicilerin ucuz ve kolay tamir imkanlarına ulaşmalarını sağlayacak kurallar önerilmiştir. Bu çerçevede,

- Ürünlerini tamir etmek isteyen üreticilerin kolaylıkla ilgiliye ulaşmalarının sağlanması, üreticilerin sürdürülebilir iş modelleri geliştirmeye teşvik edilmesi,
- Tüketicilerin kendi tamir etmeleri gereken ürünlere ilişkin önceden bilgilendirilmeleri,
- Çevrimiçi tamir platformu ile tüketiciler ve tamircilerin eşleşmesinin sağlanması,
- Tüketicilerin tamir koşullarına ve fiyatların ilişkin karşılaştırma yapabilmesi için Avrupa Tamir Bilgi Formu kurulması,
- Tamir hizmetleri için AB kalite standardı belirlenmesi gibi öneriler getirilmiştir.

Bilgilerini rica ederim.

Bahar GÜÇLÜ
Bakan A.
Genel Müdür Yardımcısı

Ek:
1- Proposal for a Directive on Green Claims
2- Proposal for Empowering consumers
3- Proposal for Repair of Goods

Dağıtım:
Türkiye İhracatçılar Meclisine
Dış Ekonomik İlişkiler Kuruluna
Türk Sanayici ve İşadamları Derneği
Müstakil Sanayici ve İşadamları Derneği Genel Sekreterliği
Türkiye Müteahhitler Birliğine
Uluslararası Yatırımcılar Derneği
Türkiye Esnaf ve Sanatkarları Konfederasyonuna
Türkiye İşveren Sendikaları Konfederasyonuna

Adres: Söğütözü 2176. sok No:63 06510 Çankaya Ankara
Telefon No: 0312 204 90 23 Faks No: .
e-Posta: berrakt@ticaret.gov.tr
İnternet Adresi: www.ticaret.gov.tr
KEP Adresi:

Ayrıntılı bilgi için:
ELİF BERRAK TAŞYÜREK
Ticaret Uzmanı
Telefon No: 0312 204 90 23

Adres: Söğütözü 2176. sok No:63 06510 Çankaya Ankara
Telefon No: 0312 204 90 23 Faks No: .
e-Posta: berrakt@ticaret.gov.tr
İnternet Adresi: www.ticaret.gov.tr
KEP Adresi:

Ayrıntılı bilgi için:
ELİF BERRAK TAŞYÜREK
Ticaret Uzmanı
Telefon No: 0312 204 90 23

EUROPEAN
COMMISSION

Brussels, 30.3.2022
COM(2022) 143 final

2022/0092 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information

(Text with EEA relevance)

{SEC(2022) 166 final} - {SWD(2022) 85 final} - {SWD(2022) 86 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

The Treaty on the Functioning of the European Union (Articles 114 and 169 TFEU) and the Charter of Fundamental Rights (Article 38) require a high level of consumer protection in the EU. EU consumer legislation also contributes to the proper functioning of the single market. It aims to make business-to-consumer relations fair and transparent and ultimately support the welfare of European consumers and the EU economy.

This proposal aims at enhancing consumer rights by amending two directives that protect the interest of consumers at Union level: the Unfair Commercial Practices Directive 2005/29/EC[1] and the Consumer Rights Directive 2011/83/EU[2]. More specifically, the proposal aims to contribute to a circular, clean and green EU economy by enabling consumers to take informed purchasing decisions and therefore contribute to more sustainable consumption. It also targets unfair commercial practices that mislead consumers away from sustainable consumption choices. Furthermore, it ensures a better and more consistent application of EU consumer rules.

The proposal was one of the initiatives set out in the New Consumer Agenda[3] and the Circular Economy Action Plan[4] and follows up on the European Green Deal[5]. Empowering consumers and providing them with cost-saving opportunities is a key building block of the sustainable product policy framework. This is to be achieved through the improved participation of consumers in the circular economy, in particular by providing better information on the durability and reparability of certain products to consumers before concluding the contract and stepping up the protection of consumers against unfair commercial practices that prevent sustainable purchases, such as:

- greenwashing practices (i.e. misleading environmental claims),
- early obsolescence practices (i.e. premature failures of goods), and
- the use of unreliable and non-transparent sustainability labels and information tools.

More precisely, the proposal aims at:

---

1 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 (OJ L 149, 11.6.2005, p. 22).

2 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 (OJ L 304, 22.11.2011, p. 64).

3 COM(2020)696 final, 13 November 2020.

4 COM(2020)98 final, 11 March 2020.

5 COM(2019)640 final, 11 December 2019.

- Providing information on the existence and length of a producer's commercial guarantee of durability for all types of goods, or the absence of such guarantee in case of energy-using goods.

- Providing information on the availability of free software updates for all goods with digital elements, digital content and digital services.

- Providing information on the reparability of products, through a reparability score or other relevant repair information, where available, for all types of goods.

- Ensuring that traders do not mislead consumers about environmental and social impacts, durability and reparability of products.

- Ensuring that a trader can make an environmental claim related to future environmental performance only when this involves clear commitments.

- Ensuring that a trader cannot advertise benefits for consumers that are considered as a common practice in the relevant market.

- Ensuring that a trader can only compare products, including through a sustainability information tool, if they provide information about the method of the comparison, the products and suppliers covered, and the measures to keep information up to date.

- A ban on displaying a sustainability label which is not based on a certification scheme or not established by public authorities.

- A ban of generic environmental claims used in marketing towards consumers, where the excellent environmental performance of the product or trader cannot be demonstrated in accordance with Regulation (EC) 66/2010 (EU Ecolabel), officially recognised eco-labelling schemes in the Member States, or other applicable Union laws, as relevant to the claim.

- A ban on making an environmental claim about the entire product, when it actually concerns only a certain aspect of the product.

- A ban on presenting requirements imposed by law on all products within the relevant product category on the Union market as a distinctive feature of the trader's offer.

- A ban of certain practices related to the early obsolescence of goods.

These measures are needed to update existing consumer law to ensure consumers are protected and can actively contribute to the green transition. The Consumer Rights Directive currently requires traders to provide consumers with information on the main characteristics of the goods or services. It includes specific information requirements about the existence of the legal guarantee of conformity, as well as additional commercial guarantees. However, as there is no requirement to provide information on the absence of commercial guarantees of durability, the Directive does not incentivise producers sufficiently to provide such guarantees to consumers. Research shows that where consumer products are offered with a commercial

guarantee, the information on such commercial guarantees, and the way that consumers are being charged, is often unclear, imprecise or incomplete, making it difficult for consumers to compare between products and to distinguish the commercial guarantee from the (compulsory) legal guarantee[6]. This proposal will address this issue by ensuring that consumers are provided with information on the existence of a commercial guarantee of durability of more than two years, covering the entire good, whenever such information is made available by the producer.

Furthermore, the Directive does not contain specific requirements to provide information to consumers on the reparability of goods. Rather, it requires only information on 'after sale services' to be provided on a 'where applicable' basis. This information, which would help promote the repair of goods and therefore be particularly valuable in helping consumers contribute to a circular economy, is largely missing at the point of sale. Recent studies show that up to 80% of EU consumers claim to have difficulty in finding information on how easy it is to repair a product[7].

The general rules in the Unfair Commercial Practices Directive on misleading practices can be applied to greenwashing practices when they negatively affect consumers, using a case-by-case assessment. However, there are no specific rules in the Directive or in its Annex I (the blacklist) defining such practices as unfair in all circumstances. Recent screening of websites by Consumer Protection Cooperation Network authorities to detect misleading environmental claims confirmed there is a need to strengthen the rules to facilitate enforcement in this area. Furthermore, a recent Commission study assessed 150 environmental claims and found that a considerable share (53.3%) of them provide vague, misleading or unfounded information on products' environmental characteristics across the EU and in a wide range of product groups (both in advertisement as well as on the product)[8].

The same situation exists for early obsolescence cases. The lack of specific rules and the need to assess the concrete effects of the practice on consumers makes it difficult to enforce the Directive in this area. This is borne out by the fact that, in their reply to the Open Public Consultation consulted in preparation of this proposal, 76% of respondents mentioned that they had experienced an unexpected failure of a product in the past 3 years[9].

1.2. Consistency with existing rules

Directive (EU) 2019/771[10] (Sale of Goods Directive) promotes durability of goods through the legal guarantee, which provides certain rights to consumers during a minimum two-year period, which can be extended by Member States under certain conditions. It also provides for conditions under which a producer may offer a commercial guarantee of durability to a consumer.

---

6 European Commission, *Consumer market study on the functioning of legal and commercial guarantees for consumers in the EU*, 2015. European Commission, Impact Assessment supporting study: *Study on Empowering Consumers Towards the Green Transition*, July 2021. *Commercial warranties: are they worth the money?* ECC-Net, April 2019.

7 European Commission, *Behavioural Study on Consumers' engagement in the circular economy*, 2018, p. 81.

8 European Commission, *Environmental claims in the EU – inventory and reliability assessment,* 2020.

9 European Commission, *A New Consumer Agenda Factual summary report – public consultation*, 2020, p. 20.

10 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, p. 28)

This proposal will increase transparency for consumers as regards commercial guarantees and will thereby also incentivise producers to offer commercial guarantees of durability longer than two years by obliging traders to provide information at the point of sale on the existence (or absence in the case of energy-using goods) and length of the commercial guarantees of durability provided by producers.

Both the Sale of Goods Directive and the Digital Content Directive[11] ensure consumers are supplied with software updates so that a product remains in conformity for the duration of the contract, or alternatively for a period of time which the consumer might reasonably expect.

However, the comparability of products at the point of sale based on the availability of software updates is not addressed. This proposal will provide for an obligation to inform consumers before concluding the contract on the existence of software updates and the period for which the producer commits to provide them, when this information is provided by the producer. When there is already a commercial guarantee of durability offered for longer than two years, the information obligation for traders only remains for software updates when the duration is longer than the duration of the commercial guarantee of durability, to avoid unnecessary information for consumers.

As this proposal amends existing EU consumer law directives, its provisions will be able to rely on the full spectrum of enforcement mechanisms in existing EU consumer law, recently strengthened by the Better enforcement and modernisation Directive[12], the Representative Actions Directive[13] and the revised Consumer Protection Cooperation Regulation[14].

1.3. Consistency with other EU policies

With the exception of certain derogations, the two consumer law directives amended by this proposal, apply across all economic sectors. Due to their general scope, they apply to many aspects of business-to-consumer transactions that may also be covered by other, more specific EU legislation in different areas. The interplay between the different instruments of Union law is regulated by the *lex specialis* principle. Under this principle, the general consumer law directives apply whenever the relevant aspects of business-to-consumer transactions are not regulated by more specific provisions of EU law. Thus, the general consumer law directives work as a 'safety net', ensuring that a high level of consumer protection can be maintained in all sectors, complementing and filling gaps in sector-specific Union law.

Two other EU-level initiatives would complement this proposal: the Green Claims initiative and the Sustainable Products initiative. The objective of the Green Claims initiative will be to

---

11 Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1)

12 Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (OJ L 328, 18.12.2019, p. 7)

13 Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1)

14 Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1)

introduce further requirements in relation to environmental claims made about products and organisations, both when made by businesses towards consumers and by businesses towards other businesses.

The Sustainable Products initiative (SPI) builds on the current Eco-design Directive[15] in order to introduce sustainability requirements for products sold in the EU. The three initiatives are mutually consistent and complementary.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Consumer protection falls within the joint remit ('shared competence') of the EU and its member countries. As stipulated in Article 169 of the Treaty on the Functioning of the EU (TFEU), the EU must help protect the economic interests of consumers and promote their right to information and education, to safeguard their interests. This proposal is based on Article 114 which in accordance with Article 169(2)(a) is the legal basis for adoption of measures that contribute to attainment of objectives of Article 169 in the context of the completion of the internal market.

In addition to pursuing single market and consumer protection objectives, the proposal will also pursue a high level of environmental protection by unlocking opportunities for the circular, clean and green economy. As these environmental benefits are complementary to the primary objectives of consumer protection and completion of the single market, Article 114 TFEU on internal market completion, with due regard to Article 169 TFEU remains the appropriate legal basis.

- **Subsidiarity (for shared competence)**

This proposal amends EU consumer protection rules, whose adoption has been deemed necessary and in line with the principle of subsidiarity. A better functioning single market cannot be achieved by national laws alone. EU consumer protection rules become increasingly relevant as the single market deepens, and the number of EU consumer transactions increases between Member States. The problems addressed by these proposed amendments are EU-wide problems with the same causes. Therefore, only action taken at EU level will be effective.

Within the EU, the volume and intensity of cross-border trade are high enough to make the efficient functioning of the single market vulnerable to inconsistent — or even merely divergent — policy choices by Member States. Moreover, traders can reach consumers across Member States' borders. This can create problems that national lawmakers and regulators are ill placed to address adequately by acting alone.

In the absence of EU-level action, national initiatives, while bringing certain benefits to consumers and the national markets, could lead to a fragmentation of the single market, in turn bringing legal uncertainty and raising compliance costs.

[15] Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10)

Directive 2005/29/EC ensures full harmonisation of national rules on unfair commercial practices that harm consumers' economic interests. Directive 2011/83/EU in principle provides full harmonisation of rules on pre-contractual information requirements.

Any new national legislation within the scope of these Directives would go against the fully harmonised legal framework. This proposal helps alleviate the difficulties faced by national authorities in enforcing the existing principle-based rules in Directive 2005/29/EC in such complex areas as misleading environmental claims, early obsolescence practices and non-transparent sustainability labels and sustainability information tools. By specifying further when and how such practices would qualify as unfair, it would increase the effectiveness of consumer protection within the EU.

This proposal also amends Directive 2011/83/EU by requiring traders to provide information on the durability and reparability of products before concluding a contract, to ensure consumers can make better-informed purchasing choices. This will ensure consumers can benefit from such information when buying products in the single market.

- **Proportionality**

The measures in the proposal are proportionate to the objectives of enabling informed purchasing decisions by consumers, to promote sustainable consumption, eliminate unfair commercial practices by traders that cause damage to the sustainable economy and lead consumers away from sustainable consumption choices, and ensuring a better and more consistent application of EU consumer protection rules.

The requirement to provide information about the presence of a producer's commercial guarantee of durability of more than two years is only needed when a producer makes this information available to the trader. Moreover, for energy-using goods, consumers should also be informed of the fact that the producer has not made that information available. Traders are only subject to this requirement in relation to energy-using goods for which durability can be reliably estimated and about which consumers are mostly interested to receive this information.

For goods with digital elements, the provision *of information about available software updates* is required only when updates are supplied for a period longer than the period covered by the producer's commercial guarantee of durability, and when such information is provided to the trader by the producer. Furthermore, such information should only be provided in case of a single act of supply of the digital elements in question.

For digital services and digital content, the provision of *information about available software updates* is required only when such information is provided to the trader by the provider when the provider is different from the trader. Furthermore, such information should only be provided in case of a single act of supply of the digital service or content in question.

Providing *information on the reparability of products through a reparability score or other relevant repair information* is required at the point of sale only if a reparability score is already established for that product under EU law, or whenever other relevant repair information is made available by the producer. Traders are not obliged to inform consumers at the point of sale if no such information is available.

The *ban on generic environmental claims used in marketing towards consumers* is expected to bring significant benefits for consumers while limiting the burden on traders. Traders are

allowed to make generic environmental claims in cases where the excellent environmental performance by products or traders can be demonstrated in accordance with Regulation (EC) 66/2010 (EU Ecolabel), by officially recognised eco-labelling schemes in the Member States in accordance with Article 11 of Regulation (EC) 66/2010, or in accordance with other applicable Union laws.

The *ban on making an environmental claim about the entire product when it actually concerns only a certain aspect of the product* is also expected to bring significant benefits for consumers while clarifying the rules for traders, ensuring a level playing field among them. It will allow traders to continue to make environmental claims about a certain aspect of a product as long as it is made clear to the consumer that the claim relates to a certain aspect and not to the whole product.

The *ban on practices related to the early obsolescence of products* is targeted at specific and well defined existing practices and aims at ensuring legal certainty for traders and facilitating enforcement, as enforcement authorities will not be required to prove that a product has been designed for early obsolescence, with the intention of stimulating the purchase of a new model.

- **Choice of instrument**

As this proposal amends two existing Directives, the most appropriate instrument is a directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks on existing legislation**

In 2017, the EU Consumer and Marketing Law and the Consumer Rights Directive underwent a fitness check and evaluation, respectively. The findings from this exercise pointed primarily to the need to improve awareness and enforcement of the rules and opportunities for consumers to seek redress, to make the best of the existing legislation, and highlighted a limited range of necessary changes due to digitalisation.

Given the focus on enforcement and digitalisation, there were no specific conclusions on the contribution of EU consumer law to sustainable consumption, an issue which gained further political prominence some years later with the announcement of the European Green Deal. Nevertheless, whenever possible and relevant, this instrument draws on the findings and conclusions collected in the 2017 exercise[16].

- **Stakeholder consultations**

In preparing this proposal, the Commission consulted with stakeholders via:

– a feedback mechanism on the inception impact assessment;

– an online public consultation;

16 Results of the Fitness Check of consumer and marketing law and of the evaluation of the Consumer Rights Directive *https://ec.europa.eu/newsroom/just/items/59332*

– targeted consultations with key stakeholders, consisting of about 150 in-depth interviews with the main groups concerned by the initiative: national authorities, EU and national business associations and EU and national consumer associations;

– computer-assisted telephone interviews with over 100 companies;

– an online consumer survey of almost 12 000 consumers in all EU countries;

– four expert workshops with different stakeholder groups.

The online Open Public Consultation

This open public consultation found that verifying the reliability of environmental claims about products was the biggest obstacle to improved consumer participation in the green transition and towards more sustainable consumption behaviour. Consumer organisations were more likely than business associations to identify this as an obstacle.

Most respondents had experienced the unexpected failure of a product in the last three years. ICT products were identified as most problematic, followed by small household appliances and clothing and footwear.

'Information about the reparability of the product' was identified as the option most likely to enable consumers to choose more sustainable products and participate in the circular economy. This was strongly favoured by public authorities and citizens, but not by companies/business organisations, who instead favoured the provision of '*information on the product's life-cycle environmental and climate footprint*'. This was also rated as the second-best option overall.

Providing better information on products' durability/lifespan was identified as the best option to empower consumers in the green transition. This was strongly favoured by consumer organisations and citizens, but not by company/business organisations or business associations, who favoured '*raising awareness about the role of consumers on circular economy and green transition*'.

Targeted consultation

In this consultation – conducted to expand on the feedback collected in the online Open Public Consultation, almost all stakeholders (except those representing industry) agreed with the view that consumers are not given, or do not have sufficient access to information on (i) products' environmental impact, (ii) the lifespan of goods, (iii) product-specific features that may lead to early failure, and (iv) the availability of repair services spare parts and software updates/upgrades.

Most consumer organisations considered that consumers are subjected to 'greenwashing' and that 'premature obsolescence' occurs to some extent. Representatives from industry tended to disagree. The proliferation of sustainability labels was also identified as a problem by most stakeholder groups.

Computer-assisted telephone interview survey

Manufacturers and retailers were asked to indicate the scale of impact and cost of introducing various legal requirements on their organisation. The responses for each requirement were as follows:

- ‘Provide information on aspects in the product’s design that can cause its early failure’ would have the biggest impact and would be most costly.
- ‘Stronger consumer protection against planned (intentional) obsolescence practices’ would have the lowest impact
- ‘Obligation to provide information on the duration of the commercial guarantee for all products’ and the ‘Obligation to expressly inform the consumer that no commercial guarantee of durability is provided for the given product’ would be least costly.

Online consumer survey

The survey found that consumers appear to be open to participating in the green transition. Most respondents were unwilling to pay for information (e.g. via an app) on the durability and reparability of ‘durable goods’. Around half of respondents said they were willing to pay extra on top of the initial price for a product that lasts longer without having to be repaired, and a similar proportion said they were willing to pay extra for an identical product that lasts longer with minor/reasonable repairs. An even larger share said they were willing to pay extra for an identical product covered by a commercial guarantee that would cover the cost of repairs. The ‘*Perceived higher price of environmentally-friendly products*’ was identified as the main obstacle that prevents consumers from adopting more sustainable behaviours and ‘*Providing better information on products’ durability/lifespan*’ and ‘*Providing better consumer information on the life-cycle environmental and climate footprint of the product*’ were identified as the most effective options to help consumers choose more environmentally sustainable products.

Expert workshops

1st workshop

Collected views on the **extent of the problems** and **examples of effective action**. It validated many of the findings from the other strands of consultation. It was largely agreed that greenwashing occurs and that information on product durability can be difficult to obtain. Doubts were raised that products are intentionally designed to fail early.

2nd workshop

Collected views of **industry associations** on how digital means can be used to provide product information. It highlighted some of the opportunities that digital tools (e.g. QR codes, e-labels) offer for conveying mandatory product information and simplifying product labels.

It also highlighted some of the challenges, particularly for SMEs who may need financial support to implement these tools and for vulnerable consumers who do not have access to, or who cannot use, them.

3rd workshop

Collected feedback on possible **options to address the various problems**. The workshop participants reiterated many of the same points that were raised in the previous consultation activities and confirmed support for certain policy options under examination.

4th workshop

Collected the views of **consumer protection enforcement authorities** (CPC authorities) on enforcement challenges. Participants highlighted the difficulty of proving intent with regard to planned obsolescence.

Public authorities noted that they lack technical expertise to be able to enforce environmental claims, and were divided on whether enforcement of the current rules in the Unfair Commercial Practices Directive is effective.

- **Impact assessment**

This proposal is based on an impact assessment[17]. The Commission's Regulatory Scrutiny Board (RSB) first issued a negative opinion (with comprehensive comments) on 5 February 2021.

After a significant revision of the initial draft, the RSB provided a positive opinion with further comments on 17 September 2021[18]. Annex I of the impact assessment explains how the RSB comments were addressed.

The impact assessment identifies two problems divided into a number of sub-problems. The two problems identified are:

(1) Consumers lack reliable information at the point of sale to make environmentally sustainable consumption choices.

(2) Consumers face misleading commercial practices related to the sustainability of products.

Problem 1 is further broken down into the sub-problems:

1.1) Lack of reliable information on the environmental characteristics of products

1.2) Lack of reliable information on the lifespan of goods

1.3) Lack of reliable information about products' reparability

Problem 2 is further broken down into the sub-problems:

2.1) Consumers are sold products that do not last as long as they could or consumers expect ("early obsolescence")

2.2) Consumers are faced with unclear or poorly-substantiated environmental claims ('greenwashing') from companies

2.3) Consumers are faced with sustainability labels and digital information tools that are not always transparent or credible.

A number of policy options were considered for each individual sub-problem. On the basis of a multi-criteria analysis, complemented by a (partial) cost-benefit analysis, and a qualitative assessment of the proportionality of the various options considered, a combination of five preferred policy options were proposed to address these problems:

[17] SWD(2022) 82

[18] SEC(2022) 165

(1) Providing information on the existence or absence of information about the existence of a producer's commercial guarantee of durability and of the period of time during which free software updates are provided (to address sub-problem 1.2)

(2) Providing a reparability score, or other relevant repair information, where applicable/available (to address sub-problem 1.3)

(3) Ban on certain identified practices associated with early obsolescence (to address sub-problem 2.1)

(4) Ban on unfounded generic or vague environmental claims and setting criteria for assessing the fairness of environmental claims to ensure their transparency and credibility towards consumers (to address sub-problem 2.2)

(5) Setting criteria for assessing the fairness of sustainability labels and digital information tools, to ensure they are transparent and credible for consumers (to address sub-problem 2.3)

Sub-problem 1.1 (lack of reliable information on products' environmental characteristics)

It was considered that introducing mandatory information requirements on environmental characteristics would best be done by sectoral legislation, as the characteristics in question differ significantly according to product category. The impact assessment therefore did not propose a preferred policy option to address this sub-problem.

Sub-problem 1.2 (lack of reliable information on the lifespan of goods)

The preferred option would ensure consumers are better informed about the durability of the goods they purchase, as the producer's commercial guarantee of durability is an excellent proxy for the durability of the good.

Furthermore, the obligation on traders to inform the consumer about the length of the guarantee, or the absence of a guarantee if that is the case, would stimulate traders to compete on the provision and length of such guarantees, thus indirectly stimulating the manufacturing of products with a longer lifespan.

Another option considered to address this sub-problem was an obligation to inform consumers about the expected lifespan of goods. However this was not selected as it was not deemed feasible to calculate an expected lifespan in a standardised manner for all the product types in scope.

Sub-problem 1.3 (lack of reliable information about products' reparability)

The preferred policy option would ensure consumers will receive reliable information at the point of sale about the reparability of a good in the form of a reparability score, if one exists for that particular product category and is mandated under Union law.

If no such reparability score is applicable or available, this option would ensure consumers are provided with other relevant repair information (where available), such as the availability of spare parts (including a procedure for ordering them) or repair manuals.

Sub-problem 2.1 (products not lasting as long as they should)

The preferred option would ensure consumers are better protected against from goods or services being marketed without disclosing that they have been designed to become obsolete earlier than the consumer might expect.

The designation of specific practices as constituting 'early obsolescence practices' will facilitate the enforcement work of consumer protection authorities.

Another option considered to address this sub-problem was collecting evidence on early failures of products identified by authorised bodies. However this option was not selected as it was not deemed likely to bring significant benefits to consumers.

Sub-problem 2.2 (unclear or unfounded environmental claims)

The preferred option would ensure consumers are protected from greenwashing, since a certain standard will need to be met by those making such claims. It would also facilitate enforcement by consumer protection authorities.

Sub-problem 2.3 (unclear/unfounded sustainability labels/digital information tools)

The preferred option would ensure consumers are protected from being misled by such labels and tools.

Another option considered to address this sub-problem was pre-approval for sustainability labels and digital information tools via an EU body. However this option was not selected as the burden on traders was deemed to be disproportionate.

The combination of the preferred policy options is expected to increase consumer welfare by at least **EUR 12.5 – 19.4 billion** over a 15 year period (around **EUR 1 billion** per year on average). It will also bring benefits to the environment, with a partial estimation of the total saved **CO2e of 5 - 7 MtCO2e** over a 15 year period. At the same time, businesses will have to adjust, which is expected to **cost between EUR 9.1 – 10.4 billion**. This represents an average one off cost **per company** of between **EUR 556 - 568**, followed by an annual recurrent cost of between **EUR 64 - 79** for the period covered. On the other hand, businesses will also experience very important benefits related to level playing field as businesses that currently mislead consumers would have to align their practices with those that are truly sustainable. The **enforcement** of the preferred options on the part of public administrations is expected to cost on average about **EUR 440 000 – 500 000 per year** per Member State.

In order to ensure full coherence with other Commission initiatives in preparation, it was decided that some of the elements of the preferred policy options selected in the impact assessment to tackle sub-problem 2.2 (unclear or unfounded environmental claims) and sub-problem 2.3 (unclear/unfounded sustainability labels/digital information tools) will not be implemented via this initiative but via the other initiatives.

- **Regulatory fitness and simplification**

The fitness check report published in 2017 showed that the general EU consumer legislation is not particularly burdensome, either in absolute terms or when compared to other areas of EU regulation[19]. Therefore, given the benefits of EU legislation in protecting consumers and

[19] For further information, see Chapter 6.2.4. of the Fitness Check Report *https://ec.europa.eu/newsroom/just/items/59332*

facilitating the single market, these evaluations identified only a limited scope for burden reduction.

Given the focus on enforcement and digitalisation, there were no specific conclusions about the contribution made by EU consumer law to sustainable consumption. Nevertheless, whenever possible and relevant, this instrument draws on the findings and conclusions collected in that exercise.

- **Fundamental rights**

The proposal is in accordance with Article 38 of the Charter of Fundamental Rights, according to which the EU must ensure a high level of consumer protection. This will be ensured by

(a) improving the reliability of durability and reparability information provided at the point of sale, and

(b) addressing misleading commercial practices related to greenwashing and the use of unreliable and non-transparent sustainability labels and sustainability information tools, and early obsolescence.

The clarification of what constitutes an unfair commercial practice as regards the making of environmental claims and the use of sustainability labels and sustainability information tools, and early obsolescence, will contribute to the implementation of Article 16 of the Charter, which guarantees the freedom to conduct a business in accordance with Union law and national laws and practices.

Finally, by empowering consumers to make more environmentally sustainable purchasing decisions, the proposal respects the right to a high level of environmental protection and the improvement of the quality of the environment, set out in Article 37 of the Charter.

4. BUDGET IMPLICATIONS

There are no consequences for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will submit a report on the application of this Directive to the European Parliament and to the Council no later than 5 years after its adoption. This report will assess the application of the Directive.

- **Explanatory documents (for directives)**

As the proposal introduces specific amendments to two existing directives, Member States should either provide the Commission with the text of the specific amendments to national rules or, in the absence of such amendments, explain which specific national law provision already implements the amendments provided in the proposal.

- **Detailed explanation of the specific rules in the proposal**

Article 1 - Amendments to Directive 2005/29/EC

Article 1 of the proposal amends Directive 2005/29/EC by updating the list of product characteristics about which if a trader deceives a consumer it can be considered a misleading action. Two new commercial practices are also included in the list of actions which are to be considered misleading if they cause or are likely to cause the average consumers to take a transactional decision that they would not have otherwise taken. One new item is added to the list of information to be regarded as material in the case of specific commercial practices, the omission of which may cause the commercial practice in question to be regarded as misleading. Furthermore, the list of commercial practices which are considered unfair in all circumstances is extended to practices associated with the early obsolescence of products and greenwashing.

The list of product characteristics about which a trader should not deceive a consumer in Article 6(1) of Directive 2005/29/EC is amended to include 'environmental or social impact, 'durability' and 'reparability'. As regards the commercial practices to be considered misleading actions if they cause or are likely to cause the average consumers to take a transactional decision that they would not have otherwise taken, **two additional practices** are added in Article 6(2) of Directive 2005/29/EC:

– making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system.

– advertising benefits for consumers that are considered as a common practice in the relevant market.

In Article 7 of Directive 2005/29/EC, the list of information to be regarded as material in the case of specific commercial practices, the omission of which may cause the commercial practice in question to be regarded as misleading, is extended to include the following item:

– where a trader provides a service which compares products, including through a sustainability information tool, information about the method of the comparison, the products which are the object of the comparison and the suppliers of those products, and the measures to keep information up to date shall be regarded as material.

The **ten additional commercial practices** added to Annex I of Directive 2005/29/EC which are to be considered unfair in all circumstances are:

– Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.

– Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.

– Making an environmental claim about the entire product when it actually concerns only a certain aspect of the product.

– Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader's offer.

– Omitting to inform the consumer that a software update will negatively impact the use of goods with digital elements or certain feature of those goods even if the software update improves the function of other features.

– Omitting to inform the consumer about the existence of a feature of a good introduced to limit its durability.

– Claiming that a good has a certain durability in terms of usage time or intensity when it does not.

– Presenting products as allowing repair when they do not or omitting to inform the consumer that goods do not allow repair in accordance with legal requirements.

– Inducing the consumer into replacing the consumables of a good earlier than for technical reasons is necessary.

– Omitting to inform that a good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer.

Article 2– Amendments to Directive 2011/83/EU

Article 2 of the proposal amends Directive 2011/83/EU as regards the pre-contractual information to be provided to consumers when concluding distance and off-premises contracts as well as contracts other than distance or off-premises contracts, in particular in regard to information on the durability and reparability of goods.

It also amends the Directive as regards the information of which consumers are to be made aware directly before placing their order, in the case of distance contracts to be concluded by electronic means.

As regards the pre-contractual information to be provided to consumers when concluding contracts other than distance or off-premises contracts, six additional items are added to the list under Article 5(1) of Directive 2011/83/EU, which comprises the information to be provided to the consumer in a clear and comprehensible manner.

These **six additional items** consist of:

– information on the existence and length, of a producer's commercial guarantee of durability for all types of goods, when this information is made available by the producer;

– information that no information has been provided by the producer about the existence of a producer's guarantee of durability for energy-using goods;

– the existence and length of the period during which the producer commits to providing software updates for goods with digital elements;

– the existence and length of the period during which the provider commits to providing software updates for digital content and digital services;

– the reparability score of the good as applicable under Union law;

– other repair information, should no reparability score be available at Union level – such as information on the availability of spare parts and a repair manual.

As regards the pre-contractual information to be provided to consumers when concluding distance and off-premises contracts, the same six items are added to the list under Article 6(1) of Directive 2011/83/EU (information to be provided to the consumer in a clear and comprehensible manner).

As regards the information consumers are to be made aware of directly before placing their order, in the case of distance contracts to be concluded by electronic means, information on the existence and length (or that no such information has been provided, in the case of energy-using goods) of a producer's commercial guarantee of durability is added to the list of such information to be provided under Art 8(2) of Directive 2011/83/EU.

2022/0092 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,[20]

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In order to tackle unfair commercial practices which prevent consumers from making sustainable consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims ("greenwashing"), non-transparent and non-credible sustainability labels or sustainability information tools, specific rules should be introduced in Union consumer law. This would enable national competent bodies to address those practices effectively. By ensuring that environmental claims are fair, consumers will be able to choose products that are genuinely better for the environment than competing products. This will encourage competition towards more environmentally sustainable products, thus reducing negative impact on the environment.

(2) Those new rules should be introduced both through amending Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council[21] relating to those commercial practices which are to be considered misleading, and therefore prohibited, on the basis of a case-by-case assessment, and through amending Annex I to Directive 2005/29/EC with the addition of specific misleading practices which are in all circumstances considered unfair, hence prohibited.

---

20 OJ C , , p. .

21 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 ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

(3) In order to deter traders from deceiving consumers as regards the environmental or social impact, durability or reparability of their products, including through the overall presentation of the products, Article 6(1) of Directive 2005/29/EC should be amended by adding the environmental or social impact, durability and reparability of the product to the list of the main characteristics of the product in respect of which the trader's practices can be considered misleading, following a case-by-case assessment. Information provided by traders on the social sustainability of products, such as working conditions, charity contributions or animal welfare, should not mislead consumers either.

(4) Environmental claims, in particular climate-related claims, increasingly relate to future performance in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products. To ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are not supported by clear, objective and verifiable commitments and targets given by the trader. Such claims should also be supported by an independent monitoring system to monitor the progress of the trader with regard to the commitments and targets.

(5) Another potentially misleading commercial practice which should be added to the specific practices targeted by Article 6(2) of Directive 2005/29/EC is advertising benefits for consumers that are actually a common practice in the relevant market. For example, if the absence of a chemical substance is a common practice in a specific product market, its promotion as a distinctive feature of the product could constitute an unfair commercial practice.

(6) Comparing products based on their environmental or social aspects, including through the use of sustainability information tools, is an increasingly common marketing technique. In order to ensure that such comparisons do not mislead consumers, Article 7 of Directive 2005/29/EC should be amended to require that the consumer is provided with information about the method of the comparison, the products which are the object of comparison and the suppliers of those products, and the measures to keep information up to date. This should ensure that consumers make better informed transactional decisions when using such services. The comparison should be objective by, in particular, comparing products which serve the same function, using a common method and common assumptions, and comparing material and verifiable features of the products being compared.

(7) The displaying of sustainability labels which are not based on a certification scheme or not established by public authorities should be prohibited by including such practices in the list in Annex I to Directive 2005/29/EC. The certification scheme should fulfil minimum transparency and credibility conditions. The displaying of sustainability labels remains possible without a certification scheme where such labels are established by a public authority, or in case of additional forms of expression and presentation of food in accordance with Article 35 of Regulation (EU) No 1169/2011. This rule complements point 4 of Annex I to Directive 2005/29/EC which prohibits claiming that a trader, the commercial practices of a trader, or a product has been approved, endorsed or authorised by a public or private body when it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.

(8) In cases where the displaying of a sustainability label involves a commercial communication that suggests or creates the impression that a product has a positive or no impact on the environment, or is less damaging to the environment than competing products, that sustainability label also should be considered as constituting an environmental claim.

(9) Annex I to Directive 2005/29/EC should also be amended to prohibit making generic environmental claims without recognised excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are 'environmentally friendly', 'eco-friendly', 'eco', 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'carbon neutral', 'carbon positive', 'climate neutral', 'energy efficient', 'biodegradable', 'biobased' or similar statements, as well as broader statements such as 'conscious' or 'responsible' that suggest or create the impression of excellent environmental performance. Such generic environmental claims should be prohibited whenever there is no excellent environmental performance demonstrated or whenever the specification of the claim is not provided in clear and prominent terms on the same medium, such as the same advertising spot, product's packaging or online selling interface. For example, the claim 'biodegradable', referring to a product, would be a generic claim, whilst claiming that 'the packaging is biodegradable through home composting in one month' would be a specific claim, which does not fall under this prohibition.

(10) Excellent environmental performance can be demonstrated by compliance with Regulation (EC) No 66/2010 of the European Parliament and of the Council[22], or officially recognised ecolabelling schemes in the Member States, or compliance with top environmental performance for a specific environmental aspect in accordance with other applicable Union laws, such as a class A in accordance with Regulation (EU) 2017/1369 of the European Parliament and of the Council[23]. The excellent environmental performance in question should be relevant to the claim. For example, a generic claim 'energy efficient' could be made based on excellent environmental performance in accordance with Regulation (EU) 2017/1369. By contrast, a generic claim 'biodegradable' could not be made based on excellent environmental performance in accordance with Regulation (EC) No 66/2010, insofar as there are no requirements for biodegradability in the specific EU Ecolabel criteria related to the product in question.

(11) Another misleading commercial practice which should be prohibited in all circumstances and thus added to the list in Annex I to Directive 2005/29/EC is making an environmental claim about the entire product when it actually concerns only a certain aspect of the product. This would be the case for example when a product is marketed as 'made with recycled material' giving the impression that the entire product is made of recycled material, when in fact it is only the packaging that is made of recycled material.

(12) The Circular Economy Action Plan[24] provides for the need to set the rules on environmental claims using Product and Organisation Environmental Footprint

---

22 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (Text with EEA relevance) (OJ L 27, 30.1.2010, p. 1).

23 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017).

24 COM(2020)98 final, 11 March 2020.

methods. Additional requirements on environmental claims will have to be set in specific Union legislation. Those new requirements will contribute to the Green Deal[25] objective of enabling buyers to make more sustainable decisions and reduce the risk of greenwashing through reliable, comparable and verifiable information.

(13) Presenting requirements imposed by law on all products within the relevant product category on the Union market, including imported products, as a distinctive feature of the trader's offer, should also be prohibited in all circumstances and added to the list in Annex I to Directive 2005/29/EC. This prohibition could apply, for example, when a trader is advertising that a given product does not include a specific chemical substance while that substance is already forbidden by law for all products within that product category in the Union. Conversely, the prohibition should not cover commercial practices promoting traders' or products' compliance with legal requirements that only apply to some products but not to other competing products of the same category on the Union market, such as products of non-EU origin.

(14) In order to improve the welfare of consumers, the amendments to Annex I to Directive 2005/29/EC should also address several practices associated with early obsolescence, including planned obsolescence practices, understood as a commercial policy involving deliberately planning or designing a product with a limited useful life so that it prematurely becomes obsolete or non-functional after a certain period of time. Purchasing products that are expected to last longer than they actually do causes consumer detriment. Furthermore, early obsolescence practices have an overall negative impact on the environment in the form of increased material waste. Therefore, addressing those practices are also likely to reduce the amount of waste, contributing to a more sustainable consumption.

(15) It should be prohibited to omit to inform the consumer that a software update, including a security update, will negatively impact the use of goods with digital elements or certain features of those goods, even if the update improves the functioning of other features. For example, when inviting consumers to update the operating system on their smartphone, the trader will have to inform the consumer if such an update will negatively impact the functioning of any of the features of the smartphone.

(16) It should also be prohibited to omit to inform the consumer about the existence of a feature of the good introduced to limit its durability. For example, such a feature could be software which stops or downgrades the functionality of the good after a particular period of time, or it could be a piece of hardware which is designed to fail after a particular period of time. The prohibition of omitting to inform consumers of such features of the goods complements and does not affect the remedies available to consumers when they constitute a lack of conformity under Directive (EU) 2019/771 of the European Parliament and of the Council[26]. For such a commercial practice to be considered unfair, it should not be necessary to demonstrate that the purpose of the feature is to stimulate the replacement of the respective good. The use of features limiting the durability of the goods should be distinguished from manufacturing practices using materials or processes of general low quality resulting in limited

[25] COM(2019)640 final, 11 December 2019.

[26] 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, p. 28).

durability of the goods. Lack of conformity of a good resulting from the use of low quality materials or processes should continue to be governed by the rules on the conformity of goods set out in Directive (EU) 2019/771.

(17) Another practice which should be prohibited under Annex I to Directive 2005/29/EC is the practice of claiming that a good has a certain durability when it does not. That would be the case, for instance, when a trader informs consumers that a washing machine is expected to last a certain number of washing cycles, while the actual use of washing machine shows this is not the case.

(18) Similarly, Annex I to Directive 2005/29/EC should also be amended to prohibit presenting products as allowing repair when such repair is not possible, as well as omitting to inform consumers that it is not possible to repair goods in accordance with legal requirements.

(19) The prohibition of those practices in relation to durability and reparability in Directive 2005/29/EC would provide the consumer protection authorities of Member States with an additional enforcement tool for better protection of consumers' interests in the cases where traders fail to comply with requirements on the durability and reparability of goods under Union product legislation.

(20) Another practice associated with early obsolescence which should be prohibited and added to the list in Annex I to Directive 2005/29/EC is inducing the consumer into replacing the consumables of a product earlier than would otherwise be necessary for technical reasons. Such practices mislead the consumer into believing that the goods will no longer function unless their consumables are replaced, thus leading them to purchase more consumables than necessary. For example, the practice of urging the consumer, via the settings of the printer, to replace the printer ink cartridges before they are actually empty in order to stimulate the purchase of additional ink cartridges would be prohibited.

(21) Annex I to Directive 2005/29/EC should also be amended to prohibit omitting to inform the consumer that the good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer. For example, the marketing of printers that are designed to limit their functionality when using ink cartridges not provided by the original producer of the printer without disclosing this information to the consumer would be prohibited. This practice could mislead consumers into purchasing an alternative ink cartridge which cannot be used for that printer, thus leading to unnecessary repair costs, waste streams or additional costs due to the obligation to use the original producer's consumables which the consumer could not foresee at the time of purchase. Similarly, marketing smart devices designed to limit their functionality when using chargers or spare parts that are not provided by the original producer without disclosing this information to the consumer would be prohibited as well.

(22) In order for consumers to take better informed decisions and stimulate the demand for, and the supply of, more durable goods, specific information about a product's durability and reparability should be provided for all types of goods before concluding the contract. Moreover, as regards goods with digital elements, digital content and digital services, consumers should be informed about the period of time during which free software updates are available. Therefore, Directive 2011/83/EU of the European

Parliament and of the Council[27] should be amended to provide consumers with pre-contractual information about durability, reparability and the availability of updates. Information should be provided to consumers in a clear and comprehensible manner and in line with the accessibility requirements of Directive 2019/882[28]. The obligation to provide this information to consumers complements and does not affect the rights of consumers provided in Directives (EU) 2019/770[29] and (EU) 2019/771[30] of the European Parliament and of the Council.

(23) A good indicator of a good's durability is the producer's commercial guarantee of durability within the meaning of Article 17 of Directive (EU) 2019/771. Therefore, Directive 2011/83/EU should be amended to specifically require traders selling goods to inform consumers about the existence of the producer's commercial guarantee of durability for all types of goods, where the producer makes this information available.

(24) The problem of limited durability contrary to consumer expectations is most relevant for energy-using goods, which are goods that function from an external energy source. Consumers are also most interested in receiving information about the expected durability of this category of goods. For these reasons, only for this category of goods, consumers should be made aware that the information about the existence of a producer's commercial guarantee of durability of more than two years has not been provided by the producer.

(25) Goods containing energy-using components, where those components are mere accessories and do not contribute to the main function of those goods, such as decorative lighting for clothing or footwear or electric light for a bicycle, should not be classified as energy-using goods.

(26) In view of the established minimum duration of two years of the seller's liability for lack of conformity in accordance with Directive (EU) 2019/771 and the fact that many product failures occur after two years, the trader's obligation to inform consumers about the existence and duration of the producer's commercial guarantee of durability should apply to guarantees that are of more than two years.

(27) In order to make it easier for consumers to take an informed transactional decision when comparing goods before concluding a contract, traders should inform consumers about the existence and duration, of the producer's commercial guarantee of durability for the entire good and not for specific components of the good.

(28) The producer and the seller should remain free to offer other types of commercial guarantees and after-sales services of any duration. However, the information provided to the consumer about such other commercial guarantees or services should not

---

27 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 (OJ L 304, 22.11.2011, p. 64).

28 Directive 2019/882/EU of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

29 Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).

30 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, p. 28).

confuse the consumer with regard to the existence and duration of the producer's commercial guarantee of durability that covers the entire good and has a duration of more than two years.

(29) To promote competition between producers as regards the durability of goods with digital elements the traders selling those goods should inform consumers about the minimum period of time during which the producer commits to provide software updates for such goods. However, to avoid overloading consumers with information, such information should only be provided when this period is longer than the period of the producer's commercial guarantee of durability, as that guarantee entails the provision of updates, including security updates, that are necessary to maintain the required functions and performance of goods with digital elements. Furthermore, information about the producer's commitment to provide software updates is relevant only where the sales contract regarding goods with digital elements provides for a single act of supply of the digital content or digital service in respect of which Article 7(3), point (a), of Directive (EU) 2019/771 applies. In contrast, there should be no new obligation to provide that information where the sales contract provides for a continuous supply of the digital content or digital service over a period of time, since for those contracts Article 7(3), point (b), of Directive (EU) 2019/771 specifies, by reference to Article 10 (2) or (5), the period of time during which the seller is to ensure that the consumer is informed of and supplied with updates.

(30) Likewise, traders offering digital content and digital services should also inform consumers about the minimum period during which the provider of the digital content or digital service, where the provider is different from the trader, commits to provide software updates, including security updates, necessary to keep the digital content and digital services in conformity. Information about the provider's commitment to provide software updates is relevant only where the contract provides for a single act of supply or a series of individual acts of supply in respect of which Article 8(2), point (b), of Directive 2019/770 applies. In contrast, there should be no new obligation to provide that information where the contract provides for a continuous supply over a period of time, since for these contracts Article 8(2), point (a) of Directive (EU) 2019/770 specifies the period of time during which the trader is to ensure that the consumer is informed of and supplied with updates.

(31) To allow consumers to make an informed transactional decision and choose goods that are easier to repair, traders should provide, before the conclusion of the contract, for all types of goods, where applicable, the reparability score of the good as provided by the producer in accordance with Union law.

(32) Pursuant to Article 5(1), point (e), and Article 6(1), point (m), of Directive 2011/83/EU traders are obliged to provide the consumer before the consumer is bound by the contract with information on the existence and the conditions of after-sales services, including repair services, where such services are provided. In addition, in order to ensure that consumers are well informed about the reparability of the goods they purchase, where a reparability score is not established in accordance with Union law, traders should provide, for all types of goods, other relevant repair information that is made available by the producer, such as information about the availability of spare parts, and a user and repair manual.

(33) Traders should provide consumers with information about the existence and duration of the producer's commercial guarantee of durability, the minimum period for updates and the repair information other than the reparability score, where the producer or

provider of the digital content or digital service, when different from the trader, makes the relevant information available. In particular, as regards goods, the trader should convey to consumers the information that the producer has provided to the trader or has otherwise intended to make readily available to the consumer before the conclusion of the contract, by indicating it on the product itself, its packaging or tags and labels that the consumer would normally consult before concluding the contract. The trader should not be required to actively search for such information from the producer, for example, on the product-specific websites.

(34) Directives 2005/29/EC and 2011/83/EU should continue to work as a 'safety net' ensuring that a high level of consumer protection can be maintained in all sectors, by complementing sector and product-specific Union law that prevail in case of conflict.

(35) Since the objectives of this Directive, namely, enabling better informed transactional decisions by consumers to promote sustainable consumption, eliminating practices that cause damage to the sustainable economy and mislead consumers away from sustainable consumption choices, and ensuring a better and consistent application of the Union consumer legal framework, cannot be sufficiently achieved by the Member States individually but can rather, by reason of the Union-wide character of the problem, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

(36) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[31], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2005/29/EC

Directive 2005/29/EC is amended as follows:

(1) in Article 2, the following points (o) to (y) are added:

'(o) 'environmental claim' means any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time;

[31] OJ C 369, 17.12.2011, p. 14.

(p) ‘explicit environmental claim’ means an environmental claim that is in textual form or contained in a sustainability label;

(q) ‘generic environmental claim’ means any explicit environmental claim, not contained in a sustainability label, where the specification of the claim is not provided in clear and prominent terms on the same medium;

(r) ‘sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that aims to set apart and promote a product, a process or a business with reference to its environmental or social aspects or both. This does not cover any mandatory label required in accordance with Union or national law;

(s) ‘certification scheme’ means a third-party verification scheme that is open under transparent, fair and non-discriminatory terms to all traders willing and able to comply with the scheme’s requirements, which certifies that a product complies with certain requirements, and for which the monitoring of compliance is objective, based on international, Union or national standards and procedures and carried out by a party independent from both the scheme owner and the trader;

(t) ‘sustainability information tool’ means software, including a website, part of a website or an application, operated by or on behalf of a trader, which provides information to consumers about environmental or social aspects of products, or which compares products on those aspects;

(u) ‘recognised excellent environmental performance’ means environmental performance compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance in accordance with other applicable Union law;

(v) ‘durability’ means durability as defined in Article 2, point (13), of Directive (EU) 2019/771 of the European Parliament and of the Council**;

(w) ‘software update’ means a free update, including a security update, that is necessary to keep goods with digital elements, digital content and digital services in conformity in accordance with Directives (EU) 2019/770 and (EU) 2019/771;

(x) ‘consumable’ means any component of a good that is used up recurrently and needs to be replaced for the good to function as intended;

(y) ‘functionality’ means functionality as defined in point (9) of Article 2 of Directive (EU) 2019/771.

_____

* Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

** 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, p. 28).';

(2) Article 6 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

'(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, environmental or social impact, accessories, durability, reparability, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product.';

(b) in paragraph 2, the following points (d) and (e) are added:

'(d) making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system;

(e) advertising benefits for consumers that are considered as a common practice in the relevant market.'

(3) in Article 7, the following paragraph (7) is added:

'7. Where a trader provides a service which compares products, including through a sustainability information tool, information about the method of comparison, the products which are the object of comparison and the suppliers of those products, as well as the measures in place to keep that information up to date, shall be regarded as material.';

(4) Annex I is amended in accordance with the Annex to this Directive.

Article 2

Amendments to Directive 2011/83/EU

Directive 2011/83/EU is amended as follows:

(1) Article 2 is amended as follows:

(a) the following point (3a) is inserted:

'(3a) 'energy-using good' means any good that depends on energy input (electricity, fossil fuels and renewable energy sources) to work as intended;';

(b) the following points (14a) to (14e) are inserted:

‘(14a) ‘commercial guarantee of durability’ means a producer’s commercial guarantee of durability referred to in Article 17 of Directive (EU) 2019/771, under which the producer is directly liable to the consumer during the entire period of that guarantee for repair or replacement of the goods;

(14b) ‘durability’ means durability as defined in Article 2, point (13), of Directive (EU) 2019/771;

(14c) ‘producer’ means producer as defined in Article 2, point (4), of Directive (EU) 2019/771;

(14d) ‘reparability score’ means a score expressing the capacity of a good to be repaired, based on a method established in accordance with Union law;

(14e) ‘software update’ means a free update, including a security update, that is necessary to keep goods with digital elements, digital content and digital services in conformity in accordance with Directives (EU) 2019/770 and (EU) 2019/771;’;

(2) in Article 5, paragraph 1 is amended as follows:

(a) the following points (ea) to (ed) are inserted:

‘(ea) for all goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good and has a duration of more than two years;

(eb) for energy-using goods, where the producer does not make available the information referred to in point (ea), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (e);

(ec) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ea), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;

(ed) for digital content and digital services, where their provider is different from the trader and makes such information available, the minimum period in units of time during which the provider provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time;’

(b) the following points (i) and (j) are added:

‘(i) where applicable, the reparability score for the goods;

(j) when point (i) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.';

(3) in Article 6, paragraph 1 is amended as follows:

(a) the following points (ma) to (md) are inserted:

'(ma) for all types of goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good and has a duration of more than two years;

(mb) for energy-using goods, where the producer does not make available information referred to in point (ma), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (m);

(mc) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ma), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;

(md) for digital content and digital services, where their provider is different from the trader and makes such information available, the minimum period in units of time during which the provider provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time;'

(b) the following points (u) and (v) are added:

'(u) where applicable, the reparability score for the goods;

(v) when point (u) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.';

(4) in Article 8(2), the first subparagraph is replaced by the following:

'If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in Article 6(1), points (a), (e), (ma), (mb), (o) and (p).'.

Article 3

Reporting by the Commission and review

By *[5 years from adoption]*, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.

That report shall be accompanied, where appropriate, by relevant legislative proposals.

Article 4

Transposition

1. Member States shall adopt and publish by [*18 months from adoption*] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

   They shall apply those provisions from [*24 months from adoption*].

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions in national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

EUROPEAN
COMMISSION

Brussels, 22.3.2023
COM(2023) 166 final

2023/0085 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on substantiation and communication of explicit environmental claims (Green Claims Directive)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In March 2022 the Commission proposed to update Union consumer law to ensure that consumers are protected and to empower them to contribute actively to the green transition[1]. This proposal provides more specific rules (*lex specialis*) and complements the proposed changes to the Unfair Commercial Practices Directive[2] (*lex generalis*). Both proposals aim at tackling a common set of problems by implementing different elements of the same preferred policy package identified in the Impact Assessment published together with the initiative on empowering consumers for the green transition[3].

1.1. Reasons for and objectives of the proposal

- **Role of consumers in accelerating the green transition**

In the European Green Deal[4] the Commission committed to ensure that consumers are empowered to make better informed choices and play an active role in the ecological transition. More specifically, the European Green Deal sets out a commitment to tackle false environmental claims by ensuring that buyers receive reliable, comparable and verifiable information to enable them to make more sustainable decisions and to reduce the risk of 'green washing'. The need to address greenwashing was subsequently set as a priority both under the New Circular Economy Action Plan[5] and the New Consumer Agenda[6]. The recently adopted Green Deal Industrial Plan[7] reiterates the need to allow consumers to make their choices based on transparent and reliable information on the sustainability, durability and carbon footprint of the products, and highlights that market transparency is a tool facilitating uptake of technologically and environmentally superior net zero products.

The European Parliament and the Council have called on the Commission to consider further action in the area. In December 2020, in its conclusions on making the recovery circular and green[8], the Council noted its appreciation of the Commission's intention to ensure the substantiation of environmental claims on the basis of environmental impacts along products' life cycles. In its resolution on the New Circular Economy Action Plan[9], the European Parliament strongly supported the Commission's intention to make proposals to regulate the use of environmental claims through the establishment of solid and harmonised calculation methods covering the full value chain.

---

1 European Commission, Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM(2022) 143 final, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0143&from=EN

2 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 (Unfair Commercial Practices Directive), *OJ L 149, 11.6.2005, p. 22–39*, as amended.

3 SWD(2022) 85 final; EUR-Lex - 52022SC0085 - EN - EUR-Lex (europa.eu)

4 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee of the Regions, The European Green Deal, COM(2019)640.

5 COM(2020)98 final, 11 March 2020.

6 COM(2020)696 final, 13 November 2020.

7 COM(2023)62final, 1 February 2023.

8 Council Conclusions, 14167/20.

9 European Parliament resolution of 10 February 2021 on the New Circular Economy Action Plan (2020/2077(INI))

Consumers want to be better informed on the environmental impacts of their consumption and make better choices. The requests of the Conference on the Future of Europe[10] include a call for more transparency as regards sustainability and environmental footprint of products, in particular in Proposal 5 on sustainable consumption, packaging and production and Proposal 20 on Defining standards within and outside the EU in environmental policies. The proposal on environmental claims is the Commission's reply to this call[11].

Completing the EU legislative framework supporting more sustainable consumption will contribute to reaching the Sustainable Development Goal 12.6 to encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle'.

Further EU action in this area will also have a positive impact on global value chains involving production processes in third countries. As a result, it will incentivise third country companies to contribute to the green transition, in particular the businesses trading within the EU internal market. Moreover, multilateral cooperation will be fostered with third countries to ensure a good understanding of the new regulatory framework and its benefits. Additionally, sustainable development chapters of the EU bilateral and region-to-region trade agreements can create opportunities for cooperation in line with the overall EU objectives to increase the sustainability dimension of its trade policy.

- **Barriers to boosting the potential of green markets in the EU through consumer empowerment**

In spite of consumers' willingness to contribute to a greener and more circular economy in their everyday lives[12], their active and effective role in this green transition is hampered by barriers to making environmentally sustainable consumption choices at the point of sale, notable a lack of trust in the credibility of environmental claims and the proliferation of misleading commercial practices related to the environmental sustainability of products.

The evidence collected to support the impact assessment[3] accompanying the proposal on empowering consumers for the green transition, which also accompanies the proposal on environmental claims both through its inception impact assessment[13] and its public consultation[14] together with an additional public consultation carried out in 2020[15], suggests that misleading practices, such as greenwashing and lack of transparency ad credibility of environmental labels, occur at various stages of the consumption journey: during the advertising stage, the purchasing stage or during the use of the products.

a) *Consumers are faced with the practice of making unclear or not well-substantiated environmental claims ('greenwashing')*

The proposal on empowering consumers for the green transition defines an *environmental claim* as any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on

10 Conference on the Future of Europe, Report on the final outcome, May 2022

11 COM(2022)404final

12 European Commission, Behavioural Study on Consumers' engagement in the circular economy, 2018, p. 10.

13 European Commission, Inception Impact Assessment: Empowering the consumer for the green transition, 2020.

14 A summary of the OPC is available via the European Commission's 'Have your Say' website: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Empowering-the-consumer-for-the-green-transition

15 Environmental performance of products & businesses – substantiating claims (europa.eu)

the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time[1].

The Commission carried out two inventories of environmental claims: one in 2014[16] and one in 2020[17]. The studies looked at a sample of 150 environmental claims for a wide range of products against the principles of the Unfair Commercial Practices Directive[2] (UCPD): clarity, unambiguity, accuracy and verifiability. The 2020 study found that a **considerable share of environmental claims (53.3%) provide vague, misleading or unfounded information** about products' environmental characteristics across the EU and across a wide range of product categories. The 2020 inventory of environmental claims also analysed the substantiation of such claims looking at their clarity, accuracy, and the extent to which they are substantiated with evidence that can be verified. The analysis found that **40% of claims were unsubstantiated**.

These results have also been confirmed by a sweep by the Consumer Protection Cooperation authorities carried out in November 2020[18]. Out of the 344 sustainability claims assessed, authorities considered that **in over half of the cases (57.5%), the trader did not provide sufficient elements allowing for judgement of the claim's accuracy**. In many cases, authorities had difficulties identifying whether the claim covered the whole product or only one of its components (50%), whether it referred to the company or only certain products (36%) and which stage of the products lifecycle it covered (75%)[19].

Moreover, most stakeholders consulted agreed that **greenwashing is a problem**, with the noticeable exception of industry representatives. More than half encountered misleading claims and expressed less trust in environmental statements and logos managed by companies or private entities[19]. In addition, most respondents to the targeted consultations indicated that consumers lack awareness of the environmental impacts of products because the information is not provided or not available[20].

In general, **consumer trust in environmental claims is quite low**. During the 2020 open public consultation[15], the general public did not agree with the statement that they trust environmental statements on products (1.57/ 4.00)[21]. The level of trust was higher for claims on traders[22], but still low (2.25/4.00).

b) *Consumers are faced with the use of sustainability labels that are not always transparent and credible*

Environmental labels are a subset of environmental claims. The labels are in a form of a trust mark, quality mark or equivalent setting apart and promoting a product/process or business with reference to its environmental aspects. These labels are sometimes based on certification schemes (environmental labelling schemes) which certify that a product/process or business meets the requirements set up by the scheme and monitor compliance.

---

16 *Consumer Market Study on Environmental Claims for Non-Food Products*, European Commission 2014.

17 Environmental claims in the EU: Inventory and reliability assessment Final report, European Commission 2020. Available at https://ec.europa.eu/environment/eussd/smgp/pdf/2020_Greenclaims_inventory.zip

18 2020 – sweep on misleading sustainability claims, Sweeps (europa.eu)

19 Screening of websites for 'greenwashing': half of green claims lack evidence, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269

20 SWD(2022) 85 final, Annex 2, pp. 66

21 Replies given on 1-5 Likert scales. These were converted into points to help consistent presentation and reflect well the degree of agreement. "Do not know" replies received 0 points, "not interested at all" or "not effective at all replies" 1 – at the other end of the scale, "very interested" or "always" replies received 4 point.

22 A claim on a trader refers to any claim made by the trader on itself as an organisation as opposed to a claim made by the trader on one of its products (goods or services).

Environmental labels existing on the EU internal market are subject to different levels of robustness, supervision and transparency, i.e., different governance models. Additional confusion is expected to be caused by an increasing number of ecolabels covering different aspects, adopting different operational approaches and being subject to different levels of scrutiny (e.g. the openness of the process in developing them or the level and independence of auditing and verification)[23].

In the preparatory study to gather evidence on ways to empower consumers to play an active role in the green transition[24], an assessment of 232 active ecolabels in the EU also examined their verification and certification aspects and concluded that almost **half of the labels' verification was either weak or not carried out.** Moreover, consumers are not aware of the distinction between labels governed by third party certification schemes and those based on "self-certifications", i.e. not verified by any third party.

In the consultation for the inception impact assessment[24] and during the targeted consultations, the **proliferation of sustainability labels and logos was also identified as an important and persistent problem across the EU** by stakeholders from most stakeholder groups. Similarly, in the open public consultation, over a quarter (27%) of participants selected "the **proliferation and/or lack of transparency/ understanding/reliability** of sustainability logos/labels on products and services" **as a relevant obstacle** to empowering consumers for the green transition[15].

This proliferation of labels combined with their varied governance models implies that producers and retailers can apply a variety of strategies in opting for a specific sustainability label. Very often, this also translates into companies displaying various labels to vouch for the sustainability of their products. **34% of businesses identified the "the proliferation and/or lack of transparency / understanding / reliability of sustainability logos / labels" as an obstacle[15].** Indeed, companies that make the effort to adhere to or develop reliable environmental labelling schemes are disadvantaged compared to companies that use unreliable environmental labels as consumers often cannot tell the difference. This issue has been amplified by the rapid emergence of a number of (private/voluntary) labelling schemes at national / Member State level, **making comparability across products increasingly difficult for consumers**.

Feedback from stakeholders shows a particularly **strong support for EU action** capable of bringing about a common approach to the provision of sustainability information to consumers, **reinforce the level-playing field for business** and to limit the proliferation of labels and misleading environmental claims on the Single Market[14].

Companies that offer truly sustainable products are disadvantaged compared to those that do not. They also **risk unnecessarily high compliance costs** as EU countries start to introduce different national solutions to address the problems described above[25].

1.2. Consistency with existing policy provisions in the policy area

- **The EU initiative to empower consumers for the green transition**

---

23 Preparatory study to gather evidence on ways to empower consumers to play an active role in the green transition, October 2021. Available at Proposal for a Directive on empowering consumers for the green transition and annex (europa.eu)

24 European Commission, Inception Impact Assessment: Empowering the consumer for the green transition, 2020- overview of consultations in Annex 2 of the Impact Assessment, page 69.

25 More on consequences of the problems for consumers market and environment included in Annex 12 of SWD(2022)85 final

The Unfair Commercial Practices Directive regulates misleading practices and misleading omissions with general provisions that can be applied to environmental claims in business-to-consumer transactions when they negatively affect consumers' transactional decisions. It calls on Member States' consumer protection authorities to assess these practices case-by-case following a transactional decision test (case-by-case assessment)[26]. It also establishes a blacklist of commercial practices[27] that shall in all circumstances be regarded as unfair without the need for case-by-case assessment. Non-compliance with the requirements of the directive is pursued by the consumer submitting a claim or a competent authority acting on own initiative.

The proposal to amend the Unfair Commercial Practices Directive[1] tackles in part the problems listed in Section 1.1 ("greenwashing" and untransparent sustainability labels). It implements a series of measures on environmental claims resulting from the preferred policy options, including:

(1) The list of **product characteristics about which a trader should not deceive a consumer** in Article 6(1) of Directive 2005/29/EC is amended to include '**environmental** or social **impact,** 'durability' and 'reparability'.

(2) The list of **actions which are to be considered misleading** if they cause or are likely to **cause** the average consumers to take a transactional decision that they would not have otherwise taken, in Article 6(2) of Directive 2005/29/EC, is amended to include *'making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system.*

(3) The list of **commercial practices which are considered unfair in all circumstances,** in Annex I of Directive 2005/29/EC, is extended to four practices associated with greenwashing:

- Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.
- Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.
- Making an environmental claim about the entire product when it concerns only a certain aspect of the product.
- Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader's offer.

The proposal on empowering consumers for the green transition thus addresses a wide range of practices, products and sales methods in a more generalised way. It provides important safeguards to protect consumers from misleading environmental claims and unreliable labels.

---

[26] Article 6 and 7 of the 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 ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

[27] Annex I of the 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 ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

- **Other EU acts encouraging sustainable consumption by providing environmental information**

On top of the consumer protection framework, there is an existing EU legislative framework that deals with the provision of environmental information, sets methodological requirements on measuring and calculating environmental impacts, such as the EU certification methodologies for carbon removals developed under the Carbon Removals Certification Regulation[28] (once adopted), or on information and labels on the environmental impacts, aspects or performance of a product or trader. For instance, The Ecodesign Directive[29] establishes a framework for setting mandatory ecodesign requirements for energy-related products to encourage their energy performance and circular design and foster new business models. The Commission also adopted a proposal for a new Ecodesign for Sustainable Products Regulation[30] in March 2022 to significantly improve the circularity, energy performance, environmental impacts and other environmental sustainability aspects for specific priority product groups. It will enable the setting of performance and information requirements for almost all categories of physical goods placed on the EU market. Under the Circular economy action plan and product policy, some other proposals made by the Commission include information requirements, for example under the proposed Regulations on marketing of construction products[31] and on batteries and waste batteries[32].

In addition, there are legal acts concerning labels developed at the EU level, both mandatory and voluntary, such as the EU Ecolabel. Established in 1992, the EU Ecolabel is the official voluntary label for environmental excellence of products in the EU demonstrating top performance. The EU Ecolabel Regulation[33] lays down rules for the establishment and application of this voluntary scheme. Other related EU legislation on labels include the Eco-Management and Audit Scheme (EMAS)[34], the Regulations on the organic farming label[35], the energy labelling[36] and the CE marking[37].

- **Completing the set of EU rules on environmental claims**

To continue to address the identified problem of greenwashing and unreliable environmental labels, the current framework could benefit from more specific requirements on unregulated claims, be it for specific product groups, specific sectors or for specific environmental impacts or environmental aspects. **This proposal on substantiating and communicating**

---

28 COM(2022) 672 final

29 Directive 2009/125/EC of the European parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products, L 285/10

30 COM(2022) 142 final

31 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

32 COM/2020/798 final.

33 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the Eu Ecolabel (OJ L 27, 30.1.2010, p. 1).

34 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

35 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, OJ L 150, 14.6.2018, p. 1.

36 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

37 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10).

environmental claims complements as *lex specialis* the existing set of EU rules on consumer protection. The proposal will allow to implement fully the preferred policy options identified in the impact assessment, as described in Section 3.2.

The key objectives of the proposal on environmental claims are thus to:

– Increase the level of environmental protection and contribute to accelerating the green transition towards a circular, clean and climate neutral economy in the EU;

– Protect consumers and companies from greenwashing and enable consumers to contribute to accelerating the green transition by making informed purchasing decisions based on credible environmental claims and labels;

– Improve the legal certainty as regards environmental claims and the level playing fields on the internal market, boost the competitiveness of economic operators that make efforts to increase the environmental sustainability of their products and activities, and create cost saving opportunities for such operators that are trading across borders.

The scope of this proposal, being *lex specialis*, is aligned with the corresponding *lex generalis*. The revised Unfair Commercial Practices Directive covers all voluntary business-to-consumer commercial practices before, during and after a commercial transaction in relation to a product. The scope of this proposal covers the substantiation and communication of **voluntary *environmental* claims**.

In the same way, the proposal on empowering consumers for the green transition deals with sustainability labels which cover *environmental or social aspects or both.* This proposal is however limited to ***environmental* labels** only, i.e. those covering predominantly *environmental* aspects of a product or trader.

As mentioned, the proposal on environmental claims **is meant to act as a safety net for all sectors where environmental claims or labels are unregulated at EU level. It does not aim to change existing or future sectoral rules.** To the contrary, the assessment and communication requirements set out in other Union legislation will take precedence over the requirements set out in the proposal, and thus should be used to substantiate and communicate environmental claims in these specific areas.

1.3. Consistency with other Union policies

The proposal on environmental claims supports the objectives of the European Green Deal and contributes to resolving the triple crises of climate change, pollution, and biodiversity loss. It contributes to the fight against greenwashing that was identified as a priority in the Commission's new circular economy action plan[5] and new consumer agenda[6]. the proposal will also reinforce overarching strategies such as the zero pollution action plan[38] or the biodiversity strategy for 2030[39] and complement strategies targeting specific sectors, such as the Farm-to-Fork strategy[40], or issues, such as the calls for improving water efficiency and reuse in the EU strategy on adaptation to climate change[41].

As described, this proposal for a directive on environmental claims and the proposal amending the Unfair Commercial Practices Directive jointly establish a coherent policy framework to help the Union in the green transition by transforming consumption patterns in

38 https://ec.europa.eu/environment/strategy/zero-pollution-action-plan_en
39 COM(2020) 380 final
40 COM/2020/381 final.
41 COM(2021) 82

a more sustainable direction. They aim to contribute to a greener internal market by encouraging the reduction of the environmental footprint of products consumed in the Union. They will also contribute to reaching the objective of the European Climate Law of balancing greenhouse gas (GHG) emissions and removals within the Union at the latest by 2050 by tackling claims related to GHG emissions reductions and climate neutrality.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1 Legal basis

This proposal is based on Article 114 of the Treaty of the Functioning of the European Union (TFEU), which applies to measures that aim to establish or ensure the functioning of the internal market, while taking as a base a high level of environmental protection.

Different requirements imposed by national legislation or private initiatives regulating environmental claims create an unnecessary burden for companies when trading cross-border, as they need to comply with different requirements in each country. This affects their capacity to operate in and take advantage of the internal market. At the same time, market participants have difficulties with identifying reliable environmental claims and making optimal purchasing decisions on the internal market.

The proposal therefore aims to ensure the functioning of the internal market for economic actors operating in the internal market and consumers relying on environmental claims. The measures proposed in this Directive will increase the level of environmental protection, while leading to further harmonisation regarding the regulation of environmental claims, and would avoid market fragmentation due to diverging national approaches that were introduced or would be introduced in the absence of rules at EU level.
The internal market dimension of reaching the environmental objective is predominant and therefore Article 114 remains the appropriate legal basis.

2.2 Subsidiarity (for non-exclusive competence)

Putting in place a common set of rules within the EU internal market is essential to ensuring a level playing field for economic operators, If Member States act individually, the level of environmental protection would remain suboptimal and there is a risk that competing different systems, based on different methods and approaches, would be used.

The proposal on empowering consumers for the green transition does not specify what the companies should do to properly substantiate their environmental claims. This in turn can lead to significantly diverging approaches across the EU to substantiate claims. This would fragment the internal market by distorting the conditions of competition and necessitating the amendment/modifications of the claims each time internal borders are crossed. This in turn brings legal uncertainty and raises compliance costs as well as unfair competition in the Single Market and undermines efficient market functioning.

The EU is well placed to promote further harmonisation of methodological requirements to assess the environmental impacts of products, services and organisations across the Single Market, relying on experiences of Member States and private initiatives in this area. **The EU can bring an important added value**, and further co-ordination would bring cost savings for governments and the private sector.

Feedback from stakeholders shows a particularly strong support for EU action capable of bringing about a **common approach** to the provision of sustainability information to consumers and **to limit the proliferation of labels and misleading environmental claims.** If Member States were to act individually and without a guiding framework, there is a high risk

to end up with many competing different systems leading to a fragmented internal market, especially for cross-border services (for instance, digital services).

EU action is justified and necessary, because a harmonised and well-functioning internal EU market with regards to environmental claims would increase the level of environmental protection and set a level playing field for businesses operating in the EU. The proposal also alleviates the difficulties faced by national authorities in enforcing the existing principle-based provisions of the Unfair Commercial Practices Directive in such complex areas as misleading environmental claims. Further EU coordination brings cost savings for both governments and private actors involved, as well as strengthens leverage on related global processes, including global value chains.

2.3 Proportionality

The measures in the proposal do not go beyond what is necessary to enable consumers to make informed purchasing decisions and promoting sustainable consumption, based on reliable and verified information.

The proportionality of the general criteria for environmental claims used in marketing towards consumers is ensured by introducing uniform requirements which companies should follow when making such claims. This proposal does not require any specific assessment method for the substantiation of any particular environmental claims and relies upon general requirements that generate reliable information for consumers. The proposal will also provide competent national bodies with uniform criteria. **This will help them assess the fairness of any environmental claim, providing a high degree of legal certainty and facilitating enforcement activities.** It is also the result of thorough consideration of stakeholder input, in particular from businesses, including SMEs.

The proportionality of requirements on environmental labels concerns the fairness of their display in marketing to consumers. There are only a limited number of uniform requirements to ensure the transparency and credibility of such labels towards users. These uniform requirements ensure that entities running environmental labels, as well as the companies applying for those labels, do not face disproportionate costs. At the same time, it will ensure a high degree of legal certainty for companies. By providing competent national bodies with uniform criteria to assess the fairness of the use of any environmental label, this measure will also facilitate enforcement activities and pursue a high level of consumer protection.

2.4 Choice of the instrument

The proposal is a stand-alone legal instrument that would not amend existing legislation. It sets a framework for the substantiation of voluntary environmental claims. Given that it aims to ensure consumer protection in an area regulated by Directives, such legal form fits better the existing Union and national legal framework and the enforcement mechanisms established by the Member States. It is therefore considered that the most appropriate instrument is a Directive.

3. RESULTS OF STAKEHOLDERS CONSULTATIONS & IMPACT ASSESSMENT, COMPLIANCE WITH BETTER REGULATION PRINCIPLES & FUNDAMENTAL RIGHTS

3.1. Stakeholder consultations

In the preparatory process of this proposal, the Commission consulted stakeholders via:

– Several public consultations in the context of the proposal on empowering consumers for the green transition[15,42].

– A public consultation on the product policy framework for the circular economy, with a section dedicated to potential future policy options based on the Environmental Footprint methods (from 29 November 2018 to 24 January 2019)[43]. Out of the 291 respondents, some indicated that companies should be able to freely choose how to generate environmental information, provided that they meet minimum criteria to avoid greenwashing. Respondents also highlighted the need for flexibility regarding the medium of communication: it should not be mandatory to use a label or QR code to provide information, as the type of information and level of detail may depend on the target audience. The respondents also highlighted the need to offer an SME tool or support from the European Commission for implementation.

– Online targeted consultations that involved key stakeholders related to the Environmental Footprint methods (from12 November 2018 to 18 December 2018) with 124 respondents [44].

– An open public consultation on the green claims initiative, between 27 August and 3 December 2020, through which 362 contributions were made[16].

  - Some *business associations* suggested the use of independent certification/verification organizations that operate in accordance with ISO14025.
  - *Large companies* highlighted that the EU framework should allow for flexibility regarding the medium of communication used to make claims.
  - *Environmental NGOs* expressed that single environmental scores should, by no means, be a way to hide trade-offs, and should be avoided.
  - *Consumer NGOs* also indicated that environmental claims could be substantiated by existing tools such as the type 1 ecolabels, Eco Lighthouse, EMAS and ISO14001.
  - A few *public authorities'* representatives thought it should be possible to substantiate claims with 'official' ecolabels such as the Nordic Swan and EU Ecolabel. Public administrations slightly prefer independent certification and verification.
  - As for *citizens*, independent certification/verification by accredited organisations is the preferred option.

A stakeholder workshop with several sessions in November 2020 dedicated to overall feedback, feedback on communication options, on practical challenges for companies in substantiating environmental claims, on the reliability of information and on implications for ecolabels; with on average 200 stakeholders participated per session[45]. The workshops confirmed that greenwashing needs to be addressed and that there is the need for a

42 Overview of all consultations carried out in the context of the Impact Assessment can be found in Annex 2 of COM(2022)85 final

43 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1740-Towards-an-EU-Product-Policy-Framework-contributing-to-the-Circular-Economy_en

44 https://ec.europa.eu/environment/eussd/smgp/pdf/EF_stakeholdercons19.pdf

45 More information available at https://ec.europa.eu/environment/eussd/smgp/initiative_on_green_claims.htm

harmonised EU-level approach. Several stakeholders indicated the need to continue using the EU Ecolabel and other reliable type I ecolabels.

3.2 Impact assessment

3.2.1 Problem definition & preferred policy option

This proposal is based on the impact assessment published together with the Commission proposal for empowering consumers for the green transition[46]. The Commission's Regulatory Scrutiny Board (RSB) first issued a negative opinion with comprehensive comments on 5 February 2021. After a significant revision of the initial draft, the RSB provided a positive opinion with further comments on 17 September 2021[47]. Annex I of the impact assessment explains how the RSB comments were addressed.

The impact assessment identifies two problems divided into a number of sub-problems. This proposal focusses on one the two problems and two of its sub-problems.

Problem 2: Consumers face misleading commercial practices related to the sustainability of products.

Sub-Problem 2.2: Consumers are faced with unclear or poorly-substantiated environmental claims ('greenwashing') from companies.

Sub-problem 2.3: Consumers are faced with sustainability labels that are not always transparent or credible[48].

A number of policy options were considered for each individual sub-problem. The Unfair Commercial Practices Directive and its amendment are designed to act as *lex generalis*. As such, it was decided that some of the elements of the preferred policy options selected in the impact assessment to tackle sub-problem 2.2 and sub-problem 2.3 would not be implemented via the initiative on Empowering consumers for the green transition but via dedicated and complementary *lex specialis*, a proposal on environmental claims.

On the basis of a multi-criteria analysis, complemented by a cost-benefit analysis, and a qualitative assessment of the proportionality of the various options considered, a combination of two preferred policy options[49] were proposed to address these problems:

(1) Prohibition of environmental claims that do not fulfil a minimum set of criteria[50] (to address sub-problem 2.2)

The preferred option would ensure consumers are protected from greenwashing, since a certain standard will need to be met by those making such claims. It would also facilitate enforcement by consumer protection authorities.

(2) Prohibition of sustainability labels not meeting minimum transparency and credibility requirements[51] (to address sub-problem 2.3)

The preferred option would ensure consumers are protected from being misled by such labels and tools.

---

46 SWD(2022) 85 final

47 SEC(2022) 165

48 This proposal does not focus on digital information tools which are addressed in the proposal on Empowering consumers for the green transition.

49 SWD(2022) 85 final, Section 7: Preferred Policy Options, pp 59.

50 SWD(2022)85 final, pp. 29-30

51 SWD(2022)85 final, pp. 31-32

Furthermore, in the course of the preparation of this initiative, the following additional measures were identified to increase the effectiveness and efficiency of the EU rules on environmental claims:

- **establishment of a verification mechanism** to facilitate the implementation and enforcement of ensuring that minimum criteria on substantiation of claims are respected, that a level playing field on the EU market is created, and that companies operating on the single market have more legal certainty and less burdens;
- **use of aggregated scores on environmental impacts** to be **limited** to environmental claims, including labels, established **at EU level only** with the aim to ensure **implementation** of the lessons learned from the work on a common standardised method at EU level (see box below);
- the possibility to **exclude microenterprises** from the requirements on substantiation **and** linked rules on communication to avoid disproportionate impacts on the smallest traders;
- to **effectively limit the proliferation of environmental labels** and focus efforts on increasing the take-up of existing public schemes and on developing EU level labelling requirements for the single market,
  - the creation of new private schemes should be approved by Member States only and if they provide added value, and
  - the creation of new public schemes at the national or regional level should be prohibited. New public schemes should be developed at the EU level only.

Lessons learnt from the work on a standard methodology to substantiate claims on environmental impacts

When initially preparing for an initiative on green claims, the European Commission launched work and consultations on the option of using a *standard methodology* to substantiate environmental claims. The scope of this work focused on the use of EU product and organisation environmental footprint methods to substantiate environmental claims. Depending on product category, these methods[52] allow to measure the environmental performance of a product or organisation throughout the value chain, from the extraction of raw materials to the end of life. The environmental footprint methods aim to provide robust and prominent methodologies developed in full transparency with stakeholders and based on scientific evidence.

In the preparatory work the Commission considered as one of these options to establish an EU legal framework requiring companies making claims related to the impacts covered by the environmental footprint methods[53] to substantiate them via those methods. However, even if the environmental footprint methods are helpful to businesses to identify the areas where they should improve their environmental impact and performance, and can adequately substantiate certain claims on several product categories, the methods do not yet cover all relevant impact

[52] More information on the methods and on the pilot phase during which they were tested can be found here: https://ec.europa.eu/environment/eussd/smgp/

[53] Climate change, ozone depletion, human toxicity – cancer, human toxicity – non-cancer, particulate matter, ionizing radiation – human health, photochemical ozone formation – human health, acidification, eutrophication – terrestrial, eutrophication – freshwater, eutrophication – marine, ecotoxicity – fresh water, land use, water use, resource use – minerals and metals, resource use – fossils.

categories for all product types (e.g. as regards marine fisheries – the sustainability of the targeted fish stock; as regards food and agricultural products – farm level biodiversity and nature protection, as well as different farming practices, as regards textiles- microplastics release) and may therefore give an incomplete picture of the environmental credentials of a product in the green claims context. In addition, many environmental claims are also made on environmental aspects (e.g. durability, reusability, reparability, recyclability, recycled content, use of natural content) for which the environmental footprint methods are not suited to serve as the only method for substantiation. Addressing the very wide and fast changing area of environmental claims by means of a single method has its limitations. Prescribing a single method like the environmental footprint as the standard methodology of substantiation for all environmental claims would not be appropriate and pose a risk for companies not being able to communicate on relevant environmental aspects or performance in relation to their products or activities.

For these reasons and based on the results of the consultation, an internal assessment of the implications in terms of burden to companies and further exchanges with stakeholders, the option of using *one standard methodology* to substantiate environmental claims was not pursued. Instead, a more flexible approach based on the preferred policy option from the impact assessment developed for the initiative on empowering consumers for the green transition was considered appropriate.

3.2.2. Impacts of the preferred policy option

The preferred policy option resulting from the cost-benefit analysis of the impact assessment has been translated in several provisions both in the proposal on empowering consumers for the green transition and the proposal on environmental claims. The impacts listed below concern the preferred policy option as a whole and thus encompass provisions from both proposals.

The proposal includes measures that are relevant for the Commission's 'one in one out' approach to reduce administrative burden and were previously reported and accounted for in the impact assessment accompanying the proposal on empowering consumers for the green transition.

- **Expected impacts of the set scope**

The proposal introduces minimum requirements on substantiation and communication of environmental claims which are subject to third party verification to be delivered prior to the claim being used in commercial communications. While this measure is expected to eliminate misleading or false claims and will help to ensure proper enforcement, it will put an additional cost on traders wishing to make such claims. The impact on smaller enterprises is expected to be proportionately higher than on larger companies. For this reason, and to ensure that the smallest companies (e.g. small family farms selling directly to consumers) are not disproportionately affected by this additional administrative cost, the proposal exempts microenterprises (fewer than 10 employees and annual turnover does not exceed EUR 2 million[54]) from the obligations of this proposal as regards substantiation and communication requirements linked to substantiation assessment. However, in case these smallest companies nevertheless wish to receive a certificate of conformity of the environmental claim that is recognised across the Union they should comply with all requirements of this proposal.

[54] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

All traders, however, including the smallest companies, remain within the scope of the Unfair Commercial Practices Directive. This means that its general rules on environmental claims will still apply, and the consumers affected by unfair commercial practices will still be able to table complaints to the competent authorities and seek redress in national and EU courts.

Moreover, the proposal also asks of Member States to take the appropriate measures to help small and medium-sized enterprises apply the requirements of the proposal. With facilitated access to measures such as financial support and organisational and technical assistance, it is expected that these companies will be encouraged to be part of the green transition.

- **Expected impacts of the requirements on substantiation of claims**

By forbidding claims that do not meet the minimum criteria, this measure will contribute to **improving the reliability of the information** provided to consumers and therefore will have a **positive impact on the decision making of consumers** facilitating the choice of products offering better environmental performance, and thus an increased consumer welfare. With certain consumers purchasing products that will be trully better for the environment, it is estimated that the **impacts on the environment will be highly positive.**.

In terms of **impacts on businesses**, claims that do not meet these minimum criteria will have to be removed. The removal of the claims will require adjustments to product packages, flyers, etc., but this will be a one-off adjustment cost[55].

In addition, **businesses will have to bear the cost of substantiation of claims**. This cost will depend to a large extent on the type of environmental claim the company voluntarily wishes to make and for how many products. Claims regarding environmental impact of a product along the life-cycle (e.g. reduction of GHG emissions across the life-cycle and value chain) will require a significantly higher investment than claims focusing on a specific environmental aspect (e.g. recycled content in the packaging). Depending on the nature and complexity of the claim, the related substantiation cost can vary significantly. For example, substantiation costs for a simple claim, e.g. on materials used in production, are estimated at EUR 500[56]. If a company decides, for instance, to make a claim on the environmental footprint of one of their products and choses to conduct a study using the product environmental footprint method, it would cost around EUR 8 000 (this can decrease to EUR 4000 in case a product environmental footprint category rules exists). If the chosen claim concerns, e.g., the footprint of the organisation itself, using the organisation environmental footrpint methods to substantiate the claim can amount to EUR 54 000 (in case sectoral rules do not exist)[57].

However, it remains a decision of companies to include (or not) environmental claims in their *voluntary* commercial communications. This means that the **companies can control their costs** by determining the scope of the claim (if any) considering its expected return on investment. In short, the costs of substantiation are of a voluntary nature to companies as they

55 For the very small share of products in stock just before the approval of the option, it is assumed that the claims will be removed by the seller (for example, by covering them with a sticker). This will impose some costs in the first two years of implementation of the option for the small share of products in stock, after which we assume that all these products have been sold.

56 In-house estimate for a specific claim on an individual impact (e.g. share in % of bio-based (or recycled) content of a product) for which the evidence is straightforward, i.e. a claim that can be substantiated based on readily available information/documents on materials used in production.

57 In-house estimate that concerns the validation of a claim on the environmental footprint of the entire organisation. Average values based on an additional, targeted survey made by DG ENV with inputs from seven of the main consultants that have been supporting PEFCR/OEFSR developments, cross-checked with other sources from the literature.

are part of one's marketing strategy and therefore credible estimations of the overall cost for the Union market are difficult.

When it comes to **enforcement costs and other costs**, the competent authorities will need to assess to what extent the specific claim complies with the criteria set out under this option, i.e. if the company making the claim holds a certificate of conformity delivered by an accredited verifier. However a number of the interviewed consumer protection authorities indicated that the option might lead to savings as it will mean that less resources are needed to substantiate their assessment of "greenwashing".

- **Expected impacts of the requirements on communication of claims**

It is expected that the rules on communication will result in clearer and more transparent claims and thus will **increase consumer welfare.** In terms of costs to businesses, once the assessment to substantiate the claim is in place, the additional cost of complying with the communication requirements will be negligible and will mostly be embedded in the cost of substantiation.

- **Expected impacts of the requirements on labelling schemes**

The introduction of minimum criteria for all environmental labels will increase the transparency and credibility of labels (and slow down or even reverse the current proliferation of these labels) and will enhance the quality of consumer decision-making. Consumers will be assured that the products holding a sustainability label will meet minimum requirement on transparency and credibility, improving consumer trust and understanding of the labels. These additional requirements on governance of the labelling schemes are expected to reduce the number of labels, as schemes that are not robust will be weaned out. It is to be noted that the conditions for joining environmental labelling schemes for small and medium sized enterprises are proportionate to the size and turnover of the companies.

The introduction of minimum criteria for assessing the fairness of sustainability labels, as envisaged under option 2.3.B, is expected to increase **consumer welfare**. When it comes to **impacts on businesses** this measure is expected to contribute to a level-playing field between products displaying labels as all will have to adhere to the same minimum criteria. Furthermore, it will also contribute to a level playing field between organisations running labels.

In addition, this measure is expected to contribute to reducing the barriers to cross-border trade by avoiding non-harmonised national approaches by the Member States concerned with the proliferation of labels/logos that are non-transparent or not credible. This will decrease legal uncertainty and costs to companies as they will have to adhere to similar rules within the internal market.

Some **administrative costs** are expected for the entities running and managing the labels/logos[58]. They will also have substantive **compliance costs** resulting from implementing the necessary changes in their internal processes, including carrying out third party certifications for each application (if they are not doing it already at the baseline). The costs incurred by the entities running and managing the labels, as quantified in the impact assessment, will be passed on to the manufacturers and sellers applying for the label.

As for **indirect costs**, the costs of applying for labels are expected to increase. On the other hand, the increased harmonisation might reduce the need to apply for several labels.

[58] Details on administrative cost break down in SWD(2022) 85 final, pp. 200

Enforcement costs for public administration estimated in the impact assessment are not expected to be significant since the proposed minimum criteria require all relevant information to be provided online and the labels require 3rd party verification.

Further measures on labelling, developed additionally to the impact assessment, will provide a strong support to the achievement of the objective to stop proliferation of environmental labelling schemes across the EU and improve the functioning of the Internal Market. By putting a halt on new public schemes, regional and national authorities will be prevented from developing labels and labelling schemes that will have to be reviewed or abandoned soon after the introduction of an equivalent label at the EU level. The period between the adoption of this measure and its implementation will provide time for planning and prevent those additional costs for public authorities. Developing labels at the EU level for the same product groups will also ensure a more efficient use of resources than if these were developed at the national level.

The uncontrolled establishment of new labelling schemes developed by private operators will also be reduced. Member State authorities will have to validate the development of such schemes based on their added value. This is expected to contribute to the reduction of the proliferation of schemes. The **administrative cost for public authorities** for developing and implementing the validation procedure is difficult to estimate because there is no certainty as to the possible number of applications. This measure is expected to incur an **administrative cost for companies** in submitting the information accompanying their request to Member State authorities to develop a private labelling scheme. This administrative cost has not yet been reported and is relevant for the 'one in one out' approach to reduce administrative burden. However, the costs are not expected to be significant, as the number of such submissions is expected to be relatively low due to an advance notice of limitations on establishment of such schemes resulting from the delay between the date this proposal is made and the date of transposition (expected to be around 4 years).

Limiting the possibility for labels to present a rating or score based on an aggregated indicator of environmental impacts to only those developed at the EU level aims at reducing consumer confusion and misinformation as well as overall proliferation of labels. There is a risk that the nature of an aggregate indicator could be used to dilute negative impacts of certain parameters of the product with more positive impacts of other parameters and transmit misleading information to the consumer regarding the actual main impacts of the product. It is essential to stop potential schemes with aggregate scoring at regional or national scale to ensure harmonisation in the internal market. Moreover, such labels are usually based on different methodologies for the same product group, which may result in the same product receiving different rating depending on the scheme.

- **Expected impacts of the ex-ante verification**

The ex-ante verification carried out by independent accredited bodies will facilitate and support the **enforcement of the proposal's requirements** without putting an excessive strain on the competent authorities' resources. The certificate of conformity allows the local competent authorities to easily check the reliability of a claim on the market. The complaints against claims for which a valid certificate of conformity exists could be handled quicker contributing to **cost savings of enforcement** as compared to business as usual.

Companies making environmental claims would **benefit from the process of certification** of claims because the certificate of conformity recognised across the EU would provide legal certainty and would require only one certification within the EU making the process of certification cheaper and easier for entities trading within the internal market.

As for **administrative costs for companies**, they would need to submit an ex-ante request to a 'verifier' for a certificate of conformity before making an environmental claim. This administrative cost will depend on the scope of every voluntary claim made and the expected quantities of claims, making the overall cost for the Union market difficult to estimate in a credible manner. For this reason this cost has not yet been reported while it is relevant for the 'one in one out' approach to reduce administrative burden.

- **Expected progress towards relevant sustainable development goals**

Regarding SDG 12 ensuring sustainable consumption and production patterns, the implementation of the preferred policy option in this proposal and in the proposal empowering consumers for the green transition is expected to lead to an increase in the purchase of products which do not deceive the consumer as to their environmental impact. The initiatives are expected to better protect consumers against unfair commercial practices such as greenwashing or non-transparent voluntary sustainability labels, which are not compatible with the green transition. As for SDG 13 on climate action, the initiatives are expected to lead to a saving of 5 – 7 MtCO2e over a period of 15 years[59].

3.3. Regulatory fitness and simplification

The proposal is a new initiative aiming to complement the general consumer law directives and specifically, as *lex specialis,* the proposal on empowering consumers for the green transition. The proposal aims directly at reducing regulatory burdens by strengthening the functioning of the internal market for green products and companies and by setting minimum criteria on environmental claims. It will reduce the risk of legal fragmentation of the single market and increase legal certainty. This, in turn, is expected to result in cost savings for businesses willing to make such claims and for competent authorities responsible for the enforcement of consumer law. Moreover, the proposal foresees a review clause six years after entry into force to assess if the directive achieved its objectives, and whether further harmonisation is needed as regards substantiation and communication of environmental claims to achieve these objectives in a more efficient manner. The proposal concerns environmental claims made in both the physical and digital environments and is thus considered digital-ready.

3.4. Fundamental rights

The proposal is in accordance with Article 38 of the Charter of Fundamental Rights, according to which the EU must ensure a high level of consumer protection. This will be ensured by ensuring the reliability, comparability and verifiability of environmental claims and by addressing greenwashing and the use of unreliable and non-transparent environmental claims and labels. The proposal will also enhance the right to a high level of environmental protection and the improvement of the quality of the environment, as enshrined in Article 37 of the Charter. In addition, by fighting greenwashing, the proposal will ensure a level playing field for businesses when marketing their greenness and therefore guarantees the freedom to conduct a business in accordance with Union law and national laws and practices.

4. BUDGETARY IMPLICATIONS

The initiative involves a budget of a total of approx. EUR 25 million until 2027 (i.e. under the current MFF).

[59] SWD(2022) 85 final

As detailed in the Legislative financial statement, the initiative foresees human resources and administrative expenditure to implement the Directive and prepare delegated and implementing acts.
It also foresees appropriations which will be fully financed through redeployment within the LIFE programme envelope. As detailed in the tables included in Section 3 of the Legislative Financial Statement, this amount covers the acquisition of environmental footprint and other required datasets to support companies, especially SMEs, in complying with the proposal on environmental claims. Indeed, public access to this information for SMEs, larger companies, public agencies and all interested parties will help reduce costs for developing and strengthening their own methodologies and potentially help decreasing the costs for the users of the developed methodologies. The access to environmental footprint datasets will also support the implementation of other EU policies on environmental sustainability and helping consumers to make the right choices, such as the proposal for Ecodesign for Sustainable Products Regulation (ESPR). The ESPR introduces the possibility to set mandatory information requirements, which may also be linked with labelling requirements, and will result in improved information flows through Digital Product Passports. The EF datasets will support the calculation and setting of information and performance requirements in delegated acts linked to the ESPR, e.g. related to carbon and environmental footprint, based on a harmonised set of high-quality secondary data. Together those data and evidence-based policies will lead to a better-informed consumer that can trust the environmental information provided by companies.

5. OTHER ELEMENTS – IMPLEMENTATION PLANS & MONITORING, EVALUATION & REPORTING ARRANGEMENT

The Commission will submit a report, assessing the achievement of objectives of this Directive, to the European Parliament and Council no later than six years after its adoption. Member States are to regularly monitor the application of this Directive based on an overview of environmental claims that have been notified to the enforcement authorities. Member States are to supply this information to the Commission on an annual basis. The European Environment Agency is to publish a bi-annual report with its assessment of the evolution of environmental claims and labelling schemes in each Member State.

6. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

6.1. Scope of the proposal

Article 1 sets the scope. The proposal sets minimum requirements on the substantiation and communication of voluntary environmental claims and environmental labelling in business-to-consumer commercial practices, without any prejudice to other Union legislation setting out conditions on environmental claims as regards certain products or sectors (as described in Section 1.2).

6.2. Requirements on substantiation of environmental claims

Article 3 of the proposal focuses on elements that have not been integrated to the consumer protection legislation, notably as regards the substantiation of claims, and in some instances provides additional clarifications. The proposal requires that the substantiation of explicit environmental claims shall be based on an assessment that meets the selected minimum criteria to prevent claims from being misleading, namely that the underpinning assessment:

– relies on recognised scientific evidence and state of the art technical knowledge;

– demonstrates the significance of impacts, aspects and performance from a life-cycle perspective;

– takes into account all significant aspects and impacts to assess the performance;

– demonstrates whether the claim is accurate for the whole product or only for parts of it (for the whole life cycle or only for certain stages, for all the trader's activities or only a part of them);

– demonstrates that the claim is not equivalent to requirements imposed by law;

– provides information on whether the product performs environmentally significantly better than what is common practice;

– identifies whether a positive achievement leads to significant worsening of another impact;

– requires greenhouse gas offsets to be reported in a transparent manner;

– includes accurate primary or secondary information.

Microenterprises (fewer than 10 employees and with an annual turnover not exceeding EUR 2 million[60]) are exempted from the requirements of this article unless they wish to receive a certificate of conformity of the environmental claim in which case they will have to comply with these requirements.

In addition, Article 4 sets out further requirements for comparative claims (i.e. claims that state or imply that a product or trader has less or more environmental impacts or performs better or worse regarding environmental aspects than other products or traders). These requirements are:

- the use of equivalent information for the assessment of environmental impacts, aspects or performance of compared products;
- the use of data generated or sourced in an equivalent manner for the products or traders that are subject to comparisons;
- the coverage of stages along the value chain is equivalent for the products and traders compared while ensuring that the most significant stages are taken into account for products and traders compared;
- the coverage of environmental impacts, aspects or performances is equivalent for the products and traders compared and ensures that those most significant are taken into account for all products and traders compared;
- the assumptions used for the comparison are set consistent for the products and traders compared.
- for comparative claims on improvement of impacts (compared to earlier version of product) include explaining the impact of improvement on other aspects and impacts and stating the baseline year.

Different types of claims will require different levels of substantiation. The proposal does not prescribe a single method and does not require conducting a full life-cycle analysis for each type of a claim. The assessment used to substantiate explicit environmental claims need to consider the life-cycle of the product or of the overall activities of the trader in order to

60 OJ L 124, 20.5.2003, p. 36

identify the relevant impacts which are subject to the claims, and to enable the trader to avoid omissions of any relevant aspects. This is also necessary to check if the benefits claimed result in a transfer of impacts to other stages of the life cycle or to significant increase of other environmental impacts.

For the assessment to be considered robust, it should include primary, company-specific data, for relevant aspects contributing significantly to the environmental performance of the product or trader referred to in the claim. Consumer protection authorities in some countries are starting to question product specific environmental claims if no primary data has been used in the substantiation. The right balance should be found between ensuring relevant and robust information for substantiating claims and the efforts needed to gather primary information considering the accessibility of primary information. The requirement to include primary information should consider how much influence the trader making the claim has over the respective process, and if primary information is available. The requirement should also consider if the processes are run by the trader making the claim and, in the case, where they are not, if the trader has access to primary information on the process. Moreover, if the process is not run by the trader making the claim and if primary information is not available, the use of secondary information should be permitted, even for processes that contribute significantly to the environmental performance of the product or trader. In any case, both primary and secondary, i.e., average data, should show a high level of quality and accuracy.

It is deemed appropriate to address climate-related claims based on offsets in a more transparent manner. Therefore, the proposal requires, for climate-related claims, to report separately from greenhouse gas emissions any greenhouse gas emissions *offsets* used by the traders, as additional environmental information, which is also the approach followed by the product environmental footprint/organisation environmental footprint methods. In addition, this information should also specify whether these offsets relate to emission reductions or removals and ensure that the offsets relied upon are of high integrity and accounted for correctly to coherently and transparently reflect the claimed impact on climate.

Microenterprises are exempted from the requirements of this article unless they wish to receive a certificate of conformity of the environmental claim in which case they will have to comply with these requirements.

The Commission should be empowered to adopt delegated acts to complement the requirements on substantiation for certain types of claims. These delegated acts should in principle follow the results of monitoring of evolution of environmental claims on the market to allow prioritising claims that are prone to misleading consumers. However, for some types of claims it may be necessary for the Commission to act prior to that.

6.3. Requirements on communication of environmental claims

The provisions of Article 5 respond to the problem of lack of reliable information on product's environmental characteristics[61] for those traders who make an environmental claim. These requirements also support the aim of ensuring that environmental claims are made on products or traders that offer environmental benefits as compared to common practice.

Notably, the proposal sets out that, when communicated, all claims:

[61] SWD(2022) 85 final, p.50: "In relation to sub-problem 1.1 (lack of reliable information on product's environmental characteristics at the point of sale), all options have been discarded at an early stage as their added value could not be demonstrated, and the measures taken under the Green Claims Initiative and the Sustainable Products Initiative are expected to reduce this sub-problem significantly."

- shall only cover environmental impacts, aspects or performance that are assessed in accordance with the substantiation requirements laid down in this proposal and are identified as significant for the respective product or trader;
- where relevant for the claim made, shall include information on how consumers may appropriately use the product to decrease environmental impacts;
- shall be accompanied by information on the substantiation (including information on product or activities of trader; aspects, impacts or performance covered by the claim; other recognised international standards, where relevant; underlying studies and calculations; how improvements that are subject to the claim are achieved; the certificate of conformity and coordinates of the verifier).

Microenterprises are exempted from the requirements of this article as regards provision of information on substantiation unless they wish to receive a certificate of conformity of the environmental claim in which case they will have to comply with these requirements.

The Commission should be empowered to adopt delegated acts to complement the requirements on communication for certain types of claims in case this is necessary to complement the supplementary rules on substantiation adopted under Article 3. Furthermore, Article 6 states that comparative claims on the improvement of an environmental impact of a product as compared to another product of the same trader, or that the trader no longer sells to consumers, shall be based on evidence that improvement is significant and achieved in the last five years.

6.4. Provisions on environmental labels and labelling schemes

These requirements should be seen as complementary to the requirements on displaying a sustainability label set out in the proposal on empowering consumers for the green transition and the Commission guidance on interpretation and application of the Unfair Commercial Practices Directive[62.]

On top of requirements on substantiation and communication applicable to all types of claims, this proposal builds on the requirements of the proposal on empowering consumers[63] banning labels based on self-certification[64], and provides additional safeguards to improve the quality of ecolabelling schemes by requiring the following transparency and credibility requirements (as per policy option from the impact assessment).

Article 7 ensures labels fulfil the requirements already set out in previous articles and subject labels to the verification in accordance with Article 11.

The proliferation of environmental labels and the ensuing consumer confusion, market fragmentation and increased burden from complying with requirements in different Member States necessitate ambitious measures that benefit both consumers and businesses. Therefore, in the course of the decision making process it was considered appropriate that the proposal on environmental claims foresees additional provisions to target proliferation of labels, beyond those assessed in the impact assessment accompanying this proposal and the proposal Empowering consumers for the green transition, notably the prohibition of labels presenting a

62 Commission Notice – 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 (OJ C 526, 29.12.2021, p. 1).

63 COM(2022) 143 final, Annex to the Proposal for a Directive of the European parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information.

64 i.e. not based on a certification scheme, or not established by public authorities

rating or score based on an aggregated indicator representing cumulative environmental impacts unless these are established at the EU level.

Article 8 further details requirements for environmental labelling schemes. These requirements are relatively similar to the governance criteria of a number of well-known and reputable public and private sustainability labelling schemes, and include as follows:

- requirements on transparency and accessibility of information on ownership, decision-making body and objectives,
- the criteria underlying the award of labels are developed by experts and reviewed by stakeholders;
- the existence of complaint and resolution mechanism;
- procedures for dealing with non-compliance and possibility of withdrawal or suspension of labelling in case of persistent and flagrant non-compliance.

For the same reasons listed above on the proliferation of environmental labels and the ensuing consumer confusion, Article 8 also introduces additional provisions to target the proliferation of labelling schemes, notably:

- prohibition of establishment of new national or regional publicly owned schemes ;
- a validation procedure for new schemes established by private operators from the EU and third countries that should be assessed by national authorities and validated only if they demonstrate added value in terms of their environmental ambition, their coverage of environmental impacts, of product category group or sector and their ability to support the green transition of SMEs as compared to the existing Union, national or regional schemes.

New public schemes from third countries wishing to operate on the Union market have to meet the requirements of this proposal and shall be subject to prior notification and approval by the Commission with the aim of ensuring that these schemes provide added value in terms of environmental ambition, coverage of environmental impacts, product groups or sectors.

Article 9 sets the requirements for the review of environmental claims by traders.

6.5. Ex-ante verification of environmental claims and labelling schemes

Article 10 details how the substantiation and communication of environmental claims and labels will have to be 3rd party verified and certified to comply with the requirements of the Directive before the claim is used in a commercial communication. An officially accredited body (the 'verifier') will carry out this ex-ante verification of claims submitted by the company wishing to use it. This measure will ensure every claim that the consumer will be exposed to had been verified to be reliable and trustworthy. The proposal also defines detailed requirements for 'verifiers' to fulfil in order to be accredited by the Member States.

Once the 'verifier' has carried out the verification of the submitted claim, it will decide to issue (or not) a *certificate of conformity*. This certificate will be recognised across the EU, shared between Member States via the Internal Market Information System[65] and will allow companies to use the claim in a commercial communication to consumers across the internal market. The certificate of conformity of claims will provide businesses with certainty that

[65] Established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, p. 1–11)

their certified claim will not be challenged by the competent authorities in another Member State. This procedure will also apply to the verification of labelling schemes in terms of their compliance with the governance provisions. The Commission will be empowered to adopt an implementing act specifying the format of certificate of conformity of claims.

Article 11 sets out that the 'verifier' must be an officially accredited[66] independent body, with no conflicts of interest to ensure independence of judgment and hold the highest degree of professional integrity. They must have the required expertise, equipment, and infrastructure to carry out the verifications as well as enough suitable personnel that observe professional secrecy.

6.6. Small and medium sized enterprises

Given the context of programmes from which small and medium sized enterprises can benefit, Article 12 ensures such initiatives are taken into account and the appropriate measures are taken to help them including financial support, access to finance, specialised management and staff training as well as organisational and technical assistance.

6.7. Enforcement of provisions

Article 13 foresees that each Member State will designate one or more appropriate competent authority as responsible to enforce the provisions set out in the proposal. As the consumer protection mechanisms vary between each Member State, it is more pertinent to let them designate the most efficient competent authority to carry out the enforcement including inspections, sanctions and judicial pursuits. In this way, the proposal leaves the possibility to Member States to choose the existing mechanisms under consumer protection law.

If more than one competent authority is designated on their territory, Member States will need to clarify the duties of each and establish the appropriate communication and coordination mechanisms, once again with the aim of efficiency.

Article 14 delineates the powers of the competent authorities to investigate and enforce the requirements. They include the power to access relevant information related to an infringement, to require access to relevant information to establish if there has been an infringement, to start investigations or proceedings, to require traders to adopt remedies and take action to end an infringement, to adopt injunctive relief where appropriate and to impose penalties.

Article 15 sets out that the competent authorities are also bestowed with the responsibility of monitoring the compliance of the proposal on the internal market. They are expected to perform regular checks of claims and labelling schemes (based on publicly available reports) as well as evaluating claims and labelling schemes that present a risk of infringement. Article 16 details the complaint handling mechanisms and requirements for access to justice.

When it comes to addressing infringements, Article 17 defines a series of obligations for Member States to respect when defining their penalty regime. The penalty must depend on the nature, gravity, extent and duration of the infringement, its character (i.e. intentional or negligent), the financial strength of the responsible party, the economic benefits derived from the infringement as well as any previous infringements or other aggravating factors. The penalties already imposed in other Member States for the same infringement shall also be considered.

---

[66] In line with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30)

Article 18 sets out the exercise of the delegation. The Committee procedure is set out in Article 19.

Article 20 sets out the monitoring requirements which is to be based on an overview of faulty environmental claims and labels provided by the Member States. The EEA shall publish on a bi-annual basis a report assessing the evolution of environmental claims in each Member State and the Union as a whole. An evaluation of the Directive is also foreseen in the provisions.

2023/0085 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on substantiation and communication of explicit environmental claims (Green Claims Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee

Having regard to the opinion of the Committee of the Regions[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Claiming to be "green" and sustainable has become a competitiveness factor, with green products registering greater growth than standard products. If goods and services offered and purchased on the internal market are not as environmentally friendly as presented, this would mislead the consumers, hamper the green transition and prevent the reduction of negative environmental impacts. The potential of green markets is not fully realised. Different requirements imposed by national legislation or private initiatives regulating environmental claims create a burden for companies in cross-border trade, as they need to comply with different requirements in each Member State. This affects their capacity to operate in and take advantage of the internal market. At the same time, market participants have difficulties with identifying reliable environmental claims and making optimal purchasing decisions on the internal market. With a proliferation of different labels and calculation methods on the market, it is difficult for consumers, businesses, investors and stakeholders to establish if claims are trustworthy.

(2) If environmental claims are not reliable, comparable and verifiable, consumers and other market actors cannot fully leverage their purchasing decisions to reward better environmental performance. Similarly, the lack of reliable, comparable and verifiable information hinders incentives for optimising environmental performance, which would typically go hand in hand with efficiency gains and cost savings for companies along the supply chain as well. These consequences are exacerbated by the lack of a common reference across the internal market and the ensuing confusion.

(3) For users of environmental information (consumers, businesses, investors, public administrations, NGOs) included in environmental claims, the lack of reliability,

[1] OJ C , , p. .

comparability and verifiability leads to an issue of trust in environmental information and confusion in interpreting heterogeneous, contradictory messages. This is detrimental to consumers and other market actors, as they may choose a product or a business transaction over other alternatives based on misleading information.

(4) It is therefore necessary to harmonise further the regulation of environmental claims. Such harmonisation will strengthen the market for more sustainable products and traders by avoiding market fragmentation due to diverging national approaches. It will also set a benchmark that can drive the global transition to a just, climate-neutral, resource-efficient and circular economy[2].

(5) Detailed Union rules on substantiation of explicit environmental claims, applicable to companies operating on the Union market in business to consumer communication, will contribute to the green transition towards a circular, climate-neutral and clean economy in the Union by enabling consumers to take informed purchasing decisions, and will help create a level-playing field for market operators making such claims.

(6) A regulatory framework for environmental claims is one of the actions proposed by the Commission to implement the European Green Deal[3], which recognises that reliable, comparable and verifiable information plays an important part in enabling buyers to make more sustainable decisions and reduces the risk of 'greenwashing', and includes commitments to step up regulatory and non-regulatory efforts to tackle false environmental claims. Together with other applicable Union regulatory frameworks, including the proposal for a Directive on empowering consumers for the green transition[4], amending Directive 2005/29/EC of the European Parliament and of the Council[5] that this proposal aims at complementing, they establish a clear regime for environmental claims, including environmental labels.

(7) This Directive is part of a set of interrelated initiatives to establish a strong and coherent product policy framework that will make environmentally sustainable products and business models the norm, and not the exception, and to transform consumption patterns so that no waste is produced in the first place. The Directive is complemented, amongst others, by interventions on the circular design of products, on fostering new business models and setting minimum requirements to prevent that environmentally harmful products are placed on the EU market through the proposal for an Eco-design for Sustainable Products Regulation[6].

---

2 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A new Circular Economy Action Plan For a cleaner and more competitive Europe, COM/2020/98 final

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM/2019/640 final

4 Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM(2022) 143 final

5 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 (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22).

6 Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM(2022) 132 final

(8) The specific needs of individual economic sectors should be recognised and this Directive should therefore apply to voluntary explicit environmental claims and environmental labelling schemes that are not regulated by any other Union act as regards their substantiation or communication, or verification. This Directive should therefore not apply to explicit environmental claims for which the Union legislation lays down specific rules, including on methodological frameworks, assessment or accounting rules related to measuring and calculating environmental impacts, environmental aspects or environmental performance of products or traders, or providing mandatory and non-mandatory information to consumers on the environmental performance of products and traders or sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to the Union rules.

(9) Within the context of the European Green Deal, the Farm to Fork Strategy and the Biodiversity Strategy, and in accordance with the target of achieving 25% of EU agricultural land under organic farming by 2030 and a significant increase in organic aquaculture and with the Action Plan on the Development of Organic Production (COM(2021) 141), organic farming and organic production need to be developed further. As regards Regulation (EU) 2018/848 of the European Parliament and of the Council[7], this Directive should not apply to environmental claims on organically certified products substantiated on the basis of that Regulation, related, for instance, to the use of pesticides, fertilisers and anti-microbials or, for instance, to positive impacts of organic farming on biodiversity, soil or water[8]. It also has a positive impact on biodiversity, it creates jobs and attracts young farmers. Consumers recognise its value. In accordance with Regulation (EU) 2018/848, the terms “bio” and “eco” and their derivatives, whether alone or in combination, are only to be used in the Union for products, their ingredients or feed materials that fall under the scope of that Regulation where they have been produced in accordance with Regulation (EU) 2018/848. For instance, in order to call the cotton “eco”, it has to be certified as organic, as it falls within the scope of Regulation (EU) 2018/848. On the contrary, if the dishwasher detergent is called “eco”, this does not fall within the scope of Regulation (EU) 2018/848, and is instead regulated by the provisions of Directive 2005/29/EC.

(10) In addition, this Directive shall not apply to sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to the Union or national rules for financial services, such as rules relating to banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, investment firms, payment, portfolio management and investment advice, including the services listed in Annex I to Directive 2013/36[9] of the European Parliament and of the Council, as well as settlement and clearing activities and advisory, intermediation and other auxiliary financial services, includnig standards or certification schemes relating to such financial services.

---

7 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

8 https://agriculture.ec.europa.eu/system/files/2023-01/agri-market-brief-20-organic-farming-eu_en_1.pdf

9 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(11) Furthermore, this Directive should not apply to environmental information reported by undertakings that apply European sustainability reporting standards on a mandatory or voluntary basis in accordance with Directive 2013/34/EU[10] and sustainability information reported on a voluntary basis by undertakings defined in articles 3(1), 3(2) or 3(3) of this Directive where that information is reported in accordance with standards referred to in Articles 29b or 29c of Directive 2013/34/EU or in accordance with other international, European or national sustainability reporting standards or guidelines.

(12) Offers to purchase goods or receive services conditional on the fulfilment of environmental criteria defined by the seller or service provider or offers where consumers receive more favourable contractual terms or prices upon the fulfilment of such criteria, for example the so-called green loans, green home insurance or financial service products with similar rewards for environmental actions or behaviour should not be subject to the rules of this Directive.

(13) In case future Union legislation lays down rules on environmental claims, environmental labels, or on the assessment or communication of environmental impacts, environmental aspects or environmental performance of certain products or traders in specific sectors, for example the announced "*Count Emissions EU*", the forthcoming Commission proposal on a legislative framework for a Union sustainable food system, the Eco-design for Sustainable Products Regulation[11] or Regulation (EU) No 1007/2011 of the European Parliament and of the Council[12], those rules should be applied to the explicit environmental claims in question instead of the rules set out in this Directive.

(14) The proposal for a Directive on empowering consumers for the green transition which amends Directive 2005/29/EC, sets out a number of specific requirements on environmental claims and prohibits generic environmental claims which are not based on recognised excellent environmental performance relevant to the claim. Examples of such generic environmental claims are 'eco-friendly', 'eco', 'green', 'nature's friend', 'ecological' and 'environmentally correct'. This Directive should complement the requirements set out in that proposal by addressing specific aspects and requirements for explicit environmental claims as regards their substantiation, communication and verification. The requirements set out in this Directive should apply to specific aspects of explicit environmental claims and will prevail over the requirements set out in Directive 2005/29/EC with regard to those aspects in case of conflict, pursuant to Article 3(4) of that Directive.

(15) In order to ensure that consumers are provided with reliable, comparable and verifiable information which enables them to make more environmentally sustainable decisions and to reduce the risk of 'greenwashing, it is necessary to establish requirements for substantiation of explicit environmental claims. Such substantiation should take into account internationally recognised scientific approaches to identifying and measuring

---

10 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

11 COM(2022) 132 final

12 Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (OJ L 272, 18.10.2011, p. 1).

environmental impacts, environmental aspects and environmental performance of products or traders, and it should result in reliable, transparent, comparable and verifiable information to the consumer.

(16) The assessment made to substantiate explicit environmental claims needs to consider the life-cycle of the product or of the overall activities of the trader and should not omit any relevant environmental aspects or environmental impacts. The benefits claimed should not result in an unjustified transfer of negative impacts to other stages of the life cycle of a product or trader, or to the creation or increase of other negative environmental impacts.

(17) The assessment substantiating the explicit environmental claim should make it possible to identify the environmental impacts and environmental aspects for the product or trader that jointly contribute significantly to the overall environmental performance of the product or trader ('relevant environmental impacts' and 'relevant environmental aspects'). Indications for the relevance of the environmental impacts and environmental aspects can stem from assessments taking into account the life-cycle, including from the studies based on Environmental Footprint (EF) methods, provided that these are complete on the impacts relevant to the product category and do not omit any important environmental impacts. For example, in the Commission Recommendation on the use of Environmental Footprint methods[13] the most relevant impact categories identified should together contribute to at least 80% of the single overall score. These indications for the relevance of the environmental impacts or environmental aspects can also result from the criteria set in various ecolabels type I, as for instance the EU Ecolabel, or in Union criteria for green public procurement, from requirements set by the Taxonomy Regulation[14], from product specific rules adopted under the Regulation …./…. of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products[15] or from other relevant Union rules.

(18) In line with Directive 2005/29/EC as amended by the proposal for a Directive on empowering consumers for the green transition, the trader should not present requirements imposed by law on products within a given product category as a distinctive feature of the trader's offer or advertise benefits for consumers that are considered as common practice in the relevant market. The information used to substantiate explicit environmental claims should therefore make it possible to identify the product's or trader's environmental performance in comparison to the common practice for products in the respective product group, such as food, or in the respective sector. This is necessary to underpin the assessment whether the explicit environmental claims can be made with regard to a given product or trader in line with the function of an environmental claim, which is to demonstrate that a product or trader has a positive impact or no impact on the environment, or that a product or a trader is less damaging to the environment than other products or traders. The common practice could be equivalent to the minimum legal requirements that are applicable to

---

13 Commission Recommendation (EU) 2021/2279 of 15 December 2021 on the use of the Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organisations, OJ L 471, 30.12.2021, p. 1.

14 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

15 […]

the specific environmental aspect or environmental performance, for example as regards product composition, mandatory recycled content or end-of-life treatment. However, in case majority of products within the product group or majority of traders within the sector perform better than those legal requirements, the minimum legal requirements should not be considered as common practice.

(19) It would be misleading to consumers if an explicit environmental claim pointed to the benefits in terms of environmental impacts or environmental aspects while omitting that the achievement of those benefits leads to negative trade-offs on other environmental impacts or environmental aspects. To this end the information used to substantiate explicit environmental claims should ensure that the interlinkages between the relevant environmental impacts and between environmental aspects and environmental impacts can be identified along with potential trade-offs. The assessment used to substantiate explicit environmental claims should identify if improvements on environmental impacts or environmental aspects lead to the kind of trade-offs that significantly worsen the performance as regards other environmental impacts or environmental aspects, for example if savings in water consumption lead to a notable increase in greenhouse gas emissions, or in the same environmental impact in another life-cycle stage of the product, for example CO2 savings in the stage of manufacturing leading to a notable increase of CO2 emissions in the use phase. For example, a claim on positive impacts from efficient use of resources in intensive agricultural practices may mislead consumers due to trade-offs linked to impacts on biodiversity, ecosystems or animal welfare. An environmental claim on textiles containing plastic polymer from recycled PET bottles may also mislead consumers as to the environmental benefit of that aspect if the use of this recycled polymer competes with the closed-loop recycling system for food contact materials which is considered more beneficial from the perspective of circularity.

(20) In order for the environmental claim to be considered robust, it should reflect as accurately as possible the environmental performance of the specific product or trader. The information used to substantiate explicit environmental claims therefore needs to include primary, company-specific data for relevant aspects contributing significantly to the environmental performance of the product or trader referred to in the claim. It is necessary to strike the right balance between ensuring relevant and robust information for substantiating environmental claims and the efforts needed to gather primary information. The requirement to use primary information should be considered in the light of the influence the trader making the claim has over the respective process and of the availability of primary information. If the process is not run by the trader making the claim and primary information is not available, accurate secondary information should be able to be used even for processes that contribute significantly to the environmental performance of the product or trader. This is especially relevant to not disadvantage SMEs and to keep the efforts needed to acquire primary data at a proportionate level. Moreover, the relevant environmental aspects are different for each type of environmental claim. For instance, for claims on recycled or bio-based content, the composition of the product should be covered by primary data. For claims on being environmentally less polluting in a certain life cycle stage, information on emissions and environmental impacts related to that life cycle stage should include primary data as well. Both primary data and secondary data, i.e. average data, should show a high level of quality and accuracy.

(21) Climate-related claims have been shown to be particularly prone to being unclear and ambiguous and to mislead consumers. This relates notably to environmental claims

that products or entities are “climate neutral”, “carbon neutral”, “100% CO2 compensated”, or will be “net-zero” by a given year, or similar. Such statements are often based on “offsetting” of greenhouse gas emissions through “carbon credits” generated outside the company’s value chain, for example from forestry or renewable energy projects. The methodologies underpinning offsets vary widely and are not always transparent, accurate, or consistent. This leads to significant risks of overestimations and double counting of avoided or reduced emissions, due to a lack of additionality, permanence, ambitious and dynamic crediting baselines that depart from business as usual, and accurate accounting. These factors result in offset credits of low environmental integrity and credibility that mislead consumers when they are relied upon in explicit environmental claims. Offsetting can also deter traders from emissions reductions in their own operations and value chains. In order to adequately contribute to global climate change mitigation targets, traders should prioritise effective reductions of emissions across their own operations and value chains instead of relying on offsets. Any resulting residual emissions will vary by sector-specific pathway in line with the global climate targets and will have to be addressed through removals enhancements. When offsets are used nonetheless, it is deemed appropriate to address climate-related claims, including claims on future environmental performance, based on offsets in a transparent manner. Therefore, the substantiation of climate-related claims should consider any greenhouse gas emissions offsets used by the traders separately from the trader’s or the product’s greenhouse gas emissions. In addition, this information should also specify the share of total emissions that are addressed through offsetting, whether these offsets relate to emission reductions or removals enhancement, and the methodology applied. The climate-related claims that include the use of offsets have to be substantiated by methodologies that ensure the integrity and correct accounting of these offsets and thus reflect coherently and transparently the resulting impact on the climate.

(22) Traders are more and more interested in making environmental claims related to future environmental performance of a product or trader, including by joining initiatives that are promoting practices which could be conducive to a reduced environmental impact or to more circularity. These claims should be substantiated in line with the rules applicable to all explicit environmental claims.

(23) The information used to substantiate explicit environmental claims should be science based, and any lack of consideration of certain environmental impacts or environmental aspects should be carefully considered.

(24) The EF methods can support the substantiation of explicit environmental claims on specific life-cycle environmental impacts that the methods cover, provided that these are complete on the impacts relevant to the product category and do not omit any important environmental impacts. The methods cover 16 environmental impacts, including climate change, and impacts related to water, air, soil, resources, land use and toxicity.

(25) The fact that a significant environmental impact of a product is not covered by any of the 16 impact categories of the EF methods should not justify the lack of consideration of such impacts. An economic actor making an explicit environmental claim on such product group should have an obligation of diligence to find evidence substantiating such claim. For instance, an economic actor making an explicit environmental claim about a fishery product as defined in Article 5 of Regulation (EU) No 1379/2013 of

the European Parliament and of the Council[16] should have an obligation of diligence to find evidence substantiating the sustainability of the targeted fish stock. Stock assessments by the International Council for the Exploration of the Sea and similar stock assessment bodies can be used for that purpose.

(26) Furthermore, there is not yet a reliable methodology for the assessment of life-cycle environmental impacts related to the release of microplastics. However, in case such release contributes to significant environmental impacts that are not subject to a claim, the trader making the claim on another aspect should not be allowed to ignore it, but should take into account available information and update the assessment once widely recognised scientific evidence becomes available.

(27) Consumers can also be misled by explicit environmental claims that state or imply that a product or trader has less or more environmental impacts or a better or worse environmental performance than other products or traders ('comparative environmental claims'). Without prejudice to the application, where appropriate, of Directive 2006/114/EC of the European Parliament and of the Council[17], in order to allow the consumers access to reliable information, it is necessary to ensure that comparative environmental claims can be compared in an adequate manner. For instance, choosing indicators on the same environmental aspects but using a different formula for quantification of such indicators makes comparisons impossible, and therefore there is a risk of misleading consumers. In case two traders make an environmental claim on climate change, where one considered only direct environmental impacts, whilst the other considered both direct and indirect environmental impacts, these results are not comparable. Also, a decision to make the comparison only at certain stages of a products life cycle can lead to misleading claims, if not made transparent. A comparative environmental claim needs to ensure that also for products with very different raw materials, uses and process chains, like bio-based plastics and fossil-based plastics, the most relevant stages of the life-cycle are taken into account for all products. For example, agriculture or forestry is relevant for bio-based plastics while raw oil extraction is relevant for fossil-based plastics and the question whether a relevant share of the product ends up in landfill is highly relevant to plastics that biodegrade well under landfill conditions but maybe less relevant for plastics that do not biodegrade under such conditions.

(28) When setting up the requirements for substantiation and communication of explicit environmental claims, including by delegated acts adopted by the Commission, the difficulties that traders may encounter in gathering information from actors throughout their value chain or on the product's overall life-cycle, especially for services or where there is insufficient scientific evidence, should be taken into account. This is important for example for services such as electronic communications services, for which it can be difficult to define the scope and system boundaries, e.g. where the life-cycle starts and where it finishes and even more where supply chains are complex and not stable, e.g. in cases where many equipment or components are manufactured by a multitude

[16] Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

[17] Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21).

of enterprises outside the EU, and thus sustainability related information might not be easily accessible to EU traders concerned.

(29) For some sectors or for certain products or traders, significant environmental impacts or environmental aspects could be suspected but there might not yet be a recognised scientific method to fully assess those environmental impacts and environmental aspects. For such cases and while efforts are made to develop methods and gather evidence to enable the assessment of the respective environmental impact or environmental aspect for those sectors, traders or products, traders should be able to promote their sustainability efforts through publication of company sustainability reporting, factual reporting on the company's performance metrics and work to reduce energy consumption, including on their websites. This flexibility would maintain and promote the incentives of those sectors or traders to continue their efforts to develop common environmental assessments pursuant to this Directive while providing for the necessary time to complete such work.

(30) While unfair commercial practices, including misleading environmental claims, are prohibited for all traders pursuant to Directive 2005/29/EC[18], an administrative burden linked to substantiation and verification of environmental claims on the smallest companies could be disproportionate and should be avoided. To this end, microenterprises should be exempted from the requirements on substantiation of Article 3 and 4 unless these enterprises wish to obtain a certificate of conformity of explicit environmental claims that will be recognised by the competent authorities across the Union.

(31) In order to meet both the needs of traders regarding dynamic marketing strategies and the needs of consumers regarding more detailed, and more accurate, environmental information, the Commission may adopt delegated acts to supplement the provisions on substantiation of explicit environmental claims by further specifying the criteria for such substantiation with regard to certain claims (e.g. climate-related claims, including claims about offsets, "climate neutrality" or similar, recyclability and recycled content). The Commission should be empowered to further establish rules for measuring and calculating the environmental impacts, environmental aspects and environmental performance, by determining which activities, processes, materials, emissions or use of a product or trader contribute significantly or cannot contribute to the relevant environmental impacts and environmental aspects; by determining for which environmental aspects and environmental impacts primary information should be used; and by determining the criteria to assess the accuracy of primary and secondary information. While in most cases the Commission would consider the need for adopting these rules only after having the results of the monitoring of the evolution of environmental claims on the Union market, for some types of claims it may be necessary for the Commission to adopt supplementary rules before the results of this monitoring are available. For example, in case of climate-related claims it may be necessary to adopt such supplementary acts in order to operationalise the provisions on substantiation of claims based on offsets.

---

[18] 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 (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22) as amended.

(32) The Commission Recommendation (EU) 2021/2279 contains guidance on how to measure the life cycle environmental performance of specific products or organisations and how to develop Product Environmental Footprint Category Rules (PEFCRs) and Organisation Environmental Footprint Sectorial Rules (OEFSRs) that allow comparison of products to a benchmark. Such category rules for specific products or traders can be used to support the substantiation of claims in line with the requirements of this Directive. Therefore, the Commission should be empowered to adopt delegated acts to establish product group or sector specific rules where this may have added value. However, in case the Product Environmental Footprint method does not yet cover an impact category, which is relevant for a product group, the adoption of PEFCR may take place only once these new relevant environmental impact categories have been added. For example, as regards marine fisheries, the PEFCR should for example reflect the fisheries-specific environmental impact categories, in particular the sustainability of the targeted stock. Concerning space, the PEFCR should reflect defence and space-specific environmental impact categories, including the orbital space use. As regards food and agricultural products, biodiversity and nature protection, as well as farming practices, including positive externalities of extensive farming and animal welfare, should, for example, also be integrated before the adoption of PEFCR could be considered. As regards textiles, the PEFCR should for example reflect the microplastics release, before the adoption of PEFCR could be considered.

(33) Since Directive 2005/29/EC already applies to misleading environmental claims, it enables the national courts and administrative authorities to stop and prohibit such claims. For example, in order to comply with Directive 2005/29/EC, environmental claims should relate only to aspects that are significant in terms of the product's or trader's environmental impact. Environmental claims should also be clear and unambiguous regarding which aspects of the product or trader they refer to and should not omit or hide important information about the environmental performance of the product or trader that consumers need in order to make informed choices. The wording, imagery and overall product presentation, including the layout, choice of colours, images, pictures, sounds, symbols or labels, included in the environmental claim should provide a truthful and accurate representation of the scale of the environmental benefit achieved, and should not overstate the environmental benefit achieved.

(34) Where the explicit environmental claim concerns a final product and relevant environmental impacts or environmental aspects of such product occur at the use phase and consumers can influence such environmental impacts or environmental aspects via appropriate behaviour, such as, for example, correct waste sorting or impacts of use patterns on product's longevity, the claim should also include information explaining to consumers how their behaviour can positively contribute to the protection of the environment.

(35) In order to facilitate consumers' choices of more sustainable products and to incentivise efforts of traders to lower their environmental impacts, when the claim communicated relates to future environmental performance, it should as a priority be based on improvements inside trader's own operations and value chains rather than relying on offsetting of greenhouse has emissions or other environmental impacts.

(36) Consumers should have easy access to the information on the product or the trader that is the subject of the explicit environmental claim and regarding information substantiating that claim. This information should also consider needs of older

consumers. For that purpose, traders should either provide this information in a physical form or provide a weblink, QR code or equivalent leading to a website where more detailed information on the substantiation of the explicit environmental claim is made available in at least one of the official languages of the Member State where the claim is made. In order to facilitate the enforcement of this Directive, the weblink, QR code or equivalent should also ensure easy access to the certificate of conformity regarding the substantiation of the explicit environmental claim and the contact information of the verifier who drew up that certificate.

(37) In order to avoid potential disproportionate impacts on the microenterprises, the smallest companies should be exempted from the requirements of Article 5 linked to information on the substantiation of explicit environmental claims unless these enterprises wish to obtain a certificate of conformity of explicit environmental claim that will be recognised by the competent authorities across the Union.

(38) When the Commission adopts delegated acts to supplement the provisions on substantiation of explicit environmental claims it may be necessary to also supplement the provisions on communication of such claims. For example, in case specific life-cycle-based rules on substantiation of explicit environmental claims for certain products group or sector are established, it may be necessary to add supplementary rules on presentation of environmental impacts assessed based on these rules by requiring that three main environmental impacts are presented next to the aggregated indicator of overall environmental performance. To this end the Commission should be empowered to adopt delegated acts to supplement the provisions on communication of explicit environmental claims.

(39) Currently, more than 200 environmental labels are used on the Union market. They present important differences in how they operate as regards for example the transparency and comprehensiveness of the standards or methods used, the frequency of revisions, or the level of auditing or verification. These differences have an impact on how reliable the information communicated on the environmental labels is. While claims based on the EU Ecolabel or its national equivalents follow a solid scientific basis, have a transparent development of criteria, require testing and third-party verification and foresee regular monitoring, evidence suggests that many environmental labels currently on the EU market are misleading. In particular, many environmental labels lack sufficient verification procedures. Therefore, explicit environmental claims made on environmental labels should be based on a certification scheme.

(40) In cases where an environmental label involves a commercial communication to consumers that suggests or creates the impression that a product has a positive or no impact on the environment, or is less damaging to the environment than competing products without the label, that environmental label also constitutes an explicit environmental claim. The content of such environmental label is therefore subject to the requirements on substantiation and communication of explicit environmental claims.

(41) The environmental labels often aim at providing consumers with an aggregated scoring presenting a cumulative environmental impact of products or traders to allow for direct comparisons between products or traders. Such aggregated scoring however presents risks of misleading consumers as the aggregated indicator may dilute negative environmental impacts of certain aspects of the product with more positive environmental impacts of other aspects of the product. In addition, when developed by

different operators, such labels usually differ in terms of specific methodology underlying the aggregated score such as the environmental impacts considered or the weighting attributed to these environmental impacts. This may result in the same product receiving different score or rating depending on the scheme. This concern arises in relation to schemes established in the Union and in third countries. This is contributing to the fragmentation of the internal market, risks putting smaller companies at a disadvantage, and is likely to further mislead consumers and undermine their trust in environmental labels. In order to avoid this risk and ensure better harmonisation within the single market, the explicit environmental claims, including environmental labels, based on an aggregated score representing a cumulative environmental impact of products or traders should not be deemed to be sufficiently substantiated, unless those aggregated scores stem from Union rules, including the delegated acts that the Commission is empowered to adopt under this Directive, resulting in Union-wide harmonised schemes for all products or per specific product group based on a single methodology to ensure coherence and comparability.

(42) In accordance with the proposal for a Directive on empowering consumers for the green transition, which amends Directive 2005/29/EC, displaying a sustainability label which is not based on a certification scheme or not established by public authorities constitutes an unfair commercial practice in all circumstances. This means that the 'self-certified' sustainability labels, where no third-party verification and regular monitoring takes place as regards compliance with the underlying requirements of the sustainability label are prohibited.

(43) In order to combat misleading explicit environmental claims communicated in the form of environmental labels and increase consumer trust in environmental labels, this Directive should establish governance criteria that all environmental labelling schemes are to comply with, complementing thus the requirements set in the said proposal amending Directive 2005/29/EC.

(44) In order to avoid further proliferation of national or regional officially recognised EN ISO 14024 type I environmental labelling ('ecolabelling') schemes, and other environmental labelling schemes, and to ensure more harmonisation in the internal market, new national or regional environmental labelling schemes should be developed only under the Union law. Nevertheless, Member States can request the Commission to consider developing public labelling schemes at the Union level for product groups or sectors where such labels do not yet exist in Union law and where harmonisation would bring added value to achieve the sustainability and internal market objectives in an efficient manner.

(45) In order not to create unnecessary barriers to international trade and to ensure equal treatment with the public schemes established in the Union, the public authorities outside of the Union setting up new labelling schemes should be allowed to request approval from the Commission for use of the label on the Union market. This approval should be conditional on the scheme's contribution to reaching the objectives of this Directive and provided that the schemes demonstrate added value in terms of environmental ambition, coverage of environmental impacts, product group or sector and meet all the requirements of this Directive.

(46) Environmental labelling schemes established by private operators, if too many and overlapping in terms of scope, may create confusion in consumers or undermine their trust in environmental labels. Therefore, Member States should only allow that new environmental labelling schemes are established by private operators provided that

they offer significant added value as compared to the existing national or regional schemes in terms of environmental ambition of the criteria to award the label, coverage of relevant environmental impacts, and completeness of the underlying assessment. Member States should set up a procedure for the approval of new environmental labelling schemes based on a certificate of conformity drawn up by the independent verifier. This should apply to schemes established in the Union and outside of the Union.

(47) In order to provide legal certainty and facilitate enforcement of the provisions on new national and regional officially recognised environmental labelling schemes and new private labelling schemes, the Commission should publish a list of such schemes that may either continue to apply on the Union market or enter the Union market.

(48) In order to ensure a harmonised approach by the Member States to the assessment and approval of environmental labelling schemes developed by private operators, and to establish an approval procedure by the Commission for proposed schemes established by public authorities outside of the Union, implementing powers should be conferred on the Commission to adopt common rules specifying detailed requirements for approval of such environmental labelling schemes, the format and content of supporting documents and rules of procedure to approve such schemes. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[19].

(49) It is essential that explicit environmental claims reflect correctly the environmental performance and environmental impacts covered by the claim, and consider the latest scientific evidence. Member States should therefore ensure that the trader making the claim reviews and updates the substantiation and communication of the claims at least every 5 years to ensure compliance with the requirements of this Directive

(50) To ensure that explicit environmental claims are reliable, it is necessary that Member States set up procedure for verifying that the substantiation and communication of explicit environmental claims, including environmental labels, or the environmental labelling schemes, comply with the requirements set out in this Directive.

(51) In order to allow the competent authorities to control more efficiently the implementation of the provisions of this Directive and to prevent as much as possible unsubstantiated explicit environmental claims, including environmental labels, from appearing on the market, verifiers complying with the harmonised requirements set up by the Directive should check that both the information used for the substantiation and communication of explicit environmental claims meet the requirements of this Directive. In order to avoid misleading consumers, the verification should in any case take place before the environmental claims are made public or environmental labels are displayed. The verifier can, if appropriate, indicate several ways of communicating the explicit environmental claim that comply with the requirements of this Directive to avoid the need for continuous re-certification in case the way of communication is slightly modified without affecting the compliance with the requirements of this Directive. To facilitate the traders compliance with the rules on substantiation and communication of explicit environmental claims, including the environmental labels, the verification should take into account the nature and content of the claim or the

[19] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

environmental label, including whether they appear to be unfair in the light of Directive 2005/29/EC.

(52) In order to provide traders with legal certainty across the internal market as regards compliance of the explicit environmental claims with the requirements of this Directive, the certificate of conformity should be recognised by the competent authorities across the Union. Microenterprises should be allowed to request such certificate if they wish to certify their claims in line with the requirements of this Directive and benefit from the certificate's recognition across the Union. The certificate of conformity should however not prejudge the assessment of the environmental claim by the public authorities or courts which enforce Directive 2005/29/EC.

(53) In order to ensure uniform conditions for the provisions on verification of explicit environmental claims and environmental labelling schemes and to facilitate the enforcement of the provisions on verification of this Directive, implementing powers should be conferred on the Commission to adopt a common form for certificates of conformity and the technical means for issuing such certificates. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[20].

(54) Small and medium-sized enterprises (SMEs) should be able to benefit from the opportunities provided by the market for more sustainable products but they could face proportionately higher costs and difficulties with some of the requirements on substantiation and verification of explicit environmental claims. The Member States should provide adequate information and raise awareness of the ways to comply with the requirements of this Directive, ensure targeted and specialised training, and provide specific assistance and support, including financial, to SMEs wishing to make explicit environmental claims on their products or as regards their activities. Member States actions should be taken in respect of applicable State aid rules.

(55) In order to ensure a level-playing field on the Union market, where claims about the environmental performance of a product or a trader are based on reliable, comparable and verifiable information, it is necessary to establish common rules on enforcement and compliance.

(56) In order to ensure that the objectives of this Directive are achieved and the requirements are enforced effectively, Member States should designate their own competent authorities responsible for the application and enforcement of this Directive. However, in view of the close complementarity of Articles 5 and 6 of this Directive with the provisions of Directive 2005/29/EC, Member States should also be allowed to designate for their enforcement the same competent authorities as those responsible for the enforcement of Directive 2005/29/EC. For the sake of consistency, when Member States make that choice, they should be able to rely on the means and powers of enforcement that they have established in accordance with Article 11 of Directive 2005/29/EC, in derogation from the rules on enforcement laid down in this Directive. In cases where there is more than one designated competent authority in their territory and to ensure effective exercise of the duties of the competent

[20] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

authorities, Member State should ensure a close cooperation between all designated competent authorities.

(57) Without prejudice to the powers already conferred by Regulation (EU) 2017/2394[21] to consumer protection authorities, competent authorities should have a minimum set of investigation and enforcement powers in order to ensure compliance with this Directive, to cooperate with each other more quickly and more efficiently, and to deter market actors from infringing this Directive. Those powers should be sufficient to tackle the enforcement challenges of e-commerce and the digital environment effectively and to prevent non-compliant market actors from exploiting gaps in the enforcement system by relocating to Member States whose competent authorities may be less equipped to tackle unlawful practices.

(58) Competent authorities should be able to use all facts and circumstances of the case as evidence for the purpose of their investigation.

(59) In order to prevent the occurrence of misleading and unsubstantiated explicit environmental claims on the Union market, competent authorities should carry out regular checks of explicit environmental claims made, and the environmental labelling schemes applied, to verify that the requirements laid down in this Directive are fulfilled.

(60) When competent authorities detect an infringement of requirements of this Directive they should carry out an evaluation and based on its results notify the trader about the infringement detected and require that corrective actions are taken by the trader. To minimise the misleading effect on consumers of the non-compliant explicit environmental claim or non-compliant environmental labelling scheme, the trader should be required by the competent authorities to take an effective and rapid action to remediate that infringement. The corrective action required should be proportionate to the infringement detected and its expected harmful effects on the consumers.

(61) Where an infringement is not restricted to their national territory, and the explicit environmental claim has been advanced between traders, competent authorities should inform the other Member States of the results of evaluation they have carried out and of any action that they have required the trader responsible to take.

(62) Competent authorities should also carry out checks of explicit environmental claims on the Union market when in possession of and based on relevant information, including substantiated concerns submitted by third parties. Third parties submitting a concern should be able to demonstrate a sufficient interest or maintain the impairment of a right.

(63) In order to ensure that traders are effectively dissuaded from non-compliance with the requirements of this Directive, Member States should lay down rules on penalties applicable to infringements of this Directive and ensure that those rules are implemented. The penalties provided for should be effective, proportionate and dissuasive. To facilitate a more consistent application of penalties, it is necessary to establish common non-exhaustive criteria for determining the types and levels of penalties to be imposed in case of infringements. That criteria should include, *inter*

[21] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

alia, the nature and gravity of the infringement as well as the economic benefits derived from the infringement in order to ensure that those responsible are deprived of those benefits.

(64) When setting penalties and measures for infringements, the Member States should foresee that, based on the gravity of the infringement, the level of fines should effectively deprive the non-compliant trader from the economic benefit derived from using the misleading or unsubstantiated explicit environmental claim or non-compliant environmental labelling scheme, including in cases of repeated infringements. The measures for infringements foreseen by the Member States should therefore also include confiscation of the relevant product from the trader or revenues gained from the transactions affected by this infringement or a temporary exclusions or prohibitions from placing products or making available services on the Union market. The gravity of the infringement should be the leading criterion for the measures taken by the enforcement authorities. The maximum amount of fines should be dissuasive and set at least at the level of 4% of the trader's total annual turnover in the Member State or Member States concerned in case of widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement measures in accordance with Regulation (EU) 2017/2394[22].

(65) When adopting delegated acts pursuant to Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[23]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(66) In order to assess the performance of the legislation against the objectives that it pursues, the Commission should carry out an evaluation of this Directive and present a report on the main findings to the European Parliament and the Council. In order to inform an evaluation of this Directive, Member States should regularly collect information on the application of this Directive and provide it to the Commission on an annual basis.

(67) Where based on the results of the monitoring and evaluation of this Directive the Commission finds it appropriate to propose a review of this Directive, the feasibility and appropriateness of further provisions on mandating the use of common method for substantiation of explicit environmental claims, the extension of prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society, or further harmonisation as regards requirements on the substantiation of specific environmental claims on environmental aspects or environmental impacts should also be considered.

(68) The use of the most harmful substances should ultimately be phased-out in the Union to avoid and prevent significant harm to human health and the environment, in

---

22 Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

23 OJ L 123, 12.5.2016, p. 1.

particular their use in consumer products. Regulation (EC) 1272/2008 of the European Parliament and of the Council[24] prohibits the labelling of mixtures and substances that contain hazardous chemicals as 'non-toxic', 'non-harmful', 'non-polluting', 'ecological' or any other statements indicating that the substance or mixture is not hazardous or statements that are inconsistent with the classification of that substance or mixture. Member States are required to ensure that such obligation is fulfilled. As committed in the Chemicals Strategy for Sustainability the Commission will define criteria for essential uses to guide its application across relevant Union legislation. .

(69) Since the objectives of this Directive, namely to improve the functioning of the internal market for economic actors operating in the internal market and consumers relying on environmental claims, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(70) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[25], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(71) The Annex to Regulation (EU) 1024/2012 of the European Parliament and of the Council[26] should be amended to include a reference to this Directive so as to facilitate the administrative cooperation between the competent authorities through the Internal Market Information System.

(72) The Annex to Regulation (EU) 2017/2394 of the European Parliament and of the Council[27] should be amended to include a reference to this Directive so as to facilitate cross-border cooperation on enforcement of this Directive.

(73) Annex I of Directive (EU) 2020/1828 of the European Parliament and of the Council[28] should be amended to include a reference to this Directive so as to ensure that the collective interests of consumers laid down in this Directive are protected.

---

24 Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

25 OJ C 369, 17.12.2011, p. 14.

26 Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

27 OJ L 345, 27.12.2017, p. 1

28 Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.

2. This Directive does not apply to environmental labelling schemes or to explicit environmental claims regulated by or substantiated by rules established in:

   (a) Regulation (EC) No 66/2010 of the European Parliament and of the Council[29],

   (b) Regulation (EU) 2018/848 of the European Parliament and of the Council[30],

   (c) Regulation (EU) 2017/1369 of the European Parliament and of the Council[31];

   (d) Directive 2009/125/EC of the European Parliament and of the Council[32],

   (e) Regulation (EU) No 305/2011 of the European Parliament and of the Council[33]

   (f) Regulation (EC) No 765/2008 of the European Parliament and of the Council[34];

   (g) Regulation (EC) No 1221/2009 of the European Parliament and of the Council[35];

   (h) Directive 1999/94/EC of the European Parliament and of the Council[36];

   (i) Regulation (EU) No 305/2011 of the European Parliament and of the Council[37];

---

29 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

30 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

31 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

32 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10).

33 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

34 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

35 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

36 Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16).

37 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

(j) Directive 2006/66/EC of the European Parliament and of the Council[38];

(k) Directive 94/62/EC of the European Parliament and of the Council[39];

(l) Regulation (EU) 2020/852 of the European Parliament and of the Council[40]

(m) Regulation (EU) … /… of the European Parliament and of the Council[41];

(n) Directive 2012/27/EU of the European Parliament and of the Council[42];

(o) Directive 2013/34/EU of the European Parliament and of the Council[43] and other Union, national or international rules, standards or guidelines for financial services, financial instruments, and financial products;

(p) other existing or future Union rules setting out the conditions under which certain explicit environmental claims about certain products or traders may be or are to be made or Union rules laying down requirements on the assessment or communication of environmental impacts, environmental aspects or environmental performance of certain products or traders or conditions for environmental labelling schemes.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) ‘environmental claim’ means environmental claim as defined in Article 2, point (o), of Directive 2005/29/EC;

(2) ‘explicit environmental claim’ means an environmental claim that is in textual form or contained in an environmental label;

(3) ‘trader’ means trader as defined in Article 2, point (b), of Directive 2005/29/EC;

(4) ‘product’ means product as defined in Article 2, point (c), of Directive 2005/29/EC;

(5) ‘consumer’ means consumer as defined in Article 2, point (a), of Directive 2005/29/EC;

---

38 Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1).

39 Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

40 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

41 Regulation (EU) … /… of the European Parliament and of the Council establishing a Union certification framework for carbon removals (OJ L …).

42 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

43 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(6) ‘business-to-consumer commercial practices’ means business-to-consumer commercial practices as defined in Article 2, point (d), of Directive 2005/29/EC;

(7) ‘sustainability label’ means sustainability label as defined in Article 2, point (r), of Directive 2005/29/EC;

(8) ‘environmental label’ means a sustainability label covering only or predominantly environmental aspects of a product, a process or a trader;

(9) ‘product group’ means a set of products that serve similar purposes or are similar in terms of use or have similar functional properties;

(10) ‘certification scheme’ means a certification scheme as defined in Article 2, point (s), of Directive 2005/29/EC;

(11) ‘verification’ means the conformity assessment process carried out by a verifier to verify whether the substantiation and communication of the explicit environmental claims are in compliance with the requirements set out in this Directive or whether environmental labelling schemes comply with this Directive;

(12) ‘value chain’ means all activities and processes that are part of the life cycle of a product or activity of a trader, including remanufacturing;

(13) ‘life cycle’ means the consecutive and interlinked stages of a product’s life, consisting of raw material acquisition or generation from natural resources, pre-processing, manufacturing, storage, distribution, installation, use, maintenance, repair, upgrading, refurbishment as well as re-use, and end-of-life;

(14) ‘primary information’ means information that is directly measured or collected by the trader from one or more facilities that are representative for the activities of the trader;

(15) ‘secondary information’ means information that is based on other sources than primary information including literature studies, engineering studies and patents.

(16) ‘public’ means one or more natural or legal persons and their associations, traders or groups;

(17) ‘environmental performance’ means the performance of a certain product or product group or trader or sector related to the environmental aspects or environmental impacts of that product or product group or the activities of that trader or sector;

(18) ‘environmental aspect’ means an element of a trader’s or sector’s activities or of products or product groups that interact or can interact with the environment.

(19) ‘environmental impact’ means any change to the environment, whether positive or negative, that wholly or partially results from a trader’s or sector’s activities or from a product or product group during its life cycle.

Article 3

Substantiation of explicit environmental claims

1. Member States shall ensure that traders carry out an assessment to substantiate explicit environmental claims. This assessment shall:

   (a) specify if the claim is related to the whole product, part of a product or certain aspects of a product, or to all activities of a trader or a certain part or aspect of these activities, as relevant to the claim;

(b) rely on widely recognised scientific evidence, use accurate information and take into account relevant international standards;

(c) demonstrate that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life-cycle perspective;

(d) where a claim is made on environmental performance, take into account all environmental aspects or environmental impacts which are significant to assessing the environmental performance;

(e) demonstrate that the claim is not equivalent to requirements imposed by law on products within the product group, or traders within the sector;

(f) provide information whether the product or trader which is subject to the claim performs significantly better regarding environmental impacts, environmental aspects or environmental performance which is subject to the claim than what is common practice for products in the relevant product group or traders in the relevant sector;

(g) identify whether improving environmental impacts, environmental aspects or environmental performance subject to the claim leads to significant harm in relation to environmental impacts on climate change, resource consumption and circularity, sustainable use and protection of water and marine resources, pollution, biodiversity, animal welfare and ecosystems;

(h) separate any greenhouse gas emissions offsets used from greenhouse gas emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate;

(i) include primary information available to the trader for environmental impacts, environmental aspects or environmental performance, which are subject to the claim;

(j) include relevant secondary information for environmental impacts, environmental aspects, or environmental performance which is representative of the specific value chain of the product or the trader on which a claim is made, in cases where no primary information is available.

2. Where it is demonstrated that significant environmental impacts that are not subject to the claim exist but there is no widely recognised scientific evidence to perform the assessment referred to in point (c) of paragraph 1, the trader making the claim on another aspect shall take account of available information and, if necessary, update the assessment in accordance with paragraph 1 once widely recognised scientific evidence is available.

3. The requirements set out in paragraphs 1 and 2 shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC[44] unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

[44] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

4. When the regular monitoring of the evolution of environmental claims referred to in Article 20 reveals differences in the application of the requirements laid down in paragraph 1 for specific claims and such differences create obstacles for the functioning of the internal market, or where the Commission identifies that the absence of requirements for specific claims leads to widespread misleading of consumers, the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for substantiation of explicit environmental claims laid down in paragraph 1 by:

   (a) determining the rules for assessing the environmental aspects, environmental impacts and environmental performance, including by determining the activities, processes, materials, emissions or use of a product, which contribute significantly or cannot contribute to the relevant environmental impacts, environmental aspects or environmental performance;

   (b) determining for which environmental aspects or environmental impacts primary information shall be provided and determining criteria based on which the accuracy of the primary information and secondary information can be assessed; or

   (c) establishing specific life-cycle-based rules on substantiation of explicit environmental claims for certain product groups and sectors.

5. When specifying further the requirements for substantiation of explicit environmental claims in accordance with previous paragraph, the Commission shall take into account scientific or other available technical information, including relevant international standards, and where relevant consider the following:

   (a) the specificities of the sectors and products that require a specific methodological approach;

   (b) the potential contribution of specific product groups or sectors to achieving Union climate and environmental objectives;

   (d) any relevant information derived from Union legislation;

   (e) ease of access to information and data for the assessment and use of this information and data by small and medium-sized enterprises (‘SMEs’).

Article 4

Substantiation of comparative explicit environmental claims

1. The substantiation of explicit environmental claims that state or imply that a product or trader has less environmental impacts or a better environmental performance than other products or traders (‘comparative environmental claims’) shall, in addition to the requirements set out in Article 3, comply with the following requirements:

   (a) the information and data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made, are equivalent to the information and data used for assessing the environmental impacts, environmental aspects or environmental performance of the product or trader which is subject to the claim;

(b) the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders is generated or sourced in an equivalent manner as the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made;

(c) the coverage of the stages along the value chain is equivalent for the products and traders compared and ensures that the most significant stages are taken into account for all products and traders;

(d) the coverage of environmental impacts, environmental aspects or environmental performances is equivalent for the products and traders compared and ensures that the most significant environmental impacts, environmental aspects or environmental performances are taken into account for all products and traders;

(e) assumptions used for the comparison are set in an equivalent manner for the products and traders compared.

2. Where a comparative environmental claim relates to an improvement in terms of environmental impacts, environmental aspects or environmental performance of a product that is subject to the claim compared to environmental impacts, environmental aspects or environmental performance of another product from the same trader, from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, the substantiation of the claim shall explain how that improvement affects other relevant environmental impacts, environmental aspects or environmental performance of the product subject to the claim and shall clearly state the baseline year for the comparison.

3. The requirements laid down in this Article shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC[45] unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

Article 5

Communication of explicit environmental claims

1. Member States shall ensure that a trader is required to communicate an explicit environmental claim in accordance with the requirements set out in this Article.

2. Explicit environmental claims may only cover environmental impacts, environmental aspects or environmental performance that are substantiated in accordance with the requirements laid down in Articles 3, 4 and 5 and that are identified as significant for the product or trader concerned in accordance with Article 3 paragraph (1) point (c) or (d).

3. Where the explicit environmental claim is related to a final product, and the use phase is among the most relevant life-cycle stages of that product, the claim shall include information on how the consumer should use the product in order to achieve

[45] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

the expected environmental performance of that product. That information shall be made available together with the claim.

4. Where the explicit environmental claim is related to future environmental performance of a product or trader it shall include a time-bound commitment for improvements inside own operations and value chains.

5. Explicit environmental claims on the cumulative environmental impacts of a product or trader based on an aggregated indicator of environmental impacts can be made only on the basis of rules to calculate such aggregated indicator that are established in the Union law.

6. Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent.

That information shall include at least the following:

(a) environmental aspects, environmental impacts or environmental performance covered by the claim;

(b) the relevant Union or the relevant international standards, where appropriate;

(c) the underlying studies or calculations used to assess, measure and monitor the environmental impacts, environmental aspects or environmental performance covered by the claim, without omitting the results of such studies or calculations and, explanations of their scope, assumptions and limitations, unless the information is a trade secret in line with Article 2 paragraph 1 of Directive (EU) 2016/943[46];

(d) a brief explanation how the improvements that are subject to the claim are achieved;

(e) the certificate of conformity referred to in Article 10 regarding the substantiation of the claim and the contact information of the verifier that drew up the certificate of conformity;

(f) for climate-related explicit environmental claims that rely on greenhouse gas emission offsets, information to which extent they rely on offsets and whether these relate to emissions reductions or removals;

(g) a summary of the assessment including the elements listed in this paragraph that is clear and understandable to the consumers targeted by the claim and that is provided in at least one of the official languages of the Member State where the claim is made.

7. The requirements set out in paragraphs 2, 3 and 6 shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

8. Where the substantiation of certain environmental impacts, environmental aspects or environmental performance is subject to the rules established in delegated acts

[46] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

referred to in Article 3, paragraph 4(a) and paragraph 4(c), the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for communication of explicit environmental claims set out in Article 5 by specifying further the information that can be or shall be communicated regarding such environmental impacts, environmental aspects or environmental performance, so as to make sure that the consumers are not misled.

Article 6

Communication of comparative environmental claims

Comparative environmental claims shall not relate to an improvement of the environmental impacts, environmental aspects or environmental performance of the product that is the subject of the claim compared to the environmental impacts, environmental aspects or environmental performance of another product from the same trader or from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, unless they are based on evidence proving that the improvement is significant and achieved in the last five years.

Article 7

Environmental labels

1. Member States shall ensure that environmental labels fulfil the requirements set out in Articles 3 to 6 and are subject to verification in accordance with Article 10.

2. Only environmental labels awarded under environmental labelling schemes established under Union law may present a rating or score of a product or trader based on an aggregated indicator of environmental impacts of a product or trader.

Article 8

Requirements for environmental labelling schemes

1. Environmental labelling scheme means a certification scheme which certifies that a product, a process or a trader complies with the requirements for an environmental label.

2. The environmental labelling schemes shall comply with the following requirements:

   (a) information about the ownership and the decision-making bodies of the environmental labelling scheme is transparent, accessible free of charge, easy to understand and sufficiently detailed;

   (b) information about the objectives of the environmental labelling scheme and the requirements and procedures to monitor compliance of the environmental labelling scheme are transparent, accessible free of charge, easy to understand and sufficiently detailed;

   (c) the conditions for joining the environmental labelling schemes are proportionate to the size and turnover of the companies in order not to exclude small and medium enterprises;

(d) the requirements for the environmental labelling scheme have been developed by experts that can ensure their scientific robustness and have been submitted for consultation to a heterogeneous group of stakeholders that has reviewed them and ensured their relevance from a societal perspective;

(e) the environmental labelling scheme has a complaint and dispute resolution mechanism in place;

(f) the environmental labelling scheme sets out procedures for dealing with non-compliance and foresees the withdrawal or suspension of the environmental label in case of persistent and flagrant non-compliance with the requirements of the scheme.

3. From [OP: Please insert the date = *the date of transposition of this Directive*] no new national or regional environmental labelling schemes shall be established by public authorities of the Member States. However, national or regional environmental labelling schemes established prior to that date may continue to award the environmental labels on the Union market, provided they meet the requirements of this Directive.

From the date referred to in the first subparagraph, environmental labelling schemes may only be established under Union law.

4. From [OP: Please insert the date = *the date of transposition of this Directive*] any new environmental labelling schemes established by public authorities in third countries awarding environmental labels to be used on the Union market, shall be subject to approval by the Commission prior to entering the Union market with the aim of ensuring that these labels provide added value in terms of their environmental ambition including notably their coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector, as compared to the existing Union, national or regional schemes referred to in paragraph 3, and meet the requirements of this Directive. Environmental labelling schemes established by public authorities in third countries prior to that date may continue to award the environmental labels which are to be used on the Union market, provided they meet the requirements of this Directive.

5. Member States shall ensure that environmental labelling schemes established by private operators after [OP: Please insert the date = *the date of transposition of this Directive*] are only approved if those schemes provide added value in terms of their environmental ambition, including notably their extent of coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector and their ability to support the green transition of SMEs, as compared to the existing Union, national or regional schemes referred to in paragraph 3, and meet the requirements of this Directive.

This procedure for approval of new environmental labelling schemes shall apply to schemes established by private operators in the Union and in third countries.

Member States shall notify the Commission when new private schemes are approved.

6. In order to receive the approvals referred to in paragraphs 4 and 5, the operators of new environmental labelling schemes shall provide supporting documents setting out the following:

(a) the rationale underlying the development of the scheme

(b) the proposed scope of the scheme,

(c) the evidence the scheme will provide added value as set out in in paragraph 4 for environmental labelling schemes established by public authorities in third countries, or in paragraph 5 for environmental labelling schemes established by private operators;

(d) a proposal for draft criteria and the methodology used to develop and award the environmental label and the expected impacts on the market;

(e) a detailed description of the ownership and the decision-making bodies of the environmental labelling scheme.

The documents referred to in the first subparagraph shall be submitted to the Commission in case of schemes referred to in paragraph 4 or to the Member States' authorities in case of schemes referred to in paragraph 5, together with the certificate of conformity for environmental labelling schemes drawn up in accordance with Article 10.

7. The Commission shall publish and keep-up-to date a list of officially recognised environmental labels that are allowed to be used on the Union market after [OP: Please insert the date = *the date of transposition of this Directive*] pursuant to paragraphs 3, 4 and 5.

8. In order to ensure a uniform application across the Union, the Commission shall adopt implementing acts to:

(a) provide detailed requirements for approval of environmental labelling schemes pursuant to the criteria referred to in paragraphs 4 and 5;

(b) specify further the format and content of supporting documents referred to in paragraph 6;

(c) provide detailed rules on the procedure for the approval referred to in paragraph 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

Article 9

Review of the substantiation of explicit environmental claims

Member States shall ensure that the information used for substantiation of explicit environmental claims is reviewed and updated by traders when there are circumstances that may affect the accuracy of a claim, and no later than 5 years from the date when the information referred to in Article 5(6) is provided. In the review, the trader shall revise the used underlying information to ensure that the requirements of Articles 3 and 4 are fully complied with.

The updated explicit environmental claim shall be subject to verification in accordance with Article 10.

Article 10

Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes

1. Member States shall set up procedures for verifying the substantiation and communication of explicit environmental claims against the requirements set out in Articles 3 to 7.

2. Member States shall set up procedures for verifying the compliance of environmental labelling schemes with the requirements set out in Article 8.

3. The verification and certification requirements shall apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC only if they so request.

4. The verification shall be undertaken by a verifier fulfilling the requirements set out in Article 11, in accordance with the procedures referred to in paragraphs 1 and 2, before the environmental claim is made public or the environmental label is displayed by a trader.

5. For the purposes of the verification the verifier shall take into account the nature and content of the explicit environmental claim or the environmental label.

6. Upon completion of the verification, the verifier shall draw up, where appropriate, a certificate of conformity certifying that the explicit environmental claim or the environmental label complies with the requirements set out in this Directive.

7. The certificate of conformity shall be recognised by the competent authorities responsible for the application and enforcement of this Directive. Member States shall notify the list of certificates of conformity via the Internal Market Information System established by Regulation (EU) No 1024/2012.

8. The certificate of conformity shall not prejudge the assessment of the environmental claim by national authorities or courts in accordance with Directive 2005/29/EC.

9. The Commission shall adopt implementing acts to set out details regarding the form of the certificate of conformity referred to in paragraph 5 and the technical means for issuing such certificate of conformity. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

Article 11

Verifier

1. The verifier shall be a third-party conformity assessment body accredited in accordance with Regulation (EC) No 765/2008[47].

2. The accreditation shall, in particular, include the evaluation of compliance with the requirements in paragraph 3.

3. The verifier shall comply with the following requirements:

[47] Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

(a) the verifier shall be independent of the product bearing, or the trader associated to, the environmental claim;

(b) the verifier, its top-level management and the personnel responsible for carrying out the verification tasks shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to the verification activities;

(c) the verifier and its personnel shall carry out the verification activities with the highest degree of professional integrity and the requisite technical competence and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their verification activities,

(d) the verifier shall have the expertise, equipment and infrastructure required to perform the verification activities in relation to which it has been accredited;

(e) the verifier shall have a sufficient number of suitably qualified and experienced personnel responsible for carrying out the verification tasks;

(f) the personnel of a verifier shall observe professional secrecy with regard to all information obtained in carrying out the verification tasks;

(g) where a verifier subcontracts specific tasks connected with verification or has recourse to a subsidiary, it shall take full responsibility for the tasks performed by subcontractors or subsidiaries and shall assess and monitor the qualifications of the subcontractor or the subsidiary and the work carried out by them.

Article 12

Small and medium sized enterprises

Member States shall take appropriate measures to help small and medium sized enterprises apply the requirements set out in this Directive. Those measures shall at least include guidelines or similar mechanisms to raise awareness of ways to comply with the requirements on explicit environmental claims. In addition, without prejudice to applicable state aid rules, such measures may include:

(a) financial support;

(b) access to finance;

(c) specialised management and staff training;

(d) organisational and technical assistance.

Article 13

Designation of competent authorities and coordination mechanism

1. Member States shall designate one or more competent authorities as responsible for the application and enforcement of this Directive.

2. For the purpose of the enforcement of Articles 5 and 6, Member States may designate the national authorities or courts responsible for the enforcement of Directive 2005/29/EC. In that case, Member States may derogate from Articles 14 to

17 of this Directive and apply the enforcement rules adopted in accordance with Articles 11 to 13 of Directive 2005/29/EC.

3. Where there is more than one competent authority in their territory, Member States shall ensure that the respective duties of those authorities are clearly defined and that appropriate communication and coordination mechanisms are established.

4. Member States shall notify the Commission and other Member States without delay of the identity of the competent authorities in their Member State and the areas of competence of those authorities.

Article 14

Powers of the competent authorities

1. Member States shall confer on their competent authorities the powers of inspection and enforcement necessary to ensure compliance with this Directive.

2. The powers conferred on competent authorities under paragraph 1 shall include at least the following:

   (a) the power of access to any relevant documents, data or information related to an infringement of this Directive, in any form or format and irrespective of their storage medium, or the place where they are stored, and the power to take or obtain copies thereof;

   (b) the power to require any natural or legal person to provide any relevant information, data or documents, in any form or format and irrespective of their storage medium or the place where they are stored, for the purposes of establishing whether an infringement of this Directive has occurred or is occurring and the details of such infringement;

   (c) the power to start investigations or proceedings on their own initiative to bring about the cessation or prohibition of infringements of this Directive;

   (d) the power to require traders to adopt adequate and effective remedies and take appropriate action to bring an infringement of this Directive to an end;

   (e) the power to adopt, where appropriate, injunctive relief with regard to infringements of this Directive;

   (f) the power to impose penalties for infringements of this Directive in accordance with Article 17.

3. Competent authorities may use any information, document, finding, statement or intelligence as evidence for the purpose of their investigations, irrespective of the format in which or medium on which they are stored.

Article 15

Compliance monitoring measures

1. Competent authorities of the Member States designated in accordance with Article 13 shall undertake regular checks of the explicit environmental claims made and the environmental labelling schemes applied, on the Union market. The reports detailing the result of those checks shall be made available to the public online.

2. Where the competent authorities of a Member State detect an infringement of an obligation set out in this Directive, they shall carry out an evaluation covering all relevant requirements laid down in this Directive.

3. Where, further to the evaluation referred to in the first subparagraph, the competent authorities find that the substantiation and communication of the explicit environmental claim or the environmental labelling scheme does not comply with the requirements laid down in this Directive, they shall notify the trader making the claim about the non-compliance and require that trader to take all appropriate corrective action within 30 days to bring the explicit environmental claim or the environmental labelling scheme into compliance with this Directive or to cease the use of and references to the non-compliant explicit environmental claim. Such action shall be as effective and rapid as possible, while complying with the principle of proportionality and the right to be heard.

Article 16

Complaint-handling and access to justice

1. Natural or legal persons or organisations regarded under Union or national law as having a legitimate interest shall be entitled to submit substantiated complaints to competent authorities when they deem, on the basis of objective circumstances, that a trader is failing to comply with the provisions of this Directive.

2. For the purposes of the first subparagraph, non-governmental entities or organisations promoting human health, environmental or consumer protection and meeting any requirements under national law shall be deemed to have sufficient interest.

3. Competent authorities shall assess the substantiated complaint referred to in paragraph 1 and, where necessary, take the necessary steps, including inspections and hearings of the person or organisation, with a view to verify those complaints. If confirmed, the competent authorities shall take the necessary actions in accordance with Article 15.

4. Competent authorities shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the person or organisation referred to in paragraph 1 that submitted the complaint of its decision to accede to or refuse the request for action put forward in the complaint and shall provide the reasons for it.

5. Member States shall ensure that a person or organisation referred to in paragraph 1 submitting a substantiated complaint shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive, without prejudice to any provisions of national law which require that administrative review procedures be exhausted prior to recourse to judicial proceedings. Those judicial review procedures shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary.

6. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.

Article 17

Penalties

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC40[48], Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States shall give due regard to the following:

   (a) the nature, gravity, extent and duration of the infringement;

   (b) the intentional or negligent character of the infringement and any action taken by the trader to mitigate or remedy the damage suffered by consumers, where applicable;

   (c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;

   (d) the economic benefits derived from the infringement by those responsible;

   (e) any previous infringements by the natural or legal person held responsible;

   (f) any other aggravating or mitigating factor applicable to the circumstances of the case;

   (g) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394, where applicable.

3. Member States shall provide that penalties and measures for infringements of this Directive shall include:

   (a) fines which effectively deprive those responsible of the economic benefits derived from their infringements, and increasing the level of such fines for repeated infringements;

   (b) confiscation of revenues gained by the trader from a transaction with the relevant products concerned;

   (c) temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions.

For the purposes of point (a), Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394[49], the maximum amount of such fines being at least at 4 % of the trader's annual turnover in the Member State or Member States concerned.

---

[48] Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

[49] OJ L 345, 27.12.2017, p. 1.

Article 18

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts as referred to in Article 3(4) and Article 5(8) shall be conferred on the Commission for a period of five years from [*OP please insert the date = the date of transposition of this Directive*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 3(4) and Article 5(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. A delegated act adopted pursuant to Article 3(4) and Article 5(8) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 19

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 20

Monitoring

1. Member States shall regularly monitor the application of this Directive based on:

(a) an overview of the types of explicit environmental claims and of environmental labelling schemes which have been subject to substantiated complaints in accordance with Article 16;

(b) an overview of explicit environmental claims and of environmental labelling schemes with regard to which competent authorities have required the trader to take corrective action, in accordance with Article 15, or have imposed penalties in accordance with Article 17.

2. The information referred to in paragraph 1 shall specify the explicit environmental claim or environmental labelling scheme, the nature of the alleged infringement, the nature and duration of the corrective action and, if applicable, the penalty imposed.

3. Member States shall provide the information referred to in paragraph 1 to the Commission on an annual basis.

4. Based on the information collected pursuant to paragraph 3 and the information made available by the Member States pursuant to Article 15(1), and, if necessary, additional consultations with competent authorities, the European Environmental Agency shall publish, every two years, a report containing an assessment of the evolution of explicit environmental claims and environmental labelling schemes in each Member State and for the Union as a whole. The report shall enable a differentiation according to the size of the trader making the claim and according to the quality of the substantiation.

Article 21

Evaluation and review

1. By [*OP please insert the date = 5 years after the date of transposition of this Directive*], the Commission shall carry out an evaluation of this Directive in light of the objectives that it pursues and present a report on the main findings to the European Parliament and the Council.

2. The report referred to in paragraph 1 shall assess whether this Directive has achieved its objective, in particular with regard to:

(a) ensuring that explicit environmental claims made about the environmental performance of a product or trader are based on reliable, comparable and verifiable information;

(b) ensuring that environment labelling schemes are based on certification schemes and meet the relevant requirements set out in Article 8;

(c) ensuring that new private environmental labelling schemes concerning products or traders already covered by existing schemes are approved by the Member States only if they provide added value as compared to the existing schemes;

(d) setting out the rules for communicating explicit environmental claims on the Union market, and avoiding duplication of costs when communicating such claims;

(e) strengthening the functioning of the internal market.

3. Where the Commission finds it appropriate, the report referred to in paragraph 1 shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Directive, including considering further provisions on:

(a) unlocking opportunities for the circular, bio and green economy by assessing the appropriateness and feasibility of mandating the use of common, and where relevant life-cycle based, method for substantiation of environmental claims;

(b) facilitating transition towards toxic free environment by considering introducing a prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society in line with the criteria to be developed by the Commission;

(c) further harmonisation as regards requirements on the substantiation of specific environmental claims on environmental aspects or impacts such as durability, reusability, reparability, recyclability, recycled content, use of natural content, including fibers, environmental performance or sustainability, bio-based elements, biodegradability, biodiversity, waste prevention and reduction.

Article 22

Amendment to Regulation (EU) 1024/2012

In the Annex to Regulation (EU) 1024/2012, the following point is added:

'X. [OP: Please insert the next consecutive number] Directive (EU) … of the European Parliament and of the Council of … on substantiation and communication of explicit environmental claims (OJ L …, date, page: Articles 13(3) and 15)'.

Article 23

Amendments to Regulation (EU) 2017/2394

In the Annex to Regulation (EU) 2017/2394, the following point is added:

'X. [OP: Please insert the next consecutive number] Directive (EU) … of the European Parliament and of the Council of … on substantiation and communication of explicit environmental claims (OJ L …, date, page).'

Article 24

Amendment to Directive (EU) 2020/1828

In Annex I to Directive (EU) 2020/1828, the following point is added:

'(X) [OP: Please insert the next consecutive number] Directive (EU) … of the European Parliament and of the Council of … on substantiation and communication of explicit environmental claims (OJ L …, date, page)'.

Article 25

Transposition

1. Member States shall adopt and publish by [OP please insert the date = *18 months after the date of entry into force of this Directive*] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

   They shall apply those measures from [OP please insert the date = *24 months after the date of entry into force of this Directive*].

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Green Claims: proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims

1.2. Policy area(s) concerned

09 - Environment & Climate Action[116]

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action[117]**

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The objective of this initiative is to increase the level of environmental protection and contribute to accelerating the green transition towards a circular, clean and climate neutral economy in the EU, protect consumers and companies from greenwashing and enable consumers to contribute to accelerating the green transition by making informed purchasing decisions based on credible environmental claims and labels, improve the legal certainty as regards environmental claims and the level playing fields on the internal market, boost the competitiveness of economic operators that make efforts to increase the environmental sustainability of their products and activities, and create cost saving opportunities for such operators that are trading across borders.
It complements the proposed changes to the proposed Unfair Commercial Practices.

1.4.2. Specific objective(s)

Establish EU rules on voluntary green claims, applicable to traders operating in the European Union (with the exception of microenterprises for some provisions) on the substantiation, communication and verification of environmental claims/environmental labelling schemes.

1.4.3. Expected result(s) and impact

By reaching the specific objectives, more market operators would be able to integrate reliable environmental information into their decision-making (e.g. purchasing decisions, choice of suppliers or co-operation with suppliers and business partners, product design, procurement choices).

---

116 For the Green Claims, the legal basis of the initiative is the Single Market but budgetary resources come from 09 – Environment and Climate Action.

117 As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

Consumers would be able to trust the environmental claims on the products they buy, enabling them to integrate environmental considerations more systematically in their purchasing decisions.

This would trigger more demand for greener products and solutions, driving growth in green markets. It would unlock opportunities in the supply chain for more efficiency and better environmental performance. This would then contribute to the general objective of unlocking opportunities for the circular and green economy. Establishing an EU approach to environmental claims would address the general objective of strengthening the functioning of the internal market, specifically of green markets.

A common EU approach answering the objective of reliability, comparability and verifiability would make it easier for enforcers to check claims, further enhancing their effect. This would further strengthen drivers for better environmental performance of products and traders, contributing to European Green Deal objectives.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

1. Environmental claims on products and companies are reliable, comparable and verifiable: increasing share of reliable environmental claims, and correspondingly decreasing share of misleading environmental claims monitored through:

o Number of environmental claims that respect (or not) the requirements of the green claims initiative;

o Effective implementation of the green claims initiative;

o Share of national authorities that consider that the Directive has made it easier to address greenwashing.

2. **Users of information trust environmental information:** increasing trust of users of information (consumers, businesses, investors, public administrations and NGOs) in environmental claims monitored through:

o Level of consumer trust in environmental claims;

o Level of consumer trust in sustainability labels;

o Level of trust of other users of information (businesses, investors, public administrations, NGOs) in environmental claims in scope.

3. Environmental performance of products and organisations improves: positive evolution of benchmark values in Product Environmental Footprint Category Rules (PEFCRs) and Product Environmental Footprint (PEF) and Organization Environmental Footprint (OEF) profile results showing a trend that products and organisations are becoming greener; decreasing consumption footprint of EU (as per the consumption footprint indicator developed by JRC), covering all 16 environmental impacts of the Environmental Footprint methods. This will be monitored by the following indicators:

o Evolution of benchmark values in PEFCRs;

o Evolution of EF profile results on PEF and OEF over time;

o Evolution of consumption footprint in the EU.

4. **Obstacles on green markets are reduced:** obstacles related to complying with multiple methods and to provide environmental information are reduced. This will be monitored by the following indicators:

o Perception of businesses on the internal market of green products.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

Short-term requirements

The Member States will have two years to transpose the Directive. This proposal is closely linked with the review of Unfair Commercial Practices Directive, proposed by the Commission in March 2022, and it is expected that the two Directives may be transposed jointly.

In addition to the transposition of the rules on substantiation and communication of environmental claims, the Member States will have to set up a procedure for verifying the substantiation of environmental claims on products/traders put on the market, , and ecolabelling schemes, designate competent authorities and a coordination mechanism.

The proposal foresees that voluntary environmental claims have to be substantiated based on an assessment that meets specific requirements set out in Article 3. In cases where the Commission adopts delegated acts establishing life-cycle based rules for specific product groups or sectors, the economic operators will be able to substantiate specific claims on environmental impacts on their basis.

In support of the implementation of this Directive, and shortly after its entry into force, the Commission will adopt an implementing act to provide details regarding the form of certificate to be issued by the verifier of environmental claims as per Article 12.

On-going requirements

The competent authorities will be obliged to undertake regular checks of the environmental claims used on the EU market.

The Member States will be obliged to regularly monitor the application of the Directive based on an overview of environmental claims which have been notified to enforcement authorities; an overview of environmental claims with regard to whom enforcement authorities have required the organisation responsible to take corrective action, and, if applicable, have taken enforcement measures. Member States will supply this information to the Commission on an annual basis.

Five years after the date of entry into force of this Directive, the Commission shall carry out an evaluation of this Directive in light of the objectives that it pursues and present a report on the main findings and where appropriate a legislative proposal for amendment of the relevant provisions of this Directive.

The Commission will be empowered to adopt delegated acts according to Article 3(4) on further specifying the requirements for the substantiation of explicit environmental claims. This will be an ongoing process to develop further substantiation methods.

The Commission will also be empowered to adopt delegated and implementing acts to supplement the requirements for environmental labelling schemes in line with Article 8(8) and (9).

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.*

It is essential to ensure a level playing field for economic operators in terms of requirements to be met when making an environmental claim, including the requirements on the information and data to be used, by putting in place a common set of rules within the EU internal market.

Based on the status quo, and if Member States were to act individually, there is a high risk to end up with many competing different systems, based on different and uncomparable methods and approaches, leading to a fragmented internal market, especially for cross-border products traded on the internal market, increasing the risk of having uneven awareness and information levels on the environmental performance of products and organisations across EU, and additional costs for companies trading cross-border (especially if they have to use different methods or comply with different labelling schemes).

In the absence of EU-level action, the market operators will continue to be faced with misleading information on environmental aspects, while obstacles on the internal market would impede businesses to operate in equivalent conditions. In addition, certain aspects, like the development of methods to underpin specific claims and the establishment of related databases (if needed) cannot be achieved at national level, given their scope in terms of coverage of products, sectors or geographical regions.

There is a clear added value in setting common requirements at EU level, because a harmonised and well-functioning internal EU market would set a level playing field for businesses operating in the EU.

It is expected that following the action at EU level Member States will be prevented from introducing unilaterally specific measures and the Directive will to reduce the risk of legal fragmentation of the single market and will bring cost savings for governments and the private sector.

1.5.3. Lessons learned from similar experiences in the past

The initiative complements the proposed changes to the proposed Unfair Commercial Practices Directive (UCPD) made by the European Commission to the European Parliament and to the Council. It builds on the lessons learned on the implementation of the UCPD and the need for specific rules on the substantiation of explicit green claims, on communication and verification. It also draws the lessons on the proliferation of ecolabelling schemes. Other lessons learned are related to the development of the EU Ecolabel, EMAS, and the development of the environmental footprint methods.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The initiatives fall under the umbrella of the European Green Deal, which guides the EU's recovery strategy. The Green Deal recognises the advantages of investing in our competitive sustainability by building a fairer, greener and more digital Europe.

The initiative is financed under Heading 3 (Natural Resources and the Environment), Title 9 (Environment and Climate Action) of the Multiannual Financial Framework. As detailed below, the implementation will require additional human resources, spending under the LIFE programme and some supporting expenditure in the EEA. The corresponding increase of the EEA subsidy will be offset from the EU programme for the environment and climate action (LIFE).

Other policy areas could provide support to businesses for implementing the requirements for substantiating and communicating environmental claims, e.g. as laid down in delegated acts according to Art 3, in particular EU funding provided on innovation and investments to businesses, in particular to SMEs. The European Regional Development Fund, through smart specialisation, LIFE and Horizon Europe complements private innovation funding and support the whole innovation cycle with the aim to bring solutions to the market. The Digital Europe Programme launched in 2022 the Concerted Action CIRPASS with the objective to open up possibilities for innovative workflows, especially to further the circularity of the flow of tangible goods, but also for consumer information by defining a cross-sectoral product data model for the digital product passport with demonstrated usefulness for the Circular Economy.

The Innovation Fund is one of the world’s largest funding programmes for the demonstration of innovative low-carbon technologies and solutions. It will provide around EUR 10 billion of support over 2020-2030, aiming to bring to the market industrial solutions to decarbonise Europe and support its transition to climate neutrality.

1.5.5. Assessment of the different available financing options, including scope for redeployment

Several options were assessed, including coverage by ENV services only with a mix of procuring services for datasets, to exploring cooperation with other services and agencies. The best option retained combines procuring services for datasets by DG ENV and a contribution to the EEA to seek expertise from their staff.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from 2024 to 2027,

– followed by full-scale operation.

1.7. Management mode(s) planned[118]

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☒ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

[118] Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The initiatives involve procurement, administrative arrangement with the JRC, increase of the contribution to the EEA and impact on the COM HR. Standard rules for this type of expenditure apply.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

N/A – cf. above.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

N/A – cf. above.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

N/A – cf. above.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

N/A – cf. above.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[119]	from EFTA countries [120]	from candidate countries and potential candidates [121]	fromother third countries	other assigned revenue
3	09 02 02 Circular Economy and quality of life	Diff.	YES	NO	YES	NO
3	09 10 02 European Environment Agency	Diff.	YES	YES	NO	NO
7	20 01 02 01 – Remuneration and allowances	Non-diff.	NO	NO	NO	NO
7	20 02 01 03 – National civil servants temporarily assigned to the institution	Non-diff.	NO	NO	NO	NO
7	20 02 06 02 – Meetings, expert groups	Non-diff.	NO	NO	NO	NO

- New budget lines requested

N/A

[119] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[120] EFTA: European Free Trade Association.

[121] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	**3**	Natural resources and environment

DG: ENV			**2024**	**2025**	**2026**	**2027 and beyond**	**TOTAL**
○ Operational appropriations							
09 02 02 Circular Economy and quality of life	Commitments	(1)	2,540	6,964	5,264	5,214	**19,982**
	Payments	(2)	2,540	6,964	5,264	5,214	**19,982**
TOTAL appropriations for DG ENV	Commitments	=(1)	2,540	**6,964**	**5**,264	**5,214**	**19,982**
	Payments	=(2)	2,540	**6,964**	**5**,264	**5,214**	**19,982**

The amount reported above will be needed to finance the following actions:

- The acquisition of the secondary Environmental Footprint (EF) datasets providing key average data on resource consumption and emissions for key processes that can be used by many companies to assess their value chains , the acquisition and development of data to fill possible data gaps, the development costs of an IT platform for the EF database as well as the maintenance of the database for the period 2026-2027 (EUR 10,095 million). The access to EF datasets will support companies, especially SMEs, in complying with the Green Claims Directive in a more cost efficient and less burdensome manner. The easy access to high quality data related to the environmental perfromance of products will be a key enabler for all companies, but especially for SMEs, to substantiate their environmental claims in a robust manner unrelated to the question if delegated acts based on Art 3 of this proposal on environmental claims are in place or not. The access to EF datasets will also support the implementation of other EU policies on environmental

sustainability and helping consumers to make the right choices, such as the proposal for Ecodesign for Sustainable Products Regulation (ESPR) [122]. The ESPR introduces the possibility to set mandatory information requirements, which may also be linked with labelling requirements, and it will result in improved information flows through Digital Product Passports. The EF datasets will support the calculation and setting of information and performance requirements e.g. related to carbon and environmental footprint, as foreseen by the ESPR proposal, based on a harmonised set of high-quality secondary data.

- The procurement of studies and surveys regarding the use of methods used for substantiation by stakeholders and the evaluation of the Directive on Green Claims (EUR 0,150 million)
- JRC will play a key role in supporting the Commission with some of the technical work required. The Administrative Arrangement is expected to represent a cost around EUR 1,700 millions
- Administrative and technical support for the preparation of delegated acts according to Art 3(4) on further specifying the requirements for the substantiation of explicit environmental claims setting life-cycle based rules for specific product groups or sectors, will be also an important expenditure. This budget line accounts for the preparation of 6 such delegated acts (EUR 6,827 million)
- Flanking measures to help SMEs to adapt to this directive, including the development of calculation tools based on the requirements described in delegated acts according to Art 3(4) (EUR 1,210 million).

Agency: EEA			**2025**	**2026**	**2027**	**TOTAL**
Title 1: Staff expenditure	Commitments	(1a)	0,180	0,367	0,375	**0,922**
	Payments	(2a)	0,180	0,367	0,375	0,922
Title 2: Infrastructure	Commitments	(1b)				
	Payments	(2b)				
Title 3: Operational expenditure	Commitments	(1c)	0,095	0,065	0,065	**0,225**
	Payments	(2c)	0,095	0,065	0,065	**0,225**
TOTAL appropriations	Commitments	=1a+1b +1c	**0,275**	**0,432**	**0,440**	**1,147**

122 Available at https://environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-products-regulation_en

for agency EEA	Payments	=2a+2b +2c	**0,275**	**0,432**	**0,440**	**1,147**

EEA costs include costs for 2 additional FTE (1 TA and 1 CA), as well as operational expenditure, for the purpose of the monitoring of the environmental claims put on the EU market following the implementation of the directive as per Article 20(4). The Agency will be tasked with a detailed analysis of information reported by the Member States as per Article 20(1) – (3) and publish reports every two years with the assessment of the evolution of green claims across the EU. This estimate includes most evidence for the biannual reports to be compiled by the Member States and reported to the European level via questionnaires. EEA will propose these questionnaires in agreement with DG ENV and enable them by means of a standard electronic tool. The information reported by the Member States will be a combination of statistics around claims in their national markets and qualitative description of the nature of false claims and corrective actions implemented. The tasks of these staff will be of permanent nature to report from countries and produce the analytical report every two years as well as supporting tasks that are necessary in the background (administration, communication, IT development, business support, etc.).

□ TOTAL operational appropriations			**2024**	**2025**	**2026**	**2027**	**TOTAL**
	Commitments	(4)	**2,540**	**7,239**	**5,696**	**5,654**	**21,129**
	Payments	(5)	**2,540**	**7,239**	**5,696**	**5,654**	**21,129**
TOTAL appropriations under HEADING 1 to 3 of the multiannual financial framework	Commitments	=4	**2,540**	**7,239**	**5,696**	**5,654**	**21,129**

Heading of multiannual financial framework	**7**	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

	2024	**2025**	**2026**	**2027 and beyond**	**TOTAL**

DG: ENV						
□ Human resources		0,606	0,606	0,606	0,606	**2,424**
□ Other administrative expenditure		0,180	0,180	0,180	0,180	**0,720**
TOTAL DG ENV	Appropriations	**0,786**	**0,786**	**0,786**	**0,786**	**3,144**

Current staff in DG ENV comprises 2 FTE officials (AD) dealing with policy-related matters and 2 FTE officials (AD) dealing with methodological issues. This staff will continue to be essential in the future and is expected to deal with the following tasks:

- Activities related to the green claim initiative such as policy coordination, green claim initiative's work plan (including a partial coverage of development of further requirements related to specific claims), team coordination, monitoring, stakeholder relation. These activities need the resources of 2 FTE officials.
- Futher development of the EF and other methods for substantiating green claims in line with Art 3: running expert groups, management of the transition phase PEFCRs/OEFSRs (including additional task of EC adoption if parts incorporatted in delegated acts according to Art 3(4) on further specifying the requirements for the substantiation of explicit environmental claim in the future). These activities need the resources of 1 FTE official.
- Managing secondary EF data: management of contracts, data checks, building database, etc. These activities need the resources of 1 FTE official.

In general Life Cycle Assessment (LCA) related tasks (e.g. method and data development) and task related to method and data development for substatiating green claims requires specialised technical/scientific knowledge with scientific PhD-level education and years of experience in the field. Attracting such staff with contract agent conditions is not possible. Therefore, these tasks should be covered via official posts, which, if no specialised staff is available in-house, should be opened to temporary agent posts.

Therefore DG ENV requests additional staff (**3 AD and 1 END** as per the distribution of the positions below) who will:

- prepare approximately 6-7 delegated acts according to Art 3(4) on further specifying the requirements for the substantiation of explicit environmental claims to regulate specific claims, e.g. on repairability, recyclability, durability or establishing specific life-cycle-based rules for certain product groups and sectors;
- prepare implementing acts setting out relevant procedures for approval of new private labelling schemes by the national authorties and the format of certificate of conformity of claims and labelling schemes;

- prepare delegated acts further specifying the criteria for approval of environmental labelling schemes referred to in Article 8 in order to ensure a uniform application across the Union;
- evaluate notified environmental labelling schemes established by public authorities in third countries aiming to operate on the Union market and prepare repsective approval decisions by the Commission with the aim of ensuring that these schemes provide added value in terms of their environmental ambition, their coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector, and meet the requirements of this Directive;
- supervise preparatory, review studies and other studies in preparation of delegated acts;
- develop and manage the EF database relevant for this and other policies such as ESPR, Batteries regulation or taxonomy;

In addition, there are 2 expert groups involved in this policy and the budget should cover three meetings/year per each expert group.

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	**0,786**	**0,786**	**0,786**	**0,786**	**3,144**

EUR million (to three decimal places)

		2024	**2025**	**2026**	**2027 and beyond**	**TOTAL**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	**3,326**	**8,025**	**6,482**	**6,440**	**24,273**
	Payments	**3,326**	**8,025**	**6,482**	**6,440**	**24,273**

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate			Year	Year	Year	Year	Enter as many years as necessary to show the	**TOTAL**

objectives and outputs			N		N+1		N+2		N+3		duration of the impact (see point 1.6)							
	OUTPUTS																	
⇩	Type [123]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[124]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

123 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

124 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Estimated impact on the EEA and COM administrative appropriations

3.2.3.1. Estimated impact on EEA human resources

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2025	**2026**	**2027**	**TOTAL**
Temporary agents (AD Grades)	0,117	0,240	0,244	**0,602**
Temporary agents (AST grades)				
Contract staff	0,063	0,128	0,130	**0,320**
Seconded National Experts				
TOTAL	**0,180**	**0,367**	**0,375**	**0,922**

Staff requirements (FTE):

	2025	**2026**	**2027**	**TOTAL**
Temporary agents (AD Grades)	1	1	1	
Temporary agents (AST grades)				
Contract staff	1	1	1	
Seconded National Experts				
TOTAL	**2**	**2**	**2**	

3.2.3.2. Estimated requirements on administrative appropriations in the Commission

3.2.3.3. Summary of estimated impact on administrative appropriations

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2024	2025	2026	2027 and beyond	TOTAL
HEADING 7 of the multiannual financial framework					
Human resources	0,606	0,606	0,606	0,606	**2,424**
Other administrative expenditure	0,180	0,180	0,180	0,180	**0,720**
Subtotal HEADING 7 of the multiannual financial framework	0,786	0,786	0,786	0,786	**3,144**
Outside HEADING 7[125] of the multiannual financial framework	N/A	N/A	N/A	N/A	N/A
Human resources					
Other expenditure of an administrative nature					
Subtotal outside HEADING 7 of the multiannual financial framework	N/A	N/A	N/A	N/A	N/A
TOTAL	0,786	0,786	0,786	0,786	**3,144**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.4. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

125 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		2024	**2025**	**2026**	**2027 and beyond**
20 01 02 01 (Headquarters and Commission's Representation Offices)		3	3	3	3
20 01 02 03 (Delegations)					
01 01 01 01 (Indirect research)					
01 01 01 11 (Direct research)					
Other budget lines (specify)					
20 02 01 (AC, END, INT from the 'global envelope')		1	1	1	1
20 02 03 (AC, AL, END, INT and JPD in the delegations)					
XX 01 xx **yy zz** 126	- at Headquarters				
	- in Delegations				
01 01 01 02 (AC, END, INT - Indirect research)					
01 01 01 12 (AC, END, INT - Direct research)					
Other budget lines (specify)					
TOTAL		4	4	4	4

Description of tasks to be carried out:

Officials and temporary staff	Cf. explanation provided for H7 in section 3.2.1.
External staff	Cf. explanation provided for H7 in section 3.2.1.

126 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

The LIFE envelope (budget lines 09.02.02) will be used to offset the increase of the EEA subsidy.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

– ☐ requires a revision of the MFF.

3.2.5. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[127]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[127] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[128]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[128] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

EUROPEAN
COMMISSION

Brussels, 22.3.2023
COM(2023) 155 final

2023/0083 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828

(Text with EEA relevance)

{SEC(2023) 137 final} - {SWD(2023) 59 final} - {SWD(2023) 60 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- Reasons for and objectives of the proposal

This explanatory memorandum accompanies the proposal for a Directive promoting the repair of goods purchased by consumers and amending Directive (EU) 2019/771, Directive (EU) 2020/1828 and Regulation (EU) 2017/2394. The proposal delivers on the Commission priority of the green transition, specifically the European Green Deal[1] and its objective of sustainable consumption.

When consumer products become defective, consumers often do not seek to repair them, but discard them prematurely, even though they could be repaired and used for longer. This happens under the legal guarantee of the Sale of Goods Directive (SGD)[2] when consumers choose replacement instead of repair, and outside the legal guarantee, when consumers are dissuaded from repair because of sub-optimal repair choices and conditions. In this context, the use of refurbished goods is also limited, leaving the potential for goods to be reused by different users untapped.

The premature disposal of reparable goods purchased by consumers leads to an increase in waste, and generate greenhouse gas emissions and more demand for valuable resources in the production of new goods. The problem of premature disposal of repairable goods purchased by consumers exists across the EU for a wide range of these goods. More than two-thirds of respondents to the public consultation (65–74%) supported EU-level solutions.

The requests of the Conference on the Future of Europe[3] include a call for a right to repair, in particular in Proposal 5 on sustainable consumption, packaging and production and Proposal 11 on Sustainable Growth and innovation. This proposal on promoting the repair of goods is part of the Commission's reply to this call[4].

To promote sustainable consumption, this Directive aims to increase the repair and reuse of viable defective goods purchased by consumers within and beyond the legal guarantee.

- **Consistency with existing policy provisions in the policy area**

The Commission is pursuing the Green Deal objective of sustainable consumption in a comprehensive manner in various initiatives that tackle different aspects of premature disposal on both the supply and demand side.

On the supply side, the Ecodesign for Sustainable Products Regulation (ESPR) proposal[5], sets the framework for product reparability at the production phase, in particular, on product design requirements and the availability of spare parts.

On the demand side, the proposal for a Directive on empowering consumers for the green transition (ECGT)[6] provides for better information on the durability and reparability of goods at the point of sale. This enables consumers to take sustainable purchasing decisions.

---

1 COM(2019)640 final, 11.12.2019.
2 OJ L 136, 22.5.2019, p. 28
3 Conference on the Future of Europe, Report on the final outcome, May 2022
4 COM(2022)404 final
5 COM(2022) 142 final, 30.3.2022.

Under the proposal for a Regulation on harmonised rules on fair access to and use of data (Data Act), users of connected products shall have access to data they generate during their use and have the right to give such data to a third party of their choice. Such data access will be relevant for independent repairers.

If a product becomes defective in the after-sales phase, the SGD provides the consumers with remedies against sellers for defects that existed at the time when the goods were delivered and become apparent within the liability period of a minimum of 2 years. Under the SGD, consumers choose between repair and replacement free of charge. They cannot request the remedy chosen if it is impossible or disproportionately costly compared to the other remedy.

The combined effect of the ESPR and the ECGT will improve product sustainability and promote sustainable purchases. However, they do not tackle the issues that dissuade consumers from repair in the after-sales phase. This initiative fills that gap focusing on the use phase of goods purchased by consumers. It promotes repair as a remedy in the legal guarantee framework of the SGD and provides consumers and businesses with new tools that promote repair beyond the legal guarantee.

The three initiatives are complementary and generate synergies by establishing a comprehensive approach towards the common objective of sustainable consumption. They are designed to have a cumulative effect and together cover the entire lifecycle of a product.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The legal basis for the proposal is Article 114 Treaty on the Functioning of the European Union (TFEU) which provides for the adoption of measures to ensure the establishment and functioning of the internal market. This proposal contributes to the better functioning of the internal market by setting out a harmonised system of rules to promote repair within and beyond the legal guarantee for the sale of goods purchased by consumers..

The SGD fully harmonises the remedies available to consumers within the legal guarantee framework for the lack of conformity of goods and the conditions under which such remedies can be exercised. It was adopted on the basis of Article 114 TFEU aiming to contribute to the functioning of the internal market by tackling contract law-related obstacles for the cross-border sales of goods purchased by consumers in the EU. This Directive amends in a targeted manner the choice between the remedies of repair and replacement in order to promote repair and thereby more sustainable consumption, using the same legal basis of Article 114 TFEU.
Beyond the SGD, individual Member States have already introduced or are considering to introduce rules promoting the repair and reuse of goods purchased by consumers. Diverging mandatory national rules promoting sustainable consumption in the contractual context create actual or potential obstacles for the smooth functioning of the internal market, adversely affecting cross-border transactions in the internal market. For instance, economic operators may be faced with additional transaction costs for obtaining the necessary legal advice in order to find out about the requirements of the law of the country in the consumer's habitual

[6] COM(2022) 143 final, 30.3.2022

residence, applicable under Regulation (EC) No 593/2008.[7] Repair service providers may be discouraged to offer their services in more than one Member State as they would need to adapt their repair contracts accordingly.

Furthermore, differing national rules and resulting differences in market practices result in low transparency in repair options and conditions. This will dissuade consumers from accessing repair services, in particular across borders as in the absence of harmonised rules the complexity in cross-border transactions is even higher than in a national context. The resulting limited consumer demand hinders the development of repair services, especially across borders. As digital technologies evolve and more goods include digital features that can be accessed remotely, repair services at a distance and across borders are likely to develop even more in the future. The obstacles that discourage consumer demand for repair indirectly also discourage the cross-border movement of goods, such as spare parts and repair equipment that are necessary for repair services.

It is therefore necessary to harmonise certain aspects of repair outside the existing liability of the seller, in order to ensure the functioning of the single market concerning the relation between a consumer and a repairer, increase legal certainty and reduce transaction costs in particular for small and medium sized enterprises, mostly represented in the repair sector.

According to Article 114(3) TFEU, the Commission takes as a basis a high level of environmental and consumer protection. The SGD aims to improve the functioning of the internal market while achieving a high level of consumer protection. This Directive adds the additional objective of promoting sustainable consumption, a circular economy and the green transition, thus also ensuring a high level of environmental protection

- **Subsidiarity**

The problems tackled by this Directive are of a cross-border nature and on a European and global scale.

The SGD has already fully harmonised certain rules on the sale of goods purchased by consumers. As this proposal changes one aspect of these rules in order to promote repair within the legal guarantee, the change needs to be done at EU level.

In the absence of EU-level action, national initiatives outside the scope of the SGD would follow in all likelihood and take different approaches in order to promote repair beyond the legal guarantee in line with the goal of more sustainable consumption. While they could bring certain benefits to consumers and the environment at national level, they would at the same time create or increase fragmentation of the internal market.

EU action is therefore necessary in order to achieve the overall objective of a functioning internal market with more sustainable consumption of goods purchased by consumers. It is only through EU action that the desired effect of promoting repair and reuse in the context of cross-border sales can be achieved consistently across the internal market.

[7] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

- **Proportionality**

This Directive puts forward a balanced approach that respects the principle of proportionality. For promoting repair in the context of the legal guarantee, national laws are amended only to the minimum extent necessary to achieve the objective. This proposal does not interfere with well-established national arrangements on liability periods. The amendment only concerns rules that are already subject to full harmonisation.

Outside the legal guarantee, harmonisation at EU level is limited only to those options, namely the standardised European Repair Information Form and obligation to repair, which have an internal market dimension. Where a solution at national level is equally effective, in particular the repair platform, this is the preferred choice. The design of the European standard for repair services is shaped as a voluntary commitment to avoid far-reaching interference with national laws on the provision of services.

The provisions of this Directive, while aiming at more sustainable consumption, are tailored to the needs they must address and are of a targeted nature, carefully designed in terms of scope and intensity.

- **Choice of the instrument**

The preferred instrument is a standalone directive. It includes on the one hand a targeted amendment to the SGD with respect to remedies under the legal guarantee, and on the other hand, new contractual rules on promoting repair beyond the liability of the seller under the SGD. A directive is the most suitable instrument here, as it ensures the desired harmonisation effect and legal certainty, while also allowing Member States to incorporate the harmonised measures into their national laws without friction.

In addition, as a non-regulatory measure, the Commission intends to encourage the development of a European standard for repair services.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

In line with the Better Regulation guidelines, an extensive consultation strategy was implemented to ensure a wide participation of stakeholders throughout the policy cycle of this proposal. The consultation strategy included relevant stakeholders, including consumers, consumer organisations at both national and EU level, businesses and business associations, environmental organisations, academic experts and national authorities. Several consultation activities took place:

- call for evidence for a period of 12 weeks from 11 January 2022 to 5 April 2022, which resulted in 325 contributions
- online open public consultation for a period of 12 weeks from 11 January 2022 to 5 April 2022, which resulted in 331 contributions

- consumer and business surveys, behavioral experiments and targeted interviews in the context of the impact assessment support study
- targeted bilateral meetings with stakeholders
- workshop with Member States on 7 April 2022

Open public consultation

In the open public consultation, the majority of respondents agreed with the existence of the problem of the decrease in the time during which most goods purchased by consumers are used. Among all stakeholder categories, major causes for the decreased lifespan of goods purchased by consumers included the difficulty for consumers to repair products themselves as well as the inconvenience, high costs or non-availability of repair services for consumers.

The vast majority of all respondents agreed that providing incentives to repair products instead of buying new ones in case of defects, both within and beyond the legal guarantee, is an objective to be pursued in order to promote sustainable consumption. The vast majority of all stakeholders also agreed that providing incentives to buy and use refurbished goods is an important objective for promoting sustainable consumption. A clear majority of all respondents considered the EU the appropriate level for action.

An option to prioritise repair whenever it is cheaper than replacement was found effective by a slight majority of all stakeholders, including the majority of EU-citizens, business stakeholders and public authorities that responded. The majority of consumer and environmental organisations found the measure ineffective.

Half of all stakeholders that responded saw voluntary commitments promoting repair as effective measures. Business stakeholders in particular found this measure effective, while the majority of responding environmental organisations and half of consumer organisations found the measure ineffective.

On the producer's obligation to repair against a price, a slight majority of respondents considered that this should apply where defects result from wear and tear, and half considered that it should apply where defects occur after the legal guarantee has expired. Business stakeholders had a different view: only a minority considered that defects resulting from wear and tear should be covered.

Call for evidence

The call for evidence outlined policy options on promoting repair in the remedies system of the SGD, on the obligation to repair and voluntary commitments promoting repair.

Stakeholders from different categories (business organisations/associations, companies, non-governmental organisations) supported the option that prioritises repair where it is cheaper or at the same cost as replacement in the context of the legal guarantee. On the obligation to repair, business stakeholders underlined that such an obligation should be against a price. The majority of stakeholders supported the option of voluntary commitments promoting repair.

Workshop with Member States

Many Member States did not yet have a position on the outlined measures. The measures that prioritise repair within the remedies system of the SGD generally found more support than

measures that provide other kinds of incentives to consumers to choose repair (such as an extension of the liability period after repair). Some Member States supported repair as the primary remedy when its cost is less than or equal to the replacement cost.

The majority of Member States did not support imposing obligations to repair on economic operators. Some of them argued that an obligation would be an excessive burden and would likely increase the price of goods purchased by the consumers. Those Member States that supported the obligation to repair pointed out that repair costs should not increase due to the obligation and that the producer should bear the responsibility of repair, not the seller.

On the obligation to issue a quote for repair outside the scope of the SGD, the majority of Member States did not have a position. Some supported such a measure while some showed reluctance.

Data collection in the context of the impact assessment support study

Data collection in the context of the impact assessment support study comprised a mystery shopping exercise, a consumer survey with two integrated consumer experiments, a business survey and stakeholder interviews. These provide data for defining the problem and assessing the impact of the policy options.

The mystery shopping exercise, targeted at retailers, resulted in 600 observations about consumer experiences when seeking repair within and outside the legal guarantee and about reasons for not getting products repaired by sellers.

The consumer survey and the integrated experiments on situations within the SGD resulted in 1,000 responses per Member State (10 Member States included) and provided input on consumer experiences when seeking for repair or purchase of second-hand goods. The second consumer experiment covering situations outside the legal guarantee period resulted in 800 observations per Member State (10 Member States included) and provided data on the barriers to repair, information of repair and consumer likelihood to repair under different circumstances.

The business survey conducted among producers, sellers and repairers resulted in 80 full responses and 284 partial responses. It provided data for the analysis of the repair market and market practices regarding the repair and replacement of defective goods. Lastly, 21 stakeholder interviews provided insights into the problem definition and market practices.

- **Impact assessment**

This proposal is based on an impact assessment. The Commission's Regulatory Scrutiny Board (RSB) first issued a negative opinion on 30 September 2022. After the initial draft, underwent a significant revision, the RSB provided a positive opinion with further comments on 24 January 2023. Annex 1 of the impact assessment explains how the RSB comments were addressed.

Several of policy options were examined on tackling the premature disposal of goods purchased by consumers both within and outside the legal guarantee.

The assessed options to promote the repair and reuse of goods **within the legal guarantee** include: prioritising repair within the remedies system of the SGD whenever it is cheaper than

replacement; making repair the primary remedy; extending the liability period in the context of repair; aligning the liability period of refurbished goods with new goods; and replacing defective goods with refurbished goods.

The assessed options to facilitate and encourage the repair and reuse of goods **beyond the legal guarantee** include: providing information on repair by producers and by a matchmaking platform on repair and refurbished goods at national or EU level; improving transparency and conditions for repair by way of voluntary commitments; obliging repairers to issue a repair quote on price and conditions for repair; and obliging producers to repair goods subject to reparability requirements under Union law or all products against a price.

The **preferred options package** includes options from both clusters, with a focus on addressing repair beyond the legal guarantee. The largest share of defects appears in this scenario and so the potential to increase repair is the highest. On the basis of a multi-criteria and cost-benefit analysis as well as a qualitative assessment of the proportionality of the various options considered, a combination of six preferred policy options was proposed to address the problems:

– prioritising repair whenever it is cheaper than replacement within the legal guarantee framework.

– an online platform at national level, matchmaking consumers with repairers and promoting refurbished goods.

– an obligation on repairers to issue upon request a quote on price and conditions for repair in a standardised form (European Repair Information Form).

– an obligation on producers of goods to which reparability requirements under Union law apply to repair outside the legal guarantee against a price.

– an obligation on producers to inform on their applicable obligation to repair.

– a voluntary EU easy repair standard (European Standard for repair services).

The preferred options package increases the repair of goods purchased by consumers both within and outside the legal guarantee by tackling several of the identified drivers of premature disposal of these goods.

Prioritising repair over replacement within the remedies system of the SGD will drive consumer behaviour towards sustainable consumption and increase repairs within the legal guarantee of viable goods purchased by consumers..

Beyond the legal guarantee, various measures will make repair easier and more attractive for consumers, increasing repairs and the lifetime of consumer goods. The national online repair platform and the obligation of producers to inform on their applicable obligation of repair services will improve the transparency of available repair services. The binding quote on repair price and conditions (European Repair Information Form) will tackle consumer price concerns and inconvenience factors in the repair process through transparency and predictability and make it easier to compare offers. The obligation to repair will promote sustainable consumption by giving consumers a right to claim repair against the producer for specific product groups that are reparable by design. The European Standard for repair services is a useful non-regulatory add-on to the binding measures that will build consumer

trust in repair services. The refurbishment function of the national platform increases the use of refurbished goods bringing benefits both to the demand and supply side.

The preferred options package contributes to increased employment, investment, and competition in the EU repair sector in the internal market, while bringing benefits to EU consumers (EUR 176.5 billion consumer savings over 15 years, translating into 25 EUR per consumer annually) and the environment (saving 18.4 million tonnes of $CO2^{8}$ over 15 years). Independent repairers, including small and medium-sized enterprises are well placed to benefit from this package. Businesses will face losses due to forgone sales and reduced production of new goods, but substantial consumer savings exceed the cost on businesses. The losses of businesses therefore reflect a transfer from business revenues to consumer welfare. Consumers are also likely to invest the money saved in the overall economy, which in turn will lead to growth and investment.

- **Fundamental rights**

The package has a positive impact on fundamental rights enshrined in the Charter of Fundamental Rights of the European Union (Charter). It promotes the right to a high level of environmental protection and improvement in the quality of the environment, as set out in Article 37 of the Charter. In particular, it helps to reduce greenhouse gas emissions, waste and use of new resources by increasing repairs both within and beyond the legal guarantee and thereby extending the lifetime of goods purchased by consumers. This proposal contributes to a high level of consumer protection (Article 38 of the Charter) by strengthening consumer rights beyond the legal guarantee. This will be ensured by

(a) providing consumers with tools that improve transparency and conditions for repair.

(b) obliging producers to repair beyond the legal guarantee certain goods purchased by consumers.

These measures will encourage and facilitate the choice of repair when goods become defective and prevent consumers from unnecessarily buying new replacement goods, reducing consumer expenditure.

While this proposal regulates certain business practices concerning repair in view of the sustainable consumption objective, it safeguards contractual freedom and is conducive to the freedom to conduct business (Article 16 of the Charter). The provisions under this proposal aim at boosting the repair market without creating a burden, in particular for small and medium-sized enterprises.

This proposal also contributes to the integration of persons with disabilities (Article 26 of the Charter), as Member States are required to ensure accessibility to the online platform for repair also for persons with disabilities, thereby facilitating their access to repair services. In addition, the proposal seeks to ensure the right to an effective remedy and to a fair trial (Article 47 of the Charter), in particular by specific provisions on enforcement to ensure compliance with this Directive.

[8] The environmental impact of the preferred option package has to be seen together with those of the ESPR (471 million tonnes of CO2 savings) and the ECGT (0.33-0.47 million tonnes CO2 savings), as they are designed to have a complementary effect. The combined environmental impact is therefore very significant. The initiatives also help each other to generate their impact.

4. BUDGET IMPLICATIONS

This proposal will not have implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will evaluate the impacts of this initiative 5 years after its entry into application. This allows for the necessary period for application and evidence collection in Member States. The progress will be monitored based on a set of indicators covering the package as a whole and its individual elements. Data on the transposition and application of the initiative will also feed into the evaluation. For that purpose, the Commission will also remain in contact with Member States and stakeholders.

The Commission will draw up a report in respect on the delegation of power to adopt delegated acts not later than 9 months before the end of the six-year period of empowerment.

- **Detailed explanation of the specific provisions of the proposal**

Article 1: Subject matter, purpose and scope

Article 1(1) indicates the subject matter of this Directive, which is to improve the functioning of the internal market by laying down common rules promoting the repair of goods purchased by consumers. In line with Article 114(3) TFEU, the Commission takes as its basis a high level of environmental and consumer protection. While pursuing the same purpose as the SGD, namely to improve the functioning of the internal market and achieve a high level of consumer protection, this Directive also adds environmental protection as an ancillary objective. In particular, by promoting sustainable consumption through repair and reuse this Directive contributes to a circular economy and the green transition.

Article 1 (2) defines the scope of this Directive which shall apply to the repair of goods purchased by consumers in the event of a defect of the goods that occurs or becomes apparent outside the liability of the seller pursuant to Article 10 of Directive (EU) 2019/771. This may be the case where the defect did not exist yet at the time that the goods were delivered to the consumer or where the lack of conformity becomes apparent only after the liability period. For these defects, this Directive introduces several provisions, namely the obligation to provide the European Repair Information Form (Article 4), the obligation to repair (Article 5) with the corresponding information requirement (Article 6) and, the platform for repair and refurbishment (Article 7). This Directive also introduces changes to the remedies systems concerning defects that fall within the liability of the sellers pursuant to Article 10 of SGD. In particular, Article 12 of this Directive amends in a targeted manner the choice between repair and replacement under the SGD. In line with the SGD, Article 12 applies to sales contracts concluded between consumers and sellers.

Article 2: Definitions

Article (2) introduces the definition of 'repairer', which is any natural or legal person who offers a repair service for commercial purposes, including independent repair service providers, producers and sellers that offer repair services.

Article 2(7) contains a definition of 'reparability requirements', which relates to the producer's obligation to repair goods that are covered by such reparability requirements provided for by Union legal acts (Article 5). 'Reparability requirements' should mean any requirements under Union legal acts listed in Annex II that enable a product to be repaired. These are for instance requirements for the disassembly and the availability of spare parts applicable to products or specific components of products, as well as repair-related information and tools.

In addition, Article 2 refers to several definitions already established in the SGD and in the ESPR.

Article 3: Level of harmonisation

In line with the SGD, this Directive follows a full harmonisation approach, whereby Member States cannot maintain or introduce in their national law provisions that diverge from those laid down in this Directive.

Article 4: European Repair Information Form

Article 4(1) introduces an obligation for repairers to provide standardised key information on their repair services via the European Repair Information Form set out in Annex I. Such standardised presentation will allow consumers to assess and easily compare repair services. Consumers will be free to decide whether they need the European Repair Information Form in a given case, for instance where they would like to gain an overview of the key conditions of the repair service or in order to compare different repair services. In such cases when it is needed and brings added value consumers can obtain the form from repairers upon request.

Article 4(2) sets out that repairers who are not obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service, thereby avoiding unnecessary burden on the repairers.

If repairers incur costs that are necessary for providing the European Repair Information Form, for instance, for inspecting the defective goods, they may request the consumer to pay these limited costs (Article 4(3)).

Article 4(4) sets out the key parameters that influence consumer decisions when considering repair. These are in particular: the price for repair or, if the price cannot be calculated in advance, the calculation method and the maximum price, repair conditions such as the time needed to complete repair, the availability of temporary replacement goods during the time of repair, the place where the consumer hands over the goods for repair and the availability of ancillary services such as removal, installation and transportation, where relevant.

Article 4(5) prohibits repairers to alter the European Repair Information Form for 30 days, once provided. This ensures that consumers have sufficient time to compare different repair offers and are protected from changing conditions. In order to safeguard contractual freedom of repairers, repairers who are not obliged to repair by virtue of Article 5, remain free to decide whether to conclude a contract, even if they had provided a form upon the consumer's

request. If a contract for a provision of repair is concluded, repairers are bound to the information given in the European Repair Information Form, which also constitutes an integral part of the contract for the provision of the repair services.

The European Repair Information Form will also make it easier to provide information on repair services including for micro, small and medium sized repairers, as Article 4(6) provides that repairers should be deemed to have fulfilled corresponding information requirements related to a repair service laid down in Directives 2011/83/EU, 2006/123/EC and 2000/31/EC.

Article 5: Obligation to repair

Article 5 introduces an obligation for producers to repair defects outside the liability of the seller upon the request of consumers and against a price.

In terms of scope, Article 5(1) limits the obligation to repair to goods for which and to the extent reparability requirements are established in Union legal acts listed in Annex II of this Directive. Those goods include product groups covered by reparability requirements under the ecodesign framework, such as household washing machines, household dishwashers, refrigerating appliances and vacuum cleaners. The reparability requirements under Union legal acts listed in Annex II ensure that the respective products are technically reparable. The obligation to repair corresponds to the scope of the reparability requirements,[9] among others to the components covered and the period during which the respective reparability requirements apply. Therefore, linking the obligation to repair to existing reparability requirements in Union legal acts in Annex II ensures that this obligation can be performed in practice and that there is legal certainty for economic operators. The obligation to repair under this Directive, which allows consumers to directly claim repair against the producer in the after-sales phase, complements supply-side requirements on reparability, encouraging consumer demand for repair.

According to Article 5(1), the producer may perform the obligation to repair for free of against a price. Where the producer repairs against a price, such repair services could become an additional source of revenue and the producer would have an interest to reach an agreement on the price with the consumer in order to conclude a contract. The competitive pressure from other repair actors are likely to keep the price acceptable for the consumer. The producer may also have an interest to perform the obligation for free as part of a commercial guarantee on durability of its products.

The producer should be exempted from the obligation to repair only where repair is impossible, for instance, where goods are damaged in a manner, which makes repair technically unfeasible (Article 5(1) sentence 2).

Article 5(2) regulates the situation where consumers purchase a good from a third country producer established outside the Union. It provides legal certainty for third country producers by specifying how they may comply with the obligation to repair when marketing goods

[9] For example, Commission Regulation (EU) 2019/2023 requires that manufacturers, importers or authorised representatives of household washing machines and household washer-dryers make available to professional repairers a specified list of spare parts, for a minimum period of 10 years after placing the last unit of the model on the market. Therefore, the obligation to repair will apply to the respective products, defects that necessitate a replacement with such spare parts and the time period of 10 years.

purchased by consumers in the Union. It also provides legal certainty to consumers by specifying which economic operators they may approach in the Union with respect to the obligation to repair of third country producers

To keep Annex II up to date, Article 5(4) introduces an empowerment for the Commission to adopt delegated acts to amend Annex II, for instance by adding new product groups when new reparability requirements are adopted in Union legal acts. The Commission empowerment for delegated acts will ensure that all relevant future reparability requirements can be integrated into Annex II.

Article 6: Information on obligation to repair

If producers are obliged to repair goods pursuant to Article 5, they need to inform consumers of that obligation and provide information on the repair services (Article 6). The information obligation aims to ensure that consumers are aware of the obligation to repair, which will increase the likelihood of repair. Article 6 allows for flexibility in how the information is made accessible as long as the producer makes it available in a clear and comprehensible manner.

Article 7: Online platform for repair and goods subject to refurbishment

Article 7 introduces an obligation for Member States to provide for at least one national platform to matchmake consumers with repairers. This will help consumers assess and compare the merits of different repair services and thereby incentivise them to choose repair instead of buying new goods. Where a relevant national platform already exists that meets the conditions set out in this Directive, Member States should not be required to create new platforms.

Article 7(1) sets a number of requirements that the national platform needs to comply with. First, the platform should include search functions for goods, location of repair services and repair conditions, for instance, the time needed to complete the repair, the availability of temporary replacement goods, ancillary services and quality standards for repairers (Article 7(1)(a)). The platform should also enable consumers to directly request the European Repair Information Form via the platform (Article 7(1)(b)) in order to make it easier for them to obtain it. To ensure that the information on the platform is accurate, the platform should allow the repairers to make regular updates (Article 7(1)(c)). In addition, in order to build consumer trust, it should allow for special labels to be displayed in accordance with national and Union law whereby repairers indicate their adherence to European or national quality standards related to repair (Article 7(1)(d)). To create awareness, the platform should also enable accessibility through national websites connected to the Single Digital Gateway (Article 7(1)(e)).

To promote the refurbishment of goods, Article 7(2) requires Member States to ensure that the online platform also includes a search function to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment.

Article 7(3) clarifies that registration on the platform is voluntary for repair and refurbishment actors. In addition, Member States should be free to decide who can access the repair platform and how it should be accessed, as long as all repairers in the EU are treated equally. Consumers should be able to access the platform for free.

Article 12: Amendment to the SGD

Article 12 adapts in a targeted manner the harmonised conditions under which the choice between the remedies of repair and replacement can be exercised according to Article 13(2) SGD. This article stipulates that the consumer may choose between repair and replacement, unless the remedy chosen would be impossible or, compared to the other remedy, would impose costs on the seller that would be disproportionate. While maintaining this principle, Article 12 adds an additional sentence to Article 13(2) SGD to promote repair over replacement, stating that the seller should always repair the goods where the costs for replacement are equal to or greater than the costs for repair. As a result, the consumer may only choose replacement as a remedy when it is cheaper than repair.

2023/0083 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[10],

Acting in accordance with the ordinary legislative procedure[11],

Whereas:

(1) Directive (EU) 2019/771 of the European Parliament and of the Council[12] pursues the objective of improving the functioning of the internal market, while achieving a high level of consumer protection. In the context of the green transition, this Directive pursues the objective of improving the functioning of the internal market, while promoting more sustainable consumption, and thereby complements the objective pursued by Directive (EU) 2019/771.

(2) In order to achieve these objectives, and in particular to facilitate cross-border provision of services and competition among repairers of goods purchased by consumers in the internal market, it is necessary to lay down uniform rules promoting the repair of goods purchased by consumers within and beyond the liability of the seller established by Directive (EU) 2019/771. Member States have already taken or are considering to introduce rules promoting repair and reuse of goods purchased by consumers outside the existing liability of the seller established by Directive (EU) 2019/771. Differing mandatory national rules in this area constitute actual or potential obstacles to the functioning of the internal market, adversely affecting cross-border transactions of economic operators acting on that market. Those operators may have to adapt their services to comply with the different mandatory national rules and may be

---

10 OC J […]

11 Position of the European Parliament of […] (not yet published in the Official Journal) and decision of the Council of […].

12 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, p. 28).

faced with additional transaction costs for obtaining the necessary legal advice on the requirements of the law of the Member State of the consumer's habitual residence, when applicable pursuant to Regulation (EC) 593/2008 of the European Parliament and of the Council[13], and to adapt their contracts for the provision of repair services accordingly. This will affect, in particular, small and medium sized enterprises, mostly represented in the repair sector. Legal fragmentation may also negatively affect consumer confidence in cross-border repair due to uncertainties regarding factors which are important for the decision to repair goods.

(3) In order to reduce premature disposal of viable goods purchased by consumers and to encourage consumers to use their goods longer, it is necessary to set out rules on repair of such goods. Repair should result in more sustainable consumption, since it is likely to generate less waste caused by discarded goods, less demand for resources, including energy, caused by the process of manufacturing and sale of new goods replacing defective goods, as well as less greenhouse gas emissions. This Directive promotes sustainable consumption in view of achieving benefits for the environment while also producing benefits for consumers by avoiding costs associated with new purchases in the short term.

(4) Regulation (EU)… of the European Parliament and of the Council [on the Ecodesign Sustainable Products] lays down, in particular, supply-side requirements pursuing the objective of more sustainable product design at the production phase. Directive (EU)… of the European Parliament and of the Council [on Empowering consumers for the green transition] lays down demand-side requirements ensuring the provision of better information on durability and reparability of goods at the point of sale, which should enable consumers to make informed sustainable purchasing decisions. This Directive complements those supply-side and demand-side requirements, by promoting repair and reuse in the after-sales phase both within and outside the liability of the seller established by Directive (EU) 2019/771. This Directive thus pursues the objectives, in the context of the European Green Deal, of promoting a more sustainable consumption, a circular economy and the green transition.

(5) This Directive should not affect the freedom of Member States to regulate aspects of contracts for the provision of repair services other than those harmonised in Union law.

(6) Reparability requirements should comprise all requirements under Union legal acts which ensure that goods can be repaired, including but not limited to requirements under the ecodesign framework referred to in Regulation [on the Ecodesign for Sustainable Products], to cover a broad range of products as well as future developments in any other field of Union law.

(7) In order to help consumers identify and choose suitable repair services, consumers should receive key information on repair services. The European Repair Information Form should lay down key parameters that influence consumer decisions when considering whether to repair defective goods. This Directive should set out a model standardised format. A standardised format for presenting repair services should allow consumers to assess and easily compare repair services. Such standardised format should also facilitate the process of providing information on repair services, in particular for micro, small and medium sized businesses providing repair services. In

[13] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

order to avoid additional burdens due to overlapping pre-contractual information requirements, a repairer should be deemed to have fulfilled corresponding information requirements of relevant EU legal acts, where applicable, if the European Repair Information Form has been filled in correctly and provided to the consumer. Information in the European Repair Information Form should be provided to consumers in a clear and comprehensible manner and in line with the accessibility requirements of Directive 2019/882[14].

(8) The consumer's free choice to decide by whom to have its goods repaired should be facilitated by requesting the European Repair Information Form not only from the producer, but also from the seller of the goods concerned or from independent repairers, where applicable. Repairers should provide the European Repair Information Form only where the consumer requests that form and the repairer intends to provide the repair service or it is obliged to repair. A consumer may also choose not to request the European Repair Information Form and to conclude a contract for the provision of repair services with a repairer pursuant to pre-contractual information provided by other means in accordance with Directive 2011/83/EU of the European Parliament and the Council. [15]

(9) There are situations in which a repairer incurs costs necessary for providing the information on repair and price included in the European Repair Information Form. For instance, the repairer may need to inspect the goods to be able to determine the defect or type of repair that is necessary, including the need for spare parts, and to estimate the repair price. In these cases, a repairer may only request a consumer to pay the costs that are necessary for providing the information included in the European Repair Information Form. In line with the pre-contractual information and other requirements set out in Directive 2011/83/EU, the repairer should inform the consumer about such costs before the consumer requests the provision of the European Repair Information Form. Consumers may refrain from requesting the European Repair Information Form where they consider that the costs for obtaining that form are too high.

(10) Repairers should not alter the conditions of repair that they provide in the European Repair Information Form, including on the price for repair, for a certain period of time. This ensures that consumers are given sufficient time to compare different repair offers. In order to safeguard as much as possible the contractual freedom for repairers other than producers of goods for whom an obligation to repair applies, to be able to decide whether to conclude a contract for the provision of repair services at all, repairers should remain free to decide not to conclude such a contract, including in situations where they have provided the European Repair Information Form. If a contract for the provision of repair services is concluded based on the European Repair Information Form, the information on conditions of repair and price contained in that form should constitute an integral part of the contract for the provision of repair services, thereby defining the repairer's obligations under that contract. Non-

---

14 Directive 2019/882/EU of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

15 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 (Text with EEA relevance) (OJ L 304, 22.11.2011, p. 64–88).

compliance with those contractual obligations is governed by the applicable national law.

(11) Directive (EU) 2019/771 imposes an obligation on sellers to repair goods in the event of a lack of conformity which existed at the time that the goods were delivered and which becomes apparent within the liability period. Under that Directive, consumers are not entitled to have defects repaired which fall outside that obligation. As a consequence, a large number of defective, but otherwise viable, goods are prematurely discarded. In order to encourage consumers to repair their good in such situations, this Directive should impose an obligation on producers to repair goods to which reparability requirements imposed by Union legal acts apply. That repair obligation should be imposed, upon the consumer's request, on the producers of such goods, since they are the addressees of those reparability requirements. That obligation should apply to producers established both inside and outside the Union in relation to goods placed on the Union market.

(12) Since the obligation to repair imposed on producers under this Directive covers defects that are not due to the non-conformity of the goods with a sales contract, producers may provide repair against a price paid by the consumer, against another kind of consideration, or for free. The charging of a price should encourage producers to develop sustainable business models, including the provision of repair services. Such a price may take into account, for instance, labour costs, costs for spare parts, costs for operating the repair facility and a customary margin. The price for and the conditions of repair should be agreed in a contract between the consumer and the producer and the consumer should remain free to decide whether that price and those conditions are acceptable. The need for such a contract and the competitive pressure from other repairers should encourage producers who are obliged to repair to keep the price acceptable for the consumer. The repair obligation may also be performed for free when the defect is covered by a commercial guarantee, for instance, in relation to guaranteed durability of goods.

(13) Producers may fulfil their obligation to repair by sub-contracting repair, for instance, if the producer does not have the repair infrastructure or if repair can be carried out by a repairer located closer to the consumer, among others where the producer is established outside the Union.

(14) The requirements laid down in delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council[16], according to which producers should provide access to spare parts, repair and maintenance information or any repair related software tools, firmware or similar auxiliary means, apply. Those requirements ensure the technical feasibility of repair, not only by the producer, but also by other repairers. As a consequence, the consumer can select a repairer of its choice.

(15) The obligation to repair should also be effective in cases where the producer is established outside the Union. In order to enable consumers to turn to an economic operator established within the Union to perform this obligation, this Directive foresees a sequence of alternative economic operators required to perform the

[16] Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (Text with EEA relevance) (OJ L 285, 31.10.2009, p. 10–35).

obligation to repair of the producer in such cases. This should enable producers located outside the Union to organise and perform their obligation to repair within the Union.

(16) To avoid overburdening producers and to ensure they are able to perform their obligation to repair, that obligation should be limited to those products for which and to the extent any reparability requirements are provided for in Union legal acts. Reparability requirements do not oblige producers to repair defective goods, but ensure that goods are reparable. Such reparability requirements can be laid down in relevant Union legal acts. Examples are delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council[17], which create a framework to improve the environmental sustainability of products. This limitation of the obligation to repair ensures that only those goods which are reparable by design are subject to such obligation. Relevant reparability requirements include design requirements enhancing the ability to disassemble the goods and a range of spare parts to be made available for a minimum period. The obligation to repair corresponds to the scope of the reparability requirements, for instance, ecodesign requirements may apply only to certain components of the goods or a specific period of time may be set to make spare parts available. The obligation to repair under this Directive, which allows the consumer to claim repair directly against the producer in the after-sales phase, complements the supply-side related reparability requirements laid down in Regulation [on the Ecodesign Sustainable Products], encouraging consumer demand for repair.

(17) To ensure legal certainty, this Directive lists in Annex II relevant product groups covered by such reparability requirements under Union legal acts. In order to ensure coherence with future reparability requirements under Union legal acts, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of in particular adding new product groups to Annex II when new reparability requirements are adopted. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[18]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(18) While this Directive imposes the obligation to repair on the producer, it also facilitates consumer choice of repair services from other repairers. This choice should in particular be facilitated by requesting the European Repair Information Form not only from the producer but also other repairers like the seller or independent repairers or by searching via the online repair platform. As consumers would need to pay for the repair, they are likely to compare repair opportunities in order to choose the most suitable repair services for their needs. Thus, it is likely they approach independent

[17] Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast).

[18] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 213,12.5.2016, p. 1).

repairers in their proximity or the seller before reaching out to producers which may for instance be located at a greater distance and for which the price could be higher due to transportation costs.

(19) In line with Directive (EU) 2019/771, a producer should be exempted from the obligation to repair where repair is factually or legally impossible. For example, the producer should not refuse repair for purely economic reasons, such as the costs of spare parts. National law implementing Directive (EU) 2019/771 or the preceding Directive 1999/44/EC of the European Parliament and of the Council[19] is already using the criterion whether repair is impossible and national courts are applying it.

(20) In order to increase the consumer awareness on the availability of repair and thus its likelihood, producers should inform consumers of the existence of that obligation. The information should mention the relevant goods covered by that obligation, together with an explanation that and to what extent repair is provided for those goods, for instance through sub-contractors. That information should be easily accessible to the consumer and provided in a clear and comprehensible manner, without the need for the consumer to request it, and in line with the accessibility requirements of Directive 2019/882. The producer is free to determine the means through which it informs the consumer.

(21) In order to encourage repair, Member States should ensure that for their territory at least one online platform exists which enables consumers to search for suitable repairers. That platform may be an existing or privately operated platform, if it meets the conditions laid down in this Directive. That platform should include user-friendly and independent comparison tools which assist consumers in assessing and comparing the merits of different repair service providers, thereby incentivising consumers to choose repair instead of buying new goods. While that platform aims at facilitating the search for repair services in business-to-consumer relationships, Member States are free to extend its scope also to include business-to-business relationships as well as community-led repair initiatives.

(22) Member States should ensure that all economic operators that may provide repair services in the Union have easy access to the online platform. Member States should be free to decide which repairers can register on the online platform as long as access to that platform is reasonable and non-discriminatory for all repairers in accordance with Union law. Enabling repairers from one Member State to register on the online platform in another Member State in order to provide repair services in areas that the consumer searched for should support the cross-border provision of repair services. It should be left to Member States' discretion how to populate the online platform, for instance by self-registration or extraction from existing databases with the consent of the repairers, or if registrants should pay a registration fee covering the costs for operating the platform. To guarantee a wide choice of repair services on the online platform, Member States should ensure that access to the online platform is not limited to a specific category of repairers. While national requirements, for instance, on the necessary professional qualifications, continue to apply, Member States should ensure that the online platform is open to all repairers that fulfil those requirements. Member States should also be free to decide whether and to what extent community-led repair initiatives, such as repair cafés, may register on the online platform, taking account of

[19] 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 (OJ L 171, 7.7.1999, p. 12).

safety considerations where relevant. Registration on the online platform should always be possible upon repairers' request, provided they fulfil the applicable requirements to access the online platform.

(23) Member States should ensure that consumers have easy access to the online platform allowing them to find suitable repair services for their defective goods. The online platform should also be accessible to vulnerable consumers, including persons with disabilities, in accordance with applicable Union law relating to accessibility.

(24) The search function based on products may refer to the product type or brand. Since repairers cannot know the specific defect before a request to repair has been made, it is sufficient that they provide on the online platform generic information on key elements of repair services to enable consumers to decide whether to repair the good in question, in particular the average time to complete repair, the availability of temporary replacement goods, the place where the consumer hands over the goods for repair and the availability of ancillary services. Repairers should be encouraged to regularly update their information on the online platform. In order to build consumer confidence in the repair services available on the online platform, repairers should be able to demonstrate their adherence to certain repair standards.

(25) In order to facilitate obtaining the European Repair Information Form, the online platform should include the possibility for consumers to directly request that form from the repairer through the online platform. This possibility should be displayed in a prominent manner on the online platform. To create awareness of national online repair platforms and to facilitate access to such platforms across the Union, Member States should ensure that their online platforms are accessible through relevant national webpages connected to the Single Digital Gateway established by Regulation (EU) 2018/1724 of the European Parliament and of the Council[20]. To raise consumer awareness of the online platform, Member States should undertake appropriate steps, for instance sign-post the online platform on related national websites or carry out communication campaigns.

(26) In order to promote sustainable consumption of goods in situations outside the liability of the seller, the online platform should also promote goods subject to refurbishment as an alternative to repair or to buying new goods. To that end, the online platform should include a functionality allowing consumers to find sellers of goods subject to refurbishment or businesses buying defective goods for refurbishment purposes, in particular by enabling a search function per product category. Such sellers of goods subject to refurbishment or purchasers of defective goods for refurbishment should have access to the platform based on the same principles and technical specifications applicable to the repair functionality.

(27) The Commission should enable the development of a voluntary European quality standard for repair services, for instance by encouraging and facilitating voluntary cooperation on a standard between businesses, public authorities and other stakeholders or by issuing a standardisation request to the European standardisation organisations. A European standard for repair services could boost consumer trust in repair services across the Union. Such standard could include aspects influencing

[20] Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

consumer decisions on repair, such as the time to complete repair, the availability of temporary replacement goods, quality assurances such as a commercial guarantee on repair, and the availability of ancillary services such as removal, installation and transportation offered by repairers.

(28) In order to promote repair within the liability of the seller as established in Directive (EU) 2019/771, the harmonised conditions under which the choice between the remedies of repair and replacement can be exercised should be adapted. The principle established in Directive (EU) 2019/771 to use the consideration whether the remedy chosen would impose costs on the seller that are disproportionate as compared to the other remedy, as one of the criteria to determine the applicable remedy, should be maintained. The consumer remains entitled to choose repair over replacement, unless repair would be impossible or it would impose disproportionate costs on the seller as compared to replacement. However, where the costs for replacement are higher than or equal to the costs of repair, the seller should always repair the goods. Hence, the consumer is entitled to choose replacement as a remedy only where it is cheaper than repair. Directive (EU) 2019/771 should therefore be amended accordingly.

(29) In order to enable the enforcement of the rules set out in this Directive by means of representative actions, an amendment of Annex I to Directive (EU) 2020/1828 of the European Parliament and of the Council[16] is necessary. For competent authorities designated by their Member States to cooperate and coordinate actions with each other and with the Commission in order to enforce compliance with the rules set out in this Directive, an amendment of the Annex to Regulation 2017/2394 of the European Parliament and of the Council[17] is necessary.

(30) In order to allow economic operators to adapt, transitional provisions concerning the application of some Articles of this Directive should be introduced. Thus, the obligations to repair and to provide related information on this obligation should apply to contracts for the provision of repair services after [24 months after the entry into force]. The amendment to Directive (EU) 2019/771 should apply only to sales contracts concluded after [24 months after the entry into force] to ensure legal certainty and to provide sellers with sufficient time to adapt to the amended remedies of repair and replacement.

(31) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[18], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(32) Promoting the repair of goods purchased by consumers, with a view to contributing to the proper functioning of the internal market while providing for a high level of environmental and consumer protection, cannot be sufficiently achieved by the Member States. Emerging national mandatory rules promoting sustainable consumption by way of repair of defects outside the scope of Directive (EU) 2019/771 are likely to diverge and lead to fragmentation of the internal market. Member States may not amend the fully harmonised rules concerning defects within the liability of the seller set out in Directive (EU) 2019/771. The objective of this Directive can rather, by reason of its scale and effects, better be achieved at Union level through fully harmonised common rules promoting repair within and outside the liability of the

seller established in Directive (EU) 2019/771. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

(33) This Directive respects the fundamental rights and freedoms and seeks to ensure full respect in particular for Articles 16, 26, 37, 38 and 47 of Charter of Fundamental Rights of the European Union. It contributes to an improvement of the quality of the environment in accordance with Article 37 of the Charter of Fundamental Rights of the European Union by promoting sustainable consumption of goods and thereby reducing negative environmental impacts from premature disposal of viable goods. This Directive ensures full respect for Article 38 on consumer protection by enhancing consumer rights relating to defects that occur or become apparent outside the liability of the seller pursuant to Article 10 of Directive (EU) 2019/771. It also ensures respect for the freedom to conduct a business in accordance with Article 16 of the Charter of Fundamental Rights of the European Union by safeguarding contractual freedom and encouraging the development of repair services in the internal market. This Directive contributes to the integration of persons with disabilities in accordance with Article 26 the Charter of Fundamental Rights of the European Union by facilitating accessibility to the online platform for persons with disabilities. This Directive seeks to ensure full respect for Article 47 on the right to an effective remedy and to a fair trial through effective means of enforcement.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter, purpose and scope

1. This Directive lays down common rules promoting the repair of goods, with a view to contributing to the proper functioning of the internal market, while providing for a high level of consumer and environmental protection.

2. This Directive shall apply to the repair of goods purchased by consumers in the event of a defect of the goods that occurs or becomes apparent outside the liability of the seller pursuant to Article 10 of Directive (EU) 2019/771.

Article 2

Definitions

For the purpose of this Directive, the following definitions apply:

1. ‘consumer’ means a consumer as defined in Article 2, point (2) of Directive (EU) 2019/771;
2. ‘repairer’ means any natural or legal person who, related to that person’s trade, business, craft or profession, provides a repair service, including producers and sellers that provide repair services and repair service providers whether independent or affiliated with such producers or sellers;
3. ‘seller’ means a seller as defined in Article 2, point (3) of Directive (EU) 2019/771;
4. ‘producer’ means a manufacturer as defined in Article 2, point (42) of Regulation [on the Ecodesign for Sustainable Products];
5. ‘authorised representative’ means authorised representative as defined in Article 2, point (43), of Regulation [on the Ecodesign for Sustainable Products];
6. ‘importer’ means importer as defined in Article 2, point (44), of Regulation [on the Ecodesign for Sustainable Products];
7. ‘distributor’ means distributor as defined in Article 2, point (45), of Regulation [on the Ecodesign for Sustainable Product];
8. ‘goods’ means goods as defined in Article 2, point (5), of Directive (EU) 2019/771 except water, gas and electricity;
9. ‘refurbishment’ means refurbishment as defined in Article 2, point (18), of Regulation [on the Ecodesign for Sustainable Products];
10. ‘reparability requirements’ mean requirements under the Union legal acts listed in Annex II which enable a product to be repaired including requirements to improve its ease of disassembly, access to spare parts, and repair-related information and tools applicable to products or specific components of products;

Article 3

Level of harmonisation

Member States shall not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

Article 4

European Repair Information Form

1. Member States shall ensure that, before a consumer is bound by a contract for the provision of repair services, the repairer shall provide the consumer, upon request, with the European Repair Information Form set out in Annex I on a durable medium within the meaning of Article 2 (11) of Directive 2019/771/EU.
2. Repairers other than those obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service.

3. The repairer may request the consumer to pay the necessary costs the repairer incurs for providing the information included in the European Repair Information Form.

Without prejudice to Directive 2011/83/EU, the repairer shall inform the consumer about the costs referred to in the first subparagraph before the consumer requests the provision of the European Repair Information Form.

4. The European Repair Information Form shall specify the following conditions of repair in a clear and comprehensible manner:

(a) the identity of the repairer;

(b) the geographical address at which the repairer is established as well as the repairer's telephone number and email address and, if available, other means of online communication which enable the consumer to contact, and communicate with, the repairer quickly and efficiently;

(c) the good to be repaired;

(d) the nature of the defect and the type of repair suggested;

(e) the price or, if the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated and the maximum price for the repair;

(f) the estimated time needed to complete the repair;

(g) the availability of temporary replacement goods during the time of repair and the costs of temporary replacement, if any, for the consumer;

(h) the place where the consumer hands over the goods for repair,

(i) where applicable, the availability of ancillary services, such as removal, installation and transportation, offered by the repairer and the costs of those services, if any, for the consumer;

5. The repairer shall not alter the conditions of repair specified in the European Repair Information Form for a period of 30 calendar days as from the date on which that form was provided to the consumer, unless the repairer and the consumer have agreed otherwise. If a contract for the provision of repair services is concluded within the 30 day period, the conditions of repair specified in the European Repair Information Form shall constitute an integral part of that contract.

6. Where the repairer has supplied a complete and accurate European Repair Information Form to the consumer, it shall be deemed to have complied with the following requirements:

(a) information requirements regarding the main features of the repair service laid down in Article 5(1) point (a), and Article 6(1), point a of Directive 2011/83/EU and Article 22(1), point (j), of Directive 2006/123/EC;

(b) information requirements regarding the repairer's identity and contact information laid down in Article 5(1), point (b), and Article (6)(1), points (b) and (c), of Directive 2011/83/EU, Article 22(1), point (a), of Directive 2006/123/EC and Article 5(1), points (a), (b) and (c), of Directive 2000/31/EC;

(c) information requirements regarding the price laid down in Articles 5(1), point (c), and Article 6(1), point (e), of Directive 2011/83/EU and Article 22(1), point (i) and (3), point (a), of Directive 2006/123/EC;

(d) information requirements regarding the arrangements for the performance and the time to perform the repair service laid down in Articles 5(1), point (d), and Article 6(1), point (g), of Directive 2011/83/EU.

Article 5

Obligation to repair

1. Member States shall ensure that upon the consumer's request, the producer shall repair, for free or against a price or another kind of consideration, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfil its obligation to repair.

2. Where the producer obliged to repair pursuant to paragraph 1 is established outside the Union, its authorised representative in the Union shall perform the obligation of the producer. Where the producer has no authorised representative in the Union, the importer of the good concerned shall perform the obligation of the producer. Where there is no importer, the distributor of the good concerned shall perform the obligation of the producer.

3. Producers shall ensure that independent repairers have access to spare parts and repair-related information and tools in accordance with the Union legal acts listed in Annex II.

4. The Commission is empowered to adopt delegated acts in accordance with Article 15 to amend Annex II by updating the list of Union legal acts laying down reparability requirements in the light of legislative developments.

Article 6

Information on obligation to repair

Member States shall ensure that producers inform consumers of their obligation to repair pursuant to Article 5 and provide information on the repair services in an easily accessible, clear and comprehensible manner, for example through the online platform referred to in Article 7.

Article 7

Online platform for repair and goods subject to refurbishment

1. Member States shall ensure that at least one online platform exists for their territory that allows consumers to find repairers. That platform shall:

(a) include search functions regarding goods, location of repair services, repair conditions, including the time needed to complete the repair, the availability of temporary replacement goods and the place where the consumer hands over the goods for repair, availability and conditions of ancillary services, including removal, installation and transportation, offered by repairers, and applicable European or national quality standards;

(b) enable consumers to request the European Repair Information Form via the platform;

(c) allow for regular updates of contact information and services by repairers;

(d) allow repairers to indicate their adherence to applicable European or national quality standards;

(e) enable accessibility through national websites connected to the Single Digital Gateway established by Regulation (EU) 2018/1724.

(f) ensure accessibility for persons with disabilities

2. Member States shall ensure that the online platform also includes a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment.

3. Registration on the online platform for repairers, as well as for sellers of goods subject to refurbishment and for purchasers of defective goods for refurbishment, shall be voluntary. Member States shall determine the access to the platform in accordance with Union law. The use of the online platform shall be free of charge for consumers.

Article 8

Enforcement

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.

2. The means referred to in paragraph 1 shall include provisions allowing one or more of the following bodies, as determined by national law, to take action under national law before the courts or competent administrative bodies of the Member State to ensure that the national provisions transposing this Directive are applied:

(a) public bodies or their representatives;

(b) organisations having a legitimate interest in protecting consumers or the environment;

(c) professional organisations having a legitimate interest in acting.

Article 9

Consumer information

Member States shall take appropriate measures to ensure that information on the rights of consumers under this Directive, and on the means to enforce those rights, are available to consumers, including on national websites connected to the Single Digital Gateway established by Regulation (EU) 2018/1724.

Article 10

Mandatory nature

1. Unless otherwise provided in this Directive, any contractual agreement which, to the detriment of the consumer, excludes the application of national measures transposing this Directive, derogates from them, or varies their effect, shall not be binding on the consumer.

2. This Directive shall not prevent the repairer from offering to the consumer contractual arrangements that go beyond the protection provided for in this Directive.

Article 11

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to Articles 4, 5 and 6 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective proportionate and dissuasive.

2. Member States shall, by 24 months from the entry into force notify the Commission of the rules and of the measures referred to in paragraph 1and shall notify it without delay of any subsequent amendment affecting them.

Article 12

Amendment to Directive (EU) 2019/771

In Article 13(2) of Directive (EU) 2019/771 the following sentence is added:

‘In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall repair the goods in order to bring those goods in conformity.’

Article 13

Amendment to Directive (EU) 2020/1828

In Annex I to Directive (EU) 2020/1828, point 67 is added:

‘67. Directive (EU) xx/xx of the European Parliament and of the Council of x on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (OJ L xx)’.

Article 14

Amendment to Regulation (EU) 2017/2394

In the Annex to Regulation (EU) 2017/2394, the following point 27 is added:

‘27. Directive (EU) xx/xx of the European Parliament and of the Council of x on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (OJ L xx) ’.

Article 15

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 5(4) shall be conferred on the Commission for a period of six years from [one month after the entry into force of this act]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the six-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 5(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State acting in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 5(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 16

Transitional provisions

1. Article 5(1) and (2) and Article 6 of this Directive shall not apply to contracts for the provision of repair services concluded before [24 months after the entry into force].

2. Article 12 of this Directive shall not apply to sales contracts concluded before [24 months after the entry into force]

Article 17

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months from the entry into force] at the latest. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Member States shall apply those measures from [24 months from the entry into force].

2. Member States shall communicate to the Commission the text of the main provisions in national law which they adopt in the field covered by this Directive and the national online platforms on repair and goods subject to refurbishment established in accordance with this Directive.

Article 18

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union.*

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

T.C.
TİCARET BAKANLIĞI
Uluslararası Anlaşmalar ve Avrupa Birliği Genel Müdürlüğü

Sayı : E-79668890-740-00084034483
Konu : AB Yeşil Aklamanın Önlenmesi ve Tamir Hakları Mevzuat Taslakları

DAĞITIM YERLERİNE

Malumları olduğu üzere, Döngüsel Ekonomi Eylem Planı kapsamında, Avrupa Komisyonu tarafından 30 Mart 2023 tarihinde açıklanan Sürdürülebilir Ürün İnisiyatifi kapsamında, sürdürülebilir ve döngüsel ürünlere ilişkin AB düzeyinde ortak kurallar getirilmesi amaçlanırken, ürün içeriğine ilişkin doğru bilgilerin tüketiciye sağlanması ve yeşil aklamanın (*green washing*) önlenmesi amaçlanmıştır.

Bu çerçevede, Komisyon tarafından Yeşil Dönüşümde Tüketicinin Güçlenmesine Yönelik Bir Direktif taslağı açıklanmış olup, taslak kapsamında tüketicilerin satın alacakları ürünün çevresel ayak izine, dayanıklılığına, tamir edilebilirliğine, geri dönüştürülebilirliğine ilişkin yeterince bilgilendirilmeleri ve Tüketici Hakları Direktifi ile Haksız Rekabet Direktifinin revize edilmesi teklif edilmiştir.

Öte yandan, Avrupa Komisyonu tarafından 2020 yılında yapılan bir çalışmaya göre, AB pazarında bulunan ürünlerde bulunan çevresel beyanların %53,3'ünün belirsiz, dayanaksız ve yanlış yönlendirici olduğu tespit edilmiştir. Gönüllülük esasında ürünlere koyulan çevresel beyanlara ilişkin AB düzeyinde kural bulunmaması yeşil aklamaya sebep olarak tüketicileri yanıltmakta ve gerçekten sürdürülebilir ürünler açısından dezavantaj doğurmaktadır.

Bu kapsamda, çevresel beyanların ispatlanmasına ve tebliğine ilişkin olarak Avrupa Komisyonu tarafından 22 Mart 2023 tarihinde Yeşil Beyanlar Direktifi Taslağı (*Directive on Substantiation and Communication of Explicit Environmental Claims- Green Claims Directive*) yayımlanmıştır.

Taslak kapsamında eko-etiket, organik gıda gibi AB mevzuatı ile düzenlenenler haricinde düzenlenmeyen alanlarda yer alan gönüllü beyanların ispatlanması ve tebliğine yönelik asgari gereklilikler getirilmekte olup, beyanların 'geri dönüştürülmüş plastikten üretilmiş tişört', '%30'u geri dönüştürülmüş plastikten üretilmiş ambalaj' gibi daha spesifik olarak ifade edilmesi gerekecektir.

Bu kapsamda, yeşil beyanların ispatlanabilmesine için beyanın bilimsel ve teknik bilgiye dayanması; yaşam döngüsü analizi kapsamında ürün performansına ve diğer alanlara etkilerinin gösterilmesi; bir mevzuatın zorunlu gerekliliği olmadığının gösterilmesi; ürünü diğer ürünlere göre çevresel olarak daha iyi yaptığının kanıtlanması; sera gazı emisyonlarındaki azalmayı şeffaf bir şekilde raporlaması; doğru birincil ve ikincil bilgiye dayanması gibi gereklilikler getirirken, yeşil beyanların tebliğinde geniş kapsamlı tebliğlerden kaçınılması, gerekli durumlarda tüketicilerin ürün kullanımı ile nasıl bir çevresel fayda oluşturduğunun açıklanması, beyana ilişkin tüm doğrulayıcı belgelerin sağlanması gibi kriterler getirilmiştir.

Adres: Söğütözü 2176. sok No:63 06510 Çankaya Ankara
Telefon No: 0312 204 90 23 Faks No: .
e-Posta: berrakt@ticaret.gov.tr
İnternet Adresi: www.ticaret.gov.tr
KEP Adresi:

Ayrıntılı bilgi için:
ELİF BERRAK TAŞYÜREK
Ticaret Uzmanı
Telefon No: 0312 204 90 23

Ayrıca, halihazırda 230 farklı çevresel etiket olduğu göz önüne alınarak, taslak kapsamında tüketici açısından kafa karışıklığının önlenmesi amacıyla fazla etiket çeşidinin önüne geçilecek, AB düzeyinde belirlenenler hariç ulusal düzeyde yeni etiketleme getirilmesi yasaklanacak, yeni getirilecek özel etiketler ise ancak mevcut etiketlerin gerekli ihtiyacı karşılamadığının ispatlanması ile ön-onay sürecinden geçmeleri durumunda kullanılabilecektir.

Buna ek olarak, Komisyon tarafından açıklanan Ürünlerin Tamirine İlişkin Ortak Kurallar Direktifi (*Directive on Common Rules Promoting the Repair of Goods*) taslağı ile elektrik süpürgeleri, tablet ve akıllı telefonlar gibi ürünlerin yasal garanti kapsamında daha maliyetli olmadığı sürece yenilenmek yerine tamir edilmesi zorunlu hale gelirken, garanti süresi geçtikten sonra tüketicilerin ucuz ve kolay tamir imkanlarına ulaşmalarını sağlayacak kurallar önerilmiştir. Bu çerçevede,

- Ürünlerini tamir etmek isteyen üreticilerin kolaylıkla ilgiliye ulaşmalarının sağlanması, üreticilerin sürdürülebilir iş modelleri geliştirmeye teşvik edilmesi,
- Tüketicilerin kendi tamir etmeleri gereken ürünlere ilişkin önceden bilgilendirilmeleri,
- Çevrimiçi tamir platformu ile tüketiciler ve tamircilerin eşleşmesinin sağlanması,
- Tüketicilerin tamir koşullarına ve fiyatların ilişkin karşılaştırma yapabilmesi için Avrupa Tamir Bilgi Formu kurulması,
- Tamir hizmetleri için AB kalite standardı belirlenmesi gibi öneriler getirilmiştir.

Bilgilerini rica ederim.

Bahar GÜÇLÜ
Bakan A.
Genel Müdür Yardımcısı

Ek:
1- Proposal for a Directive on Green Claims
2- Proposal for Empowering consumers
3- Proposal for Repair of Goods

Dağıtım:
Türkiye İhracatçılar Meclisine
Dış Ekonomik İlişkiler Kuruluna
Türk Sanayici ve İşadamları Derneği
Müstakil Sanayici ve İşadamları Derneği Genel Sekreterliği
Türkiye Müteahhitler Birliğine
Uluslararası Yatırımcılar Derneği
Türkiye Esnaf ve Sanatkarları Konfederasyonuna
Türkiye İşveren Sendikaları Konfederasyonuna

Adres: Söğütözü 2176. sok No:63 06510 Çankaya Ankara
Telefon No: 0312 204 90 23 Faks No: .
e-Posta: berrakt@ticaret.gov.tr
İnternet Adresi: www.ticaret.gov.tr
KEP Adresi:
Ayrıntılı bilgi için:
ELİF BERRAK TAŞYÜREK
Ticaret Uzmanı
Telefon No: 0312 204 90 23

Adres: Söğütözü 2176. sok No:63 06510 Çankaya Ankara
Telefon No: 0312 204 90 23 Faks No: .
e-Posta: berrakt@ticaret.gov.tr
İnternet Adresi: www.ticaret.gov.tr
KEP Adresi:

Ayrıntılı bilgi için:
ELİF BERRAK TAŞYÜREK
Ticaret Uzmanı
Telefon No: 0312 204 90 23