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NOTE

From:	Delegations
To:	Delegations
Subject:	Proposal for a Directive on Empowering consumers for the green transition - Comments on Presidency third compromise text 5036/23

Delegations will find attached comments from DK, ES, GR, HR, IE, IT and SI

MINISTRY OF INDUSTRY, BUSINESS AND FINANCIAL AFFAIRS

30 January 2023

Danish proposal for a new recital 9a to the ECGT-proposal

As mentioned at the working party meeting on 11 January 2023, we propose to add a recital clarifying the use of generic environmental claims:

Proposal for a new recital 9a:
"(9a) According to the Commission's guidance on the interpretation and application of Directive 2005/29/EC, environmental claims are likely to be misleading if they consist of vague and general statements of environmental benefits without appropriate substantiation of the benefit. Examples of such claims are "environmentally friendly", "eco-friendly", "eco" and "green" or similar. In specific sectors, certain environmental claims are in any case subject to detailed provisions on unfair commercial practices e.g. chemical substances and products. Without prejudice to sectorial EU legislation, Directive 2005/29/EC gives the possibility to use generic environmental claims if recognised excellent performance can be demonstrated such as e.g. the EU Ecolabel, the Nordic Ecolabel "the Swan" or the German "Blue Angel" or other robust and reputable labelling schemes subject to third party verification. A generic environmental claim for which the trader is able to demonstrate recognised excellent environmental performance should in any case be presented in a clear, specific, unambiguous and accurate manner and be sufficiently detailed so that the claim cannot be understood in any other way than the trader intended.

Justification**:**
The proposed wording of point 4a of Annex I to Directive 2005/29/EC may be interpreted to entail that the use of a generic environmental claim is not misleading and thereby not prohibited if the trader is able to demonstrate recognised excellent environmental performance relevant to the claim.

Traders will then be able to use environmental claims such as "environmentally friendly", "eco-friendly", "eco" and "green" if the trader is able to demonstrate recognised excellent environmental performance e.g. the EU Ecolabel.

According to the Commission's guidance on the interpretation and application of Directive 2005/29/EC, environmental claims are likely to be misleading if they consist of vague and general statements of environmental benefits without appropriate substantiation of the benefit and without indication of the relevant aspect of the product, the claim refers to. Examples

of such claims are "environmentally friendly", "eco-friendly", "eco" and "green".[1]

Specific sectors are subject to detailed provisions on unfair commercial practices. Directive 2005/29/EC only applies in so far as there are no specific Community law provisions regulating specific aspects on unfair commercial practices.[2] Directive 2005/29/EC complements other EU legislation as a safety net ensuring that a high common level of consumer protection against unfair commercial practices is maintained in all sectors.[3]

Traders must therefore be aware of the link between Directive 2005/29/EC and other EU legislation when using generic environmental claims.

As mentioned the proposed point 4a of Annex I to Directive 2005/29/EC may be interpreted to entail that traders will be able to market their products as "environmentally friendly", if the trader is able to demonstrate e.g. the EU Ecolabel.

It is the Danish understanding that even though a trader is able to demonstrate recognised excellent environmental performance e.g. the Nordic Ecolabel "the Swan", the claim should still be presented in a clear, specific, unambiguous and accurate manner. The claim should be qualified regarding which aspect of the product or its life cycle they refer to.

The Commission's guidance gives an example regarding highly polluting industries, which should ensure that their environmental claims are accurate in a sense of being relative, e.g. "less harmful for the environment" instead of "environmentally friendly". This enables the average consumer to better understand the relative impact of the product. An environmental claim should in any case relate to aspects that are significant in terms of the product's total environmental impacts over its life cycle. Highly polluting industries may be required by courts or authorities to make it clear to the consumer in their environmental claims that the product has an overall negative impact on the environment[4].

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[1] Commission notice (2021/C 526/01) 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, page 76, point 4.1.1.3.

[2] Directive 2009/29/EC recital 10 and article 3(4).

[3] Commission notice (2021/C 526/01) 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, page 73, point 4.1.1.1.

[4] Commission notice (2021/C 526/01) 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, page 78, point 4.1.1.3.

We therefore propose that a generic environmental claim should be presented in a clear, specific, unambiguous and accurate manner and be qualified even when the trader can demonstrate recognised excellent environmental performance

REPRESENTACIÓN PERMANENTE
DE ESPAÑA ANTE LA UNIÓN EUROPEA

CONSEJERÍA DE CONSUMO

ES comments
regarding the Presidency third compromise proposal 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

Spain thanks the Swedish Presidency for its work on this new proposal and wishes it every success in the coming months.

As a general remark, we would like to reiterate most of our previous comments and proposals, both in writing and during the working group meetings. However, on this occasion we will focus on those points that are most relevant to us:

1. It is crucial to **ensure consistency**, both in relation to other pieces of legislation and internally.

2. We advocate **addressing social washing in this directive**, as it is a phenomenon closely linked to sustainability that is already affecting consumers today and can be expected to increase in the future.

   Even if social issues are already covered under the broad scope of Article 6 of the Unfair Commercial Practices Directive, we consider important to introduce some amendments for the sake of greater clarity and legal certainty. The focus should therefore be put in the social and ethical aspects of sustainability where relevant.

   This would entail modifying **recital 1** to explain in more detail the scope and rationale of the proposal, since now it only refers to the environment.

   A thorough revision of **recital 3** is also needed to include an explanation about what is meant by the incorporation of the social impact of products in Article 6(1) of the Unfair Commercial Practices Directive, including examples. On the other hand, it should be further clarified that the notion of sustainability may include environmental, economic, and social and ethical aspects or a mix of all of them. Thus, the difference between claims on the social impact of products and claims about social and ethical sustainability would be clearer, also in relation to **recital 7** and through the inclusion of a **definition of "social claim".**

Social and ethical issues related to sustainability should be kept in the definition of "sustainability label".

In **article 1.2.,** we propose to amend article 6(1)b of the UCPD to introduce the expression "environmental, social and ethical features", in consistence with an explanation in the recitals.

We would also like to amend article 6(1)f of the UCPD, which relates to the attributes of the trader, to include "corporate responsibility", understood as the principles and actions an organisation commits to in order to make a positive impact on society, the environment and the economy.

3. It should be better explained what is meant by **"future performance"** in **recital 4.** Sometimes "carbon-neutral" and similar claims are being justified by compensation initiatives, but information about them is only rarely available or verified. Therefore, having an independent monitoring system in place does not seem to be enough. In our view, claims related to future performance should be prohibited when they are exclusively based on offsetting.

4. In any case, we consider necessary to define what is an **"independent monitoring system"** or, at least, what are its main characteristics to ensure independence, especially in the case of private operators.

5. We support the introduction of the notion of **"common feature"** in relation to article 6(2)e of the UCPD, but it should be further elaborated in the recital. It should be made clearer that the purpose is prohibiting what is in fact an ordinary and frequent feature from being made to appear in a prominent way as an extraordinary benefit, not the mere fact that an ordinary feature is mentioned in a purely descriptive, informative way, along with other product characteristics.

6. We think that the expression "that is awarded or **gives an impression** to be awarded" (art.1(1)r) is confusing and should be reworded in order to better reflect what is intended.

7. The definition of **"certification scheme"** should be further developed, especially to ensure its accuracy and impartiality and to clarify if an authorisation or accreditation is needed for private operators.

8. It does not seem reasonable to think that manufacturers would report characteristics deliberately introduced to produce early obsolescence. Moreover, the Annex does not include to date any practice expressly related

to the omission of information, so that its practical application could give rise to doubts and problems of interpretation. Therefore, in order to solve the problems posed by the practical assessment of subjective intentions and those linked to the responsibility regime in relation to the exchange of information between producers and retailers, we propose to **delete points 23d, 23e and 23i from the Annex.** In our view, greater consistency and legal certainty would be achieved by introducing instead the following amendment to Article 7(4) of the UCPD, which already considers the context and the expected behaviour from the trader:

In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:

a) the main characteristics of the product, to an extent appropriate to the medium and the product, ***including those features that may limit its durability or functionality****;*

aa) the potential negative impacts of software updates.

9. Since it is not defined as such in the Sale of Goods Directive, the **commercial guarantee of durability should be defined** in this Directive. It should also be explained in the recitals how it will interact with the legal guarantee, especially in relation to those cases where the commercial guarantee of durability has a shorter period than the legal guarantee. Given that in the case of the commercial guarantee it is the manufacturer who is liable, while in the case of the legal guarantee it is the trader, we should try to avoid situations that create confusion as to their respective responsibilities or about the prevalence of one type of guarantee over the other.

10. The provider should include **a "positive" harmonised graphic format to indicate the existence and duration of the commercial guarantee of durability.** Therefore, the trader would not be obliged to inform about its absence and there would be no need no produce lists of items nor to introduce problematic concepts such as "fast-moving goods", since goods without the graphic format could easily be identified as not being covered by that guarantee.

    However, an **information obligation from the trader to the consumer** should be introduced to clarify the differences between the legal guarantee, the commercial guarantee of durability and other possible commercial guarantees.

    In order to ensure proper and coherent regulation of these measures, we support the idea of inviting the Commission unit responsible for the Ecodesign Regulation to a session of the WP.

WK 53/2023 INIT - Presidency discussion paper_ Written comments from Greece

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

I. Requirement to inform about the absence of commercial guarantees of durability

One issue for the Member States has been the proposed requirement in certain cases to provide information that a certain good is not covered by a commercial guarantee of durability. The ambition is that this would encourage consumers to avoid goods without such guarantees. Several Member States expressed concerns that this could lead to an administrative burden on retailers, if the requirement would encompass too many products or categories of products, and that it is difficult to limit the application of the requirement in a fair and easily interpretable manner. Several Member States took the view that this obligation to inform should be only about the existence of the commercial guarantee on durability.

If an obligation on informing the consumers about the absence of a commercial guarantee is to be supported, the question arises for which goods this obligation shall apply. In the second compromise proposal, the definition of 'energy using good' was deleted. A possible alternative is to use instead 'fast-moving consumer goods' and define them as goods for satisfying daily needs of consumers which are typically consumed, depleted or replaced within one year. Examples of such goods could then be provided in the article or recitals (e.g. food, cosmetics, drugstore products, household cleaners, office supplies, hygiene paper). This option was mentioned, but only briefly discussed, in the working party on 7 December.

Article 5, paragraph 1, could then be amended as follows (addition in yellow):

(ea) for all goods, **except fast-moving consumer 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 **longer duration** ~~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- 2 (3) sales services and commercial guarantees provided in accordance with point (e)~~ **than the minimum legal guarantee of conformity provided by Union law. The trader shall inform the consumer about the absence of such a commercial guarantee using a Union harmonised graphic format in accordance with [Annex of this proposal].**

Question 1: What is the view of Member States on introducing an obligation to inform the consumer about the absence of a commercial guarantee of durability?

We are in favor of introducing an obligation to inform the consumer about the absence of a commercial guarantee of durability.

The exception of fast-moving consumer goods seems to be self-evident, since those goods are typically consumed, depleted or replaced within one year, so the requirement for durability might not be applicable to such products.

We do have already a similar provision in our national law, according to which seller is obliged to inform consumers about the absence of a commercial guarantee in case of "durable goods with an estimated life span of more than two years".

We believe that it might be more effective, if such obligation is imposed to manufacturers as well.

Question 2: What is the view of Member States on using 'fast-moving consumer goods' as a scope of products where the absence of a commercial guarantee of durability would not need to be mentioned?

Alternatively, the obligation to provide information that the goods benefit from a commercial guarantee of durability could be limited to goods where commercial guarantees of durability is relevant. The objective criteria for identifying goods for which a commercial guarantee of durability is relevant (for example the composite nature of the good which presents a risk of failures/breaking down, consumers expectations that the good will last at least two years, exclusion of fast-moving consumer goods) could then be added in the recitals.

We think that it might be more appropriate to limit the obligation to goods where commercial guarantees of durability is relevant.

Question 3: What is the view of Member States about limiting the goods for which information on existence of the commercial guarantee of durability is to be provided?

We think that for all goods where commercial guarantees of durability is relevant should be covered by an obligation to inform consumers about the absence of guarantee.

Question 4: Is there other options for defining positive (on existence) or negative (on absence) product scope?

The term "durable goods with an estimated life span of more than two years" that we already use in our national law could be also used as an alternative.

II. Harmonized graphical format

The first compromise introduced a proposal to require traders to present information on commercial guarantees of durability in a harmonized graphical format.

Question 5: Are Member States in favour of introducing a requirement for providing the information about the existence or absence of the guarantee in a harmonised graphical format?

Yes, we are in favor.

However, as mention in our answer to question 1 we believe that such obligation should be imposed to manufacturers as well.

III. Should the requirement to provide information be limited to commercial guarantees of durability exceeding two years in duration?

Some Member States have noted that they encounter problems with the fact that the obligation to provide information on the existence of commercial guarantees of durability is limited to cases where the guarantee exceeds the minimum legal guarantee period of two years, since at national level they have chosen to introduce longer legal guarantee periods. Even if a commercial guarantee of durability does not exceed two years, it normally constitutes an added value for consumers with additional protection and advantages.

Since this requirement applies only to cases where the producer has chosen to provide a commercial guarantee of durability (as envisaged in Article 17 of the Sales of Goods Directive), and therefore presumably would like to actively market that guarantee, perhaps it is not obvious

that extending the requirement to all commercial guarantees of durability, regardless of length, would result in a significant administrative burden on traders.

Question 6: Is it necessary to apply the requirement to guarantees with a length exceeding two years?

We think that the obligation should apply to all commercial guarantees of durability, regardless of length.

HR comments on 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 10937/3/22

We would like to thank the Swedish Presidency for the initiatives for the Proposal. As we stated on the last WG meeting, please find our amendments of the Proposal in written.

Article 1 Paragraph 2 of the Proposal - Art 6 Paragraph 2 of the Directive 2005/29/EC (UCPD)

- **Point e)**

We believe that the changes made to point e) did not result with clearer wording of this provision. Similarly to the previously inserted wording *"relevant market*", the term *"common practice in respect of the particular product"* can be subject to different interpretation. Some MS suggested *"common characteristics"* as appropriate wording.

As HR explained before in both written and oral comments, HR is of the opinion that both suggested changes in wording could result in different enforcement practice on the Union level. In order to avoid disputes over the scope of this term, since the term may be interpreted differently, e.g. as practice established on international level, Union level, on the market of one or more MS, HR proposes that the provision explicitly limits its scope to advertising benefits that are considered as common practice "*in the market of that particular Member State*" given that average consumers' decision to purchase is still orientated on business practices limited to their MS and that for the courts/administrative authorities it is easier to determine relevant practice when the practice is limited to that MS.

Proposed change:

"(e) advertising benefits for consumers that are considered as a common ~~practice~~ ***~~characteristic~~ practice*** *in the* ~~*respect of the particular product*~~ *market of that particular Member State."*

Article 1 paragraph 4 and Annex I of the Proposal – Annex I of the UCPD

- **Addition of a new point in Annex I**

Croatia fully supports BEUC's proposal on carbon neutral claims. As indicated in the mentioned proposal, *carbon neutral claims are highly misleading to consumers as they imply neutrality and no impact of products (or services) on the environment which is impossible to achieve from the scientific point of view. They are often being justified by the company's involvement in carbon offsetting/compensation projects, which consumers are not sufficiently informed about and have no means to verify whether they are really robust and reliable.*

Thus, HR proposes to add the explicit prohibition of generic claims on carbon neutrality. These claims became increasingly common in public transport services and they are usually justified by the company's involvement in carbon offsetting/compensation projects, as BEUC highlighted. However, average consumer does not understand the meaning of such projects

nor such projects are explained or even mentioned to the consumer in traders' communication messages (marketing, pre-contractual information, etc.). Although such claims are prohibited by amendments of Article 6 (2) point ea) of the UCPD in this Proposal that prohibits misleading claims in general, every specific and identified infringement of consumer rights needs to be explicitly prohibited by this Proposal.
Thus, we suggest adding the following provision as blacklisted unfair misleading commercial practice:
"Making a generic environmental claim on carbon neutrality without clarifying that carbon neutrality is a result of company's involvement in carbon offsetting/compensation projects".

- **Point 10a**

HR suggests reconsidering the need for special regulation of Point 10 a of Annex I of the UCPD, given that its matter is already covered by point 10 of Annex I of the same directive. In this regard, HR is of the opinion that the Point 4.1.1.6 of the 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) indicates the same by stating the following:
"This provision (Point 10 of the Annex I UCPD) clarifies that traders should not mislead consumers ***by unduly emphasising attributes that come <u>from regulatory requirements</u>."***

- **Points 23d, 23e and 23i + Recital 15**

HR finds the clarification of the definition of the trader in the recital 15 appropriate in order to prevent possible differences in interpretation of that definition regarding the question whether it includes manufacturer or not. However, given that this recital won't be included in the consolidated text, we ask the Presidency to reconsider our earlier suggestion of amendment of the provision of Art 5 para 3 of the UCPD in a way to explicitly prescribe that manufacturer is considered as trader. Thereby, all traders' obligations (including dual quality provision) regulated by UCPD would apply both to the manufacturer and the trader.
"3. Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader, including manufacturer could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group…".

Additional for Point 23d and accompanying Recital 15
Wording in the Point d limits trader's obligation to inform consumer on software update in cases when such update ***"will"*** impact the use of goods**.** We prefer original EC's wording **–** ***"may".*** Although *"may impact"* could be too burdensome for the trader, given its extensive range, and that it could actually cover all contracts, proposed wording ***"will"*** requires certainty which in practice will be very difficult to prove and failure to comply with this provision shall be difficult to identify and penalise in most cases.

<u>Commercial guarantee of durability – discussion paper</u>

Question 1: What is the view of Member States on introducing an obligation to inform the consumer about the absence of a commercial guarantee of durability?

HR supports **option 1a**. ---->If option 1A doesn't get support of the majority of MS, HR remains to the previous position and suggests deletion of this amendments as a whole – option 1b. --→ Alternatively, in case that option 2 gets support of majority of MS, HR could agree to that as this would ensure better consumer information. However, obligation to inform the consumer about the absence of a commercial guarantee of durability **should be deleted**. That provision constitutes disproportional obligation for the trader that would only result with consumer information overload.

Question 2: What is the view of Member States on using 'fast-moving consumer goods' as a scope of products where the absence of a commercial guarantee of durability would not need to be mentioned?

Regarding possibility to exclude "*fast moving goods*" form such obligation, we find proposed definition of these goods vague and subject to various interpretation which will result with different implementation what would be contrary to the aim of this Proposal – to harmonize trader's practices on Union level. We have the same reasoning why we don't agree with the proposed alternative – to prescribe the obligation to provide information on commercial guarantee limited for the goods "*where commercial guarantees of durability is relevant".* It is unclear what goods are to be included within the scope of that term, and we can expect different practices on this matter between MS.

Question 3: What is the view of Member States about limiting the goods for which information on existence of the commercial guarantee of durability is to be provided?

We would like to stress out that providing commercial guarantee is a matter of discretion of its provider. Prescribing obligation to inform consumer on the existence of the commercial guarantee for certain goods could be interpreted as contrary to the voluntary nature of commercial guarantee. We find existing obligation to inform consumer on the commercial guarantee in the Art 5 (1) e appropriate – when such guarantee is provided, we already have an obligation for the traders to inform consumers on that guarantee.

Question 4: Is there other options for defining positive (on existence) or negative (on absence) product scope?

We don't find any other regulatory choice.

Question 5: Are Member States in favour of introducing a requirement for providing the information about the existence or absence of the guarantee in a harmonised graphical format?

This is still a matter of discussion on HR level.

Question 6: Is it necessary to apply the requirement to guarantees with a length

exceeding two years?

No. If there are MS where consumers are confused when it comes to differences between commercial guarantee and non-conformity of products (so called “legal guarantee”), MS should strengthen educational campaigns on this matter.

Ireland's written comments on third compromise text by Swedish Presidency on the proposal for Directive '*empowering consumers for the green transition through better protection against unfair practices and better information'.*

Discussion Paper – commercial guarantee of durability

Q1 What is the view of Member States on introducing an obligation to inform the consumer about the absence of a commercial guarantee of durability

The suggestion that consumers would be encouraged to avoid goods without a guarantee of durability is understandable but this would need to be evidenced especially as the Directive refers to a lack of consumer understanding in relation to labels and information presented to support purchasing decisions.

An alternative approach would be that if a Harmonised Graphic Format (which will be used to present details of the commercial guarantee of durability) was well recognised, understood and expected by the consumer then its very absence may suggest to them that a product is not covered by a commercial guarantee of durability. It is not clear the additional burden that including details of when a good is not covered by a guarantee of durability would place upon a producer and retailer but this would need to be scoped out to support a common position.

The principles of ensuring consumers have access, choice and information to make positive purchasing decisions is fundamental and in line with the principles set out in the United Nations Guidelines for Consumer Protection[1].

Applying these principles would suggest that it is better for consumers to have information both when a good is and is not covered by a commercial guarantee of durability. However, this doesn't underplay the challenge of ensuring appropriate goods are within scope and developing labels (and graphics) which convey this information to consumers in a clear, consistent and comprehensive manner.

Q2 What is the view of Member States on using 'fast-moving consumer goods' as a scope of products where the absence of a commercial guarantee of durability would not need to be mentioned?

Q3 What is the view of Member States about limiting the goods for which information on existence of the commercial guarantee of durability is to be provided?

Assuming a requirement to inform consumers about the absence of commercial guarantee is required then clarification is needed as to what goods that this obligation does and does not apply. Both questions (Q2 and Q3) attempt to achieve this through different approaches.

The first question seeks to identify '*fast moving consumer goods´* to which this obligation would not apply, with definitions provided in the Articles or Recitals (e.g., food, cosmetics, etc). The second question takes an opposite approach, seeking to identify goods where a commercial guarantee of durability would be relevant and therefore apply, with all others exempt.

It would appear there is no simple or clear solution to this challenge and indeed much will come

[1] United Nations Guidelines for Consumer Protection (unctad.org)

down to the consumer expectation of a product's durability. Even taking food as a proposed area of exemption, some tinned goods or dried products could potentially have a longer shelf life than two years. Likewise, trying to identify sectors to which the requirement applies will be equally challenging especially if this extends to the composite nature of goods where elements or aspects of the product may fail or breakdown.

It makes sense that many day-to-day goods sit outside this obligation due to their use and limited lifespan and therefore the requirement to inform consumers regarding the absence of a commercial guarantee of durability is not required. However, clarification of the actual goods that would fall within this exemption is critical but will present a significant challenge.

Potentially, the *fast-moving consumer goods* approach may have more meaning and understanding to the consumer but the challenge of ensuring appropriate sectors are covered will remain.

Q4 Are there other options for defining positive (on existence) or negative (on absence) product scope?

No comments.

Q5 Are Member States in favour of introducing a requirement for providing the information about the existence or absence of the guarantee in a harmonised graphical format?

The benefit of a harmonised graphical format (HGF) is accepted, as mentioned in response to Q1 above. However, there is a need for consistency, clarity and consumer understanding. Consumers are often overloaded with information regarding the product and labels in relation to use and safety so it is critical any HGF supports consumers in making an informed purchasing decision rather than cause confusion.

To date in the compromise proposals there has been no mock-up or spec provided in terms of what information would be included in the HGF and how this is to be displayed. As the HGF will be the critical 'touch point' for a consumer it may be worth doing this to advance its consideration by Member States.

Q6 Is it necessary to apply the requirement to guarantees with a length exceeding two years?

As highlighted in Ireland, we have greater consumer protection in that the entitlement of the consumer to remedies for a lack of conformity, is not subject to a two-year liability period but applies instead in accordance with the six-year limitation period for contract actions in the Statute of Limitations 1957.

It may be the case that alongside the six-year legal guarantee of conformity available in Ireland a trader may wish to provide a commercial guarantee of durability which could provide added value for consumers with additional protection and/or advantages (over the legal requirement). Therefore, the trader may wish to actively market this guarantee as it could provide a competitive advantage and increased consumer confidence. While this may add to the administrative burden placed on traders, they would be assuming that burden in a voluntary capacity.

Amendments to Directive 2005/29/EC

Recital (1) - Misleading Environmental Claims
The rationale for including a specific reference to *'claims about animal welfare'* in recital 1 is not obvious, as to why this particular aspect was picked out from the information on the social responsibility of products as against, for example, "working conditions".

Article 6
Paragraph 1, point (b) and recital (3) - Environmental Claims
It is welcome to see that the terms social impact/social responsibility have been removed, retaining a focus on the environmental impact, durability or reparability of a product.

Paragraph 2, point (e) and recital (5) - Common Characteristics of a Product or Category
The characteristics of a product or product category that are now indicated as a common "feature" is clearer in the recital and provides context with the inclusion of examples or situations in which this would apply. The word "feature" should be applied consistently across the recital and Article 6(2)(e), e.g., in the recital, …"if the absence of that chemical substance in a product or product category isa common **practice"** and in the Article, "… when such a characteristic is considered as a common **characteristic**". Perhaps the words in bold should be replaced with "feature".

Amendments to Directive 2011/83/EU

Article 2
Point (14e) – software update
Should this definition be consistent with the definition in Directive 2005/29/EC, Article 1?

Article 5
Paragraph (1)(ea) and recital (27) - Commercial Guarantee of Durability
It was highlighted in previous text that in Ireland, the liability of a trader for lack of conformity (and right to consumer remedy) is in accordance with the 6-year limit for contract claims in the Statute of Limitations 1957 and not the default 2-year period in Directive EU 2019/771.

The compromise text reflects this position in the recital with the replacement of 'two years' with *'the duration of the legal guarantee of conformity'* which is more general wording to cover this situation. It doesn't include any qualification regarding Union law. We welcome this new text. However, the text in Article 5(1)(ea), does include a qualification regarding Union law and states that a commercial guarantee of durability "has a longer duration than the minimum legal guarantee of conformity provided by Union law". This text implies "more than two years" as it refers to Union law. We are concerned that this will cause an issue for us with the 6 years in the Statute of Limitations.

We would propose that the open text from recital 26 replaces the current text in Article 5(1)(ea), e.g., "has a longer duration than the duration of the legal guarantee of conformity" or that the current text is kept but national law is included, e.g., "has a longer duration than the minimum legal guarantee of conformity provided by Union or national law".

Recital 3
Is "upgradability" covered under points (14) and (14a), which deal with early obsolescence and features that limit durability e.g. software. This query was raised at the meeting but overlooked in the responses given, perhaps this could be confirmed.

Annex 1 - Durability and Planned Obsolescence
Ensuring that the trader is required to provide the consumer with information regarding the durability of a product, based on information provided by the producer is an important aspect to the Directive. Generally, across the revised test there is a requirement placed upon the trader to inform the consumer regarding any feature introduced to limit the durability '*when a trader knows or can be reasonable expected to know about it'.* The proposal would appear fair in recognising that the producer of a good is ultimately responsible for this information but a retailer can be reasonably expected to know via a statement from the producer or relevant national authority which should then be provided or communicated to the consumer.

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 2021/0170 (COD)

Written comments from Italy

General comments

Italy wishes to thank the Presidency for the work on the third compromise text on the proposal for a directive as regards empowering consumers for the green transition through better protection against unfair practices and better information and the opportunity to comment it. Italian comments, with scrutiny reserve, in the analysis of the Presidency Discussion Paper and on the third position statement are not intended to be exhaustive, and hence the explicitly reserves the right to submit more comments and proposals for provisions.

PRESIDENCY DISCUSSION PAPER

(Brussels, 4 January 2023 – WK 53/2023 INIT

Question n. 1: Question 1: What is the view of Member States on introducing an obligation to inform the consumer about the absence of a commercial guarantee of durability?

Answer: The provision that the trader should also inform on the possible absence of the producer's commercial guarantee of durability for the good - when this information is easily available for the trader and in a limited scope of products to avoid new burden for him - is, in our view, a further element of guarantee and consumer protection. See as well our comments on new formulation of recital 15.

Question 2: What is the view of Member States on using 'fast-moving consumer goods' as a scope of products where the absence of a commercial guarantee of durability would not need to be mentioned?

Answer: We could be flexible on the proposed solution, but it should be considered that some fast-moving consumer goods could also be put on the market in combination with other products that do not have these characteristics (e.g. children's food sold in combination with toys - also with electronic or energy using components.

Question 3: What is the view of Member States about limiting the goods for which information on existence of the commercial guarantee of durability is to be provided?

Answer: Firstly, it is necessary to consider the protection of the consumer and his right to full information, as envisaged by the reform of this legislation. Any limitation of this right to information must be adequately motivated and justified (for example considering the other important factor represented by avoiding charging traders with excessive or disproportionate burden).

Question 4: Is there other options for defining positive (on existence) or negative (on absence) product scope?

Answer: We think that there are various forms on this definition, as it results from the interpretative practice relating to project management. However, we need further information and clarification on what requested.

Question 5: Are Member States in favour of introducing a requirement for providing the information about the existence or absence of the guarantee in a harmonised graphical format?

Answer: where such information has necessarily to be provided, we're in favour of introducing a homogeneous and simple method for traders to use, such as that of a harmonized graphic format.

Question 6: Is it necessary to apply the requirement to guarantees with a length exceeding two years?

Answer: with the aim of consumer protection in terms of completeness of information, we believe that this obligation may be appropriate.

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ON PRESIDENCY THIRD COMPROMISE PROPOSAL
(Brussels, 4 January 2023 (OR. en) 5036/23

General comments

Italy wishes to thank the Presidency for the work on the third compromise text on the proposal for a directive as regards empowering consumers for the green transition through better protection against unfair practices and better information and the opportunity to comment it. Italian comments, with scrutiny reserve, in this third position statement are not intended to be exhaustive, and hence the explicitly reserves the right to submit more comments and proposals for provisions.

RECITALS

Recital 1

We appreciate the added text regarding the "animal welfare" referred to environmental claims.

Recital 3

We take note of the cancellation of the concept of "social responsibility" and the maintenance of the concept of environmental impact. We deem it appropriate to further clarifying the concepts, in particular through the clear indication of the reference declaratory regulations, also envisaging a possible integration of the definitions.

Recital 4

We confirm what was previously expressed ([1]) regarding the need to clarify the concept of “independent monitoring system” proposed (in our opinion improperly) to amend Article 6 (2) and not in Annex 1.

Recital 5

We appreciate the acceptance – as we asked in our previous comments ([2]) – the deletion of the concept of "common practice" (not legally determinable and can give rise to different interpretations, especially in cases of case-by-case analysis). It should be further clarified the new added concept of “common feature”. We insist that this prohibition be included in the annex and not in the text of the directive.

Recital 6

We consider a step ahead the deletion of the term “social” referred to the aspects of product to be compared. See also our comments on recital 3.

Recital 7

We consider positively the deletion of the term “social” referred to the aspects of product and the substitution of the term “authority” with “entity”. Nevertheless, we insist on the already sent comment regarding the importance that every brand must be based on clear, objective and verifiable criteria ([3]).

Recital 9

We have no comments on the added therm “sustainalble”.

Recital 10

We welcome the new formulation of the provision (in acceptance of Italian comments already sent) with the new clear distinction between the Regulation (EC) n. 1221/2009 (referred to EMAS) and the Regulation (EC) n. 66/2010 (referred to EU Ecolabel).

Recital 14b

We ask the ratio of the deletion of the first paragraph. We refer to our written comments and prefer the previous version of the recital text ([4]).

([1]) Written Comments IT 23.11.22 and 7.12.22.

([2]) Written Comments IT 7.12.22.

([3]) Written Comments IT 7.12.22. – Comments on rec. 7 “We consider the addition of the specification that the directive applies only to sustainability labels that refer - mainly - to the environmental and social aspects of the product as a step forward. However, we insist on considering that every brand must be based on clear, objective and verifiable criteria. It is also important to consider that (existing) certification schemes have substantial cost (auditor fees, innovations in materials and production lines in the whole supply chain, preparation of all technical documentation, modifying internal procedures, training, adjusting packaging materials which needs to be done well in advance). To enable the green transition, it is important to bring sustainability closer to business without new burdens.

([4]) Written Comments IT 23.11.22 – “We welcome the provision that clarify the distinction between unfair practices (regulated by the proposal) and lack of conformity of the good (that continue to be governed by the rules set out in Directive (EU) 2019/771)”.

Recital 15

We had welcomed the new added text of the second compromise text, which provides that the trader should be responsible for omitting to provide information on software update "only if he was accordingly informed by the producer". Now we return to the previous version and the added text that "This prohibition applies only to the trader that is providing the software update to the consumer, regardless whether it is the producer of the good, software provider or the seller of the good". We ask the rationale for this modification, not finding a reason for it in the discussion of the previous working groups meeting.

Recital 16

We take note, with scrutiny reserve, of the "return" to the original version of the text with the new added text. We remain waiting for the explanation of the ratio of this new version before taking an official position at respect.

Recital 17

We take note, with scrutiny reserve, of the "return" to the original version of the text with the deletion of the requirement that we considered appropriate with the view of the correct application and interpretation of the enforcement activities by competent authorities. We remain waiting for the explanation of the ratio of this new text added (in particular on the concepts of "usage of time or intensity", "ordinary conditions of use" and/or "reasonably expected knowledge" of the trader regarding the durability) before taking an official position at respect.

Recital 21

See our comments on rec. 17 regarding the concept of "reasonably expected knowledge" of the trader about design limitations and our comments on recital 16 regarding the differencies between original producers of the goods engaged on the business and the "mere" retalilers.

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Amendments to Directive 2005/29/EC - UCPD

Article 1 (1)-amendments to art. 2 UCPD:

- **points r and u)**

See our comments on recitals n. 1 (on added text), n. 3 (on the deleted concept of social responsibility) and n. 10 (on certification schemes).

- **point w)**

We welcome the new formulation of the text.

Article 1 (2)-amendments to art. 6 UCPD:

- **point a) sub (b).**

See our comments on recital 10 (on the deleted concept of social responsibility).

- **point b) sub (e).**

See our comments on recital 5 (on the new term “common feature”). At respect, we ask for uniformity reasons to use the same term both in the recital 5 and in this provision (“feature” or “characteristic”). We claim, as previously represented, that the present prohibition should be included in annex I and not in Art. 6 (2) Directive 2005/29/EC.

Article 1 (3)/amendments to art. 7 UCPD:

We welcome the new added text with the acceptance of the suggestions of Italian delegation regarding the better definition in more concrete terms to make it clear that the obligation to provide information in the case of product comparisons relates only to environmental aspects of the products to be compared.

Annex I - UCPD

- **points 23d, 23e, 23f, 23i**

See our comments on rec. 17 on the concept of “reasonably expected knowledge” of the trader. We ask the ratio of the deleted text.

Rome, 16.1.23

Ministry of Enterprises and Made in Italy

DIRECTORATE GENERAL FOR MARKET, COMPETITION, CONSUMER PROTECTION AND TECHNICAL PROVISIONS-UNIT IX

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

Written comments and suggestions

(Republic of Slovenia)

Slovenia welcomes the third Presidency's compromise proposal for a directive. First, SI would like to emphasise that we are open to further improvements of the proposal. We believe that the discussion at the WP meeting on 11 January presents the solid bases to ensure them and we are looking forward to a new compromise text.

SI would also like to point out that it is crucial to prepare a compromise proposal that will be appropriate and applicable to all Member States' markets to the greatest extent possible.

It is at most important to ensure clarity and ease of application of the proposed provisions in order to ensure legal certainty for all market participants, but we must also bear in mind that consumer protection must be effective. The clarity of the provisions will certainly be most important precisely in the area of the commercial guarantee of durability, in order to avoid confusion among consumers regarding the understanding of their consumer rights.

It is also necessary to ensure that consumers will not be overloaded with information and that they will really be empowered to make the best decisions that will contribute to a green transition.

In general, SI would like to emphasize that the proposal should clearly define to whom the provisions apply and who will be responsible in individual cases of infringments (trader and/or producer). In this regard we would like to point out how the proposal will address unfair practices of those producers who are not traders at the same time. SI has concerns whether, in the way we have tackled this issue, we will ensure the purpose of the proposal for this directive and in practice actually make it easier for the supervisory authorities to take action against those companies that engaged in unfair business practices (regarding the green transition). SI believes that we should find a way to be able to take action against all businesses that engage in unfair business practices, especially those producers (who are not traders) that use unfair business practices (in the green transition field) for a greater gain.

Although SI would like to be more ambitious in the approach of tackling unfair practices connected to "green-washing" and "early obsolence" to empower consumer to actively participate to the green transition with his choices, we support the goal of SE PRE to reach the general approach at the COMPET Council on 2 March or few weeks later at the Coreper and we will ensure our constructive support in this regard.

SI provides also key comments on individual provisions in the text below.

Article 1 (Amendments to Directive 2005/29/EC – UCPD Directive):

(1)

- Regarding the inclusion of the concept of social aspect in the **definition of »sustainability label« in point (r)** SI is in principle flexible, because sustainability itself is a complex concept. Nevertheless, SI would like to ask for additional explanations and some examples in the field of social aspect, because it is difficult to impose obligations on someone if these aspects are not clearly defined, e.g. in the definition.

- SI explained in the previous written comments its view that the definition of the term **»certification scheme« in point (s)** is already more appropriate as in the first compromise text and in connection with point (u) represents a better solution, since the product requirements must be objectively verifiable and publicly accessible and consequently also comparable. Also, SI does not oppose to the addition that the definition of the certification scheme, in addition to the product, also refers to the process or a business.

  SI also believes that monitoring should be further explained. In addition, SI would ask again for additional clarification of what exactly falls under the third-party scheme for monitoring of compliance - who determines them, on the basis of which criteria and who exactly belongs to this scheme. Is this a specific authority in accordance with Regulation 1221/2009/EC or Regulation 66/2009/EC or any other authority. SI would like to ask for detailed explanations.

  With the proposal that was mentioned at the last meeting regarding the national accreditation body, for which there could be an obligation to supervise in the case of certification by a third party, special care must be taken not to impose excessive burdens on the Member States. It would also be appropriate that the decision on how they will establish a certification scheme is left to Member States (subject to the same harmonised requirements).

  SI would like to repeate the concerns already expressed in previous written comments. SI has a general concern that certification schemes could be a major cost, especially for SMEs that would like their products to meet such requirements of the scheme. In addition to the above, businesses could also pass on these costs to consumers, but the question arises as to whether and to what extent consumers are willing to pay a higher price for such products.

  As for the EMAS labels, it should also be emphasized that there are only nine companies or organisations in Slovenia that possess the EMAS label. Therefore, we are actually worried about what are the obstacles that prevent companies from obtaining the EMAS label and whether Slovenian companies will have the possibility of meeting the conditions and the possibility of investing funds to obtain the EMAS mark.

  The Ecolabel is more established in Slovenia, especially in tourism. Most environmental marks are granted for tourist accommodation, while there is not so much interest in products (a few environmental marks are granted for cleaning products, paints and paper). The reason is that companies do not meet all the mandatory criteria that must be met in order to be granted the environmental label.

  For the above reasons, SI believes that Slovenian companies will not be competitive on the internal market and consumers will not buy their products, so we are asking for proposals for additional solutions to this problem. It is obvious that the EMAS and Ecolabel labels are not so interesting for Slovenian companies. It is necessary to ensure level playing field and access for all companies in the internal market, while taking care to remove barriers and help companies that would like to contribute to the green transition.

- according to some comments from the last WP meeting, SI also agrees that the definition of "software update" in **point (w)** should be written in a different way and more clearly, so that it is clear that it refers to free and paid updates.

(2)

In **point (b) of the first paragraph of Article 6**, where the term “social impact” or “social responsibility” is deleted, SI has the same opinion as in point (r).

(3)

- Regarding the amendments in the **Article 7(7) of the UCPD Directive**, SI believes that the provision with the added text is not clear enough, so we ask for additional clarifications or the provision should be written differently in order to achieve its purpose and that everyone would understand it equally.

Annex 1

- Regarding the changes in **points 23d, 23e and 23i**, SI considers that the current text is more appropriate than the previous one. SI agrees that we should not impose disproportionate burdens and responsibilities on the trader for providing information to the consumer in cases where the trader does not have this information. If the trader does not know or cannot reasonably be expected to know about something, he cannot be held liable for omitting to inform the consumer about it. At the same time, SI explains that in Slovenia we use the term "know or should have known" without the word "reasonably". SI is also interested in what would be considered under "cannot reasonably be expected to know". Does a trader that is responsible for non-conformity of a product for which the deadline for providing updates for two years after the purchase qualify as a trader who knows is reasonably be expected to know during the period of two years. Nevertheless, we still believe that solutions should be found so that producers are also responsible for their unfair practices, because SI is afraid that without ensuring this we would not fully achieve the purpose of the proposal.

Article 2 (Ammendments to Directive 2011/83/EU – CRD Directive):

(1)

- As already explained, regarding the proposed options for the **definition of the commercial guarantee of durability (14a) and the definition of sustainability (14b) of Article 2**, SI was initially not in favor of the EC's proposal regarding the commercial guarantee of durability, but after further discussions it believes that it is better to keep the definition than to delete it. SI can support the request to inform the consumer about the existence of a commercial guarantee of durability on the condition that the guarantee is longer than two years and if there is no obligation of the trader to inform the consumer about the non-existence of such a guarantee. SI is afraid that information about the non-existence of a commercial guarantee of durability could confuse consumers and they would understand that there is no guarantee at all, not even a legal one. SI is of the opinion that option 2 is better. We also support the addition of option 2 or additional explanations in the recitals, which would eliminate the obligation to provide information about the commercial guarantee of durability for certain goods, such as e.g. daily necessities and any other goods for which such listing would be pointless for informing consumers and would not represent real benefits for consumers, and would at the same time represent an excessive additional burden for businesses and would not bring the desired effects. SI can only support a commercial guarantee od durability that it is given free of charge and for the entire product.

(2)

- Regarding the proposed **options in Article 5 of the CRD Directive**, SI has already mentioned concerns about information overload for consumers and insufficient differentiation between guarantees. SI is in favor of **Option 2** with **point (ea)** and deletion of **point (eb)**, but without the trader's obligation to inform the consumer of the non-existence of such a guarantee in point (ea). SI believes that the change in the text in **point (ea)** in such a way that the text "more than

two years" is replaced by "a longer duration than the minimum legal guarantee of conformity provided by Union law" is appropriate. In this way, it will be ensured that the provision is also adapted for Member States where the legal guarantee is longer than two years (although this does not apply to Slovenia), so that they can maintain the already achieved higher consumer protection. In addition, we explain that we have a specific situation in Slovenia, since in addition to the two-year legal guarantee for non-conformity provided by traders, we also have a one-year mandatory guarantee for certain technical goods provided by poducers. For this reason, if it is additionally written as in point (ea) that the trader shall inform the consumer about the absence of such a commercial guarantee using a Union harmonized graphic format in accordance with Annex of this proposal, consumers could understand that no guarantees are provided at all, not even a mandatory one-year guarantee (in accordance with SI law - provided by producers) or legal guarantee of conformity (in accordance with EU law –provided by traders). It is necessary to ensure the clarity of the provisions so as not to cause confusion among consumers.

- SI has already explained that agrees in principle with the amended text in **point (ec),** whereby PRE has returned the “producer” instead of the “provider” to the text. Also, SI does not object to adding the text "to the trader" after the word "available". However, SI still asks for an explanation as to why there is no period of more than two years. SI understands that updates are available for up to two years as part of conformity based on Directive 2019/771/EU, therefore, SI does not understand why this provision should also cover the period of software updates before the end of two years. However, it is also true that if the trader does not receive information from the producer and thus does not have to inform the consumer, the provision becomes irrelevant.

- SI has a similar comment on **point (ed)** as on (ec) - why should this provision also cover the period of software updates, which also falls under conformity based on Directive 2019/770/EU.

(3)

- Regarding the proposed options in **Article 6, Paragraph 1** of the CRD Directive, the SI is of the same opinion as in the related points in Article 5.