



Empowering Consumers for the Green Transition

A first step in dire need of more

Brussels, May 2022

The initiative on Empowering Consumers for the Green Transition is a first step to tackle vague, irrelevant, misleading or factually wrong claims. It clearly bans unsubstantiated generic claims, introduces new information requirements on product durability and repairability, and strengthens how environmental labels and information tools are regulated. However, in many instances, **the proposed amendments fail to match the original ambition of the initiative**. ECOS encourages co-legislators to further strengthen the proposed measures to fully protect consumers and ensure that greenwashing no longer gets a free pass in Europe.

As it stands, the current proposal is not aligned with the other initiatives it is supposed to complete as a general 'safety net'. It leaves the regulation of all specific green claims to the not yet published Substantiating Green Claims Initiative (GCI), despite the fact that the scope of GCI will be limited to claims covering impacts that can be assessed under the Product and Organisation Environmental Footprint methods. This **leaves out too many claims unregulated**, notably on reusability of products or biodiversity impact.

The proposal also **fails to effectively protect** consumers **against misleading climate claims**, by allowing companies to talk about climate neutral products, which is a scientific nonsense. It proposes to strengthen the regulation of certification and monitoring schemes, but falls short of introducing actual ways of assessing their quality, leaving market authorities in the dark as to what makes for an adequate level of transparency or reliability. As more and more companies make claims on their trajectories towards emission reduction, if we are to believe such promises, guarantees must be given on how their plans and actions are checked and monitored.

Regarding information on durability and repairability, the proposal should go beyond kindly asking retailers to display information if available, and **actually require producers to provide this information**. The proposal is also too weak when it comes to banning problematic and unsustainable practices such as **early obsolescence**. If producers are considered capable of providing information on such practices, then the reality of these practices is proven and **should thus not be allowed at all**.

Finally, ECOS warns that the initiative **will need to be strictly enforced** if it is to bring tangible results. While the new specifications will ensure common interpretation of what constitutes greenwashing across Member States, it does not directly address the current lack of resources and expertise dedicated to enforcing the directives.

Recommendation summary

What we like	<ul style="list-style-type: none">• Strengthening of the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD) to better define how they apply to environmental issues• Bans on unsubstantiated generic environmental claims
What needs to be strengthened	<ul style="list-style-type: none">• Improve definitions, misleading actions, and commercial practices to avoid the potential for weak interpretation• Claims on climate neutrality should be banned under all circumstances• Real bans on early obsolescence practices should be introduced• Strengthen the definition of 'top environmental performance in accordance with other applicable EU Law' to ensure that it only applies to the very best products• Define and regulate specific claims where the Green Claims Initiative will not apply• Strengthen the framework for declaring future environmental performance, and the establishment of sustainability labels, certification schemes and monitoring schemes, including their pre-approval by European authorities.• Make producers and traders proactively display information on reparability, reliability, and durability instead of making traders share this information only when available

Amendments should be more specific to be effective

Article 1 – Amendments to Directive 2005/29/EC on Unfair commercial practices

Article 2: definitions

Overall we welcome the introduction of new definitions to better specify how the UCPD should be applied relating to sustainability aspects. In order for the UCPD to act as intended, and in accordance with the recitals of the proposal, we propose to further specify some definitions:

- Add a definition of **certification schemes and independent monitoring systems** and define the minimum transparency and credibility conditions that should apply to them, for example following UNEP guidelines on product sustainability information¹. At the moment, these conditions are not defined at all, which deprives them of any practical meaning. One important credibility condition should be **the pre-approval of these schemes** by European authorities to avoid a proliferation of schemes that public authorities will not have the resources to retroactively verify.
- Add a definition of what the 'clear, objective and verifiable commitments and targets' are, and what the 'independent monitoring system' should assess when regulating **engagement of future environmental performance**. It should strictly prevent companies from presenting unreliable plans, as exposed in the New Climate Institute's Corporate Climate Responsibility Monitor².
- Add a definition of **specific environmental claims** to avoid loopholes, such as '*a specific environmental claim means an explicit environmental claim whereby the specification of the claim is provided in clear and prominent terms on the same medium*' where the claim was made. This is important to ensure that there is no gap in legislation and that effective bridges exist between UCPD and more sectoral laws.
- Further specify the definition of **'top environmental performance'** in Art.2 of UCPD by adding '*such as a class A in accordance with Regulation (EU) 2017/1369 of the European Parliament and of the Council.*' on EU energy labelling, as mentioned in Recital (10) to avoid a looser interpretation of the term. Only the very top performers should benefit from the authorisation to make a generic environmental claim.

Article 6: Misleading Actions

To ensure that Art. 6 on Misleading actions effectively protects consumers, ECOS strongly recommends that a point to address **specific claims** is added to paragraph 6.2 related to altered transactional decisions. Making a specific environmental claim without both using a relevant assessment method, and presented according to established rules, should be considered misleading. The assessment methods and rules of presentation should be established in EU law.

¹https://www.oneplanetnetwork.org/sites/default/files/guidelines_for_providing_product_sustainability_information_ci-scp_2017_revised.pdf

² <https://newclimate.org/2022/02/07/corporate-climate-responsibility-monitor-2022/>

While this mention includes the upcoming Substantiating Green Claims Initiative (GCI), it would also re-include in the scope these specific claims that will not be covered by GCI. Indeed, GCI only sets itself as a scope the impacts covered by the Product and Organisation Environmental Footprint methods. As shown in our report on plastic claims³, there are many more claims that can be specific enough to fall out of the current Empowering Consumers scope, and thus prevent consumers from making the sustainable choices they wish to. Below are examples of specific claims that should be covered under the amendments:

- A claim would be considered as specific as soon as some figures are provided. For example, a plastic bottle could claim 'composed of 30% **biobased plastic**'. Under the current amendments, it would be excluded from the coverage of Empowering Consumers, but also from the Green Claims Initiative since biobased content is not assessed in PEF. By contrast, 'composed of 50% **recycled content**' could eventually be covered by GCI, given that the PEF contains a formula to calculate recycled content. But will it be covered by GCI if it is only to specify recycled content, and not to perform a full life-cycle assessment of the product? In both cases, there is a need to include a mention in Empowering Consumers' amendments to ensure that specific claims on content cannot be made without following a calculation method specified under EU law.
- Similarly, **reusability claims** can be easily specified by companies, and yet mislead consumers, as there is no official assessment of reusability available. For example, producers can sell 'reusable containers' that can only be refilled via single-use refill pouches and make claims such as: 'refillable 100 times thanks to our throwaway refill pouch'. This would be considered as specific and therefore out of the scope of the current proposal, yet it would mislead consumers into thinking they are choosing a more circular option. There is therefore a need to develop an official assessment method, and rules to display reusability claims. In the meantime, Empowering Consumers should ban these claims, by making them possible only once these methods and rules are included in EU law.
- Typically, the example on **biodegradability** provided in Recital (9) should not be allowed unless there is a legal definition of how to measure biodegradability, and how to report it to consumers: what is 'home composting'? What level of biodegradation do we mean with 'biodegradable in one month'? None of these details should be left unregulated. Currently, the proposal would not cover this claim. It will not be covered by the Green Claim Initiative either. This loophole must be fixed.
- Finally, specific claims on **biodiversity** are currently missing methodologies to assess impact and report information. They are not covered under the PEF method for this reason, and they should therefore not be allowed, even when specified, until a reliable assessment method is developed.

Annex I: Commercial Practices Which Are In All Circumstances Considered Unfair

Annex I should be further specified to **fully ban climate neutral claims**. Notably, the proposed point 4.a on generic environmental claims without demonstrated excellent environmental performance should not apply to climate claims. These should be banned in all circumstances. Even when

³ <https://ecostandard.org/publications/too-good-to-be-true-a-study-of-green-claims-on-plastic-products/>

substantiated, climate neutrality claims mislead the consumer into thinking that products or companies have no climate impact. Moreover they do not contribute to an effective carbon neutrality trajectory at the global level, as the French environmental agency ADEME rightly pointed out⁴.

Further amendments to Annex I are also introduced to tackle **early obsolescence**. However, these amendments only suggest banning the omission of information relating to the early obsolescence of products and stop short from banning these practices altogether. As these practices will have to be identified anyway to allow the proper implementation of the suggested amendments, ECOS recommends the co-legislator to propose an outright ban on these practices.

Article 2 – Amendments to Directive 2011/83/EU on Consumer rights

Article 2: Definitions

Point (14d) introduces the **repairability score** and refers to an unspecified EU law for the method establishing the scoring system. ECOS invites co-legislators to make a clear mention of which legislative proposal will contain the scope and the methodology to develop repair scoring systems, and to ensure that such a legislative proposal indeed comes to see the light of day.

Article 5 and article 6: Information requirements for contracts other than distance or off-premises contracts, Information requirements for distance and off-premises contracts

The proposed points (ec) and (mc), introduce an obligation to **display information on software updates** when available. They will have limited impact if producers are not obliged to provide such information. ECOS strongly encourages the co-legislator to **make access to this type of information mandatory**.

To ensure that consumers are fully aware of the available information on commercial guarantees and software updates, ECOS suggests adding the possibility for consumers to **proactively confirm that they are aware** of the availability, or absence, of **commercial guarantees and software updates** in physical or digital form before the finalisation of the purchase.

Information requirements on the availability of spare parts, including the procedure of ordering them, as well as information requirements on the availability of a user and repair manual, should follow the **same logic as for commercial guarantees: if this information is not available, this should be clearly stated on the product**. As this would be difficult to implement on certain products that are inherently single-use, such a requirement should be implemented as a priority on energy-using goods.

Article 8: Formal requirements for distance contracts

ECOS suggests that traders should also **make the consumer aware** in a clear and prominent manner, and directly before the consumer places their order, **of the information on software updates** provided for in Article 6(1) mentioned in the section above (distance and off-premises contracts), points (mc) on goods with digital elements and (md) on digital content and services.

⁴ <https://presse.ademe.fr/2021/04/avis-de-lademe-tous-les-acteurs-doivent-agir-collectivement-pour-la-neutralite-carbone-mais-aucun-acteur-ne-devrait-se-revendiquer-neutre-en-carbone.html>

There is no justification for not making this information available in the context of distance contracts to be concluded by electronic means whilst information on commercial guarantees will be made available.

Further remarks

Information requirements and Digital Product Passports

The proposal includes a number of new information requirements, especially to help purchasing decisions. To the extent possible, this information helping purchasing decisions, they should be displayed on or next to the product itself. In addition, as Digital Product Passports are gradually introduced under the new Ecodesign for Sustainable Products Regulation, it will be important to take this opportunity to also include these information requirements in the DPPs.

Lifespan of goods

Using the producer's commercial guarantee of durability is indeed a good approach to tackle as many products as possible at once, but under certain conditions:

- Rules on the **transparency of these commercial guarantees** should be strict enough to ensure that the wearing of products which is associated to their normal usage will not disqualify them from commercial guarantees.
- **The burden of proof should rely on producers** for the whole legal and commercial guarantee period.
- **Free repair**, and not replacement, should be the **default option**. If users want to have their product repaired by independent repairers for logistic reasons (e.g. the user lives in a remote area, the producer's repairing facility is too far), repair costs should still be covered by producers.

These commercial guarantee related requirements must be developed through the revision of the Sale of Goods Directive planned under the "Sustainable consumption of goods – promoting repair and reuse" initiative.

The Commission **should still investigate an obligation to inform consumers about the expected lifespan of goods**, at least for a selection of product types. When relevant, this lifespan should be expressed in usage rather than in time (e.g. washing cycles for washing machines). Legislators should **make it mandatory for manufacturers of certain products to add an offline/mechanical usage counter** (like an odometer in a car) on their products. This could be tackled through Ecodesign delegated acts and standardisation.