

Position paper on the Proposal for a Directive on Empowering consumers in the green transition

The e-commerce sector is essential in offering consumers access to an ever-wider range of sustainable companies and products in the EU. Merchants play a pivotal role in communicating the right information at the right time to empower consumers to make more sustainable choices. Therefore, Ecommerce Europe shares the objective of the proposal to ensure transparency, relevance, and reliability of green claims.

Ecommerce Europe welcomes the European Commission's work on harmonising and clarifying how existing consumer legislation applies to environmental claims and sustainable aspects of products and services. We strongly encourage policymakers to strive for the highest level of harmonisation to avoid the fragmented interpretation of future rules.

As a bridge within the supply chain and a direct link to consumers, merchants rely on a proportionate assignment of responsibility and legal clarity to fulfil their role. The paper below outlines some of the remaining concerns that need to be addressed by co-legislators during upcoming negotiations.

Generally, we strongly encourage policymakers to ensure alignment with other ongoing and upcoming discussions on Ecodesign for Sustainable Products (ESPR) and Green Claims. As detailed further below, crucial aspects of this proposal will be dependent on its alignment with the ESPR, especially regarding the flow and the availability of environmental information to sellers. Moreover, the expected proposal on Substantiating Green Claims will have a direct impact on the industry's ability to display and back environmental claims as detailed in this proposal. We, therefore, call on the EU institutions to ensure that these texts are taken into account before the finalisation and adoption of the Empowering consumers in the green transition Directive.

Key Recommendations

1. Clarify the scope of the proposal as well as key definitions and provisions to ensure legal certainty;
2. Ensure that the obligations of economic operators are attributed in a proportionate way, taking into account the role of various actors in the supply chain and their ability to access information and comply with the new requirements;
3. Maintain sufficient flexibility for certification and substantiation of green claims, grounded in reliable and verifiable methodologies;
4. Avoid creating a disproportionate and undue negative impact on second-hand products

Scope and definitions

Ecommerce Europe believes that the scope of the proposal as well as key definitions should be further clarified. Concerning the scope, we would first like to stress that this proposal will amend two pieces of

legislation not yet implemented by all EU Member States. We therefore strongly urge policymakers to refrain from adopting any additional requirements not strictly in the scope of this proposal that would amend other aspects of the UCPD and the CRD. This would create significant confusion and considerably impact legal certainty for companies and their ability to prepare and comply with new rules. These new rules should focus on the ultimate objective of this revision which aims to ensure that consumers have access to relevant and understandable information presented in a way that is adapted to the environment they are shopping in.

Secondly, we would like to highlight below concepts and definitions (Article 1.1) that require further clarification.

Environmental claim

We believe that the broadness of the definition of “environmental claim” could lead to important differences in case-by-case interpretation and create confusion on the EU market. We are concerned by the concepts associated with “representation”, including pictorial or symbolic representation, which strictly interpreted could create important challenges for companies, especially if these interpretations differ from one market to another.

Sustainability labels

We believe that the ambiguity in the definition of “sustainability labels” should be lifted by clearly differentiating sustainability labels from pictograms, icons or filters referring to environmental aspects of a product, meant to facilitate consumers’ navigation on e-commerce websites and marketplace. Consumers should be able to rely on simple indicators when browsing a page (e.g. an icon indicating a product has been produced using second-hand material), to then access detailed information once on the product page. These icons should not be considered sustainability labels, even if the objective of such an indicator is to differentiate one product from another.

Repairability score

We would like to express our concerns regarding the requirements on the repairability score. Considering only very few countries have an established repairability score, this definition and the requirement attached to it – as mandatory pre-contractual information under Article 6 of the CRD – are premature. This wording could encourage the development of different scores across Europe, deepening fragmentation. This could result both in confusion from consumers, confronted with different scores across EU countries, but would also negatively impact SMEs that use online commerce to reach consumers all over Europe. Most SMEs would likely lack the resources needed to comply with all the different scores needed to sell in every Member State of the European Union. We recommend that the proposal makes a direct reference to workstream on harmonized method for product-specific pan-European repairability scores (e.g., through delegated acts under the future Regulation on Ecodesign for Sustainable Product Regulation).

Misleading practices

Article 1.2 proposes new addition to the list of potentially misleading practices. We would welcome some clarification on the following provisions:

- Amendment to Article 6.1 (b) : the proposal introduces as a “*main characteristic of the product*” its “*environmental or social impact, durability, repairability*”. The definition of “environmental and social impact” is not defined in this proposal, nor does it include a reference to existing legislation. We strongly encourage policymakers to clarify these concepts.

- Amendment to Article 6.2 (d): “*making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system*”. We recommend that the proposal further specifies the definition of an “independent monitoring system”
- Amendment to Article 6.2 (e): “*advertising benefits for consumers that are considered as a common practice in the relevant market*”. We encourage policymakers to include an explicit and objective list of factors that would lead to “benefits” being viewed as “common practice in the relevant market”. Without such a clarification, we are concerned that the provision will bring legal uncertainty that may even go beyond the “green transition” policy area.

Information on negative impacts of software updates

We would welcome further clarifications on the prohibition of omitting information to consumers that software updates will negatively impact a device (Annex 1.23d). Negative impact is a vague and subjective concept, and we would encourage policymakers to come forward with further guidance and/or standards on what type of software updates would require such disclaimers to consumers. Many devices provide automatic software updates, in part to maximize the uptake of critical security fixes. Any requirement directed to prior notice to consumers, or giving customers the ability to opt-out of updates, risks diminishing the uptake and leaving customers unprotected. Further, we would argue that information about software updates for goods that include digital elements/content or services, should be limited to the provision of information about security updates which are essential to consumers’ safe use of goods. Any additional information requirements, including software updates, should be aligned with other existing EU legislation.

Proportionate obligations of actors

We encourage policymakers to ensure that the obligations of economic operators are proportionate and aligned with connected pieces of legislation such as the proposal on Ecodesign for Sustainable Products. An important aspect of this issue in the current proposal is to ensure sellers’ access to reliable and up-to-date information on the products they are selling, to ensure that this information can be passed on to the consumers. This is particularly important for small and micro-businesses, who do have even fewer resources available to research or check the information that is being communicated (or not) by actors before them in the supply chain).

While the current text provides limited safeguards on the making available of information from the producer to the seller, we would strongly encourage further clarification and emphasis on producer obligations. We would welcome an explicit obligation on producers to make this information either available to the seller or even to make all information mentioned in the text publicly available and frequently updated. In order to ensure clarity for all actors, we also encourage policy-makers to make clear what information should be passed down to the sellers. Legal clarity on responsibilities is all the more important considering the fact that sellers sometimes encounter difficulties in accessing redress when the information provided has been challenged. Finally, we encourage the text to clarify where liability lies concerning the veracity or lack of information, as producers and manufacturers should be held liable for the information that is communicated (or not) to sellers. Specifically, regarding the information on guarantee period, we would like to highlight that the issue of guarantee period information in online stores is a challenge for many merchants. A recent ECJ ruling ([judgment of 05.05.2022, C-179/21](#)) highlights that an unconditional obligation to provide such information, in all circumstances, seems to be disproportionate. Such an obligation would require the trader to carry out considerable work collecting and updating information on such a guarantee, even though he does not necessarily have a direct contractual relationship with the manufacturer and the commercial guarantee from that manufacturer does not, in principle, fall within the scope of the contract which the trader intends to conclude with the consumer.

We encourage the policymakers to clarify the responsibility of producers to communicate the above-mentioned information to sellers, including in case of changes to the guarantee period.

We would also like to highlight that these requirements could be challenging to implement for catalogue mail-orders where the complete specification of commercial guarantee conditions would require important adaptation and would require at least a transitional period (preferably at the beginning of the calendar year) to allow annual catalogues to be prepared and laid, and avoid having to re-issue catalogues throughout the year.

Excellent environmental performance and certification schemes

The revision of these Directives should be flexible enough to allow companies to streamline various environmental claims or layer information to cater for different consumer needs and behaviour (i.e., putting the main performance, repairability and durability level of the product on the first layer of information, with additional layers or links for those customers who may want to dig deeper). The issue of displaying information is crucial to sellers, as the user experience could be negatively impacted if rules are not designed to adapt to an online or omnichannel environment. It is also important to consider the importance of comprehensibility and avoid information overload. It should also maintain a level of flexibility for certification schemes and labelling as long as an agreed set of criteria for reliability is achieved. We are concerned that the current proposals impose limitations on the display and certification of green claims that go beyond what is necessary to ensure the relevance and reliability of these claims.

Moreover, we would like to bring to policymakers' attention that online marketplaces and retailers take due care in incentivising consumers to purchase more sustainable products via dedicated aggregator programmes, which collate and highlight to consumers (by way of a label, badge, icon or name) products which have received a sustainability label which is based on a certification scheme or third party verification or which is established by public authorities. We would therefore recommend that the use of aggregator programmes, badges, or other visual representations and icons, that facilitate consumers' access to verified and substantiated sustainability labels, and which may assist the consumer in identifying and understanding a claim, should not be considered a sustainability labels or generic environmental claims.

We believe it is important to consider the impact of these rules on micro-enterprises and SMEs, for which the EC should clearly define accessible parameters that would allow them to describe their products in a manner that supports their efforts in providing consumers with accurate information and abiding with the Unfair Commercial Practices Directive.

Concerning substantiating environmental claims (Annex 1.4), it is important to keep in mind that the EU ecolabel or national excellence labels cannot apply to a range of products sold in the EU. Moreover, it remains difficult to anticipate the impact of this ban so long as the scope and the impact of the upcoming EU proposal on Substantiating Green Claims remain unknown. We, therefore, encourage policymakers to maintain a sufficient level of flexibility and consider various methods that could be used on a product-level (e.g. the use of PEF when available).

We believe that provisions on certification schemes should be made clearer and more proportionate. We encourage policymakers to further clarify the concept of "certification schemes", as well as "independent monitoring systems". We also encourage the policymakers to consider the importance of flexibility for industry-led innovation and development and would ask it to reconsider introducing a blanket ban on third-party labels. We would recommend not limiting "certification schemes", as defined in the proposal, to labels that are "open to all traders". This would significantly reduce the options of providing consumers with relevant and concise information on products' sustainability aspects. Industry initiatives that highlight and promote products that meet high sustainability standards, based on third-party certifications, should be supported to further promote initiatives which incentivise sustainable consumption patterns.

We encourage policymakers to keep in mind the costs of certification schemes, which could discourage smaller players to seek certification and therefore impact their ability to market their products and service even if efforts are being done to improve the environmental impact of their operations.

We would also like to highlight that adapting existing certification schemes or creating new schemes (also taking into account the certification process of products and services) is not realistically achievable under the current timeline for implementation of 24 months (Article 4.1). This could create situations where products could lose their certifications as the Directive enters into force if a scheme is not up to date, or available for that product category, while new schemes are not ready to be used. As this will be directly impacted by other pieces of legislation that have yet to be published or finalised (including the Substantiating Green Claims and Ecodesign proposals), we strongly encourage policymakers to extend this timeline.

Second-hand products

The Directive would apply indiscriminately to new and second-hand goods. We are concerned that the latter will never be able to attain legally acceptable claims or labels of good environmental performance. There would be situations where, especially on certain platforms, goods of all conditions coexist. In these situations, environmentally performant new products will be distinguished as such to consumers, but second-hand products will never be, even though they almost always have a lower environmental footprint than new products. Our suggestion would therefore be for the Directive to explicitly recognize the higher environmental value of second-hand products and to explicitly allow advertising based on this higher environmental value.

In general, we also encourage policymakers to establish exemptions for second-hand and refurbished products, especially regarding unfair commercial practices where the seller could be liable for design decisions made by the manufacturer (e.g. the presence of software that could limit the durability of a product might be flagged to sellers only after a consumer has flagged this issue to them). Article 23d, 23e, 23f, 23g and 23i of Annex 1 of the UCPD should be carefully re-assessed through this angle.

In the absence of producer obligations to make information publicly available, as mentioned above, we would encourage policymakers to waive information requirements or at least provide for exceptions for second-hand products. This information can be incredibly difficult to collect or even simply non-existent for the traders of these goods, as they often do not have a direct relationship with the producer of the good.

While we do recognize the opportunity that projects such as a European digital product passport would create to facilitate the necessary flow of information, the timeline on which this could become operational is much longer than the implementation timeline of this Directive. We, therefore, encourage policymakers to consider exemptions or lighter regimes for handmade and second-hand products, as legislation needs to account for this gradual reality to develop over time as well as the number of products already in circulation which have not reached the end of their life and must be reused.

Concerning the amendments to the CRD, requiring all products to provide information regarding a commercial guarantee of durability would create a disproportionate burden on sellers of handmade and second-hand/vintage products. We call on policymakers to consider the feasibility of assessing the durability of a product, especially for micro-businesses (selling handmade, small-batches products) or sellers of vintage/ second-hand products. We believe that it would be disproportionate, and unnecessary for the purpose of this Directive, to force sellers of goods such as vintage clothing, or small batches of creative products (e.g. handmade mugs), where the durability of the goods cannot be assessed, or would not be uniform for all products.