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From: General Secretariat of the Council
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Subject: 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
- Letter to the Chair of the IMCO Committee of the European Parliament

Following the Permanent Representatives Committee meeting of 25 October 2023 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annexes to the Chair of the European Parliament Committee on the Internal Market and Consumer Protection (IMCO).



Council of the
European Union

SGS 23 / 004658

Brussels, 25/10/2023

Ms. Anna CAVAZZINI

Chair, Committee on the Internal Market and Consumer Protection
European Parliament
Rue Wiertz 60, B-1047 Bruxelles
Belgium

Subject: 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 [2022/0092 (COD)]

Dear Ms CAVAZZINI,

Following the informal meeting held on 19 September 2023 between the representatives of the three institutions, a draft overall compromise package was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt this position at the first reading in accordance with Article 294(3) of the Treaty on the Functioning of the European Union (TFEU) in the form as set out in the compromise package contained in the Annex to this letter (subject to revision by the lawyer linguists of both institutions), the Council would, in accordance with Article 294(4) TFEU, approve the European Parliament's opinion and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement of this dossier at the first reading.

Yours faithfully,

Raúl FUENTES MILANI
Chairman of the
Permanent Representatives Committee

Copy: Mr **Didier REYNDERS**, Member of the European Commission
Ms **Biljana BORZAN**, Rapporteur of the IMCO Committee of the European Parliament

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee,¹

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to *contribute to the proper functioning of the internal market, taking as a base a high level of consumer protection and environmental protection, and to make progress in the green transition, it is essential that consumers can make informed purchasing decisions and thus contribute to more sustainable consumption patterns. This implies that traders have a responsibility to provide clear, relevant and reliable information. Therefore, specific rules should be introduced in Union consumer law to tackle unfair commercial practices that mislead consumers and prevent them* from making sustainable

¹ OJ C , , p. .

consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims ("greenwashing"), ***misleading information about the social characteristics of products or traders' businesses ("social washing"), or non-transparent and non-credible sustainability labels.*** Those rules would enable ***competent national*** bodies to ***effectively*** address ***such*** practices . Ensuring that environmental claims are fair, ***understandable and reliable will allow traders to operate on a level playing field and will enable consumers*** to choose products that are genuinely better for the environment than competing products. This will encourage competition towards more environmentally sustainable products, ***thereby*** reducing ***the*** negative impact on the environment.

- (2) Those new rules should be introduced both through amending Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council² relating to those commercial practices which are to be considered misleading, and therefore prohibited, on the basis of a case-by-case assessment, and through amending Annex I to Directive 2005/29/EC with the addition of specific misleading practices which are in all circumstances considered unfair, hence prohibited. ***As already laid down in Directive 2005/29/EC, it should still be possible to consider that a commercial practice is unfair on the basis of Articles 5 to 9 of that Directive, even though that particular practice is not listed as an unfair commercial practice in Annex I of Directive 2005/29/EC.***
- (3) In order ***for consumers to be empowered to take better-informed decisions and thus stimulate the demand for, and the supply of, more sustainable goods, they should not be misled about a product's environmental or social characteristics or circularity aspects, such as durability, reparability or recyclability,*** through the overall presentation of the products. Article 6(1) of Directive 2005/29/EC should ***therefore*** be amended by adding environmental ***and social characteristics and circularity aspects*** to the list of the main characteristics of ***a*** product in respect of which the trader's practices can be considered misleading, following a case-by-case assessment. Information provided by traders on the social ***characteristics of a product throughout its value chain can relate for example to***

² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

the quality and fairness of working conditions of the involved workforce, such as adequate wages, social protection, work environment safety and social dialogue; to the respect for human rights; to equal treatment and opportunities for all, such as gender equality, inclusion and diversity; to contributions to social initiatives; or to ethical commitments, such as animal welfare. Environmental and social characteristics of a product should be considered to have a broad meaning, including environmental and social aspects, impacts and performance.

- (4) Environmental claims, in particular climate-related claims, increasingly relate to future performance in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products. To ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are not supported by clear, objective, **publicly available** and verifiable commitments and targets given by the trader **and are not set out in a detailed and realistic implementation plan that shows how these commitments and targets will be achieved and allocates resources to this end. The implementation plan should include all the relevant elements necessary to fulfil the commitments, such as budgetary resources and technological developments, where appropriate and in accordance with Union law.** Such claims should also be **verified by a third party expert, who should be independent from the trader, free from any conflicts of interest, with experience and competence in environmental issues and who should be enabled** to monitor **regularly** the progress of the trader with regard to the commitments and targets, **including the milestones for achieving them. Traders should make those regular findings of the third party expert available to consumers.**
- (5) Another potentially misleading commercial practice **to** be added to the specific practices **referred to in** Article 6(2) of Directive 2005/29/EC is advertising benefits **to** consumers that are **irrelevant and not directly related to any feature of that specific product or business and which may mislead consumers into believing that they are more beneficial to consumers, the environment or society than other products or traders' businesses** of the same type, for example, **claiming that a particular brand of bottled water is gluten-free or claiming that paper sheets do not contain plastic.**

- (6) Comparing products based on their environmental or social *characteristics or circularity aspects, such as durability, reparability or recyclability*, is an increasingly common marketing technique *that could mislead consumers, who are not always able to assess the reliability of that information*. In order to ensure that such comparisons do not mislead consumers, Article 7 of Directive 2005/29/EC should be amended to require that the consumer is provided with information about the method of the comparison, the products which are the object of comparison and the suppliers of those products, and the measures to keep information up to date. This should ensure that consumers make better informed transactional decisions when using such services. The comparison should be objective by, in particular, comparing products which serve the same function, using a common method and common assumptions, and comparing material and verifiable features of the products being compared.
- (7) *Sustainability labels can relate to many aspects and it is essential to ensure their transparency and credibility. Therefore*, the displaying of sustainability labels which are not based on a certification scheme, *or which have not been* established by public authorities should be prohibited by including such practices in the list in Annex I to Directive 2005/29/EC. *Before displaying a sustainability label, the trader should ensure, that according to the publicly available terms of the certification scheme, it meets minimum conditions of transparency and credibility, including the existence of an objective monitoring of compliance with the requirements of the scheme. Such monitoring should be carried out by a third party whose competence and independence from the scheme owner and the trader is ensured based on international, Union or national standards and procedures, for example by demonstrating compliance with relevant international standards, such as ISO 17065 "Conformity assessment — Requirements for bodies certifying products, processes and services" or through the mechanisms provided for in Regulation (EC) No 765/2008*. The displaying of sustainability labels remains possible without a certification scheme *when* such labels are established by a public authority, or in case of additional forms of expression and presentation of food in accordance with Article 35 of Regulation (EU) No 1169/2011. *Examples of sustainability labels established by public authorities are logos awarded when complying with the requirements of Regulation (EC) No 1221/2009 (EMAS) or Regulation (EC) No 66/2010 (EU Ecolabel). Some certification marks, as defined in Article 27 of Directive 2015/2436/EC, can also operate as sustainability labels if they*

promote a product, process or business with reference to, for example, its environmental or social characteristics or both. The trader should display such certification marks only if they are established by public authorities or based on a certification scheme. This rule complements point 4 of Annex I to Directive 2005/29/EC, which prohibits claiming that a trader, the commercial practices of a trader or a product *have* been approved, endorsed or authorised by a public or private body when *that is not the case*, or making such a claim without complying with the terms of the approval, endorsement or authorisation.

Voluntary market-based and public standards for green and sustainable bonds do not primarily target retail investors and are subject to specific legislation. For these reasons, these standards should not be considered sustainability labels according to this Directive. Public authorities should, as far as possible and in compliance with Union law, promote measures to facilitate access to sustainability labels for small and medium-sized enterprises.

- (8) In cases where the displaying of a sustainability label involves a commercial communication that suggests or creates the impression that a product has a positive or no impact on the environment, or is less damaging to the environment than competing products, that sustainability label also should be considered as constituting an environmental claim.
- (9) Annex I to Directive 2005/29/EC should also be amended to prohibit making generic environmental claims without recognised excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are ‘environmentally friendly’, ‘eco-friendly’, ‘green’, ‘nature’s friend’, ‘ecological’, ‘environmentally correct’, ‘climate friendly’, ‘gentle on the environment’, ‘carbon friendly’, ‘energy efficient’, ‘biodegradable’, ‘biobased’ or similar statements that suggest or create the impression of excellent environmental performance. Such generic environmental claims should be prohibited whenever no *recognised* excellent environmental performance *can be demonstrated*. Whenever the specification of the *environmental* claim is provided in clear and prominent terms on the same medium, such as the same advertising spot, product’s packaging or online selling interface, *the environmental claim is not considered to be a generic environmental claim*. For example, the claim ‘*climate-friendly packaging*’ would be a generic claim, whilst claiming that *100% of energy used to produce this packaging comes from renewable sources*’ would be a specific claim, which *would* not fall under this prohibition *without prejudice to other provisions of Directive 2005/29/EC*

remaining applicable to those specific claims. Furthermore a claim made in written form or orally combined with implicit claims such as colours or images could constitute a generic environmental claim altogether.

- (10) **Recognised** excellent environmental performance can be demonstrated by compliance with Regulation (EC) No 66/2010 of the European Parliament and of the Council³, or officially recognised **EN ISO 14024** ecolabelling schemes in the Member States, or ■ with top environmental performance for a specific environmental **characteristic** in accordance with other applicable Union laws, such as a class A in accordance with Regulation (EU) 2017/1369 of the European Parliament and of the Council⁴. The excellent environmental performance in question should be relevant to the **entire** claim. For example, a generic **environmental** claim ‘energy efficient’ could be made based on **recognised** excellent environmental performance in accordance with Regulation (EU) 2017/1369. By contrast, a generic **environmental** claim ‘biodegradable’ could not be made based on **recognised** excellent environmental performance in accordance with Regulation (EC) No 66/2010, insofar as there are no requirements for biodegradability in the specific EU Ecolabel criteria related to the product in question. **Similarly, a trader should not make a generic claim such as ‘conscious’, ‘sustainable’ or ‘responsible’ exclusively based on recognised excellent environmental performance because such claims relate to other aspects in addition to the environmental aspect, such as social characteristics.**
- (11) Another misleading commercial practice which should be prohibited in all circumstances and thus added to the list in Annex I to Directive 2005/29/EC is making an environmental claim about the entire product **or the entire trader’s business** when it actually concerns only a certain aspect of the product **or a specific, unrepresentative activity of the trader’s business. This ban would apply**, for example, when a product is marketed as ‘made with recycled material’ giving the impression that the entire product is made of recycled material, when in fact it is only the packaging that is made of recycled material, **or when a trader gives the impression that it is only using renewable energy sources when several of the trader’s business facilities still use fossil fuels. This should not prevent traders to**

³ Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (Text with EEA relevance) (OJ L 27, 30.1.2010, p. 1).

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

make environmental claims at the global level of their business provided that they are accurate and verifiable and do not overstate the environmental benefit, such as reporting a decrease of the use of fossil fuels at the global level of their business in the example above.

(11a) *It is particularly important to prohibit claims, based on greenhouse gas emissions offsetting, that a product, either a good or service, has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions. Such claims should be prohibited under all circumstances and therefore added to Annex I to Directive 2005/29/EC as they mislead consumers by making them believe that such claims relate to the product itself, or the supply and production of that product, or as they give the false impression to consumers that the consumption of that product has no environmental impact, while this is not the case. Examples of such claims are ‘climate neutral’, ‘CO2 neutral certified’, ‘carbon positive’, ‘climate net zero’, ‘climate compensated’, ‘reduced climate impact’, ‘limited CO2 footprint’ among others. Such claims can only be allowed when they are based on the actual lifecycle impacts of the product in question, and not based on greenhouse gas emissions offsetting outside the product’s value chain, as the former and the latter are not equivalent. This should not prevent companies from advertising their investments in environmental initiatives, including carbon credit projects, as long as they provide such information in a way that is not misleading and also complies with the requirements laid down in Union legislation.*

(12) ■ Additional requirements on environmental claims will have to be set in specific Union legislation. Those new requirements will contribute to the Green Deal⁶ objective of enabling buyers to make more sustainable decisions and reduce the risk of greenwashing through reliable, comparable and verifiable information.

(12a) *Marketing across the Member States of goods as being identical when, in reality, they have a significantly different composition or characteristics may mislead consumers and cause them to take a transactional decision that they would not have taken otherwise. Such marketing practices are expressly addressed in Article 6(2)(c) of Directive 2005/29/EC, introduced by Directive (EU) 2019/2161 that entered into application on 28*

⁶ COM(2019)640 final, 11 December 2019.

May 2022. The Commission will assess and report in 2024 on the application of Directive (EU) 2019/2161, including Article 6(2)(c) of Directive 2005/29/EC and whether those cases should be subject to more stringent requirements, including prohibition in Annex I. The new provisions against greenwashing practices in this Directive also apply to such practices where versions of the same product are marketed as being identical in different Member States despite their significant differences in the meaning of Article 6(2)(c) of Directive 2005/29/EC.

- (13) Presenting requirements imposed by law on all products within the relevant product category on the Union market, including imported products, as a distinctive feature of the trader's offer, should **■** be prohibited in all circumstances and *thus* added to the list in Annex I to Directive 2005/29/EC. This prohibition could apply, for example, when a trader is advertising that a given product does not include a specific chemical substance while that substance is already forbidden by law for all products within that product category in the Union. Conversely, the prohibition should not cover commercial practices promoting traders' or products' compliance with legal requirements that only apply to some products but not to other competing products of the same category on the Union market, such as products of non-EU origin. *It could be the case that certain products on the market are required to comply with certain legal requirements while other products in the same product category do not. For example, fish products produced using EU-mandated sustainable fishing methods would be allowed to advertise compliance with EU legal requirements, where fish products offered on the EU market and of third country origin need not to comply with them.*
- (14) In order to improve the welfare of consumers, the amendments to **■** Directive 2005/29/EC should also address several practices associated with early obsolescence, including planned *early* obsolescence practices, understood as a commercial policy involving deliberately planning or designing a product with a limited useful life so that it prematurely becomes obsolete or non-functional after a certain period of time *or after a predetermined intensity of use*. Purchasing products that are expected to last longer than they actually do causes consumer detriment. Furthermore, early obsolescence practices have an overall negative impact on the environment in the form of increased **■** waste *and use of energy and materials*. Therefore, addressing *information related to early obsolescence* practices is also likely to reduce the amount of waste, contributing to a more sustainable consumption.

- (15) It should *also* be prohibited *under Annex I to Directive 2005/29/EC to withhold information from consumers about the fact that a software update* ■ will negatively impact the *functioning* of goods with digital elements or *the use of digital content or digital services*. *In general, traders responsible for the development of software updates are expected to have such information, while in other cases traders can rely on reliable information provided by, for example, software developers, suppliers or by competent national authorities*. For example, when inviting consumers to update the operating system on their smartphone, the trader *should not withhold the information towards the consumer that such an update will negatively impact the functioning of any of the features of the smartphone, such as the battery, certain applications performances or a complete smartphone slowdown*. *This prohibition applies to any update, including security and functionality updates*. *For updates, including security updates, necessary to keep the good, digital content and digital service in conformity, Article 8 of Directive 2019/770 and Article 7 of Directive 2019/771 also apply*. *This provision is without prejudice to Article 19 of Directive 2019/770*.
- (15a) *Software updates that are security updates are necessary for the secure use of the product while updates related to enhancing functionality features are not*. *Therefore, Directive 2005/29/EC should prohibit the presentation of a software update as necessary to keep the product in conformity where it only enhances functionality features*.
- (16) *Commercial communications for a good containing a feature introduced to limit its durability is a commercial practice detrimental to consumers and the environment as they encourage the sale of such goods which leads to higher costs for consumers and unnecessary use of resources, waste production and greenhouse gas emissions*. *Any such commercial communication should therefore be prohibited when information on the feature and its effects on the durability of the good are available to the trader*. *Examples of such a feature could be software which stops or downgrades the functionality of the good after a particular period of time, or* ■ *a piece of hardware which is designed to fail after a particular period of time*. *It could also be a design or manufacturing flaw which, although not introduced as a feature for that purpose, leads to the premature failures of the good, if it is not fixed once information about the existence and effects of this feature has become available to the trader*. *In the context of this provision, commercial communications include communications designed to promote, directly or indirectly, the goods*. *The manufacturing of goods and making them available on the*

market do not constitute a commercial communication. This prohibition is aimed to cover mainly the traders who are the producers of the goods as they are the ones determining the durability of the goods. Therefore, in general, when a good is identified as containing a feature to limit the durability, the producer of that good is expected to be aware of that feature and its effect on the durability of that good. Nevertheless, traders who are not the producers of the goods, such as the sellers, can be targeted by this provision where reliable information is available to them about the feature and its effects on durability, such as a statement from a competent national authority or information provided by the producer. Therefore, as soon as such information is available to the trader, such prohibition should apply irrespective of whether the trader is actually aware or unaware of that information, for example by neglecting it. For such a commercial practice to be considered unfair, it should not be necessary to demonstrate that the purpose of the feature is to stimulate the replacement of the respective good, *but it would be sufficient to prove that this feature has been introduced to limit the durability of the good. This prohibition complements and does not affect the remedies available to consumers when they constitute a lack of conformity under Directive (EU) 2019/771 of the European Parliament and of the Council*⁷. The use of features limiting the durability of the goods should be distinguished from manufacturing practices using materials or processes of general low quality resulting in limited durability of the goods. Lack of conformity of a good resulting from the use of low quality materials or processes should continue to be governed by the rules on the conformity of goods set out in Directive (EU) 2019/771.

- (17) Another practice which should be prohibited under Annex I to Directive 2005/29/EC is the practice of *falsely* claiming that a good has a certain durability *in terms of usage time or intensity under normal conditions of use*. That would be the case, for instance, when a trader informs consumers that a washing machine is expected to last a certain number of washing cycles, *in accordance with normal expected use indicated in the instructions*, while the actual use of *the* washing machine *under the prescribed conditions* shows this is not the case. *Such claims are largely made by the producers, as they determine*

⁷ *Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28).*

themselves the durability of the goods. Therefore, in general, traders who are the producers of those goods are expected to be aware of false claims on the durability of the good, whereas other traders such as sellers should rely on reliable information available to them, for instance based on a statement from a competent national authority or information provided by the producer. Lack of conformity of a good resulting from occasional faults in the manufacturing of a good should continue to be governed by the rules on the conformity of goods set out in Directive (EU) 2019/771.

- (18) Similarly, Annex I to Directive 2005/29/EC should also be amended to prohibit presenting products as allowing repair when such repair is not possible.
- (19) The prohibition of those practices in relation to durability and reparability in Directive 2005/29/EC would provide the consumer protection authorities of Member States with an additional enforcement tool for better protection of consumers' interests in the cases where traders fail to comply with requirements on the durability and reparability of goods under Union product legislation.
- (20) Another practice associated with early obsolescence which should be prohibited and added to the list in Annex I to Directive 2005/29/EC is inducing the consumer into replacing *or replenishing* the consumables of a product earlier than would otherwise be necessary for technical reasons. Such practices mislead the consumer into believing that the goods will no longer function unless their consumables are replaced, thus leading them to purchase more consumables than necessary. For example, the practice of urging the consumer, via the settings of the printer, to replace the printer ink cartridges before they are actually empty in order to stimulate the purchase of additional ink cartridges would be prohibited.
- (21) Annex I to Directive 2005/29/EC should also be amended to prohibit *withholding information from* the consumer *about the impairment of the functionality of a good* when using consumables, spare parts or accessories that are not provided by the original producer. For example, *if a printer is* designed to limit *its* functionality when using ink cartridges not provided by the original producer of the printer, *this information should not be hidden* to the consumer *because* this practice could mislead consumers into purchasing an alternative ink cartridge which cannot be used for that printer, thus leading to unnecessary waste streams or additional costs *for the consumer*. *Similarly, if a smart device is designed to limit its functionality when using chargers or spare parts that are*

not provided by the original producer, this information should not be hidden to the consumer at the time of purchase. It should also be prohibited to mislead consumers into believing that using consumables, spare parts or accessories not supplied by the original producer will impair the functionality of a good while this is not the case. In general, traders who are the producers of those goods are expected to have that information, whereas other traders such as sellers should rely on reliable information available to them, for instance based on a statement from a competent national authority or information provided by the producer.

- (22) In order for consumers to take better informed decisions and stimulate the demand for, and the supply of, more durable goods, specific information about a product's durability and reparability should be provided for all types of goods before concluding the contract. Moreover, as regards goods with digital elements, digital content and digital services, consumers should be informed about the period of time during which free software updates are available. Therefore, Directive 2011/83/EU of the European Parliament and of the Council⁸ should be amended to provide consumers with pre-contractual information about durability, reparability and the availability of updates. Information should be provided to consumers in a clear and comprehensible manner and in line with the accessibility requirements of Directive 2019/882⁹. The obligation to provide this information to consumers complements and does not affect the rights of consumers provided in Directives (EU) 2019/770¹⁰ and (EU) 2019/771¹¹ of the European Parliament and of the Council.
- (23) A good indicator of a good's durability is the producer's commercial guarantee of durability within the meaning of Article 17 of Directive (EU) 2019/771. *The producer's*

⁸ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

⁹ Directive 2019/882/EU of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

¹⁰ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (OJ L 136, 22.5.2019, p. 1).

¹¹ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 28).

commercial guarantee of durability is a commitment from a producer to the consumer on the durability of the good, more specifically it is a commitment that the good will maintain its required functions and performance through normal use. In order to inform consumers about the fact that a guarantee of durability is offered for a particular good, that information should be provided to the consumer using a harmonised label. Traders selling goods should be required to inform consumers about the existence and duration of the producer's commercial guarantee of durability covering the entire good, offered without additional costs, and for more than two years, where the producer makes this information available to the trader. The trader should not be required to actively search for such information from the producer, for example, on the product-specific websites. To avoid consumer's confusion between the commercial guarantee of durability and the legal guarantee of conformity, consumers should be reminded on the harmonised label that they also benefit from the legal guarantee of conformity.

- (23a) *Recent consumer reports have shown that consumers are often unaware of their legal rights under Directive (EU) 2019/771. Therefore a harmonised notice should remind consumers about the existence and the main elements of the legal guarantee of conformity, including its minimum duration of two years and a general reference to the possibility that the duration of the legal guarantee of conformity can be longer under national rules. This will prevent possible confusion with the information on commercial guarantee of durability.*
- (23b) *The harmonised label should be displayed in a prominent manner and used in a way that allows the consumers to identify easily which particular good benefits from a commercial guarantee of durability covering the entire good, offered without additional costs, and for more than two years, for example by placing the label directly on the packaging of a particular good or by displaying the label in a prominent manner on the shelf where the goods covered by such a guarantee are placed, or by placing it directly next to the picture of the good when the good is offered for sale online. Producers offering such commercial guarantees of durability can themselves place the harmonised label directly on the particular good or on its packaging, with the aim of benefitting from a commercial advantage. Traders should ensure that the harmonised label is clearly visible. The harmonised notice should meanwhile provide a general reminder to the consumers about the legal guarantees of conformity applicable to all goods in accordance with Directive 2019/771. The harmonised notice should be displayed in a*

prominent manner, for example, as a poster in an eye-catching way on a wall in the shop, next to the checkout counter or, in cases of online sale, placed as a general reminder on the website of the trader selling goods.

- (23c) *Implementing powers should be conferred on the Commission as regard to the design and content of the harmonised label and the harmonised notice. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹².*

- (26) In view of the established minimum duration of two years of the **legal guarantee** of conformity in accordance with Directive (EU) 2019/771 and the fact that many product failures occur after **this duration**, the trader's obligation to inform consumers about the existence and duration of the producer's commercial guarantee of durability **using a harmonised label** should **only** apply to **commercial guarantees of durability** that are **offered for a period longer** than two years. **In addition, the harmonised label should also remind consumers of the existence of the legal guarantee of conformity.**
- (27) In order to make it easier for consumers to take an informed transactional decision when comparing goods before concluding a contract, traders should inform consumers about the existence and duration, of the producer's commercial guarantee of durability for the entire good and not for specific components of the good.
- (28) The producer and the seller should remain free to offer other types of commercial guarantees and after-sales services **■**. However, the information provided to the consumer about such other commercial guarantees or services should not confuse the consumer with regard to the existence and duration of the producer's commercial guarantee of durability **covering** the entire good, **offered without additional costs, and for** more than two years, **using a harmonised label.**

¹² **Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).**

(29) ***In order for consumers to take better-informed decisions and*** to promote competition between producers as regards the durability of goods with digital elements, the traders selling those goods should inform consumers about the minimum period of time during which ***or date until when*** the producer commits to provide software updates for such goods. ***Likewise, traders offering digital content and digital services*** should ***inform consumers about the minimum*** period ***during which or until when the provider*** of the ***digital content or digital service commits to provide software*** updates, including security updates, **■** necessary to ***keep the digital content and digital services in conformity. This obligation should ensure that consumers receive this information in a simple and clear manner allowing them to compare different minimum periods. This is without prejudice to the obligations set out in Union law, in particular in Directives (EU) 2019/770 and (EU) 2019/771 and, where applicable, specific Union product legislation. The information on software updates should be provided in a manner that is not misleading under the provisions*** of Directive 2005/29/EC. ***The trader should be obliged to provide this information only where the producer or provider has made such information available.***

■

(31) ***Pursuant to Article 5(1), point (e), and Article 6(1), point (m), of Directive 2011/83/EU,*** traders are obliged to provide the consumer before the consumer is bound by the contract with information on the existence and the conditions of after-sales services, including repair services, where such services are provided. ***In addition, to*** allow consumers to make an informed transactional decision and choose goods that are easier to repair, traders should provide, before the conclusion of the contract, for all types of goods, where applicable, the reparability score of the good as provided by the producer ***and established*** in accordance with Union law.

(32) **■** In order to ensure that consumers are well informed about the reparability of the goods they purchase, where a reparability score is not established in accordance with Union law, traders should provide **■** other relevant repair information that is made available by the producer, such as information about the availability, ***estimated cost and ordering procedure*** of spare parts ***necessary to keep goods in conformity, about the availability of repair and maintenance instructions as well as about repair restrictions.***

- (33) Traders should provide consumers with *the harmonised label, information about* the minimum period for updates and the repair information other than the reparability score, where the producer or provider of the digital content or digital service, when different from the trader, makes the relevant information available. In particular, as regards goods, the trader should convey to consumers the information that the producer has provided to the trader or has otherwise intended to make readily available to the consumer before the conclusion of the contract, by indicating it on the product itself, its packaging or tags and labels that the consumer would normally consult before concluding the contract. The trader should not be required to actively search for such information from the producer, for example, on the product-specific websites. *At the same time, it would be in the interest of the producers to proactively provide such information to benefit from a commercial advantage.*
- (33a) *Traders should, where applicable, inform the consumer about the availability of environmentally friendly delivery options, such as the delivery of goods by cargo bikes or electric delivery vehicles or the possibility of bundled shipping options.*
- (33b) *If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader should also make the consumer aware about the harmonised label, whenever provided, in a clear and prominent manner, and directly before the consumer places his order to ensure the consumer takes that information into account.*
- (34) Directives 2005/29/EC and 2011/83/EU should continue to work as a ‘safety net’ ensuring that a high level of consumer protection can be maintained in all sectors, by complementing sector and product-specific Union law that prevail in case of conflict.
- (35) Since the objectives of this Directive, namely, enabling better informed transactional decisions by consumers to promote sustainable consumption, eliminating practices that cause damage to the sustainable economy and mislead consumers away from sustainable consumption choices, and ensuring a better and consistent application of the Union consumer legal framework, cannot be sufficiently achieved by the Member States individually but can rather, by reason of the Union-wide character of the problem, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with

the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

(36) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

(36a) To facilitate the proper application of this Directive, it is important that the Commission keeps the guidance documents on Directive 2005/29/EC and Directive 2011/83/EU updated to take into account the content of this Directive.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2005/29/EC

Directive 2005/29/EC is amended as follows:

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

‘(ca) ‘goods’ means goods as defined in point (5) of Article 2 of Directive (EU) 2019/771 of the European Parliament and of the Council;

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

¹³ OJ C 369, 17.12.2011, p. 14.

- █ █
- (q) ‘generic environmental claim’ means any █ environmental claim ***made in written form or orally, including through audiovisual media***, not contained in a sustainability label, where the specification of the claim is not provided in clear and prominent terms on the same medium;
- (r) ‘sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that aims to set apart and promote a product, a process or a business with reference to its environmental or social aspects or both. This does not cover any mandatory label required in accordance with Union or national law;
- (s) ‘certification scheme’ means a third-party verification scheme ***which certifies that a product, process or business complies with certain requirements and which, in case of compliance, allows for the use of a corresponding sustainability label. Its terms, including its requirements, are publicly available and meet the following criteria:***
- i. The scheme*** is open under transparent, fair, and non-discriminatory terms to all traders willing and able to comply with the scheme’s requirements;
 - ii. The scheme’s requirements are developed by the scheme owner in consultation with relevant experts and stakeholders;***
 - iii. The scheme sets out procedures for dealing with non-compliance and foresees the withdrawal or suspension of the use of the sustainability label by the trader in case of non-compliance with the scheme’s requirements; and***
 - iv. The monitoring of compliance by the trader with the scheme’s requirements is subject to an objective procedure*** and carried out by a ***third party whose competence and independence*** from both the scheme owner and the trader ***is based on international, Union or national standards and procedures.***
- █ █

- (u) ‘recognised excellent environmental performance’ means environmental performance compliant with Regulation (EC) **No 66/2010** of the European Parliament and of the Council, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in **the Member States or with** top environmental performance in accordance with other applicable Union law;
 - (v) ‘durability’ means durability as defined in Article 2, point (13), of Directive (EU) 2019/771 of the European Parliament and of the Council;
 - (w) ‘software update’ means **an** update, including a security update, that is necessary to keep goods with digital elements, digital content and digital services in conformity in accordance with Directives (EU) 2019/770 and (EU) 2019/771 **or a functionality update**
 - (x) ‘consumable’ means any component of a good that is used up recurrently and needs to be replaced **or replenished** for the good to function as intended;
 - (y) ‘functionality’ means functionality as defined in point (9) of Article 2 of Directive (EU) 2019/771.
- (2) Article 6 is amended as follows:
- (a) in paragraph 1, point (b) is replaced by the following:
 - ‘(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, environmental or social **characteristics**, accessories, **circularity aspects, such as** durability, **repairability and recyclability**, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product.’;
 - (b) in paragraph 2, the following points (d) and (e) are added:
 - ‘(d) making an environmental claim related to future environmental performance without clear, objective, **publicly available** and verifiable commitments **set out in a detailed and realistic implementation plan**

that includes measurable and time-bound targets and other relevant elements necessary to support its implementation, such as allocation of resources, and that is regularly verified by an independent third party expert, whose findings shall be made available to consumers.

(e) advertising benefits *to* consumers that are *irrelevant and do not result from any feature of the product or business.*'

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

‘7. **■** Where a trader provides a service which compares products *and provides the consumer with information on environmental or social characteristics or on circularity aspects, such as durability, reparability or recyclability, of the products or suppliers of those products*, information about the method of comparison, the products which are the object of comparison and the suppliers of those products, as well as the measures in place to keep that information up to date, shall be regarded as material *information.*;’

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

Article 2

Amendments to Directive 2011/83/EU

Directive 2011/83/EU is amended as follows:

(1) Article 2 is amended as follows:

■
■

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

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

replacement of the goods, ***under the conditions laid down in Article 14 of Directive (EU) 2019/771, whenever the goods do not maintain their durability;***

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

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

(14d) ‘reparability score’ means a score expressing the capacity of a good to be repaired, based on ***harmonised requirements*** established ***at Union level;***

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

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

(a) point (e) is replaced by the following:

(e) a reminder of the existence of the legal guarantee of conformity for goods, and its main elements including its minimum duration of two years in accordance with Directive (EU) 2019/771, provided in a prominent manner, using the harmonised notice referred to in Article 22a;

(b) the following points (ea) to (ec) are inserted:

‘(ea) where a commercial guarantee of durability of more than two years covering the entire good is offered to the consumer without additional costs, and the producer makes that information available to the trader, the information that the specific good benefits from such a [] guarantee [] and its duration together with a reminder of the existence of the legal guarantee of conformity [shall be] provided in a prominent manner, using the harmonised label referred to in Article 22a;

(eaa) a reminder of the existence of the legal guarantee of conformity for digital content and digital services;

(eab) where applicable, the existence and the conditions of after-sales services and commercial guarantees;

■ ■

(ec) for goods with digital elements *or for digital content and digital services*, where the producer *or the provider* makes such information available *to the trader*, the minimum period in units of time during which, *or date until when, the producer or the provider provides software* updates.

■ ■

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

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

(j) when point (i) is not applicable *and the producer makes such* information ■ available *to the trader, information* about the availability, *estimated cost, ordering procedure* of spare parts *necessary to keep the good in conformity*, ■ about the availability of *repair and maintenance instructions as well as information about repair restrictions*. ■

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

(-a) point (g) is replaced by the following:

‘(g) the arrangements for payment, delivery including where available environmentally friendly delivery options, performance, the time by which the trader undertakes to deliver the goods or to perform the services, and, where applicable, the trader’s complaint handling policy;’;

(-aa) point (l) is replaced by the following:

“(l) a reminder of the existence of the legal guarantee of conformity for goods, and its main elements including its minimum duration of two years in accordance with Directive (EU) 2019/771, provided in a prominent manner, using the Harmonised notice referred to in Article 22a; ”

(a) the following points **(la)**, **(laa)** and **(lc)** are inserted:

‘(la) where a commercial guarantee of durability of more than two years covering the entire good is offered to the consumer without additional costs, and the producer makes that information available to the trader, the information that the specific good benefits from such a guarantee and its duration together with a reminder of the existence of the legal guarantee of conformity [shall be] provided in a prominent manner, using the harmonised label referred to in Article 22a;

(laa) a reminder of the existence of the legal guarantee of conformity for digital content and digital services;

■

(lc) for goods with digital elements or for digital content and digital services, where the producer or the provider makes such information available to the trader, the minimum period in units of time during which, or date until when, the producer or the provider provides software updates.

■

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

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

(v) when point (u) is not applicable and the producer makes such information available to the trader, information about the availability, estimated cost, ordering procedure of spare parts necessary to keep the good in conformity, about the availability of repair and maintenance instructions as well as information about repair restrictions. ■

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

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

- (4a) the following article 22a is inserted:**

Article 22a

Harmonised notice and harmonised label

1. *In order to ensure that consumers are well informed and easily understand their rights throughout the Union, a harmonised notice and harmonised label shall be used when providing information in accordance with Article 5(1)(e) and 6(1)(l) and Articles 5(1)(ea) and 6(1)(la) respectively.*
2. *By [the date of entry into force of this Directive + 18 months] the Commission shall, by means of implementing acts, specify the design and content of the harmonised notice referred to in paragraph 1.*
3. *The harmonised notice shall contain the main elements of the legal guarantee of conformity, including its minimum duration of two years as provided in Directive (EU) 2019/771 and a general reference to the possibility that the duration of the legal guarantee is longer under national rules.*
4. *By [the date of entry into force of this Directive + 18 months] the Commission shall, by means of implementing acts, specify the design and content of the harmonised label referred to in paragraph 1.*
5. *The harmonised notice and the harmonised label shall be easily recognisable and understandable for consumers and easy to use and reproduce for traders.*
6. *That implementing act shall be adopted in accordance with the examination procedure referred to in Article 27a.*

(4b) The following Article 27a is inserted:

‘Article 27a

Implementing act

- 1. The Commission shall be assisted by a Committee. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’***

Article 3

Reporting by the Commission and review

By **■** 5 years from ***application [entry into force + 5 years + 30 months]***, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.

That report shall include an assessment on the Directive’s contribution to enhancing consumer rights, in particular regarding the effectiveness of the harmonised label and the harmonised notice to improving the availability and consumers’ understanding of commercial guarantees of durability as well as the consumers’ awareness of their legal guarantee rights. Furthermore, the report shall assess the Directive’s overall contribution to the participation of consumers in the green transition and its impact on traders

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

Article 4

Transposition

1. Member States shall adopt and publish by ... [***24 months from the date of entry into force***] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from ... [**30** months from *the date of entry into force*].

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

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

Article 5

Entry into force

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

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

Annex

Annex I to Directive 2005/29/EC is amended as follows:

(1) (1) the following point 2a is inserted:

‘2a. Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.’

(2) (2) the following points 4a *to 4ba* are inserted:

4a. ‘Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.

4b. Making an environmental claim about the entire product *or the entire trader’s business* when it actually concerns only a certain aspect of the product *or a specific activity of the trader’s business*;

4ba. Claiming, based on greenhouse gas emissions offsetting, that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions. ’

(3) (3) the following point 10a is inserted:

10a. ‘Presenting requirements imposed by law on all products within the relevant product category on the Union market as a distinctive feature of the trader’s offer.’

(4) (4) the following points 23d to 23i are inserted:

23d. ‘*Withholding information from* the consumer *about the fact* that a software update will negatively impact the *functioning* of goods with digital elements or *the use of digital content or digital services*.

23da. Presenting a software update as necessary where it only enhances functionality features.

23e. Any commercial communication in relation to a good containing a feature introduced to limit its durability despite information on the feature and its effects on the durability of the good being available to the trader.

23f. ***Falsely*** claiming that a good has a certain durability in terms of usage time or intensity ***under normal conditions of use.***

23g. Presenting goods as allowing repair when they do not **■** .

23h. Inducing the consumer into replacing ***or replenishing*** the consumables of a good earlier than ***necessary*** for technical reasons **■** .

23i. ***Withholding information concerning the impairment of the functionality of a good when*** consumables, spare parts or accessories ***not supplied*** by the original producer ***are used, or falsely claiming that such impairment will happen.***'
