

Our position

Empowering consumers for the green transition



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.4 trillion in 2021, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The European Commission's proposal for a directive empowering consumers for the green transition is a welcome initiative that supports the goal of promoting sustainable consumption and protecting consumers from unfair business practices.

To ensure that consumers are able to fully participate in the circular economy, policymakers should further improve the proposal by:

- Allowing companies to provide information to consumers digitally.
- Defining 'common practice'.
- Not mandating third-party monitoring systems for future environmental performance claims.
- Aligning 'third-party verification' with the current definition of 'verification' outlined in the International Organization for Standardization (ISO) 14050:2009.
- Revising the approach to 'generic' environmental claims by prohibiting vague and truly non-specific claims and allowing claims defined under international standards.
- Ensuring software update provisions do not discourage customers from updating their software.
- Maintaining support for industry environmental labels that fulfil high sustainability criteria based on third-party verification.
- Not considering as prohibited 'per-se' bans in Annex I but rather subject these to a 'case-by-case' assessment to determine whether certain conduct is misleading:
 - Omitting to inform a consumer that a software update negatively impacts the products or that a good is designed with limited functionality when using non-original consumables.
 - Inducing the consumer to replace the consumables of a product earlier than for technical reasons is necessary.
- Clarifying that the restriction proposed to be added as point 23i of Annex 1 about limited product functionality when using non-original consumables only applies to intentional effect, not unforeseen consequences.

Introduction

Transitioning to a greener economy is the defining challenge of our time for companies, governments and consumers. The European Commission has proactively proposed a broad range of initiatives to achieve this. Specifically, on 30 March 2022, the European Commission released a proposal for a directive on empowering consumers for the green transition. The directive would amend two currently existing directives, ie the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive. This European Commission initiative constitutes one of the pillars of the EU Circular Economy Action Plan (CEAP) aimed at making products placed on the EU market more sustainable. Other legislative initiatives in this area include: the Ecodesign for Sustainable Products Regulation (ESPR); revision of packaging and packaging waste directive (PPWD); right to repair; and the regulation on substantiating green claims with Product Environmental Footprint (PEF) / Organisation Environmental Footprint (OEF) methodologies. CEAP in turns constitutes one of the key pillars of the European Green Deal (EGD) agenda – a policy priority pursued by the Commission to transform the EU into a global leader of sustainability-driven solutions, products, services and technologies.

The proposal for a directive on empowering consumers for the green transition is meant to enable consumers to make more informed consumption choices. While businesses already encourage consumers to participate in the circular economy through a variety of means, such as providing transparent sustainability information, simplifying access to repairs, offering longer product guarantees, offering trade-in programmes and refurbishing products, to continue these efforts and fully empower consumers, the Commission must work to eliminate greenwashing, early planned obsolescence and the use of untrustworthy and opaque sustainability. The following sections offer suggestions for how the Commission and legislators can further improve the proposal to enable consumers to participate fully in the green transition.

Sustainability-related claims

‘Common practice’

Although banning advertising benefits that constitute a ‘common practice’ in the relevant market – where they cause or are likely to cause a purchasing decision – is a welcome and reasonable move, the term ‘common practice’ itself is not defined in the proposal. At the moment, Recital 5 only contains an example of such ‘common practice’ without a full definition.

In order to avoid legal uncertainty for traders, the proposal must include a clear definition of what constitutes a ‘common practice in the relevant market’. This can be done either in the main text of the UCPD or via future guidance from the Commission.

Claims related to future environmental performance

The tracking of targets and commitments related to future environmental performance must be clear, objective and verifiable. However, the requirement for such tracking to be done via an ‘independent monitoring system’ in all cases is excessive and leads to unnecessary duplication.

The proposal does not define ‘independent monitoring system’. The current wording might imply that traders engaging in claims related to future environmental performance must rely on hiring a third-party verifier for each claim. In fact, there are already robust reporting and verification rules under other EU legislation, including multiple EU directives and regulations such as the Non-Financial

Reporting Directive/Corporate Sustainability Reporting Directive, EU Deforestation Regulation, EU Corporate Sustainability Due Diligence Directive and voluntary instruments like Type I Ecolabels. Traders usually already have robust internal procedures for reporting and auditing. The requirement for an independent monitoring system under this Directive would create overlaps and duplication.

If claims related to future environmental performance are clear, objective and verifiable, then by definition it can be determined whether they are legitimately made. The external surveillance requirement would be a deterrent and disincentivise traders to monitor their own progress. An independent monitoring system assumes no companies can be trusted to make legitimate claims about future environmental performance and subjects all companies to the significant costs of procuring independent third-party monitoring. This is not a proportionate regulatory approach.

While recognising the validity of the Commission's own PEF methodology, any rules to disclose information to consumers should not dismiss other life cycle assessment methods, which, in many ways, are considered more scientifically robust (eg ISO, Greenhouse Gas Protocol (GHG), European Telecommunications Standards Institute (ETSI), etc). The PEF methodology presents significant downsides when applied to complex articles such as information communications technology (ICT) products without the development of Product Environmental Footprint Category Rules (PEFCRs). The methodology used to quantify carbon and environmental footprints should be appropriate for the product group, reliable, verifiable and comparable as well as recognise internationally applied methodologies such as the GHG Protocol. Such methodology should also consider the diversity of the product, its functionality and its life cycle and the depth of primary data reasonably anticipated to be available in the supply chain.

Sustainability labels

Addressing the proliferation of sustainability labels and logos is essential. Requiring such labels to be based on third-party certification or verification and existing schemes established by public authorities is a step in the right direction. At the same time, it is important to continue to enable companies to communicate with consumers via sustainability labels, including ones that are brand-owned.

Sustainability icons used by traders to communicate to consumers certain features of the product (eg 'biodegradable') should not be covered by this provision. Such icons are used due to natural limits on the size of the labels and limits to on-pack communication. These are not subject to verification schemes. As these icons serve illustration purposes, they should instead be treated as part of the self-declared environmental claim. A self-declared environmental claim (see more below) is in a textual form and where relevant, is accompanied by a visual representation (icon). Self-declared environmental claims accompanied by visual representations or icons are not sustainability labels. Accordingly, they should not need to be certified nor verified by third-parties – but they do need to be substantiated and communicated to the consumer with explanatory specification. That distinction is reflected in the proposed definitions of sustainability labels and self-declared claims (see below).

Finally, traders should also be allowed to continue using brand or industry association-owned sustainability labels, provided they are based on third-party verification and that the trader or association provide sufficient information about the scheme. As outlined in the proposal, a certification scheme, which needs to be open to all traders, implies that brand or industry association-owned labelling schemes need to open their scheme to other companies. That would prohibit the use of any brand or industry association-owned sustainability labels. The purpose of the proposal is not to ban brand or industry association-owned sustainability labels but to make sure that whatever label is

used is robust and verified through an independent third party. By definition, a brand-owned sustainability label is not open to all traders (the same may apply to industry associations that make their scheme available as a membership benefit) and as such would not meet the requirement for certification schemes. Instead, brand and industry association-owned sustainability labels should be subject to third-party verification requirement as defined in the international standard of ISO 14050:2009.

Generic claims

Generic environmental claims should be tackled without hindering companies' ability to innovate in consumer communication. Accordingly, the framework needs to be clearer for environmental claims to work.

Furthermore, the EU environmental claims legislation should be, to the extent possible, aligned with international standards, in particular ISO norms. Thus, ISO 14020 series should be the basis for environmental claims and related requirements.

The proposal defines 'explicit environmental claim,' but as it largely refers to the general definition of environmental claim also included in the proposal, it is redundant. Thus, the definition of 'explicit environmental claim' should be removed from the text of the directive.

The proposal also introduces the definition of 'generic environmental claim'. However, a more nuanced approach would better tackle such claims. Specifically, drawing inspiration from the ISO 14021:2016 norm:

- 'Vague' or 'non-specific claims' are neither substantiated via robust and established science-based criteria and/or methodologies nor based on existing, recognised standards. These claims – such as 'eco-friendly', 'good for the environment', 'sustainable', 'green', etc – should be prohibited.
- 'Self-declared environmental claims' could be accompanied by a visual representation (icon) for illustration purposes. These claims would have to be substantiated through robust, science-based criteria and/or methodologies (inter alia, existing and recognised international standards) and accompanied specification (ie explanatory statement specifying the claim). Examples of such claims are: 'energy efficient', 'biodegradable', 'carbon positive', 'carbon neutral' and 'climate neutral'. Given these claims are well defined and quantifiable under international norms, they should not be treated as 'generic' and need to be distinguished from 'vague' claims mentioned above. Accordingly, traders should be allowed to continue to use 'self-declared environmental claims'.
- Given that there are natural limits for how much can be communicated on-pack and to prevent over-packing, traders should be allowed to communicate the specification of self-declared claims via digital communication.
- The only situation where the trader does not need to provide specification would be whenever the trader can demonstrate 'excellent environmental performance' relevant to the claim, in line with the definition of 'excellent environmental performance' in the proposal.

Commercial guarantee of durability

Recital 23 of the proposal requires traders selling goods to inform consumers about the presence of the producer's commercial guarantee of durability for all types of goods when this information is made available by the producer or the absence of such guarantee of durability in the case of 'energy-using goods'. The definition of 'energy using goods' as 'any goods that depend on energy input' should be

improved to cover only durable, non-perishable goods and exclude parts or consumables that are used in combination with the durable goods.

The reference to a ‘commercial guarantee of durability’ may mislead consumers regarding the probability that the goods will not need to be repaired during the guaranteed term. To avoid any confusion, it must be made clear that the durability guarantee exclusively refers to the period during which the producer would repair or replace faulty goods at no cost to consumers and avoid the promise that goods will not require repair during that period.

The commercial guarantee of durability should continue to be optional, supplied at the producer's discretion in accordance with the Sale of Goods Directive, without prejudice to the seller's guarantee of conformity. It should not cause contradictions with the abovementioned Directive, which already requires manufacturers to explicitly inform consumers of the commercial guarantee.

The Commission should reconsider the assumption that the duration of the commercial guarantee can be considered as a proxy for the ‘guaranteed lifespan’ of the products. Lifespan of products is generally longer than the commercial guarantee given by the producer, which generally has the same duration and equivalent rights than the legal guarantee of conformity provided by the seller. Requesting a guarantee of durability under which the consumer would enjoy similar rights to those already available under the commercial and legal guarantees would lead to an overlap of the three different guarantees while also creating confusion for consumers.

A longer commercial guarantee of durability would not necessarily be good for consumers. It is well known that the costs of providing lengthened guarantees are allocated into the product price. Therefore, the longer the duration of such a guarantee, the longer consumers are required to go to the producer to repair the products without benefiting from competition between producers and third-party after-sale repair services.

Reparability information

The proposal requires manufacturers to inform consumers of a product's reparability score when it is established in accordance with EU law or to inform consumers of the availability of spare parts and repair manuals if there is no reparability score. While customers should have clear and accurate repair information, some clarifications are required. It should be clear that this provision does not apply to business-to-business transactions. Businesses already have commercial repair arrangements in place that assure sustainability while addressing their specific operating needs, and consumer repair scores are created separately.

Compatibility with existing and upcoming product-specific EU legislation that encourages repair is essential. Reparability rating will most likely be included in product-specific standards under the Ecodesign for Sustainable Products Regulation, supported by the Joint Research Centre to ensure a science-based approach. There is a strong need for harmonised EU-wide techniques for product group-level reparability scoring.

There are currently at least 12 different initiatives and national schemes for quantifying reparability, such as the French reparability index. A clear EU definition and harmonised calculation methodology at the product level are required to measure and validate product reparability labelling. Otherwise, risks include consumer uncertainty, a fragmented Single Market with standalone national initiatives and unfair competition. These requirements need to be verifiable and, where applicable, reporting methodologies need to be standardised. This should be consistent with the requirements developed under other EU instruments such as the Ecodesign for Sustainable Products Regulation.

Production and stocking of spare parts in order to enable repairing products over the long-term are not always in line with circular economy principles, as they often lead to over production of parts and additional use of materials and encourage consumers to dispose of parts sooner than needed. A scientific approach must be used to determine which parts should be produced as spares based on verifiable high failure rates. Mandating the availability of parts with much lower failure rates will oblige manufacturers to produce, store and eventually dispose of a large inventory of spare parts that may never be used. Instead of improving the material efficiency, this would have the effect of generating more waste. Alternative mechanisms of repair (eg replacement by refurbished products equivalent to new in performance) should also be encouraged.

Digital information

Manufacturers are struggling to comply with all the information required on the packaging, while also decreasing the amount of packaging used to minimise waste, in line with the ongoing revision of the PPWD. The use of digital tools over physical tools to provide information to consumers (including for communicating specifications of so-called ‘self-declared environmental claims’) allows manufacturers to deliver more data in a more targeted manner, while also making it easier and quicker to update as new data arise. The Digital Product Passport (DPP) introduced by the European Commission’s proposal on Ecodesign For Sustainable Products Regulation provides a solid base for a harmonised and single instrument for all product information requirements and consumer information.

User and repair manuals should be available electronically (eg downloaded from the manufacturer’s website), favouring electronic versions of user and repair manuals over printed copies to reduce the environmental impact.

It should be clarified that producers and sellers can meet their information obligations under the UCPD by making mandatory information available online as part of the product’s DPP. In the case of offline shopping, that information should also be easily accessible to consumers at the point of purchase by, for example, providing a QR code on packaging or other materials displayed in shops.

Product comparison based on environmental and social aspects

The Commission proposal rightly addresses comparison tools that are an increasingly common marketing technique, as highlighted in Recital 6. However, comparison tools are not the same as product rating tools. These tools, often in the form of an app, do not necessarily compare products but are commercial services that are increasingly used by consumers, against a subscription fee, to make their purchasing decisions. These commercial practices that rate products on their characteristics, including safety, or their environmental or social aspects should also be subject to clear transparency requirements as they represent a commercial practice. Product rating apps should be based on objective and verifiable information and should not imply that products are unsafe while they comply with applicable legal and safety requirements.

To truly empower consumers for the green transition and avoid misleading practices by product comparison and/or product rating tools, the Commission should extend the scope of this directive to ensure that rating apps are subject to regulation and scrutiny so they do not mislead consumers about products’ attributes and safety.

Planned obsolescence

Business practices or marketing strategies whereby manufacturers deliberately shorten the lifetime of a product to ensure a constant or recurring purchase pattern are by nature anti-competitive. The introduction of new products represents industry's best efforts to meet consumer expectations and preferences. The speed at which this occurs reflects the extremely competitive market in which companies compete, which quickly increases consumer expectations, and the breakneck pace of technological advances.

Early obsolescence practices may be addressed both under the Ecodesign for Sustainable Products Regulation by providing the appropriate product design requirements and under the UCPD by prohibiting certain identified practices. However, in the case of practices banned under the UCPD, it must be clear that infringing conduct only includes intentional design and deliberate practices,¹ not product quality issues or unintentional defects that may be covered under the guarantee of conformity or the commercial guarantee of durability or result in a 'product recall' exercise, or when there is otherwise a valid reason (technical or not) for such conduct.

Software updates

Operating system updates improve user experience and extend a device's lifetime by maintaining a safe, stable and seamless operating environment. Software and operating system support is thus a key factor in ensuring a device's longevity. Updates ensure goods can function as they did at the time of delivery, support compatibility with new devices and applications, address unintended functional issues and protect consumers against threats by mitigating security vulnerabilities. While recognising the importance of providing information to consumers on the software updates affecting their device, this should not discourage consumers from updating their software.

Software updates are also critical for the ecosystem at large, given the proliferation of cyber attacks across the connected ICT supply chain. With increased connectivity and remote work, as well as the expansion of the attack surface, ensuring software update adoption is a critical societal priority.

Older versions of operating systems do not offer any benefits to users, but rather lead to significant disadvantages, particularly in relation to the security of the device and the entire connected ecosystem as well as data loss, software compatibility and device function.

A better definition of the term 'negative impact' is needed. At the moment it is a broad and subjective term that may prevent modifications that improve users' experiences with the device. Moreover, it should not refer to any unintended effects of software updates that were not predicted by the producer (eg interoperability issues with third parties). Because the assessment of this practice is subject to the concurrence of several conditions, this practice should be moved from the 'per se' black list in Annex I into the list of misleading omissions to be assessed on a 'case-by-case' basis under Article 7 UCPD.

According to the current proposal, manufacturers must advise customers about the minimal time frame in which software updates are assured. However, the current text does not specify how this information must be delivered or when manufacturers must begin counting the provision term of

¹ Recital 16 of the proposal distinguishes between the use of features limiting the durability of the goods and the use of materials of a low quality that results in limited durability of the goods, which is to be governed by the guarantee of conformity. Similarly, unintentional or non-deliberate product issues should be excluded from the ban for early obsolescence practices.

software updates. Given the complexities and particularities of design and business operations, manufacturers' decision-making flexibility is critical.

Overall, better alignment of requirements across all legal instruments is necessary. Amongst others, software update-related provisions and requirements are contemplated across the following policy regimes: Radio Equipment Directive, Product Liability Directive, General Product Safety Directive, cybersecurity, privacy, sustainability and eco-design, consumer contracts, the New Legislative Framework and more. Reducing regulatory fragmentation is key to ensure proposals are striking a sound balance between potentially competing principles. Furthermore, this fragmentation presents barriers for the ecosystem, industry, civil society, standard bodies and technical experts to engage on potential proposals. It also prevents regulations from addressing the needs of the evolving technology landscape, including emerging threats. This legislative fragmentation is especially challenging given the need to ensure proposals are technically feasible and not overly prescriptive, and consider the complexity of ecosystem collaboration needed for effective update provisioning and adoption.

Goods designed to limit their functionality with non-original consumables, spare parts or accessories

The proposal requires manufacturers to notify consumers when a product is designed to limit its functionality when used with consumables, spare parts or accessories not supplied by the original manufacturer. However, this cannot be considered an example of early obsolescence (ie the premature failure of goods)². Rather, it is a misleading practice, as the omitted information is required for the consumer to make an informed transactional decision. This omission may be deceptive in certain cases, which should be evaluated on a 'case-by-case' basis rather than as a 'per se' ban.

The ban only applies to purposeful impacts, not accidental consequences induced, for example, by the manufacturer's inability to test its devices with third-party consumables, spare parts or accessories.

The obligations for informing when aftermarket consumables, spare parts or accessories are to account for limited functionality due to inadequate quality or safety precautions are impossible to comply with ; it is impossible for the manufacturer to ensure compatibility and interoperability of its products with third-party products that did not exist prior to the product's release.

As a result, the proposed ban under new point 23 of Annex I should not be considered a 'per se' abusive practice but rather as part of the material information about product characteristics to be provided under the Consumers Rights Directive or alternatively, as a potential misleading omission under Article 7 of the UCPD to be assessed on a 'case-by-case' basis.

Inducing consumers to replace the consumables earlier for technical reasons

The proposal also prohibits the practice of inducing consumers to replace consumables earlier than technically necessary. While the objective is laudable, a more detailed analysis is needed to determine whether the customer is 'induced' or if replacement is required for a 'technical reason'.

² In fact, the 'Preparatory Study to Gather Evidence on Ways to Empower Consumers to Play an Active Role in the Green Transition' prepared for the European Commission and released in October 2021 did not consider this conduct (nor the additional ban on inducing consumers to replace consumables earlier) as part of the practices that were identified and assessed as associated with early obsolescence (see page 106 of the Preparatory Study).

There could be several technical and non-technical reasons for warning customers about the impending need to replace the consumable. Likewise, there could be situations where the customer is informed in a non-misleading manner for consumer convenience about the remaining level (eg of ink) in consumables. Therefore, a case-by-case review rather than a general prohibition would be preferable. This ban should be removed from the blacklist of early obsolescence practices³ contained in Annex I and be moved to Article 6(2) of the UCPD as a potential misleading practice, which is to be assessed as infringing conduct on a 'case-by-case' basis. Thus, the provisions' applicability should be confined to circumstances in which the warnings are misleading and expressly designed to urge the user to replace the consumables earlier than necessary.

Alignment with other legislation

The EU has already developed robust rules to protect consumers against unfair commercial practices, provide remedies and empower them to make more sustainable choices. It is necessary to clarify and harmonise the proposal with other circular economy legislation, such as the Ecodesign for Sustainable Products Regulation, the Right to Repair Initiative and the initiative on substantiating green claims. For example, the definition of 'durability' must be consistent, as well as the definition of energy-consuming goods, should be compatible with other legislation.

Conclusion

The European Commission's proposal for a directive empowering consumers for the green transition addresses an important issue. The implementation of the above recommendations would allow consumers to meaningfully contribute towards the green transition, without creating unintended and potentially negative effects on technology, innovation, consumer products and services.

³ See footnote 2 above.

Annex I

Proposal for the amendments

Commission’s text	AmCham EU amendments
<p><u>Sustainability-related claims</u></p> <p>“Common practice”</p>	
	<p><u>(new definition)</u></p> <p>‘common practice’ means a product or service characteristic that is common to all products or services offered in the same relevant market such that it does not differentiate – in relation to the criteria under consideration – the product concerned from other products in that category</p>
<p><u>Sustainability-related claims</u></p> <p>Claims related to future environmental performance</p>	
<p><u>Recital 4</u></p> <p>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. [...] Such claims should also be supported by an independent monitoring system to monitor the progress of the trader with regard to the commitments and targets.</p>	<p><u>Recital 4</u></p> <p>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. [...] Such claims should also be supported by an an independent monitoring system to monitor the progress of the trader with regard to the commitments and targets.</p>
<p><u>Article 6 – paragraph 2 (d)</u></p> <p>Making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system to monitor the progress;</p>	<p><u>Article 6 – paragraph 2 (d)</u></p> <p>Making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system to monitor the progress;</p>
<p><u>Sustainability-related claims</u></p> <p>Sustainability labels</p>	
<p><u>Recital 7</u></p> <p>The displaying of sustainability labels which are not based on a certification scheme or not established by public authorities, should be prohibited by including such practices in the list in Annex I to Directive 2005/29/EC. The certification scheme should fulfil minimum transparency and credibility conditions. [...] This rule complements point 4 of Annex I to Directive 2005/29/EC which prohibits claiming that a trader, the commercial practices of a trader, or a product has been</p>	<p><u>Recital 7</u></p> <p>The displaying of sustainability labels which are not based on a certification scheme or a third-party verification or not established by public authorities, should be prohibited by including such practices in the list in Annex I to Directive 2005/29/EC. The certification scheme should fulfil minimum transparency and credibility conditions. [...] This rule complements point 4 of Annex I to Directive 2005/29/EC which prohibits claiming that a trader, the commercial practices of a</p>

approved, endorsed or authorised by a public or private body when it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.	trader, or a product has been approved, endorsed or authorised by a public or private body when it has not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.
<u>Article 2 (r)</u> '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;	<u>Article 2 (r)</u> '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, and use of which is likely to suggest certification of that product or process by a third-party verification scheme. This does not cover any mandatory label required in accordance with Union or national law;
Article 2	Article 2 (new definition) 'third-party verification' means a confirmation, through the provision of objective evidence, that the trader is able to comply with the scheme's requirements, which certifies that a product complies with certain requirements, and for which the monitoring of compliance is objective, based on international, Union or national standards and procedures and is carried out or supported by a party independent from the scheme owner and – where applicable – the trader;
Annex I 4a Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.	Annex I 4a Displaying a sustainability label which is not based on a certification scheme, or a third-party verification or not established by public authorities.
<u>Sustainability-related claims</u>	
Generic claims	
Recital 9 Annex I to Directive 2005/29/EC should also be amended to prohibit making generic without recognized excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are 'environmentally safe', 'environmentally friendly', 'earth friendly', 'non-polluting', 'green', 'nature's friend' and 'ozone friendly'.	Recital 9 Annex I to Directive 2005/29/EC should also be amended to prohibit making generic vague or non-specific environmental claims without recognized excellent environmental performance which is relevant to the claim. Examples of such generic vague or non-specific environmental claims are 'environmentally safe', 'environmentally friendly', 'earth friendly', 'non-polluting', 'green', 'nature's friend' and 'ozone friendly'.
Annex I to Directive 2005/29/EC	Annex I to Directive 2005/29/EC

<p>Annex I to Directive 2005/29/EC should also be amended to prohibit making self-declared environmental claims or without recognised excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are ‘carbon neutral’, ‘carbon positive’, ‘climate neutral’, ‘energy efficient’, ‘biodegradable’, ‘biobased’ or similar statements. For example, the claim ‘biodegradable’, referring to a product, ‘the packaging is biodegradable through home composting in one month’ would be a specific claim, which does not fall under this prohibition.</p>	<p>Annex I to Directive 2005/29/EC should also be amended to prohibit making self-declared environmental claims without an accompanying explanatory statement specifying the claim in clear and prominent terms on the same medium or – due to limited space on the same medium – through digital means, or without recognised excellent environmental performance which is relevant to the claim. Examples of such self-declared generic environmental claims are ‘carbon neutral’, ‘carbon positive’, ‘climate neutral’, ‘energy efficient’, ‘biodegradable’, ‘biobased’ or similar statements. For example, the claim ‘biodegradable’, referring to a product, would need to be accompanied by a specification of that claim, such as ‘the packaging is biodegradable through home composting in one month’ would be a specific claim, which does not fall under this prohibition.</p>
<p>Article 2 (p) ‘explicit environmental claims’ means an environmental claim that is in textual form or contained in a sustainability label</p>	<p>Article 2 (p) ‘explicit environmental claims’ means an environmental claim that is in textual form or contained in a sustainability label (removed completely)</p>
<p>Article 2 (q) ‘generic environmental claim’ means any explicit environmental claim, not contained in a sustainability label, where the specification of the claim is not provided in clear and prominent terms on the same medium</p>	<p>Article 2 (q) ‘vague or non-specific environmental claim’ means an environmental claim, in textual form and not contained in a sustainability label, which broadly implies that a product is environmentally beneficial or environmentally benign, and which is not substantiated through robust and science-based criteria/methodologies and definitions, inter alia per existing and recognised international standards; (replaces current definition of “generic environmental claim”)</p>
	<p>NEW definition under Article 2: ‘self-declared environmental claim’ means an environmental claim, in textual form and, where relevant, accompanied by a visual representation for illustration purposes, and not contained in a sustainability label or not defined in Union or national law; which is substantiated through robust and science-based criteria/methodologies and definitions, inter alia per existing and recognised international standards.</p>
<p>Annex I 4a Making a generic environmental claim-for which the trader is not able to demonstrate recognized excellent environmental performance relevant to the claim. Making a self-declared environmental claim for which the trader is not able to demonstrate recognised excellent</p>	<p>Annex I 4a Making a generic vague or non-specific environmental claim-for which the trader is not able to demonstrate recognized excellent environmental performance relevant to the claim- Making a self-declared environmental claim for which the trader is not able to demonstrate recognised excellent</p>

<p>environmental performance relevant to the claim or without a specification of the claim provided in clear and prominent terms on the same medium or – due to limited space on the same medium – through digital means.</p>	<p>performance relevant to the claim or without a specification of the claim provided in clear and prominent terms on the same medium or – due to limited space on the same medium – through digital means.</p>
<p>Annex I 4 c</p>	<p>Annex I 4 c</p> <p>Making a self-declared environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim or without a specification of the claim provided in clear and prominent terms on the same medium or – due to limited space on the same medium – through digital means.</p> <p>(new point under annex I)</p>
<p>Recital 14</p> <p>In order to improve the welfare of consumers, the amendments to Annex I to Directive 2005/29/EC should also address several practices associated with early obsolescence, including planned obsolescence practices, understood as a commercial policy involving deliberately planning or designing a product with a limited useful life so that it prematurely becomes obsolete or non-functional after a certain period of time. Purchasing products that are expected to last longer than they actually do causes consumer detriment. Furthermore, early obsolescence practices have an overall negative impact on the environment in the form of increased material waste. Therefore, addressing those practices are also likely to reduce the amount of waste, contributing to a more sustainable consumption.</p>	<p>In order to improve the welfare of consumers, the amendments to Annex I to Directive 2005/29/EC should also address several practices associated with early obsolescence, including planned obsolescence practices, understood as a commercial policy involving deliberately planning or designing a product with a limited useful life so that it prematurely becomes obsolete or non-functional after a certain period of time. Purchasing products that are expected to last longer than they actually do causes consumer detriment. Furthermore, early obsolescence practices have an overall negative impact on the environment in the form of increased material waste. Therefore, addressing those practices are also likely to reduce the amount of waste, contributing to a more sustainable consumption. However, unintentional or non-deliberate product issues should be excluded from the ban of early obsolescence practices.</p>
<p>Recital 15</p> <p>It should be prohibited to omit to inform the consumer that a software update, including a security update, will negatively impact the use of goods with digital elements or certain features of those goods, even if the update improves the functioning of other features. For example, when inviting consumers to update the operating system on their smartphone, the trader will have to inform the consumer if such an update will negatively impact the functioning of any of the features of the smartphone.</p>	<p>It should be prohibited to omit to inform the consumer that a software update, including a security update, will negatively impact the use of goods with digital elements or certain features of those goods, even if the update improves the functioning of other features. For example, when inviting consumers to update the operating system on their smartphone, the trader will have to inform the consumer if such an update will negatively impact the functioning of any of the features of the smartphone. However, manufacturers shall not be held responsible if the negative impact is unintentional because of usage of third party products.</p>
<p>Recital 20</p> <p>Another practice associated with early obsolescence which should be prohibited and added to the list in Annex I to</p>	<p>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</p>

<p>Directive 2005/29/EC is inducing the consumer into replacing the consumables of a product earlier than would otherwise be necessary for technical reasons. Such practices mislead the consumer into believing that the goods will no longer function unless their consumables are replaced, thus leading them to purchase more consumables than necessary. For example, the practice of urging the consumer, via the settings of the printer, to replace the printer ink cartridges before they are actually empty in order to stimulate the purchase of additional ink cartridges would be prohibited.</p>	<p>the consumables of a product earlier than would otherwise be necessary for technical or non 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. By contrast, producers should not be prevented from informing consumers that consumables are running low or will be fully spent soon. Such a practice should not be prohibited, but it should be assessed – only if necessary - as an infringing conduct on a “case-by-case” basis.</p>
<p>Recital 21</p> <p>Annex I to Directive 2005/29/EC should also be amended to prohibit omitting to inform the consumer that the good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer. For example, the marketing of printers that are designed to limit their functionality when using ink cartridges not provided by the original producer of the printer without disclosing this information to the consumer would be prohibited. This practice could mislead consumers into purchasing an alternative ink cartridge which cannot be used for that printer, thus leading to unnecessary repair costs, waste streams or additional costs due to the obligation to use the original producer’s consumables which the consumer could not foresee at the time of purchase. Similarly, marketing smart devices designed to limit their functionality when using chargers or spare parts that are not provided by the original producer without disclosing this information to the consumer would be prohibited as well.</p>	<p>Annex I to Directive 2005/29/EC should also be amended to prohibit Omitting to inform the consumer that the good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer should be considered as a misleading practice. This omission, in particular, may be deceptive in certain cases, which should be evaluated on a "case-by-case" basis rather than as a ban as set under Annex I to Directive 2005/29/EC. For example, the marketing of printers that are designed to limit their functionality when using ink cartridges not provided by the original producer of the printer without disclosing this information to the consumer would be prohibited. This practice could mislead consumers into purchasing an alternative ink cartridge which cannot be used for that printer, thus leading to unnecessary repair costs, waste streams or additional costs due to the obligation to use the original producer’s consumables which the consumer could not foresee at the time of purchase. Similarly, marketing smart devices designed to limit their functionality when using chargers or spare parts that are not provided by the original producer without disclosing this information to the consumer would be prohibited as well.</p>
<p>Recital 22</p> <p>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 Council²⁷ should be amended to provide consumers with precontractual 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 2019/88228 . The</p>	<p>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 by indicating that software updates will be available for at least a certain number of years from the introduction of the model in the market. Therefore, Directive 2011/83/EU of the European Parliament and of the Council should be amended to provide consumers with precontractual 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 2019/88228.</p>

<p>obligation to provide this information to consumers complements and does not affect the rights of consumers provided in Directives (EU) 2019/77029 and (EU) 2019/77130 of the European Parliament and of the Council.</p>	<p>The obligation to provide this information to consumers complements and does not affect the rights of consumers provided in Directives (EU) 2019/770 and (EU) 2019/771 of the European Parliament and of the Council.</p>
<p>Recital 23 A good indicator of a good’s durability is the producer’s commercial guarantee of durability within the meaning of Article 17 of Directive (EU) 2019/771. Therefore, Directive 2011/83/EU should be amended to specifically require traders selling goods to inform consumers about the existence of the producer’s commercial guarantee of durability for all types of goods, where the producer makes this information available.</p>	<p>Therefore, Directive 2011/83/EU should be amended to specifically give the option to require traders selling goods to inform consumers about the existence of the producer’s commercial guarantee of durability for all types of goods, where the producer makes this information available.</p>
<p>Recital 25 Goods containing energy-using components, where those components are mere accessories and do not contribute to the main function of those goods, such as decorative lighting for clothing or footwear or electric light for a bicycle, should not be classified as energy-using goods.</p>	<p>Goods containing energy-using components, where those components are mere accessories and do not contribute to the main function of those goods, such as decorative lighting for clothing or footwear or electric light for a bicycle or a memory card for the mobile phone or a removable USB memory stick, should not be classified as energy-using goods.</p>
<p>Recital 29 To promote competition between producers as regards the durability of goods with digital elements the traders selling those goods should inform consumers about the minimum period of time during which the producer commits to provide software updates for such goods. However, to avoid overloading consumers with information, such information should only be provided when this period is longer than the period of the producer’s commercial guarantee of durability, as that guarantee entails the provision of updates, including security updates, that are necessary to maintain the required functions and performance of goods with digital elements. Furthermore, information about the producer’s commitment to provide software updates is relevant only where the sales contract regarding goods with digital elements provides for a single act of supply of the digital content or digital service in respect of which Article 7(3), point (a), of Directive (EU) 2019/771 applies. In contrast, there should be no new obligation to provide that information where the sales contract provides for a continuous supply of the digital content or digital service over a period of time, since for those contracts Article 7(3), point (b), of Directive (EU) 2019/771 specifies, by reference to Article 10 (2) or (5), the period of time during which the seller is to ensure that the consumer is informed of and supplied with updates.</p>	<p>To promote competition between producers as regards the durability of goods with digital elements the traders selling those goods should inform consumers about the minimum period of time during which the producer commits to provide software updates for such goods. Manufacturers should not be required to provide a fixed number of years. It should be indicated that software updates will be available for at least a certain number of years from the introduction of the model in the market. However, to avoid overloading consumers with information, such information should only be provided when this period is longer than the period of the producer’s commercial guarantee of durability, as that guarantee entails the provision of updates, including security updates, that are necessary to maintain the required functions and performance of goods with digital elements. Furthermore, information about the producer’s commitment to provide software updates is relevant only where the sales contract regarding goods with digital elements provides for a single act of supply of the digital content or digital service in respect of which Article 7(3), point (a), of Directive (EU) 2019/771 applies. In contrast, there should be no new obligation to provide that information where the sales contract provides for a continuous supply of the digital content or digital service over a period of time, since for those contracts Article 7(3), point (b), of Directive (EU) 2019/771 specifies, by reference to Article 10 (2) or (5), the period of time during which the seller is to ensure that the consumer is informed of and supplied with updates.</p>
<p>Recital 31</p>	<p>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</p>

<p>To allow consumers to make an informed transactional decision and choose goods that are easier to repair, traders should provide, before the conclusion of the contract, for all types of goods, where applicable, the reparability score of the good as provided by the producer in accordance with Union law.</p>	<p>types of goods, where applicable, the reparability score of the good as provided by the producer in accordance with Union law. This provision should not apply to business-to-business transactions.</p>
<p>Recital 32 Pursuant to Article 5(1), point (e), and Article 6(1), point (m), of Directive 2011/83/EU traders are obliged to provide the consumer before the consumer is bound by the contract with information on the existence and the conditions of after-sales services, including repair services, where such services are provided. In addition, in order to ensure that consumers are well informed about the reparability of the goods they purchase, where a reparability score is not established in accordance with Union law, traders should provide, for all types of goods, other relevant repair information that is made available by the producer, such as information about the availability of spare parts, and a user and repair manual.</p>	<p>Pursuant to Article 5(1), point (e), and Article 6(1), point (m), of Directive 2011/83/EU traders are obliged to provide the consumer before the consumer is bound by the contract with information on the existence and the conditions of after-sales services, including repair services, where such services are provided. In addition, in order to ensure that consumers are well informed about the reparability of the goods they purchase, where a reparability score is not established in accordance with Union law, traders should provide, for all types of goods, other relevant repair information that is made available by the producer, such as information about the availability of spare parts, and a user and repair manual. Electronic versions of user and repair manuals should be made available (e.g. downloaded from the manufacturer's website) and shall be given preference over printed copies.</p>
<p>Recital 33 Traders should provide consumers with information about the existence and duration of the producer's commercial guarantee of durability, the minimum period for updates and the repair information other than the reparability score, where the producer or provider of the digital content or digital service, when different from the trader, makes the relevant information available. In particular, as regards goods, the trader should convey to consumers the information that the producer has provided to the trader or has otherwise intended to make readily available to the consumer before the conclusion of the contract, by indicating it on the product itself, its packaging or tags and labels that the consumer would normally consult before concluding the contract. The trader should not be required to actively search for such information from the producer, for example, on the product-specific websites.</p>	<p>Traders have the option to should provide consumers with information about the existence and duration of the producer's commercial guarantee of durability, the minimum period for updates and the repair information other than the reparability score, where the producer or provider of the digital content or digital service, when different from the trader, makes the relevant information available. In particular, as regards goods, the trader should convey to consumers the information that the producer has provided to the trader or has otherwise intended to make readily available to the consumer before the conclusion of the contract, by indicating it on the product itself, its packaging or tags and labels that the consumer would normally consult before concluding the contract. The trader should not be required to actively search for such information from the producer, for example, on the product-specific websites. Manufacturers can provide a url/website on the packaging of the product to enable consumers to access further information. Electronic information would enable reducing packaging in line with the waste reduction efforts as well as sharing product information in different languages across the EU.</p>
Annex	
<p>Article 2 Directive 2011/83/EU is amended as follows: (1) Article 2 is amended as follows:</p>	<p>Directive 2011/83/EU is amended as follows: (1) Article 2 is amended as follows: (a) the following point (3a) is inserted:</p>

<p>(a) the following point (3a) is inserted:</p> <p>‘(3a) ‘energy-using good’ means any good that depends on energy input (electricity, fossil fuels and renewable energy sources) to work as intended;’;</p>	<p>‘(3a) ‘energy-using good’ means any durable non-perishable good that depends on energy input (electricity, fossil fuels and renewable energy sources) to work as intended, excluding parts or consumables that are used in combination with the durable goods.</p>
<p><i>Article 7 – paragraph 7</i></p> <p>Where a trader provides a service which compares products, including through a sustainability information tool, information about the method of comparison, the products which are the object of comparison and the suppliers of those products, as well as the measures in place to keep that information up to date, shall be regarded as material.</p>	<p><i>Article 7 – paragraph 7</i></p> <p>Article 7, Paragraph 7 is amended as follows:</p> <p>Where a trader provides a service which compares or rates products, including through a sustainability information tool, information about the method of comparison or evaluation, the products which are the object of comparison or rating 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.</p>