

The Consumer Voice in Europe


PROPOSAL ON EMPOWERING CONSUMERS FOR THE GREEN TRANSITION

BEUC Position Paper



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Why it matters to consumers

Europe's consumers would like to contribute to the fight against the climate crisis and be a part of the solution. Unfortunately, for the time being this is made very difficult for them as they are surrounded by conflicting messages and receive information about products which is often incomplete. In order to actively participate in the green transition, consumers need better information and stronger protection from unfair commercial practices that can negatively impact their purchasing decisions. Stronger consumer rights should go hand in hand with ambitious product policy legislation. These different sets of legislative measures must work together to empower consumers to live their lives more sustainably.

Summary

BEUC welcomes the European Commission's commitment to empower consumers for the green transition and considers that its March 2022 legislative proposal is a very good first step towards that objective. This proposal would in particular update and amend the existing Directives on Consumer Rights (2011/83/EU) and on Unfair Commercial Practices (2005/29/EC).

However, the proposal requires certain improvements and clarifications in order to effectively fulfil its main objectives.

BEUCs recommendations

On sustainability labels:

- National or EU authorities must pre-approve sustainability labels and sustainability information tools. This pre-approval must be dependent on conformity with the minimum requirements defined in the legislation, subject to mutual recognition and published in the publicly available register.

On green claims:

- BEUC welcomes the proposal to explicitly prohibit generic claims
- In addition, we recommend banning the following:
 - o carbon neutral claims and their equivalents
 - o biodegradable claims, if consumers are not informed about the conditions under which the biodegradability can be achieved based on existing standards
 - o generic social impact claims whenever the specification of the claim is not provided in clear and prominent terms on the same medium
- The requirements for the permitted use of claims about future performance should be further strengthened

On premature obsolescence:

- BEUC welcomes the proposal to explicitly prohibit six premature obsolescence practices but recommends adapting their wording in order to introduce an outright ban on premature obsolescence practices and not only a ban on misinforming consumers about them.
- BEUC recommends adding additional practices to the annex of the Unfair Commercial Practices Directive (UCPD), namely:

- a general prohibition of premature obsolescence practices
- a prohibition on marketing a good that fails to comply with the requirements of the Ecodesign Directive
- a prohibition on marketing a good without fixing a design issue that leads to an early failure of this good, within a reasonable time after it becomes known
- a prohibition on bundling security updates with other types of software updates.

On pre-contractual information requirements for consumers as regards:

- Durability:

Instead of a requirement to provide information on the existence and duration of a commercial guarantee of durability, consumers should be informed about the “guaranteed lifespan” of products via an EU-wide mandatory label. This mandatory label should always display at least the legal guarantee period with a possibility for manufacturers to expand it on a voluntary basis with a longer lifespan declaration. Such declarations must have the equivalent effect to expanding the legal guarantee period.

- Software updates:

Traders must be required to always inform consumers, as a minimum, about the mandatory period for which software updates shall be supplied, in accordance with existing and future EU legislation. If producers declare a longer period for which they are ready to supply updates, this should be also taken into account in addition to the minimum period.

- Repairability:

Before a repairability score is available at EU level, traders must use the existing national repairability scores, where applicable, to inform consumers about the availability of spare parts and user and repair manual.

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1. Introduction

In March 2022, the European Commission published the long-awaited legislative proposal on empowering consumers for the green transition through better protection against unfair practices and better information¹. This proposal includes targeted amendments to two horizontal consumer law Directives: the Consumer Rights Directive (CRD)² and the Unfair Commercial Practices Directive (UCPD)³.

BEUC welcomes this proposal as an important first step towards empowering consumers for the green transition. However, **in order to better achieve its main goals, the proposal still requires some improvements.**

Most importantly, BEUC calls also on the Commission, the European Parliament and the EU's Council of Ministers to pay more attention to **the need to connect EU consumer law with product policy legislation**. There is a lot of unexplored potential in creating such links, which can be beneficial for both consumers and businesses. Instead of treating these areas of law in silos, there must be more consistency and better coordination in order to achieve common goals. This paper outlines some of the areas where we think such links are most urgently needed.

Finally, once these new rules are adopted, the EU and national authorities need to ensure that they are properly complied with not only by traders based in the EU but also those based in third countries that target European consumers, including online platform providers.

2. Amendments to the Unfair Commercial Practices Directive (Article 1)

2.1. Tackling greenwashing

2.1.1. Bans of certain practices in all circumstances (amendments to the UCPD annex I)

Sustainability labels and sustainability information tools

Today, consumers face a proliferation of environmental labels⁴ and sustainability information tools. This can be extremely confusing for them and leads to a situation where consumers have difficulties to identify genuinely sustainable products and are "generally unable to understand the meaning of environmental labels and make no distinction between non-certified (self-declaration) and third-party certified labels"⁵.

This situation is completely unacceptable in the green transition. Consumers should be informed only via reliable and robust labels and information tools that they can trust. Private labels based on industry self-certification should no longer be allowed.

The proposal must therefore be amended to include **a requirement for sustainability labels and sustainability information tools to be pre-approved by national or EU authorities**. This is the only way to effectively remove all misleading, unclear and unsubstantiated labels and sustainability information tools (e.g. sustainability filters used by traders for product comparison) used on the European markets, and at the same time significantly increase consumers' confidence and trust in these

¹ Proposal for a Directive as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM/2022/ 143 final)

² Directive 2011/83/EU on consumer rights

³ Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market

⁴ 455 environmental labels are currently being used in the world according to the Eco label index: <https://www.ecolabelindex.com/>

⁵ Environmental claims for non-food products, study contracted by DG JUST (2014): https://ec.europa.eu/info/sites/info/files/study_on_environmental_claims_for_non_food_products_2014_en.pdf

labels. The pre-approval by a national or EU authority must be subject to mutual recognition by all Member States and be dependent on conformity with minimum requirements⁶, such as:

- publicly available and objectively verifiable award criteria
- developed using independent process and going beyond to what is required by EU legislation
- impartial control procedure with third party verification
- transparency concerning the scheme owner
- accessibility to all market players
- procedural transparency for consumers
- outcome transparency for consumers
- scientific robustness and stakeholder relevance
- compliance and dispute resolution mechanisms put in place and periodic revision of the award criteria.

If a label or a sustainability information tool is focused on only one environmental aspect, this should be clearly and prominently communicated to consumers.

For the sake of transparency, all pre-approved sustainability labels and sustainability information tools must be included in **a publicly available register**, updated regularly by the relevant EU and national authorities.

The Commission considered this policy option for its legislative proposal, which according to the Impact Assessment (AI)⁷ would have **a significant positive impact not only on consumers** (their decision making, trust, welfare and protection) **but also on business** (better level playing field, reductions of barriers to cross-border trade). Unfortunately, even though this policy option was considered the most effective (due to the fact that “the compliance level will be higher given that only pre-approved labels and digital information tools will be allowed”)⁸ it was rejected due to the alleged high costs of setting up and running an EU body in charge of pre-approving sustainability labels.

BEUC calls on the co-legislators (European Parliament and the EU’s Council of Ministers) to reconsider this, as already existing authorities (both on the national and EU level⁹) could be made responsible for this pre-approval, which would generate much lower costs than what was estimated in the impact assessment. An added value of pre-approval of sustainability labels and sustainability information tools would be a **significant improvement of legal certainty, both for consumers and for traders**, which should not be underestimated in the overarching sustainability goals that we want this new legislation to achieve. Such an approach would allow also for more efficient market surveillance and significantly lower the enforcement costs.

BEUC’s proposal for the pre-approval approach for green claims and labels was previously described in a paper entitled “Getting rid of greenwashing – restoring consumer confidence in green claims”¹⁰, where BEUC recommended that such pre-approval could take inspiration from the experience and lessons learned from the EU scheme already in place for health and nutrition claims in food. We called for this procedure to be clear, swift and efficient, with indications in terms of timing, avoiding too much bureaucracy, while using a credible and scientifically proven approach.

⁶ This list contains both the minimum criteria for sustainable labels in the Commissions [preparatory study](#) (annex II, p. 38) published in 2022, complemented by some additional requirements that BEUC identifies as important.

⁷ https://ec.europa.eu/info/sites/default/files/5_1_186786_prep_stu_prop_em_co_en.pdf (p. 187)

⁸ https://ec.europa.eu/info/sites/default/files/4_1_186783_ia_sum_prop_em_co_en.pdf (p. 47)

⁹ E.g. European Environmental Agency

¹⁰ https://www.beuc.eu/sites/default/files/publications/beuc-x-2020-116_getting_rid_of_green_washing.pdf

BEUC Recommendations:

Sustainability labels and sustainability information tools shall be required to be pre-approved by the national or EU authority. Such pre-approval decisions must be dependent on conformity with the minimum requirements defined in the legislation, be subject to mutual recognition and published in the publicly available register.

Generic environmental claims

Generic claims can be highly misleading as their vague character makes them very difficult to properly substantiate. For this reason, they were already recognised as likely to be misleading in the Commission guidelines on the interpretation of the UCPD¹¹. Now the Commission has decided to go a step further.

BEUC welcomes the new explicit prohibition on generic claims which is included in the proposal.

We also support the proposal to introduce an exception from this prohibition in cases where the trader is able to demonstrate recognised excellent environmental performance. As proposed by the Commission, this exception should remain as narrow as possible and be limited only to products bearing an EU Ecolabel or other ISO Type I ecolabels officially recognised at national or regional level in accordance with Article 11 of the EU Ecolabel Regulation¹². In addition, a list of ISO type I ecolabels shall be drawn on the EU level to ensure better legal certainty.

However, for the sake of the legal certainty the condition related to the “top environmental performance in accordance with other applicable Union law” should be further specified with explicit references to existing EU legislation. Moreover, the proposal must explicitly ensure that any future legislation that would fall under this provision must contain provisions that specifically clarify when the top environmental performance can be reached.

Finally, the conditions under which the claim is specified (not to fall under the prohibition of the generic claims) should be made more specific. We recommend therefore a requirement that the specification shall be based on the EU-recognised assessment method or standards; to be added to recital 9 of the proposal. In cases, where an EU-recognised assessment method was not put in place yet, the claims shall not be allowed to be used on the market.

Generic social impact claims

Similarly to generic environmental claims, generic claims about the social impact (e.g. “fairly produced”, “sustainable sound production”) must also be prohibited whenever the specification of the claim (e.g. “no child labour”) is not provided in clear and prominent terms on the same medium.

Contrary to the rules for generic environmental claims, there should be no exception for traders able to demonstrate an excellent social performance given that the means to demonstrate such social impact claims currently do not exist in the EU.

¹¹ Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market ([2021/C 526/01](#))

¹² The EU Ecolabel meets the [guiding principles of the standard EN ISO 14024 for Type I Ecolabels](#) (criteria address the main impacts throughout the life-cycle of products, are developed with the involvement of independent stakeholders, criteria are public and transparent, regularly revised, third party verified,.....). In addition to the EU Ecolabel, other ecolabelling schemes that are based on the same standard exist in Europe (e.g. Blue Angel, Nordic Swan). In 2017, the Commission published a report on the implementation of Article 11 of the EU Ecolabel Regulation providing a list of officially recognised ISO Type 1 ecolabels in the EU. We recommend that this list is used as a reference but strongly advice that national authorities and the Commission are responsible for keeping the list up-to-date taking into account the membership of the Global Ecolabelling Network.

Carbon neutral claims should be explicitly banned

Carbon neutral claims are highly misleading to consumers as they imply neutrality and no impact of products (or services) on the environment which is impossible to achieve from the scientific point of view. In fact, according to the opinion of ADEME¹³, the French Agency for the Environmental Transition, the carbon neutrality can realistically be achieved only on a global level and not on a level of a specific product or an individual company.

Such claims are therefore **by definition misleading and impossible to substantiate** from the scientific point of view.

Hidden behind such carbon neutral claims is usually the companies' involvement in carbon offsetting/compensation projects. Unfortunately, consumers are not informed about this sufficiently and if the compensation projects are mentioned, they have no means to verify (and be sure) that they are robust and reliable. There are hundreds of compensation projects out there with a very different focus (e.g. reforestation, water purification) but consumers do not have the means to understand their real contribution to decarbonisation. Moreover, the Paris Agreement on climate change left an unregulated gap as many compensation projects are double counted by the country owning the project and by the agency selling compensated CO².¹⁴ There are no rules at the moment that would ensure the official certification of the carbon compensation projects by public authorities.

At the moment, carbon neutral claims are being used even by the most polluting industries (e.g. fossil fuel companies, airlines, meat and dairy products). This is completely unacceptable because it gives consumers the wrong impression, that these products are "decent" because their impact was compensated. On top of that, companies often prefer to buy carbon credits, which are less costly for them, instead of investing to cut their own emissions.

Making claims based on false or misleading arithmetic calculations referring to carbon neutrality of their products and services should not be allowed. Instead, companies should be transparent about their actual contribution to collective efforts to achieve carbon neutrality on the global scale. Most importantly, companies must communicate clearly and with appropriate evidence based on robust and harmonised methods - with disclosure of the concrete phases of the lifecycle of products or services where savings are achieved- about the reductions of their own carbon footprint and, as a separate point, their participation in compensation projects). Claims based on compensation projects should also not be used directly on products as this could give a misleading impression to consumers that they are related to the attributes of the specific product.

In the current text of the proposal, carbon neutral claims fall under the scope of the new provision on generic claims (recital 9 mentions carbon neutral claims as an example of a generic claim), which can open the door for such claims to continue being used. A more ambitious approach in this case is needed. **BEUC recommends that carbon neutral claims and labels, and their equivalents¹⁵, are explicitly banned in annex I of the UCPD.**

In France, carbon neutral claims have already been prohibited recently by the Climate and Resilience Law¹⁶, unless they respect a certain number of criteria¹⁷. However, the decree defining the modalities of this new law has been criticised by consumer organisations¹⁸ as lacking the ambition to effectively protect consumers from carbon neutral claims that give them the impression that products or services have no impact on the climate.

¹³ [Utilisation de l'argument de "neutralité carbone" dans les communications](#), Recommendations of ADEME, published in February 2022.

¹⁴ [Voluntary offsetting: credits and allowances | Umweltbundesamt](#), published in January 2021.

¹⁵ Other examples used are: CO₂ neutral, climate neutral, 100% carbon neutral, carbon neutral certified etc.

¹⁶ Art. 12 of the Law n°2021-1104 of 22 August 2021 on "combating climate change and building resilience to its effects": <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924>

¹⁷ Using carbon neutral claims is still permitted if the advertiser makes the following available to the public: (1) a greenhouse gas emissions balance sheet integrating the direct and indirect emissions of the product or service; (2) the process by which the greenhouse gas emissions of the product or service are first avoided, then reduced and finally offset (3) the methods of offsetting residual greenhouse gas emissions that comply with minimum standards defined by decree.

¹⁸ <https://www.clcv.org/communiqués-de-presse/decret-neutralite-carbone-un-projet-qui-manque-dambition>

Biodegradable – stricter rules required

At the moment, there is no definition at EU level on how to measure biodegradability. There are also no rules on how it should be communicated to consumers. Products claiming to be biodegradable often can only be so under very specific conditions and require the use of an industrial composting plant, to which most consumers do not have access to when they dispose of their products. In natural conditions, such products might not be biodegrade at all or only at very slow rates, without avoiding greenhouse emissions and still posing environmental risks to ecosystems. This leads to the situation where the majority of the biodegradable claims made today on the market are misleading consumers.

BEUC therefore recommends that claiming a product to be biodegradable and omitting to inform the consumer about the conditions under which the biodegradability can be achieved based on recognised standards, must be explicitly prohibited. Biodegradable claims should only be allowed for products that comply with a clear definition and strict rules governing the use of this type of claims that still needs to be developed.

Such an explicit prohibition of “biodegradable” claims has already been introduced in France¹⁹.

Claims about the entire product (while they actually only concern one of its aspects)

BEUCs supports the Commission proposal to explicitly ban environmental claims about the entire product when they actually concern only a certain aspect of the product (new point 4b to be added to the UCPD annex).

Presenting legal requirements as a distinctive feature

BEUCs supports the Commission proposal to explicitly ban presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader’s offer (new point 10a to be added to the UCPD annex).

BEUC Recommendations:

BEUC welcomes the explicit prohibition of the generic claims.

In addition, we recommend banning the following:

- carbon neutral claims and their equivalents
- biodegradable claims, if consumers are not informed about the conditions under which the biodegradability can be achieved based on existing standards
- generic social impact claims whenever the specification of the claim is not provided in clear and prominent terms on the same medium

2.1.2. Bans on certain practices on a case-by-case basis (amendments to the art. 6 UCPD)

The Commission has also proposed to ban certain practices on a case-by-case basis, by amending article 6 of the UCPD. The difference with the previously analysed bans is that when enforcing these provisions consumers would be always required to prove that the commercial practice in question caused them, or was likely to cause them, to take a transactional decision that they would not have taken otherwise.

Claims related to future environmental performance

¹⁹ French decree n°2022-748 of 29 April 2022, implementing the article 13 of the law AGEC.

It is nowadays very common on the market to see companies making environmental claims for the future (often as far ahead as the year 2050). Such claims can widely mislead consumers if they are not robust and based on real and achievable commitments.

BEUC welcomes the fact that the Commission proposes to ban this type of claims on a case-by-case basis. However, in our view **the requirements under which such claims can be allowed should be further strengthened** in order to really prevent consumers from continuing to be misled.

We often see companies making future claims that already have specific commitments or even a monitoring system in place, but they lack an implementation plan that could allow them to reach their targets within the proposed timeframe. They also do not dedicate sufficient resources to achieving their targets and sometimes even base their commitments on technologies that do not yet exist or technologies whose impact is still open to question.

Instead, companies should be required to have **a realistic implementation plan** to meet their targets, including specific interim targets: first one not later than after the initial [2] years and the second one after the additional [5/10] years. Such interim targets should be consistent with achieving the long-term commitment and verified by an independent third party. The implementation plan, as well as progress achieved, should be made publicly available and regularly reported.

Companies should also have additional **disclosure obligations** as regards the budget allocated to the action plan in question, progress made towards its achievement and finally the technologies that the commitments will rely on, their availability and feasibility to help in achieving the companies' targets.

Future claims should also **not rely solely on offsetting schemes**. Companies should not be allowed to communicate net emissions targets. They must be required to report separately their own emission reduction efforts and the financing they provide for climate action outside their value chain.

Finally, future claims should not be displayed on products, as they can mislead consumers on the product's attributes at that moment and not meet their expectations triggered by the claim. Such claims should therefore only be allowed on the company/organisation level and not on the product level.

Benefits considered to be common practice in the relevant market

BEUC welcomes the Commission proposal to ban, on a case-by-basis, advertising benefits for consumers that are considered as a common practice in the relevant market.

This proposal is in line with the general rule of art. 6 UCPD according to which an environmental claim can be misleading even if the information is factually correct if it deceives or is likely to deceive the average consumer.

Such an explicit provision shall improve the legal certainty and facilitate enforcement.

BEUC Recommendations:

The requirements for the permitted use of future claims should be further strengthened, prohibiting claims that rely on offsetting schemes or technology not proven at scale. The proposal should also include an obligation to have a detailed implementation plan (including interim targets), independent monitoring system and additional disclosure obligations (e.g. concerning the technologies to be used for achieving the targets).

2.1.3. Main characteristics of the product

BEUC strongly supports explicitly including durability and repairability, as well as the environmental and social impact, among the main characteristics of a product (amendment to the art. 6 (1)(b) UCPD).

This amendment shall provide additional clarity and facilitate the enforcement of the said article.

We would also suggest including **reusability** and **recyclability** among the main characteristics of a product.

2.1.4. Comparison tools, including sustainability information tools (amendment to art. 7 UCPD)

Comparing products based on their environmental or social aspects is becoming more and more popular in response to growing consumer interest in more sustainable products. However, it is really important for the consumer that the results of such comparisons are reliable and substantiated.

However, the current Commission proposal only focuses on new information disclosure obligations concerning, for example, the method used for the comparison. Such technicalities are not necessarily needed by consumers, as they might not read them at all or if they do, it may be difficult to understand their real implications.

Instead, sustainability information tools should be pre-approved by a national or an EU authority (for more details see our recommendations in the section 2.1.1 of this paper).

Finally, it is also very important to ensure that the comparison tools are well designed to deliver real added value to consumers²⁰.

BEUC Recommendations:

Instead of providing consumers with the information about the method of comparison, sustainability information tools should be pre-approved by a national or an EU authority.

Link with the Green Claims Initiative (foreseen for Q3/Q4 2022)

The UCPD allows only for ex-post control (environmental claims are assessed solely if challenged before a court or by the national enforcement authority). This is not sufficient, as it does not effectively prevent misleading and unsubstantiated environmental claims from entering the market in the first place. As soon as such claims are used, the harm is already done and consumer trust is undermined. Moreover, ex-post enforcement measures can take years. We cannot wait so long while allowing for the misleading green claims to continue circulating.

In order to remedy this loophole, BEUC recommends that the upcoming Green Claims Initiative introduces an ex-ante control system in order to complement the UCPD amendments. Most importantly, this initiative should introduce **an ex-ante obligation for traders to submit evidence supporting green claims** before they are used on the market.

²⁰ For BEUCs recommendations in this area see our recent position paper entitled "How to design energy comparison tools that are fit for consumers", [BEUC-X-2022-014](#)

BEUC's more detailed recommendations in this field, including on introducing the pre-approval scheme for all green claims and labels, inspired by the scheme already in place for health and nutrition claims in food (Regulation 1924/2006²¹), can be found in our separate position paper dedicated to this topic²².

2.2. Tackling premature obsolescence

Bans on certain practices in all circumstances (amendments to the UCPD annex I)

BEUC supports the Commission proposal to address certain premature obsolescence practices explicitly in the blacklist of unfair commercial practices (annex I UCPD). This change would constitute a significant improvement of consumer protection and allow national authorities to enforce the Directive more effectively.

However, the proposed new provisions put **too much focus on information** ('claiming' or 'omitting to inform'). Instead, we should avoid situations where, as long as traders inform consumers, they can proceed with their practices and cannot be held liable. Premature obsolescence is a real problem nowadays and these practices should simply not be allowed under any circumstances, irrespective of whether consumers were informed about them or not.

The most probable reason why the Commission has decided to rely heavily on information requirements is the construction of the UCPD itself. Its main and most commonly used articles 6 & 7 are focused on information and so are most of the practices listed in annex I. However, the scope of the Directive also includes other types of commercial practices. In its article 2d it defines business-to-consumer commercial practices as "*any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers*". Also, article 5 prohibits commercial practices that are contrary to the need for professional diligence, which does not only cover providing misleading information to consumers or omitting to provide it. We therefore recommend that the co-legislators amend the proposed provisions in order to introduce **an outright ban of premature obsolescence practices** and not only a ban on misinforming consumers about them.

New practices should be also added to the list included in the empowerment proposal.

First, a new point with a **general prohibition of premature obsolescence practices** should be added to annex I, in order to outlaw any practices that do not fall under the very specific points already listed in the proposal. We discover new forms of premature obsolescence practices on a regular basis everyday, so it is important that the Directive remains future proof.

Second, the Directive must also explicitly prohibit the marketing of a product which is not compliant with the requirements of the Ecodesign Directive.

Third, based on BEUCs experience with its complaint against premature obsolescence of Nintendo game controllers²³, we also recommend that the Directive must explicitly prohibit the marketing of a good without fixing a design issue that leads to an early failure of this good, within a reasonable time after it becomes known.

Fourth, the Directive must prohibit the bundling of security updates with other types of software updates. Security updates are crucial to keep consumers safe and consumers should therefore always be able to download them separately from other types of updates, which they might wish to abstain from.

²¹ [Regulation \(EC\) No 1924/2006](#) of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods

²² https://www.beuc.eu/publications/beuc-x-2020-116_getting_rid_of_green_washing.pdf

²³ On 27 January 2021, BEUC submitted an external alert to the CPC network (an EU network of consumer protection authorities) against Nintendo for the premature obsolescence of its game controllers. For more information see: <https://www.beuc.eu/publications/beuc-launches-europe-wide-complaint-against-nintendo-premature-obsolescence/html>

Finally, the co-legislators must pay particular attention to ensuring that **the final wording of the new provisions should not require any proof of intent**. Pure negligence should be sufficient to trigger their application. Otherwise, enforcement of these provisions would be made significantly more difficult, if not impossible in practice.

Link with other initiatives (proposal for Ecodesign for Sustainable Products Regulation (ESPR) and the forthcoming proposal on right to repair)

In order to effectively tackle premature obsolescence of products, it is also very important to ensure that products are designed to last longer. This can be ensured both via the public law durability and reparability product requirements but also by incentivising this positive development by covering more durable goods with longer legal guarantee rights under which the producer can also be held directly liable.

Only all those elements introduced together would be efficient to successfully fight premature product obsolescence.

BEUC Recommendations:

BEUC welcomes the new explicit prohibition of six premature obsolescence practices. However, such practices should be banned per se and not only if the trader does not inform consumers about them correctly.

New practices shall be also added to the list, including a general prohibition of premature obsolescence and a prohibition on marketing a product which fails to comply with Ecodesign requirements.

3. Amendments to the Consumer Rights Directive (Article 2)

Consumers currently lack information on product durability and reparability. This is unfortunate, as this kind of information can have an important impact on their purchasing decisions²⁴. It could not only help them to make more sustainable choices but also to save money, as buying longer lasting products pays off in the long run²⁵. It also stimulates competition amongst companies to improve their products.

This is the reason why, for a long time now, BEUC has been calling for new information requirements covering durability, reparability and availability of software updates. We welcome that the legislative proposal on empowering consumers makes the first steps to introducing such measures.

However, BEUC considers that **the proposed amendments to the Consumer Rights Directive (CRD) still require some improvements** in order to better fulfil their role and to avoid confusing consumers about their existing rights.

²⁴ According to a Commission's [Behavioural Study on Consumers' Engagement in the Circular Economy](#) from 2018, consumers are almost three times more likely to choose products with the highest durability and more than two times more likely to choose products with the highest reparability ratings. The impact was the strongest when durability and reparability information were presented together.

²⁵ A study conducted by BEUC member vzbv confirmed that in four product groups alone, consumers in Germany could save €3.67bn per year if products lasted longer (more information here: <https://www.vzbv.de/pressemitteilungen/studie-zu-langlebigkeit-von-produkten-qualitaet-zahlt-sich-aus>)

3.1. Information on durability (amendments to articles 5 and 6 CRD)

Proxy for durability?

In BEUC's view, the information obligation on the existence and duration of a commercial guarantee of durability is **not sufficient to properly inform consumers about the durability** of products.

This type of guarantee is purely voluntary and remains a commercial gesture of the producer. Moreover, it is virtually unregulated, given that article 17(1) of Directive 2019/771 requires only that if a producer offers such a guarantee, they shall be directly liable to the consumer for repair or replacement of the good in accordance with Article 14. Everything else, including whether consumers need to pay a fee in order to be covered by this additional protection²⁶, is left to the discretion of the producer.

In order to effectively promote durable products and encourage consumers to make more sustainable purchasing choices by facilitating the comparisons between products, **EU legislation must require producers to instead give consumers information on products' guaranteed lifespans.**

A 'guaranteed lifespan' **must always include, as a minimum, the legal guarantee period** as established by EU legislation, with a possibility for manufacturers to expand it on a voluntary basis using a longer lifespan declaration. Such declarations must have the equivalent effect to expanding the legal guarantee period.

In addition, the legal guarantee periods of more durable goods should better reflect their actual lifespans, which are often much longer than the basic two years. For this purpose, BEUC recommends expanding the legal guarantee periods for these products on the basis of the product-specific durability **requirements** introduced in the Ecodesign implementing measures²⁷.

Taking the above recommendations onboard is the only way to ensure that the information reflecting the period for which the product is covered by a guarantee would provide a real proxy for product durability.

Link with the forthcoming proposal on right to repair (foreseen for Q3/Q4 2022)

The forthcoming proposal on right to repair will introduce amendments to the Sales of Goods Directive, with the aim of promoting repair and reuse as well as encouraging producers to design products that last longer.

This forthcoming reform will be a great opportunity to expand the legal guarantee periods for more durable goods based on the Ecodesign requirements.

The above measure should be combined with introducing direct producer liability for non-conformity as well as further expanding the reversal of the burden of proof²⁸.

Mandatory EU label

The Commission proposal introduces new information obligations on durability without specifying the format in which this information should be provided to consumers. This loophole can weaken the significance of the proposed changes. Consumers need to be able to easily compare between products and choose the ones that are more durable. For this goal they need the information to be available in a

²⁶ According to the recital 62 member states might however require that such guarantees are provided free of charge.

²⁷ A methodology shall be developed on how to best translate product durability requirements into the legal guarantee periods expressed in years.

²⁸ For further information about BEUC recommendations for the right to repair proposal see the following BEUC paper: https://www.beuc.eu/publications/beuc-x-2022-034_public_consultation_on_right_to_repair.pdf

standardised and easy to comprehend format. BEUC is therefore calling on the Commission to introduce **a new EU-wide, mandatory 'guaranteed lifespan' label.**

Link with the proposal on Ecodesign for the Sustainable Products Regulation

The pending proposal for the Ecodesign for the Sustainable Products Regulation (ESPR)²⁹ provides for a possibility to create new product labels. This opportunity should be further examined in the light of our above recommendations.

In the meantime, the empowerment proposal could already make a reference to such a future label (as is the case for the reparability score (mentioned in articles 2(2)(b) and (3)(b) of this proposal) which also does not yet exist at EU-level and will still need to be developed.

Link with public law requirements

Information obligations for traders **should not be dependent on whether the producer makes this information available**, as otherwise the effectiveness of the relevant provisions would be significantly reduced.

In order to ensure that the relevant information on durability, reparability and updates is always available to consumers, **corresponding information obligations for manufacturers should be introduced via the product policy legislation** (e.g. via a horizontal requirement applicable to all products covered by the revised Ecodesign proposal³⁰).

Risk of providing consumers with only partial information

As we argue above, information on durability will be most effective if provided to consumers via a harmonised EU-wide label. However, it would be insufficient to only include on such a label information about the existence and duration of a commercial guarantee of durability. Consumers should always receive, as a minimum, information about their existing rights, in this case the information on the legal guarantee periods. Otherwise, they will not have a full picture allowing them to make a conscious purchasing decision.

This is even more important in the light of the fact that differences between legal guarantees and commercial guarantees are often not clear for consumers. Moreover, traders engage in misleading practices by communicating to consumers only about commercial guarantees (often paid ones), without properly informing them about legal guarantees, as happened in the past in a well-known Apple case³¹ and is still happening according to a recent investigation in the field of electronic goods conducted by the French consumer protection authority (DGCCRF)³².

BEUC's suggestion expressed above to **inform consumers about products' 'guaranteed lifespan' via an EU wide label** would ensure that consumers received the full information they require to make informed purchasing choices.

²⁹ Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC (COM(2022) 142 final)

³⁰ idem

³¹ In 2012, 11 consumer organisations (all members of BEUC) called Apple for an immediate halt to its misleading practices in relation to consumers' product guarantee rights. For more information see: <https://www.beuc.eu/publications/2012-00189-01-e.pdf>

³² In September 2021, DGCCRF found that in 36% of controlled establishments consumers were not properly informed about the legal and the commercial guarantees. One of the problems identified was that traders were highlighting paid commercial guarantees when no information on legal guarantee of conformity was given to consumers. The investigation revealed also that both the sales staff and the store managers did not have a sufficient knowledge about the legal guarantees. For more information see: https://www.economie.gouv.fr/dgccrf/quelle-information-sur-les-garanties-pour-les-produits-electroniques-grand-public-et#_ftn1

Legitimate interest in obtaining information on commercial guarantees

In a very recent judgment of the Court of Justice in the Victorinox case³³, issued already after the publication of the proposal on empowering consumers in the green transition³⁴, the Court took the view that the trader is only required to provide consumers with pre-contractual information concerning the manufacturer's commercial guarantee where the consumer has **a legitimate interest in obtaining that information**.

According to this judgment, the legitimate interest can be established if the trader makes the manufacturer's commercial guarantee a **central and decisive element of his offer**, in particular where that guarantee has been made for sales purposes in such a way as to improve the competitiveness and attractiveness of its offer in comparison with his competitors' offers.

The Consumer Rights Directive, in its articles 5(1)(e) and Art. 6(1)(m), already includes an explicit obligation for traders to remind consumers about the existence of commercial guarantees, if applicable. There is a risk therefore that the new provision introducing the information obligation as regards the existence of the commercial guarantee of durability, will have to be interpreted in the light of that judgment and that a similar requirement to demonstrate a legitimate interest will also apply to it.

The obligation to provide this information via a mandatory EU label would in our view ensure that it would automatically become a decisive element of the offer. A requirement for such labels to be present on all products³⁵ would be instrumental in consumers' purchasing decisions.

BEUC Recommendations:

Instead of the information on the existence and duration of a commercial guarantee of durability, consumers should be informed about the **"guaranteed lifespan" of products**, which should always display at least the legal guarantee period as a minimum and be provided to consumers in the form of an **EU-wide mandatory label**.

The information obligation for traders **should not be dependent on whether the manufacturer makes this information available**. Corresponding information obligations for manufacturers must be introduced via the product policy legislation.

3.2. Information on software updates (amendments to articles 5 and 6 CRD)

The availability of software updates is an important factor that can indicate the durability of goods with digital elements. However, here again, the new provisions should be very carefully drafted so that the information made available to consumers also reflects existing legal obligations on the period during which software updates must be supplied³⁶.

The amended Directive should therefore not allow traders to fail to inform consumers about the duration for which the updates will be provided. In fact, on the basis of the existing legal framework, traders are already obliged to provide software updates for as long as consumers might expect³⁷. In order to make internet connected products last longer, this period should be further expanded to at least their lifespan

³³ Judgment in Case C-179/21, Victorinox, 5th May 2022

³⁴ Proposal for a Directive as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM/2022/ 143 final)

³⁵ A general exception from the obligation to carry such an EU label could be introduced for products with lifespans shorter than two years, which is justified by their composition and purpose.

³⁶ The Directive 2019/771 already now foresees an obligation for traders to supply updates for as long as consumers can expect (which following to the recital 31 should be at least as long as the duration of the legal guarantee period).

³⁷ Art. 7(3) of the Directive 2019/771 on certain aspects concerning contracts for the sale of goods.

duration via other upcoming or pending initiatives³⁸. Such mandatory periods must be always communicated to consumers as a minimum requirement.

We therefore recommend amending the relevant provision of the proposal to ensure that consumers are always informed, as a minimum, about the **periods for which the updates shall be provided in accordance with the applicable EU legislation**.

This mandatory minimum information shall also **not be dependent on whether the manufacturer makes this information available**.

BEUC Recommendations:

Traders should be required to **always inform consumers, as a minimum, about the mandatory period for which the updates shall be supplied, in accordance with existing and future EU legislation**. If producers declare a longer period for which they are ready to supply updates, this should be also taken into account in addition to the minimum period.

3.3. Information on repairability (amendments to articles 5 and 6 CRD)

Consumers are very interested to know how repairable products are and are willing to take this information into account when making their purchasing choices. Moreover, new information obligations in this area could incentivise manufacturers to better design their products in order to make them more repairable, which could give them a clear marketing advantage.

However, in order for such information to really have the above effect, the format in which it is provided plays also a very important role. An EU-wide harmonised label displaying this information in the format of a score/index is in our view the most effective tool that should be used for this goal as it would allow consumers to much easier compare between products.

BEUC welcomes the Commission's intention to introduce a repairability score at EU level and the fact that the proposal on empowering consumers already explicitly refers to it. However, introducing such a score at EU level might take considerable time and will most probably be done systematically per product category. Therefore, for the time when an EU-wide score is not available yet, **we recommend that traders must use national repair scores**, where applicable, to inform consumers about the availability of spare parts and repair manuals, as required by the art. 2(2)(b) point (j) and art. 2 (2)(b) point (v)).

For example, in France, a repair index has already been introduced in January 2021. It will serve as an inspiration for a similar tool at EU level, taking into account also reflections on how to best address its most important shortcomings and lessons learned.

Our more detailed recommendation on the development of a repair score can be found in a separate position paper entitled: "A repair score that works for consumers: Recommendations for an effective tool for consumers to make more sustainable choices"³⁹.

BEUC Recommendations:

During the interim period before a repairability score is introduced at EU level, traders must also communicate repairability information to consumers via **repair scores established at national level**, where applicable.

³⁸ We can expect further obligations regarding the updates to be introduced via the Ecodesign revision or the upcoming proposal on the Cyber Resilience Act.

³⁹ https://www.beuc.eu/publications/beuc-x-2022-054_beuc_paper_on_repair_score.pdf

4. Conclusions

Recent research⁴⁰ confirms, that even in these unstable times, with product prices and the inflation rates rising, sustainability remains an important purchase criterion for consumers. Unfortunately, this potential is currently underexploited as they are struggling to identify which products or services are genuinely more sustainable. They lack crucial information on how durable and repairable their products are and, on top of that, are being misled into thinking some products are better for the environment when they are not. We cannot afford this situation to continue any longer and ambitious changes are needed to make it easy for consumers to make the sustainable choice.

⁴⁰ In May 2022, the Gesellschaft für Konsumforschung (GfK) published its GfK Sustainability Index that examines the attitudes of German consumers regarding sustainability (for more information see: <https://www.gfk.com/press/sustainability-index-germany-may-2022>)

