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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information - Presidency compromise proposal

With a view to the meeting of the Working Party on Consumer Protection and Information on 28 September 2022, delegations will find a Presidency compromise proposal in the Annex to this note.

Changes compared to the Commission proposal are indicated in **bold underlined** for new text and ~~strikethrough~~ for deleted text. For some recitals and provisions, the Presidency submits to delegations' views two options, highlighted in dark grey and light grey.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

Whereas:

- (1) In order to tackle unfair commercial practices which prevent consumers from making sustainable consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims (“greenwashing”), non-transparent and non-credible sustainability labels ~~or sustainability information tools~~, specific rules should be introduced in Union consumer law. This would enable national competent bodies to address those practices effectively. By ensuring that environmental claims are fair, consumers will be able to choose products that are genuinely better for the environment than competing products. This will encourage competition towards more environmentally sustainable products, thus reducing negative impact on the environment.
- (2) Those new rules should be introduced both through amending Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council² relating to those commercial practices which are to be considered misleading, and therefore prohibited, on the basis of a case-by-case assessment, and through amending Annex I to Directive 2005/29/EC with the addition of specific misleading practices which are in all circumstances considered unfair, hence prohibited.
- (3) In order to deter traders from deceiving consumers as regards the environmental or social impact, durability or reparability of their products, including through the overall presentation of the products, Article 6(1) of Directive 2005/29/EC should be amended by adding the environmental or social impact, durability and reparability of the product to the list of the main characteristics of the product in respect of which the trader’s practices can be considered misleading, following a case-by-case assessment. Information provided by traders on the social sustainability of products, such as working conditions, charity contributions or animal welfare, should not mislead consumers either.

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

- (4) Environmental claims, in particular climate-related claims, increasingly relate to future performance in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products. To ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are not supported by clear, objective and verifiable commitments and targets given by the trader. 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. **Consumers should be able to consult the findings of independent monitoring systems and thus be able to take note of the relevant proof indicating the progress of the producer.**
- (5) Another potentially misleading commercial practice which should be added to the specific practices targeted by Article 6(2) of Directive 2005/29/EC is advertising benefits for consumers that are actually a common practice ~~in the relevant market~~ **regarding the relevant product whenever the average consumer is not aware that this is a common practice**. For example, if the absence of a chemical substance **in a product** is a common practice **if the substance has never been associated with the particular product** ~~in a specific product market,~~ **Therefore, its promotion of the absence of a chemical substance** as a distinctive feature of the product could constitute an unfair commercial practice. **For example, dishwashing liquid might be advertised as containing “no CFCs” or being “CFC-free.” However, if dishwashing liquid products have never contained CFCs, the implication that the product has been improved through the removal of CFCs should be considered misleading. A “free” claim may also be misleading if it implies to the average consumer that the compared product is unsafe, toxic or harmful when it is not.**

- (6) Comparing products based on their environmental or social aspects, ~~including through the use of sustainability information tools~~, is an increasingly common marketing technique. In order to ensure that such comparisons do not mislead consumers, Article 7 of Directive 2005/29/EC should be amended to require that the consumer is provided with information about the method of the comparison, the products which are the object of comparison and the suppliers of those products, and the measures to keep information up to date. This should ensure that consumers make better informed transactional decisions when using such services. The comparison should be objective by, in particular, comparing products which serve the same function, using a common method and common assumptions, and comparing material and verifiable features of the products being compared.
- (7) 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. The displaying of sustainability labels remains possible without a certification scheme where such labels are established by a public authority, or in case of additional forms of expression and presentation of food in accordance with Article 35 of Regulation (EU) No 1169/2011. 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 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.
- (8) In cases where the displaying of a sustainability label involves a commercial communication that suggests or creates the impression that a product has a positive or no impact on the environment, or is less damaging to the environment than competing products, that sustainability label also should be considered as constituting an environmental claim.

- (9) Annex I to Directive 2005/29/EC should also be amended to prohibit making generic environmental claims without recognised excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are ‘environmentally friendly’, ‘eco-friendly’, ‘eco’, ‘green’, ‘nature’s friend’, ‘ecological’, ‘environmentally correct’, ‘climate friendly’, ‘gentle on the environment’, ‘carbon friendly’, ‘carbon neutral’, ‘carbon positive’, ‘climate neutral’, ‘energy efficient’, ‘biodegradable’, ‘biobased’ or similar statements, as well as broader statements such as ‘conscious’ or ‘responsible’ that suggest or create the impression of excellent environmental performance. Such generic environmental claims should be prohibited whenever there is no excellent environmental performance demonstrated or whenever the specification of the claim is not provided in clear and prominent terms on the same medium, such as the same advertising spot, product’s packaging or online selling interface. For example, the claim ‘biodegradable’, referring to a product, would be a generic claim, whilst claiming that ‘the packaging is biodegradable through home composting in one month’ would be a specific claim, which does not fall under this prohibition.

- (10) ~~Excellent~~ **Recognised excellent** environmental performance can be **based on registration in accordance with Regulation (EC) No. 1221/2009 of the European Parliament and the Council on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) or** demonstrated by compliance with Regulation (EC) No 66/2010 of the European Parliament and of the Council³, or officially recognised ecolabelling schemes in the Member States, or compliance with top environmental performance for a specific environmental aspect in accordance with other applicable Union laws, such as a class A in accordance with Regulation (EU) 2017/1369 of the European Parliament and of the Council⁴. The excellent environmental performance in question should be relevant to the claim. For example, a generic claim ‘energy efficient’ could be made based on excellent environmental performance in accordance with Regulation (EU) 2017/1369. By contrast, a generic claim ‘biodegradable’ could not be made based on excellent environmental performance in accordance with Regulation (EC) No 66/2010, insofar as there are no requirements for biodegradability in the specific EU Ecolabel criteria related to the product in question.
- (11) Another misleading commercial practice which should be prohibited in all circumstances and thus added to the list in Annex I to Directive 2005/29/EC is making an environmental claim about the entire product when it actually concerns only a certain aspect of the product. This would be the case for example when a product is marketed as ‘made with recycled material’ giving the impression that the entire product is made of recycled material, when in fact it is only the packaging that is made of recycled material.

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

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

- (12) The Circular Economy Action Plan⁵ provides for the need to set the rules on environmental claims using Product and Organisation Environmental Footprint methods. Additional requirements on environmental claims will have to be set in specific Union legislation. Those new requirements will contribute to the Green Deal⁶ objective of enabling buyers to make more sustainable decisions and reduce the risk of greenwashing through reliable, comparable and verifiable information.
- (13) Presenting requirements imposed by law on all products within the relevant product category on the Union market, including imported products, as a distinctive feature of the trader's offer, should also be prohibited in all circumstances and added to the list in Annex I to Directive 2005/29/EC. This prohibition could apply, for example, when a trader is advertising that a given product does not include a specific chemical substance while that substance is already forbidden by law for all products within that product category in the Union. Conversely, the prohibition should not cover commercial practices promoting traders' or products' compliance with legal requirements that only apply to some products but not to other competing products of the same category on the Union market, such as products of non-EU origin. **It could be the case that certain products on the market are required to comply with certain legal requirements while other products are not. For example, fish products produced using EU-mandated sustainable fishing methods should still be allowed to advertise this (e.g. fish caught within the EU have to be fished using sustainable fishing methods, whereas fish caught in Japan do not). In this case, the EU-caught fish should be allowed to advertise compliance with EU legal requirements.**

⁵ COM(2020)98 final, 11 March 2020.

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

(14) 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 **early** obsolescence practices, understood as a commercial policy involving deliberately planning or designing a product with a limited useful life so that it prematurely becomes obsolete or non-functional after a certain period of time. Purchasing products that are expected to last longer than they actually do causes consumer detriment. Furthermore, **planned** 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.

(14a) Marketing of a good although the trader is aware or may reasonably be aware of the fact that such good contains a feature that was introduced to limit its durability should be prohibited on a case-by-case assessment by competent authorities. Therefore, traders should make reasonable efforts to verify that goods they are selling do not contain such features. For example, such a feature could be software which stops or downgrades the functionality of the good after a particular period of time, or it could be a piece of hardware which is designed to fail after a particular period of time.

(14b) The prohibition of such features of the goods complements and does not affect the remedies available to consumers when they constitute a lack of conformity under Directive (EU) 2019/771 of the European Parliament and of the Council on certain aspects concerning contracts for the sale of goods. The use of features limiting the durability of goods should be distinguished from manufacturing practices using materials or processes of general low quality resulting in limited durability of the goods. Lack of conformity of a good resulting from the use of low quality materials or processes should continue to be governed by the rules on the conformity of goods set out in Directive (EU) 2019/771.

- (15) It should be prohibited under Annex I to Directive 2005/29/EC to omit to inform the consumer that a software update, including a security update, ~~will~~ **may** 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~~ **should** inform the consumer, based on information provided by the provider of the update, if such an update ~~will~~ **may** negatively impact the functioning of any of the features of the smartphone, **for example the battery, certain applications performances or a complete smartphone slowdown.**
- (16) ~~It should also be prohibited to omit to inform the consumer about the existence of a feature of the good introduced to limit its durability. For example, such a feature could be software which stops or downgrades the functionality of the good after a particular period of time, or it could be a piece of hardware which is designed to fail after a particular period of time. The prohibition of omitting to inform consumers of such features of the goods complements and does not affect the remedies available to consumers when they constitute a lack of conformity under Directive (EU) 2019/771 of the European Parliament and of the Council⁷. For such a commercial practice to be considered unfair, it should not be necessary to demonstrate that the purpose of the feature is to stimulate the replacement of the respective good. The use of features limiting the durability of the goods should be distinguished from manufacturing practices using materials or processes of general low quality resulting in limited durability of the goods. Lack of conformity of a good resulting from the use of low quality materials or processes should continue to be governed by the rules on the conformity of goods set out in Directive (EU) 2019/771.~~

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

- (17) Another practice which should be prohibited under Annex I to Directive 2005/29/EC is the practice of claiming that a good has a certain durability when it does not. That would be the case, for instance, when a trader informs consumers that a washing machine is expected to last a certain number of washing cycles **if used in accordance with the instructions**, while the actual use of washing machine **under the prescribed conditions** shows this is not the case. **However, such practice should be prohibited only in case a trader's claim regarding the usage time or intensity turns to be incorrect in a significant number of cases.**
- (18) Similarly, Annex I to Directive 2005/29/EC should also be amended to prohibit presenting products as allowing repair when such repair is not possible, as well as omitting to inform consumers that it is not possible to repair goods in accordance with legal requirements.
- (19) The prohibition of those practices in relation to durability and reparability in Directive 2005/29/EC would provide the consumer protection authorities of Member States with an additional enforcement tool for better protection of consumers' interests in the cases where traders fail to comply with requirements on the durability and reparability of goods under Union product legislation.
- (20) Another practice associated with early obsolescence which should be prohibited and added to the list in Annex I to Directive 2005/29/EC is inducing the consumer into replacing the consumables of a product earlier than would otherwise be necessary for technical reasons. Such practices mislead the consumer into believing that the goods will no longer function unless their consumables are replaced, thus leading them to purchase more consumables than necessary. For example, the practice of urging the consumer, via the settings of the printer, to replace the printer ink cartridges before they are actually empty in order to stimulate the purchase of additional ink cartridges would be prohibited.

- (21) Annex I to Directive 2005/29/EC should also be amended to prohibit 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 for the consumer 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.

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

Option 1:

- ~~(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.~~

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

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

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

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

- (24) The problem of limited durability contrary to consumer expectations is most relevant for energy using goods, which are goods that function from an external energy source. Consumers are also most interested in receiving information about the expected durability of this category of goods. For these reasons, only for this category of goods, consumers should be made aware that the information about the existence of a producer's commercial guarantee of durability of more than two years has not been provided by the producer.
- (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.
- (26) In view of the established minimum duration of two years of the seller's liability for lack of conformity in accordance with Directive (EU) 2019/771 and the fact that many product failures occur after two years, the trader's obligation to inform consumers about the existence and duration of the producer's commercial guarantee of durability should apply to guarantees that are of more than two years.
- (27) In order to make it easier for consumers to take an informed transactional decision when comparing goods before concluding a contract, traders should inform consumers about the existence and duration, of the producer's commercial guarantee of durability for the entire good and not for specific components of the good.
- (28) The producer and the seller should remain free to offer other types of commercial guarantees and after sales services of any duration. However, the information provided to the consumer about such other commercial guarantees or services should not confuse the consumer with regard to the existence and duration of the producer's commercial guarantee of durability that covers the entire good and has a duration of more than two years.

Option 2:

- (23) A good indicator of a good's durability is the producer's commercial guarantee of durability within the meaning of Article 17 of Directive (EU) 2019/771. **The producer's commercial guarantee of durability is not a new type of guarantee.** Therefore, Directive 2011/83/EU should be amended to ~~specifically require traders~~ **provide for a specification of the producer's commercial guarantee of durability. Such guarantee is a commitment from a producer to the consumer on the durability of the good, more specifically it is a commitment that the good will maintain its required functions and performance through normal use. If the good will not keep its durability, the producer is directly liable to the consumer to offer free replacement or repair of the good. Consumers will benefit from clarity and better information on the durability of goods. In addition, it will also address existing consumer confusion about the currently offered commercial guarantees information, which is often unclear, imprecise or incomplete. The producer's commercial guarantee of durability should be beneficial to consumers and the environment since it promotes longer durability of goods. Traders** selling goods **should be specifically required** 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.
- (24) The problem of limited durability contrary to consumer expectations is most relevant for energy-using goods, which are goods that function from an external energy source. Consumers are also most interested in receiving information about the expected durability of this category of goods. For these reasons, only for this category of goods, consumers should be made aware that the information about the existence of a producer's commercial guarantee of durability of more than two years has not been provided by the producer.
- (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.

- (26) In view of the established minimum duration of two years of the seller's liability for lack of conformity in accordance with Directive (EU) 2019/771 and the fact that many product failures occur after two years, the trader's obligation to inform consumers about the existence and duration of the producer's commercial guarantee of durability should apply to guarantees that are of more than two years.
- (27) In order to make it easier for consumers to take an informed transactional decision when comparing goods before concluding a contract, traders should inform consumers about the existence and duration, of the producer's commercial guarantee of durability for the entire good and not for specific components of the good.
- (28) The producer and the seller should remain free to offer other types of commercial guarantees and after-sales services of any duration. However, the information provided to the consumer about such other commercial guarantees or services should not confuse the consumer with regard to the existence and duration of the producer's commercial guarantee of durability that covers the entire good and has a duration of more than two years.

- (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~~ **provider** 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.~~
- (30) Likewise, traders offering digital content and digital services should also inform consumers about the minimum period during which the provider of the digital content or digital service, ~~where the provider is different from the trader,~~ commits to provide software updates, including security updates, necessary to keep the digital content and digital services in conformity. ~~Information about the provider's commitment to provide software updates is relevant only where the contract provides for a single act of supply or a series of individual acts of supply in respect of which Article 8(2), point (b), of Directive 2019/770 applies. In contrast, there should be no new obligation to provide that information where the contract provides for a continuous supply over a period of time, since for these contracts Article 8(2), point (a) of Directive (EU) 2019/770 specifies the period of time during which the trader is to ensure that the consumer is informed of and supplied with updates.~~

- (31) Pursuant to Article 5(1), point (e), and Article 6(1), point (m), of Directive 2011/83/EU traders are obliged to provide the consumer before the consumer is bound by the contract with information on the existence and the conditions of after-sales services, including repair services, where such services are provided. In addition, to 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 or national law. *[New first sentence moved from recital 32]*
- (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~~ 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 or national 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. The trader should not be required to actively search for such information from the producer, for example, on the product-specific websites. *[New last sentence moved from recital 33]*

Option 1:

- ~~(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.~~

Option 2:

- (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.~~

- (34) Directives 2005/29/EC and 2011/83/EU should continue to work as a 'safety net' ensuring that a high level of consumer protection can be maintained in all sectors, by complementing sector and product-specific Union law that prevail in case of conflict. **Similarly, the specific Union law providing for transparency and certification as included for example in Regulation (EC) No 1221/2009, Regulation (EC) 66/2010 of the European Parliament and of the Council on the EU Ecolabel, or Regulation (EC) 2017/1001 of the European Parliament and of the Council on the European Union trade mark should prevail in case of conflict.**

- (35) Since the objectives of this Directive, namely, enabling better informed transactional decisions by consumers to promote sustainable consumption, eliminating practices that cause damage to the sustainable economy and mislead consumers away from sustainable consumption choices, and ensuring a better and consistent application of the Union consumer legal framework, cannot be sufficiently achieved by the Member States individually but can rather, by reason of the Union-wide character of the problem, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.
- (36) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹², Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

¹² OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2005/29/EC

Directive 2005/29/EC is amended as follows:

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

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

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

~~‘(p) ‘explicit environmental claim’ means an environmental claim that is in textual form or contained in a sustainability label;~~

(q) ‘generic environmental claim’ means any ~~explicit~~ environmental claim **in any form**, not contained in a sustainability label, where the specification of the claim is not provided in clear and prominent terms on the same medium;

(r) ‘sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that aims to set apart and promote a product, a process or a business with reference **predominantly** to its environmental or social aspects or both. This does not cover any mandatory label required in accordance with Union or national law;

(s) ‘certification scheme’ means a third-party ~~verification~~ scheme that is open under **publicly accessible**, transparent, fair and non-discriminatory terms to all traders willing and able to comply with the scheme’s requirements, which certifies that a product complies with certain **objectively verifiable and publicly accessible** requirements, and for which the monitoring of compliance is objective, based on international, Union or national standards and procedures and carried out by a party independent from both the scheme owner and the trader;

~~(t) ‘sustainability information tool’ means software, including a website, part of a website or an application, operated by or on behalf of a trader, which provides information to consumers about environmental or social aspects of products, or which compares products on those aspects;~~

(u) ‘recognised excellent environmental performance’ means environmental performance **based on a registration in accordance with Regulation (EC) No. 1221/2009 or** compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance in accordance with other applicable Union law;

(v) ‘durability’ means durability as defined in Article 2, point (13), of Directive (EU) 2019/771 of the European Parliament and of the Council**;

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

(x) ‘consumable’ means any component of a good that is used up recurrently and needs to be replaced **or replenished** for the good to function as intended;

(y) ‘functionality’ means functionality as defined in point (9) of Article 2 of Directive (EU) 2019/771.

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

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

(2) Article 6 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, environmental or social impact, accessories, durability, reparability, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product.’;

(b) in paragraph 2, the following points (d) ~~and (e)~~ **to (ea)** are added:

‘(d) making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system;

(e) advertising benefits for consumers that are considered as a common practice in the relevant market **respect of the particular product;**

(ea) any marketing of a good when the trader is aware or may reasonably be aware that such good contains a feature that was incorporated to limit its durability.'

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

‘7. 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.’;

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

Article 2

Amendments to Directive 2011/83/EU

Directive 2011/83/EU is amended as follows:

(1) Article 2 is amended as follows:

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

~~‘(3a) ‘energy using good’ means any good that depends on energy input (electricity, fossil fuels and renewable energy sources) to work as intended;’;~~

Option 1:

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

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

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

Option 2:

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

(14a) ‘commercial guarantee of durability’ means a producer’s commercial guarantee of durability referred to in Article 17 of Directive (EU) 2019/771, under which the producer is directly liable to the consumer during the entire period of ~~that~~ **the guarantee of durability** for repair or replacement of the goods, **under the conditions laid down in Article 14 of Directive (EU) 2019/771, whenever the goods do not maintain their durability;**

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

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

(14d) ‘reparability score’ means a score expressing the capacity of a good to be repaired, based on a method established in accordance with Union law **or national law, where applicable;**

(14e) ‘software update’ means a free update, including a security update, that is necessary to keep goods with digital elements, digital content and digital services in conformity in accordance with Articles 7 and 8 of Directive Directive (EU) 2019/770 and Articles 6 and 7 of Directive (EU) 2019/771;’;

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

Option 1:

(a) the following points (eac) to and (ed) are inserted:

~~‘(ea) for all goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good and has a duration of more than two years;~~

~~(eb) for energy-using goods, where the producer does not make available the information referred to in point (ea), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (e);~~

Option 2:

(a) the following points (ea) to (ed) are inserted:

‘(ea) for all goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good, ~~and~~ has a duration of more than two years **and is not offered against additional payment to the good. This information shall be made available in a Union harmonised graphic format in accordance with [Annex of this proposal];**

(eb) for energy-using goods, where the producer does not make available the information referred to in point (ea), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be ~~at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (e)~~ **made available in a Union harmonised graphic format in accordance with [Annex of this proposal];**

(ec) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the ~~producer~~ **provider** provides software updates, ~~unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ea), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;~~

(ed) for digital content and digital services, ~~where their provider is different from the trader and makes such information available, the minimum period in units of time during which the provider provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time.~~ **Where the provider of digital content and digital services is different from the trader, the trader shall provide the information about the minimum period in units of time during which the provider provides software updates only if the provider makes such information available;**

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

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

(j) when point (i) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.’;

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

Option 1:

(a) the following points (ma) ~~to~~ **and** (md) are inserted:

~~‘(ma) for all types of goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good and has a duration of more than two years;~~

~~(mb) for energy using goods, where the producer does not make available information referred to in point (ma), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (m);~~

Option 2:

(a) the following points (ma) to (md) are inserted:

(ma) for all types of goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good, ~~and~~ **has a duration of more than two years and is not offered for additional payment to the good. This information shall be made available in a Union harmonised graphic format in accordance with [Annex to this proposal];**

(mb) for energy-using goods, where the producer does not make available information referred to in point (ma), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be ~~at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (m)~~ **made available in a Union harmonised graphic format in accordance with [Annex to this proposal];**

(mc) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the ~~producer~~ **provider** provides software updates, ~~unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ma), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;~~

(md) for digital content and digital services, ~~where their provider is different from the trader and makes such information available~~, the minimum period in units of time during which the provider provides software updates, ~~unless the contract provides for a continuous supply of the digital content or digital service over a period of time.~~ **Where the provider of digital content and digital services is different from the trader, the trader shall provide the information about the minimum period in units of time during which the provider provides software updates only if the provider makes such information available;**

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

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

(v) when point (u) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.’;

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

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

Article 3

Reporting by the Commission and review

By *[5 years from adoption]*, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.

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

Article 4

Transposition

1. Member States shall adopt and publish by ~~*[18 months from adoption]*~~ ***[24 months from adoption]*** at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from ~~*[24 months from adoption]*~~ ***[30 months from adoption]***.

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

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

Article 5

Entry into force

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

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

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

(1) the following point 2a is inserted:

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

(2) the following points 4a and 4b are inserted:

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

4b. Making an environmental claim about the entire product when it actually concerns only a certain aspect of the product.’;

(3) the following point 10a is inserted:

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

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

‘23d. Omitting to inform the consumer that a software update ~~will~~ **may** negatively impact the use of goods with digital elements or certain features of those goods **or** **digital content or digital service** even if the software update improves the functioning of other features.

~~23e. Omitting to inform the consumer about the existence of a feature of a good introduced to limit its durability.~~

23f. Claiming that, given specific use conditions, a good has a certain durability in terms of usage time or intensity when it does not as a result of a systematic underperformance of the relevant good.

23g. Presenting goods as allowing repair when they do not or omitting to inform the consumer that goods do not allow repair ~~in accordance with legal requirements~~.

23h. Inducing the consumer into replacing the consumables of a good earlier than necessary for technical reasons ~~is necessary~~.

23i. Omitting to inform the consumer that a good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer.’.
