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NOTE

From:	Delegation of Poland
To:	Working Party on Consumer Protection and Information (Attachés) Working Party on Consumer Protection and Information
Subject:	Proposal for a Directive on Empowering consumers for the green transition - Comments on Presidency compromise text 10937/22 REV 2 from delegation of PL.

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 Doc 10937/2/22 REV 2

PL comments

I. Article 1 - Amendments to Directive 2005/29/EC

1. Article 2 point (o)

A deletion of the definition of "explicit environmental claims" is proper. In practice, it would be difficult to distinguish between the types of environmental claims, an explicit one or a general one.

We believe that definition of the „environmental claims" should be simplified.

"Environmental claim" means any message or representation in any form, which is not mandatory under Union law or national law, 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. "

The recital should then precisely indicate examples of such messages, representations. This would be: *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.*

2. Article 2 point (u)

The proposal includes a definition of "recognised excellent environmental performance". On the other hand, the amendment to Article 6 (2) point (d), where is a new misleading practice - "making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system" - uses the term of „environmental performance". It is not clear if „environmental performance” means the same as „recognised excellent environmental performance”.

We suggest to use the phrase „*recognized environmental performance*” instead of „*recognized excellent environmental performance*”. The term „*environmental performance*” is used in the legal acts referred to in the definition - Regulation (EC) No. 1221/2009 and Regulation (EC) No 66/2010. That could ensure terminological cohesion.

Please also see our comment on point 4a in the Annex (below).

II. Article 2– Amendments to Directive 2011/83/EU

Article 2 point (14a), Article 5 (1) points (ea) – (eb), Article 6 (1) points (ma) – (mb)

In our opinion, Option 2 could be considered under the following conditions.

We have already indicated that the fulfillment of this obligation by a seller will depend on the producer's activity. We have indicated the risk of failure to provide full and precise information by the producer, as well as the risk of losing a guarantee in the supply chain.

Option 2 aims to clarify what is a "commercial durability guarantee". Option 2 also proposes the use of a harmonized graphic symbol. In our opinion this is a right direction, but not sufficient.

There is still a doubt where the harmonised graphic symbol should be placed - on the goods, on the packaging, on the label? Moreover, who will be obliged to place such a symbol. The seller is not obliged to search for additional information. Therefore, the seller may have a difficulty with the fulfillment of his information obligation towards consumer. The consumer will then not receive full information. Incomplete information may be misleading. The seller must receive from the producer precise information on the kind of guarantee offered. In our opinion, this obligation should be imposed on the producer. Therefore additional clarification will be needed. It should be clear that such a graphic symbol is placed by the producer.

It is also necessary to precisely define the „commercial durability guarantee”. This is necessary so that the consumer (but also the seller) can distinguish between various types of guarantee. The consumer has to be sure that the graphic symbol is a symbol of „commercial durability guarantee” - not any other kind of guarantee (there could be: the legal guarantee, the commercial guarantee, the commercial guarantee of durability, others). The graphic symbol must not be misleading. The producer must also be sure, before placing this graphic symbol on the product, that symbol should relate only to „commercial durability guarantee”. That is also necessary for enforcement authorities.

If we accept this graphic symbol, it will not be necessary to inform to consumer that energy-using goods do not have the „commercial durability guarantee”. There will be one graphic symbol on the product which means that the producer offers „commercial durability guarantee”. The goods without such the graphic symbol are the goods without this kind of guarantee. It is sufficient information for the consumer to compare the goods and make a decision. In our opinion one harmonized graphic symbol is sufficient.

Therefore the letters (eb) and (mb) should be deleted:

~~(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];~~

~~(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];~~

Annex

Point 4a

In our opinion, we should add a practice in the Annex which prohibits the trader from making "environmental statements" in the case where the trader is unable to demonstrate environmental performance.

„4a. Making an environmental claim which states or implies that a product or a trader is less damaging to the environment than other products or traders for which the trader is not able to demonstrate recognized environmental performance.”

This amendment is also related to our proposal to amendment of the definition of „*recognized environmental performance*” [in Article 2 point (u)].