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LIMITE

CONSOM

MI

COMPET

ENER

ENV

SUSTDEV

DIGIT

CODEC

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NOTE

From:	Delegation of Austria
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 AT.

Austrian comments on the first compromise proposal (Doc. 10937/22 REV2) for a Directive amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information (2022/0092(COD))

Article 1 - Amendment to Directive 2005/29/EC

General Remarks

We thank the Presidency for giving the opportunity to comment on the first compromise proposal (Doc 10937/22) in writing.

We maintain our previous position that a more in-depth discussion on this proposal is necessary. The text is complex and intertwined with other legislative acts. The links to other proposals have not yet been fully clarified as this is not possible at the current state, as not all legal acts have been published yet, e.g. green claims initiative, but also the farm to fork initiative which is supposed to contain requirements for sustainable food product labels as well. Therefore, it must be clear in the present text of the UCPD that if there are specific regulations - such as on sustainable food labelling - these specific rules prevail. The clarification in recital 7 is not enough in this regard, as it only refers to the displaying of sustainability labels (Annex No. 2a) and only to Art. 35 of Regulation (EU) No 1169/2011.

Furthermore, the Impact Assessment has not been discussed in depth yet. The effects of the amendments can be significant, as the market conditions for traders, especially SMEs, have changed massively this year. The costs for sustainability labels based on certification schemes need to be looked at closely. Whether consumers are willing to pay more for those products probably needs to be reassessed in times of current inflation.

Regarding the amendments in recital 34: We support the German comments that we need to ensure the continued use of trademarks.

Definitions in the UCPD (Art. 2):

- Regarding the new definition for “goods” in Art. 2 (ca) we were wondering whether there might be problems with interpretation because “digital content” is e.g. not included. However in the UCPD we have the broad concept of products, which - according to the definition in Art. 2 (c) as amended by the Omnibus-Directive - refers to goods, services and others - including digital content.

- Art. 2 (q) “generic environmental claim”: We think it’s positive that the definitions are simplified here. However, due to the deletion of Art. 2 (p) adjustments in Art. 2 (q) are still required. Also, it should not only be about the textual form, but also the spoken word.

- Art. 2 (u): We want to repeat our text proposal in relation to national labels as it is of utmost importance in our view:

*‘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 **or with officially recognised ecolabelling schemes in the Member States,** ~~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*

The current category “compliant with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010” is not sufficient as the Austrian ecolabel is available for more product groups than the EU Ecolabel. Those product groups should also be covered. Also, Art. 11 of Regulation (EC) 66/2010 is not an appropriate reference as Art. 11 para 1 only refers to product groups, for which EU Ecolabel criteria have been published and is therefore too narrow.

Art. 6 UCPD

- As regards to the common practice in Art. 6 (2) lit. e it should (and already is) only be misleading, if it is promoted as something special or wrongly as the only product with those features within a certain category of products. The example in the corresponding recital 5 is not helpful as CFCs is already prohibited - and for these situations we have No. 10a of the Annex. Thus, the wording of the Article should be:

*“advertising benefits for consumers **as an unique selling proposition even though they** are considered as a common practice in respect of the **particular product category;**”*

- Regarding the new Art. 6 (2) (ea): We welcome that this provision was transferred from the Annex to Art. 6. Regarding the wording, we think “*know or who ought to know*” is probably a more common phrase, see e.g. Art. 5 (3) of Directive 2001/95/EC on general product safety.

UCPD Annex:

- No. 2a: For us it is important to have "public entities" here instead of "*public authorities*" as the certification bodies in the Member States are often issued within the framework of private-sector administration (and not by an authority) - at least it is the case for the Austrian ecolabel.

- No. 23d: We have no problem with replacing the word "will" with "may", but we see only limited added value here, because traders will then give a general information about updates and their effects. For us, it is still an open question how "negative impact" is understood in that context, e.g. software updates bring improvements on one hand, but on the other hand it is possible that after the update minor delays occur due to the code processing (e.g. when opening software applications) or further updates are required after the software update.

- No. 23f: The intention of the amendment is positive, but the text is not clear enough: We should speak about "the specific use conditions of the relevant good", also regarding the systematic underperformance it should be clear in the text of the Annex that we speak about a significant number of cases.

- No. 23g: We do not agree with the deletion here because it will mean that the trader will have to inform the consumer that a good does not allow repair in any case, e.g. "This pen is not repairable". We should return to the EC proposal in this point, with the adjustment that it should only refers to legal requirements established by Union law because national provisions can differ from region to region. But according to Art. 4 Geoblocking Regulation (EU) 2018/302 an online trader must offer a product in all Member States. We therefore suggest the addition "*established by Union law*" in order to have a fulfilable obligation:

*"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 **established by Union law.**"*