MINISTRY OF JUSTICE
FINLAND

13 October 2022

PROPOSAL FOR A DIRECTIVE EMPOWERING CONSUMERS FOR THE GREEN TRANSITION – COMMENTS ON THE PRESIDENCY COMPROMISE PROPOSAL

Written comments by Finland

We would like to thank the Czech Presidency for the possibility to comment on the compromise proposal.

As a general remark, our biggest concerns relate to the issue of the commercial guarantee of durability. We strongly support option 1. If option 2 is to be chosen, the functionality of the markets could be jeopardized and some of the objectives laid down in the original Directive 2011/83 – such as promoting the competitiveness of enterprises – could be endangered.

Please find our detailed comments below.

1. Directive 2005/29/EC

What comes to directive 2005/29/EC Article 2, 6 and 7, Finland in general supports the changes presented in the compromise proposal. However, further changes should be made. For example points 23d, 23e and 23f should not be included in the Annex I of the Directive.

Article 1 - Directive 2005/29/EC Article 2

(r) 'sustainability label' and adding the word 'predominantly'

- The addition of the word 'predominantly' is acceptable. However, taking into account that it is not an easy task to draw the line between what is 'predominantly' and what is not, some examples or explanations should be presented in the recitals.

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Article 1 - Directive 2005/29/EC Article 6

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

- We are not fully convinced that it is a good idea to remove the expression 'the relevant market' even though the term is not a clear concept in itself. Practices in different member states can vary quite a lot.

(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.

- Finland does not support this addition. The legislative technique used here is also somewhat uncommon. It is now to be understood that a commercial practice shall be regarded as misleading if a marketed good has features or properties which limit its durability. It would make more sense to directly ban the marketing of such goods.

2. ANNEX I (Directive 2005/29/EC)

'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.

- Finland is still of the opinion that point 23d point should be removed from the proposal. We refer here to our earlier written comments. In addition, we would like to point out that changing the verb from 'will' to 'may' will not change the fact that traders are going to present rather general statements or claims to avoid responsibility.

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**

- When reading this new version of point 23f together with the recital text one might get such an overall impression that the assessment would be made in the light of future cases. When a trader claims something in marketing, a trader should have evidence to support his or he claim.

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.~~

- Removing the phrase 'in accordance with legal requirements' will not solve the problems recognized earlier in this context. If anything, the removal will lead to even more confusion. Earlier the word 'allow' indicated that repairing is prohibited by a certain law or regulation, and now, if the aforementioned phrase is to be deleted, the word 'allow' indicates that for some reason it is not physically possible to repair a certain good. Therefore, the phrase 'in accordance with legal requirements' should be kept in the proposal. However, in the recitals, it

should be explained in a more detailed manner what the legal requirements are or what actually is meant by the legal requirements.

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.

- Both point 23e and point 23i should be removed from the proposal. Does a trader really get the information – in all situations – regarding 'consumables, spare parts or accessories' from the manufacturer (even if the trader separately asks the said information)?

3. The issue of the commercial guarantee of durability

Finland strongly supports option 1 of the two options, i.e. not including any new provisions regarding the commercial guarantee of durability in the legislation. In our view, the existing legislation and legal framework – especially after the judgment in case C-179/21 – is sufficient and balanced. We refer here to our earlier comments concerning Article 5(1)(ea) and Article 6(1)(ma), Article 5(1)(eb) and Article 6(1)(mb) as well as Article 8(2).

The proposed information obligations (option 2) will bring little to no benefits for the average consumer. On the contrary, they would more likely only confuse consumers or even worse be misleading.

In addition, we would still like to emphasize the importance of case C-179/21. In the light of the said case, certain criteria are laid down for when a trader should provide information also about the manufacturer's commercial guarantee.

It is pointed out (see C-179/21, point 40) by the court that 'an unconditional obligation to provide such information, in all circumstances, seems to be disproportionate, in particular in the economic context of the functioning of certain undertakings, in particular small undertakings' and that 'Such an unconditional obligation would require traders to carry out considerable work collecting and updating information on such a guarantee.'

After weighing the high level of consumer protection and the competitiveness of enterprises (the ECJ refers here to the recital 4 of Directive 2011/83), the ECJ comes to the following conclusion 'the trader is required to provide the consumer with pre-contractual information on the manufacturer's commercial guarantee only where the legitimate interest of the average consumer, who is reasonably well informed and reasonably observant and circumspect to a high level of protection must prevail in the light of his or her decision whether or not to enter into a contractual relationship with that trader.'

If such criteria (which are referred to above) were not set, but the information should be given in a manner suggested in option 2, the functionality of the markets could be jeopardized and some of the objectives laid down in the original Directive 2011/83 – such as promoting the competitiveness of enterprises – could be endangered. Therefore, the option 2 is not only problematic from the consumer's point of view (i.e. it can be very hard for the average consumer to understand all the information about the different guarantees) but also from the point of view of enterprises. Hence, there should be a fair balance, and we believe that the judgment in case C-179/21 succeeds in achieving that.

4. Other remarks

Article 6(2)(d) (Independent monitoring system)

- We still wonder what actually is meant by ‘an independent monitoring system’. This should be clarified and explained in the recitals.

Council of the European Union
General Secretariat

Interinstitutional files:
2022/0092 (COD)

Brussels, 17 October 2022

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NOTE

From:	Delegations
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 delegations of DK, FI, IT, LT, LV, NL, SK

Written comments of the Lithuanian delegation
on certain issues related to the 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

These comments are submitted following the meeting of Working Party of Consumer Protection and Information on 28 September 2022.

As a general comment, Lithuania supports the compromise proposal. However, there are some aspects that still raise questions.

Regarding Article 1 of the compromise proposal (UCPD)

The proposed amendments to the definitions set out in Article 2 of Directive 2005/29/EC (UCPD) could be accepted. However, the proposed amendment to Article 6(2) of Directive 2005/29/EC (misleading practices), to which point (ea) is proposed, raises doubts.

As already stated in LT's position at the previous meetings, the trader is primarily responsible for providing the information to the consumer. Meanwhile, information on the sustainability of the product and its characteristics is available to the producer. This raises the question of whether the trader can really know about the durability of the goods if the producer has not specified it, and be responsible for this. Therefore we would strongly encourage further clarification and emphasis on producer obligations. In order to ensure clarity for all actors, we also encourage Commission to make clear what information should be passed down to the traders.

Regarding commercial guarantee of durability

In deciding between the two options offered, the first option is more to be supported.

Pursuant to Article 17 (1) of the Sales of Goods Directive (Directive 2019/771), a commercial guarantee of durability is a commercial guarantee. In other words, a commercial guarantee of durability is a specific type of commercial guarantees. The term "commercial guarantee", as a generic term embraces commercial guarantees of durability.

Therefore, existing traders' information obligations under the Consumer Rights Directive (2011/83/EU) concerning commercial guarantees essentially cover commercial guarantee of durability (implicitly), as well. Adding additional information obligations on commercial guarantees of durability is not necessary.

However, for reasons of greater legal clarity and uniform application targeted amendments may be suggested to existing information obligations concerning commercial guarantees, i. e. Article 5(1)(e) and Article 6(1)(m) of the Directive.

Proposed amendment

Article 5(1)

e) in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees **including commercial guarantees of durability**, where applicable;

Article 6(1)

m) where applicable, the existence and the conditions of after sale customer assistance, after-sales services and commercial guarantees **including commercial guarantees of durability**.

DEU proposal on the Empowering Consumers Directive regarding a "Withdrawal Button"

Lithuania could support Germany's proposal and would support the idea of applying the "Withdrawal Button" horizontally, not only in the field of financial services contracts.

Written comments and drafting suggestions from Latvia on the proposal for a Directive on green transition regarding the compromise text (14.10.2022.)

ARTICLE 1

In general, LV supports the Proposal, but regarding the **definition on "*sustainability label*"** we still suggest to specify in Recital (1), that "*with reference predominantly [..]*" remains at the discretion of the supervisory authorities at a national level, to avoid misinterpretations, how this specific indicator should be measured and controlled by. Therefore we suggest following drafting for this definition:

*"(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 **according to state administrative supervisory authority suggestions and previously implemented common practices.** 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.".*

Regarding Article 6, paragraph 2, point (e) Latvia is concerned whether this proposed a wording of the article will not, however, create an opportunity for different interpretations of what is meant by the benefit, which is considered a common practice. Therefore we suggest following drafting for this definition:

"*(e) advertising special characteristics when in fact all similar goods possess such characteristics and are considered as a common practice in the relevant market, in particular by specifically emphasizing the presence or absence of certain common characteristics;".*

Regarding this provision, we also would like to mention Recitals 5. and 13., because Latvia is concerned that given examples there may give the impression that such practices has not been prohibited until now, thus possibly causing problems with cases already pending in the court cases of some memberstates for example. Rather, the Comission maybe should work on supplementing the guidelines and developing unified monitoring methodologies for the evaluation of green claims, as this process is technically complex and often requires the opinions of different experts.

Latvia thinks that the wording "*or may reasonably be aware*" in **part (ea) of Article 6** is very unclear and can not be correctly measured, nor how to prove such cases. This could lead in problems in implementation and supervision. In addition, as Latvia mentioned before, we don't think that the trader should be held responsible for information that he may be aware of, basically stating that he must do some sort of

research about specific features of the good so as not to violate the requirements of regulatory acts. This kind of responsibility lacks the legal certainty and clarity, also making the monitoring of such practices likely hard to carry.
We still believe that in order to achieve greater efficiency, it would be primarily necessary to set restrictions on manufacturers to produce and put on the market such goods that do not meet the goals of the green transition, for example in the Ecodesign Directive. In order not to create consequences for either the environment or consumers, products should be sustainable already after their construction - *sustainable by design*, because the production of unsustainable goods should be restricted first, and the restriction of inappropriate commercial practices could be an additional measure.
Also regarding the wording "*any marketing of a good*", it is not the correct way to impose new restrictions, as under this wording lays not only commercials, but also price tags, brochures, in which such information is not obligatory to be shown.

ARTICLE 2

Latvia still wants to clarify about provisions in **Article 5** - what happens in cases where one of the components of the product, for example, has a longer expected guarantee of durability, and accordingly, whether such information about that part separately should also be provided to the consumer, not just for the whole good itself. We recommend to clarify these situations through Recital, to avoid misunderstandings between supervisory authorities and consumers regarding these specific situations that may occur.

ANNEX

Paragraph 23f of the Annex defines "*specific use conditions*", but it is not quite clear what is meant by the word "s*pecific*". Therefore we suggest following drafting for this definition:

"*23f. Claiming that a good has a certain durability in terms of usage time or intensity,* ***if used in accordance with the instructions,*** *when it does not as a result of a systematic underperformance of the relevant good.".*

Also in the Recitals should be clearly stated what "*a systematic underperformance*" means, because it is hard to comprehend hot to detect such cases, if there is no visible criteria.
As mentioned in previous written comments, Latvia suggests that **23d.** from the Annex I should either be deleted or a reference could be added in this point or in Recitals, stating that it allows Member states to protect the collective interests of consumers if there is an event of non-compliance with the contract as a result of renewal.

RECITALS

As mentioned before**,** Latvia expresses concern about the words of point **14a.** "*or may reasonably be aware*", considering it cannot be measured properly, for example it is not clear how to determine the cases where the trader could have reasonably known such information nor how to prove such cases. This kind of provision basically can be

interpreted that the trader should do some sort of research or testing of a good, to be aware of its' specific features that may or may not limit a goods durability.

Regarding **14b.**, we believe that it should be clarified that the good must meet certain requirements arising from the specifics of that good, so we suggest to avoid the word "*quality*", because by the concept of the word "*quality*", there are really no defined and uniform standards how to measure it in general. For example, wording "*use of low quality materials*" is quite unclear, as this may vary for country to country what is supposedly considered as low, so maybe it's more correct to use wording like "*materials or processes that lacks a set of established standards in particular market and specific product group*".

Latvia still asks to clarify in the Recital 17. the words "*significant number of cases*", as it is still currently unclear how to determine the number of cases that should be considered adequate in a specific context, for example such number most likely regarding washing machines and wool coats won't be the same and it may cause some misunderstandings.

Latvia asks to clarify why wording "*where the provider is different from the trader*" is deleted. We believe that it should not be deleted, because such an obligation is also applicable to intermediaries, as indicated in point (md) of the first paragraph of Article 6 of the CRD. This wording should stay in the Recital 30. By adding at the beginning word "*also*".

Written comments – Slovakia

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.

In the text below we would like to share with you our written comments on the latest released compromise proposal from the Czech Presidency.

Article 1 of the proposal

Amendments to Directive 2005/29/EC

(1) Article 2 - points ca) and o) to y)

We do not have any reservations about definitions.

(2) Article 6 paragraph 2 point e) – relevant market

We generally support proposed change, however we would suggest rather texting "type of product" instead of "product". (So that there is no narrowing interpretation in practice).

(2) Article 6 paragraph 2 point ea) – any marketing

With this amendment, it is not perfectly clear for us, what should be the subject of regulation or ban. According to point 23e of the annex, *'omitting to inform'* should have been prohibited, according to the newly proposed point ea) incorporated directly in Art. 6 UCPD is '*marketing*'. From a substantive point of view, we are more inclined to option "omitting to inform". The subject of such an unfair commercial practice should rather be informing the consumer about the presence of elements that limit the life of the product (i.e. support rather for the original wording of point 23e of the Annex). In the proposal of letter ea), we can support the effort to limit the trader's responsibility (although awareness can be difficult to prove in practice) and we would welcome this approach if it were to persist in keeping point 23e in the Annex instead of letter ea) of directive.

Annex of UCPD

Point 23g - Omitting the words "*in accordance with legal requirements*" in our view expands the scope of unfair commercial practices and indirectly also expands the trader's information obligation. In principle, the trader will have to inform the consumer if product can´t be repaired for each such a product that can´t be repaired. If the aim of this proposal is to introduce the obligation to inform about reparability for each product, it should be introduced in another provision of CRD, not under the wording of unfair commercial practices. Therefore we would like to suggest wording of point 23 of the annex as follows "*Presenting goods as allowing repair when they do not.*"

Article 2 of the proposal

Amendments to Directive 2011/83/EU

(1) Article 2 point a) (3a) – category of energy using goods

We support omission of category energy using goods.

(1) Article 2 point b) (14d) – union law and national law

Within the reparability score, a reference to national law has been added - We are concerned about the fragmentation of the market and thus about fragmentation of information provided to consumers and so we would prefer harmonized approach in this matter.

(1) Article 2 point (14a and 14b) + Article 5 points ea) and eb) - commercial guarantee of durability

In case of art. 2 point 14a and 14b, we would prefer option 1 that proposes removing this definitions.

Regarding Article 5 points ea) and eb), we are of the opinion, that new information obligations regarding the commercial guarantee of durability as is amended in the proposal is for consumers rather confusing and can cause information overload. Providing a commercial guarantee of durability is a competitive advantage, therefore we believe that economic entities are interested in providing this information to consumers anyway. If the traders does not provide this information, it would not change the producer's obligation. We stand the same position as in aforementioned as well for **article 6 point ma) and mb)**.

(2) Article 5 (a) point ec) and (3) Article 6 point mc)

Proposed changes does mean the extension of the information obligation to all cases, but by removing the exceptions, the legal regulation becomes more complex and therefore easier to apply. We can support this amendment.

(2) Article 5 (a) point ed) and Article 6 point md)

We can support proposed changes of those provisions for similar reason as in aforementioned paragraph.

(2) Article 5 (b) point j) + Article 6 (b) point v)

We find this information's obligations as excessively burdensome. We would like to suggest deleting the whole provision or at least part "*including their ordering procedure*".

(4) Article 8 (2)

We support removal of this provision.

Article 4

We support extension of transposition period.

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 2021/0170 (COD)

Written comments from Italy
ON COMPROMISE PRESIDENCY PROPOSAL
INTERINSTITUTIONAL FILE: 2022/0092(COD)
(Brussels, 26 September 2022 (OR. en) 10937/22-REV 1)

General comments

First of all, we would like to thank the Presidency for the work done, its attempts to collect Member States suggestions and the introduction several concrete examples for better understand the logic of the intervention. Nevertheless, we still consider valid and kindly ask the Presidency to consider the comments already submitted and not taken into consideration in the compromise text. Today in our oral comments we would like to focus on the crucial issues. We reser to send further comments in writing.

RECITALS

Recital 1
We welcome the deletion of the text: “sustainability information tools” (as well at recital 6) that does not add a specific area of attention related to the greenwashing issue.

Recital 4

Whilst prefacing that, as already expressed, the prohibition reffering to this recital should be included in annex I and not in Art. 6 (2) Directive 2005/29/EC, we appreciate the new text added (on the possibility consumer be able to consult its findings) but we still have some concern, as like as other delegation, on the meaning of "an independent monitoring system". We ask also to add some examples in the recital itself. For instance, “an independent monitoring system” could concern an audit pursuant to Regulation (EU) 2020/852 concerning the establishment of a framework that favours sustainable investments and amending regulation (EU) 2019/2088 and proposal for a directive on Corporate Sustainability Reporting (COM (2021) 189 final). See comments related to article 1 (2) (b) sub (d).

Recital 5

Whilst prefacing that, as already expressed, the prohibition reffering to this recital should be included in annex I and not in Art. 6 (2) Directive 2005/29/EC, we partially appreciate the new text added (with a concrete example on a distinctive feature of the product could constitute an unfair commercial practice) and the relevant clarification regarding the "relevant product" also related to art. 1 (2) point b) sub (e) and the deletion of reference to "relevant market". We have some concerns on the the notion of "average consumer" that appears some generic giving rise to different interpretations.

Comments concerning recital 4 and 5 are tied up to article 1 (2) (b) sub (d) (e)

From a technical point of view, the choice of extend the scope of article 6, paragraph 2, of directive 2005/29 / EU, seems not viable. The list of practices contained in article 6, paragraph 2, of the aforementioned directive, in fact, is just an example, as the assessment of misleading actions is subject to the so-called test of settlement. Consequently, such practices must be considered lawful if they are not likely to induce the consumer to take a decision of a commercial nature other than that which he would otherwise have taken. However, the environmental boasting relative to future performance in the absence of the indication of precise objectives and a monitoring system and the attribution to the product in terms of advantage for consumers of characteristics that are instead common to the entire market are provided in re ipsa of a deceptive suitability which, on the other hand, justifies its tracing back to the category of practices that must certainly be considered unfair - and therefore its inclusion in Annex I of the directive.

Recital 7

Any label should be based on clear, objective and verifiable criteria (and has to exist before they can be certified): the ratio of this ban should be better explained. In other words an adequate certification systems has yet to exist for the issues addressed by the label. And this is a cost for economic operators, mostly if SME's. To enable the green transition, it is important to bring sustainability closer to businesses (for example through assessment UE programmes made of the needs necessity of certified labels and including an evaluation of alternatives to labels as well as on the effects of such certified labels on consumer recognition).

Recital 10

We welcome the added text that introduce the concept that recognised excellent environmental performance can be based on registration in accordance with Reg. 1221/2009 on the voluntary participation by organisations in a Community eco management and audit scheme (EMAS). However, we still have some concern on the point - see our comments to article 1 (2) (b) - and we ask to put in the recital the added text:

Rec. 10 - 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 ecomanagement 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 Council [***or information concerning sustainable activities in accordance with the taxonomy Regulation (Eu) 2020/852***]. 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.

Recital 14a

We welcome the provision - and the example - for a better information to protect consumers against unfair commercial practices. Meanwhile we are concern about the possibility for States/Autorithies to apply the provision without clear guidelines by the Commission. As well the possibility that traders should make "reasonable" efforts to verify that goods they are selling do not contain features introduced to limit the durability of the good seems some generic and, without clear rules to adopt, could bring new burdens for traders.

We reiterate that in principle we do not agree about the extention of the scope of article 6, paragraph 2, of directive 2005/29 / EU. We prefere to include eventual new prohibitions in Annex I.

Recital 14b

We welcome the provision that clarify the distinction between unfair practices (regulated by the proposal) and lack of conformity of the good (that continue to be governed by the rules set out in Directive (EU) 2019/771).

Recitals 15-17

We share the Presidency re-wording propoposals.

Recitals 23-28

We opt for option 2 (see our comment on article 2 (2) point a)

Recital 23

We welcome the new text added to the provision when 1) specify that the producer's commercial guarantee of durability is not a new type of guarantee and 2) clarify that 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 (the good will maintain its required functions and performance through normal use).

However, see our comment on article 2 (2) point a.

Recitals 29 and 30

We don't agree on the deletion of the text. We would have preferred the previous version of the text which - even if somewhat redundant - reaffirmed an important concept at benefit of consumers where the contract provides for a continuous supply over a period of time.

Recitals 31 and 32
We welcome the new compromise text, in particular the reference as well to national law regarding the reparability score considering information on the availability of spare parts should only be expressly provided when this is longer than the minimum period established in the legislation of each Member State (transposing Directive 2019/771 on the sale of goods).

Recital 33
We do not agree on any of the two proposals elaborated with reference to this recital. We prefer the original version of the text.

Recital 34
We welcome the new compromise text, in particular the example that clarify that product specific Union law providing for transparency and certification should prevail in case of conflict ensuring that a high level of consumer protection can be maintained in all sectors.

Article 1

Amendments to Directive 2005/29/EC

Article 1 (1)
We welcome the introduction of point (ca) and the reaffirmed consistency with Dir. (EU) 2019/771 for the definition of good.

Article 1 (1) point p).
We welcome the deletion of the point p) according to our - and other delegation - already expressed concerns.

Article 1 (1) points q, s, and x).
We welcome the new added text.

Article 1 (1) point r).
We still have concerns on consistency of the provision with the legislation on guarantee trademark, EMAS standards and the quality mark provided for in the Procurement Directives and whether there are requirements for sustainability marks and how to ensure. We refer as well to our previous comments on recital 10. We ask the "ratio" of the added text and the word "predominantly".

Article 1 (1) point t).
We welcome the deletion of the point t) (see as well our comments at recital 1 also referred to 6).

Article 1 (1) point u).
See comments on art. 1 (2) (b) sub (d).

Art. 1 (2) point b) sub (d).
We claim, as previously represented, that the present prohibition should be included in annex I and not in Art. 6 (2) Directive 2005/29/EC.

Without prejudice to all other considerations, we consider that information on capital expenditures (Capex) and operating expenses (Opex) in line with the taxonomy of environmentally sustainable economic activities (Regulation (EU) 2020/852), should be considered evidence of an environmental declaration relating to future environmental performance, pursuant requirements of letter d) (clear, objective and verifiable commitments and targets where the independent monitoring system is ensured by the audit according to the proposal for a directive on Corporate Sustainability Reporting (COM(2021) 189 final).

Art. 1 (2) point b) sub (e).
We appreciate the modification of the text that substitute "in the relevant market" with "respect of the particular product". However we prefer that the present prohibition be included in annex I and not in Art. 6 (2) Directive 2005/29/EC (see comments on recitals 4 and 5).

Art. 1 (2) point b) sub (ea - new)
Whilst prefacing that the prohibition should be included in annex I and not in Art. 6 (2) Directive 2005/29/EC, we have some concern on the concept of "reasonably awareness" of the trader. How defined it by Authorites without a clear EU Guidelines.See as well our comments at recital 14a.

Art. 1 (3) (sub 7)
We welcome the deletion of the text (see as well our comments to recital 1).

Annex 1: See our comments at recital 4.

Article 2

Amendments to Directive 2011/83/EU

Article 2 (1) lett a sub 3a
We welcome the deletion of the 3a with the definition of "energy using good". See our comment at (ea) on the definition.

Article 2 (1) lett b points 14a and 14b
We opt for option 2. We welcome the expressed consistency with Dir. (EU) 2019/771 both for the definition of durability (art. 2, point 13) and for the conditions for repair or replacement therein defined (art. 14) and in coherence with the rest of the points 14. See as well our comments at article 1 (1).

Article 2 (1) lett b sub 14d
See our comments on (ea). However, we appreciate the addition of the text on the accordance also with national law, where applicable.

Article 2 (1) lett b sub 14e
We welcome the expressed consistency with Dir. (EU) 2019/770 and Dir. (EU) 2019/771.

Article 2 (2) point a

(ea)

We confirm, as indicated, to opt for option 2. As already indicated in our previous comments, in relation to goods different from energy-using goods (*), the limitation of the information obligation to the sole existence of a guarantee of durability exceeding the legal threshold is not sufficient in itself, to trigger pro-competitive dynamics of equal intensity to those expected for energy-using goods.

For these ones, on the other hand, there is an obligation to provide information relating to the guarantee of durability of the asset exceeding the legal guarantee or its absence. Infact even in the absence of the law, companies willing to guarantee the durability of their products beyond the two-year term would have the possibility and the incentive to use this advertising boast.

(*) Instead of "energy-using goods" we would prefer the use of the same definition of "energy-related product" appearing in Directive 2009/125/EC ("Ecodesign" directive).

However, we welcome the new text of art. Article 2 (2) point a (ea) - taking in consideration our comments regading the necessity of consumers' awareness on these processes - introduce the provision that the information to consumers shal be made available in a Union harmonised graphic format.

This is only a first step and we confirm the necessity of information campaigns - at European or national level – in order to raise consumers' awareness on the subject of sustainability.

(eb)

We confirm that concerning energy-using goods, the provision of an information obligation relating to the guarantee of durability exceeding the legal guarantee, or its absence, is consistent with the general objectives of legal policy pursued in Italy by the competent authorities in the field of protection of the consumer and competition.

(ec)

We support the deletion of part of the paragraph. However, we confirm a mismatch between the obligations of the producer and the seller could arise (Directive (UE) 2019/770 and with Directive (UE) 2019/771, in particular at art. 7 (3).

(ed)

We welcome the added text at the end of the paragraph that specify that "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.

Article 2 (2) point b

(i)

Consumer could be confused by a provision that will not be immediately operational except for very few goods (if the JRC methodology is implemented for smartphones and tablets within 2022, as foreseen). Information campaigns and guidelines of the Commission could be appropriate.

Article 2 (3) point a

We confirm, as indicated, to opt for option 2.

(ma) (mb)

We welcome the new text - taking in consideration our comments regading the necessity of consumers' awareness on these processes - introduce the provision that the information to consumers shal be made available in a Union harmonised graphic format.

(mc)

See our comments at article 2 (2) point a (ec).

(md)

See our comments at article 2 (2) point a (ed).

Article 2 (4)

We welcome the deletion of the whole paragraph, deletion that receipt our expressed concern asking for consistency with recital 22 of the proposal.

Article 4

We welcome the acceptance of our request (as well as other delegations) to extend the transposition period from 18 to 24 months, and the period of application (from the adoption) from 24 to 30 months, given the well known transposition issues caused by the impact of the massive modernization process of EU legislation and the challenges of the green and digital transition for the Member States when adapting their national legal frameworks.

Rome, 28.9.22

Ministero dello Sviluppo Economico

Ministry of Economic Development
Directorate General for Market, Competition, Consumer Protection and Technical provisions.
ITALY

Working Party on Consumer Protection and Information: Empowering the Consumer for the Green Transition - Written comments of the Netherlands

In this text we share our views on several elements of the compromise proposal. We thank the presidency for their work on the proposal and we look forward to continue the discussions in the upcoming Working Party meetings.

Recital 15

Comment:
In recital 15 of the compromise proposal the previously added information about the provider has been removed. We believe that producers/providers are usually the actors that have access to such detailed product information. For this reason, it should be clear that the trader can only provide this information based on information given by the provider/producer.

Article 1, (s) - UCPD

Comment:

We are pleased with the addition that certification schemes should be publicly accessible and we believe that scrutiny by consumers and market authorities could help raise the quality of the scheme's requirements.

We are also supportive of the idea that certification schemes are open to all traders, which could help businesses to access existing schemes, which might already have proven their worth, and limit the number of sustainability labels on the market.

However, this provision could be strengthened by adding that the scheme should define "how an independent party verifies" that a product complies with the requirements for certification in the scheme.

Furthermore, we would like to suggest to further explain what is considered to be an independent scheme owner. This could be done by adding a new definition to the text (see below).

Moreover, we would like to point out that both businesses and market state authorities could benefit from guidelines which address when a party (or certifying organization) is considered to be independent from both the scheme owner and the trader. Additionally, these guidelines could help determine when a certification scheme is considered to be transparent and it could address the extent to which a company's compliance remains relevant over long periods of time.

Finally, the guidelines could emphasize that accredited certification schemes are considered to be of higher quality and that businesses are encouraged to join such schemes.

Proposed definition for 'independent scheme owner'

(t) *'Independent scheme owner' means an identifiable organization that has established a certification scheme and that is responsible for the design and the management of the scheme, and which does not carry out certification activities itself.*

Note 1 to entry: Examples of scheme owners are:

- *Independent foundations'*
- *Standardization bodies;*
- *Governmental authorities.*

An independent scheme owner cannot be a certification body or (association of) trader(s).

Article 1, par. 2 (a) (UCPD)

Comment

This article lists 'social impact' as one of the main characteristics of a product. However, the proposal does not describe what this entails. We suggest to elaborate on this aspect in the proposal (perhaps in the preamble).

Article 2, option 2 (ea) – CRD

General comment

Generally, we support the idea that producers are ought to make information available about the commercial guarantee of durability. The provision could stimulate producers to develop more durable products and market these products as such.

Unlike the large majority of Member States, The Netherlands do not have a legal guarantee period of two years but an open norm. Nonetheless, we believe that labelling a product with a commercial guarantee of durability can help inform consumers about the period of time under which they can expect to be entitled to a properly functioning product.

Remark

However, we question whether the trader can be made responsible for providing the information to the consumer in a Union harmonized graphic format. It should be prevented that traders are burdened with collecting information about the life expectancy of a product and, subsequently, transform this information into a graphic format. We believe that this should be done by the producer.

Finally, displaying a commercial guarantee of durability in a Union harmonized graphic format should be the preferable option. Leaving this up to economic operators could result into the creation of divergent labels and, subsequently, to confusion among consumers.

Article 2, option 2 (eb) – CRD

The obligation for traders to display that the producer has not provided information about the existence of a commercial guarantee of durability on a product, we would like to share the following observations:

1) In line with our previous comment, traders should not be required to invest much of their time and resources into establishing whether the producer has or has not provided any information about the commercial guarantee of durability. We suggest the compromised text will be adjusted in this regard.

2) When consumers see a product with a graphic format stating that no commercial guarantee of durability is offered by the producer, it might be interpreted that they are not entitled to any legal guarantee. This could be confusing to consumers.

Final remark

We believe that the proposal should make a distinction between economic operators responsible for new goods and traders of second-hand and refurbished products, considering the importance of the latter to the circular transition.

It has been brought to our attention that (re)sellers of refurbished or second-hand goods will face difficulties being hold accountable for matters such as design choices, the use of software limiting the lifetime or functionality of a device.

1. oktober 2022

Denmark's written comments to the Presidency compromise proposal 10937/2/22 REV 2 – proposal for a directive as regards empowering consumers for the green transition through better protection against unfair practices and better information

Regarding the proposed amendments to Directive 2011/83/EU

Article (1) (2) amending Article 6, paragraph 2, by adding point (ea):

(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.

Comments:

We are concerned about the scope of the provision and have a scrutiny reservation. We are most inclined to keep the proposed point 23e in the Annex.

Annex I (regarding the UCPD)

Even though the revised proposal from the Presidency does not contain changes to the proposal on Annex (1) point 2a or (2) point 4a we find cause to reiterate our views regarding these parts of the proposal as stated previously in our written comments dated June 8th

Regarding sustainability label

Wording of current proposal:

(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."

Proposed wording:

~~'2a. Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.';~~ (Deletion of point 2a)

Reasons:

The provision may lead to the contrary conclusion, that the marketing of a sustainability label is lawful *if it is* based on a certification scheme or introduced by public authorities.

This means that the criteria for when the use of a sustainability label is not misleading wil be determined by private certification companies, so that a company will be able to call its product sustainable, for example, if the product meets the criteria established by private certification schemes.

We note in this connection that the proposed definition of a certification scheme in (s) does not set conditions for the certification scheme's requirements. This could lead to the risk of consumers being misled by private certified sustainability labels.

If the provision is not deleted it should be clearly specified in the preamble or elsewhere in the directive that private certified sustainability labels must also not be in breach of the general provisions in Articles 5-9 on a case by case basis, so that this question cannot give rise to doubt.

Regarding making a generic environmental claim

Wording of current proposal:

(2) the following point 4a is inserted:

"4a. Making a generic environmental claim for which the trader is not able to demonstrate recognized excellent environmental performance."

Proposed wording:

"4a. Making a ~~generic~~ 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 ~~excellent~~ environmental performance."

Reasons:

The wording of the current proposed provision can give rise to the contrary conclusion, that the use of a generic environmental claim is lawful if the trader can demonstrate relevant, recognized excellent environmental performance.

Traders will then be able to market their products as, for example, "environmentally friendly", if the products comply with the relevant legislation e.g. to achieve the EU Ecolabel.

This will mean that traders who invest further in a green conversion of their production than required to achieve e.g. the EU Ecolabel, will not be able to highlight it in marketing, as traders can probably not highlight their products in a better way than with absolute environmental statements.

According to the Danish understanding of the current regulation of green claims under the UCPD, a product that is licensed with an ecolabel from an official ecolabeling scheme such as the "Swan label" or the EU Ecolabel can normally be marketed with relative, general environmental statements such as "less environmentally damaging", "more environmentally friendly", "more gentle on the environment", "better for the environment "or similar terms.

If the product is referred to with absolute, general environmental statements such as "environmentally friendly", it will, on the other hand, require the trader to be able to prove that the product generally has a significantly lower impact on the environment than similar products based on a life cycle analysis.

The wording of the inserted 4a will therefore lead to a modification of the criteria for when companies can use absolute environmental statements in marketing, such as "environmentally friendly", which will make it difficult to market products that are even less harmful to the environment.

In addition, the change will mean that products from highly polluting industries, or products that contain environmentally hazardous substances, can also be marketed as e.g. "environmentally friendly", if they have an ecolabel of excellence and thus are environmentally better than other similar products. However, the Commission's guide to the interpretation and application of the applicable UCPD, p. 78, states that "*[t]he highly polluting industries should ensure that their environmental claims are correct in such a sense that they are relative, e.g. "Less harmful to the environment" instead of "environmentally friendly" […]".*

The Danish proposal will mean that the trader cannot automatically call a product e.g. "environmentally friendly" or "good for the environment" under the given conditions, but instead e.g. "more environmentally friendly" or "better for the environment".

Regarding early obsolescence

Wording of Presidency proposal

(4) the following point 23g is inserted:

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

Comments:

It is the Danish understanding that the omitted text will mean an extension of the proposed provision without adding any clarity.

Regarding the proposed amendments to Directive 2011/83/EU

General remark
As a general remark, and as Denmark has already pointed out, we find it important that the proposal on information that must be provided to the consumer does not lead to information overload. Further, there should be a fair balance between the administrative burdens imposed on the traders and the added value for the consumers.

General comment regarding option 1 and 2 concerning the proposed obligation to provide information on commercial guarantees on durability
In light of our general comment above, we are hesitant towards introducing additional information obligations, and we are therefore inclined to support option 1.

Article 2, paragraph 1 (b)
At technical level, if option 1 is chosen, the proposed Articles should be referred to as "(14a) to (14c)" instead of "(14c) to (14e)".

Further, at a technical level, if option 2 is chosen, we propose that the sentence "whenever the goods do not maintain their durability" is deleted. The sentence may confuse rather than contribute to the definition of a "commercial guarantee of durability". Further, the sentence cannot be found in the referred Articles 14 and 17 of Directive 2019/771/EU.

As regards the definition of "reparability score" in the proposed (14d), we would like further information on the proposed added reference to national law and how this should be applied in practice. Will it for instance entail that a trader in one EU Member State is obliged to inform consumers of a national reparability score in another EU Member State established in accordance with the national laws of that Member State? Further, does it include national reparability scores based on different methods than reparability scores established in accordance with Union law? Finally, on a technical level, "in accordance with" may be substituted with "on the basis of" or "by".

Article 2, paragraph 2 (a)
At a technical level, if option 1 is chosen, the proposed Articles should be referred to as "(ea) and (eb)" instead of "(ec) and (ed)".

Article 2, paragraph 3 (a)
At a technical level, if option 1 is chosen, the proposed Articles should be referred to as "(ma) and (mb)" instead of "(mc) and (md)".