

Comments of the Czech Republic on 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

The Czech Republic would like to thank the Swedish Presidency for the work done on the compromise text so far and for the possibility to comment on the compromise text of the proposal for a Directive on “Empowering Consumers for the Green Transition”. The Czech Republic would like to submit the following comments for the purposes of drafting a new compromise text:

General remarks

The Czech Republic would like to stress that information provided for consumers must be clear and comprehensible for consumers and the obligation for provision of the information must not create unnecessary administrative burden for traders. The rules shall also be enforceable.

During the previous meetings the Czech Republic stressed links to the upcoming Green Claims Initiative. We agree with other delegations that timetable for this proposal should be reconsidered with respect to the upcoming **Green Claims Initiative and the Right to Repair Initiative**. Implications of these two upcoming initiatives on our proposal should be carefully examined. The situation might be more complicated with the Green Claims Initiative which will probably not be dealt with in our working group. After examination of the upcoming Green Claims Initiative we may come to the conclusion that some provisions of the current text (for example provisions on certification schemes which triggered a lot of discussion and confusion during the last WP meeting) would be better suited in other pieces of legislation.

Article 1 - Directive 2005/29/EC on unfair commercial practices

(1) Definitions

(s) certification scheme – during the previous meeting the Member States asked whether there would be an obligation for the Member States to have certification schemes in place if the proposal only provides for a definition of a certification scheme and not for the obligation of the Member States to have a certification scheme available. The Council Legal Service explained that it would be an obligation for the Member States to have or to set up certification schemes on their territory so that the businesses would have a chance to obtain respective certification. If this is the case then mere definition of the certification scheme is not sufficient, there should be provisions specifically imposing obligations on the Member States to set up certification schemes that would be coherent with the definition. On top of that, we are of the opinion that provisions for certification schemes would be better suited in other types of legislation, maybe in the upcoming Green Claims Initiative, depending on its scope.

Definitions **(r) sustainability label** and **(u) recognised excellent environmental performance** should also be carefully examined in light of the upcoming Green Claims Initiative. We are rather of the opinion that these terms and relevant issues should be regulated in other pieces of legislation.

(2) Article 6 UCPD

(d) This provision contains too many vague terms open to various ways of interpretation namely “publicly accessible and verifiable commitments”, “detailed and realistic implementation plan” or “independent third party expert”. During the last working party meeting Member States especially questioned the term of “independent third party expert”. Interpretation of these vague terms will be complicated not only for the enforcement authorities but especially for the traders who will not have legal certainty.

(e) Some delegations expressed their reservations or even suggested deletion of this provision regarding advertising benefits considered as a common practice in Article 1(2)(b) sub. (e) of the proposal arguing that certain correct indications are in the interest to consumers. Some consumers may prefer to be informed that some products are for example “vegan” or “free of animal products”. In addition, the current proposed provision contains criteria that are vague and their interpretation will be problematic for traders and enforcement authorities such as “special characteristic”, “product category” or “common feature”. Therefore, we support those Member States who suggested deletion of this provision. We too see hardly any benefit of this provision for consumers.

Annex to UCPD points 23d, 23e and 23i

The Czech Republic as well as some other delegations remains of the opinion that these provisions should be deleted from the Annex. Even after some improvements suggested by the Member States and proposed by the Presidency we do not see any added value in these novelty provisions in terms of contribution to the sustainability of products. Rather than contributing to the goals of the proposed directive, we are worried about the impact on small retailers or SMEs. On top of that these provisions would be extremely difficult to be enforced by the surveillance authorities. If the aim of the Commission is to limit the use of features to limit durability, we encourage the Commission to look into alternative EU regulation.

Regarding point 23e, we appreciate efforts of the PRES to accommodate Member States’ comments, however, even after complete redrafting of this provision it will be difficult to be enforced especially in respect with suspected knowledge (“being aware”) of the feature limiting durability of goods.

Article 2 - Directive 2011/83/EU on consumer rights

Information on commercial guarantees on durability

As in the previous meetings, the Czech Republic remains of the opinion that the obligation of the trader to inform the consumer on the possible commercial guarantee of durability according to the current CRD is satisfactory. The proposal should not contribute to excessive burden for traders and we should especially eliminate confusion for consumers.

We are concerned by the obligation regarding harmonized graphic format for provision of the information. First of all, it is not clear who should be responsible for providing information on guarantees in harmonized

graphic format, whether a trader or a producer. This is not clear neither from the proposed Article 6a nor from the corresponding recital 23. Furthermore, how should this provision be interpreted in terms of where this information in graphic format should be placed – on web pages, durable medium or the packaging? If this information in graphic format should be placed on the packaging, then the producer should be responsible. But Articles 5 and 6 of the CRD that are being amended aim at the trader.

Furthermore, this proposed provision of the Consumer Rights Directive should be considered in connection with Article 17 of the Sales of Goods Directive, because Article 17 of the SGD lays down essentials of the commercial guarantee statements. For example, Article 17 of the SGD provides that commercial guarantee statement shall be provided to the consumer on a durable medium. We need clarification how these two provisions correlate together.

There is no impact assessment for the new obligation to provide consumers with the harmonized graphic format for provision of the information on commercial guarantee on durability and we are of the opinion that costs and impacts on the traders, especially SMEs should be carefully considered. It applies in particular in case it will be traders who shall be responsible for preparing/drafting the graphic format. We have to bear in mind that costs incurred by the traders will be transmitted to consumers in the price of the goods. That could lead in the end to the unwanted consequences that consumers' demand for such more expensive goods would fall and consumers would prefer less expensive and maybe less durable goods.

If the obligation applies only in cases where a commercial guarantee of durability is offered on the entire good, then we are afraid there will be hardly any use for these provisions, since in majority of cases producers provide guarantee of durability only for certain parts of the good e.g. battery in electric cars, engines etc. and not for the whole good.

Information on availability of spare parts

We are also sceptical regarding obligation of traders to inform consumers about the availability of spare parts. The trader would be obliged to give information, which is provided by the producer about the availability of the spare parts. Problems will arise in the future in cases of no availability or high prices of spare parts. We expect that the Right to Repair Initiative might also contain provisions on availability of spare parts. Therefore, this provision should be re-examined in light of the upcoming Right to Repair Initiative.