

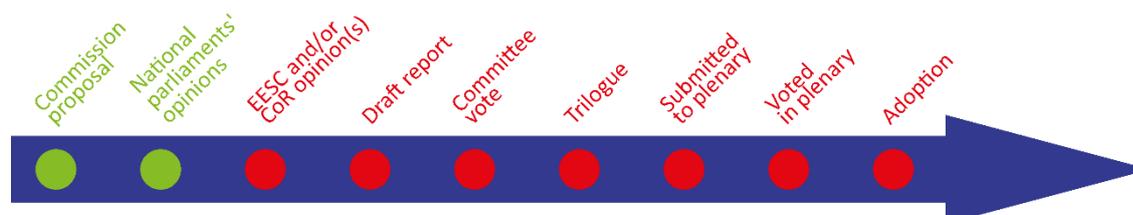
# Empowering consumers for the green transition

## OVERVIEW

On 30 March 2022, the Commission published a proposal for a directive empowering consumers for the green transition, through better protection against unfair practices and better information. The proposal is designed to enhancing consumer rights in making informed choices in order to play an active role in the transition to a climate-neutral society. It proposes new rules to provide consumers with information on products' sustainability, in particular their durability and reparability, at the point of purchase. It also aims to promote commercial guarantees exceeding the two-year legal guarantee, as well as to ban false and misleading green claims ('greenwashing') and certain types of premature obsolescence of products.

In the European Parliament, the file has been referred to the Committee on the Internal Market and Consumer Protection. In the Council, discussions have started in the working party on consumer protection and information.

<b>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</b>		
<i>Committee responsible:</i>	Internal Market and Consumer Protection	COM(2022) 143 30.3.2022
<i>Rapporteur:</i>	Biljana Borzan (S&D, Croatia)	2022/0092(COD)
<i>Shadow rapporteurs:</i>	Arba Kokalari (EPP, Sweden) David Cormand (Greens/EFA, France)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Publication of draft report	



## Introduction

On 30 March 2022, the Commission published a [proposal](#) for a directive empowering consumers for the green transition through better protection against unfair practices and better information. The proposal, which would amend the Consumer Rights and Unfair Commercial Practices Directives, is part of a [circular economy package](#), which also included a [communication](#) on making sustainable products the norm and a proposal for a [regulation](#) on ecodesign requirements for sustainable products.<sup>1</sup>

A legislative proposal empowering consumers to make informed choices and play an active role in the ecological transition was first mentioned in the [European Green Deal](#) strategy, which presented a vision of a climate-neutral EU by 2050 and a reduction of greenhouse gas (GHG) emission by 50 to 55 % by 2030 compared with 1990. The details were further specified in the [new circular economy action plan](#) and the [new consumer agenda](#). These strategic documents laid out plans for the legislative proposal to ensure that, at the point of sale, consumers get trustworthy and relevant information on product durability, availability of spare parts, repair services and environmental characteristics. It would also protect consumers from greenwashing and premature obsolescence, in particular for electronic products. The proposal goes hand in hand with the ecodesign requirements proposal, which, in addition to laying down sustainability requirements, aims to establish rules on a digital product passport, which could also provide consumers with information on environmental aspects of products. A proposal on [substantiating green claims](#), announced for the second half of 2022, is expected to clarify rules on the types of green claims that can be made and tie them to the harmonised EU-wide [product environmental footprint](#) (PEF) methodology. A legislative initiative on the [right to repair](#), also announced for the second half of 2022, is expected to make repairs easier and could involve changes to the legal guarantee.

According to a 2021 Commission [consumer conditions survey](#), 56 % of EU consumers pay attention to the environmental impact of goods and services, while the proportion of consumers saying this is true for *all or most* goods or services they buy is 23 %. Two thirds of consumers said they buy products that are better for the environment even if they cost more. Consumers also seem to have confidence in the environmental claims about products and services, with 61 % finding most of them reliable. A 2019 special [Eurobarometer](#) showed that the environment was personally very or fairly important for 94 % of participants. Two thirds agreed that their consumption habits had negative effects on the environment, and most of the participants – slightly over 30 % – said that the best way to tackle environmental problems was to change consumption and production patterns. A 2018 Commission [behavioural study](#) demonstrated that providing consumers with information on durability and reparability of products was highly effective in steering them towards choosing more sustainable products. The study also showed that consumers were willing to pay more for products with better durability and reparability, but had difficulty finding that information.

## Existing situation

Currently, EU rules do not require consumers to be informed on the durability, reparability and general sustainability of products.

The [Unfair Commercial Practices Directive](#) (UCPD) requires an 'invitation to purchase' to cover '**material information**', including the main characteristics of the product. Under Article 6, consumers must not be misled by material information that is false or that in any way deceives or is likely to deceive, even if it is factually correct. Article 7 forbids misleading omissions of material information. The directive contains a non-exhaustive list of main characteristics of a product, which does not explicitly mention information on sustainability. According to 2021 Commission [guidance](#) on the interpretation and application of the UCPD, the directive can nevertheless be applied to environmental claims; such claims must be truthful, and must not contain false information or be presented in a way that is misleading to consumers; and traders must be able to provide evidence to support their claims before competent national authorities if they are challenged. In addition,

Annex I of the UCPD contains a 'blacklist' of **practices that are always considered unfair** (by being misleading or aggressive) and are therefore banned in all circumstances. According to the guidance, several points that relate to certifications, labels and codes of conduct can be relevant for green claims (e.g. falsely claiming to be a signatory to a code of conduct or displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation). When assessing an environmental claim, the product's main environmental impacts over its lifecycle should be taken into account.<sup>2</sup> The UCPD guidance also notes that traders failing to inform consumers that a product has been designed with a limited lifetime could, taking into account specific circumstances, be considered to have omitted to provide material information.

The [Consumer Rights Directive](#) (CRD) requires that consumers be given certain **pre-contractual information** before buying a product or a service. This also includes information on a product's main characteristic, as well as a reminder of the existence of a legal guarantee of conformity and the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees. The EU rules on guarantees for products have indirect consequences for issues such as product durability and reparability. The [Sale of Goods Directive](#), which regulates certain aspects of the contractual relationship between a consumer and a seller, lays down a **legal guarantee** period of two years that applies to all sales of goods in the EU. The legal guarantee on second-hand goods is one year. If during the guarantee product turns out to be faulty, the seller must either repair or replace it, and if this is not successful, offer a discount or return of the money paid. The choice between replacement and repair is left to consumers, unless the chosen option is impossible or would impose costs on the seller that would be disproportionate. The guarantees for digital content and digital services are regulated by the [Digital Content and Digital Services Directive](#). Both the Sale of Goods and the Digital Content and Digital Services Directives require that consumers be supplied with **software updates**: for a period of time that the consumer may 'reasonably expect' in cases of contracts for a single act of supply, or for the duration of the contract in cases of continuous supply over a period of time. The Sale of Goods Directive also addresses **commercial guarantees**, which can be offered by the seller or the producer (unlike the legal guarantee, which always holds the *seller* liable for the conformity of goods). A producer's commercial guarantee of durability can offer the consumer more favourable conditions than the legal guarantee. Member States are allowed to lay down rules on aspects of commercial guarantees that are not regulated by the directive, e.g. they can decide that commercial guarantees are to be free of charge for consumers.

The EU has some sector-specific legislation on mandatory environmental labelling, most notably for energy related products, which must carry an **energy efficiency label** in line with the [Energy Efficiency Labelling Directive](#). Labelling products on a scale from A to G has proven a success, with [four in five consumers](#) considering it in their purchases. Since 2021, [new rules](#) for refrigerators, dishwashers, washing machines, TV screens and lamps require energy efficiency labels to include some additional information, such as water used per washing cycle, storing capacity and noise emitted. Mandatory environmental labelling also exists for [tyres](#), [passenger cars](#) and [packaging](#).

In addition, the EU runs the [EU Ecolabel](#), a **voluntary labelling scheme** that promotes products and services meeting high environmental standards throughout their lifecycle. It encourages producers to generate less waste and CO<sub>2</sub> and to make products that are durable, repairable, upgradeable and easily dismantled. It sets requirements for a wide variety of products, not only electrical ones. According to the [Commission](#), there are also over a hundred **private voluntary 'green' labels** active in the EU, with a 'varied level of reliability and environmental issues covered'.

## Parliament's starting position

In a [resolution](#) of 15 January 2020 on the European Green Deal, Parliament stressed the importance of empowered and well-informed consumers. It called for consumers to be informed about the durability and reparability of products and their environmental footprint, and for information to be based on solid data and consumer research. It said measures should ensure that the information is

transparent, comparable and harmonised. It also called for the elimination of 'planned obsolescence business strategies where products are designed to have a short life span and need to be replaced'.

Parliament's [resolution](#) of 25 November 2020 on a more sustainable single market for business and consumers, called for mandatory labelling to inform consumers on the estimated lifetime and reparability of a product at the time of purchase. It said that such a labelling could include a repair score and an environmental performance index, taking into account multiple criteria throughout the product's life cycle. Parliament also suggested tackling the premature obsolescence of products by adding to Annex I of the UCPD practices that shorten product lifetime and constrain reparability. It also welcomed the planned legislative proposal on green claims and asked the Commission to look into the need for a European register of authorised and banned environmental claims.

Parliament repeated some of these calls in its [resolution](#) of 10 February 2021 on the new circular economy action plan. It called for harmonised labelling, such as a durability index or reparability score, and the introduction of usage meters, as well as measures against greenwashing. It supported the Commission's intention to regulate the use of green claims through the establishment of solid and harmonised calculation methods covering the full value chain, based on harmonised indicators and life-cycle assessments such as environmental footprints.

In its [resolution](#) of 7 April 2022 on the right to repair, Parliament called for improved consumer information on the reparability of products as key to enabling consumers to play a more active role in the circular economy. This information would help consumers compare and identify the most sustainable products available on the market. Parliament called on the Commission to propose harmonised rules for such consumer information, including repair scores, and information on estimated lifespan, spare parts, repair services, and the period during which software updates would be available.

## Preparation of the proposal

To prepare the proposal, the Commission asked for [feedback](#) on its inception impact assessment, which was open from 23 June to 1 September 2020 and received 77 responses. This overlapped with an online public consultation from 30 June to 6 October 2020 that gathered stakeholder views on several consumer initiatives. The part on empowering consumers for the green transition received 313 responses, with most coming from business organisations and companies (42%), followed by EU citizens (24%), non-governmental organisations, including consumer associations (15%) and public authorities (12%). The largest number of participants (33%) identified the difficulty of verifying environmental claims as the main obstacle for greater consumer participation in the circular economy. This was followed by the perceived higher price of environmentally friendly products (29%) and a lack of knowledge on how to adopt more sustainable consumption behaviour (28%). Information about the reparability of the product and the product's life-cycle and environmental and climate footprint was seen as most useful for consumers when choosing sustainable products, with the former strongly favoured by public authorities and citizens, and the latter by companies and business organisations.

In addition, the Commission conducted targeted consultations that included 150 in-depth interviews with key stakeholders; computer-assisted telephone interviews with more than 100 companies; an online consumer survey with almost 12 000 respondents from all over the EU; and four expert workshops with different stakeholder groups.

All of this fed into an [impact assessment](#) (and the [executive summary](#))<sup>3</sup> that accompanies the proposal. The impact assessment identified two main problems: (i) a lack reliable information at the point of sale that would enable consumers to make environmentally sustainable consumption choices, including information on the environmental characteristics of products, on their lifespan and reparability; and (ii) misleading commercial practices relating to the sustainability of products, such as early obsolescence, greenwashing, and non-transparent and non-credible sustainability labels and digital tools. A number of options were analysed, with the preferred one being a

combination of the provision of information on the existence or absence of a producer's commercial guarantee of durability; provision of a repair scoring index or other relevant repair information on a where applicable/available basis; a ban on certain identified practices of early obsolescence; a ban on unfounded general or vague claims and setting criteria for assessing the fairness of all environmental claims; and a minimum transparency and credibility criteria for assessing the fairness of sustainability labels and digital information tools. According to the impact assessment, the initiative is expected to increase consumer welfare by at least €12.5 to 19.4 billion for the period 2025 to 2040 and bring CO<sub>2</sub> equivalent savings of at least 5 to 7 MtCO<sub>2</sub>e over a period of 15 years. The cost for businesses was estimated at between €9.1 and 10.4 billion for the period 2025 to 2040 (including one-off costs and annual recurrent costs), or €0.6 to 0.7 billion per year on average.<sup>4</sup> Companies are also set to benefit as a result of an enhanced level playing field and the reduction of barriers to cross-border trade on the single market.

## The changes the proposal would bring

The Commission's proposal would amend the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD).

Article 1 of the proposal would amend the UCPD to explicitly prohibit misleading consumers about certain environmental and circular aspects of products, as well as certain commercial practices relating to obsolescence of products, including planned obsolescence.

- **Product characteristics:** environmental and social impact, durability and reparability would be explicitly mentioned on the list of main product characteristics, which, if false or deceiving, could be considered to constitute a misleading commercial practice. National courts and administrative authorities could assess whether this information or its omission were misleading on a case-by-case basis (Article 6(1) UCPD).
- **Potential misleading commercial practices:** two more practices would be explicitly mentioned on a list of practices that can be found misleading on a case-by-case basis, taking into account all features and circumstances. One is making environmental claims about future environmental performance of a product without clear, objective and verifiable commitments and targets and without an independent monitoring. The other is advertising something that is a common practice in the relevant market as a special benefit for consumers - for instance, highlighting that a product does not contain a chemical substance, when absence of this substance is a common practice for the particular product anyway (Article 6(2) UCPD).
- **Comparison tools:** traders providing a service that compares the sustainability of products would be required to disclose information on the method of comparison, the products being compared, the suppliers of the products, and measures on how information is to be kept up to date (Article 7 UCPD).

**Ten new banned commercial practices** would be added to the list of commercial practices that are always considered misleading, regardless of the circumstances, in Annex I UCPD:<sup>5</sup>

- displaying a sustainability label that is not based on a certification scheme or not established by public authorities;
- making generic environmental claims, such as 'environmentally friendly', 'eco-friendly', 'eco', 'green', 'biodegradable', 'nature's friend', 'carbon neutral', 'carbon positive', 'biobased', or similar (recital 9). Such claims would be prohibited if their excellent environmental performance could not be demonstrated by, for instance, compliance with the EU Ecolabel, officially recognised ecolabelling schemes in a Member State, or EU laws such as legislation on energy efficiency labelling (recital 10);
- making an environmental claim about the entire product when it actually concerns only a certain aspect of the product;

- presenting requirements imposed by law as a distinctive feature of a trader's offer, for instance, highlighting that a product does not contain a chemical substance, when this substance is prohibited by law for all products within that product category (recital 13);
- omitting to inform the consumer that a software update, including a security update, would negatively impact the use of goods with digital elements. Consumers would have to be informed, for instance, if updating the operating system would negatively impact the functioning of any features of their smartphone (recital 15);
- omitting to inform the consumer about a feature of a product that limited its durability. This would introduce a ban on planned obsolescence of products, i.e. products designed to fail after a particular period of time;
- false claims about durability of a product;
- falsely claiming that a product can be repaired or failing to inform the consumer that the product cannot be repaired in line with legal requirements (e.g. legal guarantee);
- persuading consumers to replace a product earlier than necessary for technical reasons, for instance, urging them via settings on a printer to replace ink cartridges before they are actually empty (recital 20);
- failing to inform the consumer that the product is designed in such a way that using non-original spare parts, consumables and accessories (ink cartridges or a charger manufactured by a different producer) would limit its functionality (recital 21).

Article 2 of the proposal would amend the Consumer Rights Directive (CRD), with the aim of improving the pre-contractual information for consumers.

- **Commercial guarantee of durability:** when buying products, consumers would have to be informed when the producer offered a commercial guarantee of durability longer than the current two-year legal guarantee. For energy-using products, the information that the producer had *not* provided information on the existence of such commercial guarantee would also have to be supplied to consumers (Articles 5(1) and 6(1) CRD).
- **Software updates:** for products with digital elements and for digital content and digital services, consumers would have to be informed of how long software updates would be provided for, but only if the producer or provider made that information available to the trader. Consumers should also be informed if the producer offered updates for a period longer than a commercial guarantee of two years (Articles 5(1) and 6(1) CRD).
- **Repair score:** consumers would have to be provided with a reparability score or information about the availability of spare parts and user and repair manual, in line with the applicable law. This means that a reparability score would have to be provided only if it had been already established by other EU laws (articles 5(1)(i) and 6(1)(u) CRD).<sup>6</sup> When the repair score was not available, consumers would have a right to information about the availability of spare parts, the procedure for ordering them and the availability of a user and repair manual (articles 5(1)(j) and 6(1)(v) CRD).

Member States would be required to transpose the directive within 18 months of its adoption and would have an additional six months to commence application.

## Advisory committees

The European Economic and Social Committee (EESC) is working on an [opinion](#) on the proposal (rapporteur: Thierry Libaert, Diversity Europe – Group III, France). The European Committee of the Regions (COR) is not expected to adopt an opinion.

## National parliaments

The [deadline](#) for the submission of reasoned opinions on the grounds of subsidiarity was 26 May 2022. No national parliament issued a reasoned opinion.

## Stakeholder views<sup>7</sup>

The European Consumer Organisation ([BEUC](#)) welcomed the proposal, saying that providing consumers with information on durability and reparability of products was 'great news', but it called for the information to be provided on mandatory EU-wide labels to make it easier for consumers to compare products. It said EU rules were desperately needed to guide consumers through the 'jungle of green claims'. While acknowledging that the Commission is tackling greenwashing with this proposal already, it said the proposal on substantiating green claims would be crucial and called for a requirement to have any green claim preapproved.

The Environmental Coalition on Standards ([ECOS](#)) said that the circular economy package was essential for the EU to reach climate neutrality. The legislation should ensure that consumers are guided towards products that are good for them and the environment; that they are provided with the information on product durability; and that misleading information is banned. ECOS warned that a clear plan on how this will be put into action, especially by EU Member States, was lacking.

The European Environmental Bureau ([EEB](#)) welcomed the greater transparency on the length of commercial guarantees of durability and the ban on specific greenwashing practices and practices leading to premature obsolescence of products. However, it called for a general prohibition of obsolescence and a ban on all carbon neutral claims that rely on offsetting. It criticised the fact that the proposal did not introduce an exhaustive list of green claims that are allowed under specific conditions or public registration of green claims and supporting evidence, which would facilitate random checks by market surveillance authorities.

[Right to repair](#) Europe called for a mandatory EU-wide A-G reparability score on EU energy labels and the extension of legal guarantees for product groups with a lifetime significantly longer than two years, with the burden of proof during the extended period placed on the manufacturer. Software and security updates should be available for the device's entire expected lifetime and when software support ends, consumers should be able to install an alternative operating system.

[Digital Europe](#) saw the package as promising and said that digital tools would enable manufacturers to 'ramp up innovative ways to convey key product information and targeted data to consumers', noting that 80% of customers use a combination of online and offline research before making a purchase. During the public consultation, Digital Europe [advocated](#) for empowering consumers by promoting online information provision, based on an EU-wide harmonised methodology and product-specific standardisation; and by upholding existing consumer protection legislation against premature obsolescence. It also favoured creating competition among companies in the area of commercial extended warranties and reliability innovations.

During the public consultation, [ECommerce](#), representing the European e-commerce sector, said that any information meant to empower consumers must be accessible, understandable and comprehensive. Therefore any initiative relating to consumer information should consider the risk of 'over-burdening obligatory information streams that in effect do not inform at all'. It also noted that e-commerce offered new ways to access information, for example through sustainability filters, use of data to communicate information throughout a product's lifecycle, or digitalised information.

During the feedback period, [Applia](#), representing home appliance manufacturers, advocated for the durability, reparability and environmental characteristics information requirements to be based on a coherent standards-based methodology, assessing a product's environmental impact in a holistic way. It argued that any measurement method should be neutral towards companies' strategies, and that companies should be free to play to their strengths, for example, emphasising light-weight or recycled content, or durability or recyclability. Applia supported further development of product-specific standardisation requests to CEN and CENELEC, to produce reliable test methods.

The European Furniture Industries Confederation ([EFIC](#)) proposed a standalone consumer protection instrument, introducing a harmonised EU-level system to offer consumers information on products' environmental performance. An EU-level information scheme would allow consumers

to compare different products on the market, make environment-oriented decisions by choosing the most durable and resource-efficient, and reward manufacturers who invest in their products' quality and sustainability. It called for, when possible, the use of symbols on products/packaging, as opposed to text, as language differences would otherwise restrict the free movement of goods.

The European Automobile Manufacturers' Association ([ACEA](#)) also supported a new consumer protection legal instrument, hoping that such legislation would not only avoid creating different sets of consumer information for different EU countries, but could be used as a blueprint worldwide.

## Legislative process

In the European Parliament, the file has been referred to the Committee on the Internal Market and Consumer Protection, with Biljana Borzan (S&D, Croatia) as rapporteur.

In the Council, the Working party on consumer protection and information has begun its work.

## EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

EPRS briefing on [Sustainable consumption: Helping consumers make eco-friendly choices](#), 2020.

EPRS briefing on [Ecodesign for Sustainable Products](#), 2022.

EPRS briefing on the [Right to Repair](#), 2022.

## OTHER SOURCES

[Empowering consumers for the green transition](#), Legislative Observatory (OEIL), European Parliament.

## ENDNOTES

- <sup>1</sup> It also included two product specific initiatives: revision of the [Construction Products Regulation](#) and an [EU strategy for sustainable and circular textiles](#).
- <sup>2</sup> However, a 2020 'sweep' (screening of websites), carried out by the Commission and the national consumer protection authorities showed that 42 % of analysed environmental claims were exaggerated, false or deceptive.
- <sup>3</sup> The Regulatory Scrutiny Board first gave a negative opinion, and then a [positive opinion with reservations](#).
- <sup>4</sup> The EPRS is working on an initial appraisal of the Commission's impact assessment.
- <sup>5</sup> While the exact wording for the banned practices is in the Annex of the proposal, recitals provide for examples.
- <sup>6</sup> See also recital 31 of the proposal.
- <sup>7</sup> This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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