



May 2023

## **Empowering Consumers for the Green Transition: Position-Paper**

### **Comparing positions of the EU institutions and e-NGOs (EEB, ECOS, Carbon Market Watch, ClientEarth)**

In March 2022, the European Commission published a proposed Directive - “Empowering Consumers for the Green Transition” - meant to update existing EU consumer protection legislation.

This directive provides stronger protection against unfair commercial practices, such as corporate greenwashing and early obsolescence of products, that are harmful to both consumers and the environment. This legislation is essential to provide clear, actionable rules on what types of commercial practices are misleading and therefore prohibited in all circumstances, or on a case-by-case basis.

In May 2023, the European Parliament and the Council of the European Union adopted their respective positions on the proposal. With interinstitutional negotiations set to begin, we take this opportunity to share our recommendations on the aspects we consider key to achieving the proposal’s objective: effectively protecting consumers from greenwashing and further misleading practices. This includes (among other points):

- A strong definition of “certification scheme”.
- An ambitious definition of what can be considered “recognised environmental excellence”.
- A ban on all neutrality claims, including at product-level (goods and services) as well as at company- level. This ban should cover neutrality claims related to a company’s present activities as well as to its future environmental performance.
- Detailed and stringent requirements related to claims on future environmental performance.
- Increased information on product reparability, and information on repair restrictions.
- Better protection against products subject to obsolescence practices.

The following sections provide a comparison of the different articles proposed by the EU institutions, along with our recommendations with a view to ensuring the highest level of environmental ambition and consumer protection. Following the comparison, we provide an explanation of our key recommendations.

## NGO recommendations – article by article

Text in bold letters indicates changes compared to the Commission’s proposal.

Issue	<u>EU Commission</u>	<u>EP position</u>	<u>Council position</u>	NGO Position
<b>UCPD amendments – green claims and sustainability labels</b>				
<b>Definition of environmental claim</b> Article 1, paragraph 1, point o	“means any message or representation [...] which states or implies that a product or trader has a positive or no impact on the environment [...]”	“means any message or representation [...] which states or implies that a product, <b>product category, brand</b> or trader has a positive or no impact on the environment [...]”	Same as Commission	<b>Support Parliament</b>
<b>Definition of certification scheme</b> Recital 7 & Article 1, paragraph 1, point s	certification scheme means: <ul style="list-style-type: none"> <li>- Third-party verification scheme</li> <li>- Open to all traders under transparent, fair and non-discriminatory terms</li> <li>- Certifies a product</li> <li>- Monitoring of compliance is objective, based on international, Union or national standards and procedures carried out by a party independent from the scheme owner and the trader</li> </ul>	certification scheme means: <ul style="list-style-type: none"> <li>- Third-party verification scheme</li> <li>- Open to all traders under <b>publicly available</b>, transparent, fair and non-discriminatory terms <b>and at a reasonable cost</b> to traders <b>and entities</b></li> <li>- Certifies a product <b>or a business</b></li> <li>- <b>Requirements are publicly available and independently developed</b></li> <li>- Monitoring of compliance <b>and award of the certification</b> are objective and based on international/union or national standards</li> <li>- <b>Monitoring of compliance done by a third party which is verified by the Member State</b></li> <li>- <b>Complaints systems open to consumers and other external stakeholders and the possibility of withdrawal of the sustainability label in cases of non-compliance</b></li> </ul>	certification scheme means: <ul style="list-style-type: none"> <li>- <b>A third-party verification scheme</b></li> <li>- Open to all traders under <b>publicly accessible</b>, transparent, fair and non-discriminatory terms</li> <li>- Certifies a product, <b>process or business</b></li> <li>- <b>Requirements are objectively verifiable and publicly accessible</b></li> <li>- Monitoring of compliance is objective, based on international, Union or national standards and procedures carried out by a party independent from the scheme owner and the trader</li> </ul>	<b>Support Parliament</b> The Council's definition would lead to verifiable but not third-party verified requirements and could therefore not ensure the same level of reliability.

<p><b>Sustainability labels</b> Recital 7 &amp; Annex I, paragraph 1, point 2a</p>	<p>Sustainability labels must be based on a certification scheme or be established by a public authority</p>	<p>Same as Commission</p>	<p>Sustainability labels must be based on a certification scheme, established by a public authority, <b>or alternatively be registered as a certification mark in accordance with Regulation (EU) No 2017/1001 or Directive (EU) 2015/2436</b></p>	<p><b>Support Commission / Parliament</b></p> <p><b>Reject Council Position</b> regarding the integration of certification mark as alternative for sustainability labels as they are not based in all cases on transparent and reliable governance, such as third-party verification.</p>
<p><b>Recognised environmental excellence</b> Recital 10 &amp; Article 1, paragraph 1, point u</p>	<p>Environmental excellence means compliance with</p> <ul style="list-style-type: none"> <li>- EU Ecolabel Regulation (EC) No 66/2010 or</li> <li>- type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation No 66/2010 or</li> <li>- top environmental performance in accordance with applicable Union law</li> </ul>	<p>Same as Commission</p>	<p>Environmental excellence means compliance with</p> <ul style="list-style-type: none"> <li>- <b>EMAS certification (Regulation (EC) No 1221/2009), or</b></li> <li>- EU Ecolabel Regulation, or</li> <li>- type I ecolabelling schemes officially <b>recognised in the Member States</b>, or</li> <li>- top environmental performance in accordance with applicable Union law</li> </ul>	<p><b>Support Commission / Parliament</b></p> <p><b>Reject Council position</b> regarding the inclusion of the EMAS certification which is a scheme for improving an organisation's environmental performance over time, but does not reflect environmental excellence</p>
<p><b>Generic environmental claims</b> Annex I, paragraph 2, point 4a</p>	<p>Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.</p>	<p>Making a generic environmental claim for which the trader <b>does not provide</b> evidence of the recognised excellent environmental performance relevant to the claim.</p>	<p>Same as Commission</p>	<p><b>Support Parliament</b></p>
<p><b>Climate neutrality claims</b> Recital 4 &amp;</p>	<p>Neutrality claims allowed if made in a specific form</p>	<p><b>Neutrality claims banned</b></p> <p><b>(ya) 'carbon offsetting' means the purchase of carbon credits or the provision of financial support for</b></p>	<p>Same as Commission</p>	<p><b>Support Parliament</b></p> <p>The ban should be extended to include company-level claims.</p>

<p><i>New (EP):</i> Article 1, paragraph 1, point ya &amp; Annex I, paragraph 1, point 2 (4ba)</p>		<p><b>environmental projects, that aim to neutralise, reduce, compensate or inset the purchaser’s own environmental impact, or that of their goods or services.</b></p> <p><b>4ba. Claiming, based on carbon offsetting, that a product has a neutral, reduced, compensated or positive greenhouse gas emissions’ impact on the environment.</b></p>		<p>This ban should extend to all neutrality claims related to a company’s present activities as well as to its future activities.</p>
<p><b>Future environmental performance claims</b> Recital 4; Article 1, paragraph 2, point b (d)</p>	<p>Future claims must:</p> <ul style="list-style-type: none"> <li>- have clear, objective and verifiable commitments and targets</li> <li>- be supported by an independent monitoring system to monitor the trader’s progress</li> </ul>	<p>Future claims must:</p> <ul style="list-style-type: none"> <li>- have clear, objective, <b>quantified, science-based</b> and verifiable commitments and targets</li> <li>- <b>cannot be based solely on carbon offsetting schemes</b></li> <li>- <b>have a detailed and realistic implementation plan including concrete targets consistent with achieving the trader’s long-term commitment, underpinned by a sufficient budget and allocation of sufficient resources</b></li> <li>- be supported by an independent monitoring system to monitor the trader’s progress <b>of the implementation plan</b></li> </ul>	<p>Future claims must:</p> <ul style="list-style-type: none"> <li>- have clear, <b>publicly accessible</b> and verifiable commitments and targets</li> <li>- <b>have a realistic implementation plan showing how the targets will be achieved</b></li> <li>- <b>Claims should be verified by a third-party expert, independent from the trader, with experience and competence in environmental aspects who should be enabled to monitor the trader’s progress</b></li> <li>- <b>Findings of the expert must be made available to consumers</b></li> </ul>	<p><b>Support Parliament and Council in strengthening the provisions, notably on:</b></p> <p>Requiring an implementation plan with publicly available, quantified, science-based and concrete commitments and targets, and with the involvement of independent experts in monitoring the claims and their progress.</p> <p>In addition, the ban on claims based on carbon offsetting should cover all such claims, and not be limited to claims that are “solely” based on carbon offsets. A ban on claims that are “solely” based on carbon offsets is nonsensical because it is extremely easy for a company to show that it</p>

				has done "something" other than buying carbon offsets (e.g., changing a lightbulb).
<b>Claims on common practices</b> Recital 5 & Article 1, paragraph 2, point b (e)	Ban of advertising benefits for consumers considered as common practice in the relevant market	Same as Commission	<b>deleted</b>	<b>Support Commission / Parliament</b>
<b>Claims about the entire product or business</b> Annex I, paragraph 1, point 2 (4b)	Ban of claims on the entire product when only a certain aspect of the product is concerned	Ban of claims on the entire product <b>or the trader's business</b> when only a certain aspect of the <b>product or of the trader's business</b> is concerned	Same as Commission	<b>Support Parliament</b>
<b>Claims which cannot be substantiated according to legal requirements</b> <i>New:</i> Annex I, paragraph 1, point 2 (4bb)		<b>Making an environmental claim which cannot be substantiated in accordance with legal requirements.</b>		<b>Support Parliament</b>

**UCPD - recommendations on durability and reparability provisions**

<b>Issue</b>	<b><u>EU Commission</u></b>	<b><u>EP position</u></b>	<b><u>Council position</u></b>	<b>NGO Position</b>
<b>Obligations for traders</b> (throughout the text).			Provisions only apply if trader can be 'reasonably expected' to know about the breach of point in question.	<b>Delete</b>  'Reasonably expected' is vague and could potentially allow for loopholes to obligations.  If the trader has not been provided with information on the practices covered

				by this directive, or in Annex I, the consumer should be informed thereof.
<b>Repair and spare part information</b> Article 5, paragraph 1 (j)	(j) when point (i) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.;	(j) when point (i) is not applicable, information <b>provided</b> by the producer about the availability <b>and maximum price expected</b> of the spare parts <b>necessary to repair goods, including the minimum period, after the purchase of the good, during which spare parts and accessories are available</b> , the procedure of ordering them, and the availability of a user and repair manual, <b>as well as the availability of diagnosis and repair tools and services.</b> ;	(j) when point (i) is not applicable <b>and the producer makes such information available to the trader</b> about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.;	<b>Support Parliament</b>
<b>Information on functionality updates</b>		<b>23da. Omitting to inform the consumer in a clear and understandable manner that the functionality update is not necessary to keep the product in conformity.</b>		<b>Support Parliament</b>
<b>Practices limiting the lifespan of a good</b> Annex I, 23e (+ Recitals 14,15, 16)	23e. Omitting to inform the consumer about the existence of a feature of a good introduced to limit its durability	23e. <b>Introducing</b> a feature to limit the durability of a good.	23e. <b>Any commercial communication in relation</b> to a good containing a feature introduced to limit its durability <b>when the trader can be reasonably expected to know that the good contains such feature.</b>	<b>Support Parliament</b>
<b>Marketing products with lifespan limiting features</b> Annex I – point 23e a (new) (+ Recitals 14,15, 16)		<b>23ea. Marketing a good without fixing a design issue, within a reasonable time after it became known, thus leading to the early failure of that good.</b>		<b>Support Parliament</b>

<p><b>Non-repairable products</b> Annex I – point 23g (+ Recital 18)</p>	<p>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.</p>	<p><b>23g. Marketing a good which does not allow repair in accordance with legal requirements or failing to inform the consumer that a good is not repairable.</b></p>	<p>23g. Presenting goods as allowing repair when they do not.</p>	<p><b>Support Parliament</b></p>
<p><b>Information about repair restrictions</b> Annex I – point 23g a (new) (+ Recital 18)</p>		<p><b>23ga. Omitting to inform the consumer about the unavailability of spare parts and other repair restrictions.</b></p>		<p><b>Support Parliament</b></p> <p>This provision should further cover practices restricting repair outside the manufacturer network, such as <u>part-pairing</u>. We therefore suggest the following inclusion: <b><i>...such as the use of software to prevent third party repair.</i></b></p>
<p><b>Information about refusal to perform a repair</b> Annex I – point 23g b (new) (+ Recital 18)</p>		<p><b>23gb. Omitting to inform the consumer that the trader will refuse to repair a product that has previously been repaired by an independent professional, a nonprofessional or a user.</b></p>		<p><b>Support Parliament</b></p>
<p><b>Early replacement of consumables</b> Annex I – point 23h</p>	<p>23h. Inducing the consumer into replacing the consumables of a good earlier than for technical reasons is necessary.</p>	<p><b>23h. Marketing a good that requires replacing the consumables earlier than necessary for technical reasons.</b></p>	<p>23h. Inducing the consumer into replacing <b>or replenishing</b> the consumables of a good earlier than necessary for technical reasons</p>	<p><b>Support Parliament</b></p>
<p><b>Limiting functionality when using non-OEM components</b> Annex I – point 23i</p>	<p>23i. Omitting to inform that a good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer.</p>	<p><b>23i. Marketing a product that is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer.</b></p>	<p>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' <b>when the trader can be reasonably expected to know about such design limitations.</b></p>	<p><b>Support Parliament</b></p>

<b>Non-compliant products</b> Annex I – point 23i b (new)		<b>23ib. Marketing a good which is not compliant with the requirements under Union product legislation.</b>		<b>Support Parliament</b>



## Explanation of key recommendations

### **Sustainability labels and certification schemes need third-party verification as a minimum requirement**

The Commission's proposal foresees that sustainability labels must be either based on a certification scheme or be established by a public authority.

The Council suggests adding as a third option that labels can be based on a certification mark (EU trade mark Regulation (EU) No 2017/1001 or trade mark Directive (EU) 2015/2436). We recommend rejecting this addition. A certification mark is not underpinned by the same governance principles as what is proposed for certification schemes. Notably, the need for a third-party verification would be missing. However, this is one of the crucial requirements that makes a sustainability label more reliable.

The Parliament's position on the other hand significantly improves the definition of certification scheme, notably by suggesting that the requirements of the certification scheme must be independently developed, that the monitoring of compliance is to be done by a verified third party, and that a complaint system should be established.

Beyond the crucial third-party verification, these additions would further strengthen the reliability and rigour of certification schemes.

### **Recognised environmental excellence cannot be demonstrated with EMAS**

Recognised environmental excellence should only be possible to be demonstrated with compliance in accordance with the EU Ecolabel, other type I ecolabelling schemes, or environmental excellence in accordance with applicable Union law.

The Council proposes also accepting the EMAS certification as a basis for environmental excellence, however we disagree. An EMAS certification proves that the organising is striving towards improving their environmental performance, but contrary to the EU Ecolabel, it does not guarantee a high ambition. Organisations can start their EMAS commitment at a low level of performance.

### **Climate neutrality claims**

The issue of climate neutrality claims is rather fundamental: there is simply no such thing as a climate neutral company or product. These claims heavily rely on offsetting credits rather than on real emission reductions made within a company's own value chain. Neutrality claims are extremely contentious and plagued with problems related to uncertainty around quantification and low credit quality. For example, it cannot be scientifically proven that one carbon credit can reliably neutralise or counterbalance one tonne of CO<sub>2</sub> emitted; therefore, "tonne-for-tonne" offsetting is an illusion. For this "tonne-for-tonne" concept to be valid, carbon credits would have to be deemed "high quality" by meeting certain criteria. However, there are [currently no credits available](#) on the voluntary carbon market that we consider to be "high quality" enough to truly counterbalance emissions.

Many [consumers may not understand](#) what these claims are based on, nor are they well equipped to understand the factual and scientific flaws behind them. This may give them a false reassurance that their purchases are climate-friendly and that consumption patterns do not need to change ("why should I take the train when I can buy a carbon-neutral flight"?). In fact, such claims impede structural change as they divert attention to small, inefficient gains (if there are any gains at all). Having the option of purchasing carbon credits year after year and then claiming to be carbon neutral effectively means that a business is discouraged from making the necessary changes at source to actively contribute to societal decarbonisation. All neutrality claims should be banned. This

includes product- (goods and services) and company- level claims. This ban should also cover claims related to a company's current *and* future environmental performance.

It is also important that the "Empowering Consumers" file is consistent with EU jurisprudence. Neutrality / offsetting claims have been prohibited by various advertising regulators across the EU: in [Austria](#) (Austrian Airlines), the Netherlands (Shell, [first](#) for the claim 'Drive CO2 Neutral', [then](#) for the altered claim 'CO2-compensation, also [KLM](#)) and France ([Easyjet](#), [Butagaz](#), and others). Court claims under the UCPD have been brought to Courts in the [Netherlands](#) and [Germany](#) against nine different companies for offsetting claims. In February, a Swedish Court issued its judgment on a case brought by the Swedish consumer protection authority back in 2019 about Arla milk's "net zero carbon" products claim. This is the first legal precedent on how the UCPD prohibits such offsetting claims. The Swedish Court found that offsetting claims (neutral, compensated etc) are unlawful, because they cannot guarantee the permanent benefit in comparison to the permanent impact of CO2 emissions. In addition, a [Court in Germany recently ruled](#) that TotalEnergies' "CO2-compensated" heating oil claim was misleading. While these regulatory and judicial decisions are a positive development, they are not enough to genuinely (and uniformly) protect EU consumers from misleading corporate greenwashing practices. The issues surrounding neutrality / offsetting claims will not disappear without a clear ban.

### **Substantiating claims on future environmental performance**

All claims about future environmental performance (except neutrality claims, which should be fully banned - see recommendation above) should be supported by detailed and stringent requirements such as: clear and understandable information provided by the company setting out clear, objective, science-based, and verifiable commitments and targets, with the involvement of independent experts in monitoring the claims and their progress. This information should also be publicly accessible. Consumers are entitled to know whether companies genuinely are committed to effective climate action / deep decarbonisation in line with a green transition. Claims related to future environmental performance should also only be used at the company level and not on product level, otherwise such claims can mislead consumers.

### **Claims about the entire product or business ("cherry-picking")**

"Cherry-picking" is emphasising one "sustainable" aspect of a product's composition or value chain or business to expressly or implicitly give the mistaken impression that the entire product or business is "sustainable". As recognised in existing regulatory guidance, this is a particular problem with corporate reputational advertising promoting an entire business "brand", which has the effect of maximising brand sympathy to sell highly polluting products. These kinds of claims mislead consumers and breach existing legal standards and should be explicitly prohibited.

### **Early obsolescence and repair information**

Early failure of products and anti-repair practices are major barriers to consumer participation in the green transition. Such practices should therefore be blacklisted as unfair in all circumstances. Not only do they mislead consumers and restrict device users from repairing their products, but they also lead to a waste of resources as consumers have no option but to discard them.

Such practices should be generally prohibited in Union legislation as far as possible. However, as such a ban is not in scope of this legislation, we support the most stringent rules possible on these practices, such as prohibiting the marketing of products with features that could foreseeably limit their lifespans.

One essential element that has been overlooked in this legislation is the unfair practice that is part-pairing. [Part-pairing](#) entails pairing a component part's individual serial number to a unique device using proprietary software. This makes it [impossible](#) for end-users and repairers to replace parts as only the original manufacturer can authorise the replacement or not. Consumers will often not become aware of such features until their product fails. Therefore, making consumers aware of these features at the point of sale will help steer them towards products that are easier to repair, thereby saving them money, creating an open and competitive repair market, and reducing resource-use and CO2 emissions. Apple's use of this practice is [currently being investigated](#) by the Paris Prosecutor's Office as a way of making products prematurely obsolete. In order to address this anti-repair practice within this text, we suggest developing the Parliament's amendment in Annex I – point 23g a through referencing this practice.

If a trader has been given no information from the producer on the information requirements covered by this directive, the consumer should be informed thereof. This could serve to incentivise producers to move away from the use of such practices and highlight to consumers that this particular product might not be the most sustainable choice.

### Further reading

- [Open letter on protecting consumers from unfair commercial practices and greenwashing](#), co-signed by 37 NGOs
- [EEB feedback on the proposal for a directive on empowering the consumers for the green transition](#) (May 2022)
- [EEB comments on provisions on sustainability labels and green claims in the proposal on empowering the consumers for the green transition](#) (September 2022)
- [EEB article - Wish to empower consumers? Blacklist greenwashing and early obsolescence](#)
- EEB [Coolproducts don't cost the earth](#) report on climate savings from extending product lifetimes
- Carbon Market Watch and NewClimate Institute – [Corporate Climate Responsibility Monitor: Assessing the Transparency and Integrity of Companies' Emission Reduction and Net-zero Targets](#)
- [ECOS – Greenwashing, certified? report on climate neutrality claims legislation and standards](#)
- ClientEarth - [Legal risks of carbon offsets | ClientEarth](#)
- ECOS article – [Burn now pay later : Why the new ISO standard won't fix the problem with carbon neutrality](#)
- [2023 report published by the Belgian Consumer Protection Organisation](#) that analysed the integrity of "carbon neutral" products found in Belgian supermarkets. It found such claims to be scientifically inaccurate and misleading.
- [2023 report published by the European Consumer Organisation \(BEUC\)](#) on the prevalence of neutrality claims in the food sector, and why these claims are misleading/deceptive.
- A [2023 greenwashing study published by German consumer group vzbv](#) concluded that sustainability advertising does more harm than good. It found that "green advertising claims [such as "CO-2-compensated strawberry yoghurt" or "climate-neutral milk"] have considerable greenwashing potential.
- The [Guardian investigation's of Verra's forest-related credits](#) found that "based on analysis of a significant percentage of the projects, more than 90% of their rainforest offset credits – among the most commonly used by companies [in offsetting marketing] – are likely to be "phantom credits" and do not represent genuine carbon reductions", and could instead exacerbate the climate crisis.

- A [Dutch Authority for Financial Markets](#) report that focuses on voluntary carbon markets and climate claims.

## **Contacts**

EEB: Orla Butler ([orla.butler@eeb.org](mailto:orla.butler@eeb.org)) and Miriam Thiemann ([miriam.thiemann@eeb.org](mailto:miriam.thiemann@eeb.org))

ECOS: Margaux Le Gallou ([margaux.legallou@ecostandard.org](mailto:margaux.legallou@ecostandard.org))

Carbon Market Watch: Lindsay Otis Nilles ([lindsay.otis@carbonmarketwatch.org](mailto:lindsay.otis@carbonmarketwatch.org))

Client Earth: Jonathan White ([JWhite@clientearth.org](mailto:JWhite@clientearth.org))