

The Consumer Voice in Europe

EMPOWERING CONSUMERS FOR THE GREEN TRANSITION

BEUC recommendations for the trilogue negotiations



Contact: Patrycja Gautier – consumerrights@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • www.beuc.eu
EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2023-068 – 31/05/2023

Why it matters to consumers

In order to actively participate in the green transition, consumers need better information on durability and reparability of their products, as well as on the period during which the software updates will be supplied if their products have a digital element. Moreover, the EU rules protecting them against the unfair practices related to the premature obsolescence and greenwashing should be significantly strengthened and made more explicit in order to avoid any interpretation divergencies between courts and authorities and allow for more legal certainty on the market.

Summary

The European Commission proposal for a Directive on empowering consumers for the green transition¹ has been significantly improved by the co-legislators' proposed amendments in the Resolution of the European Parliament (EP) adopted on 11 May 2023² and the Council's position adopted on 3 May 2023³.

It will be now essential to preserve these improvements during the inter-institutional negotiations, foreseen to start in June 2023. Most importantly, BEUC calls on the co-legislators to ensure that final text includes:

- An explicit ban of carbon neutral claims.
- Strengthened provision on the future environmental performance claims, which will not allow for such claims if they are solely based on carbon offsetting.
- An EU harmonised label on durability/guarantee which includes, as a minimum, information on the duration of the legal guarantee.
- Information on software updates which includes, as a minimum, information on what is required under the applicable Union legislation.
- Outright ban of premature obsolescence practices.
- A ban of dark patterns.

In the **annex** to this paper, you will also find a table with our **recommendations article by article**.

¹ Proposal for a Directive as regards empowering consumers for the green transition through better protection against unfair practices and better information (COM/2022/ 143 final)

² https://www.europarl.europa.eu/doceo/document/TA-9-2023-0201_EN.pdf

³ <https://data.consilium.europa.eu/doc/document/ST-9008-2023-INIT/en/pdf>

BEUC Key Recommendations for the trilogue negotiations

1. EU harmonised label on durability

Consumers currently lack information on product durability and repairability. This is unfortunate as such information can be very influential on their purchase decisions. According to different studies⁴, consumers are often even ready to pay more for more durable products. This is not only due to their environmental concerns but also due to the fact that buying one, good quality and durable product might end up being much cheaper than having to replace a broken good every couple of years. According to the data collected by a BEUC member, vzbv, consumers in Germany could save even up to €3.67bn if they bought more durable goods in four product groups alone⁵.

Clear and comparable information on durability of products can therefore steer the market and strongly incentivise producers to improve the quality and the design of their products in order to be more competitive, which as a result will lead to less waste.

Moreover, information on durability can have even stronger implications if it is linked to specific consumer rights and displayed on a harmonised EU label.

We agree that using guarantee periods as a proxy to inform consumers about the durability of goods is a good idea. However, using for this goal only voluntary guarantees, such as the commercial guarantee of durability is not sufficient and might be even confusing for consumers as it will not give them the full picture on the guarantees covering the good.

A durability label should therefore always include, as a minimum, the legal guarantee period as established by the EU legislation, with a possibility for producers to add an information about its voluntary expansion in the form of the commercial guarantee of durability.

Finally, for consumers to be able to easily compare between different durability labels displayed on products, it is important that only certain types of commercial guarantees are allowed to be communicated via this tool. Those should be commercial guarantees of durability proving an equal level of protection to the legal guarantees. As indicated in the both the EP and Council positions, such voluntary guarantees should be also provided for free and cover the entire good. All other types of commercial guarantees with the variety of conditions at a sole discretion of producers and traders can of course continue to be used but should not be displayed on a label dedicated to inform consumers about the durability of the good.

BEUC supports the EP proposal to inform consumers about the durability of the goods via a harmonised label, in a 'XX years + YY years' format⁶.

2. Software updates

The availability of software updates is extremely important to make products last longer. Once they are not available, many connected products become simply obsolete. Consumers

⁴ According to a Commission's Behavioural Study on Consumers' Engagement in the Circular Economy from 2018, consumers are almost three times more likely to choose products with the highest durability and more than two times more likely to choose products with the highest repairability ratings. The impact was the strongest when durability and repairability information were presented together.

⁵ For more information, see: <https://www.vzbv.de/pressemitteilung/studie-zu-langlebigkeit-von-produktenqualitaet-zahlt-sich-aus>

⁶ In the EP proposal, the figure XX stands for the duration of the legal guarantee period and YY stands for its voluntary expansion in the form of an equivalent commercial guarantee of durability.

are well aware of that. If provided with information about the period during which the updates will be supplied, they would take it account when choosing which product to buy. Currently, this information is unfortunately often not available or very well hidden on the website of the producer⁷.

It is a great development that the European Commission proposed to introduce a new information obligation on the availability of updates. However, what was missing in the initial proposal was taking into account the existing legal obligations on the period during which software updates must be supplied. The Directive 2019/771 already now foresees an obligation for traders to supply updates for as long as consumers can expect (which following to the recital 31 should be at least as long as the duration of the legal guarantee period). Additional legal requirements are also currently being introduced by sector specific legislation⁸. Such mandatory periods must be always communicated to consumers as a minimum requirement.

BEUC supports the EP proposal to amend the wording of the relevant provision in a way that the trader is always required, as a minimum, to inform consumers about the period during which updates shall be provided in accordance with the applicable Union law.

3. Ban of carbon neutral claims

Carbon neutral claims are highly misleading to consumers as they imply neutrality and no impact of products on the environment, which is impossible to achieve from the scientific point of view⁹. They are usually substantiated by the participation of the company in the carbon offsetting/compensation projects, which can realistically never balance the carbon emissions and have no guarantee of permanence¹⁰. Moreover, emission compensation schemes often keep companies from taking more ambitious – yet generally more costly – action to reduce in-house emissions. They also give consumers a wrong impression about the environmental impact of products and deter them from changing their consumption patterns.

According to the most recent BEUC report entitled, “A climate neutral food basket: too good to be true,”¹¹ such claims have become very widely spread on the market. This is also illustrated by our members research, for example in Belgium¹² or in Germany¹³.

⁷ See the recent research by the Privacy International on this topic: <https://privacyinternational.org/press-release/4964/privacy-international-research-shows-smart-device-security-updates-fail-meet>

⁸ New Ecodesign measures for smart phones and tables foresee longer periods for the supply of updates (3 or 5 years). Similar measures are also currently discussed under the Cyber Resilience Act.

⁹ According to [the opinion of ADEME](#) (published in February 2022), the French Agency for the Environmental Transition, the carbon neutrality can realistically be achieved only on a global level and not on a level of a specific product or an individual company

¹⁰ Logging, as well as droughts and wildfires (increasingly more likely as the effects of climate change become clear) can quickly eradicate fragile forests planted as offsetting projects, whilst the carbon for which they are meant to compensate remains in the atmosphere for centuries.

¹¹ https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-025_A_climate-neutral_food_basket-Too_good_to_be_true.pdf

¹² A [study](#) commissioned by our Belgian member TestAchats found many misleading carbon neutral claims being displayed in products that can be found easily in Belgian supermarkets.

¹³ [Research](#) conducted by the German consumer organisation vzbv found that ‘CO2 neutral’ and ‘climate neutral’ claims are particularly powerful claims, and those with the strongest positive impact on consumer perception of the (supposed) climate friendliness of a food product – more than providing the product’s detailed CO2 footprint.1

While, in BEUCs view, the current UCPD already now does not allow for these kind of claims¹⁴, the diverging opinions on its interpretation lead to legal uncertainty and to many companies being subject to greenwashing accusations and court cases¹⁵. This could be effectively remedied by a clear and explicit prohibition of carbon neutral claims via the UCPD annex, as proposed by the EP.

BEUC supports the EP proposal to prohibit claiming, based on carbon offsetting, that a product has a neutral, reduced, compensated or positive greenhouse gas emissions' impact on the environment.

4. Stricter rules for the future environmental performance claims

If not properly substantiated, claims related to a future environmental performance (e.g. 'net zero by 2025') can be highly misleading.

We welcome the fact that both the EP and the Council decided to further strengthen the relevant provision included in the initial proposal.

Companies that want to make future environmental performance claims should always have a realistic and publicly available implementation plan in place, verified by a third party expert and with clear interim targets.

In addition, it is also crucial to specify in the text, as proposed by the EP, that these kind of claims should never be solely based on carbon offsetting schemes. Instead, the company's main efforts should be focused on reducing its own emissions. Buying often cheap and doubtful¹⁶ carbon credits from offsetting projects shall never be the way for the company to reach its commitments. While the effects of carbon emissions from these companies' operations are certain and long-term, the effects of the nature-based offsetting projects, e.g., dedicated to planting trees, are anything but guaranteed.

BEUCs supports the EP and Council proposals to strengthen the provision on the future environmental performance claims. BEUC underlines however that it is crucial, as proposed by the EP, that the final provision does not allow such claims if solely based on carbon offsetting schemes.

5. Outright bans on premature obsolescence practices

In Europe, thousands of products fail prematurely every year¹⁷. This raises the amount of unnecessary waste and puts strains on the environment and consumers' pockets. The current Unfair Commercial Practices Directive (UCPD) is unfortunately not sufficient to address this problem effectively.

¹⁴ Kaupa, Clemens, Peddling False Solutions to Worried Consumers the Promotion of Greenhouse Gas 'Offsetting' as a Misleading Commercial Practice (July 8, 2022). Journal of European Consumer and Market Law, 2022, Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4157810

¹⁵ For example, in February 2023, [the Swedish Patent and Market Court found that the carbon neutral claims used on Arla milk gave consumers a misleading impression](#) that the product does not give rise to any climate footprint at all. In its ruling, the Court highlighted that, while environmental claims have significant commercial value, consumers have difficulties in critically evaluating their plausibility. The Court also underlined that the lack of permanence of carbon offsetting projects is problematic. The Court has henceforth banned the use of the claim and warned that future use of the claim will incur a fine of SEK 1 million.

¹⁶ Recent research into Verra, the world's leading carbon standard, revealed that more than 90% of rainforest carbon offsets are worthless. For more information see [here](#).

¹⁷ Only in the context of the [Prompt project](#), we gathered 16,000 cases across Europe where consumers reported about their products failing too early.

BEUC supports therefore the Commission proposal to explicitly prohibit certain unfair commercial practices leading to this phenomenon via the UCPD annex (blacklist of practices deemed unfair in all circumstances).

As already foreseen in the initial proposal, it is important that for the new provisions to be triggered it shall not be required to prove an intent. Even if the design flaw leading to early obsolescence was not made on purpose, the mere fact of continuing to sell a product that will very likely fail prematurely should not be allowed¹⁸.

Moreover, for the new provision to be effective, it shall contain an outright ban of premature obsolescence practices and not only a ban on misinforming consumers about them.

Finally, we would like to underline the fact that adding the wording "*when the trader can be reasonably expected to know*" into the provisions, as proposed by the Council, will significantly weaken their practical effectiveness. While it is indeed usually the producer who is responsible for its products failing too early, providing consumers with a possibility to address their claim based on UCPD to the trader, would indirectly increase the pressure on producers to abandon such practices. Currently, the only instrument addressing the producer directly, that could also tackle the premature obsolescence, is the Ecodesign Directive or more broadly product policy legislation. However, these instruments do not foresee any individual consumer claims but only public law sanctions, which depend a lot on the enforcement capacity of a particular Member State (its powers, resources, priorities etc.) and therefore create a much weaker incentive to put an end to the premature obsolescence practice. It should be also noted that any claims brought against the trader on the basis of the UCPD, can be later settled with the producer on the basis of the redress procedure provided under different national legislation.

BEUC supports the EP proposal to expand the list of prohibited premature obsolescence practices and to turn them into an outright ban. BEUC rejects the Council additions "*when the trader can be reasonably expected to know*".

6. Dark patterns

Dark patterns, or deceptive design in online interfaces, pose a serious problem to European consumers. In 2022, a behavioural study published by the European Commission demonstrated that 97% of the most popular websites and apps deployed one or more such functionalities. The most common types that were found included hidden information/false hierarchies, preselection, nagging, difficult cancellations and forced registration.¹⁹

This was confirmed again by a more recent sweep by the European Commission and national authorities of the CPC Network of online retail stores for use of specific types of manipulative design features (fake countdown timers, web interfaces designed to lead consumers to purchases, subscriptions or other choices and hidden information), which found evidence of at least one of such 'dark patterns' in 148 out of the 399 examined shops.²⁰

¹⁸ The weakness of the current UCPD in this respect was very well demonstrated by the recent Nintendo case. [BEUC external alert](#) submitted to the CPC Network (EU network of the consumer protection authorities) resulted with the confirmation of an infringement of the UCPD. However, the measures that were taken as a result of the coordinated enforcement action launched by the authorities focused only on ways to solve short term consumer issues (the company at the end [committed to offer free repairs](#) of the game controllers, also outside of the guarantee period) but did not allow for any more far-reaching measures. This means that a product, very likely to fail prematurely, is still allowed to be sold on the European market.

¹⁹ European Commission 2022: Behavioural study on unfair commercial practices in the digital environment: dark patterns and manipulative personalisation: <https://op.europa.eu/s/xrpf>

²⁰ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_418

A recent survey of consumer attitudes commissioned by BEUC across eight Member States showed that the majority of consumers (64%) are aware of companies using design tricks to steer their choices. 41% respondents have reported making unwanted purchase decisions as a result. This has broader implications: in the age group 18-34, 64% reported they have lost trust in a company because they felt they were being manipulated.²¹

BEUC supports the prohibition of dark patterns under the UCPD. The proposed formulation of the general prohibition in Article 6 UCPD correctly renders the deception independent of proving intent (the 'on purpose or in effect' wording). In defining the subject of protection, it follows the established formulation in Article 13 DMA and Recital 67 DSA ('the autonomy, decision-making or choice') while integrating the UCPD's approach in targeting practices which are 'likely' to cause material distortion of consumers' transactional behaviour (the 'on purpose or in effect' qualifier).

However, BEUC recommends moving this formulation to Article 8 UCPD on aggressive practices to duly account for the nature of such practices, while making it more easily enforceable across the spectrum of possible use cases. This would also require the proposed blacklist items to be positioned accordingly under 'Aggressive commercial practices' in the Annex to the Directive.

BEUC supports the EP proposal to ban dark patterns via the UCPD. However, to maximise the efficiency of the general prohibition, BEUC recommends moving it from Article 6 (misleading practices) to Article 8 (aggressive practices). Consequently, the two specific prohibitions proposed by the EP should be positioned accordingly at the end of Annex I.

ANNEX

BEUC recommendations – article by article

Article	BEUC recommendations
UCPD amendments	
1(1) [definitions]	<ul style="list-style-type: none"> (q) Generic environmental claims - support Council additions (s) Certification scheme – support the EP additions (u) Recognised environmental performance - Reject the Council additions (w) Software update – support the EP additions (including the (new) definitions of security updates (wa) and functionality updates (wb) (x) Consumable – support the Council and EP addition (ya) Carbon offsetting (new) – support the EP proposal

²¹ Forthcoming in June 2023.

1(2)(a) [main product characteristics]	Support the EP additions
1(2)(b)(d) [future environmental performance claims]	Support the EP and Council proposals to strengthen the provision on the future environmental claims. Most importantly: - not to allow future claims based solely on carbon offsetting - require an implementation plan - require that commitments are publicly available - require that commitments are verified by a third-party independent expert, whose findings are made available to consumers
1(2)(b)(e) [common practice]	Keep the EC proposal
1(2)(b)(ea) [dark patterns]	Support the EP proposal but move this provision to the art. 8 UCPD instead of art. 6 UCPD.
1(3) [sustainability information tools]	Support the Council additions
CRD amendments	
2(1) [definitions]	(3a) energy using goods – support the EP & Council proposal to delete. (14a) commercial guarantee of durability – support the Council clarification. (14d) support the EP clarification
2(2)(a) & 2(3)(a) [precontractual information on durability]	<ul style="list-style-type: none"> - Support the EP proposal for a label (format XX years + YY years)²² - Support the Council recommendation to introduce this label via a Union Harmonised Graphic Format - Support deleting the distinction between energy using goods and other goods (as suggested by both the EP and the Council) - Support the EP clarification in AM 52 (new) - Support the EP clarifications in AM 54 & 63 (new) <p>Annex Z (new)</p> <ul style="list-style-type: none"> - Support the EP proposal - Add a clarification that the label shall be development in a Union Harmonised Graphic Format as proposed by the Council
2(2)(a)(ec,ed) & 2(3)(a)(mc,md) [updates]	Support the EP additions
2(2)(b) & 2(3)(b) [repairability]	Support the EP additions

²² In the EP proposal, the figure XX stands for the duration of the legal guarantee period and YY stands for its voluntary expansion in the form of an equivalent commercial guarantee of durability.

2(3)(a) [delivery options – new]	Support the EP proposal (AM 55)
2(4)	Keep the Commission proposal (deleting however the reference to the point (mb))
UCPD annex amendments (Greenwashing)	
Point 2a [sustainability label]	Reject Council additions
Point 4a [generic environmental claims]	Support the EP additions
Point 4b [claim about the entire product]	Support the EP additions
Point 4ba (new) [carbon neutral claims]	Support EP proposal to ban carbon neutral claims
Point 4bb (new)	Support the EP proposal
UCPD annex amendments (Dark patterns)	
Point 7a (new) [dark patterns]	Support the EP proposal to explicitly ban two types of dark patterns in the UCPD annex: <ul style="list-style-type: none"> - Giving more prominence to certain choices - Making the procedure to unsubscribe too burdensome
UCPD annex amendments (Premature obsolescence)	
Point 23da (new)	Support the EP proposal
Point 23d	Reject the Council additions
Point 23e	Support the EP proposal
Point 23ea (new)	Support the EP proposal
Point 23f	Reject the Council additions
Point 23g	Support the EP proposal
Point 23ga (new)	Support the EP proposal
Point 23gb (new)	Support the EP proposal
Point 23h	Support the EP wording: “marketing a good that ...” Support the Council addition “or replenishing”
Point 23i	<ul style="list-style-type: none"> - Support the EP proposal - Reject the Council additions

