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Building on existing best practice to support consumers' green transition



Executive summary

DIGITALEUROPE strongly supports the European Commission's aim to use consumer law to promote more sustainable consumption and protect consumers from unfair commercial practices.¹

Eliminating greenwashing practices, early obsolescence, and unreliable and non-transparent sustainability information is key to creating a level playing field for businesses and empowering consumers.

The digital industry has been proving its commitment to a circular economy through numerous strategies. This includes providing transparent sustainability information, facilitating access to repair, providing extended product guarantees, and offering trade-in programmes and refurbished products.

A successful legal framework to empower consumers for the green transition must build on such existing best practice. Notably, it should:

- ▶▶ Drive sustainability by allowing companies to provide all relevant information to consumers digitally;
- ▶▶ Continue to allow industry environmental labels that meet high sustainability standards based on third-party verification;
- ▶▶ Ensure that software update provisions do not discourage software updates, exposing consumers to cybersecurity threats or poor functioning; and
- ▶▶ Clarify that the proposed ban on 'early obsolescence' relates to intentional practices, and not to unintended effects.

¹ COM/2022/143 final.



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Alignment with other legislation

This proposal overlaps with several policy areas. Alignment with other current and upcoming circular economy legislation is therefore important.

This is particularly the case in relation to the **guarantee of durability** and **repairability information**, which should be consistent with the planned ‘**right to repair**’ proposal.²

Similarly, **definitions**, such as ‘durability,’ must be consistent with other legislation – such as the proposed Ecodesign for Sustainable Products Regulation³ – as well as with **key standards** such as the EN 4555X suite of material efficiency standards.



Commercial guarantees of durability

The proposal requires traders selling goods to inform consumers about the existence of the producer’s commercial guarantee of durability for all types of goods, where the producer makes this information available, or the absence of such guarantee in the case of ‘energy-using goods.’⁴

It is important to consider that a guarantee regarding ‘durability’ could lead consumers to the **erroneous impression that the product will not need to be repaired** during the guarantee period. To prevent this, it must be made clear that the guarantee means the producer will repair or replace the faulty goods free of charge for consumers during such period – not that the goods will not require repair at all.

It is also important to stress that the commercial guarantee of durability should remain **optional for producers**, as provided for under the Sale of Goods Directive,⁵ and without prejudice to the guarantee of conformity provided by the seller.

Finally, the definition of ‘energy-using goods’ as ‘any goods that depend on energy input’ should specify that it covers **only durable non-perishable goods**, and excludes parts or consumables that are used in combination with such durable goods.

² See DIGITALEUROPE, *Creating a safe and effective ‘right to repair,’* available at <https://www.digitaleurope.org/wp/wp-content/uploads/2022/04/FINAL-DIGITALEUROPE-Right-to-Repair-position.pdf>.

³ COM(2022) 142 final.

⁴ Recitals 23 and 24.

⁵ Art. 17, Directive (EU) 2019/771.



Reparability information

DIGITALEUROPE believes consumers should have clear and accurate information on repair information. Our members treat repair, and increasingly refurbishment and remanufacturing, as part of their everyday business practice, performing millions of repairs annually. These services are integral to ensuring customer trust and satisfaction in their brands.

The proposal would require manufacturers to inform consumers of a product's reparability score, when this is established under EU law, or if there is no reparability score, inform consumers of the availability of spare parts and repair manuals.

For a reparability score to be meaningful and successful, there must be **harmonised EU-wide methodologies for reparability scoring at the product-group level**. Currently, there are at least 12 different initiatives for measuring reparability and national initiatives, such as the French reparability index.

A **clear EU definition and harmonised calculation methodologies** are essential to measure and verify the reparability labelling of products. Otherwise, we risk creating confusion among consumers, a fragmented Single Market and unfair competition.



Digital provision of information

Packaging is already filled with information. For sustainability reasons, many manufacturers are trying to reduce packaging – not make it bigger to fit more information. This is a challenge for producers, particularly when the product is sold across the Single Market and contains information notices in multiple languages.

It is important to keep in mind that consumers make most of their purchasing decisions before going to shops.⁶ As evidenced in a recent survey,⁷ more than 80 per cent of customers use a combination of online and offline research before a purchase. In the case of electronic devices, over 50 per cent of consumers surveyed used their mobile phones to research while physically browsing in-store.

⁶ BEUC, *Consumers at the centre of the drive to sustainability - BEUC's view on the European Green Deal*, 2019, available at https://www.beuc.eu/publications/beuc-x-2020-012_beuc_position_on_european_green_deal.pdf.

⁷ Google Insights, *Consumer Journey Study*, 2018, available at <https://www.thinkwithgoogle.com/intl/en-cee/consumer-insights/consumer-journey/study-reveals-complexity-modern-consumer-paths-purchase-and-how-brands-can-make-inroads/>.

Online provision of information allows more data to be conveyed in a targeted and up-to-date manner. For this reason, the final Directive should allow producers and sellers to **comply with the information requirements by making compulsory information available online**, provided that, in the case of offline shopping, that information is easily available for consumers also at the point of purchase. For instance, by providing a QR code on the packaging or other materials displayed in shops, where consumers can find the required information.

As it relates to Recitals 32–33, **user and repair manuals should be made available electronically**, e.g. downloadable on the manufacturer’s website or included in the Digital Product Passport. Using electronic manuals is more sustainable and enables easy sharing of product information in different EU languages. Electronic manuals should be given preference to hard copies.



Environmental claims

DIGITALEUROPE supports the requirement that environmental claims made by manufacturers should be based on robust, commonly recognised criteria and, where applicable, recognised international standards such as ISO standards.

Sustainability labels

Under the proposal, making a ‘generic environmental claim’ about environmental performance will require proof of ‘recognised excellent environmental performance.’⁸ For products not covered by EU sustainability labelling, this will require third-party certification or, for those covered by an EU labelling scheme, achievement of the top performance class.

We believe that the exclusive reference to the top performance class will be counterproductive,⁹ and we recommend that **‘recognised excellent environmental performance’ should correspond instead to the ‘highest two populated classes.’**

This is because under the EU Energy Labelling Regulation,¹⁰ Class A should be unpopulated following the rescaling of an energy label. This would mean that manufacturers of a Class B product, which is then the most energy-efficient product available on the market, would not be able to claim the product is ‘energy efficient.’ The sustainability criteria in the EU Taxonomy Climate Change

⁸ Annex 1, new point 4a.

⁹ See Recitals 9–10.

¹⁰ Regulation (EU) 2017/1369.

delegated act also identifies the highest two populated classes of energy efficiency of an energy label as sustainable.¹¹

We are also concerned by the blanket ban on non-third-party labels. In addition to the use of sustainability labels developed by public bodies, it is important that industry initiatives can be used as an indication of the sustainability of a product or service. **Industry initiatives that meet high sustainability standards based on third-party certifications should be supported.** Many industry-led initiatives eventually become the sustainability norm, and a blanket limitation will discourage innovation.

The final Directive should continue to allow private labels, which are third-party verified through robust and credible auditing, to be used to encourage more companies to provide consumers with reliable sustainability information. As ‘certification schemes,’ as defined in the proposal, do not yet exist for all aspects of environmental or social sustainability, restricting only to labels that are ‘open to all traders’ would significantly reduce the scope of relevant sustainability information that can be shared with consumers. It would also make it more complex to develop new labels to cover new progress in the sustainability of products or services. Allowing operators to innovate and establish robust and credible labels to account for sustainability aspects is therefore essential.

Finally, it is unclear under the proposal whether sustainability labels developed by non-EU public authorities can be used, or whether they can be used only subject to a certification scheme similar to sustainability labels provided by private third parties.

Certification schemes for sustainability labels

The definition of certification scheme should make it clear that it ‘means a third-party verification scheme related to a sustainability label,’ so that it is understood that such **certification scheme is always connected to a sustainability label.**

More clarity is needed on the monitoring of requirements for certification schemes for third-party sustainability labels, including what is meant by compliance based ‘on international, Union or national standards and procedures.’¹² Requirements should be monitored after the marketing claim has been made public – the opposite would require authorisation from the authorities before advertising the sustainability attributes of products.

Finally, it is unclear to what extent a certification scheme meeting the criteria set by the proposal could still be banned as a generic environmental claim.

¹¹ C/2022/0631 final.

¹² Art. 1(1)(s).

Additional guarantees for traders could be provided by amending the definition of ‘explicit environmental claim’ to mean ‘an environmental claim that is in textual form, *subject to a certification scheme* or contained in a sustainability label.’¹³

Durability claims

A product’s durability is highly dependent on the end user’s use of it, correct installation, maintenance, climate conditions, etc. For this reason, the proposed **restrictions on making durability claims in terms of usage time or intensity should be considered at the model level**, rather than each individual product.

Additionally, there should be **alignment on how durability is measured by product group across all Directives and Member State law** to avoid fragmentation and consumer confusion. In partnership with industry, international and European standardisation organisations should develop and continue to improve science-based assessment tools and criteria to enable producers to measure product durability reliably.

Claims based on common industry practices

DIGITALEUROPE supports the proposed ban on advertising benefits for consumers that are considered common practice in the relevant market. It is clearly positive from a consumer perspective. However, the final Directive should more clearly define what is regarded as a ‘common practice’ and a ‘relevant market.’



Intentional early obsolescence

DIGITALEUROPE strongly rejects business practices or marketing strategies whereby manufacturers deliberately shorten the lifetime of a product in order to ensure a constant or recurring purchase pattern. Introducing new products reflects our industry’s best efforts to keep pace with consumer expectations and preferences. The speed at which this occurs reflects the highly competitive market we operate in, rapidly increasing consumer expectations and the breakneck speed of technological improvements.

Software updates

Software updates are meant to improve user experience by maintaining a safe, stable and seamless environment. They ensure goods can function as they did at the time of delivery, support compatibility with new devices and applications,

¹³ Art. 2(p), Directive 2005/29/EC.

address unintended functional issues, and protect consumers against threats by mitigating security vulnerabilities.

Software updates are not just critical for individual end-users, but the ecosystem at large, given how cyber-attacks proliferate across the connected ICT supply chain. With increased connectivity and remote work, as well as the expansion of the attack surface, **ensuring software update adoption is a critical societal priority.**

It is important for consumers to receive notification of the impact of software updates.¹⁴ However, this must **not discourage consumers from updating their software**, exposing the product or service to cybersecurity threats or poor functioning.

From this perspective, the term ‘negative impact’ used in the proposal is a vague, subjective phrase and could discourage changes that improve customers’ experiences with the device. Additionally, given that the intent is to ban early obsolescence practices, the notification should be restricted to updates that will negatively impact ‘the product’s **durability**,’ not simply ‘the use of a product or particular features.’

It should also be clarified that the provision only applies to **intentional** early obsolescence effects (e.g. by intentionally harming the performance of the product battery) and not to the unintended impacts in connection with third-party products that may be used in combination with the updated product. Manufacturers test their software updates on their own products and cannot be held responsible for unintentional impacts because of the use of third-party products.

The proposal also encourages manufacturers to inform consumers of the minimum period in which software updates are guaranteed. Correctly, the proposal does not stipulate how this information must be provided and from which moment manufacturers are required to count the provision period. This allows manufacturers to duly consider the complexity of the underlying design and business processes in making such decisions.

Goods designed to limit functionality

The proposal requires manufacturers to inform consumers when a good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer.

It should be clarified that the **ban relates only to intentional effects**, and not to unintended effects caused, for example, because the manufacturer does not test

¹⁴ Recital 15.

its products with third-party consumables, spare parts or accessories. Similarly, manufacturers cannot ensure compatibility and interoperability with third-party products that did not exist until after the product was placed on the market.

For this reason, the final Directive should also clarify what information obligations exist when aftermarket consumables, spare parts or accessories are responsible for the reduced functionality.

Inducing a consumer to replace consumables

The proposal also bans the practice of inducing the consumer into replacing consumables, for example printer ink, earlier than is technically necessary.¹⁵

We support the intent of this provision. However, there may be several non-technical reasons that could justify alerting consumers about replacing the consumables earlier.

For example, informing the consumer of the remaining ink level in a printer cartridge can help the consumer plan ahead so they have a replacement cartridge available for when the ink runs out, or to avoid a situation where the print quality may not be entirely satisfactory.

In this situation, it should be clarified that the ban does not apply to communication to the consumer that merely states the approximate remaining ink level, as long as it is clear to the consumer that ink is still left.

Therefore, the scope should be **limited to cases where the warnings are specifically designed to induce the consumer into replacing consumables earlier than is technically necessary.**

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¹⁵ Recital 20

About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belgium: AGORIA

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Czech Republic: AAVIT

Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, SECIMAVI, numeum

Germany: bitkom, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: Infobalt

Luxembourg: APSI

Moldova: ATIC

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS

Slovakia: ITAS

Slovenia: ICT Association of Slovenia at CCIS

Spain: Adigital, AMETIC

Sweden: TechSverige, Teknikföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT Ukraine

United Kingdom: techUK