



ARTICLE

PROVISIONAL AGREEMENT ON THE DIRECTIVE TO EMPOWER CONSUMERS FOR THE GREEN TRANSITION

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On September 19, 2023, the Council of the European Union[1] and the European Parliament[2] jointly announced, through a press release, that they have reached a provisional agreement on the directive to empower consumers for the green transition. The content of this agreement, as derived from the accord, is not yet available but is expected to include new rules prohibiting misleading advertisements and providing better information about products.

According to the Council, the compromise agreement upholds the main objectives set out by the Commission in its proposal dated March 30, 2022. These objectives primarily focus on contributing to the establishment of a circular, clean, and green European economy, specifically by enabling consumers to make informed ecological choices.

Broadly speaking, the directive seeks to bolster consumer rights by amending Directive 2005/29/EC of May 11, 2005, concerning unfair business-to-consumer commercial practices in the internal market[3], and Directive 2011/83/EU of October 25, 2011, on consumer rights[4], aligning both with the ecological transition.

It is also essential to note that this directive is not standalone. It is part of a more extensive framework alongside two other European initiatives that have not yet been finalized. These include the proposal for a directive on green claims which will introduce additional requirements in this area, and the proposed regulation on the eco-design of durable products aimed at enhancing product circularity and sustainability.

The directive will undoubtedly have a significant impact on businesses in a field where interpretation plays a vital role (specifically in the realm of greenwashing), sometimes to the detriment of legal certainty.

In light of this update, we would like to highlight the main points of the directive proposal as follows:

Ecological Claims: Generic environmental labels such as "biodegradable," "eco-friendly," "climate-neutral," or "eco" will be prohibited unless there is evidence of outstanding environmental performance that justifies such a claim.

Greenhouse Gas Emission Offsets: A company will no longer be able to claim that a product has a neutral, reduced, or better environmental impact if such a claim is based on an unverified program to offset its greenhouse gas emissions. Offsetting could involve measures such as purchasing carbon credits or tree planting.

Planned Obsolescence: A company may be held liable if the product they sell is affected by a system of planned obsolescence that they could not have been unaware of or about which they did not inform consumers, as indicated by the Council. Similarly, companies can be held accountable for unnecessary software updates, encouragement to replace a product, or unjustified obligations to purchase replacement parts.

Sustainability Labels: The directive proposal aims to enhance the credibility of sustainability labels and is expected to define the core components of certification systems upon which these labels must be based. Furthermore, companies will not be permitted to use a sustainability label unless it has been certified or established by a public authority.

Legal and Commercial Warranties: The directive proposal introduces a harmonized labeling system for information on commercial and legal warranties. At the request of the Parliament, given that many consumers are unaware that they benefit from a two-year legal warranty, the directive will mandate the increased visibility of this information in stores and on websites. Additionally, the Commission will be tasked with designing a new quality label for producers wishing to voluntarily extend the warranty period at no additional cost.

In practice, companies will need to ensure that the ecological claims they place on their products comply with the new rules and are sufficiently substantiated to avoid greenwashing. This might be the case, for instance, if a company inappropriately relies on its greenhouse gas offsets.

Next Steps

The text now needs to undergo a final review by both the Parliament and the Council for final approval. The Parliament is expected to make its decision in a plenary session in November 2023. Member states will then have two years to ensure the directive is transposed into national law.



[1] <https://www.consilium.europa.eu/en/press/press-releases/2023/09/19/council-and-parliament-reach-provisional-agreement-to-empower-consumers-for-the-green-transition/>

[2] <https://www.europarl.europa.eu/news/en/press-room/20230918IPR05412/eu-to-ban-greenwashing-and-improve-consumer-information-on-product-durability>

[3] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0029>

[4] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083>
