

Adoption of the Directive on empowering consumers for the green transition

The Directive on empowering consumers for the green transition imposes on producers and sellers of goods a number of obligations aimed at protecting consumers from misleading environmental claims ('greenwashing'), helping consumers and users make more sustainable choices and increasing confidence in ecological information and labels.

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On 6 March 2024, Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices (the "Unfair Commercial Practices Directive") and Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights (the "Consumer Rights Directive") as regards empowering consumers for the green transition through better protection against unfair practices and through better information

(the "Directive on empowering consumers for the green transition" or the "Directive")¹.

The Directive on empowering consumers for the green transition imposes on producers and sellers of goods a number of obligations aimed at protecting consumers from misleading environmental claims ('greenwashing'), helping consumers and users make more sustainable choices and increasing confidence in ecological information and labels.

The time limit for Member States to transpose the Directive into national law is 27 March 2026, and the new obligations must enter into force by 27

¹ This directive should not be confused with the proposal for a directive on substantiation and communication of explicit environmental claims (known as the "Green Claims Directive").

September of the same year at the latest. Hence, as of that date, operators will have to adjust their activity to the measures and obligations grouped below by category:

1) *Certification schemes and sustainability labels*

The Directive on empowering consumers for the green transition amends Articles 6 and 7 and Annex I of the Unfair Commercial Practices Directive and declares prohibited conduct consisting of attributing certain environmental, sustainable, ecological or social characteristics to certain products, processes or businesses if these are not supported by certification systems and/or sustainable labels. In particular:

- No sustainability labels may be displayed that are not based on an external and independent certification scheme or have been established by public authorities.
- Claims related to the future environmental performance of a product, process or business may not be made without clear, objective, publicly available and verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets and other relevant elements necessary to support its implementation, and that

is regularly verified by an independent third-party expert whose findings are made available to consumers.

- Furthermore, where a trader provides a service which compares products and provides the consumer with information on environmental or social characteristics or on circularity aspects, such as durability, reparability or recyclability², he must provide information on the method of comparison, the products which are the object of comparison and the suppliers of those products, as well as the measures in place to keep that information up to date.
- The Directive also prohibits making generic environmental claims without recognised excellent environmental performance which is relevant to the claims³. Examples of generic environmental claims include ‘environmentally friendly’, ‘eco-friendly’, ‘green’, ‘eco-friendly’, ‘organic’, ‘biobased’ or similar.

2) *Confusing or misleading claims*

The following are also regarded as misleading commercial practices and therefore punishable:

- Providing the consumer with false or untruthful information, or any information

² In this regard, see Article 18 of the Waste and Contaminated Soils for a Circular Economy Act 7/2022 of 8 April and its implementing rules on extended producer responsibility. In particular, with regard to packaging, the provisions of Article 12 of Royal Decree 1055/2022, of 27 December, on packaging and packaging waste, should be taken into consideration. Likewise, with regard to electrical appliances, read the provisions of Royal Decree 110/2015, of 20 February, on waste electrical and electronic equipment.

³ In this respect, the Directive states that recognised excellent environmental performance can be demonstrated, for example, by compliance with Regulation (EC) No. 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel or EN ISO 14024 ecolabelling schemes, among others.

which, in whatever form, including its overall presentation, misleads or is likely to mislead the average consumer as to the main characteristics of the product, including aspects relating to its circularity, separability or recyclability.

- Advertising benefits to consumers that are irrelevant and do not result from any characteristic feature of the product or business. Thus, claims that highlight redundant characteristic features of a product would be prohibited (e.g. ‘gluten-free water’, ‘plastic-free paper sheets’, ‘vegan chickpeas’, etc.).
- Making claims about an entire product or the trader’s entire business when it actually concerns only a certain aspect of the product or a specific, unrepresentative activity of the trader’s business.
- Making claims, based on the offsetting of greenhouse gas emissions, that a product, either a good or service has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions.

3) *Presenting compliance with requirements that are imposed by law as a distinctive feature of the trader’s offer*

The Directive also provides for conduct consisting of presenting compliance with the legal requirements imposed on a certain category of products as a distinguishing feature of those products as a punishable conduct. Excluded from this prohibition are commercial practices promoting traders’ or products’ compliance with legal requirements that only apply to some products but not to other competing products of the same category on the Union market, such as products of non-Union origin.

4) *Durability and reparability of goods*

The new Directive also seeks to promote the production and placing on the market of goods that are durable and repairable with a view to reducing waste streams. In this respect, the different producers and sellers operating in the EU will have to comply with the following measures:

- Where a good is repairable, the potential consumer must be informed of its “repairability score” for that good. A repairability score is defined in the Directive as a score expressing the capacity of a good to be repaired, based on harmonised requirements established at Union level.
- If the good in question is not repairable, the potential consumer must be provided with information on the availability and estimated cost of, and procedure for ordering, spare parts necessary to maintain the good in conformity, as well as information on the availability of repair and maintenance instructions and on any repair restrictions.
- As regards goods with digital elements, digital content and digital services, the potential consumer should be informed about the period during which free software updates are available.
- It is also prohibited to withhold information from the consumer that a software update (including security and functionality updates) will negatively impact the functioning of goods with digital elements or the use of digital content or digital services.
- It is also prohibited to (i) present a good as allowing repair when it does not, (ii)

- induce a consumer to replace or replenish the consumables of a good earlier than necessary for technical reasons, (iii) withhold information concerning the impairment of the functionality of a good when consumables, spare parts or accessories not supplied by the original producer are used, or falsely claiming that such impairment will happen, and (iv) falsely claim that under normal conditions of use a good has a certain durability in terms of usage time or intensity.
- Finally, operators will also be obliged to provide consumers with the following pre-contractual information:
 - a) Existence of legal guarantees and, where applicable, any additional commercial guarantees that the trader has chosen to offer.
 - b) Characteristics and conditions of after-sales service.
- Harmonised notice or label on the legal guarantee of conformity, including its minimum duration of two years and a general reference to the possibility that the duration of the legal guarantee of conformity can be longer under national law⁴;
- Harmonised notice or label on the additional commercial guarantee which shall include the durability of the good under normal conditions of use (commercial guarantee of durability) as well as the reminder of the existence of the legal guarantee of conformity.

The harmonised label should be displayed in a prominent manner and used in a way that allows consumers to easily identify which particular good benefits from a commercial guarantee of durability offered by the producer at no additional cost, covering the entire good, and with a duration of more than two years, for example by placing the label directly on the packaging of a particular good, by displaying the label in a prominent manner on the shelf where the goods covered by such a guarantee are placed or by placing it directly next to the picture of the good in the case of online sale.

For its part, the harmonised notice should provide a general reminder to consumers about the legal guarantee of conformity applicable to all goods in accordance with Directive (EU) 2019/771 concerning contracts for the sale of goods. The harmonised notice should be displayed in a prominent manner, for example, on a poster in an eye-catching way on a wall

5) *Harmonised notice and label*

Finally, in view of the frequent lack of consumer awareness of the existence and duration of legal and commercial guarantees, the Directive on empowering consumers for the green transition provides for the establishment of a harmonised notice and label in order to make it easier for consumers to know their rights in this respect.

To this end, the Commission is entrusted with the design of the following harmonised notices and labels:

⁴ In the case of Spain, the legal guarantee is 3 years for products marketed from 1 January 2022, in accordance with Article 120(1) of Royal Legislative Decree 1/2007, of 16 November, approving the recast version of the Consumer and User Protection Act and other supplementary laws.

in the shop, next to the checkout counter or, in cases of online sale, placed as a general reminder on the website of the trader selling goods.

Once the transposition of the Directive into Spanish law has been completed, the penalty regime associated with non-compliance with the new obligations is expected to be regulated in Chapter II (arts. 47 to 52) of the Consumer and User Protection (Recast) Act and other supplementary laws (the “TRLGDCU”)⁵, according to which the penalties for non-compliance with the aforementioned obligations could reach up to 1 million euros, with the possibility of exceeding this amount to between six and eight times the unlawful profit made by the operator obliged to comply with these obligations.

The TRLGDCU also provides for the imposition of ancillary penalties, including (a) the confiscation of the goods that are the subject matter of the infringement, (b) the publication of the minor and serious penalties imposed when they have become final in administrative proceedings, (c) the temporary closure of the establishment or business facilities; and (d) the requirement for the infringer to rectify

the breaches identified in the decision that ends the penalty proceedings.

The application of the Directive on empowering consumers for the green transition requires a thorough knowledge of environmental legislation since, in practice, the accreditation of the environmental, sustainable, ecological or social characteristics that may be attributed to certain products, processes or businesses is

deferred to the provisions of the different sectoral environmental rules and regulations that condition the placing on the market of these products or the carrying out of any business activity. These rules and

regulations range from legislation on climate change, extended producer responsibility, waste management, water quality, environmental auditing systems to the very broad and complex legislation on chemicals and emerging pollutants, to name but a few regulatory areas that are particularly relevant for the purposes of the provisions of this new Directive.

Its effective application will necessarily lead companies to review their commercial and corporate policies and strategies to ensure their correct adaptation to the new European regulatory framework against greenwashing.

Consumer protection against green washing practices in commercial advertising

⁵ Currently, the penalty regime associated with the Unfair Commercial Practices Directive (as far as consumer rights are concerned) and the Consumer Rights Directive is transposed in Spain in the TRLGDCU.