



# Empowering Consumers in the Green Transition

## Amendments proposed by EEB, Carbon Market Watch, ClientEarth and ECOS

### Recital 4

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
<p>Environmental claims, in particular climate-related claims, increasingly relate to future performance in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products. To ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are not supported by clear,</p>	<p>Environmental claims, in particular climate-related claims, increasingly relate to future performance in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products. To ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are <u>solely based on carbon</u></p>	<p>Environmental claims, in particular climate-related claims, increasingly relate to future performance <u>such as</u> in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a <u>green</u> economy by purchasing their products. To ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are based <del>solely</del> on offsetting or not supported by <u>clear and</u></p>



<p>objective and verifiable commitments and targets given by the trader. Such claims should also be supported by an independent monitoring system to monitor the progress of the trader with regard to the commitments and targets.</p>	<p><u>offsetting</u> or not supported by clear, objective and verifiable commitments and targets given by the trader <u>followed by an implementation plan at the trader level. To achieve this, future environmental performance should include concrete and verifiable interim targets consistent with achieving long-term commitment, sufficient budget allocated and be based only on existing technologies. The implementation plan as well as the progress achieved should be made publicly available and regularly reported upon. Claims related to future environmental performance should also be supported by an independent monitoring system to monitor the progress of the implementation plan of the traders' commitments and targets. Claims related to the future environmental performance should only be used at the trader level and not on product level, otherwise the environmental claims can mislead consumers.</u></p>	<p><u>understandable supplementary information given by the trader setting out clear, objective, science-based and verifiable commitments and targets, and an implementation plan at the trader level that shall include implementing actions, concrete and verifiable interim targets which do not rely on offsets and are consistent with achieving long-term commitment. The implementation plan shall have sufficient budget allocated and be based only on existing economically and technically viable technologies. The implementation plan as well as the progress achieved should be made publicly available, included in supplementary information to the claim, and regularly reported upon. Claims related to future environmental performance should also be supported by an independent monitoring system to verify the claim and monitor the progress of the trader with regard to the commitments and targets. Claims related to the future environmental performance should only be used at the trader level and not on product level, otherwise the environmental claims can mislead consumers.</u></p>
<p>Justification:</p> <ul style="list-style-type: none"> <li>Traders create the impression that products contribute to the green transition in aspects beyond climate change, and will increasingly do so in the future. Climate 'net zero' claims are presently rarely supported with near-term plans which align with pathways to European climate goals. The basis for future performance claims should be set out clearly for consumers in supplementary information provided to consumers in the same medium, and should include consistent near-term targets, an implementation plan, sufficient budget and reliance on viable technologies. These rules must provide consumers with at least the level of protection from misleading future environmental performance claims which emerging EU sustainability reporting rules provides for shareholders.</li> <li>The Draft Report prohibits claims regarding future performance based <i>solely</i> on offsets, but a more common and problematic practice by companies is <i>partly</i> using offsets as substitutes for real emissions reductions in order to reach near-term 'emissions reduction' targets, thereby giving consumers a misleading impression that the company's business and products genuinely support the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1,5 °C above pre-industrial levels.</li> </ul>		



- Traders are making environmental claims based on offsetting or 'netting' to mislead about environmental impacts beyond climate change. For example, some businesses and products are being advertised as "plastic neutral" on the basis that for every amount of plastic created, a measured equivalent of plastic waste is removed from the environment. This creates in consumers the misleading impression that introducing new plastic products to the market will not lead to plastic pollution. Such offsetting or netting is in the process of being prohibited under emerging EU sustainability reporting rules, and should also be prohibited in consumer communication to guarantee consistency, a high level of environmental protection and a high level of consumer protection.
- Independent verification of claims is a key safeguard increasingly used by businesses to validate corporate targets and stop them misleading consumers. For example, the SBTi Corporate Net Zero Standard features alignment with a cross-sector pathway of -4.7% reductions per year, to align with the global aim of halving emissions by 2030 and including Scope 3 emissions. [Scope 3 emissions are all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions].

## Recital 7

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
<p>The displaying of sustainability labels which are not based on a certification scheme or not established by public authorities should be prohibited by including such practices in the list in Annex I to Directive 2005/29/EC. The certification scheme should fulfil minimum transparency and credibility conditions. The displaying of sustainability labels remains possible without a certification scheme where such labels are established by a public authority, or in case of additional forms of expression and presentation of food in accordance with Article 35 of Regulation (EU) No 1169/2011. This rule complements point 4 of Annex I to Directive 2005/29/EC which prohibits claiming that a trader, the commercial practices of a trader, or a product has been approved, endorsed or authorised by a public or private body when it has not, or making such a claim without complying with the terms of the</p>	<p>The displaying of sustainability labels which are not based on a certification scheme or not established by public authorities should be prohibited by including such practices in the list in Annex I to Directive 2005/29/EC. The certification scheme should fulfil minimum transparency and credibility conditions. The displaying of sustainability labels remains possible without a certification scheme where such labels are established by a public authority, or in case of additional forms of expression and presentation of food in accordance with Article 35 of Regulation (EU) No 1169/2011. This rule complements point 4 of Annex I to Directive 2005/29/EC which prohibits claiming that a trader, the commercial practices of a trader, or a product has been approved, endorsed or authorised by a public or private body when it has not, or making such a claim without complying with the terms of the</p>	<p>The displaying of sustainability labels <u>or sustainability information tools</u> which are not based on a certification scheme, <u>pre-approved by an EU national or an EU authority</u>, or not established by public authorities should be prohibited by including such practices in the list in Annex I to Directive 2005/29/EC. The certification scheme should fulfil minimum transparency and credibility conditions. The displaying of sustainability labels remains possible without a certification scheme where such labels are established by a public authority, or in case of additional forms of expression and presentation of food in accordance with Article 35 of Regulation (EU) No 1169/2011. This rule complements point 4 of Annex I to Directive 2005/29/EC which prohibits claiming that a trader, the commercial practices of a trader, or a product has been approved, endorsed or authorised by a public or private body when it has not, or making such a claim without</p>



approval, endorsement or authorisation.	approval, endorsement or authorisation.	complying with the terms of the approval, endorsement or authorisation.
<p>Justification:</p> <ul style="list-style-type: none"> <li>A white list of labels kept up to day at EU level, would provide better legal certainty for companies, better protection for consumers and enforcement by market surveillance authorities. This option was assessed in the Impact Assessment (as having a significant positive impact for consumer protection, as well as for business with respect to level playing field and reduced barriers to cross-border trade). It would allow better enforcement and compliance. Possibility of mutual recognition by national authorities can contribute to reduce costs. A precedent exists already through the Health and Nutrient Claims Regulation, with EFSA acting as the EU body overseeing food claims.</li> <li>Traders are increasingly using digital sustainability information tools (in light of e-commerce uptake), often providing general sustainability claims for products where only a particular dimension has been addressed (e.g. recycled content) and/or there is no third party verification.</li> </ul>		

## Recital 9

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
Annex I to Directive 2005/29/EC should also be amended to prohibit making generic environmental claims without recognised excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are 'environmentally friendly', 'eco-friendly', 'eco', 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'carbon neutral', 'carbon positive', 'climate neutral', 'energy efficient', 'biodegradable', 'biobased' or similar statements, as well as broader statements such as 'conscious' or 'responsible' that suggest or create the impression of excellent environmental performance. Such generic environmental claims should be prohibited whenever there is no excellent environmental	Annex I to Directive 2005/29/EC should also be amended to prohibit making generic environmental claims without recognised excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are 'environmentally friendly', 'eco-friendly', 'eco', ' <u>eco-friendly packaging</u> ', 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'carbon neutral', 'carbon positive', 'climate neutral', 'energy efficient', 'biodegradable', 'biobased', ' <u>deforestation-free</u> ', ' <u>green-dot</u> ', ' <u>sustainable</u> ' or similar statements, as well as broader statements such as 'conscious', ' <u>concerned</u> ' or 'responsible' that suggest or create the impression of excellent environmental performance. Such generic environmental claims should be prohibited whenever there is no excellent environmental performance demonstrated or whenever the specification of the claim is not provided in clear and prominent terms on the same medium, such as the same advertising spot, product's packaging or	Annex I to Directive 2005/29/EC should also be amended to prohibit making generic environmental claims without recognised excellent environmental performance which is relevant to the claim. Examples of such generic environmental claims are 'environmentally friendly', 'eco-friendly', 'eco', 'eco-friendly packaging', 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'carbon neutral', ' <u>carbon offset</u> ', ' <u>carbon compensated</u> ', 'carbon positive', "carbon negative", 'climate neutral', ' <u>plastic offset</u> ', 'energy efficient', 'biodegradable', 'biobased', 'deforestation-free', 'green-dot', 'sustainable' or similar statements, as well as broader statements such as 'conscious', 'concerned' or 'responsible' that suggest or create the impression of excellent environmental performance. Such generic environmental claims should be



<p>performance demonstrated or whenever the specification of the claim is not provided in clear and prominent terms on the same medium, such as the same advertising spot, product's packaging or online selling interface. For example, the claim 'biodegradable', referring to a product, would be a generic claim, whilst claiming that 'the packaging is biodegradable through home composting in one month' would be a specific claim, which does not fall under this prohibition.</p>	<p>online selling interface. For example, the claim 'biodegradable', referring to a product, would be a generic claim, whilst claiming that 'the packaging is biodegradable through home composting in one month' would be a specific claim, which does not fall under this prohibition.</p>	<p>prohibited whenever based on <u>claims of neutrality or offsetting through, for example, purchase of carbon credits</u>, or whenever there is no excellent environmental performance demonstrated or whenever the specification of the claim, is not provided in clear and prominent terms on the same medium, such as the same advertising spot, product's packaging or online selling interface, <u>and based on methods and communication rules established in EU or national legislation</u>. For example, the claim 'biodegradable', referring to a product, would be a generic claim, whilst claiming that 'the packaging is biodegradable through home composting in one month' would be a specific claim, which does not fall under this prohibition.</p>
<p>Justification:</p> <ul style="list-style-type: none"> <li>• We support the explicit prohibition of generic claims without recognised environmental performance.</li> <li>• The express prohibition of environmental claims based on offsetting (or similar) is added to this article to prevent inconsistency or lack of clarity in the Directive.</li> <li>• In order to avoid any loopholes by allowing the trader to choose different methods to demonstrate the claims, it should be required that any claim complies with EU or national legislation.</li> <li>• Biodegradability should not be subject of claims. There is a risk that biodegradability claims undermine the prevention and separate collection of waste for recycling, and encourage improper disposal. Products which are already biodegradable today (e.g. paper) are not subject of claims, and this should continue to be the case as these products should be recycled. We strongly argue for the removal of the reference to biodegradability claims in the legislation. This example should be replaced by another one, as it gives legitimacy to making biodegradability claims. It would be preferable to use an example of a claim that is likely to be covered under the Green Claim Regulation.</li> </ul>		

## Article 1, paragraph 1, point 1 - definitions

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
	<p><b>'carbon offsetting'</b> means the <u>purchase of carbon offsets to compensate for the purchaser's own greenhouse gas emissions. Offsets are typically achieved through financial support for</u></p>	<p><b>'Offsetting'</b> means the claim that the <u>acquisition of credits or provision of financial support for environmental projects elsewhere, such as the purchase of carbon credits, compensates for the purchaser's</u></p>



	<u>projects, like reforestation, renewable energy, energy efficiency, etc;</u>	<u>own environmental impact, or that of their goods or services.</u> Offsetting is typically achieved through financial support for projects. This financial support is typically provided through the purchase of carbon credits (for GHG mitigation projects) or plastic credits (for plastic recovery projects).
<b>'environmental claim'</b> means any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time;	<b>'environmental claim'</b> means any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or <u>indicates</u> that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time;	<b>'environmental claim'</b> means any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or <u>implies</u> that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time;
		<b>'fossil fuels'</b> means all fuels formed from hydrocarbon deposits (including, but not limited to, oil, fossil gas, and coal), the burning or combustion of which releases greenhouse gasses;
		<b>'specific environmental claim'</b> means an explicit environmental claim on a given environmental aspect whereby the specification of the claim is provided in clear and prominent terms on the same medium'
		<b>'Pre-approval of sustainability labels or sustainability information tools'</b> means an ex-ante conformity assessment to be performed by an EU or national authority'
<b>'certification scheme'</b> means a third-party verification scheme that is open under transparent, fair and non-discriminatory terms to all	<b>'certification scheme'</b> means a third-party verification scheme that is open under transparent, fair and non-discriminatory terms to <u>the</u>	<b>'certification scheme'</b> means a third-party verification scheme that is open under transparent, fair and non-discriminatory terms <u>to all</u>



<p>traders willing and able to comply with the scheme's requirements, which certifies that a product complies with certain requirements, and for which the monitoring of compliance is objective, based on international, Union or national standards and procedures and carried out by a party independent from both the scheme owner and the trader;</p>	<p><u>participating</u> traders willing and able to comply with the scheme's requirements, which certifies that a product complies with certain requirements, and for which the monitoring of compliance <u>and awarding of the certificate</u> are objective, based on <u>transparent and non-discriminatory procedures, as well as</u> international, Union or national standards and <u>impartially</u> carried out by a party independent from the trader;</p>	<p><u>traders</u> willing and able to comply with the scheme's requirements, which certifies that a product complies with certain requirements, <u>which are publicly available free of cost, developed in independent processes and reflecting significant improvement compared to baseline legislation and conventional products</u>, and for which the monitoring of compliance is objective, based on international, Union or national standards and procedures, <u>impartially carried out by a party independent from both the scheme owner and the trader, and allowing the fair and transparent processing of complaints from external from external stakeholders with respect to non-compliance and leading to withdrawal of the label in case of noncompliance;</u></p>
<p>'recognised excellent environmental performance' means environmental performance compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance in accordance with other applicable Union law;</p>	<p>'recognised excellent environmental performance' means environmental performance compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance in accordance with other applicable Union law, <b>or with a label in accordance with Article 43(1), points (b) to (e) of Directive 2014/24/EU of the European Parliament and of the Council 1a or an EU certification mark in accordance with Article 84 of Regulation (EU) No 2017/1001 of the European Parliament and of the Council1b;</b></p>	<p>'recognised excellent environmental performance' means environmental performance compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance in accordance with other applicable Union law <u>corresponding indicatively to 10-20% of the products available in the Community market in terms of environmental performance ;</u> or with a label in accordance with Article 43(1), points (b) to (e) of Directive 2014/24/EU of the European Parliament and of the Council <del>or an EU certification mark in accordance with Article 84 of Regulation (EU) No 2017/1001 of the European Parliament and of the Council1b;</del></p>
<p>'sustainability information tool' means software, including a website, part of a website or an application, operated by or on</p>		<p>'sustainability information tool' means software, including a website, part of a website or an application, operated by or on behalf of a trader, which provides</p>



<p>behalf of a trader, which provides information to consumers about environmental or social aspects of products, or which compares products on those aspects;</p>		<p>information to consumers about environmental or social aspects of products, or which compares products on those aspects. <u>In the case of comparison, it comparison should be objective by, in particular, comparing products which serve the same function, using a common method and common assumptions, and comparing material and verifiable features of the products being compared.</u></p>
<p>‘sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that <b>aims</b> to set apart and promote a product, a process or a business with reference to its environmental or social aspects or both. This does not cover any mandatory label required in accordance with Union or national law;</p>	<p>‘sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that <b>is predominantly implemented with the aim</b> to set apart and promote a product, a process or a business with reference to its environmental or social aspects or both. This does not cover any mandatory label required in accordance with Union or national law;</p>	<p>‘sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that <del>is predominantly implemented with the aim</del> <b>aims</b> to set apart and promote a product, a process or a business with reference to its environmental or social aspects or both. This does not cover any mandatory label required in accordance with Union or national law;</p>
<p>Justification:</p> <ul style="list-style-type: none"> <li>• Traders are making environmental claims based on offsetting or ‘netting’ to mislead about environmental impacts beyond climate change. For example, some businesses and products are being advertised as “plastic neutral” on the basis that for every amount of plastic created, a measured equivalent of plastic waste is removed from the environment. This creates in consumers the misleading impression that introducing new plastic products to the market will not lead to plastic pollution. Such offsetting or netting is prohibited under emerging EU sustainability reporting rules, and should also be prohibited in consumer communication to guarantee consistency, a high level of environmental protection and a high level of consumer protection</li> <li>• We consider that the change of wording from “implies” to “indicates” proposed in the Draft Report narrows the application of these provisions in a way that reduces the <i>effet utile</i> of the law and the effective protection to consumers. Consumer law is supposed to regulate the impressions given to consumers (average consumer understanding), not the literal interpretation of words. <u>The Commission Guidance on the interpretation and application of Directive 2005/29/EC</u> explains the substantial misleading effect that implicit claims can have on consumers. In order to tackle the proliferation of unreliable labels, the certification schemes underpinning any labels and claims should be based on minimum transparency and reliability principles. They should be open to all traders to ensure a level playing field.</li> <li>• The addition to ‘recognised excellent environmental performance’ is there to ensure that only the best in class in (EU) 2017/1369 are effectively acknowledged as excellent. When several classes of performance exist in a legislation, it is important that only the first populated classes corresponding to 10-20% of the market are recognised under the UCPD to avoid diluting the ambition. The integration of a reference to Directive 2017/1001 on EU Trade Marks does not offer sufficient guarantees of environmental excellence, since this legislation does not establish provisions to ensure that the EU trade-marks which are certified are underpinned by robust methodologies ensuring a comprehensive assessment of environmental performance and there are no requirements with respect to any level of ambition.</li> </ul>		





- As long as a sustainability label allows communication on environmental and social aspects, it should be integrated within the provisions of UCPD. A wider definition will allow for easier enforcement without needing to assess the representativeness of environmental and social requirements with respect to other aspects such as quality. For instance, a label might have 80% of requirements related to quality, and 20% to environmental aspects. A restrictive definition might not cover such cases.

## Article 1(2)(b) - Addition to Art.6(2) of the UCPD

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
(d) making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system;	(d) making an environmental claim related to future environmental performance <u>solely based on carbon offsetting or</u> without clear, objective and verifiable <u>reduction</u> commitments and targets <u>complemented by a realistic implementation plan</u> and without an independent monitoring system;	(d) making an environmental claim related to future environmental performance based on offsetting or without <u>clear and understandable supplementary information setting out</u> clear, objective, <u>science-based</u> and verifiable commitments and targets complemented by a realistic and funded implementation plan <u>based on economically and technically viable technologies, and</u> without <u>verification by an</u> independent monitoring system;
<p><b>Justification:</b></p> <ul style="list-style-type: none"> <li>Traders create the impression that products contribute to the green transition in aspects beyond climate change, and will increasingly do so in the future. The basis for such claims should be set out clearly for consumers in supplementary information, and should include consistent near-term targets, an implementation plan, sufficient budget and reliance on viable technologies. These rules must provide consumers with at least the level of protection from misleading future environmental performance claims which emerging EU sustainability reporting rules provides for shareholders.</li> <li>The Draft Report prohibits claims regarding future performance based <i>solely</i> on offsets, but a more common and problematic practice by companies is <i>partly</i> using offsets as substitutes for real emissions reductions in order to reach near-term 'emissions reduction' targets, thereby giving consumers a misleading impression that the company's business and products genuinely support the transition to a climate-neutral economy consistent with a pathway to limit the temperature increase to 1,5 °C above pre-industrial levels.</li> <li>Traders are making environmental claims based on offsetting or 'netting' to mislead about environmental impacts beyond climate change. For example, some businesses and products are being advertised as "plastic neutral" on the basis that for every amount of plastic created, a measured equivalent of plastic waste is removed from the environment. This creates in consumers the misleading impression that introducing new plastic products to the market will not lead to plastic pollution. Such offsetting or netting is prohibited under emerging EU sustainability reporting rules, and should also be prohibited in consumer communication to guarantee consistency, a high level of environmental protection and a high level of consumer protection.</li> <li>Independent verification of claims is a key safeguard increasingly used by businesses to validate corporate targets and stop them misleading consumers. For example, the SBTi Corporate Net Zero</li> </ul>		



Standard features alignment with a cross-sector pathway of -4.7% reductions per year, to align with the global aim of halving emissions by 2030 and including Scope 3 emissions.

## Annex I, paragraph 1, point 1

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
<p>(1) the following point 2a is inserted:</p> <p>'2a. Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.';</p>	<p>(1) the following point 2a is inserted:</p> <p>'2a. Displaying a sustainability label which is not based on a <u>label in accordance with Article 43(1), points (b) to (e) of Directive 2014/24/EU, an EU certification mark in accordance with Article 84 of Regulation (EU) No 2017/1001 or some other certification scheme</u> or not established by public authorities.';</p>	<p>(1) the following point 2a is inserted:</p> <p>'2a. Displaying a sustainability label <u>or a sustainability information tool</u> which is not based on a certification scheme, <u>pre-approved by a national or EU authority</u>, or not established by public authorities.';</p>
		<p>2b. Displaying a sustainability label based on different levels of performance, when the existing classes are not clearly provided in the same graphic representation to allow for clear comparison.</p>
<p>Justification:</p> <ul style="list-style-type: none"> <li>• A white list of labels kept up to day at EU level, would provide better legal certainty for companies, better protection for consumers and enforcement by market surveillance authorities. This option was assessed in the Impact Assessment (as having a significant positive impact for consumer protection, as well as for business with respect to level playing field and reduced barriers to cross-border trade. It would allow better enforcement and compliance. Possibility of mutual recognition by national authorities can contribute to reduce costs. A precedent exists already through the Health and Nutrient Claims Regulation, with EFSA acting as the EU body overseeing food claims.</li> <li>• Traders are increasingly using digital sustainability information tools (in light of e-commerce uptake), often providing general sustainability claims for products where only a particular dimension has been addressed (e.g. recycled content) and/or there is no third party verification.</li> <li>• Any labels distinguishing products in terms of sustainability performance, should provide clear communication to consumers. In case they are based on a system that corresponds to different levels of ambition, the graphic representation should clearly show all the classes of performance covered by the scheme and which is the class applying specifically to the good or service displaying the label. Currently it is possible finding in the market labels which are based on several levels of ambition (e.g. gold, silver, bronze) but with a very similar logo that applies to all of them. This leads to partial communication and potentially mislead consumers in their choices.</li> </ul>		



## Annex I, paragraph 1, point 2

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
<p>(2) the following points 4a and 4b are inserted:</p> <p>4a. Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.</p> <p>4b. Making an environmental claim about the entire product when it actually concerns only a certain aspect of the product.</p>	<p>(2) the following points 4a, 4b and 4ba are inserted:</p> <p>4a. Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.</p> <p>4b. Making an environmental claim about the entire product <u>that is not covered by a sustainability label</u> when it actually concerns only a certain aspect of the product;</p> <p>4ba. Claiming that a good or a service has a neutral or positive greenhouse gas emissions' impact on the environment.</p>	<p>(2) the following points 4a, 4b, 4c, 4d and 4e are inserted:</p> <p>4a. Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.</p> <p>4b. Making an environmental claim about the entire product <u>or the trader's business</u> when it actually concerns only a certain aspect of the product <u>or the trader's business</u>.</p> <p>4c. Claiming that a good, <u>business</u> or a service has a neutral, <u>reduced, compensated, positive (or similar) environmental impact based on offsetting</u>.</p> <p>4d. <u>Making an environmental claim with the effect of promoting fossil fuel products, fossil fuel transportation (save services of general economic interest) or highly polluting industries.</u></p> <p>4e. <u>Making an environmental claim on the content of the product based on an accounting method that allows for the free allocation of inputs to final outputs, without telling consumers that only a residual amount of the input in question was actually fed into the production process of the final product offered for sale.</u></p> <p>4f. <u>Making a specific environmental claim without using a relevant assessment method and communication rules both established in accordance with Union or national law.</u></p>



#### Justification:

- A white list of labels kept up to day at EU level, would provide better legal certainty for companies, better protection for consumers and enforcement by market surveillance authorities. This option was assessed in the Impact Assessment (as having a significant positive impact for consumer protection, as well as for business with respect to level playing field and reduced barriers to cross-border trade. It would allow better enforcement and compliance. Possibility of mutual recognition by national authorities can contribute to reduce costs. A precedent exists already through the Health and Nutrient Claims Regulation, with EFSA acting as the EU body overseeing food claims.
- Traders are increasingly using digital sustainability information tools (in light of e-commerce uptake), often providing general sustainability claims for products where only a particular dimension has been addressed (e.g. recycled content) and/or there is no third party verification.
- The addition of claims of carbon neutrality to the Annex needs to avoid prohibiting donations to tree planting projects. In order to sufficiently guarantee legal certainty and a high level of consumer and environmental protection, it needs to extend to: 1) non-carbon or climate offsetting; 2) business claims 'carbon neutral today' (which are not caught by the future environmental performance claim provisions), 3) variants of offsetting claims (CO2 compensation, etc.).
- The amendment proposed to point 4b in the Draft Report undermines the protection under the Directive because, according to the definition of 'sustainability label' in the proposal, any sustainability label could be used to evade the effect of this provision – including a label created for that purpose by traders.
- Environmental claims about the entire trader's business that actually concern only a certain aspect of the trader's business are a prevalent practice that misleads consumers. It will allow traders to continue to make environmental claims about a certain aspect of a business as long as it is made sufficiently clear to the consumer that the claim relates to a certain aspect and not to the whole business, for example by clarifying the size of the relevant aspect in the context of the overall business' environmental impacts.
- Accurate consumer information, a consistent application of EU consumer protection rules and active consumer participation in green transition is fatally undermined by all fossil fuel environmental claims, which increase or preserve demand for products that are harming health and climate and which must be phased out or limited for climate goals.<sup>1</sup> Existing law and jurisprudence largely does not permit environmental claims promoting fossil fuels. Prohibiting environmental advertising by fossil fuel and fossil fuel transport companies would enable informed purchasing decisions regarding products that are chiefly responsible for climate change and other environmental and health harms, significantly reduce compliance costs and legal uncertainty and is necessary to proportionately address the principal barrier to consumer participation in transition and sustainable consumption.
- Regarding claims on content: we are seeing mass balance assessment with free allocation being more and more accepted as a way to calculate (attributed) recycled or renewable content in products. Certification schemes themselves rely on this method. While business partners might have a good understanding how it works and that it is aggregating data rather than an accurate depiction of reality, this will never be understandable to consumers why a bottle claims to be 90% made of recycled plastic when in reality it could be containing little to no recycled plastic all. For us, this is an accounting trick which:
  - Misleads consumers,
  - Overstates the actual sustainability credentials of a product,

<sup>1</sup> [International Energy Agency Net Zero Roadmap](#), "Electric vehicles (EVs) go from around 5% of global car sales to more than 60% by 2030. [...] 2035 [...] No new ICE car sales"; "bans on new fossil fuel boilers need to start being introduced globally in 2025"; "Of the emissions reductions in transport in 2050, nearly 80% come from measures to reduce passenger aviation demand". Europe should move faster than these global pathway milestones, and consumer protection must play its part.



- Allows companies to make little to no change to their production process while claiming sustainability benefits.
- Similar to requiring that general environmental claims are based on recognised assessment methods of environmental performance, it is also necessary ensuring the claims that only refer to one specific environmental aspect or impact of products are based on common rules established in EU or national legislation to ensure a level playing field among traders and that consumers receive comparable information. It is critical to ensure that there is no legislative gap between the scope of the Green Claims Regulation and the UCPD. Indeed, a number of environmental aspects are not covered under Product Environmental Footprint method, especially reusability, recyclability, or biodiversity claims. Taking the example of reuse and refill claims, it is fairly easy to specify that a product can be reused or refilled. However, there is currently no appropriate standard or regulation to ensure that reuse and refill happen in a meaningful and sustainable way (think: home-refillable products, which still depend on single-use packages). Standards notably lack requirements for durability over multiple reuse cycles, or the need for reuse infrastructure. In addition, consumers often lack the necessary information to benefit from the reuse and refill schemes proposed by companies. Specific claims should therefore be banned unless there is a dedicated EU legislation to set requirements on how to make the claim.

## Annex I, paragraph 1, point 4

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
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 <b>the durability of a good</b> .	23e. Marketing a product with a feature which foreseeably limits its lifetime.
<b>Justification:</b> <ul style="list-style-type: none"> <li>• This point in the Annex could support other provisions suggested here which together can serve as a general prohibition of obsolescence. It is preferable to refer to the lifetime of the product as this is in practice a product of both the durability and the repairability.</li> <li>• We support the proposal in the ENVI draft report to change the language away from "Omitting to" as this simply serves as an information provision.</li> </ul>		

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
	23ga. Omitting to inform that the seller will refuse to perform a repair on a product that has previously been repaired in another professional network, beyond the legal guarantee.	23ga. Omitting to inform that the seller will refuse to perform a repair on a product that has previously been repaired <b>by an independent professional or non-professionals and users</b> . <del>in another professional network, beyond the legal guarantee.</del>
<b>Justification:</b> <ul style="list-style-type: none"> <li>• As this is an information provision this should cover also the period of conformity.</li> <li>• In many cases users may try to repair devices themselves as a first remedy before resorting to their guarantee even during the period of conformity, for example where a repair might cause the some nuisance (e.g. in the case of a washing machine or mobile phone) if they cannot use it for an extended period of time.</li> </ul>		



- This provision should also cover self-repair attempts and repairs by professionals, as both are legitimate. In any case, it will be difficult for vendors to distinguish between the two.

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
		23gb. Omitting to inform the consumer about a design or feature which will limit repair by end users or independent professionals.
<p><b>Justification:</b></p> <ul style="list-style-type: none"> <li>• Practices which limit the potential for non-affiliated repairers to repair a device are widespread on products today, such as requiring the use of specialist tools, not making spare parts available or not providing access to repair information or diagnostic tools necessary to repair a device. These are often deliberate practices from manufacturers to keep control of after sales markets and hamper competition.</li> <li>• Consumers may not become aware of these features until their product fails. Making consumers aware of these features at the point of sale will help steer consumers towards products which are easier to repair.</li> </ul>		

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
	<i>23ia. Engaging in practices that lead to shortening a product's lifespan and stimulate the purchase of a new product</i>	<i>23ia. Engaging in practices that <b>foreseeably</b> lead to shortening a product's lifespan <del>and stimulate the purchase of a new product</del></i>
<p><b>Justification:</b></p> <ul style="list-style-type: none"> <li>• Building on experience with the French general prohibition on obsolescence which has a similar formulation it is very difficult to prove that obsolescence has been included deliberately to sell more devices. Removing this from the provision will increase its enforceability.</li> </ul>		

## Amendments to the section of the proposed Directive aimed at reforming Directive 2011/83/EU (CRD)

### Article 2(2) - Addition to Art.5 of the CRD

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
'(ea) for all goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units		'(ea) for all goods, where the producer makes it available, information that the goods benefit from a <b>free</b> commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good



of time, where that guarantee covers the entire good and has a duration of more than two years;		and has a duration of more than two years;
<p><b>Justification:</b> This provision is only interesting for consumers if it offers them additional protection for their device beyond the legal guarantee free of charge. If the guarantee has a charge this is an additional service the producer/vendor offers and they will market it to the consumer anyway.</p>		

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
(eb) for energy-using goods, where the producer does not make available the information referred to in point (ea), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (e);		(eb) for <b>all</b> goods, where the producer does not make available the information referred to in point (ea), information that the producer has not provided information on the existence of a <b>free</b> commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (e);
<p><b>Justification:</b> It is unclear why this provision would only apply to energy using products only. There are many other product groups or sectors where the expected lifetime of a product is longer than two years and additional protection could be interesting for the consumer.</p>		

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
(ec) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ea), the information on the updates shall be provided if those updates are		(ec) for goods with digital elements, <b>where the producer makes such information available</b> , the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ea), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;



<p>supplied for a longer period than the commercial guarantee of durability;</p> <p>(ed) for digital content and digital services, where their provider is different from the trader and makes such information available, the minimum period in units of time during which the provider provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time;'</p>		<p>(ed) for digital content and digital services, <b>where their provider is different from the trader and makes such information available</b>, the minimum period in units of time during which the provider provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time;'</p>
<p><b>Justification:</b> The proposed points will have limited impact if producers are not obliged to make information on software updates available. We strongly encourages the co-legislator to also make access to this type information mandatory for producers.</p>		

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
<p>(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.'</p>		<p>j) when point (i) is not applicable, information made available by the producer about the availability of <b>the spare parts necessary for the repair of the device</b>, including the procedure of ordering them, and about the availability of a user and repair manual.'</p>
<p><b>Justification:</b> Without clarifying which spare parts the provision is referring to it is foreseeable that manufacturers could simply make a limited number of or irrelevant spare parts available to market their product as repairable when this in not the case. Referring to the parts necessary to repair the device helps to limit this risk. An alternative to this would be to provide a definition of spare parts in Article 2.</p>		

## Article 2(3) - Addition to Art.6 of the CRD

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
<p>'(ma) for all types of goods, where the producer makes it available, information that the goods benefit from a</p>		<p>'(ma) for all types of goods, where the producer makes it available, information that the goods benefit from a <b>free</b> commercial guarantee of durability and its duration in</p>





commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good and has a duration of more than two years;		units of time, where that guarantee covers the entire good and has a duration of more than two years;
<p><b>Justification:</b> This provision is only interesting for consumers if it offers them additional protection for their device beyond the legal guarantee free of charge. If the guarantee has a charge this is an additional service the producer/vendor offers and they will market it to the consumer anyway.</p>		

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
(mb) for energy-using goods, where the producer does not make available information referred to in point (ma), information that the producer has not provided information on the existence of a commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (m);		(mb) for <b>all</b> goods, where the producer does not make available information referred to in point (ma), information that the producer has not provided information on the existence of a free commercial guarantee of durability of more than two years. This information shall be at least as prominent as any other information about the existence and the conditions of after-sales services and commercial guarantees provided in accordance with point (m);
<p><b>Justification:</b> It is unclear why this provision would only apply to energy using products. There are many other product groups or sectors where the expected lifetime of a product is longer than two years and additional protection could be interesting for the consumer.</p>		

COM proposal	ENVI draft report	ClientEarth, ECOSm CMW and EEB's proposal
(mc) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a		(mc) for goods with digital elements, <del>where the producer makes such information available</del> , the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the



<p>period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ma), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;</p>		<p>existence of a commercial guarantee of durability is provided in accordance with point (ma), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;</p>
<p>(md) for digital content and digital services, where their provider is different from the trader and makes such information available, the minimum period in units of time during which the provider provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time;'</p>		<p>(md) for digital content and digital services, where their provider is different from the trader <b>and makes such information available</b>, the minimum period in units of time during which the provider provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time;'</p>
		<p><u>'(me) for all goods, digital content and digital services referred to in previous points (ma), (mb), (mc) and (md), the consumer should have the opportunity to proactively confirm that it is aware of the availability, or absence thereof, of commercial guarantees and software updates through an online form before the finalisation of the purchase'</u>.</p>
<p><b>Justification:</b></p> <ul style="list-style-type: none"> <li>• This will have limited impact if producers are not obliged to make information on software updates available. We strongly encourages the co-legislator to also make access to this type information mandatory for producers</li> <li>• It is important to ensure that consumers are fully aware of the available information on commercial guarantees and software updates</li> </ul>		

## Article 2(3) – Addition to Art.8(2) of the CRD

COM proposal	ENVI draft report	ClientEarth, ECOS, CMW and EEB's proposal
If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall		If a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer



<p>make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in Article 6(1), points (a), l, (ma), (mb), (o) and (p).</p>		<p>aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in Article 6(1), points (a), (e), (ma), (mb), (mc), (md), (o) and (p).</p>
<p><b>Justification:</b></p> <ul style="list-style-type: none"> <li>Traders should also make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information on software updates provided for in Article 6(1), points (mc) and (md). There is no justification for not making this information available in the context of distance contracts to be concluded by electronic means whilst information on commercial guarantees will be made available.</li> </ul>		

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