



**Independent
Retail Europe**

**CONSUMER POLICY – STRENGTHENING THE ROLE OF
CONSUMERS IN THE GREEN TRANSITION
- COMMENTS OF INDEPENDENT RETAIL EUROPE -**

24 MAY 2022



EXECUTIVE SUMMARY

Independent Retail Europe welcomes the proposal for a Directive empowering consumers for the green transition through better protection against unfair practices and better information ([COM\(2022\)143 final](#)). We fully support the proposed obligation for a certification scheme for any environmental claim and the provisions on the sustainability information tool. The trader or retailer can however not provide information to consumers about products, if the product manufacturer does not communicate those beforehand. Retailers are themselves misled by product manufacturers in case where a product bears inaccurate environmental claims. We would therefore appreciate a provision explicitly asserting the retailers' right to obtain full compensation from product manufacturers in cases where consumers have been subject to an unfair commercial practice directly resulting from inaccurate information on environmental claims provided by product manufacturers.

Main issues covered by this position:

- 1) Proposed amendments to the Unfair Commercial Practices Directive 2005/29/EC
 - a. Retailers are dependent on the information provided by the manufacturer
 - i. Reliable Environmental Claims and a useful Sustainability Information Tool
 - ii. Misleading Practices (Annex I)
 - b. Need to better define pictorial and graphic claims, especially in the context of generic claims
 - c. Customer advice is a retailer's main service i.e. Retailers always need to have the right to present their customers new product designs.
 - d. Need for sufficiently long transition periods
- 2) Proposed amendment to the Consumer Rights Directive 2011/83/EU
 - a. Retailers are in a difficult position between consumers and producers, therefore the producer should always be directly liable to the consumer in the case of a repair during the legal guarantee.

COMMENTS OF INDEPENDENT RETAIL EUROPE ON CONSUMER POLICY – STRENGTHENING THE ROLE OF CONSUMERS IN THE GREEN TRANSITION

1) Amendments to the Unfair Commercial Practices Directive 2005/29/EC

We welcome the proposed revision of the Unfair Commercial Practices Directive (UCPD) and are satisfied that no new labels are being proposed. Indeed, we do not see a need for new labels, as this would only be confusing for consumers and retailers.

a) Retailers are dependent on the information provided by the manufacturer

To provide accurate information to consumers, retailers are fully dependent on the accuracy of the information provided to them by the product manufacturers. Therefore, if a product sold by a retailer

to a consumer bears an inaccurate environmental claim, the retailer has actually also been misled by the product manufacturer.

In such a case, consumers are allowed to raise the retailers' liability of the unfair commercial practice, even if the retailer was actually misled by the product manufacturer. The Commission proposal should acknowledge this specificity and assert the retailers' right to obtain compensation from product manufacturers in cases where consumers have been subject to an inaccurate environmental claim (and therefore to an unfair practice) from a retailer directly resulting from an inaccurate information provided by the manufacturer to the retailer concerning the product at stake.

i) Reliable environmental claims and a useful sustainability information Tool

We take note of the proposal that environmental claims should be based on "clear, objective and verifiable commitments and targets" supported by an independent monitoring system and that those labels should be based on a certification scheme (or established by public authorities). Such an approach should put a halt to the proliferation of dodgy labels and claims.

However, it raises a practical issue for retailers: retailers have no control whatsoever over the claims that product manufacturers insert on the packaging of their products. Retailers are therefore not able to verify by themselves if a claim put by a manufacturer on a product will be compliant with these new legal provisions under the UCPD. Consumers, however, will be able to hold retailers liable and obtain compensation if the environmental claim on the product is inaccurate.

Since retailers are fully dependent on the accuracy of the information provided to them by product manufacturers, a new specific provision should assert the retailers' right to obtain compensation from product manufacturers in cases where they need to compensate consumers who were misled by an inaccurate environmental claim directly resulting from inaccurate information provided by the product manufacturer.

In Article 7 UCPD, the proposal includes an additional item in the list of information that is considered as material in relation to commercial communication: *Information about the method of comparison* when using a sustainability information tool. Indicating information about a) the method of comparison, b) the products that are the object of comparison and c) the suppliers of those products, as well as d) the measures in place to keep that information up to date, seems feasible for traders. Traders are able to provide the requested information for their comparison tools. However, we would like to note that comparing sustainability scores that are based on different methodologies would be of questionable benefit for consumers. In the long-term, there is therefore a need for a standardized methodology to facilitate the development of reliable comparison tools.

ii) Misleading practices (Annex I)

We welcome the clarifications added to Annex I of the UCPD. However, we would like to stress that manufacturers must be obliged to provide the listed information, since they have the best knowledge of the product. If the manufacturer does not provide such information, the retailer will not be able to

provide it to consumers. In fulfilling their information obligation towards consumers, retailers entirely depend on the information provided by manufacturers. The proposal amending the UCPD should therefore contain a provision acknowledging the retailers/distributors' right to seek and obtain full compensation from manufacturers in cases where they need to compensate consumers who were misled by an inaccurate environmental claim directly resulting from inaccurate information provided by the product manufacturer. This applies to all misleading "omitting" commercial practices listed in Annex I.

Regarding early obsolescence (new point 23 e) Annex I), for example, we would like to emphasize that a retailer promoting a product on behalf of the manufacturer has no means of knowing whether the manufacturer has introduced a feature that limits durability. If the practice described occurs, retailers themselves have been misled by the manufacturer. Retailers very much depend on the information that they receive from manufacturers. The proposal amending the UCPD should therefore contain a provision acknowledging the retailers/distributors' rights to seek and obtain full compensation from manufacturers in cases where they need to compensate consumers subject to such unfair commercial practice as a direct result from inaccurate information provided by the product manufacturer.

The same applies for software updates that will negatively impact the use of goods or when claiming that a good has a certain durability in terms of usage time or intensity when it does not (new 23 d) and f) Annex I). The retailer must be able to rely on the information provided by the product manufacturer when advertising his products. The proposal amending the UCPD should therefore contain a provision acknowledging the retailers/distributors' rights to seek and obtain full compensation from manufacturers in cases where they need to compensate consumers subject to such unfair commercial practice as a direct result from inaccurate information provided by the product manufacturer.

b) Need to better define pictorial and graphic claims, especially in the context of generic claims

The proposed revision of the UCPD defines an environmental claim as a "*text, pictorial, graphic or symbolic representation, implying a positive impact on the environment*" (Art. 1 (1) (o) of the proposal). The definition is still too broad since pictorial and graphic elements are not defined further. For instance, using the green color may already be considered as falling under the scope of this definition if interpreted widely. Hence, there is a need for a provision clarifying what is and/or what is not covered by pictorial and graphic elements.

c) Customer advice is a retailer's main service

Furthermore, Annex I of the UCPD introduces the following misleading practice: "*inducing the consumer into replacing the consumables of a good earlier than for technical reasons is necessary*" (new point 23 h). This new provision will be difficult to implement in practice since a consumer might seek advice (from a retailer) on some features of a new product design. Retailers need to always be able to present their customers new product designs and provide them with all necessary information. It should be clarified that this new point 23-h does not prevent retailers from offering new products to consumers.

d) Need for sufficiently long transition periods

Any changes to labelling requirements, including environmental claims, need sufficiently long transition periods.

A large number of labels can be expected to flourish and their certification can be expected to be controlled, if not approved, by the public authorities. This will require the national legislator of each Member State to define the scope of the label in addition to updating the list of misleading commercial practices. After this legislative phase, probably followed by implementing decrees, there will be a certification phase for candidate labels. It is only after this certification phase that professional traders will be able to identify compliant labels and thus market the products. The transitional period of 24 months therefore appears to be rather short and is indeed a minimum period necessary for the application of this new regulation.

Moreover, retailers, especially SME retailers, need to sell out the old stock that is still subject to the existing labelling requirements. A short transition period, that will end before the old stock is entirely sold out, will lead to economic losses and the destruction of non-compliant products, putting the environmental objective of the proposal at risk. We therefore recommend the co-legislators to keep at least the 24 months period foreseen in article 4-1 before starting to apply the provisions of the Directive.

2) Amendments to the Consumer Rights Directive 2011/83/EU

a) Retailers are in a difficult position between consumers and producers

Regarding the proposed revision of the Consumer Rights Directive 2011/83/EU, we highly appreciate the definition of “*commercial guarantee of durability*” clearly stating that it is the producer that is liable to the consumer for all possible repairs and replacements. In practice, our members have reported many situations where retailers are in an impossible position between the consumers’ right to a repair/replacement and the manufacturer’s unwillingness to provide for such a repair/replacement. Retailers should not be responsible or carry the costs for repairing or replacing products. Therefore, the producer should either be directly liable to the consumer in the case of a repair during the legal guarantee or there needs to be a compensation mechanism between retailers and manufacturers, to ensure that retailers do not carry the costs for a defect that is not the retailer’s fault.

Among the additions to Article 5 and 6 on the information requirements for contracts, we appreciate the possibility that the trader may also make available the information that the producer has not made available on the existence of a commercial guarantee for durability. However, we believe that this should not apply only for energy-using goods but for all goods. We also would appreciate a more general obligation on producers to indicate the expected lifespan of their products.

Original version: English – Brussels, 24.05.2022

*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons.

Find more information on [our website](#), on [Twitter](#), and on [LinkedIn](#)