

Advice

Empowering the Consumer for the Green Transition

Brussels, 6 October 2022

1. Introduction

In the context of the European Green Deal, under the Circular Economy Action Plan¹, the European Commission (DG JUST) launched a consumer policy initiative to strengthen the role of consumers in the green transition. The main two problems identified were lack of reliable and relevant information at the point of sale and certain commercial practices leading to consumer mistrust and confusion. The first is divided into durability information and repair information, while the second is divided into early obsolescence and greenwashing.

On 30 March 2022, the European Commission adopted the proposal for a directive empowering consumer for the green transition through better protection against unfair practices and better information². The proposal foresees targeted amendments to the Consumer Rights Directive³ and to the Unfair Commercial Practices Directive⁴, plus it ensures a horizontal approach versus other more detailed product specific or technical rules.

The targeted amendments to the Unfair Commercial Practices Directive in relation to greenwashing, which sets minimum requirements for sustainability logos and labels, has particular relevance for the market of fishery and aquaculture products. Under the Work

¹ [Communication from the Commission - A new Circular Economy Action Plan](#)

² https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Consumer-policy-strengthening-the-role-of-consumers-in-the-green-transition_en

³ [Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights](#)

⁴ [Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market](#)

Programme for Year 6 (2021-2022), the MAC committed to produce advice on this topic, once new legislative developments took place. In previous advice⁵, the MAC expressed support for the exploration of the potential usefulness of minimum requirements for voluntary sustainability claims and certification schemes, be it through EU legislation or through European or international standardisation.

The Market Advisory Council (MAC) welcomes the initiative on Empowering the Consumer for the Green Transition, particularly the targeted amendments to the Unfair Commercial Practices Directive that aim to fight greenwashing.

2. New definitions in Article 2 (“definitions”)

The legislative proposal introduces new definitions under Article 2 (“definitions”) of the Unfair Commercial Practices Directive, which are relevant for the market of fisheries and aquaculture products (i.e., “environmental claim”, “generic environmental claim”, “sustainability label”, “certification scheme”, “recognised excellent environmental performance”. The MAC agrees with the addition of definitions and generally agrees with the proposed ones. Nevertheless, in relation to the most relevant definitions, several issues must be highlighted.

- *‘Environmental claim’ 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.*

⁵ Advice on voluntary sustainability claims on fishery and aquaculture products, including ecolabels and certification schemes was adopted on 15 June 2021: <https://marketac.eu/voluntary-sustainability-claims/>.

- Analogously to health claims⁶, “environmental claim” should be defined as a product characteristic. As an example, the way a trader acts translates into a final characteristic of the marketed product, but the proposed definition only refers to product impact, not the impact of the trader, which could be different among different products commercialised by the same trader. This approach would make it possible to define the positive impact of the product on the environment, reduce the impact of equivalent products, and to establish a methodology to demonstrate improvement of the environmental impact over time.
- In the implementation of controls, it is important that authorities are particularly careful about the interpretation of the concepts of “pictorial”, “brand names”, “company names” and “product names”.
- *‘Generic environmental claim’ means any explicit environmental claim, not contained in a sustainability label, where the specification of the claim is not provided in clear and prominent terms on the same medium.*
 - The proposed definition refers to “any explicit environmental claim, not contained in a sustainability label”. The legislative proposal defines “explicit environmental claims” as an “environmental claim that is in textual form or contained in a sustainability label”. The intention of the definition of “generic environmental claim” seems to be broader than claims in textual form. Therefore, it would be useful to clarify if there is no contraction between the two proposed definitions, plus to clarify the meaning of “same medium”. The deletion of the first comma in the definition of “generic environmental claim” would reduce misunderstandings.

⁶ According to Article 2(1) of Regulation (EC) No 1924/2006 on nutrition and health claims made on foods, “claim” means any message or representation, which is not mandatory under Community or national legislation, including pictorial, graphic or symbolic representation, in any form, which states, suggests or implies that a food has particular characteristics.

- *‘Sustainability label’ means any voluntary trust mark, quality mark or equivalent, either public or private, that aims 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.*
 - The phrasing of the proposed definition is rather complex, which might hinder its interpretation and implementation.
- *‘Certification scheme’ means a third-party verification scheme that is open under transparent, fair and non-discriminatory terms to all 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.*
 - The reference to “able to” should be deleted, since it would be difficult to decide what traders would be able to comply. The focus should be on an open scheme to all traders. Traders will either comply or not comply to receive a certification.
 - To support reliable and consistent interpretation and application, besides objective monitoring of compliance, the awarding of the certificate should also be objective and carried out by an independent party. It would be helpful to include criteria to define “minimum transparency and credibility conditions”⁷, for example: 1) transparent communication of the scheme’s sustainability objectives, 2) meaningful involvement of stakeholders in establishing the requirements that support these sustainability objectives, 3) effective evaluation of how the

⁷ In this work, the ISEAL Credibility Principles and the ISEAL Codes of Good Practice could be useful, since these offer a framework for defining such scheme responsibilities. These are widely recognised international references that complement generic standards on audit quality by considering what good practice for schemes looks like in the specific context of sustainability: <https://www.isealalliance.org/get-involved/resources>. Furthermore, these are an example of a good framework finding a balance between including innovative approaches and a minimum transparency and credibility criteria.

implementation of the requirements delivers performance, 4) effective oversight of certification and control of claims, and 5) making evidence that supports any claims publicly available. The inclusion of criteria for key scheme responsibilities would also be useful for interpretation.

- Besides parties independent from both the owner and the trader, the monitoring of compliance should also be open to any third-party/body which demonstrates competence in auditing the scheme. Benchmarks should be envisaged⁸.
- In relation to monitoring of compliance, if it is based on international, Union or national standards and procedures, it is important to clarify which types of reference standards and procedures are included. There should be a balance between ensuring good practice and fostering innovation. For instance, new technologies and techniques (e.g., collection of information through remote sensing and/or worker voice tools) have the potential to increase the efficiency and reliability of verification/monitoring of compliance as compared to approached relying solely on traditional in-person audits.
- In the case of sustainability standards, minimum transparency and credibility conditions extend beyond the scope of certification activities. Sustainability integrates environmental, social and economic consideration and it is not a fixed state. Sustainability standards and similar market-based approaches aim to drive change over time. Credible claims from such schemes should be based on a demonstrated ability to deliver improvements in social and environmental performance over time. The broader role of the scheme should be considered.

⁸ In this work, it would be useful to consider the requirements for certification bodies proposed by GSSI, such as Global Benchmark Tool: <https://www.ourgssi.org/benchmarking/>, and by ASI: <https://www.asi-assurance.org/s/>.

3. Amendment to point b) of paragraph 1 of Article 6 (“misleading actions”)

The MAC generally supports the amendment to point b) of paragraph 1 of Article 6 of the Unfair Commercial Practices Directive, which expands the list of main product characteristics about which a trader is not to mislead a consumer to include environmental or social impact.

- *‘(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, environmental or social impact, accessories, durability, reparability, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product.’*

- Taking into account that the legislation applicable to the fishing sector is generally defined at EU-level, the difficulties for businesses to go beyond EU legislation, and that it is difficult for individual businesses to go beyond as it is a sum of actors that defines the state of each final product, it would be useful to include a special mention regarding fisheries.

“Environmental or social impact” must be defined to evaluate whether a commercial practice contains false information in relation to it. Definitions of “social impact” and “information on social sustainability” should be provided in Article 2 of the Unfair Commercial Practices Directive.

4. Amendment to paragraph 2 of Article 6 (“misleading actions”)

The MAC generally supports the amendment to paragraph 2 of Article 6 of the Unfair Commercial Practices Directive, which would mean that the two practices below can be considered misleading, after a case-by-case assessment.

- *Making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and without an independent monitoring system.*
 - The proposed definition is rather vague, particularly when referring to a “objective and verifiable commitments”. A redrafting could facilitate the interpretation and implementation of the definition, particularly if it is supposed to mean “making an environmental claim related to future environmental performance which cannot be objectively verified by a qualified and independent verification body”.
- *Advertising benefits for consumers that are considered as common practice in the relevant market.*
 - In the context of the market of fisheries and aquaculture products, it is important to clarify how it would apply to fishing products, particularly whether compliance with the Common Fisheries Policy (CFP) Regulation would be considered as “common practice”, meaning that advertising a fish product as being fished under the CFP would be considered as a misleading practice.

5. Amendment to Article 7 (“misleading omissions”)

The MAC generally supports the amendment to Article 7 of the Unfair Commercial Practices Directive, which would mean that the practice below can be considered misleading, after a case-by-case assessment.

- *Where a trader provides a service which compares products, including through a sustainability information tool, information about 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, shall be regarded as material.*

- In the market of fisheries and aquaculture products, services which compare products are particularly relevant, especially considering the ongoing development of front-of-pack nutrition labelling schemes.
- Demonstrating that a “product comparison service” is reliable implies not only informing about the method used for comparison, but also indicating and describing the attributes to be compared and the measurable parametrisation of those attributes. In cases where the comparison of attributes is semi-quantitative or qualitative, a complete description of the methodology must be required, and it must be supported by widely accepted technical-scientific literature.

6. New items in Annex I (“blacklist of misleading commercial practices”)

The MAC generally agrees with the proposed new items in Annex I (“blacklist of misleading commercial practices”) of the Unfair Commercial Practices Directive.

- *Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.*
 - In the case of a sustainability label not based on third-party certification, it would be important to clarify how the reliability of the certification could be demonstrated.
- *Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.*
 - The comments made above concerning the definition of “generic environmental claim” and of “sustainability label” should be taken into account.
- *Making an environmental claim about the entire product when it actually concerns only a certain aspect of the product.*

- A definition of “a certain aspect” would be useful, particularly to clarify if it refers to the product characteristics, raw materials, ingredients, or packaging.
- The addition of this new misleading commercial practice is welcomed, as long as “a certain aspect of the product” is not sufficient to generate an environmental claim for the product as a whole.
- *Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader’s offer.*
 - Fishing products, as other food products, participate in a global market. Under the objectives of the CFP Regulation, the CFP shall aim to ensure that exploitation of living marine biological resources restores and maintains populations of harvested species above levels which can produce the maximum sustainable yield. Nevertheless, trade legislation does not forbid imports of fishing products that are not managed at FMSY. EU fishing businesses must also comply with social obligations that are specific to EU legislation. Therefore, it is necessary to clarify whether the advertising of requirements, such as compliance with MSY levels, imposed by EU law to EU operators, but not to other fishing actors, would be considering a misleading practice.

7. Recommendations

The amendments to the Unfair Commercial Practices Directive and to the Consumer Rights Directive are extremely important, since these will have a direct impact on how companies’ sustainability efforts shall be presented to consumers in the future, and how public authorities may view these efforts as inadequate, misleading, or deceiving. Therefore, in the context of the legislative proposal adopted under the Empowering the Consumer for the Green Transition initiative, the MAC believes that the European Commission and the Member States, in the interinstitutional negotiations, should:

- a) Recognise the importance of the initiative, particularly the targeted amendments to the Unfair Commercial Practices Directive that aim to fight greenwashing, for the EU market of fisheries and aquaculture products, including through the close involvement of the services responsible for fisheries and aquaculture matters;
- b) Ensure coherence with other policy initiatives affecting the communication on sustainability information to consumers, such as the revision of the marketing standards framework for fishery and aquaculture products⁹, the revisions of rules on food information to consumers¹⁰, the sustainable food system framework¹¹, the legislative proposal on substantiating green claims¹², the Product Environmental Footprint Category Rules for unprocessed Marine Fish products¹³, the EU taxonomy and technical screening criteria, and the sustainable corporate governance framework;
- c) Proceed with the additions and amendments to the Unfair Commercial Practice Directive described in sections 2 to 6 of the present advice, while integrating the suggestions made;
- d) Ensure that the definitions proposed are clear, easy to read, understandable, and, when appropriate, quantifiable/measurable, in order to reduce legal uncertainty for all actors, including operators, Member States and control authorities, in the context of monitoring, control and compliance;

⁹ On several occasions, the MAC adopted advice concerning the ongoing revision of the marketing standards framework, which is expected to include the incorporation of sustainability aspects in the framework. The latest one was on 15 October 2021: <https://marketac.eu/marketing-standards-sustainability/>.

¹⁰ Advice on the Roadmap of the revision adopted on 23 February 2021: <https://marketac.eu/revision-of-foodinformation-to-consumers-regulation/>.

¹¹ Advice adopted on 15 February 2022: <https://marketac.eu/sustainable-food-system-framework-initiative/>.

¹² Advice on the potential legislative proposal on substantiating green claims adopted on 10 December 2020: <https://marketac.eu/substantiating-green-claims/>

¹³ Advice on ongoing protect adopted on 24 May 2022: <https://marketac.eu/recommendation-of-mac-concerning-product-environmental-category-rules-pefcr-for-marine-fish-for-human-consumption/>

- e) Taking into account that EU fishing operators must comply with the CFP, while also participating in a global market, clarify whether the advertising of compliance with CFP rules in EU produced products would be considered a misleading practice¹⁴;
- f) In relation to sustainability labels, including when certified by a third-party, ensure that that the label is clear, but that it cannot be used to indicate that similar products not certified by that label are not sustainable¹⁵.

¹⁴ It would be important to clarify whether advertising of compliance with CFP rules would be considered a misleading practice or not. As fishing is a common policy of the EU, the main rules are set at EU-level. Where the Commission proposes increasing the environmental requirements for the EU fishing sector, it should also allow advertising that highlights those ambitious requirements when they are met. The EU fishing industry is concerned that meeting higher environmental standards will increase EU production costs. Consumers should be able to be informed on the EU environmental standards, so that they can better understand potential differences compared to third countries' products, and to other foodstuffs, including differences of prices.

¹⁵ For example, when selling products, the suggestion that only products using that particular label are sustainable.