

The new EU Directive on Empowering Consumers for the Green Transition

12 March 2024



The new **EU Directive on Empowering Consumers for the Green Transition** aims to promote sustainable consumption by (i) tackling unfair commercial business practices such as greenwashing that prevent consumers from making sustainable consumption choices and (ii) improving consumer information to enable sustainable transactional decisions. Member States need to transpose the directive into national law by 27 March 2026, with further 6 months to apply the new rules. Companies should familiarise themselves with the changes at an early stage and consider the implications for their business practices.

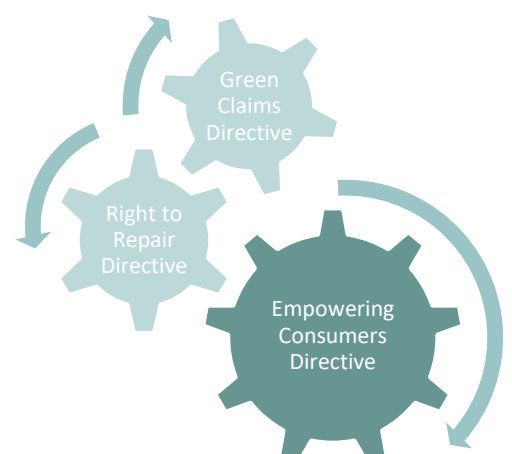
Contents

What's the background to the Empowering Consumers Directive and how does it interact with the EU's other circular economy initiatives?	1
Which business practices will be prohibited under the amended UCPD?	2
What are the consequences of the changes to the CRD?	4
Which companies are affected by the new rules?	4
What can be expected after the implementation?	4
Which steps should companies start taking now?	5
Key contacts	6

What's the background to the Empowering Consumers Directive and how does it interact with the EU's other circular economy initiatives?

The Directive on Empowering Consumers for the Green Transition (**Empowering Consumers Directive**) forms part of the EU Commission's **Circular Economy Action Plan** and is complemented by other circular economy initiatives:

- > This applies, in particular, to the planned Directive on substantiation and communication of explicit environmental claims (**Green Claims Directive**) as far as greenwashing is concerned. While the Empowering Consumers Directive tackles greenwashing by way of amendments to the **Unfair Commercial Practices Directive (UCPD)**, the Green Claims Directive is intended to provide more specific rules to regulate how explicit environmental claims must be substantiated and communicated and to control the proliferation of environmental labels (read more in our [blog post](#)). The Green Claims Directive is still at a much earlier stage in the negotiation process, and it is unlikely that the EU institutions will reach a final agreement before the EU elections. Consequently, they will have to pick up discussions again towards the end of the year.
- > With regard to consumer information, the Empowering Consumers Directive is linked to the Directive on common rules promoting the repair of goods (**Right to Repair Directive**) which is in the process of being formally adopted (read more in our [blog post](#)). While the Empowering Consumers Directive looks at pre-contractual information on the durability and reparability of products by way of amendments to the **Consumer Rights Directive (CRD)** amongst other things, the Right to Repair Directive focuses on the period after goods have been sold to consumers.



Which business practices will be prohibited under the amended UCPD?

The UCPD serves to prevent unfair commercial practices and to thereby protect consumers' interests as well as competitors' interests. It addresses business-to-consumer commercial practices that are directly connected with the promotion, sale or supply of a product to consumers (the UCPD expressly does not address commercial practices carried out primarily for other purposes, for example commercial communication aimed at investors, such as annual reports and corporate promotional literature). However, some EU Member States, including Germany, Austria, France and Sweden, have transposed the provisions in a way that they apply to business-to-business commercial practices as well. Whilst green claims were regulated under the UCPD prior to the Empowering Consumers Directive, the new legislation amends the UCPD to expressly tackle greenwashing and other unfair commercial practices that potentially hamper sustainability efforts.

Potentially misleading business practices

The Empowering Consumers Directive introduces changes to Articles 6 and 7 UCPD, which relate to practices that must be assessed on a case-by-case basis to be considered misleading and prohibited:

- > To enhance transparency, **environmental and social characteristics as well as circularity aspects** are added to the list of main features of a product about which consumers must not be misled. According to the recitals of the Empowering Consumers Directive, these characteristics shall be understood in a broad sense, also encompassing the impact and performance of a product, which means that companies should take great care when determining which aspects they want to cover in marketing materials.
- > The Empowering Consumers Directive specifically addresses certain **practices that are potentially misleading**:
 - > Environmental claims (that is, 'commercial communications' that are not mandatory under EU or national law, about the environmental impact of a product, product category, brand or trader) relating to future environmental performance are considered misleading if they are not substantiated with a publicly accessible, comprehensive and practical implementation plan verified by third-party experts, with their findings also made accessible to the public.
 - > Advertising benefits to consumers that are irrelevant and not directly related to any feature of that specific product or business may also be considered misleading in so far as consumers might believe that these products are more beneficial to consumers, the environment or society than others of the same type.
 - > To combat misleading claims, comparisons of products based on their environmental or social characteristics or circularity aspects (e.g., durability, reparability or recyclability) must be accompanied by information about the method of comparison, the products which are the object of comparison, the suppliers of those products and the measures to keep information up to date.

Although none of these practices are considered misleading in and of themselves, as it will depend on the facts in each case, the new provisions will likely have a considerable practical impact as they require companies to invest significant additional effort if they wish to maintain these commercial practices in respect of their products (e.g., with regard to the substantiation of claims related to future environmental performance or comparative claims).

New blacklisted business practices

Importantly, the Empowering Consumers Directive also adds practices to the blacklist in Annex I of the UCPD which contains misleading practices that are prohibited in all cases:

- > The Empowering Consumers Directive bans the use of **generic environmental claims** unless they are properly substantiated by demonstrating recognised excellent environmental performance in accordance with EU law, thereby putting an end to discussions about such claims at national level (see, e.g., our [blog post](#) on case law in Germany). According to the recitals of the Empowering Consumers Directive, this includes commonly used claims such as 'environmentally friendly', 'eco-friendly', 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'energy efficient', 'biodegradable' or 'biobased'.

Companies should carefully draft green advertising statements and make sure that any environmental claims can be adequately substantiated.

It is worth noting, however, that the Empowering Consumers Directive does not ban specific environmental claims (e.g., '100 % of energy used to produce this packaging comes from renewable sources' instead of 'climate-friendly packaging'), which means that companies should carefully draft green advertising statements that are specific, can be adequately substantiated and which are not likely to be misleading.

- > The Empowering Consumers Directive prohibits **environmental claims about the entire product or the trader's entire business** when the claim actually concerns a certain aspect of the product or a specific, unrepresentative activity of the trader's business only. However, this does not prevent a trader from making environmental claims about its entire product or business, provided that those claims are not misleading.
- > It will be prohibited to claim that **a product** has a neutral, reduced or positive impact on the environment if the claim is based on **offsetting of greenhouse gas emissions**. This ban relates to claims like 'climate neutral', 'CO2 neutral certified', 'carbon positive', 'climate net zero', 'climate compensated', 'reduced climate impact' and 'limited CO2 footprint' that are often used in practice.

Such claims should only be allowed when they are based on the actual lifecycle impact of the product in question, and not based on the offsetting of greenhouse gas emissions outside the product's value chain, as the former and the latter are not equivalent. Companies are also still allowed to use their investments in environmental initiatives for marketing purposes, as long as consumers are not made believe that such claims relate to the impact of a specific product or given the false impression that the consumption of that product does not have an environmental impact.

Companies are still allowed to use their investments in environmental initiatives for marketing purposes.

- > Voluntary trust marks, quality marks or similar marks with reference to environmental or social characteristics are currently often used to promote a product, a process or company. To ensure their transparency and credibility, such **sustainability labels** are only allowed if they are (i) based on official certification schemes, or (ii) established by public authorities. While it is relatively straightforward to refer to sustainability labels that have been established by public authorities, care must be taken when referring to certification schemes: Companies need to ensure that they meet the minimum requirements regarding transparency and credibility as laid out in the amended UCPD. In this respect, the Empowering Consumers Directive *inter alia* requires on-going monitoring of compliance with the scheme requirements and procedures for dealing with non-compliance.
- > It is prohibited to present **requirements that are imposed by law on all products** within the relevant product category as an (alleged) distinctive feature of the offer.
- > Finally, the Empowering Consumers Directive targets several practices concerning **early obsolescence** since they can have a negative impact on the environment through increased waste, energy and material consumption. Most importantly, the amended blacklist prohibits false durability claims, prompts to replace consumables earlier than necessary, requiring the purchase of spare parts solely from the original manufacturer, or withholding information on the effect of third-party spare parts on the functionality of the good, as well as presenting goods as repairable when they are not. Further restrictions relate to software updates, including security and functionality updates, as these are deemed to be often associated with early obsolescence.

Linklaters

What are the consequences of the changes to the CRD?

The Empowering Consumers Directive also amends the CRD to enable consumers to take environmentally friendly consumption decisions:

- > Traders will be obliged to provide more and reliable information on the **legal warranty** under the **Sale of Goods Directive** as well as on any **commercial guarantees** of durability provided by producers on a voluntary basis. Importantly, the Empowering Consumers Directive introduces a new harmonised notice that must be used for information on the legal warranty and a harmonised label that must be used for information on commercial guarantees. The details on the design and content of the harmonised notice and the harmonised label are still to be determined by the EU Commission by way of implementing acts by 27 September 2025, but it is already evident that compliance with the new rules will require changes to current business practices.
- > Further new pre-contractual information requirements relate to the **reparability of products, spare parts, user manuals, and software updates**.
- > Moreover, new requirements apply for **off-premises contracts** in relation to information about for payment, delivery, and performance.

All obligations under the amended CRD relate only to information that must be provided to consumers. Nevertheless, these information requirements will also impose additional burdens on companies that must be shouldered. In this context, it is also worth noting that the Right to Repair Directive will bring further obligations with regard to the legal warranty and reparability of goods (read more in our [blog post](#)).

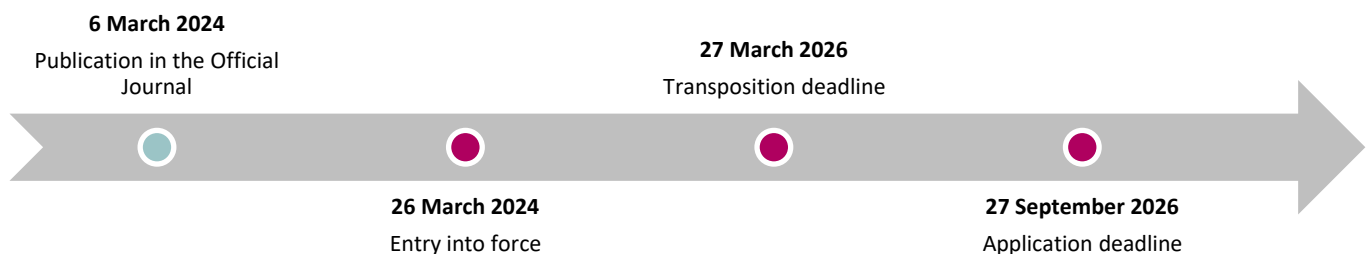
Which companies are affected by the new rules?

The new provisions will not only affect the manufacturing/production industry. While some rules will only be relevant for companies that manufacture and/or sell physical goods (e.g., the ones relating to practices concerning early obsolescence, or the amendments to the CRD), others have a broader scope of application. In particular, the requirements for environmental claims apply to “any message ... in any form ... in the context of a commercial communication”, i.e. they may, for instance, also cover marketing or similar statements of financial institutions.

The new provisions will not only affect companies active in the manufacture or sale of physical goods but will partially also apply to financial institutions.

What can be expected after the implementation?

Now that the Empowering Consumers Directive has been formally adopted and published in the Official Journal of the EU, it will enter into force by the end of March 2024. The EU Member States have to transpose the directive into national law by 27 March 2026 and apply the new national rules by 27 September 2026.



The new provisions leave little room for manoeuvre on substance for the Member States. As regards greenwashing, for example, some Member States such as France will have to review their existing laws in light of the amended UCPD, while others such as Germany or Spain will need to create new rules. Either way, it is welcome that the Empowering Consumers Directive will create a level playing field across the EU so that companies that are active in various Member States will no longer be subject to divergent legislation and case law.

Linklaters

However, the Empowering Consumers Directive does not address enforcement of the new provisions, and the existing enforcement provisions of the UPCD and CRD leave a lot of leeway to the Member States. With regard to the UPCD, they currently have different mechanisms in place. In many Member States including Denmark, Finland, Italy, Ireland, the Netherlands, Romania and Sweden, compliance with the respective national provisions is monitored by regulatory authorities, with civil actions being available as well. Other Member States, such as Germany and Austria, rely on private enforcement only. For the new requirements of the UCPD, it is up to the Member States to determine the consequences of non-compliance, and it will be crucial for companies to familiarise themselves with the enforcement systems and practices in the Member States in which they operate.

Which steps should companies start taking now?

While the Empowering Consumers Directive still needs to be transposed into national law, it is already evident that the national implementation acts will impose far-reaching new obligations on a wide range of companies. Companies should therefore use the transposition period to familiarise themselves with the new requirements and, if necessary and commercially viable, adapt their practices.

We are keen to assist you in this regard and suggest considering the following as a starting point:

1. Understand which changes introduced by the Empowering Consumers Directive are relevant for your business. In particular, check whether you have any commercial practices in place that could be affected (or even banned) in the future. This includes, for instance,
 - > environmental claims (in particular, if unsubstantiated or based on offsetting),
 - > sustainability labels,
 - > certain practices concerning early obsolescence, and
 - > pre-contractual information requirements.
2. Review and evaluate whether, from a business standpoint, these practices need to be adjusted to comply with the new requirements, or to be given up entirely.
3. Monitor closely what lies ahead and how the Empowering Consumers Directive dovetails with other pieces of existing and upcoming EU legislation, for instance,
 - > the Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS),
 - > the envisaged Green Claims Directive (regarding which discussions will most likely spill over to the next legislative period),
 - > the Right to Repair Directive (expected to be adopted this spring, read more in our [blog post](#)), and
 - > the proposed Corporate Sustainability Due Diligence Directive (CSDDD or CS3D), regarding which discussions will most likely spill over to the next legislative period,as well as non-EU legislation, such as
 - > consumer protection legislation in the UK, i.e., the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008, and
 - > relevant guidance by the Advertising Standards Authority and the Competition and Markets Authority on environmental claims.

As always, we will keep you posted about these and all other relevant developments in the ESG space on our blog [Sustainable Futures](#).

Key contacts



Julia Grothaus
Partner, Co-Head of ESG in the EU
Germany
Tel: +49 69 71003 523
julia.grothaus@linklaters.com



Rachel Barrett
Partner, Head of ESG
United Kingdom
Tel: +44 207456 5414
rachel.barrett@linklaters.com



Bolko Ehlgren
Partner
Germany
Tel: +49 69 71003 174
bolko.ehlgren@linklaters.com



Alex Ferreres
Partner
Spain
Tel: +34 91399 6070
alejandro.ferreres@linklaters.com



Daniella Strik
Partner
The Netherlands
Tel: +31 207996 338
daniella.strik@linklaters.com



Claudia Cavicchioli
Counsel
France
Tel: +33 15643 2725
claudia.cavicchioli@linklaters.com



Kerry Liebenberg
Counsel
United Kingdom
Tel: +44 207456 5660
kerry.liebenberg@linklaters.com



Mirjam Erb
Senior Associate (Knowledge)
Germany
Tel: +49 69 71003 611
mirjam.erb@linklaters.com



Kathrin Bauwens
Managing Associate
Germany
Tel: +49 69 71003 642
kathrin.bauwens@linklaters.com



Guillaume Croisant
Managing Associate
Belgium
Tel: +32 2501 9345
guillaume.croisant@linklaters.com



Matteo Farneti
Managing Associate
Italy
Tel: +39 0288393 5304
matteo.farneti@linklaters.com



Lucas Marlow
Associate
Germany
Tel: +49 69 71003 494
lucas.marlow@linklaters.com

www.linklaters.com

This content is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here, please get in touch.

Should this document contain hyperlinks to external third-party websites, please note that we have no influence on the content of such websites. Therefore, we cannot assume any responsibility for such third-party content. The provider or operator of the respective third-party websites is responsible for the content of the linked websites.

© Linklaters LLP. All Rights reserved 2024

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority.

The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications.

A list of the names of the members of Linklaters LLP and of the non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors or registered foreign lawyers.

Please refer to www.linklaters.com/regulation for important information on our regulatory position.