

# The Fight Against Greenwashing in the European Union: Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, and the Portuguese Case\*

## O Combate ao *Greenwashing* na União Europeia: A Diretiva (EU) 2024/825 do Parlamento Europeu e do Conselho, de 28 de fevereiro de 2024 e o caso português

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**Abstract:** In contemporary society, issues of environmental protection are a constant concern and can challenge acquired habits, as well as the acquisition of goods and products. Thus, the consumer is called to have an active and proactive role in sustainable development, as their choices, to a certain extent, will focus on goods and services that are less harmful to the environment.

It is certain that humans, as consumers, need to acquire goods and services to meet their essential needs and, in this sense, play a primordial role in the development of the economic and commercial circuit, aiming to address their deficiencies. To do so, they need true, reliable information about the products and services they intend to acquire so that they are sustainable and less harmful to the environment.

However, in commercial relations between professionals and consumers, advertising practices are used by economic agents to claim that their products, goods, and services are the least harmful to the environment. This is where greenwashing comes in, which is nothing more than a false environmental claim aimed at suggesting or giving the impression, through advertising or marketing campaigns, that a certain product, good, or service has a less harmful environmental impact. But, in reality, such environmental claims are unfounded, inaccurate, incorrect, or even false.

Following the European Green Deal, around the circular economy, there is a concern by the European Union in combating greenwashing practices, ecological bleaching, or eco-bleaching. In this fight, the Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, emerges, aiming to combat unfair commercial practices that prevent consumers from making the most sustainable choices for the environment.

**Keywords:** Greenwashing; environmental sustainability; consumer; unfair commercial practices.

**Resumo:** Na sociedade contemporânea as questões de proteção ao meio ambiente são uma preocupação constante e que podem colocar em causa os hábitos adquiridos, bem como as aquisições de bens e produtos. Deste modo, o consumidor é chamado a ter um papel ativo e pró-ativo no desenvolvimento sustentável, pois as suas escolhas, em certa medida, vão incidir sobre bens e serviços que sejam menos lesivos do ambiente.

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Certo que, o ser humano, enquanto consumidor, necessita de adquirir bens e serviços para suprir as suas necessidades essenciais e nessa medida tem um papel primordial no desenvolvimento do circuito económico e comercial, no sentido de colmatar as suas carências. Para tal, necessita que tenha informações verdadeiras, fidedignas acerca dos produtos e serviços que pretende adquirir no sentido que sejam sustentáveis e pouco lesivos ao meio ambiente.

Todavia, nas relações comerciais, entre profissionais e consumidores, são utilizadas práticas publicitárias, pelos agentes económicos, que os seus produtos, bens e serviços são os menos lesivos para o ambiente. É aqui que surge, o *greenwashing* que não passa de uma falsa alegação ambiental e tem por objetivo sugerir ou dar a impressão, através de meios publicitários ou de campanhas de *marketing*, de um determinado produto, bem ou serviço tem um impacto ambiental menos nocivo para o ambiente, mas, no fundo, tais alegações ambientais são infundadas, imprecisas, inexatas ou até mesmo falsas.

Dando seguimento ao pacto ecológico europeu, em torno da economia circular, existe uma preocupação por parte da União Europeia no combate a práticas *greenwashing*, branqueamento ecológico ou eco-branqueamento. Neste combate é que surge a Diretiva (EU) 2024/825 do Parlamento Europeu e do Conselho, de 28 de fevereiro de 2024, que visa combater as práticas comerciais desleais que impedem os consumidores de fazer as escolhas mais sustentáveis para o meio ambiente.

**Palavras-Chave:** *Greenwashing*, sustentabilidade ambiental, consumidor, práticas comerciais desleais.

**Sumario:** I. Introduction; II. Environmental Sustainability; III. The Concept of Consumer and Unfair Commercial Practices: The Portuguese Legal System; IV. The Fight Against Greenwashing in the European Union; V. Final Considerations.

## I. Introduction

1. With the economic growth we have been witnessing, especially since World War II, there is also a significant change in consumer society. New paradigms and consumption patterns have emerged<sup>1</sup>. As such, around the late 1960s, new legal instruments emerged to safeguard consumer relations, aiming at consumer protection<sup>2</sup>.

2. The European Union has since introduced Directives to defend consumer relations. Initially, there was a need to regulate the commercialization of products such as foodstuffs, particularly regarding price indication. Among others, regulations on the marketing of dangerous products, misleading advertising, liability for defective products, and sales outside commercial establishments or distance sales have also emerged. There are also norms related to consumer credit, unfair commercial practices, product warranty conditions, among other important aspects for the consumer<sup>3</sup>.

<sup>1</sup> This text was based on our study: vide Sérgio Manuel da Costa Machado, “Greenwashing, branqueamento ecológico ou eco-branqueamento: uma prática comercial desleal”, *Nuevas Perspectivas del Derecho en Iberoamérica*, Instituto Iberoamericano de Estudios Jurídicos, Porto, 2024, pp. 452-467. S. Passinhas, *Propriedade e Personalidade no Direito Civil Português*, Almedina, Coimbra, 2017, pp. 36-42.

<sup>2</sup> S. PIEDELIEVRE, *Droit de La Consommation*, Economica, Paris, 2008, p. 1 et seq.. On the legislative evolution of consumer protection in the European Union, see, M. T. ÁLVAREZ MORENO, *La Protección Jurídica En La Contratación En General*, Reus, Madrid, 2015, p. 6 et seq., in which the author outlines four phases of consumer protection within the European Union: 1) the era of merchants (1957 to 1974); 2) the Europe of citizens (1974 to 1984); 3) the relationship between Europe and citizens (1984 to 2001); 4) which begins in 2001, called “reorganization and consolidation of consumer protection standards,” starting with the European Commission’s Communication on “European Contract Law” of 11.07.2001 [COM (2001) 398 final], as well as the “Green Paper” on consumer protection in the European Union [COM (2001) 531 final], presented by the Commission on 02.10.2001. See also, A. LEÓN ARCE, *El Consumo Como Realidad Social, Económica Y Jurídica*, in *Derecho de Los Consumidores y Usuarios – Doctrina, Normativa, Jurisprudencia, Formularios*, Tomo I, 3.<sup>a</sup> ed., Tirant Lo Blanch, Valencia, 2016, p. 59 et seq..

<sup>3</sup> Cfr. D. F. GATTA SÁNCHEZ, “Sistema Normativo, Competencias y Organización Administrativa en Materia de Consumo: Unión Europea, Estado y Comunidad de Castilla y León”, *Estudios Sobre Consumo*, Tirant lo Blanch, Valencia, 2012, p. 134 et seq.; T. HUALDE MANSO, *Del Consumidor Informado al Consumidor Real – El Futuro del Derecho de Consumo Europeu*, Dykinson, Madrid, 2016, p. 11 et seq.; C. LASARTE, *Manual Sobre Protección de Consumidores y Usuarios*, 12.<sup>a</sup> ed., Dykinson, Madrid, 2022, pp. 15-28.

3. In this regard, Consumer Law has a function of preventing imbalances, as it is closely related to the principle of commutative justice, aiming to lead to a contractual balance<sup>4</sup>.

4. It is clear that, over the last few decades, consumer law has primarily focused on protecting consumers when acquiring goods (such as refrigerators, radios, televisions, etc.). Next, there is a concern to protect consumers concerning services provided to them (for example, water supply, electricity, gas, telephone, etc.). Thirdly, there is a concern to protect the digital consumer. Finally, and more recently, there is a concern with environmental sustainability issues<sup>5</sup>.

5. For all the reasons presented and given the current circumstances, consumer law is constantly being altered and adjusted. Such changes have significant impacts on the economy, politics, industry, and, in general, the entire society. This is the challenge of consumer law, at each time or moment, to know its scope and reach.

## II. Environmental Sustainability

6. The environment is now one of the fundamental concerns of our planet<sup>6</sup>. Environmental issues become a community problem and a political issue<sup>7</sup>. As such, the legal environment is challenged due to the damages inflicted upon it<sup>8</sup>, leading to several alerts for behavioral changes.

7. Environmental degradation is scientifically presented as being, on a large scale, due to the acceleration of economic and technological development that intensified with industrialization, particularly from the 19th century, in Western civilization<sup>9</sup>. Since the late 20th century, concerns about environmental quality and the need to preserve it have been felt worldwide, even in countries globally more averse to the environmental protection movement<sup>10</sup>.

8. With alerts about environmental issues, the European Union<sup>11</sup> has not remained indifferent and has played an important and decisive role, defining strategies to empower the consumer for the ecological transition, regulate the actions of economic operators, ensure sustainable consumption, and guarantee greater durability of goods. Consequently, in recent years, environmental sustainability issues have entered the concerns of consumer law, aiming to outline policies and legislation for more sustainable choices by consumers<sup>12</sup>.

<sup>4</sup> A. AGOSTINHO GUEDES, *Estudos Sobre a Decisão Judicial – Coordenadas da decisão Judicial em Direito Privado*, UCP Editora, Lisboa, 2024, pp. 53-55. For an understanding of the contractual balance in consumer contracts, particularly in B2C relationships, see A. F. MORAIS ANTUNES, “Equilíbrio negocial e fair dealing no Direito dos contratos”, *Encontros de Direito Civil – Limites à Autonomia Privada*, UCP Editora, Lisboa, 2023, p. 141 et seq..

<sup>5</sup> M. BEJA, *Sociedade de Consumo e Consumidores em Portugal*, Fundação Francisco Manuel dos Santos, Lisboa, 2023, pp. 67-92.

<sup>6</sup> A. CRISTAS, “A Sustentabilidade no Centro da Evolução Legislativa Europeia: Os novos princípios estruturantes da taxonomia climática e ambiental e os seus reflexos”, *Estudos em Homenagem à Professora Doutora Maria Helena Brito*, Vol. II, Gestlegal, Coimbra, 2022, pp. 843-860.

<sup>7</sup> F. REIS CONDESSO, *Direito do Ambiente – Ambiente e Território. Urbanismo e Reabilitação Urbana*, 3.<sup>a</sup> ed., Almedina, Coimbra, 2018, pp. 14-16

<sup>8</sup> M. MIRANDA BARBOSA, *A dignidade da Pessoa – A fundamentação do jurídico, a (re)compreensão do direito à luz do dever e o bloqueio da simples aspiração*, Gestlegal, Coimbra, 2024, pp. 272-294.

<sup>9</sup> M. G. F. P. D. GARCIA, *O Lugar do Direito na Proteção do Ambiente*, Almedina, Coimbra, 2007, p. 59.

<sup>10</sup> C. AMADO GOMES AND H. CHENG LEONG, *Introdução ao Direito do Ambiente*, 6.<sup>a</sup> ed., AAFDL, Lisboa, 2023, pp. 27-36.

<sup>11</sup> Regarding environmental protection in the European Union and environmental responsibility, see C. ARAGÃO SEIA, *A Responsabilidade Ambiental na União Europeia*, Almedina, Coimbra, 2022, p. 23 et seq..

<sup>12</sup> On the evolution of the general lines of the European Union in the protection, empowerment of the consumer for the ecological transition, and issues surrounding environmental sustainability, see S. ALMEIDA, “A tutela e a capacitação do consumidor para a transição ecológica: linhas gerais do quadro europeu e seus reflexos no ordenamento luso”, *Novo Liber Amicorum Mário Frota – Sempre a Causa dos Direitos dos Consumidores*, Almedina, Coimbra, 2023, pp. 827-831.

9. For example, related to environmental concerns, the European Union has briefly highlighted some initiatives, such as: “in 2001, the European Union (EU) adopted a strategy for sustainable development, which was revised in 2006, providing «a long-term vision of sustainability in which economic growth, social cohesion, and environmental protection are inseparable and mutually reinforcing»”<sup>13</sup>.

10. In December 2015, the European Commission published an EU Action Plan for the Circular Economy, stating: “the transition to a more circular economy, in which the value of products, materials, and resources is maintained in the economy for as long as possible, and waste production is minimized, is a fundamental contribution to the EU’s efforts to develop a sustainable, low-carbon, resource-efficient, and competitive economy. This transition is an opportunity to transform our economy and create new and sustainable competitive advantages for Europe”<sup>14</sup>.

11. In December 2019, the European Commission launched the European Green Deal with the aim of reducing carbon dioxide emissions by 2050, preserving natural heritage, biodiversity, and investing in cutting-edge research and innovation to combat the climate crisis<sup>15</sup>.

12. In March 2020, the European Commission outlined the New Circular Economy Action Plan, following the European Green Deal (Green Deal), with the aim of “accelerating the transition to a regenerative growth model that gives back to the planet more than it takes, moving towards resource consumption not exceeding planetary boundaries, and in that aim, striving to reduce the ecological impact of consumption and doubling the rate of circular material use in the next decade”<sup>16</sup>. In November 2020, the European Commission outlined the New Consumer Agenda, the EU’s consumer policy for the period 2021 to 2025<sup>17</sup>, in five priority areas: green transition; digital transformation; enforcement and redress of consumer rights; specific needs of certain consumer groups; and international cooperation. Thus, it highlighted sustainable consumption as one of the EU’s concerns.

13. At the end of February 2024, the Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, was approved, amending Directives 2005/29/EC and 2011/83/EU regarding the empowerment of consumers for the green transition through better protection against unfair practices and better information<sup>18</sup>, with transposition to be carried out by Member States by March 27, 2026, with its provisions applicable from September 27, 2026. This Directive aims to combat unfair commercial practices, including: misleading environmental claims, or greenwashing, ecological bleaching or eco-bleaching practices; early obsolescence of goods; the use of non-transparent and non-credible sustainability labels or sustainability information tools; and improving the information that should be available to consumers, to promote circular and ecological choices, through a harmonized label.

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<sup>13</sup> European Union, “Desenvolvimento Sustentável”, available at [www: https://eur-lex.europa.eu/legal-content/PT/TX-T/?uri=LEGISSUM:sustainable\\_development](http://www.eur-lex.europa.eu/legal-content/PT/TX-T/?uri=LEGISSUM:sustainable_development), last accessed November 29, 2024.

<sup>14</sup> European Commission, “Communication from the commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions. Closing the loop – an EU action plan for the circular economy”, COM/2015/0614 final, available at <http://eur-lex.europa.eu/legal-content/PT/ALL/?uri=CELEX%3A52015DC0614>, last accessed November 29, 2024.

<sup>15</sup> European Council, “European Green Deal”, available at [www: https://www.consilium.europa.eu/en/policies/green-deal/](https://www.consilium.europa.eu/en/policies/green-deal/), last accessed November 29, 2024.

<sup>16</sup> European Commission, “Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions”, available at [www: https://eur-lex.europa.eu/legal-content/PT/TX-T/?uri=COM:2020:98:FIN](https://eur-lex.europa.eu/legal-content/PT/TX-T/?uri=COM:2020:98:FIN), last accessed November 29, 2024.

<sup>17</sup> Communication from the Commission to the European Parliament and the Council “New Consumer Agenda – Strengthening consumer resilience for sustainable recovery” COM (2020) 696 final, available at [www: https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:52020DC0696](https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:52020DC0696), last accessed November 29, 2024.

<sup>18</sup> Regarding the whole process: European Commission, *Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act)*, EUR-Lex, <https://eur-lex.europa.eu/legal-content/PT/HIS/?uri=CELEX:52022PC0143>, last accessed November 29, 2024.

### III. The Concept of Consumer and Unfair Commercial Practices: The Portuguese Legal System

14. At the beginning of the 19th century, a codification movement was observed on the European continent. Initially, in France, in 1804<sup>19</sup>, the first Civil Code emerged, considered a legislative monument, which greatly influenced the 19th-century European codification<sup>20</sup>.

15. However, the legal concept of the consumer was entirely unknown in the 19th-century codifications. These codifications greatly influenced the 20th-century codifications, which still mark today's legal systems, where the legal concept of the consumer is unknown; thus, various doubts persist today regarding the concept of the consumer, as seen in legislation, jurisprudence, and doctrine<sup>21</sup>.

16. As BAPTISTA DE OLIVEIRA informs us, the first movements associated with the awareness of the intrinsic imbalance in the contractual consumer relationship emerged in the 1920s in the United States of America, leading to the initial concerns about consumer rights, as the weaker party in a legal relationship. In Europe, this consumer protection movement began in the 1950<sup>22</sup>.

17. A historical milestone in consumer protection is the speech by US President John F. Kennedy, delivered to Congress on March 15, 1962, in which he states: “consumers, by definition, we are all.” From here, a legislative movement gradually began to protect consumer relations, particularly the weaker party, the consumer<sup>23</sup>.

18. In Europe, the first step towards a notion of consumer emerged in the “Consumer Protection Charter of the Council of Europe” of May 17, 1973, defining it as “«a natural or legal person to whom goods are supplied and services are provided for private use»”<sup>24</sup>.

19. Subsequently, the European Economic Community (now the European Union) in the Preliminary Program of 1975, aimed at consumer protection, indicated that “in the future, the consumer will not only be considered as a buyer or user of goods and services for personal, family or collective use but as a person who participates in the various aspects of social life that can affect them directly or indirectly as a consumer”<sup>25</sup>. From here, the European Economic Community initiated a legislative process aimed at protecting consumers, promoting their rights and interests, specifically through the issuance of Directives.

20. We note some Directives, as examples, that advance a notion of the consumer<sup>26</sup>: 1) Directive 2005/29/EC of the European Parliament and of the Council of May 11, 2005, concerning unfair busi-

<sup>19</sup> On the conditions for the drafting, writing, and promulgation of the French Civil Code of 1804, see R. C. VAN CAENEGEM, *Introduction Historique au Droit Privé*, E. Story-Scientia, Bruxelles, 1988. P. 3 et seq., considering that the French Civil Code of 1804 was an important milestone for the time, affirming property law and family law. The French Civil Code of 1804 sought a new society to concretize freedom and equality (only legal), but not fraternity itself. See M. ASCHERI, *Introduzione Storica al Diritto Moderno e Contemporaneo – Lezioni e Documenti*, G. Giappichelli Editore, Torino, 2003, p. 278.

<sup>20</sup> ANTONIO PADOA SCHIOPPA, *Storia del Diritto in Europa – Dal Medioevo all'età contemporânea*, Società Editrice il Mulino, Bologna, 2007, p. 465.

<sup>21</sup> J. ENGRÁCIA ANTUNES, *Direito do Consumo*, 2.<sup>a</sup> ed., Coimbra, Almedina, 2024, pp. 77-78.

<sup>22</sup> F. BAPTISTA DE OLIVEIRA, *O Conceito de Consumidor: Perspectivas Nacional e Comunitária*, Almedina, Coimbra, 2009, p. 47.

<sup>23</sup> J. MORAIS CARVALHO, *Manual de Direito do Consumo*, 8.<sup>a</sup> ed., Almedina, Coimbra, 2022, p. 35; A. HIDALGO CEREZO, *Nuevas Tendencias de Derecho de Consumo – Aspectos generales, legislación especial y de consumo digital*, Dykinson, Madrid, 2023, pp. 31-34.

<sup>24</sup> F. BAPTISTA DE OLIVEIRA, *cit.*, p. 47.

<sup>25</sup> Council of the European Communities, “Council Resolution of 14 April 1975 on a preliminary program of the European Economic Community for a consumer protection and information policy”, Official Journal of the European Communities, 1975, p. 66.

<sup>26</sup> At the level of the European Union, the concept of a consumer varies from Directive to Directive without a unified definition: see, B. SCHÜLLER, “The Definition Of Consumers In EU Consumer Law”, *European Consumer Protection – Theory And Practice*, Edited by James Devenney and Mel Kenny, Cambridge University Press, Cambridge, 2012, p. 124, which considers that a consumer is a person acting for non-commercial or professional purposes.

ness-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) No 2006/2004 («Unfair Commercial Practices Directive»), in Article 2(a), states: “«Consumer» means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside their trade, business, craft or profession”; 2) Directive 2011/83/EU of the European Parliament and of the Council of October 25, 2011, on consumer rights, in Article 2(1), states: “«Consumer» means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside their trade, business, craft or profession”; 3) Directive (EU) 2019/770 of the European Parliament and of the Council of May 20, 2019, on certain aspects concerning contracts for the supply of digital content and digital services, in Article 2(6), states: “«Consumer» means any natural person who, in relation to contracts covered by this Directive, is acting for purposes which are outside their trade, business, craft or profession”.

**21.** Regarding the Portuguese legal system, there is no single concept of the consumer. Instead, various notions of the consumer can be found, with the Consumer Protection Law (Law No. 24/96, of July 31) being the most relevant, as it incorporates the general principles of consumer law<sup>27</sup>. Under Article 2(1) of the Consumer Protection Law, a consumer is understood as “anyone to whom goods are supplied, services are provided or any rights are transferred for non-professional use by a person who engages in a professional economic activity aimed at obtaining benefits”<sup>28</sup>.

**22.** Thus, a consumer is considered to be the purchaser of a good or service for purposes not related to their professional activity, i.e., for private use, whether personal, family, or domestic. Acquisitions of goods to meet professional or business needs are not considered<sup>29</sup>.

**23.** In case of doubt about the consumer’s status, under the rules of burden of proof distribution provided in Article 342(1) of the Portuguese Civil Code, it is up to the allegedly injured party to prove it<sup>30</sup>.

**24.** It should be noted that, in the case of mixed use, Article 49 of Decree-Law No. 84/2021, of October 18 (regulates consumer rights in the purchase and sale of goods, digital content, and services, transposing Directives (EU) 2019/771 and (EU) 2019/770), states the following: “the verification of professional use of goods, digital content, or services by the consumer, provided that the commercial purpose is not predominant in the overall context of the contract, does not preclude the application of the regime provided for in this decree-law”<sup>31</sup>.

<sup>27</sup> F. D. GRAVATO MORAIS, *Teoria Geral das Obrigações. A Relação Jurídica Obrigacional – Fontes das Obrigações: Contratos*, Vol. I, Editora d’Ideias, Coimbra, 2024, pp. 18-21.

<sup>28</sup> In Portuguese legislation, we find various notions of consumer, such as Article 4(1)(a) of Decree-Law No. 133/2009, of June 2 (Consumer Credit Contracts): “«Consumer» means a natural person who, in the legal transactions covered by this decree-law, acts for purposes outside their commercial or professional activity”; Article 3(e) of Decree-Law No. 24/2014, of February 14 (Distance and Off-Premises Contracts): “Consumer means a natural person acting for purposes outside their commercial, industrial, craft, or professional activity”; Article 2(g) of Decree-Law No. 84/2021, of October 18 (Consumer Rights in the Purchase and Sale of Goods, Digital Content, and Services): “Consumer means a natural person who, in relation to contracts covered by this decree-law, acts for purposes outside their commercial, industrial, craft, or professional activity”. See J. ENGRÁCIA ANTUNES, “O Conceito de Consumidor”, *Revista de Direito Civil*, No. 4, 2018, pp. 771-796; N. M. PINTO OLIVEIRA, *Contrato de Compra e Venda – Introdução, Formação do Contrato*, Vol. I, Gestlegal, Coimbra, 2021, pp. 121-210.

<sup>29</sup> In this sense, see the Judgment of the Supreme Court of May 15, 2003, Case No. 03B1015, Rapporteur Abílio Vasconcelos; as well as the Judgment of the Supreme Court of May 27, 2008, Case No. 08A1104, Rapporteur Paulo Sá, both available at [www.dgsi.pt](http://www.dgsi.pt), last accessed on November 15, 2024.

<sup>30</sup> In this sense, see the Judgment of the Supreme Court of March 24, 2015, Case No. 7002.11.OTBOER.L1.S1, Rapporteur Gregório Silva Jesus, *Coletânea de Jurisprudência*, Vol. I, 2015, pp. 167-173: “according to the rules of distribution of the burden of proof provided in Article 342(1) of the Civil Code, it will be up to the allegedly injured party to prove their status as a “consumer””.

<sup>31</sup> In the law of the European Union, the criterion of predominant use is already adopted. For example, recital 17 of Directive 2011/83/EU on consumer rights states that “in the case of dual-purpose contracts, if the contract is concluded for purposes related partly to the person’s trade and partly outside it and the trade purpose is so limited as not to be predominant in the overall context of the contract, that person should also be considered a consumer”, see, A. JUÁREZ TORREJÓN, *Garantías y Servicios Postventa a Favor de los Consumidores*, Marcial Pons, Madrid, 2016, pp. 55-58; J. MORAIS CARVALHO and J. CAMPOS CARVALHO,

25. Without entering into other considerations, briefly, we note that the consumer is exposed to the most diverse behaviors of a professional. Thus, the consumer is subject to acts and omissions of information that can be harmful and detrimental to their personal and family life, i.e., they are in a position of vulnerability<sup>32</sup>, subject to unfair commercial practices that can pose risks, such as, for example, entering into a transaction that they would not have otherwise made<sup>33</sup>.

26. Unfair commercial practices in the Portuguese legal system are regulated by Decree-Law No. 57/2008, of March 26, resulting from the transposition of a European Directive aimed at business-to-consumer relations. This is Directive 2005/29/EC of the European Parliament and of the Council of May 11<sup>34</sup>, concerning unfair business-to-consumer commercial practices in the internal market, which aims to prevent behaviors that directly harm consumers' economic interests<sup>35</sup>.

27. Decree-Law No. 57/2008, of March 26, prohibits, in Article 4, unfair commercial practices. Article 5(1) of the same Decree-Law provides a general clause that establishes as “unfair any commercial practice that is contrary to professional diligence and that distorts or is likely to distort substantially the economic behavior of the average consumer whom it reaches or affects with regard to a particular good or service.” This notion is translated as follows: if it is a legal consumer relationship, there is a commercial practice, and that commercial practice must be contrary to professional diligence, and finally, that commercial practice distorts the consumer's economic behavior<sup>36</sup>.

28. For assessment criteria and according to Decree-Law No. 57/2008, of March 26, it is understood: “«Commercial practice of the company in relations with consumers, or, briefly, commercial practice»: any action, omission, conduct, or assertion by a professional, including advertising and commercial promotion, directly related to the promotion, sale or supply of a good or service to the consumer” (Article 3(d)); “«Substantially distort the economic behavior of consumers» the carrying out of a commercial practice that significantly impairs the consumer's ability to make an informed decision, leading them, consequently, to take a transaction decision that they would not have otherwise taken” (Article 3(e)); “«Professional diligence» the standard of specialized competence and care that can reasonably be expected from a professional in their dealings with consumers, assessed according to honest market practice and/or the general principle of good faith in the professional's field of activity” (Article 3(f)).

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“O(s) Contrato(s) de Fornecimento de Conteúdos ou Serviços Digitais”, *Estudos em Homenagem à Professora Doutora Maria Helena Brito*, Gestlegal, Coimbra, 2022, pp. 415-416.

<sup>32</sup> As observes, M. D. HERNÁNDEZ DÍAZ-AMBRONA, *Consumidor Vulnerable*, Reus, Madrid, 2015, p. 23, the consumer's vulnerability should be assessed in the abstract and considering a particular circumstance. See also S. PASSINHAS, “O Lugar da Vulnerabilidade no Direito do Consumidor Português”, *Estudos de Direito do Consumidor*, n.º 15, 2019, pp. 258-263.

<sup>33</sup> M. MIRANDA BARBOSA, *Lições de Teoria Geral do Direito*, 2.ª ed., Gestlegal, Coimbra, 2022, pp. 813 e 814.

<sup>34</sup> The process that led to Directive 2005/29/EC of the European Parliament and the Council of May 11 began in the 1960s, bringing together elements of Private, Public, and Criminal Law, dispersed until then in the legal instruments of the various Member States: see, H.-W. MICKLITZ, “A General Framework Directive on Fair Trading”, *The Forthcoming EC Directive on Unfair Commercial Practices – Contract, Consume and Competition Law Implications*, Kluwer Law International, The Hague, 2004, p. 43 et seq.; S. NEWMAN RODRÍGUEZ, “Directiva 2005/29/CE Sobre Práticas Comerciales Desleales: La Protección de Los Consumidores En Europa”, *Dereito: Revista Xurídica da Universidade de Santiago de Compostela*, No. 2, 2009, p. 33 et seq.; B. B. DUIVENVOORDE, *The Consumer Benchmarks In The Unfair Commercial Practices Directive*, Springer, Heidelberg - New York - Dordrecht - London, 2015, p. 14 et seq.; C. GOANTÁ, *Convergence In European Consumer Sales Law – A Comparative And Numerical Approach*, Intersentia, Cambridge, 2016, p. 125 et seq..

<sup>35</sup> A. SOVERAL MARTINS, “A Transposição da Directiva Sobre Práticas Comerciais Desleais (Directiva 2005/29/CE) em Portugal pelo Decreto-Lei n.º 57/2008, de 26 de Março”, *Estudos em Homenagem ao Professor Doutor Carlos Ferreira de Almeida*, Vol. I, Almedina, Coimbra, 2011, p. 571; C. FUENTESECA DEGENEFÉ, *Práticas Comerciales Desleales y Validez del Contrato – El último inciso del art. 19.2 TRLGDCU*, Bosch, Barcelona, 2021, p. 11 et seq.; A. CASADO NAVARRO, *Consecuencias negativas de las prácticas desleales contra los consumidores – Relaciones entre el derecho contractual de consumo y el derecho de la competencia desleal*, Marcial Pons, Madrid, 2022, p. 23 et seq..

<sup>36</sup> L. M. T. MENEZES LEITÃO, “A Revisão do Regime das Práticas Comerciais Desleais”, *I Congresso De Direito do Consumo*, Almedina, Coimbra, 2016, p. 75; S. PASSINHAS, “A Propósito das Práticas Comerciais Desleais: Contributo para uma Tutela Positiva do Consumidor”, *Estudos de Direito do Consumidor*, No. 13, 2017, p. 107 et seq..

**29.** Besides the general clause, Article 6 of Decree-Law No. 57/2008, of March 26, refers to special provisions on unfair commercial practices: “a) Commercial practices likely to substantially distort the economic behavior of a clearly identifiable group of particularly vulnerable consumers, due to their mental or physical infirmity, age, or credulity, in relation to the commercial practice or the underlying good or service, if the professional could reasonably foresee that their conduct would be likely to cause such distortion; b) Misleading commercial practices and aggressive commercial practices referred to in Articles 7, 9, and 11; c) Misleading commercial practices and aggressive commercial practices referred to, respectively, in Articles 8 and 12, considered as such in any circumstances”.

**30.** Misleading actions are provided for in Article 7 of Decree-Law No. 57/2008, of March 26, which, in general terms, are considered “the commercial practice that contains false information or that, even if factually correct, by any means, including its overall presentation, deceives or is likely to deceive the consumer concerning one or more of the elements listed below and that, in both cases, leads or is likely to lead the consumer to take a transaction decision that they would not have taken otherwise.” Misleading omissions are found in Article 9 of Decree-Law No. 57/2008, of March 26, which, in general terms, can occur when: “the professional omits material information necessary for an informed transactional decision by the consumer; when the professional hides or provides information in an unclear, unintelligible, ambiguous, or untimely manner; when the professional fails to identify the commercial intent of the practice if not already apparent from the context.” Article 8 of the said Decree-Law lists various misleading commercial practices in any circumstances, including a “blacklist” of misleading business practices.

**31.** Article 11 of Decree-Law No. 57/2008, of March 26, considers “a commercial practice to be aggressive if, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to impair the consumer’s freedom of choice or conduct concerning a good or service and, therefore, leads or is likely to lead the consumer to make a transactional decision that they would not have taken otherwise.” Article 12 of the same Decree-Law also establishes an extensive “blacklist” of aggressive commercial practices in any circumstances.

**32.** Finally, it is important to highlight the means of reacting to unfair commercial practices, which are combated in both public and private domains. The public domain involves the imposition of an administrative fine or precautionary measures, payment of fines, and judicialization of the Public Administration – Articles 19, 20, and 21 of Decree-Law No. 57/2008, of March 26. The private domain allows for civil actions, whether for civil liability or price reduction or contract resolution (actions carried out by the consumer) – Article 14 of Decree-Law No. 57/2008, of March 26. Moreover, there is always the possibility of an injunction to cease conduct harmful to the consumer – Article 16 of Decree-Law No. 57/2008, of March 26<sup>37</sup>.

**33.** Consider, for example, the following: Maria is concerned about environmental issues and makes a conscious effort to buy environmentally friendly products produced under fair conditions. In July 2024, Maria bought from the company “Health and Beauty,” through its website, cosmetic products described as: “100% organic,” “responsibly and sustainably produced for the environment,” “biodegradable formula,” “products with a positive impact on the environment,” and “certified as the most environmentally friendly products”.

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<sup>37</sup> A. MENEZES LEITÃO, *Direito do Consumo*, AAFDL, Lisboa, 2023, pp. 167-168. In Portuguese jurisprudence, we can see the Judgment of the Lisbon Court of Appeal of July 8, 2017, Case No. 1199/16.0Y5LSB-3, Rapporteur A. Augusto Lourenço, where a telecommunications operator was condemned for misleading advertising practices, under Articles 7(1)(b) and 21(1), both of Decree-Law No. 57/2008, of March 26. Also, the Judgment of the Lisbon Court of Appeal of March 18, 2024, Case No. 236/23.6YUSTR.L1-PICRS, Rapporteur Paulo Registo, considered: “The offer of false information or even the presentation of true information by the company, provided that they mislead or are likely to mislead the consumer concerning the contractual elements provided for in the various subparagraphs of Article 7(1) of DL No. 57/2008, of March 26, should be considered “misleading commercial practice” and, therefore, prohibited by law,” both available at [www.dgsi.pt](http://www.dgsi.pt), last accessed on November 15, 2024.



34. Convinced by “Health and Beauty” that she was making the most ecological choice possible, Maria was very surprised, after receiving the cosmetic products, to find that they were only one color, green, composed of harmful chemicals, and not carrying any certification, notably the “EU Ecolabel”<sup>38</sup>. She immediately realized that the received products did not match the advertised ones, i.e., they were not “environmentally friendly” products. Maria felt deceived.

35. In this hypothetical case, the consumer can claim an unfair commercial practice since the environmental claims of the cosmetic products should be presented clearly, unequivocally, with truthful information that can be verified. In the presented example, and under Portuguese law, we may be led to a misleading action - Article 7 of Decree-Law No. 57/2008, of March 26, as well as a misleading omission - Article 9 of Decree-Law No. 57/2008, of March 26, with the burden of proof on the supplier of the cosmetic products that they possess the announced characteristics, as provided for in Article 22 of Decree-Law No. 57/2008, of March 26.

#### IV. The Fight Against Greenwashing in the European Union

36. In contemporary society, the call for more sustainable consumption leads consumers to choose products, goods, and services that are less harmful to the environment. However, consumers are often misled in their choices, as they are not making the most sustainable choices.

37. Many consumers nowadays opt to buy goods and products that are less harmful to the environment as a way to play an active role in sustainability. Moreover, consumption can be a form of political commitment, with choices based on values of justice and equity. Citizens take responsibility for contributing to political and social change through boycotts, buycotts, fair trade, green consumption, and anti-consumption<sup>39</sup>.

38. The existence of false environmental claims can lead consumers to make decisions they did not intend to make. Thus, the consumer is placed in a position of particular vulnerability, as they are often not familiar or informed about greenwashing practices<sup>40</sup>.

39. We can say, simply, that greenwashing manifests itself in a widespread commercial practice that can be harmful to consumers. This practice aims to suggest or give the impression, through advertising or marketing, that a certain product or service has a positive sustainable impact on the environment, but in reality, such environmental claims are unfounded, inaccurate, incorrect, or even false.

40. It should be emphasized that greenwashing can be identified by the color, usually green, used on the product packaging, with the inclusion of vague symbols and references that may be present, such as “ecological,” “green,” “environmentally friendly,” or “environmentally respectful,” misleading the consumer about its sustainability, as well as the manufacturing method. However, false environmental claims are easily justified by the lack of financial capacity to adapt companies to new manufacturing methods and production models governed by sustainable development policies.

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<sup>38</sup> For better understanding, see: European Union, *Ecolabel: O rótulo ecológico da UE*, Your Europe, [https://europa.eu/youreurope/business/product-requirements/labels-markings/ecolabel/index\\_pt.htm](https://europa.eu/youreurope/business/product-requirements/labels-markings/ecolabel/index_pt.htm), last accessed November 29, 2024.

<sup>39</sup> S. PASSINHAS, *Propriedade...*, *cit.*, pp. 38-39.

<sup>40</sup> For an approach to greenwashing practices, see, among others, D. SILVA, “O Combate ao greenwashing na União Europeia”, *VII Seminário Internacional Hispano-Luso-Brasileiro sobre Direitos Fundamentais e Políticas Públicas*, Pensamento Sábio – Associação para o conhecimento e inovação. Universidade do Minho. Escola de Direito, Braga, 2022, pp. 152-161; D. BLADT, G. VAN CAPELLEVEEN and D. MURAT YAZAN, “The influence of greenwashing practices on brand attitude: A multidimensional consumer analysis in Germany”, *Business Strategy and the Environment*, No. 10, 2023, pp. 597-625; A. MIRANDA AN-GUITA, “Declaraciones ambientales, competencia desleal y patrones en la jurisprudencia comparada: A propósito del blanqueo ecológico o greenwashing”, *Cuadernos de Derecho Transnacional*, Vol. 16, No. 1, 2024, pp. 423-459.

41. However, some companies gradually implement sustainable development policies, where their advertisements or marketing campaigns use ways to convey truthful information to consumers, known as green marketing<sup>41</sup>.

42. With the general population's access to communication means and new technologies, such as a computer with internet access, we see an increase in advertising campaigns about products and services whose utility and effects are often unknown. Many of these products only have their main characteristics visible, without reference to their consumption dangers. On the other hand, now more than ever, online shopping is increasingly accessible, requiring just a click. There is no consumer awareness nor merchant responsibility in most cases. For example, imposing the obligation to expose the buyer to the negative and positive aspects of a product or even a link so that, during electronic purchases, the consumer is required to read and accept the quality principles and the negative and positive effects of the product. Creating a link for a more complete description and the risks involved in using the product would be an alternative.

43. Young people, in particular, are a large group open to new technologies and everything they offer. They are therefore heavily encouraged to consume due to age, fashion issues, vanity, among others. They consume without reflecting on the product, its components, and everything that comes from using them. Campaigns for greater awareness and education, providing an electronic description (e.g., keyRcode) of the product's characteristics, aid in decision-making at the time of purchase. Besides a computer, the population has a mobile phone, tablet, and other devices that easily allow reading such information.

44. The increase in consumer misinformation campaigns is another reality. Campaigns only focus on highlighting the best qualities and effects of acquiring and using a product. What is important is to make it appear that all products are magnificent and of the best quality. However, many of these end up sometimes compromising consumer safety, causing environmental pollution, among others.

45. Aggressive sales tactics are another factor that contributes significantly to product consumption. Pressure to consume, often accompanied by gift offers, special prices, lead consumers to purchase the product without reflecting on it. The obligation to buy one good when purchasing another is another issue that, indirectly, can lead to consuming unsustainable products.

46. Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, amending Directives 2005/29/EC and 2011/83/EU concerning empowering consumers for the green transition through better protection against unfair practices and better information demonstrates the European Union's concern for environmental issues, besides leaving a significant challenge to all Member States as observed in recital 1 of the Directive which states: "in order to contribute to the proper functioning of the internal market, based on a high level of consumer protection and environmental protection, and to make progress in the green transition, it is essential that consumers can make informed purchasing decisions and thus contribute to more sustainable consumption patterns. That implies that traders have a responsibility to provide clear, relevant, and reliable information. Therefore, specific rules should be introduced in Union consumer law to tackle unfair commercial practices that mislead consumers and prevent them from making sustainable consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims ('greenwashing'), misleading information about the social characteristics of products or traders' businesses, or non-transparent and non-credible sustainability labels. Those rules will enable competent national bodies to effectively address such practices. Ensuring that environmental claims are fair, understandable, and reliable will allow traders to operate on a level

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<sup>41</sup> R. MARIA D'ANGELO and D. VOCALELLI, "Green Marketing": An analysis of definitions, strategy steps, and tools through a systematic review of the literature", *Journal of Cleaner Production*, No. 165, 2017, pp. 1263-1279; A. URIBE AREVALO, "La responsabilidad del marketing verde", *Tendencias*, Vol. 24, No. 2, 2023, pp. 288-306.

playing field and will enable consumers to choose products that are genuinely better for the environment than competing products. This will encourage competition leading to more environmentally sustainable products, thereby reducing the negative impact on the environment.” Recital 6 of the said Directive also mentions: “comparing products based on their environmental or social characteristics or circularity aspects, such as durability, reparability, or recyclability, is an increasingly common marketing technique that could mislead consumers, who are not always able to assess the reliability of that information. In order to ensure that such comparisons do not mislead consumers, Article 7 of Directive 2005/29/EC should be amended to require traders to provide consumers with information about the method of comparison, the products which are the object of comparison and the suppliers of those products, and the measures to keep information up to date. This should ensure that consumers make better-informed transactional decisions when relying on such comparisons. It should be ensured that such comparisons are 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”.

**47.** The amendments to Directive 2005/29/EC introduced by Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, aim to ensure that professionals do not mislead consumers about environmental impacts, the duration, and repair of products; reinforce professionals’ duties of information regarding environmental claims, to combat greenwashing; and prohibit the display of sustainability labels that are not based on certification schemes or not established by public authorities.

**48.** Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, amends Article 2 of Directive 2005/29/EC, adding conceptual terms such as: “environmental claim” means any message or representation that is not mandatory under Union or national law, in any form, including text, pictorial, graphic, or symbolic representation, such as labels, brand names, company names, or product names, in the context of a commercial communication, and which states or implies that a product, product category, brand, or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time; “generic environmental claim” means any environmental claim made in written or oral form, including through audiovisual media, that is not included on a sustainability label and where the specification of the claim is not provided in clear and prominent terms on the same medium; “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 by reference to its environmental or social characteristics, or both, and excludes any mandatory label required under Union or national law; “certification scheme” means a third-party verification scheme that certifies that a product, process or business complies with certain requirements, that allows for the use of a corresponding sustainability label, and the terms of which, including its requirements, are publicly available and meet the following criteria: (i) the scheme is open under transparent, fair, and non-discriminatory terms to all traders willing and able to comply with the scheme’s requirements; (ii) the scheme’s requirements are developed by the scheme owner in consultation with relevant experts and stakeholders; (iii) the scheme sets out procedures for dealing with non-compliance with the scheme’s requirements and provides for the withdrawal or suspension of the use of the sustainability label by the trader in case of non-compliance with the scheme’s requirements; and (iv) the monitoring of a trader’s compliance with the scheme’s requirements is subject to an objective procedure and is carried out by a third party whose competence and independence from both the scheme owner and the trader are based on international, Union or national standards and procedures”.

**49.** Also, Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, introduces new prohibitions in Annex I of Directive 2005/29/EC, including: a) “Displaying a sustainability label that is not based on a certification scheme or not established by public authorities”; b) “Making a generic environmental claim for which the trader is not able to demonstrate recognized excellent environmental performance relevant to the claim”; c) “Making an environmental claim about

the entire product or the trader's entire business when it concerns only a certain aspect of the product or a specific activity of the trader's business"; d) "Claiming, based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced, or positive impact on the environment in terms of greenhouse gas emissions"; e) "Presenting requirements imposed by law on all products within the relevant product category on the Union market as a distinctive feature of the trader's offer"; f) "Withholding information from the consumer about the fact that a software update will negatively impact the functioning of goods with digital elements or the use of digital content or digital services"; g) "Presenting a software update as necessary when it only enhances functionality features"; k) "Any commercial communication in relation to a good containing a feature introduced to limit its durability despite information on the feature and its effects on the durability of the good being available to the trader"; l) "Falsely claiming that under normal conditions of use a good has a certain durability in terms of usage time or intensity"; m) "Presenting a good as allowing repair when it does not"; n) "Inducing the consumer to replace or replenish the consumables of a good earlier than necessary for technical reasons"; o) "Withholding information concerning the impairment of the functionality of a good when consumables, spare parts, or accessories not supplied by the original producer are used, or falsely claiming that such impairment will happen".

**50.** It is also important to note that Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, makes amendments to Directive 2011/83/EU of the European Parliament and the Council, of October 25, 2011, on consumer rights, aiming to reinforce information duties on the existence and duration of the commercial durability guarantee of a product, for all types of goods, as well as prohibiting practices related to the early obsolescence of goods.

**51.** In short, the European Union, through Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, amending Directives 2005/29/EC and 2011/83/EU regarding empowering consumers for the green transition through better protection against unfair practices and better information, seeks to improve the criteria of information and communication limitations of products and goods. This aims to protect consumers, allowing them to make more sustainable purchases and gradually change habits and behaviors.

**52.** With this, the European Union aims to raise awareness among consumers of the various Member States to a new reality which is sustainable development. Thus, the importance of having a more informed consumer about the origin and manufacturing conditions of goods, as well as greenwashing practices, arises.

## V. Final considerations

**53.** Consumer law today leads us to reflect on its role and what function it can play in environmental sustainability. The consumer is called to have an active and proactive behavior towards the challenges posed to environmental sustainability and, inherently, the entire circular economy. In the contemporary world, several challenges must be faced, deserving profound reflection from society in general.

**54.** Environmental sustainability depends on individual behavior. Excessive consumption and harmful products to the environment jeopardize everyone's well-being.

**55.** It is emphasized that consumer law aims, in essence, to protect consumers. However, there is a need for consumer law to adapt to emerging new realities, particularly in sustainable development. This is because it is essential to protect consumers and sensitize them to environmental issues.

**56.** As technologies facilitate the contracting of goods and services, particularly online, consumers make quick but often hasty decisions. The good is not physically visible, and the lack or even distortion of information contributes to this.

**57.** Directive (EU) 2024/825 of the European Parliament and the Council, of February 28, 2024, amending Directives 2005/29/EC and 2011/83/EU regarding empowering consumers for the green transition through better protection against unfair practices and better information, aims to combat unfair commercial practices, including misleading environmental claims, such as greenwashing, ecological bleaching or eco-bleaching; early obsolescence of goods; the use of non-transparent and non-credible sustainability labels or sustainability information tools; and improving the information that should be available to consumers, promoting more ecological choices through a harmonized label.

**58.** Here lies a significant challenge for the Member States of the European Union on a path towards more sustainable development.

**59.** We live in a period where major issues arise, and in the face of globalization, these tend to be solved on a global scale.

**60.** One of the biggest problems the world faces is related to global warming and, inherently, uncontrolled consumption, which certainly affects the entire population on a global scale. This new problem undoubtedly challenges environmental sustainability.

**61.** The issue of environmental sustainability is a central problem, implicitly linked to all other spheres of humanity: economic, social, cultural. Thus, it is possible to say that the problem can only be overcome by changing behaviors, both in production and consumption, such as new ways of producing, buying, educating, being, thinking, and living. Change happens in every part of our lives, and collectively it will translate into a more sustainable and environmentally friendly planet.

**62.** Therefore, facing future challenges means fully assuming the prerogatives of the globalization process, particularly as a warning of mutability that will lead us to a better world, discovering new models that are less harmful to the environment.