



Position Paper on the Green Claims Proposal

I. Introduction

BUSINESSEUROPE is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and actively campaigning on the issues that most influence their performance. We speak for all-sized enterprises in 35 European countries whose national business federations are our direct members.

The Business community is committed to the transition to a climate-neutral economy by mid-century. We therefore welcome the publication of the proposal for the Green Claims Directive in March 2023 as one of the remaining deliverables from the 2020 European Consumer Agenda & the Commission “New Circular Economy Action Plan”¹.

II. Main messages

- ⇒ European companies are **supportive of strengthening the role of consumer policy in the green transition**. Such policies should however be developed in a **proportionate, efficient, and balanced way** to ensure workability on the ground, foster transparency and assist sustainable consumer behavior.
- ⇒ The Commission proposal breaks in part with a longstanding approach around regulating green claims. The EU moves from prohibiting unlawful and misleading green practices to regulating in detail how such practices can and should be done. This amounts to a considerable regulatory intervention which makes it paramount that the **principle of adequacy** and proportionality are upheld in this initiative.
- ⇒ **Greenwashing harms the functioning of the internal market** because it allows products and businesses to gain an unfair competitive advantage over competitors by intentionally providing unfounded or misleading information.

¹ https://eur-lex.europa.eu/resource.html?uri=cellar:9903b325-6388-11ea-b735-01aa75ed71a1.0017.02/DOC_1&format=PDF



- ⇒ Because many businesses conduct life cycle analyses to assess the environmental impact of certain products, these businesses are **exposed to unfair competition from** businesses that provide false or misleading information without any justification or simply referring to meeting regulatory requirements.
- ⇒ Greenwashing may also stimulate the import (including private import by consumers) and production of unsustainable products through supply chains in third countries where environmental or consumer protection rules are not as ambitious as in the EU. EU initiatives on green claims should **promote a level playing field in Europe and beyond** to ensure uniform and across the board coverage.
- ⇒ The impact assessment points to the increasing use of green labels and claims without the corresponding increase in consumer trust in those instruments. It should also be noted that **a growing number of companies choose not to communicate about their green initiatives due to uncertainty** about what is allowed or not by law, as well as uncertainty about its reception in the media and the public. Thus, all these dynamics need to be considered also to avoid that ecologically desirable market signals are weakened. **EU rules on how to substantiate and communicate sustainability initiatives:**
 - must be **clear and simple**, so that consumers and other market actors can rely on the communication (no misleading actions or omissions), and companies do not refrain from informing about their initiatives out of fear of illegality.
 - **cannot be disproportionately burdensome and complex** so companies can still feel empowered to make environmental/sustainability claims, which is essential to help consumers make informed choices, boosting market uptake of sustainable products and in turn have an actual positive environmental impact, which should be the ultimate aim of such regulatory action.
 - **must lead to harmonised interpretation and enforcement** across the EU. This will limit possible phenomena of forum shopping, ensure mutual recognition, avoid differentiated consumers' rights and enhance companies' opportunities.
 - must be **coherent and predicated on a clear set of standards** and methodologies for consistency.



- must address **overlaps and unclarities** on how different **ongoing directives** under discussion interact, e.g., around the Empowering Consumers Directive.
- **must discourage** any type of environmental impact accounting relying on algorithms based on weak or questionable scientific evidence.

⇒ **Overload of consumer information should be avoided** in this initiative and across EU consumer policy in general. Different access rights shall be granted based on the need of the different players - B2C, B2B, B2Gov – and following a **“need to know” principle**. This shall **be applied across the multiple initiatives in parallel**. For example:

- Empowering Consumers Directive
- Right to Repair Directive
- Corporate Sustainability Reporting Directive
- Ecodesign for Sustainable Products Regulation
- Packaging and Packaging Waste Regulation

⇒ **Enforcement measures** are important to guarantee deterrence and respect for the rules and this should primarily **rely on intervention by public authorities**, which is what happens in most Member states. When private enforcement appears as a secondary option, it should be made sure **those entitled to bring claims/complaints in front of authorities or courts need to comply** with minimum criteria consistent with the current **Representative Actions Directive**.

⇒ **Enforcement actions envisaged in the proposal are disproportionate to the regulatory aim and should not be solely focused on punitive action** but also consider corrective measures (in alternative to sanctions) giving the companies the opportunity to correct, adjust or refine their claim.

⇒ Clear transition rules are necessary to **avoid disrupting the single market, distorting incentives to advertise green claims** and avoid **hurting the ability of consumers to make informed sustainable choices**. It is important to address **the lack of transitional provisions and clarifications on possible retroactive penalties during the legislative process**.



III. Specific comments

Scope - Article 1

The text refers to the amendment of the Unfair Commercial Practices Directive (UCPD) as proposed under the currently negotiated Empowering the Consumer for the Green Transition (ECGT). Since the amendment of the UCPD has not yet been approved, it is important to refrain from inconsistency among EU legislations.

The scope states the “*Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.*” It should however be made more prominent that the proposal does not cover business-to-business environmental claims nor sustainability reporting.

It is not clear from the proposal how the same rules could work for both claims about products and about traders. Furthermore, it is important to ensure that the list in Article 1 is complete with all *lex specialis* that already regulate environmental labelling schemes or explicit environmental claims for specific products (e.g. Renewable Energy Directive).

Definitions – Article 2

The definitions in Article 2 (points 17-19) on "environmental performance," "environmental aspect," and "environmental impact" are complex and in their current form not clear, partly because they are interrelated. Simple and easy-to-understand definitions of these essential concepts are needed.

Documentation of environmental claims - Article 3

Confusing and conflicting formulations are used in Article 3. It is initially stated that businesses must assess a range of factors. However, most of the subsequent factors that must be included in the assessment are not formulated as something to be assessed but as requirements (e.g., "shall demonstrate, provide, include, identify," etc.). Overly prescriptive documentation requirements could lead to more confusion, more costs and ultimately less transparency.

The proposed directive would make the legal situation less clear and the burden of proof heavier on European companies, as it is not clear and must be specified further what constitutes e.g., "widely recognized scientific evidence." Leaving the definition of this criteria or the rules for third-party verification to the respective Member State will create potential problems of coordination and legal fragmentation.



A best practice that can serve as inspiration, comes from the Danish Consumer Ombudsman. The Ombudsman's guidance currently states (p. 15)²: "*The documentation must be comprehensive, which normally means that the claims must be supported by statements or studies from independent bodies with recognized professional competence. If there is significant disagreement or doubt within the field of expertise about the environmental effect [...], the business must provide balanced information or refrain from promoting the message.*"

There is also lack of clarity on:

- how extensive a life cycle analysis must be performed and to what extent it depends on whether the environmental claim is a "general, stand-alone environmental claim" (i.e., generic) or an "environmental claim with an explanation".
- the "significance" required for environmental impacts, environmental aspects or environmental performance subject to the claim from a life cycle perspective.
- how to measure "significantly better performance than what is common practice", which would require access to information and data from companies that are often not in the public domain.
- to what extent – and under what conditions – environmental improvements that only concern a specific part of a product, such as the packaging in a package of beef, may be advertised.
- to what extent changes to the claims' text trigger a new assessment / certification.
- whether/to which extent a trader further down the distribution line may use a certification of a business partner
- whether the information obligations in Article 5(6) apply only to the specific claim made or should cover the entire product (which would then have to cover both the packaging improvement and the environmental impact of the product inside the packaging).

We have doubts whether animal welfare should be included as an environmental aspect in Article 3, Paragraph 1(g). It should be noted that animal welfare is subject to specific regulation both at the EU and national level and in the EU's Corporate Sustainability Reporting Directive it is considered as an ethical aspect (under Governance) rather than an environmental aspect (under Environment).

² See here: [Rapport \(forbrugerombudsmanden.dk\)](https://forbrugerombudsmanden.dk)



Substantiation of comparative explicit environmental claims - Article 4

The provision appears unnecessarily complex. The provisions in Article 4 subparagraphs (b)-(e) appear largely covered by subparagraph (a) or could be incorporated into subparagraph (a) with a rephrasing.

The robustness of methodologies such as Product Environmental Footprint (PEF) or other science-based methodologies, that companies can rely on to substantiate their claims, needs to be further clarified and enhanced to ensure their added value. Business stakeholders need to be involved in this process.

Communication of explicit environmental claims - Article 5

The provision should be further clarified. It is unclear what is meant by "cumulative environmental impacts". If certification data is provided to the consumer through marketing channels (traditionally more simplified), it could easily lead to misunderstandings and information overload of the consumer as to how to interpret this data. These new rules should account for the context, communication vehicle and target group of the information.

It is important that the obligations under this proposal (e.g., Article 5) are consistent with the need to protect commercially sensitive information and IP rights. The current proposal makes no reference to the protection of such sensitive information such as trade secrets or intellectual property (IP), which is crucial to safeguard and promote continued R&D by European companies.

Communication of comparative environmental claims - Article 6

The reference to Article 4 may not be enough to ensure mutual recognition as there are different life cycle assessments with flexibility provided by the respective science-based methodology (e.g. LCA, GHGP), which would make it difficult to compare.

Environmental labels - Article 7

To provide clarity to consumers, traders and verifiers, the proposal should specify what happens to well-recognized public schemes and labels (e.g., Nordic Swan, Austrian Ecolabel). It is also unclear what would happen to existing private labelling schemes and what is meant by "*a rating or score of a product or trader based on an aggregated indicator of environmental impacts of a product or trader*". And in case of necessary ex post revision of a scheme how would this be processed in practice?



We also see the need for further clarification regarding how this proposed directive relates to labels and certifications that communicate a part of a product's manufacturing process or value chain. It is important for companies to have a certain flexibility and continue to be able to use relevant labels and certifications that substantiate particularly important parts of a product's value chain, provided that they also meet the (revised) requirements in Articles 3-6.

It is also important to address the use of aggregated scores on labelling systems which intend to lead the consumers to judge the environmental sustainability of a single product in an arbitrary manner. For example, the use of "traffic lights" labels influences consumers' choices rather than providing adequate information to enable them to make free and well-informed choices.

Relationship of the proposal with existing international standards

The subject of environmental claims and labels is already covered by a wide range of standards such as the ISO-Standards (e.g. ISO-EN14021, ISO-EN14024-26) or e.g., sector specific labels like TCO Certified or the Electronic Product Environmental Assessment Tool (EPEAT) for the technology industry. These labels are based on a consolidated tool for the definition and quantitative verification of green claims. This proposal should build on the well-implemented worldwide standards to avoid confusing consumers/users and increasing the costs and complexity of managing the labelling system for European companies.

Requirements for environmental labelling schemes - Article 8

Article 8 sets the rules regarding environmental labelling schemes established by public authorities in third countries awarding environmental labels to be used on the Union market and requires them to be subject to approval by the Commission prior to entering the Union market. It is important that all those requirements as well as the novel requirements that are to be put in place with the implementation of this directive should be communicated to the third countries well advanced and in a detailed form.

A requirement for stakeholder involvement is not appropriate. It is a reasonable and proportionate requirement that the conditions for obtaining an environmental label be determined by or in consultation with experts. However, it is unproportionate that the conditions be subject to mandatory consultation with "a *heterogeneous group of stakeholders*". Stakeholders are not necessarily experts or objective of every claim. It would be reasonable that only stakeholders who apply the scheme or their representatives can give feedback.



Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes - Article 10

Mandatory third-party verification for both the documentation of an environmental claim and the company's use of environmental claims will impose considerable administrative burden on companies and verifiers alike. It requires not only a relevant environmental expert, but also a professional legal assessment.

The proposal lacks references to self-regulatory measures developed by different sectors which could play a role in fulfilling the objectives of this initiative. One example is the ICC Advertising and Marketing Communications Code developed by the International Chamber of Commerce (ICC) which serves as a gold standard for responsible marketing self-regulation.

According to the proposal, verification must be carried out by a verifier before the environmental claim is made public. This will have negative consequences for companies waiting for verification when launching a new, innovative product (e.g., increased costs, outdated products and services and delayed/lower market penetration) and could constitute considerable administrative burden. Verification may just become completely impractical which could lead to deterring from any positive statement on sustainability and act as a de facto ban.

There may also be a risk that innovative green products will instead be launched in markets outside the EU. It may also discourage companies from communicating about green initiatives if the process is too cumbersome.

Additionally, there is a significant risk that the requirement for prior approval and certificate of conformity will complicate and increase the cost of sustainability efforts, which ultimately negatively affects the consumer through higher prices. If verification before publication becomes mandatory, it should be ensured, *ad minimum*, that the process is fast and flexible.

The proposal should make clear whether a claim, once it is verified, can be repeated in the context of different communications, materials and channels by the company that pursued the verification process and by all other companies of the same group, avoiding the reiteration of the same verification process. Similarly, the proposal should make it clear that verified information (e.g., CSRD, CS3D) could be used in green claims without requiring it to be audited again. In this way, redundancy and disproportionate economic and time burdens can be avoided.

We would recommend clarifying that communication requirements apply to different actors involved (e.g., manufacturers, e-commerce platforms, etc.).



To avoid delays because of the many (expected) requests and assessments which would result in less available claims and less information for consumers to make informed choices, it is important to include a time limit for verifiers into the directive to draft their certificates of conformity for both existing and new claims. The directive should as well include a requirement for member states to prioritize existing environmental claims made before the entry into force of this directive and consider introducing a grandfathering period, where existing claims, submitted for verification, can continue to be used. In addition, it should be clarified that products already placed on the market before the entry into force of the directive can still be sold.

Verifiers - Article 11

It is important to ensure that verifiers' assessment is recognized across the Union and to further specify the verification processes. This will reduce the burden on the single verifiers and grant the possibility for traders to make substantiated green claims with benefits for both the traders and the consumers.

Compliance and monitoring measures - Article 15

Administrative burdens on the economic operator and Member States' authorities should be reduced to a minimum. Time consuming and cost inefficient approval processes could be counterproductive. Only aggregated results should be published to protect commercially sensitive information and IP rights as well as to prevent unreasonable naming and shaming.

Further clarification is needed regarding whether a certificate or document related to an environmental claim follows a product throughout its value chain, regardless of where in the value chain the application has been made and approved. Similarly, there is a need for clarification on how responsibility is distributed among different actors in the same value chain.

Legitimacy for substantiated complaints and access to justice - Article 16

The wide-open right to file substantiated complaints to authorities by any stakeholder in Article 16 or to take companies to courts has a strong potential for abuses. Besides the risk of leading to massive litigation in the EU, granting these rights to any entity could deprive those really affected by the claims of the chance to bring claims to courts which goes against the fundamental principle of access to justice. Moreover, the requirements in paragraph (2) for organisations or entities are not sufficient to act as a representative.



Ad minimum, the same basic requirements (for the entities enabled to bring forward complaints) and procedural safeguards (against abusive litigation) should be imposed as in the Representative Actions Directive (EU) 2020/1828.

Penalties - Article 17

This provision sets out that companies may be subject to additional sanctions for violation of the directive. In our view, the proposal and its terminology raise several questions in relation to rule of law principles (e.g., how to calculate the economic “benefit” a certain environmental claim).

Using guiding criteria for Member States to assess whether to impose a penalty and at what level is preferable to proposing turnover-based fines. The Commission’s own reports³ confirmed that it is difficult to draw a conclusion about whether specific penalties like turnover-based fines have a better performance in terms of trust or on enforcement. Other factors than turnover tend to be more appropriate to determine the level of fines, for example: severity of the infringement; the distinction between procedural shortcomings and material adverse impacts, intentionality; risk for the property, physical integrity, and interests of the citizens; damages; repetitive nature of the breach, etc.⁴.

The proposed enforcement measures could lead to double punishment without making distinctions, for example, as to the severity of the violation or how long ago it occurred or the time sequence of two possible violations. Harmonization in key aspects of enforcement is essential to guarantee a level playing field.

Finally, it should be noted that public support is a very broad term, which also includes support schemes for businesses or industries to aid the green transition. The last part of paragraph 3 should be formulated identically to the recent harmonization of the sanction provisions in several EU directives on consumer protection, including the UCPD.

Evaluation and review - Article 21

The possibility to introduce a potential prohibition of environmental claims for products through a legislative amendment by the Commission is too far reaching. Those products are already under provision of numerous other legislation (REACH, RoHS Directive, etc.) in the EU and should still be allowed to be subject to a green claim. Furthermore, we question if this directive is the right place to define what is a *use considered essential for the society* (Article 21(3)(b)).

³ See, Consumer Scoreboard 2017: [Link](#)

⁴ See for example Directive 2019/2161 (Omnibus directive, New Deal for Consumers)