

## AESGP feedback

### European Commission's proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)

July 2023

AESGP, the Association of the European Self-Care Industry, is interested to provide input on the public consultation concerning the published legislative proposal for a Directive on the Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive).

AESGP welcomes the European Commission's proposal, and we believe that together with the proposal on Empowering Consumers for the Green Transition will be key to **eliminating greenwashing practices** while defining clear rules and **creating a level playing field for businesses** and **truly empowering consumers** to make more sustainable choices.

For this to be achieved, AESGP supports the feedback from the European Brands Association and similarly recommends EU policymakers take into consideration the following elements:

1. Legal coherence across Sustainability proposals.
2. Proportionated substantiation rules.
3. Clear, harmonized, time-bound and comprehensive ex-ante verification and certification requirements.
4. Sufficient transition period ensuring compliance.
5. Foster digital means proportionating disclosed information and excluding confidential business data.
6. Clarified rules for environmental labelling schemes.
7. Assurance of fair competition and a level playing field among industries.

### Legal coherence of the Green Claims Directive with the proposal on Empowering Consumers for the Green Transition should be ensured

- **The definitions set under the Green Claims Directive must be aligned with those established under the Empowering Consumers for the Green Transition (ECGT) proposal:**
  - The **definition of 'explicit environmental claim'** has been deleted by the European Parliament and Council from the ECGT proposal. Thus, the definition should be either removed from the Green Claims Directive or included and clarified to avoid it coinciding with the definition of 'environmental claim' set under the ECGT proposal: an explicit environmental claim should be a substantiated environmental claim where the specification of the claim is provided in clear and prominent terms on the same medium or through digital means.
  - The **definition of 'sustainability label'**, currently included under the Green Claims Directive, should be deleted as it falls out of the scope of the proposal, which focuses only on environmental labels.

- **Traders should not be required to demonstrate that the claim goes beyond requirements imposed by law**

The substantiation measures defined in Article 3 should **avoid adding unnecessary and burdensome requirements, by requiring traders to demonstrate that the claim is not equivalent to requirements imposed by law** on products within the product group. The **ECGT proposal already prohibits the practice** of presenting requirements imposed by law on all products as a distinctive feature of the trader's offer.

- **Traders should not be required to show that a product performs significantly better than is common practice for products in the relevant sector or product group**

The requirement that environmental claims must be substantiated by information confirming that the product subject to the claim **performs significantly better than is common practice for products** in the relevant sector or product group **risks being disproportionate and subject to different interpretations across Member States**. The proposal on Empowering Consumers for the Green Transition already prohibits advertising benefits that are considered common practice. Unless the claim establishes a comparison concerning the entire market, requiring a claim to include information about all competing traders or products would be disproportionate. This would impact green innovation and would make it impossible to substantiate most environmental claims, as **it would require traders to have access to and collect data about competing traders or products**, to access their life-cycle environmental impact. This is extremely difficult given that **such information is often confidential and seeking it from competitors could infringe competition law**.

Additionally, if a trader places an innovation on the market, which is subsequently adopted by other economic operators, it would be highly challenging to monitor and determine the point in time when that innovation would become common on the market. The broader voluntary uptake of a sustainability innovation to the point that it becomes a common standard constitutes success and positive development and should thus be allowed to be communicated.

## **The rules for the substantiation of explicit environmental claims should be proportionate to the type of claim**

- **We support the “life cycle perspective” approach proposed by the European Commission which states that a detailed life-cycle analysis would not be required to substantiate all environmental claims**

We support the approach proposed by the European Commission which requires the assessment used to substantiate environmental claims to consider the life cycle of the product and does not require conducting a full life-cycle analysis for each type of environmental claim. To ensure a harmonised interpretation and implementation, **we recommend including or referencing in the proposal the definition of “life cycle perspective” set in ISO 140013**: “This does not require a detailed life cycle assessment; thinking carefully about the life cycle stage that can be controlled by the organisation is sufficient. Typical stages of a product life cycle include raw material acquisition, design, production, transportation/delivery, use, end-of-life treatment, and final disposal. The life cycle stages that are applicable will vary depending on the activity, product, or service”.

Moreover, the substantiation requirements should be proportionate to the nature of the environmental claim and appreciate the **difference between claims related to environmental aspects, environmental impacts, and environmental performance**. The **requirements should be aligned with existing regionally and globally recognised standards** (e.g., ISO 14020, ISO 14021, ISO 14025), **and clarify where a life cycle assessment is appropriate**. Broader substantiation requirements may otherwise disincentivise traders from investing in improving the environmental aspects of their products. For a claim related to an environmental aspect, e.g., that a product contains X% recycled content, the share of recycled content should be substantiated through the documentation provided by the supplier. On the contrary, an environmental claim related to an environmental impact, e.g., on carbon footprint, must be supported by a life-cycle assessment of the product.

- **Traders should be allowed to provide a qualitative assessment where there is no scientific consensus on how to measure an environmental impact**

As the Directive requires to demonstrate, when claiming an environmental impact, that the trader is not creating an adverse effect on other environmental impacts, it should be noted that there is no scientific consensus on how to measure some of them (e.g., biodiversity). For those indicators, traders should be allowed to provide a qualitative assessment. The European Commission could adopt guidance to support traders in such assessment. Moreover, a balanced approach should be followed related to any **trade-off effects** in green claims (referring to positive sustainable impacts of a product in one sector leading to worsening sustainable impacts of the product in other sectors).

- **Clarity on the assessment of claims should be provided to facilitate traders' compliance with the substantiation requirements and prevent divergent approaches by Member States and verifiers**

To avoid different interpretations by the Member States and competent authorities, as well as by the verifiers, the proposal should set a clear **definition of the 'widely recognised scientific evidence'** required for the substantiation of explicit environmental claims. This should be identified as evidence based on national, international, or European standards or on scientifically valid reasoning or methodology which has been either subject to peer review and publication or has received widespread acceptance within a relevant scientific community. **Self-certification by traders** would be a more proportionate approach for certain claims whose definitions are clear and not controversial, thus reducing the financial and regulatory burden on businesses. Article 10 should avoid those traders facing uncertainty and the risk of being challenged by national competent authorities or courts at any time.

- **A robust, transparent and clear legal framework for the substantiation and communication of climate-related claims must be established**

The Self-Care industry is committed to innovating and transitioning towards more sustainable production and products and is making significant investments in terms of human and financial resources to achieve the EU climate and environmental goals, including those of carbon neutrality and net zero by 2050. Carbon and climate neutrality claims are a strong incentive for manufacturers to invest in greenhouse gas reduction (GHG) plans and quality offsets programmes. At the same time, these efforts should be communicated to consumers, who then have the appropriate information to make an informed choice. We thus believe that it is important to establish a clear set of rules to enable companies to make robust and substantiated claims on carbon footprints and climate neutrality. Today international standards provide the methodology to measure the carbon footprint of a product (e.g., the EU PEF, ISO 14067, Greenhouse Gas Protocol Standards, UK PAS 2050) and labelling requirements for "carbon neutrality" claims of a product (e.g., ISO 14021, UK PAS 2060). All these standards, in summary, indicate that to achieve carbon neutrality for a product, the GHG emissions should primarily be avoided, then reduced and removed (i.e. within the operations and value chain) and just then finally compensated through high-quality carbon credits/offsetting. Moreover, the establishment of detailed requirements to substantiate "carbon neutrality" claims for products/brands is ongoing through the work of ISO 14068. Such claims should thus be permitted if using these internationally recognised standards. Furthermore, other EU Member States like France, have already adopted national legislation (see AGECL law) which regulates how companies can substantiate their carbon neutrality claims on products. Such rules could be used for inspiration to set a clear EU framework.

We agree with the transparency measures set out under the Green Claims Directive, which require traders to separate any GHG offsets used from GHG emissions as additional environmental information, specifying whether those offsets are related to emissions reductions or removals, and describe how those offsets are of high integrity. Additionally, **we recommend requiring traders to also disclose avoidance-based offsets, not only reductions and removals.** This will allow consumers to have more comprehensive information. Moreover, the implementation of the European Commission's proposal on Carbon Removals Certification will contribute to strengthening the requirements for carbon removal credits, ensuring their robustness and high integrity.

## The ex-ante verification and certification requirements must be clear, harmonised, time-bound and comprehensive to provide certainty to traders and avoid any delay in the provision of the information to the user

The process defined in the proposal risks being **burdensome given the absence of clear procedures and timings for the approval of environmental claims and environmental labelling schemes**. Considering the high number of environmental claims and environmental labelling schemes that will have to be verified and certified, **the current procedure risks considerably delaying their use, and consequently the provision of the information to the user**. This will act as a disincentive if the communication becomes too costly or cannot be made at all. A speedy procedure is paramount to avoid pitfalls currently affecting nutritional labels and health claims, which take on average 2 years to receive approval. Third-party ex-ante verification of green claims should **only be necessary for green claims not based on the suggested methodology**.

To ensure users are adequately informed on the environmental aspects, impacts or performance of products, the ex-ante verification and certification process should be:

- **Clear:** Traders should have full clarity on the process, including the documentation to be submitted and the steps to be followed for the verification and certification. The proposal should also clarify that existing explicit environmental claims and environmental labelling schemes would also be subject to ex-ante verification and certification. However, products with existing on-pack environmental claims and which have already been placed on the market before the entry into force of the Directive should still be allowed to be marketed until their natural life cycle or stock depletion, to avoid massive withdrawals and consequent waste generation.
- **Harmonised:** The text should avoid divergent interpretations or procedures established across Member States and verifiers. The Directive should define the minimum requirements for the procedures, to be implemented by the Member States.
- **Time-bound:** Clear deadlines should be established for verifiers to carry out the verification and certification process, to ensure products bearing an environmental claim or environmental label can be placed on the market within a given timeframe.
- **Comprehensive:** As part of the minimum requirements for the procedure the text should allow **traders to submit the request for verification of a group of claims** when those claims are based on the same methodology. Moreover, if a claim is accepted in one language, it should automatically be accepted in its translated versions.  
The text should ensure that verifiers support traders submitting the verification requests and that traders have the right to challenge the refusal to certify a claim or labelling scheme before the national administrative authorities, courts, or advertising self-regulation institutions.
- **Confidential:** As economic operators will seek verification before a product launches innovations or new products, the text should clarify that verifiers are bound by the rules of confidentiality regarding the claim and the underlying product or service.

Additionally, the **European Commission should swiftly adopt the implementing acts** setting out the details on the form and the technical means for issuing the certificate of conformity **within 12 months** from the entry into force of the Directive. To support traders in the ex-ante verification and certification of the environmental claims and environmental footprint labelling schemes, the **European Commission should publish a list of accredited verifiers**.

## A sufficient transition period is needed for the establishment of the ex-ante verification and certification process and for traders to ensure that existing environmental claims and labelling schemes are compliant with the Directive

The **transposition period defined in Article 25 is too short and not feasible for Member States, verifiers and businesses**. Member States have 18 months to transpose the new rules into national legislation and the new measures are to be applied 24 months after the entry into force of the Directive. This means that **during this short time frame and, in particular, the 6 months after the transposition of the Directive and before the application of the new rules:**

- **All Member States must have adopted their national laws** (without any delay) which must be clear and harmonised to be implementable and avoid any disruption of the market. These laws must also define the procedures for the independent third-party conformity assessment bodies to carry out the ex-ante verification and certification process and draw up the declaration of conformity.
- **The European Commission must adopt without any delay the required implementing acts** setting out the details regarding the certificate of conformity and the technical means to issue the certificate. **In case of any delay in the adoption of the implementing acts, verifiers will not be able to perform their activities and issue the certificate of conformity, and companies would have to withdraw the products with existing environmental claims or labels** that did not receive the authorisation before the application of the new rules.
- **Verifiers must be accredited and have the necessary capacity** (in terms of procedures, human resources, and expertise) **to treat the high number of applications that will be submitted by companies.** These applications must be treated before the new rules become applicable, to allow companies to continue to market the products bearing the environmental claim or the environmental label and avoid any withdrawal of goods from the market.  
**In our experience, it could take around 6 months for the standards to be defined and an additional 6 months for verifiers to be accredited. Afterwards, the verifiers will have to start processing the requests for verification and certification** submitted on existing and new environmental claims and environmental labelling schemes.
- Companies must have clear and certain processes and time frames for the ex-ante approval verification and certification, to ensure that they can collect, prepare, and submit the applications for the certification of environmental claims and environmental footprint labelling scheme. This is key for those products bearing environmental claims or labels already placed on the market.

**We strongly recommend extending the timelines mentioned for the application of the requirements** to provide enough time for Member States, verifiers, and traders to adjust to the new requirements and have legal certainty on the steps to take to ensure that existing environmental claims or environmental footprint labelling schemes are compliant with the Directive. For this reason, **we recommend that the new requirements start being applied 36 months from the entry into force of the Directive.**

## **The proposal should foster the use of digital means for the communication of explicit environmental claims while ensuring that the information to be disclosed is proportionate and does not include confidential business information**

- **The use of digital means should be allowed both for the communication and substantiation of environmental claims**

We support the Commission's provisions allowing companies to provide information on the product and the substantiation of the claim either in physical form or through **digital means (QR code or equivalent)**. The use of digital solutions allows traders to have the flexibility to provide high-quality information relevant to the user while avoiding having to increase the size of their packaging to fit the additional information. Moreover, digital solutions enable manufacturers to easily adapt and update information without having to change the packaging.

We recommend further clarifying that **all the information mentioned in Article 5**, including how the user should use the product to achieve the expected environmental performance (for those environmental claims where the in-use phase is among the most relevant life-cycle stages), **can be conveyed through digital means.**

- **The information to be disclosed for the communication of environmental claims should be easily understandable, user-relevant and not include confidential business information**

The information to be disclosed in the communication of environmental claims is extremely vast. These risks create a significant burden on traders, consequently disincentivizing them from making environmental claims and investing in R&D in the environmental area without a proportionate benefit from the point of view of compliance enforcement and user information. As a robust level of compliance will already be guaranteed through the establishment of the ex-ante verification and certification process, **the amount of information to be disclosed should be proportionate, easily understandable, and relevant to the user.** While it is important to provide the relevant Union or international standards, as well as the studies or calculations to the relevant authorities and verifiers, this information is not relevant for the user, who would be overwhelmed by the amount of information.



Rather, it is necessary to **provide user-relevant information, through the publication of a clear and understandable summary of the assessment that has been carried out, the relevant information on the offsets used for climate-related claims, and the certificate of conformity or document proving that a third party verification has been performed.**

Moreover, it should be clear that any **confidential business information shall not be disclosed** and should be made available only to the authorities upon request and should not be publicly disclosed.

## **Rules for environmental labelling schemes should be clarified to avoid inhibiting investments into more sustainable practices**

While we support the objective of ensuring that existing and future environmental labelling schemes are based on robust and transparent procedures, the **very strict conditions for new private schemes to be established risk creating a barrier to entering the market.** Such strict requirements risk limiting and inhibiting the considerable investments that brands are doing to innovate towards more sustainable practices, in many cases in areas where there are no existing standards or methodologies. It is thus necessary to strike a balance between ensuring that existing and future private environmental labelling schemes are robust, based on national, international, or European standards and methodologies, and third-party verified, while still being a strong incentive for continuous innovation and improvements. Moreover, the 'added value' to be proved for the establishment of private labelling scheme risks being subject to different interpretations by the Member States that will have to approve the private schemes and thus needs to be better defined. **An EU Regulation would be a preferable legal instrument due to its direct applicability in all Member States, rather than a Directive.** Additionally, the Directive should require **the Commission to adopt the implementing acts within 12 months of the adoption of the Directive.** This would ensure that the implementing acts are not adopted after the deadline for the Member States to transpose the rules into their national legislation, which would lead to a risk of divergent rules being adopted.

### **Additional comments:**

- The text should clarify that the **prohibition set in Article 7 to use scoring or rating environmental labels unless established under Union law**, applies to *all* economic operators, including any product-rating app or websites run by economic operators other than traders. As these tools are developed and used to compare products, they need to be subject to the same treatment.
- The **time frame of 30 days for traders to bring the explicit environmental claim into compliance** with the Directive is not realistic, also considering the corrective measures that would need to be taken. The text should clarify that the trader shall *initiate* the corrective actions to bring the claim into compliance with the Directive within 30 days, to be effective as soon as possible.
- The **provisions on complaint handling and access to justice** should also be extended to verifiers, as they should be held responsible and bound by the same rules as the companies that they verify. In the case of a judicial review procedure, the verifiers should also be involved in the process, as they are the accredited bodies that have carried out the verification process and issued the certificate of conformity.
- Article 9: We believe that the regular **review of claim** substantiation should occur at **intervals longer than 5 years.**
- The **indication that the maximum amount of the fines should** be *at least* 4% of the trader's annual turnover should be clarified, as it risks leaving the door open to the Member States to adopt different approaches.