

## Commission proposal for the Green Claims Directive

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Presented by **Commissioner for Environment, Oceans and Fisheries Virginijus Sinkevičius**

On 22 March, the Commission presented as part of its Consumer package a proposal for the Green Claims Directive, which lays out common criteria for targeting greenwashing and misleading environmental claims. The proposal aims at giving consumers more clarity and better quality information to choose environment-friendly products and services. In terms of business, the text aims to reward and boost sales of companies, which make efforts to improve the environmental sustainability of their products. According to the proposal, companies choosing to make a “green claim” about their products or services, will have to respect minimum norms on how they substantiate these claims and how they communicate them.

This proposal provides more specific rules and complements the proposed changes to the Unfair Commercial Practices Directive (2005/29/EC), while also building on the Commission proposal for a Directive empowering consumers for the green transition through better protection against unfair practices and better information published in March 2022 which is currently going through ordinary legislative procedure. Following the publication, the Green Claims Directive will now be subject to the scrutiny by the Parliament and the Council.

### Background

The most recent 2020 study found that a considerable share of environmental claims (53.3%) provide vague, misleading, or unfounded information about products’ environmental characteristics across the EU and across a wide range of product categories (both in advertisement as well as on the product). Most stakeholders (except industry representatives) expressed less trust in environmental statements and logos managed by companies or private entities, consumer’s trust in green claims is quite low too.

### General objectives

The aim is to enable consumers to act on reliable information about the sustainability of products and traders by setting out the detailed European rules on voluntary green claims. The requirements concern environmental claims made by traders in business-to-consumer (**B2C**) commercial practices.

The Green Claims Directive will contribute to increasing environmental sustainability and to the green transition towards a circular, clean and climate neutral economy in the EU by enable consumers to make informed purchasing decisions. It will contribute to fighting greenwashing and create a level playing field for green claims.

The proposal on environmental claims **is meant to act as a safety net for all sectors where environmental claims or labels are unregulated at EU level**. It does not aim to change existing or future sectoral rules. In addition, the Green Claims Directive is complementary to:

- The revised Unfair Commercial Practices Directive, which covers all voluntary business-to-consumer commercial practices before, during and after a commercial transaction in relation to a product. The scope of the Green Claims Directive proposal covers the substantiation and communication of **voluntary environmental claims**.

- The proposal on empowering consumers for the green transition, which deals with sustainability labels which cover environmental or social aspects or both. The Green Claims proposal is however limited to **environmental labels** only, i.e. those covering predominantly environmental aspects of a product or trader.

### Specific objectives

1. Ensure that environmental claims are based on **reliable, comparable, and verifiable** information by asking traders to perform an assessment according to the requirements set in Article 3. This information shall be made available to allow for an informed choice of the product, process or service.
2. Set requirements to **limit the proliferation of environmental labels** and to limit the consequent consumer confusion.
3. Ensure that the **information substantiating the claim is made publicly available** together with the claim itself in a physical form or in the form of a weblink, QR code or equivalent.
4. Achieve **clarity on rules** for making environmental claims on the internal market and **checking them** by a accredited third party certification body.
5. Set clear rules for Member States for setting up market **surveillance and enforcement procedures** for verifying the substantiation and communication of environmental claims as well as for the verification of the compliance of environmental labelling schemes.

### Key principles set by the Directive

Traders that are willing to set environmental claims on the environmental impacts, environmental aspects or the environmental performance of their product, service or process should perform an assessment to **demonstrate its added value** compared with what is common practice for the products in the relevant product group or traders in the relevant sector (Article 3(1)). **Information on the product or the trader subject to the claim**, and its substantiation, should be made publicly available in a physical or in a digital form (weblink or QR code or equivalent). This provision accounts for trade secrets derogations in line with Directive (EU) 2016/943.

This assessment will have to demonstrate that the environmental impacts, environmental aspects or environmental performance addressed by the claim is:

- significant from a life-cycle perspective;
- goes beyond the requirements by law;
- does not create a significant harm in relation to environmental impacts on climate change, resource consumption and circularity, sustainable use and protection of water and marine resources, pollution, biodiversity, animal welfare and ecosystems, and
- the performance of the product or trader is significantly better than what is common practice for products in the relevant product group or traders.

The methodology (Art.3(1)) for performing this assessment shall:

- be based on widely recognised scientific evidence and state of the art technical knowledge and take into account relevant international standards;
- consider multiple environmental impacts, and not focus on only one; and
- be regularly reviewed by an accredited third party conformity assessment body or verifier (Article 11).

On top of requirements on substantiation and communication applicable to all types of claims, the Green Claims Directive include provisions to address the **proliferation of environmental labels and the ensuing consumer confusion**. The environmental labels (Article 8) act as a certification scheme that certifies that a product, a process or a trader complies with the requirements for an environmental label. Such labels need to fulfill a series of governance criteria to improve the quality of ecolabelling schemes. This list of environmental labels that can be used in Europe will be published and maintained by the European Commission.

### Content requirements

No provisions consider specific requirements on substances for the time being. However, according to Article 21(b) and Recital 67, the European Commission has to evaluate the Directive in light of its objectives 5 years after the date of the transposition of the Directive. If needed, they can propose measures to facilitate the transition towards toxic free environment by considering introducing a prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society in line with the criteria to be developed by the Commission.

Recital 17 seems to allow flexibility on the assessment of the environmental footprint substantiating the claim. Notably, Recital 32 focuses on the Product Environmental Footprint (PEF) methodology<sup>1</sup>, and establishes that the category rules for specific products or traders can be used to support the substantiation of claims in line with the requirements of this Directive. However, it should be noted that the PEF method is referred to as an indicator of performance for the success of the measures implemented by the Directive<sup>2</sup>.

### Expected delegated and implementing acts

The Commission will be empowered to adopt delegated acts to supplement further requirements for specific environmental claims (Article 3(4)) and Article 5(8)); this may include establishing new PEFCRs/OEFSRs, that can be relevant for the implementation of the ESPR (Recital 32).

The Commission will be empowered to adopt implementing acts to:

- Ensure a uniform application across the Union of the Requirements for environmental labelling schemes (Article 8(8)).
- Establish the form of the certificate of conformity (Article 10(9)).

### Reporting obligations for authorities

- The Commission will submit a report, assessing the achievement of objectives of this Directive, to the European Parliament and Council no later than six years after its adoption.
- Member States are to regularly monitor the application of this Directive based on an overview of environmental claims that have been notified to the enforcement authorities.
- Member States are to supply this information to the Commission on an annual basis.
- The European Environment Agency is to publish a bi-annual report with its assessment of the evolution of environmental claims and labelling schemes in each Member State.

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<sup>1</sup> Commission Recommendation (EU) 2021/2279

<sup>2</sup> Legislative Financial Statement, page 62