



Green Claims Directive

ECOS position paper

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The Green Claims Directive (GCD) is urgently needed, and ECOS supports its adoption. It represents a crucial initial step that can and should be strengthened further. Nonetheless, even in its current form, it will significantly enhance legal measures against greenwashing.

Voluntary environmental claims are made because they give a market advantage to those who make them. It is urgent that these claims no longer support polluting industries, but instead promote sustainable consumption. Claims should be relevant, clear, and reliable.

The Green Claims Directive sets the baseline for regulating such claims. While sectoral legislations may go beyond, this baseline should, at the very least, be upheld and respected.

We need harmonised methods to substantiate environmental claims in a coherent manner across Europe. Rules should ensure that methods are not misused as sophisticated greenwashing. The methods should progressively cover all environmental impacts and claims.

The ex-ante verification system will support the work of authorities by ensuring that most claims meet legal requirements. However, certificates of conformity must not rubberstamp greenwashing: clear substantiation rules must be put in place to prevent problematic practices.

Notably, claims on products with hazardous substances, or claims based on the use of credits to compensate a product's impact on the environment should be banned.

This position paper summarises our assessment of the directive, highlighting where we hope co-legislators can improve the proposal, and how we think it can support good environmental communication to consumers.

Contact : Margaux Le Gallou - margaux.legallou@ecostandard.org

ECOS - Environmental Coalition on Standards

WeWork, rue du Commerce 31, B-1000 Brussels, Belgium

T +32 2 894 46 68 · info@ecostandard.org · www.ecostandard.org

Recommendation Summary

<p>What is good</p>	<ul style="list-style-type: none"> • Claims will be substantiated, especially on their relevance from a life-cycle perspective or the overall activity of the trader, and the reliability of the information provided. • The publication of background information will significantly increase the transparency of environmental claims. • Minimum requirements set for environmental labels will improve their reliability. • The use of scores and ratings based on aggregated indicators of environmental impacts will be restricted to environmental labelling schemes established under EU law. • The ex-ante verification system of claims and labels has the potential to eliminate a major share of misleading claims. • Provisions on enforcement, sanctions and access to justice are significant progress.
<p>What needs to be strengthened</p>	<ul style="list-style-type: none"> • Article 3 contains important principles on a claim's relevance and clarity, but lacks methods to ensure a harmonised transposition and implementation by the new mandatory third-party verifiers. • The Commission should not wait for the results of the monitoring or evaluation of the GCD to develop tailored methodologies to implement Article 3. We need a clear action plan, a timeline for delegated acts, and an inclusive and transparent consultation process. • Regarding labels, the scope of GCD should be extended to all sustainability labelling schemes that include environmental claims. It would not only provide legal clarity, but it would extend the benefits of the GCD to more schemes. • Clarifications are needed on the scope of claims being excluded, the scope of the restriction on rating and scoring, and the verification process.
<p>What needs to change</p>	<ul style="list-style-type: none"> • It is essential to ensure that introducing specific claim requirements in other laws does not serve as a means to evade the ambitions of the GCD, but rather as an opportunity to surpass them. Existing legislation should also be brought up to the level of ambition of GCD when it is not already the case. • We strongly advise co-legislators to clearly ban claims based on offsetting and the idea of compensating one's impact on the environment, be it for carbon emission, plastic pollution or ecosystem destruction. • On future environmental performance, more requirements are needed to ensure the goals are realistic and followed by action. An independent monitoring system should be introduced, tasked with assessing detailed implementation plans and their progressive realisation. • Products that contain hazardous substances should not be allowed to carry green claims, as it should be a societal objective to get these substances out of the marketplace as far and as fast as possible.

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Assessment of the proposed directive

Scope of the directive and regulatory context

With its proposal for a Directive on Substantiating Green Claims (GCD), the European Commission aims to complement a regulatory framework that currently fails to provide the right tools to ensure that green marketing does not turn into greenwashing. The GCD will act as the link between the Unfair Commercial Practices Directive (UCPD, for which it acts as *lex specialis*) and sectoral environmental legislations that include requirements for specific types of claims.

While the UCPD introduces the main definitions and prohibitions in the field of voluntary environmental communication to consumers, the GCD will provide the rules on how to exactly communicate claims and substantiate them, as part of an environmental labelling scheme, or independently. It is an important piece of legislation to ensure that no more environmental claims appear on the market without any evidence or clarity on their meaning.

The proposal includes a long list of scope exemptions, applying whenever existing or future sectoral legislation provides requirements for environmental claims. One can assume that sectoral legislations will be able to provide more detailed definitions and methods of assessment to substantiate these claims. **However, nothing in GCD ensures that the minimum level of protection it introduces will be matched in these sectoral legislations, particularly regarding third-party ex-ante verification of claims and the disclosure of documentation.**

In this spirit, we are concerned that the GCD will not be the overarching framework on how to substantiate and communicate environmental claims, but a backup option that sectoral legislations could circumvent by introducing less stringent requirements. In addition, the ever-expanding scope exemptions reduce legal clarity as companies will have to first understand which claims fall under GCD and which fall under sectoral legislation. This, in turn, will require them to follow multiple procedures when presenting several claims on the same product.

For example, the upcoming Packaging and Packaging Waste Regulation is a case in point. It will cover claims on packaging's recycled and biobased content. However, the process for substantiation and verification of these claims is not included in the proposal at this stage, leaving it unknown if it will meet the ambition of GCD. Besides, other claims, for example on the lifecycle impact of packaging are not covered and should therefore fall under GCD.

Recommendations

- Co-legislators should ensure coherence between the Green Claims Directive and sectoral legislations. Introducing requirements on specific claims in another law should not become a way to opt out of GCD's ambitions, but rather to go beyond. Existing legislations should also be brought up to the level of ambition of GCD when it is not already the case.
- To avoid confusion, the directive should explicitly clarify that it is not entire sectors that are excluded, but only the claims that are specifically regulated under the sectoral legislation. The Commission should publicise a list of all environmental claims that are covered under other legislations and therefore out of the scope of GCD.

Environmental assessment methodologies for effective verification

Article 3 is at the core of the proposal, as it introduces the list of rules that traders need to follow when substantiating their claims. The original plan for the legislative proposal had foreseen the use of the Product Environmental Footprint (PEF) method developed by the European Commission as a way to substantiate claims on the life-cycle impacts of certain products. The final proposal has almost entirely removed references to the PEF method. No other method is introduced for any type of environmental impact or aspect.

While Article 3 contains important principles on a claim's relevance and clarity, it fails to provide clear requirements on how to implement these principles. Terms such as 'recognised scientific evidence' or 'significant from a life-cycle perspective' leave room for interpretation, leading to potential inconsistencies in their application.

The proposal refers to international standards for substantiation. This can only work if the standard includes clear definitions for terms to be used in environmental claims and strict test methods to ensure that the characteristics of a product do indeed fit the definition in the standard. Standards that offer loose definitions and do not include dedicated test methods are easy to comply with without any added value when it comes to claims¹. Some standards might even introduce problematic practices, such as the upcoming ISO standard on carbon neutrality.²

The proposal introduces the possibility for the European Commission to further specify the requirements for substantiation, via Delegated Acts. Some topics are already foreseen such as carbon claims and PEF categories rules. As for the timeline, some topics might be covered in the coming years, but in general, the Commission prefers to wait for the results of the monitoring of implementation to decide on priority topics. This would postpone most Delegated Acts until

¹ ECOS (2021) Too good to be True: A study of green claims on plastic products
https://www.oneplanetnetwork.org/sites/default/files/from-crm/ecos_rpa_report_-_too_good_to_be_true.pdf

² ECOS Blogpost on ISO 14068 https://ecostandard.org/news_events/climate-neutrality-only-as-strong-as-the-weakest-definition/

after 3 years of implementation. There is no detailed action plan. Besides, while the Delegated Acts procedure foresees the creation of a committee for the consultation of experts from the Member States, it does not foresee the wider inclusion of civil society, nor creates conditions for them to engage in a meaningful way. Considering on one hand the criticism of the PEF governance, and on the other the existence of consultation forums such as the Consultation Forum set for Ecodesign, or the EU Ecolabelling Board, creating a similar structure to discuss the implementation of the Green Claims Directive could strengthen the involvement of civil society. This would ensure transparency and a wider pool of expertise.

Finally, Article 3 introduces an additional scope exemption: microenterprises are neither obliged to follow the substantiation procedure, nor to have their claims verified ahead of their publication. We believe this exemption to be problematic, considering that the legislation covers a voluntary action. If a company has the capacity to make claims, it should have the capacity to substantiate them. The proposal already includes support measures for SMEs, on account of their potential lack of means to implement the Directive. This can be extended to microenterprises.

Recommendations

- ECOS strongly supports the principle of having legislative rules on how to substantiate environmental claims. But we need clear and standardised methods to ensure that the principles set in Article 3 are respected and assessed in comparable ways across the EU market. This will be especially necessary with the introduction of mandatory third-party verification of claims, and as the directive is transposed in all Member States.
- Regarding the Product Environmental Footprint method, we recommend continuing its development, and encourage its use by companies when appropriate. We believe PEF is best used for ecodesign, rather than claims. Compared to other LCA methods, especially the use of the ISO 14040 and 14044 standards, PEF ensures that users will assess all significant impacts. However, PEF has not yet been tailored to many product categories, and in some cases, the product category rules have been criticised for not being able to properly assess environmental impacts³ and its governance structure should be more representative⁴.
- In addition, while LCAs are one efficient way to assess environmental impacts, they are not suited to assess several environmental aspects such as reusability or reparability. Other methods are necessary to address these issues and substantiate claims.
- We strongly encourage the Commission to not wait for the results of the monitoring or evaluation of the Green Claims Directive to initiate the development of tailored

³ Eunomia (2022) Understanding the PEFCR for Apparel and Footprint. The role of PEF in policy. Report for the EEB, <https://eeb.org/wp-content/uploads/2022/10/Understanding-the-PEFCR-for-Apparel-and-Footwear-Eunomia-Oct-2022.pdf>

⁴ Civil Society Open letter on concerns about the PEF methodology and its application to apparel and footwear products, 2022 https://ecostandard.org/wp-content/uploads/2022/10/Civil-society-open-letter-The-PEF-methodology-and-its-application-to-apparel-and-footwear-products_2022.pdf

methodologies to implement Article 3. A clear action plan and timeline for delegated acts are needed.

- We recommend establishing a dedicated Consultation Forum on Green Claims, ensuring the participation of Member States and civil society, and creating a transparent and inclusive process evaluating and determining appropriate aspects and assessment methods for different claim types and sectors.
- Micro-enterprises should not be exempted from substantiation rules but provided with adequate support.

Compensation claims and carbon offsets

The way the proposal tackles climate-related claims is a truly missed opportunity to nip in the bud a major source of greenwashing. **By proposing rules on how to report information on the use of offsets, the Commission legitimises the use of credits to compensate for a company's environmental impact.** No amount of substantiation on the calculation methods being used, or the number of credits purchased will fix the problem of a flawed concept.

Carbon credits used as offsets, and offsetting in general, rely on the false assumption that effective environmental degradation can be cancelled out (compensated) by buying credits that supposedly fund environmental protection or restoration elsewhere in the world. It is scientifically false to say with certainty that a ton of CO₂ emitted today can be permanently stored again by planting trees. A ton of plastic waste collected from the ocean cannot write off the fact that a company has produced a ton of virgin plastic.

Offsetting is being used by companies because it is cheaper and easier than investing in diminishing their own impact on the environment, which in many cases would require significantly changing their economic activity. Allowing companies to make claims based on offsetting means encouraging them to maintain the status quo.

Instead, sound environmental information to consumers should focus on the positive change companies make in their own processes. While communicating contributions to external environmental projects (beyond the value chain) could be acceptable under certain conditions, companies should focus their marketing on what they are doing themselves and their core activities, and they should never be allowed to frame their contributions as compensation. They should also be transparent as to how representative these improvements are in relation to their overall impact. Incremental changes and communication on external contributions may be interesting from a brand perspective but they provide no added value to sustainable consumption.

Recommendation

- We strongly advise co-legislators to clearly ban claims based on offsetting and the idea of compensating one's impact on the environment, be it for carbon emission, plastic pollution or ecosystem destruction.

Future environmental performance

Claims on future environmental performance are claims on goals, not on achievements. While they can encourage companies to engage in a meaningful transition, there is a high risk of them not walking the talk, and simply removing their claim without having done any progress on their targets. It is important that requirements on future environmental performance account for this type of situation. However, the proposal only requires that claims on future environmental performance include a time-bound commitment for improvements inside own operations and value chains. **The proposal falls short of providing adequate protection to consumers that are not equipped to assess whether the claim is realistic or simply cosmetic.**

Recommendations

- Claims relating to future environmental performance should only be allowed at the trader level and not at the product level. At the product level, these claims have little added value and can mislead consumers, especially when done about emission reduction pathways that are done at the company level, not at the product level. Attributing overall emission reductions to specific products will lead to accounting tricks that make little sense to consumers.
- Companies' leadership should be directly accountable for monitoring and reporting processes and reporting should happen at least annually.
- Information on emissions, targets and plans must be comprehensive (in the case of climate claims, all emissions scopes should be accounted for, including all emissions facilitated by financial entities). In addition to time-bound commitments inside the company's own operations and value chains, companies should provide clear, understandable supplementary information detailing the implementation plan and its realisation.
- The implementation plan, as well as the progress achieved, should be made publicly available and included in the claim as supplementary information and regular reports on this should be submitted.
- The implementation plan should set out clear, objective, science-based and verifiable commitments and targets. It should set interim targets at least every 2-5 years that do not rely on offsets and that are consistent with achieving a long-term commitment.
- When claims relate to climate strategies, the implementation plan should include measures and targets to transition away from dependence on fossil fuels and apply policies to phase them out.
- The implementation plan should have an adequate budget allocated to it and be based only on existing economically and technically viable technologies.
- Claims relating to future environmental performance should also be subject to independent monitoring to verify the claims and to monitor traders' progress in respect of their commitments and targets, in addition to the verification process set out in Article 10.
- Mitigation actions should take into account the need to preserve or enhance ecosystems and biodiversity.

Claims on unsustainable products: hazardous substances

An earlier draft of the GCD prevented the possibility to make environmental claims on products containing hazardous substances. **The final proposal however removed this part of Article 3** and only included it as a provision that could be considered in future amendments to the Directive.

For example, regardless of its other qualities, a product containing the “forever chemical” PFAS should not benefit from an environmental claim of sustainability, yet with the current proposal, there is nothing to stop a manufacturer from ignoring the presence of PFAS and calling its product green.

Recommendation

- We strongly recommend not postponing this ban. Products that contain hazardous substances should not benefit from green marketing as it should be a societal objective to get these substances out of the marketplace as far and as fast as possible. Consumers should not be encouraged to purchase them, and companies would be more inclined to phase them out quickly if it affects their marketing activities.

Labelling schemes

ECOS welcomes the provisions on environmental labelling schemes, and the new procedure to verify that labelling schemes meet minimum requirements. While the Empowering Consumers in the Green Transition directive already put a halt to self-attributed labels and sets some principles for certification schemes, the Green Claims Directive will provide new guarantees that consumer-facing labels are reliable. Ecolabelling and voluntary certification play an important role in environmental communication, providing clarity to consumers and supporting companies in making reliable claims and getting recognition for their improvements.

The GCD focuses on labelling schemes that predominantly cover environmental aspects. However, several labelling schemes cover different sustainability aspects, mixing environmental and social requirements. Any threshold to define ‘predominantly’ would inevitably lead to arbitrary decisions and will not solve the issue of schemes making a few environmental claims and yet falling out of the scope of the legislation. Besides, the issue of untransparent and unreliable labelling schemes goes beyond environmental ones.

Recommendation

- We recommend extending the scope to all labelling schemes that include environmental claims. This will not only provide legal clarity but also extend the benefits of the GCD to more labelling schemes.

Scores and ratings based on aggregated indicators

We welcome the provision to prohibit scores and ratings based on aggregated indicators of environmental impacts unless they are awarded by environmental labelling schemes established under Union law. Scores and ratings are seen as simple and efficient ways to communicate environmental performance at a glance to consumers. However, aggregated indicators are based on several choices that may vary from one label to another (for example on how to weight different impact categories against each other), and may hide important trade-

offs (a good score in climate impact might hide a low score in human toxicity). The multiplication of incomparable scoring on similar issues may therefore confuse consumers instead of helping them choose the most sustainable option.

Recommendation

- We encourage co-legislators to clarify what exactly constitutes an aggregated indicator of environmental impacts. While we understand that scoring on overall environmental impacts, such as those based on a life-cycle assessment would fall under the restriction, it is unclear if scores on a limited set of impacts (e.g. durability or reparability) would be affected as well.

Documentation

We welcome the provisions regarding information that needs to be communicated to consumers to substantiate the claim. While we should not expect consumers to have the time or expertise to go through the most technical parts of the documentation, these disclosures will allow civil society and other interested parties to check the content of claims and potentially raise concerns.

However, article 5 does not indicate which information should be directly included next to the claim, and which can be put online, one or multiple clicks away from the consumer's attention. Marketing claims tend to be as concise as possible, often being unclear on the exact perimeter of the claim.

Recommendation

- We believe the formulation of the claim should be detailed enough to at least understand which environmental aspects, impact or performance is covered by the claim. If this cannot be included in the claim itself, it should be directly accessible next to the claim on the product or packaging.

Ex-ante verification

We strongly welcome the inclusion of ex-ante verification of claims. The current system relies on public authorities to identify and act on claims after they have been put on the market and the harm has been done. The number of checks currently performed is particularly low compared to the scale of greenwashing. Ex-ante verification should be an efficient way of removing most harmful claims from the market, and help companies in following the new requirements for substantiation and communication.

However, we regret that the verification is set at the national level rather than at the Union level, especially in the absence of detailed definitions and methods on how to apply the requirements in Article 3. There is a clear risk that different verifiers in different Member States will provide different assessments. Some might award certificates of conformity more easily than others. Companies with the capacity to identify lenient verifiers and address their demands to them will benefit from this lack of uniformity. Not only is it important to strengthen Article 3 but the European institutions should also ensure that the transposition of the directive in the Member States does not further aggravate divergences.

Finally, verifiers will only assess claims against GCD, not UCPD. **We welcome that the award of a certificate of conformity under GCD does not mean that a claim could not be targeted by authorities for infringing on UCPD.** However, such a situation should be avoided as far as

possible. Notably, the ban on generic environmental claims without any proof of excellent performance should be respected.

Recommendation

- We invite the Commission to provide guidance for verifiers on how to minimise the risk of providing a certificate of conformity under GCD for claims that might be in breach of the UCPD.

Enforcement and penalties

We welcome the provisions on enforcement and monitoring of implementation. While the ex-ante verification system should already clear the market, it is important to monitor its effect on greenwashing. Similarly, as we have raised concerns that the lack of specific methods to assess claims might lead to disparate implementation, monitoring the effectiveness of the directive is particularly needed. Member States and the European Commission should dedicate the necessary resources to implement the Green Claims Directive.

Article 16 on complaint handling and access to justice opens the possibility for citizens and organisations to submit complaints. This is welcome and should support the work of authorities in identifying cases.

Finally, we strongly support the new penalty system. Considering the existence of the verification mechanism, there should be no excuse for infringing on the legislation, and the sanctions should be proportional to the harm done. Greenwashing hampers the development of sustainable products and protects the market share of environmentally destructive products.