

Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)

WFA feedback

The [World Federation of Advertisers](#) (WFA) welcomes the opportunity to provide input to the European Commission's attempt to regulate the substantiation, communication and verification of voluntary environmental claims and environmental labels.

WFA is the voice of marketers worldwide, representing 90% of global marketing communications spend, over €800 billion per year. We represent over 140 brand owners and 60 national advertiser associations worldwide. This includes national advertiser associations in 19 EU Member States and about 50% of the companies we represent are European.

Marketers welcome a stronger EU stance against 'greenwashing' and clear rules.

2021 research by WFA, Project 17 and BVA Nudge Unit found that marketers and consumers agree on the role of brand owners in driving sustainability, with 95% of marketers believing that the marketing function can make a difference in the sustainability journey, and 92% of consumers agreeing that brands have a responsibility to change consumer behaviour.¹ However, so-called 'greenwashing' practices are undermining these efforts both in terms of eroding consumer trust and impeding a level playing field for businesses. Advertisers support measures that set clearer rules while still incentivising businesses to invest in the green transition.

With this submission, WFA has identified seven areas where the European Commission proposal could be improved to better deliver on its ambitions. In essence, WFA calls for:

- ✓ A consistent approach with the Empowering Consumers for the Green Transition Directive
- ✓ Clarity on methodologies required to substantiate categories of claims
- ✓ Robust guidance on the data necessary to certify claims
- ✓ Recognition of the role of private environmental labels in driving the green transition
- ✓ A streamlined ex-ante approval system that assists rather than inhibits the green transition, including: standardised assessment forms, a fast-track procedure, and a 30-day deadline for processing by independent verifiers.
- ✓ A realistic transposition timeframe
- ✓ Recognition of the role of advertising self-regulation

1. Maintaining legal consistency with other EU legislation will help ensure legal certainty.

WFA recognises and welcomes that the Green Claims Directive is but one part of the EU's wider European Green Deal strategy². More specifically, the proposal is intended to act as a more detailed set of rules accompanying the amendments proposed to the Unfair Commercial Practices Directive (UCPD)³ by the Empowering Consumers for the Green Transition (ECGT) proposal.⁴

However, certain discrepancies already exist between the two proposals. For instance, the two proposals differ in approach when it comes to their definitions of 'environmental labels', and 'explicit environmental claims'.⁵ **For the sake of legal clarity, it is imperative that these proposals**

¹ WFA, in partnership with Project 17 and BVA Nudge Unit, *Marketing and sustainability: Closing the gaps*, 2021

² https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1585324585932&uri=CELEX%3A02005L0029-20220528>

⁴ https://commission.europa.eu/publications/proposal-directive-empowering-consumers-green-transition-and-annex_en

⁵ To ensure alignment with the interinstitutional negotiations on the draft Empowering consumer directive, the mention of 'explicit' should be deleted, and to avoid any confusion between the definition of labels and claims, the term 'environmental label' should be modified to 'environmental footprint labelling'.

evolve in tandem, and that due care is taken to maintain coherence with principle-based horizontal rules contained within the UCPD.

2. Advertisers welcome legislation that recognises a diversity of options to substantiate environmental claims

We support the requirement for advertisers to substantiate their claims and labels based on robust scientific evidence, and particularly the reference to the use of “widely recognised scientific evidence” that “take[s] into account relevant international standards”.⁶ Though it should be clarified that this covers methodologies which have either been subject to peer review and publication or have received widespread acceptance within a relevant scientific community.

Nevertheless, it remains unclear how a manufacturer can prove that an impact, aspect, or performance subject to the claim is ‘significant’ from a life-cycle perspective. We would advise that substantiation be proportionate, and not oblige manufacturers to conduct a full life-cycle analysis (LCA) to prove ‘significant impact’. For example, **only environmental claims related to an environmental impact or environmental performance (i.e., environmental footprint claims) should be required to be supported by an LCA study.**

Similarly, the proposal requires manufacturers to inform consumers of possible negative trade-offs on other environmental impacts or environmental aspects. However, it will be difficult to identify trade-offs when there is no recognised methodology, e.g., in the case of non-LCA indicators such as biodiversity. **Further guidance and specifications from the European Commission on those matters and approved methodologies and standards would be beneficial.**

When reporting about a product or service performing “significantly better”⁷ than what is common practice for products in the relevant product group or traders in the relevant sector, we would caution that any requirements to include information about competition traders, products or services risks being disproportionate and significantly restrain and disincentivise green innovation if traders cannot demonstrate to be “significantly better”. Information from competitors would be particularly difficult to obtain since it’s typically confidential business data which is not available to the public.

WFA members welcome the increased transparency requirements on greenhouse gas offsets and the nature of these offsets. Advertisers acknowledge that unsubstantiated carbon neutrality claims, which may only rely on carbon offsetting schemes, are misleading for the consumer.⁸ **It is therefore important to have a robust and EU-harmonised framework which clearly outlines the criteria a brand must meet in order to be able to claim carbon neutrality.** This will ensure that companies are incentivised to continue investing in greenhouse gas reduction plans and quality offsets programmes.

3. Clearer requirements on the communication of environmental claims are needed.

WFA welcomes that the scope of the proposed Directive is limited to business to consumer communications and **would recommend creating clearer language in the text to avoid ambiguity.**

We welcome the fact that the proposal allows for the information on substantiation to be made available on product, weblink or via a QR code.⁹ This allows advertisers to add that specification of a claim in a manner that is appropriate to the medium of communication.

⁶ Article 3 (1) (b) of the Commission proposal ([COM/2023/166 final](#))

⁷ Article 3 (1) (f), COM/2023/166 final

⁸ See [WFA-AIM joint statement](#): “Leading European Brands call for a clear, robust and EU-harmonised framework for carbon neutrality claims to empower consumers in the green transition and to incentivise companies to invest and innovate”, 24 March 2023.

⁹ Article 5 (6), COM/2023/166 final

However, WFA would warn that the list of information to be disclosed is extremely vast¹⁰, which would create a significant burden on traders and possibly present issues with confidentiality or intellectual property rights, notwithstanding the reference to the Directive on the Protection of Trade Secrets.¹¹ This risks disincentivising them from using environmental claims and investing in research and development in the environmental area without a proportionate benefit from the point of view of compliance enforcement and consumer information. Indeed, a robust level of compliance will already be guaranteed through the submission of all environmental claims to prior verification and certification by accredited independent third-parties. **We would therefore advise creating a better distinction between substantiation data made available to consumers and data available to the independent verifiers and authorities upon request.**

4. EU law should recognise the added value of private environmental labelling schemes.

Avoiding the proliferation of unsubstantiated schemes and reinforcing trust in existing ones is crucial as sustainability labels are one of many ways to enable consumers to make greener choices. In the spirit of promoting and encouraging EU-harmonisation, we welcome the restrictions on new voluntary public schemes at regional and national level. Similarly, it would be preferable if the Directive provided clear rules to limit the proliferation of mandatory schemes at national level. This would not only be burdensome for manufacturers to implement, but risks creating further confusion amongst consumers.

However, we would caution against introducing too strict requirements for the development of new private labelling schemes, as these typically evolve at a quicker pace than government-led ones, reflect the latest stages of innovation and can more easily be updated in accordance with latest developments. **WFA would suggest clarifying the definition of “added value”¹², which currently leaves room for interpretation between different authorities.**

Restrictive provisions regarding environmental and sustainability certification schemes pose the risk of excluding the opportunity for private industry sustainability programs to be developed, even if they undergo independent validation and are based on third-party verification. Taking this approach would deny a role for industry to support/accelerate the green transition and discourage individual company investments in sustainability. Most worryingly, we fear this approach will not bring results: company-owned initiatives are tailored to address specific challenges of a given sector that might not be covered by existing broader third-party certification schemes. Certifications will remain inaccessible and existing gaps between where sustainable supply is and where certifications are will remain wide.

The publication of the implementing acts providing detailed requirements for approval of environmental labelling schemes should be timely to ensure a level playing field. They should specify the format and content of supporting documents, as well as the rules of procedure for the approval.

5. A poorly designed ex-ante verification scheme of environmental claims and labels could inhibit the Green Transition.

To avoid an excessive burden on traders, the right balance must be found between the ex-ante verification and certification process and ex-post enforcement actions. Green innovation could be heavily penalised if the regulatory constraints are unreasonably severe. Innovation breakthroughs in this area require meaningful financial investment, which is hard to justify commercially if traders are unable to bring their environmental upgrades to the attention of consumers. **We thus strongly**

¹⁰ Article 5 (6), COM/2023/166 final

¹¹ Article 5 (c), COM/2023/166 final *“the underlying studies or calculations used to assess, measure and monitor the environmental impacts, environmental aspects or environmental performance covered by the claim, without omitting the results of such studies or calculations and, explanations of their scope, assumptions and limitations, unless the information is a trade secret in line with Article 2 paragraph 1 of Directive (EU) 2016/943 112”*

¹² Article 8 (5), COM/2023/166 final

support proposal's inclusion of the mutual recognition of certificates of conformity to allow claims permitted in one EU jurisdiction to be able to be used across all.

The scope of the ex-ante approval system should be well defined, to ensure a streamlined process that mitigates the impact on the often-compressed timelines for marketing communications. To that end, the Commission should investigate **only requiring full ex-ante approval for environmental performance claims using LCA-based methodologies, whilst a fast-track procedure would be considered for environmental aspect claims using approved methodologies.** Similarly, **claims deriving from an approved sustainability label, or conveying the same message, should not require additional verification.**

To facilitate and accelerate the process of approval of environmental claims and schemes, **we would encourage the Commission to establish a standardised form with clear formats and timelines during which third-party certifiers must conduct the assessment.** Additionally, we would welcome the Commission's thoughts on setting a price limit for the approval of claims and labels, which would be proportionate to the assessment being made.

We suggest verifiers to issue their assessments within a maximum period of 30 days from the date when a verification and certification request is submitted to them. An independent review mechanism should also be provided if the request for the certification of a claim or label be denied.

In order to promote transparency and facilitate enforcement, Member States should make public the list of certificates of conformity within 30 days from having been notified by the verifier. **Traders should be required to publish online the certificates issued by verifiers regarding their claims or labelling schemes within 7 days from the date when the trader starts using each certified claim or label.** Publication of certificates should not be required prior to that date to protect the confidentiality of advertising campaigns until they are released, which typically has significant commercial importance.

Finally, **further clarity is needed on who will be liable in case of breaches, i.e., only the manufacturer making the claim, or also the certifier.**

6. Proper and uniform application of rules across the EU will limit the burden on business.

The proposal sets forth that Member States shall adopt and publish within 18 months after the date of entry into force of the Directive the laws, regulations and administrative provisions necessary to comply with it, and apply those measures 24 months after the date of entry into force of the Directive.¹³ This means that within only 6 months after the transposition legislation is adopted by the Member States, governments will have to accredit a sufficient number of verifiers with capacity to review within that very short deadline what will presumably be an extremely high number of claim and labelling scheme verification and certification requests submitted by traders across all economic sectors.

This will be a difficult task to perform within only 6 months and will likely lead to the discontinuation of a majority of environmental claims and labels within 24 months from the entry into force of the Directive, including many claims that are very robustly substantiated. This would be contrary to the objectives of this legislation. In order to prevent these unintended negative consequences, **we suggest that after the transposition deadline be prolonged from 24 months to 30 months.**

7. EU legislation should recognise the important complementary role of advertising self-regulation.

Importantly, the issue of misleading environmental claims is also covered by specific national provisions, as well as guidance and frameworks. Beyond the enforcement of codes of conduct, advertising standards bodies handle monitoring, training, and compliance advice to industry with the aim of ensuring responsible advertising. The advertising self-regulatory system provides a cost

¹³ Article 25, COM/2023/166 final

efficient and expeditious dispute resolution, as 90% of cases are resolved within two months (44% in under a week and 67% in two weeks). In 2021, environmental claims made up 15% of all misleading advertising complaints made to national self-regulatory organisation members of the European Advertising Standards Alliance (EASA)^{14 15}.

WFA would stress that advertising self-regulation should continue to be recognised within the future legal framework and must be accounted for in any legislative initiative, in accordance with the Principles for Better Self- and Co- Regulation (SRCR)¹⁶, endorsed by the European Commission’s Better Regulation Agenda,¹⁷ which provides guidance for conception and implementation of SRCR systems and lists robust criteria that must be fulfilled in order to establish a comprehensive self- or co-regulatory regime. The benefits of self-regulation and codes of conduct are already recognised as such in the UCPD¹⁸, as well as in the Audiovisual Media Services Directive¹⁹.

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¹⁴ European Advertising Standards Alliance, [2021 European Trends in Advertising Complaints, Copy Advice and Pre-clearance](#), 2022

¹⁵ EASA’s self-regulatory members enforce national advertising codes of conduct that are inspired by the principles of the [ICC Advertising and Marketing Communications Code](#) (ICC code) — or that directly apply it. Chapter ‘D’ of the ICC Code covers the issue of misleading environmental claims. It is complemented by a specific [ICC Framework](#) offering guidance for the application of the ICC Code’s principles to environmental advertising.

¹⁶ European Commission, [Principles for Better Self- and Co-Regulation](#), 2017

¹⁷ European Commission, [Better Regulation principles](#), 2019

¹⁸ Article 10, [Unfair Commercial Practices Directive](#)

¹⁹ Article 4 (a), [Audiovisual Services Media Directive](#)

WFA's national advertiser association members

