

## Policy Brief

### Update on Environmental Claims Regulation in Advertising

Products placed and services offered on the EU market are gaining increased scrutiny from both consumers and the regulators regarding their environmental footprint. Consumers want to make informed choices about their purchases and the EU legislator is implementing regulation which aims to ensure that marketing claims are consistent with the environmental impact of goods and services. To this end, regulators are working on regulating environmental claims in advertising by requiring brands and by extension agencies to substantiate marketing messages as well as to demonstrate the environmental-friendly components of the products and services they provide in order to justify these claims.

#### Environmental Claims Regulation in advertising

Currently, two legislative proposals are on the table to address the challenges of substantiating green claims in advertising:

- The Directive Proposal “[Empowering consumers in the Green Transition](#)” lays out substantiation standards in marketing messages and sets obligations on environmental labels that brands can adhere to as a way of substantiating claims (I).
- The [Green Claims Proposal](#) aims to complement the above-mentioned proposal by further specifying following which methodologies and criteria brands will be required to follow to market their products and services as sustainable (II).

#### I. Empowering Consumers in the Green Transition

In March 2022, the European Commission released a directive proposal aimed at enhancing consumer protection by amending two EU directives that safeguard consumer interests: the Unfair Commercial Practices Directive 2005/29/EC and the Consumer Rights Directive 2011/83/EU.

It implements a series of measures on environmental claims resulting from the preferred policy options, including:

- (1) The list of **product characteristics** in Article 6(1) of Unfair Commercial Practice Directive is amended to include ‘environmental or social impact’, ‘durability’ and ‘reparability’.
- (2) *‘making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system’.*
- (3) The list of **commercial practices which are considered unfair in all circumstances**<sup>1</sup> is extended to four practices associated with greenwashing:
  - Displaying a sustainability label which is not based on a certification scheme or not established by public authorities;

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<sup>1</sup> Annex I of the Unfair Commercial Practice Directive

- Making a generic environmental claim for which the trader is not able to demonstrate recognized excellent environmental performance relevant to the claim;
- Making an environmental claim about the entire product or trader's business when it concerns only a certain aspect of the product or trader's business;
- Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader's offer.

The proposal on empowering consumers for the green transition thus provides important safeguards to protect consumers from misleading environmental claims and unreliable labels.

## II. Green Claims Directive Proposal

While the above-mentioned UCPD amending directive “Empowering consumers in the Green transition” extends the scope of unfair commercial practices to misleading environmental claims, the Green Claims Proposal further specifies the requirements which are necessary to meet in order to substantiate and communicate Green Claims.

### Which claims are covered by the Green Claims Proposal?

The proposed Directive on Green Claims targets **green claims made by businesses that state or imply a positive environmental impact**, lesser negative impact, no impact, or improvement over time for their products, services, or organization. We will successively outline in the following pages:

- A) How Green Claims need to be substantiated
- B) How Green Claims need to be communicated to consumers
- C) How substantiation methodologies need to be verified and certified
- D) How the Green Claims Proposal will be enforced

### **A) How Green Claims need to be substantiated**

Green claims substantiation can either be achieved by compliance with the assessment criteria outlined in the Proposal (1) or through compliance with existing legislation or labelling schemes which are recognised at EU-level (2).

#### **1) Assessment criteria for valid Green Claims substantiation**

To prevent misleading claims, the proposal requires brands to meet minimum requirements for supporting their environmental claims.

The assessments used to support those claims must meet the following criteria<sup>2</sup>:

- Rely on recognized scientific evidence and state of the art technical knowledge;
- Demonstrate the significance of impacts, aspects and performance from a life-cycle perspective;
- Take into account all significant aspects and impacts to assess the performance;
- Demonstrates whether the claim is accurate for the whole product or only for parts of it (for the whole life cycle or only for certain stages, for all the trader's activities or only a part of them);
- Demonstrate that the claim is not equivalent to requirements imposed by law;

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<sup>2</sup> Article 3 of the Directive Proposal on substantiation and communication of explicit environmental claims

- Provide information on whether the product performs environmentally significantly better than what is common practice;
- Identify whether a positive achievement leads to significant worsening of another impact;
- Require greenhouse gas offsets to be reported in a transparent manner;
- Include accurate primary or secondary information.

**Example:** The proposal requires that these green claims, such as "packaging made of 30% recycled plastic", "bee-friendly juice", "carbon compensated ride" or "commitment to reduce CO2 emissions linked to the production of this product by 50% by 2030 as compared to 2020, must be substantiated and this substantiation be verified ex-ante

If differences arise in the application of requirements for specific environmental claims, or if there is a serious risk of misleading consumers due to the absence of requirements, the Commission may adopt delegated acts to supplement the requirements for substantiation.

These delegated acts can include:

- Determining rules for assessing environmental aspects, impacts, and performance;
- Identifying which information should be provided; and
- Establishing specific life-cycle-based rules for certain product groups and sectors.

Strikingly, the proposal does not build on the Product and Organisation Environmental Footprint methods (PEF/OEF) as substantiation methodologies, which are only mentioned in the Recitals – in stark contrast with the initiative’s inception impact assessment and with a leaked draft.

## 2) Substantiating Green Claims through compliance with Environmental Labels

A privileged option for brands to comply with the substantiation requirements is to adhere to existing EU-wide recognized labelling schemes (such as the EU Ecolabel Regulation (EC) No 66/2010) which build on compliance with the substantiation requirements outlined above. The European Commission expects the compliance with environmental labels to enhance the quality of consumer decision-making since consumers will be assured that the products holding a sustainability label will meet minimum requirement on transparency and credibility.

In accordance with the Proposal for a Directive on Empowering Consumers for the Green Transition, displaying a sustainability label which is not based on a certification scheme or not established by public authorities constitutes an unfair commercial practice in all circumstances.

The Green Claims proposal builds on the existing ban on labels based on self-certification and includes the following requirements<sup>3</sup>:

- Requirements on transparency and accessibility of information on ownership, decision-making body and objectives;
- The criteria underlying the award of labels are developed by experts and reviewed by stakeholders;

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<sup>3</sup> Article 8 of the Directive Proposal on substantiation and communication of explicit environmental claims

- The existence of complaint and resolution mechanism;
- Procedures for dealing with non-compliance and possibility of withdrawal or suspension of labelling in case of persistent and flagrant non-compliance.

To effectively limit the proliferation of environmental labels the proposal provides:

- the creation of new private schemes should be approved by Member States only and if they provide added value, and the creation of new public schemes at the national or regional level should be prohibited. New public schemes should be developed at the EU level only.

### **B) How Green Claims need to be communicated to consumers**

When communicated, all claims<sup>4</sup>:

- Shall only cover environmental impacts, aspects or performance that are assessed in accordance with the substantiation requirements laid down in this proposal and are identified as significant for the respective product or trader;
- Where relevant for the claim made, shall include information on how consumers can use the product in an appropriate manner to reduce environmental impacts;
- Shall be accompanied by information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent.

### **C) How substantiation methods will need to be verified and certified**

Yes. The proposal outlines a process for ex-ante (prior) verification of claims made by brands seeking to use Green Claims<sup>5</sup>.

This verification will be carried out by a third-party accredited body, referred to as the "verifier," and will ensure that all claims presented to consumers have been thoroughly examined and deemed trustworthy.

The proposal also sets out specific requirements that verifiers must meet in order to be accredited by Member States.

After the verifier has completed the verification process for a given claim, they will decide whether or not to issue a certificate of conformity.

### **D) How will the Green Claims Proposal be enforced**

Each Member State will designate one or more appropriate competent authority as responsible to enforce the provisions set out in the proposal.

Competent authorities will have the power to<sup>6</sup>:

- Access relevant information related to an infringement;
- To require access to relevant information to establish if there has been an infringement;
- To start investigations or proceedings;
- To require traders to adopt remedies and take action to end an infringement;

<sup>4</sup> Article 5 of the Directive Proposal on substantiation and communication of explicit environmental claims

<sup>5</sup> Article 10 and 11 of the Directive Proposal on substantiation and communication of explicit environmental claims

<sup>6</sup> Article 13 and 14 of the Directive Proposal on substantiation and communication of explicit environmental claims

- To adopt injunctive relief where appropriate and to impose penalties.

They are expected to perform regular checks of claims and labelling schemes as well as evaluating claims and labelling schemes that present a risk of infringement.

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