

FoodDrinkEurope position on the proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)

FoodDrinkEurope welcomes the European Commission's proposal for a Green Claims Directive (**GCD**). We have historically supported the development of an EU-harmonized framework which should set minimum requirements for the voluntary provision of environmental information.

Making and substantiating green claims in a verifiable and easy-to-understand way across the EU will facilitate a level-playing field among companies in the Single Market and incentivize more sustainable production and consumption.

As a follow up to the proposal on Empowering Consumer for the Green Transition, we understand that this proposal aims to specify in more detail how substantiation should be conducted. The potential of this legislation lies in the possibility of **aligning the substantiation methods used**, by relying on recognized EU and international methods.

To ensure the proposal delivers on this potential, without creating excessive administrative burden and causing risk of fragmentation, we recommend the following:

Ensure coherence with the proposal on Empowering Consumers for the Green Transition (ECGT)

The ECGT text voted by the European Parliament blacklists the practice of ***“making an environmental claim which cannot be substantiated in accordance with legal requirements”***. It is therefore crucial to clarify for what type of environmental claims operators can rely on this Directive when substantiating and verifying their claims.

- Co-legislators have proposed deleting the term ***“explicit environmental claim”*** from the ECGT proposal. In principle, the Green Claims Directive should be the overarching framework for substantiating all environmental claims which are not regulated by a more specific legislation (e.g Packaging and Packaging Waste Regulation, Ecodesign for Sustainable Products Regulation).
- The ECGT already requires proof of environmental excellence for generic claims, i.e claims where the specification is not provided in clear and prominent terms on the same medium. For coherence, we suggest that the scope of this proposal covers the remaining cases i.e non-generic claims, which by default require substantiation and would benefit from harmonized rules.
- The **definition of ‘sustainability label’**, currently included under the Green Claims Directive, should be deleted as the proposal focuses 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 ECGT proposal already prohibits advertising benefits that are considered common practice. Unless the claim establishes a comparison with regard to the entire market, it would be disproportionate to require that a claim includes information about all competing traders or products. 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.

Adjust the substantiation method to the type of claim and clarify when LCA studies are necessary

We support the principle of the GCD that the assessment used to substantiate environmental claims should only consider the life cycle of the product and not require conducting a full lifecycle analysis for each type of claim. However, this could be significantly clarified by including the definition of "life cycle" perspective" as set in ISO 140013 *"When determining environmental aspects, the organization considers a life cycle perspective. This does not require a detailed life cycle assessment; thinking carefully about the life cycle stages that can be controlled or influenced by the organization is sufficient"*.

The substantiation itself should be proportionate to the nature of the claim and account for the differences between environmental aspects, environmental impacts, and environmental performance. It would be helpful if the legislation specifies in what cases a lifecycle assessment is appropriate. This is the case for claims related to the environmental impact (e.g. carbon footprint) of a product. However, for claims relating to environmental aspects (e.g. product contains X% recycled content) the truthfulness of the claim should be substantiated by documentation provided by the supplier(s) through the value chain.

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, verified by independent experts.

Provide a framework for environmental impacts for which there is currently no recognized scientific evidence

As regards food and agriculture, the Explanatory statement clarifies that there are several relevant impact categories that remain to be assessed for trade-offs in LCA methodologies (biodiversity, nature protection). While recognized scientific methods are still in the making, we propose to **enable operators to provide a qualitative assessment, since a lifecycle assessment is not currently possible.**

Meanwhile, we ask the Commission to work closely with the food industry in creating a balanced lifecycle assessment method including all relevant impact categories, not least in the context of the Framework for a Sustainable Food System.

PEFCRs should be referenced more strongly in the Directive, while the methodology continues to improve

For product categories and sectors which have developed PEFCRs, the agreed category rules should be used as a benchmark by national authorities when setting up procedures for verifying the substantiation of claims for products within the scope. When assessing compliance of environmental footprint claims with the Directive, verifiers should rely on PEFCRs as a reference point since they contain key methodological findings (e.g. allocation of impacts, most relevant impacts and lifecycle stage). This is critical to enable consumers to compare products within the same product category.

To avoid different interpretations by competent authorities, the Directive must set a clear harmonized definition of **“widely recognized scientific evidence”**. While a single-harmonized substantiation method is not yet possible for all claims, this is already possible for environmental footprint claims by relying on the EU PEF method, which is currently the state-of-the art when it comes to assessing environmental impacts.

As a minimum, to support companies in the assessment and substantiation of claims the **European Commission should issue guidance on the scientific methods and standards that can be accepted to carry out the assessment for environmental footprint claims**. This could be done fairly quickly.

It is of fundamental importance for the EU single market and for the feasibility of this policy framework, that once a methodology is recognized as valid by one Member State, it should be considered valid throughout the EU. **Establishing a database of recognized methodologies would support economic operators who want to make a claim.**

When it comes to environmental footprint labeling schemes, it is crucial that the Directive requires that a single LCA method and algorithm is used.

Mitigate the administrative burden for companies by providing clear framework for verification of claims

The process for approving environmental claims must be proportionate to the public interest pursued. Avoiding misleading claims should not result in a system where simple environmental claims take 1 year or more to be approved. Such undue delays will postpone the provision of valuable information to the consumers.

To ensure consumers 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 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.

- For environmental labelling schemes, we find it reasonable to pre-authorize only the compliance of the scheme, rather than every display of the label. Displaying labels without obtaining the necessary authorization by the scheme is already considered misleading under the Empowering Consumers for the Green Transition (ECGT) proposal.
- For future aggregated scores stemming from an environmental scheme approved in EU legislation, pre-approval of labels based on such scheme should not be necessary.
- **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 provide that if a claim is accepted in one language, it should automatically be accepted in its translated versions. The proposal should also ensure that verifiers support traders submitting the verification requests and that traders have the right to challenge the refusal to certify an environmental 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 new innovations or new products, the proposal should clarify that verifiers are bound by the rules of confidentiality regarding the claim and the underlying product or service.

The verifiers should also have sufficient capacity to adjust to increased workloads and the Commission should be required to publish a list of accredited verifiers.

The disclosed information should be easily understandable by the consumers and not include confidential business information

It is key to differentiate between the information that needs to be provided for verifiers and national authorities and that which is relevant for the consumers. Consumers do not need access to studies or calculations underpinning the claim – in fact it may act as overload and cause the consumer to miss out on relevant information. Rather, it is necessary to provide consumer-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.

Rules for private environmental labeling schemes should not inhibit 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.** In many cases, brands have independently engaged in collaboration with certifiers to create programs showing environmental advances and going beyond existing certification schemes. To encourage continued investment in developing and improving voluntary programs behind brand-owned labels, legislation should allow the use and development of such labels, even when they are not open to all traders.

Moreover, the 'added value' to be proven 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 need to be better defined.

Given the new regulatory set up, a sufficient transition period is needed for the establishment of the ex-ante verification process and for traders to ensure that existing claims and labelling schemes comply with the Directive

Firstly, we see no reason why the transposition time frame should be shorter than the standard 24 months. From experience, we know that there are delays to the adoption of implementing acts by the Commission and there should be appropriate leeway, avoid a situation where national legislators are forced to act in dissonance.

Once national legislation is adopted, third-party conformity assessment bodies must be accredited and have the necessary capacity (in terms of procedures, human resources and expertise) to treat the considerable high number of applications that will be submitted by companies. This should take at least 12 months. At the same time, sufficient time should be given to operators to collect, prepare and submit applications for claims and labels already placed on the market.

Claims and environmental labeling schemes that have been on the market prior to the entry into force of the Directive should be allowed to remain until their verification has been completed.

Overall, we recommend that the new requirements **start being applied 36 months from the entry into force of the Directive.**

Conclusions

We thank the European Commission for providing the space to share our feedback on such an important initiative. We look forward to collaborating on the development of an important tool for scale-up of the green transition through comprehensive claims and efficient verification systems.