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proposal for a
Green Claims
Directive has been
published

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On 22 March 2023, the European Commission published a document entitled "*Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)*" (hereinafter the "**Proposal**" or the "**Directive**").

The main objectives of the Proposal are to: (i) protect consumers and traders from greenwashing; (ii) contribute to accelerating the transition towards a circular economy and involve consumers in this process by enabling them to make informed purchasing decisions; and (iii) improve the transparency of environmental claims by boosting the competitiveness of traders that make efforts to increase the environmental sustainability of their products or services and their activities.

Below are the main provisions included in the Proposal.

The Proposal concerns green claims, i.e., all “explicit environmental claims” voluntarily adopted by a trader regarding the interactions with the environment (i.e., environmental aspects), environmental performance or the impacts of a product/service, positive or negative, on the environment (i.e., environmental impacts) or those concerning the trader’s own activity.

Specifically:

- **“environmental aspect”** will mean an element of a trader’s or sector’s activity, or an element of a product/service or product/service group that interacts or can interact with the environment;
- **“environmental impact”** will mean any change to the environment, positive or negative, resulting in whole or in part from the activity of a trader or sector or from a product/service or group of products/services during their life cycle;
- **“environmental performance”** will mean the performance of a product/service, or a group of products/services of a trader or of an entire sector in relation to the relative environmental aspects or environmental impacts.

Both claims in text form and those contained in environmental labels adopted by a trader in the context of its commercial communication will fall within the scope of the new provisions. Voluntary environmental claims that are already covered by other existing EU rules (which would ensure that such regulated claims are reliable), such as the EU Ecolabel or the organic food logo will remain excluded.

The Commission also announced that the Directive will be a *lex specialis* and will therefore complement the general consumer protection rules provided for in Directive 2005/29/EC¹.

Proof and communication of green claims

According to the Proposal, traders that choose to adopt a green claim to promote their products/services, or their activities will always have to comply with a set of **minimum requirements** to both (i) **substantiate** and (ii) **communicate** these voluntary environmental declarations correctly to the public.

i Substantiation of green claims

¹ As amended by the '*Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information*', published by the European Commission on 30 March 2022.

Firstly, before adopting a green claim, **traders** (except for microenterprises²) must **make an assessment to verify whether the claim they intend to adopt is duly substantiated**.

Specifically, in the context of the evaluation, each trader should:

- **specify if the claim is related to the whole product, part of a product or certain aspects** of a product (the same applies to claims relating to services or to the trader's activity);
- **rely on widely recognised scientific evidence**, use accurate information, and take into account all relevant international standards;
- **demonstrate that the claim refers to significant environmental aspects, performance or impacts of a product's life cycle** or of the overall activities of the trader, and not merely to secondary information and data in order to identify the relevant impacts and enable the trader to avoid omission of any relevant information³;
- in case of claims on the environmental performance, take into account all significant environmental aspects and impacts;
- **demonstrate that the claim is not merely stating that the products/services or the activity of the trader meet the requirements already imposed by law**;
- specify whether the product/service or activity of the trader which is subject to the claim performs significantly better in terms of environmental impacts, aspects or performance than other products/services or traders in the relevant sector;
- identify whether improving the environmental impacts, aspects, or performance covered by the claim leads to a significant harm in relation to environmental impact on factors such as climate change, resource consumption, pollution, biodiversity, animal welfare and ecosystems;
- report greenhouse gas offsets in a transparent and clear manner;
- **include all “primary information”** (*i.e.*, all information directly measured or collected by the trader) about the environmental impacts, aspects or performance covered by the claim;
- in the absence of primary information, include all available “secondary information”, namely information based on different sources, including literary studies, engineering studies or patents, that are in any case relevant to what is stated in the claim.

More stringent rules will apply if the trader (except for microenterprises) **wishes to declare that its products/services or activity have lower environmental impacts or better environmental performance than other products/services or their competitors** through a “comparative explicit environmental claim”. In this case, traders will also have to further comply with the following requirements:

- the information and data used for assessing the environmental impacts, aspects or performance of the products/services or activity of competitors must be the same as those used for assessing the products/services or activity of the trader making the comparative claim;
- such data must be generated or sourced in the same manner in relation to both competitors and the trader adopting the claim;
- the same environmental impacts, aspects, and performance as well as the same stages of the value chain of a product/service or activity must be assessed and, among them, the most significant elements must always be considered;
- where an improvement in environmental impacts, aspects or performance is claimed with respect to another product/service of the same trader (or of a competing trader that is no longer active in the market or no longer selling the product/service), the trader must explain how this improvement affects other environmental impacts, aspects or performance of the product/service that is the subject of the claim, and must clearly indicate the baseline year of the comparison.

² Traders with fewer than 10 employees and an annual turnover not exceeding 2 million euro.

³ If the product has significant environmental impacts that are not subject to the claim and no widely recognised scientific evidence is available for the purpose of the life cycle assessment, the trader shall take into account all other relevant information that is available and, if necessary, update the assessment once such evidence becomes available.

The information used to support voluntary environmental claims shall also be reviewed and updated by traders whenever the accuracy of a claim may be compromised, and, in any case, no later than five years from the date on which the information supporting the environmental claim is provided.

All the requirements provided by the Commission are mainly aimed at making sure that traders, in order to present themselves as “greener” than their competitors, do not diffuse information that is false (or insufficiently evidenced by relevant scientific data), and do not focus on aspects that are irrelevant to assessing “sustainability”. Each claim (which must be assessed on a case-by-case basis) will therefore only be duly substantiated if the trader is able to comply with all the new requirements set forth by the Directive.

ii The communication of green claims

Traders (and, to some extent, microenterprises) will also have to comply with several additional stringent requirements to ensure that the communication of voluntary environmental claims is also clear and understandable and, ultimately, not misleading for consumers.

Firstly, green claims may only cover those environmental impacts, aspects or performance that are sufficiently substantiated and that are significant for the product/service or activity of the trader itself (see previous paragraph).

In order to properly communicate green claims to the public, **information on (i) the product/service or activity of the trader subject to the claim and (ii) the substantiation of the data provided should be made available together with the claim, either in physical form or in the form of a link to a website, QR code or equivalent.**

Specifically, traders will have to provide at least the following information to consumers:

- the environmental aspects, impacts or performance covered by the claim;
- the relevant EU or international standards, where applicable;
- the studies or calculations used by the trader to assess, measure, and monitor the environmental impacts, aspects or performance covered by the claim - without omitting the results of such studies or calculations - and explanations of their scope as well as any limitations, unless the information qualifies as a trade secret;
- a brief explanation of how the improvements covered by the claim have been achieved;
- the certificate of conformity concerning the substantiation and correct communication of the claim and the contact information of the verifier that drew up the certificate (see following paragraphs);
- for climate-related claims that rely on offsets to greenhouse gas emissions, information to which extent such claims rely on offsets and whether such offsets relate to emissions reductions or removals;
- a clear and understandable summary of the assessment carried out, also including the information listed above, in at least one of the official languages of the Member State where the claim is made;
- **if the claim is related to a final product** intended for sale to consumers and the use phase is among the most relevant phases in the life cycle of that product, **information about the correct use of the product to achieve its expected environmental performance;**
- **if the claim refers to the future environmental performance of a product/service or of a trader, the trader's commitment to achieve improvements in its own operations and value chains within a given time frame.**

With regard to comparative claims, a trader will only be able to claim an improvement in the environmental impacts, aspects or performance of a product/service compared to another product/service of the same trader (or of a competing trader that is no longer active on the market or no longer selling the product/service), if: (i) it has gathered evidence of a significant improvement; and (ii) this improvement has been achieved within the last five years.

All claims on the cumulative environmental impact of a product/service or trader based on an aggregate indicator of environmental impacts will also be prohibited, unless the aggregated indicator is calculated on the basis of rules established by EU laws.

Environmental labels

Environmental labels (*i.e.*, all labels referring to the environmental impacts, aspects or performance of a trader's products/services or activities) **also fall within the scope of the Proposal**.

Any trader wishing to adopt environmental labels will therefore have to comply with the same stringent requirements that regulate the "explicit environmental claims" (see previous paragraph), regarding both the substantiation and communication of such marks.

Each environmental label will also have to comply with the requirements of the relevant labelling system, which will certify that a product, process, or trader complies with the requirements for the environmental label.

With the introduction of the Directive, Member States will not be allowed to establish new public, national or regional, labelling schemes and **only those labelling schemes developed and approved at EU level** (as well as those already introduced before the Directive comes into force) **will be allowed**.

Member States will be allowed to approve any new private labelling scheme only if it demonstrates that it pursues more ambitious environmental objectives than existing public schemes. Once approved, Member States will have to notify the Commission of the introduction of a new private labelling scheme. Similar considerations apply to any new public labelling scheme introduced by third countries, which will only be approved by the Commission if it provides added value in terms of environmental ambition compared to existing labelling schemes.

The Commission will publish and keep updated the list of all labelling schemes, public or private, approved within the Union.

Ex-ante verification and certification of green claims

Moreover, the Proposal provides that **green claims will also have to be third party verified and certified** before they are used in a commercial communication.

According to the Proposal, Member States must instruct third-party verifiers that are independent from the traders that adopt the claims to verify, on a case-by-case basis, that all the requirements of the Directive concerning the substantiation and communication to the public of claims have been met. Microenterprises - to which the provisions of the Directive only partially apply - will be able to access these checks only upon request.

Once the *ex-ante* verification has been completed and the claim is found to be compliant with the provisions of the Directive, **the verifier shall prepare a certificate of conformity** stating that the voluntary environmental claim or the environmental label meets all the requirements of the Directive.

This certificate of conformity will have to be recognised by the national authorities that are competent for verifying compliance with the Directive and will allow companies to use the claim in their commercial communication to the public across the internal market without any challenge from these local authorities. However, this **will not affect the ability of other national authorities and courts to assess whether the claim also complies with the general consumer protection rules of Directive 2005/29/EC**. Compliance with the provisions of the Proposal is therefore without prejudice to the possibility that the claim may be deemed unlawful under other aspects.

Competent authority and penalties

The Proposal also requires Member States to identify a competent authority for the application and enforcement of the Directive. In any case, Member States can designate the same authority already competent for the enforcement of Directive 2005/29/EC on consumer protection (for Italy this is the Autorità Garante della Concorrenza e del Mercato - AGCM).

The competent authority shall, *inter alia*, have the power to:

- access all documents, data and information deemed relevant to verify possible infringements of the Directive;

- require any natural or legal person to provide any relevant information concerning such documents, data and information;
- start investigations or ex officio proceedings;
- require traders to adopt appropriate remedies and to take all appropriate action to bring an infringement to an end;
- adopt injunctive relief with regard to infringements of the Directive; and
- impose penalties.

Regarding penalties, **the Commission requires Member States to introduce penalties (economic and non-economic) that are effective, proportionate, and dissuasive.** Penalties should be modulated according to: (i) the nature, gravity, extent, and duration of the infringement; (ii) their character (intentional or negligent) as well as any action taken by the trader to mitigate or remedy the damage suffered by consumers; (iii) the economic conditions of the trader; (iv) the economic benefits derived from the infringement and; (v) other aggravating or mitigating factors, including any previous infringements.

Any natural or legal person or organisation with a legitimate interest will also have the right to submit a complaint to the competent local authority in case of infringements of the Directive.

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