**Issue alert: European Commission publishes green claims substantiation proposal**

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| Executive Summary: |
| Today, Wednesday 22 March, the European Commission published its [proposal on the substantiation and communication of explicit environmental claims](https://environment.ec.europa.eu/system/files/2023-03/Proposal%20for%20a%20Directive%20on%20Green%20Claims.pdf), also known as the Green Claims Directive. The Commission said the proposal aimed to give consumers stronger reassurance that ‘when something is sold as green, it actually is green’. It added that businesses that ‘make a genuine effort to improve the environmental sustainability of their products’ should also benefit. Some key points from the proposal include: * Flexibility for businesses to choose a lifecycle assessment methodology (the EU Product Environmental Footprint (PEF) and other internationally recognised scientific lifecycle assessment methods), while aiming to gradually make PEF the method of reference
* However, the proposal states that the PEF method fails to cover all relevant impact categories and requires further work
* The proposal aims to ban eco-scores not set up by EU law
* It introduces a claim pre-authorisation procedure together with specific requirements for the verifier
* It envisages specific support for SMEs

FoodDrinkEurope will now consult its members on the proposal and engage in the legislative process with the European Parliament, Council and Commission to ensure the final directive is good for business, as well as consumers and the environment. |

**Statement**

The following statement can be used, if approached for comment by the media or other stakeholders.

*“We firmly support the purpose of the Commission’s proposal which is to avoid misleading information and greenwashing, while ensuring a level-playing field among businesses. Establishing harmonised requirements for the voluntary provision of environmental information has the potential to incentivise businesses to continue improving their environmental footprint and increase consumer trust.*

*“The proposal contains several positive aspects, among which the support to SMEs; however, its success will depend on striking the right balance between third-party verification and bureaucratic red tapes. As a Directive, the proposal leaves a lot of room for Member State interpretation, which could create different approaches and divergence for businesses trading across borders.*

*“We share the Commission’s goal to create robust, simple and effective tools to enable informed consumer choices and we stand ready to continue working together towards this end.”*

A more detailed position paper on substantiating green claims can be found on the FoodDrinkEurope website [here](https://www.fooddrinkeurope.eu/resource/substantiating-green-claims-position-paper/).

**Background**

The Commission carried out two inventories of green claims and found that 53.3% of those provide vague, misleading, and unfounded information about products environmental characteristics. Building on the ambition of the EU Green Deal, it announced in its 2020 Circular Economy Action Plan that it would propose new legislation requiring companies to substantiate voluntary green claims based on the Product and Organization Environmental Footprint Methods. These lifecycle assessment methods have been elaborated over the last decade by the Commission’s technical experts and are inspired by international standards, with adjustments made to enhance comparability. In close collaboration with stakeholders, the method also resulted in 22 product category rules (“PEFCR”, e.g. dairy, pasta, bottles water, pet food, wine) and 2 Organization Environmental Footprint Sector Rules (“OEFSR”, retail and copper production).

**Given its methodological shortcoming (e.g. biodiversity for food), the Commission has decided not to pursue PEF as the main substantiation method. However, PEFCRs can be used for substantiating green claims in line with the Regulation and the Commission may adopt product specific PEFCR in form of delegated acts**. In case the Product Environmental Footprint method does not yet cover a relevant impact category, the adoption of PEFCR may take place only once these new relevant environmental impact categories have been added.

**The “Green claims” proposal**

The newly-published proposal deals specifically with explicit environmental claims – in textual form and in form of a label. The proposal will however be superseded by any upcoming green claims rules in the context of the legislative framework on Sustainable Food Systems.

While leaving businesses with more freedom regarding the choice of substantiation methodology, the text is quite restrictive when it comes to labels (including eco-scores). The proposal introduces a claims pre-authorisation procedure together with specific requirements for the verifier. Specific support is envisaged for SMEs.

**Key elements of the proposal:**

1. **Requirements for the substantiation methodology**

Traders must specify to what part of the product the assessment relates to and rely on internationally recognized scientific methods and standards. Traders must also demonstrate that the claims relate to significant environmental aspects and disclose trade-offs. The specific case of using recycled PET bottles for textiles is considered misleading. Offsets, including their share, must be transparently accounted for and disclosed. Comparative claims must guarantee equivalence of information and data as well as the equivalence of lifecycle stages, impacts and aspects considered.

There are no restrictions on claims for products containing hazardous substances.

1. **Requirement for the communication of environmental claims**

Only claims assessed in line with the compliant method can be made. When the use stage is most relevant, the claim must be accompanied by the right instruction. For claims relating to future performance, a time-bound commitment for improvement in own operations and value chain must be included. The assessment behind the environmental claim must be available together with the claim through a weblink, QR code or equivalent.

All labels must fulfil the requirements on substantiation and communication of environmental claims. However, only labels awarded under EU law may display a rating or a score – such EU law can include product- specific delegated acts issued under this legislation.

1. **Requirement for environmental labelling schemes**

All schemes (whether EU or private) must fulfil specific requirements: information about the ownership and decision-making bodies is transparent, membership conditions are fair, requirement for joining have been developed by experts that can ensure scientific robustness and have been submitted for consultation to heterogenous group of stakeholders and a system for dealing with disputes and non-compliance is in place.

To safeguard the functioning of the single market, from the date of transposition of this Directive, no new national or regional environmental labelling schemes shall be established. Environmental labelling schemes may only be established under EU law. Exceptionally, Member States may only approve private schemes, if these bring additional value in terms of ambition, coverage and support the green transition of SMEs. Such authorisation procedure will apply for private schemes established after the date of transposition. To receive authorization, operators of the schemes must provide documents explaining the rationale for the development, propose scope of the scheme, evidence of added value, description of ownership and proposal for draft criteria and the methodology used to aware the label.

Public environmental schemes established in third countries will be subject to approval by the Commission.

The European Commission will adopt an implementing act providing detailed requirements and procedure for approving private environmental labelling schemes.

**4. Verification of the substantiation of environmental claims and environmental labelling schemes**

Member States must set up pre-authorization procedures for the verification of environmental claims. An independent verifier shall provide a certificate recognised across the Union, certifying that the substantiation of claims or the environmental labelling scheme complies with this Directive’s requirements. The certificate of conformity must be available together with the claim via a QR code or link. At the same time, authorities will conduct regular check on environmental claims. Interested public parties (e.g. NGOs) can also submit complaints to national authorities. Maximum penalties imposed by Member States can go up to 4% of the trader’s annual national turnover.

**5. Micro enterprises and SMEs**

Only micro enterprises are exempted from substantiation and communication requirements, but Member States must support SMEs by way of financial support, access to finance, specialised training and technical assistance. The conditions for joining environmental schemes (e.g. turnover) must not exclude SMEs.

**6. Legal basis and legal form**

The European Commission has proposed a Directive with an internal market legal basis, replicating the current set up for all consumer protection legislation. However, the Commission finds that minimum criteria on green claims will reduce the risk of legal fragmentation on the single market. Moreover, the proposal foresees a review clause 5 years after entry into force to assess if the Directive achieved its objectives, and whether further harmonisation is needed as regards substantiation and communication of green claims.

**7. Timeline**

Member States shall adopt and publish the provisions for compliance in the 18 months after the entry into force of this Directive. The measures shall enter into force 24 months after the Directive enters into force.

Commission is also empowered to adopt delegated acts determining sector or product specific substantiation or communication rules (including their presentation – i.e. top three impacts).

**Next steps**

The European Parliament and Member States will now start examining the proposal. It is possible that institutions will aim to finalise their respective negotiating position in Q4 2023 and start negotiations in view of wrapping up the file before March 2024.