

'Green claims' directive

Protecting consumers from greenwashing

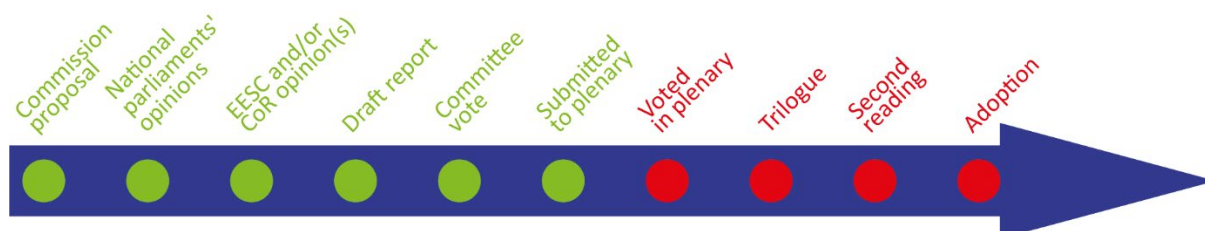
OVERVIEW

In the absence of specific rules on claims regarding the 'green' nature of products, how can consumers be sure that such claims are reliable, comparable and verifiable throughout the EU?

On 22 March 2023, the European Commission put forward a proposal for a directive on green claims. The proposed directive would require companies to substantiate the voluntary green claims they make in business-to-consumer commercial practices, by complying with a number of requirements regarding their assessment (e.g. taking a life-cycle perspective).

The proposal is now in the hands of the co-legislators. In Parliament, the file was allocated jointly to the Committees on Internal Market and Consumer Protection (IMCO) and on Environment, Public Health and Food Safety (ENVI). Parliament is expected to vote on the report adopted jointly by ENVI and IMCO during its 2024 March plenary session.

Proposal for a directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (green claims directive)		
<i>Committees responsible:</i> <i>(Joint committee)</i>	Committee on Internal Market and Consumer Protection (IMCO) and Committee on the Environment, Public Health and Food Safety (ENVI)	COM(2023)166 22.3.2023 2023/0085(COD)
<i>Co-rapporteurs:</i>	Andrus Ansip (Renew, Estonia) Cyrus Engerer (S&D, Malta)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Shadow rapporteurs:</i>	Arba Kokalari (EPP, Sweden) Pernille Weiss (EPP, Denmark) Laura Ballarín Cereza (S&D, Spain) Emma Wiesner (Renew, Sweden) Malte Gallée (Greens/EFA, Germany) Kim Van Sparrentak (Greens/EFA, Netherlands) Virginie Joron (ID, France) Annalisa Tardino (ID, Italy) Carlo Fidanza (ECR, Italy) Pietro Fiocchi (ECR, Italy) Anne-Sophie Pelletier (The Left, France)	
<i>Next steps expected:</i>	Vote in plenary on joint committee report	



Introduction

Many labels claim products are 'greener', 'more sustainable' or 'eco-friendlier' than others. In 2020, there were around 230 active [ecolabels](#) in Europe, and 100 private green energy labels have been mapped in the EU. Can consumers or companies be sure that these claims are based on solid grounds? In 2020, the [European Commission](#) found that 53 % of examined environmental claims in the EU were vague, misleading or unfounded, and 40 % were unsubstantiated. The absence of specific EU rules contributes to this situation.

The 2019 communication on the [European Green Deal](#) stressed the need to rethink a broad range of EU policies to transform the EU economy for a more sustainable future – including those policies affecting production and consumption.

A number of initiatives to set up a product policy framework, aiming at making sustainable products, services and business models the norm and to transform consumption patterns was put forward in the [circular economy action plan](#) of March 2020. The Commission announced that it would propose a revision of EU consumer law to ensure that consumers receive trustworthy and relevant information on products at the point of sale – on their lifespan, for instance. It also announced that it would aim to reinforce consumer protection against greenwashing, setting minimum requirements for sustainability labels/logos and for information tools. The Commission explained that it would propose that businesses substantiate their environmental claims using product and organisation environmental footprint methods. The Commission's Joint Research Centre (JRC) has developed such [methods](#) to assess products' full life cycle impacts. They can measure emission and resource use, up to final waste management. The methods also enable a comparison of impacts for similar products, and the JRC provides advice on how to communicate the results to the public.

The green transition is furthermore one of the key priority areas covered by the [new consumer agenda](#) published in November 2020. This stressed that consumers need to be better protected against 'information that is not true or presented in a confusing or misleading way to give the inaccurate impression that a product or enterprise is more environmentally sound, called "greenwashing"'.

The March 2022 proposal for a directive [empowering consumers for the green transition](#) aimed to amend [Directive 2011/83/EU on consumer rights](#) and [Directive 2005/29/EC on unfair business-to-consumer commercial practices](#) to tackle unfair commercial practices that mislead consumers away from sustainable consumption. The Council and Parliament reached [provisional agreement](#) on [this file](#) on 19 September 2023, which was formally [adopted](#) on 20 February 2024. Among other things, the new directive prohibits making a generic environmental claim for which the company is not able to demonstrate recognised excellent environmental performance relevant to the claim. The proposal for a directive on green claims aims to complement other parts of the file by proposing more specific rules on environmental claims (on their substantiation, communication and verification).

Parliament's starting position

In its [resolution](#) of January 2020 on the European Green Deal, the Parliament highlighted the importance of empowered and well-informed consumers to support a clean and circular economy. It called on measures to ensure that consumers receive transparent, comparable and harmonised product information, including the labelling of products, based on solid data, so that they are able to make healthier and more sustainable choices.

In its [resolution](#) of November 2020, entitled 'towards a more sustainable single market for business and consumers', the Parliament welcomed the announced legislative proposal on substantiating green claims and called for the development of clear guidelines and standards for green claims and commitments that translate into stronger eco-label certifications. It also recommended assessing

the possibility of the establishment of a public European register listing authorised and banned environmental claims, as well as the conditions and steps to be taken to assert a claim.

In its [resolution](#) of February 2021 on the new circular economy action plan, the Parliament pointed to the right of consumers to receive better information on the environmental and climate impacts of products throughout their lifecycle. It called for measures to counter greenwashing and false environmental claims regarding products, and reiterated its support for the Commission's plan to put forward proposals to regulate the use of green claims. The Parliament also highlighted the need to enforce the recently amended [Directive 2005/29/EC on unfair business-to-consumer commercial practices](#) through proactive measures tackling green claims.

Council starting position

In its [conclusions](#) of October 2019 on 'more circularity: transition to a sustainable society', the Council expressed its support to all initiatives promoting the communication of environmental impacts, and to the establishment of a mandatory scheme for environmental claims.

In its [conclusions](#) of December 2020 on making the recovery circular and green, the Council expressed its support for the Commission's plans to ensure that green claims concerning products are substantiated on the basis of environmental impacts along their lifecycle, using product environmental footprints and other life-cycle based methods.

In its [conclusions](#) of February 2021 on the new consumer agenda, the Council welcomed the Commission's objective to put forward measures to encourage sustainable consumption by better protecting consumers against unsubstantiated green claims and greenwashing.

Preparation of the proposal

The Commission published an [inception impact assessment](#) for a legislative proposal on substantiating green claims on 20 July 2020, with a feedback period open until the end of August of the same year. The Commission received 193 contributions. A [public consultation](#) took place from 27 August to 3 December 2020. The Commission received 360 contributions.

No specific impact assessment accompanies the proposal. The Commission instead refers to the [impact assessment](#) published together with the proposal for a directive empowering consumers for the green transition. The proposed regulation focuses on one of the problems identified in the impact assessment (consumers face misleading commercial practices related to the sustainability of products) and two of its sub-problems (consumers are faced with unclear or poorly-substantiated environmental claims from companies and with sustainability labels that are not always transparent or credible).

The proposal was published on 22 March 2023, as a part of a [third package](#) of proposals to promote a more circular economy, issued since the publication of the new circular economy action plan.

The changes the proposal would bring

The [proposed directive](#) would set detailed rules on substantiating and communicating explicit environmental claims about products, in business-to-consumer commercial practices. The requirements included in the proposed directive would apply to specific aspects of explicit environmental claims and would take precedence over the requirements of Directive 2005/29/EC concerning those aspects, in case of conflict.

It would apply to voluntary explicit environmental claims and environmental labelling schemes, which are not regulated by any other EU acts, such as [Regulation \(EC\) No 66/2010](#) (EU ecolabel), [Regulation \(EU\) 2018/848](#) (organic products), [Regulation \(EC\) No 1221/2009](#) (Community eco-management and audit scheme (EMAS)), or the future [regulation establishing an EU certification framework for carbon removals](#).

Member States would have to ensure that companies carry out an assessment to substantiate explicit environmental claims, meeting a number of requirements, including:

- specifying if the claim concerns the whole product or part of it, or if the claim concerns all activities of a company or only some of them;
- basing claims on widely recognised scientific evidence, using accurate information and international standards;
- taking a life-cycle perspective;
- taking all the significant environmental aspects and impacts into account to assess the environmental performance;
- demonstrating that the claim is not equivalent to requirements imposed by law;
- providing information whether the product or company subject to the claim performs significantly better than in common practice;
- checking that a positive achievement has no harmful impacts on climate change, resource consumption and circularity, sustainable use and protection of water and marine resources, pollution, biodiversity, animal welfare and ecosystems;
- reporting greenhouse gas offsets in a transparent way: separating greenhouse gas emissions offsets from greenhouse gas emissions, specifying whether the offsets concern emission reductions or removals, and providing information on the quality of the offsets;
- including primary information (directly measured or collected by the company);
- including secondary information (based on other sources than primary information, such as literature studies, engineering studies and patents), when no primary information is available.

The proposed directive does not prescribe a single method for the assessment.

The Commission would be empowered to adopt delegated acts to amend these requirements, for instance to set up specific life-cycle-based rules for certain product groups and sectors.

In addition, comparative environmental claims would also have to comply with the following requirements:

- use equivalent information and data for the assessment;
- use data that is generated or sourced in an equivalent manner;
- cover the same stages along the value chain;
- cover the same environmental impacts, aspects or performances;
- use the same assumptions.

Furthermore, Member States would have to ensure that the communication of explicit environmental claims complies with a number of requirements, including that it only covers claims that are substantiated and, if the use phase is among the most relevant life-cycle stages of that product, that it provides information on how the consumer should use the product. Information on the product or the company and on the substantiation (such as standards used), should be made available in a physical or digital form. Member States would have to ensure that environmental labels fulfil the requirements mentioned above and are subject to verification.

The Commission would be empowered to adopt delegated acts to further specify the information that could be communicated.

The requirements to substantiate explicit and comparative environmental claims, and on communication of explicit environmental claims, would not apply to [microenterprises](#) (employing fewer than 10 people and whose annual turnover and/or annual balance sheet total does not exceed €2 million), unless they request the verification.

The proposed directive would also set requirements for environmental labelling schemes (i.e. certification schemes that certify that a product, a process or a company complies with the requirements for an environmental label):

- information about its ownership and decision-making bodies is transparent;
- information about its objectives and the requirements and procedures to monitor compliance are transparent;
- the conditions for joining the scheme are proportionate to the size of companies, so as not to exclude small and medium-sized enterprises (SMEs);
- the requirements are scientifically robust and relevant from a societal perspective;
- a complaint and dispute resolution mechanism is in place;
- procedures are set out for dealing with non-compliance and for the withdrawal of the label in case of non-compliance with the requirements of the scheme.

The labels presenting a rating or score for a product or company based on an aggregated indicator representing cumulative environmental impacts would be banned, unless they have been awarded under environmental labelling schemes set up under EU law.

To tackle the proliferation of labelling schemes, setting up new publicly owned national or regional environmental labelling schemes would be prohibited from the date of transposition of the proposed directive. Schemes set up prior to that date may continue to award environmental labels on the EU market if they meet the requirements of the proposed directive.

New public environmental labelling schemes established in third countries, awarding environmental labels to be used on the EU market, would need to be approved by the Commission.

After the date of transposition of the proposed directive, new private environmental labelling schemes set up in the EU and in third countries would have to be approved by Member States, taking account of their added value in terms of their environmental ambition and ability to support SMEs' green transition, compared to existing schemes.

The Commission would publish the list of officially recognised environmental labels permitted for use on the EU market.

Member States would have to ensure that the information used for the substantiation of explicit environmental claims is reviewed and updated by companies when there are circumstances that may affect the accuracy of a claim.

Member States would have to establish procedures to ensure the *ex ante* verification of the substantiation and communication of explicit environmental claims, against the requirements set out in the proposed directive, to be carried out by a verifier, delivering a certificate of conformity certifying that the claim or the label complies with the requirements, and recognised across the EU. The verifier would have to be an accredited third-party conformity assessment body.

Member States would have to help SMEs to apply the provisions of the proposed directive, at least by raising awareness on how to comply with the requirements on explicit environmental claims. In addition, Member States could provide them with financial support, facilitate access to finance, and provide training and technical assistance.

National competent authorities would have to undertake regular checks of the explicit environmental claims made and the environmental labelling schemes applied. The results of these checks would be published.

Member States would also lay down a system of penalties applicable in case of infringements.

Advisory committees

The European Economic and Social Committee (EESC) adopted its [opinion](#) on the proposed directive on 14 June 2023 (rapporteur: Angelo Pagliara (Workers – GR II/Italy)). The EESC asked the Commission to ensure that the requirements established in the proposed directive become a model for a minimum level of protection against greenwashing, to be reflected in sectoral legislation excluded from the scope of this directive when covering certain voluntary claims and labelling. The EESC also called on the Commission to introduce a ban on claims based on carbon offsetting, and to ensure

that the adequate conditions are in place for strengthening the competitiveness of the EU single market, particularly via the introduction of common methodologies for substantiating different kinds of claims.

The European Committee of the Regions (CoR) is [expected](#) to adopt its opinion on the consumers' protection package (including on the proposal on green claims) during its plenary session of 11 October 2023 (rapporteur: Dan Boyle, The Greens, Ireland).

National parliaments

The [deadline](#) for the submission of reasoned opinions on grounds of subsidiarity was 25 July 2023. No such opinion was delivered within the time limit.

Stakeholder views¹

The [public consultation](#) on the proposal was closed on 21 July 2023.

[SMEunited](#) is worried that, although the proposed directive would exempt micro-enterprises from obligations ((Articles 3(3), 4(6), 5(7)), SMEs could be affected indirectly through market pressure or consumers who suspect they do not comply with the obligations. Improved support measures should be in place therefore, in case micro-enterprises would like to apply the requirements of the directive voluntarily, through the introduction of a simplified EU-level tool and by facilitating lifecycle analysis for SMEs at EU level. The proposed directive should not lead to a situation where only financially strong market players would be able to use green claims. SMEunited calls for simple, workable and proportionate substantiation criteria. Furthermore, the proposed directive should require Member States to put an alternative verification scheme for SMEs in place, instead of mandatory third-party verification for all claims and all companies. An assumption of conformity for small-scale marketing would also be appropriate.

[Industrial Minerals Europe](#) (IMA-Europe), an umbrella organisation that brings together a number of European associations specific to individual minerals, stressed that it is key to set up simplified procedures for obtaining the single certificate of conformity for products, to avoid any unnecessary administrative burden. Furthermore, when adopting delegated acts on substantiation of explicit environmental claims and on communication of such claims, the Commission should avoid 'over-regulating' by adding extra rules which would create legal uncertainty for operators. Moreover, third parties should not be allowed to submit complaints against traders without sufficient proof of non-compliance. Competent authorities should allow enough time for remedies to be implemented before applying penalties.

[BEUC](#), an umbrella group for 45 independent consumer organisations from 31 countries, called for an outright ban on misleading claims on carbon neutrality. BEUC also welcomed that consumer organisations would be able to bring collective complaints to court.

The [European Environmental Bureau](#) (EEB), a network of environmental citizens' organisations in Europe, consisting of 180 member organisations in 40 countries, particularly regrets the lack of a ban on carbon neutral claims and on the use of green claims on products containing hazardous chemicals.

The [Environmental Coalition on Standards](#) (ECOS) noted with regret that the proposal fails to impose an EU-wide method to calculate environmental impacts. ECOS also pointed out that climate neutrality claims were not banned, although they are a form of greenwashing. Furthermore, ECOS asked that a consultative forum on green claims, with active participation from civil society and Member States, further develop the existing EU Product Environmental Footprint method, to help ensure a common methodology for substantiating life cycle impacts.

Legislative process

Council of the EU

In the Council, the proposal is being discussed at meetings of both the Working Party on the Environment and the Working Party on Consumer Protection and Information. The file was discussed in July 2023 during the [informal ministerial meeting](#) on consumer affairs and industry and internal market, organised by the Spanish Presidency of the Council in Bilbao.

European Parliament

In the Parliament, the file was allocated jointly to the Committees on Internal Market and Consumer Protection (IMCO) and on the Environment, Public Health and Food Safety (ENVI) (Rule 58 of the Rules of Procedure of the Parliament). They appointed, respectively, Andrus Ansip (Renew, Estonia) and Cyrus Engerer (S&D, Malta) as rapporteurs.

In total, 821 amendments to the Commission proposal were tabled in the joint committee. On 14 February 2024, ENVI and IMCO adopted the report, with 85 [votes](#) in favour, two against and 14 abstentions. The report will be put to a vote in plenary in March 2024 and will represent Parliament's position at first reading. The file will be followed up by the new Parliament after the European elections on 6-9 June 2024.

According to the report, the verification of environmental claims and environmental labelling schemes by the verifiers should be completed within 30 days. The verifier may also extend the period for verification for more than 30 days, in duly justified cases. Verifiers should provide an estimation of the period of the verification procedure to the company on the date when the request for verification is submitted.

Member States should ensure that the cost of verification and certification takes into account the complexity of the substantiation of the claim, and the size and turnover of companies requesting verification and certification, with particular regard to micro-, small and medium-sized enterprises.

Within 18 months of the entry into force of the proposed directive, the Commission should establish, through a delegated act, a simplified verification system allowing companies to benefit from a simplified procedure for certain environmental claims.

Within 18 months of the entry into force of the proposed directive, the Commission should also provide a report on the use of environmental claims on products containing substances classified as toxic, hazardous to the environment, carcinogenic, mutagenic or toxic for reproduction (CMR), causing endocrine disruption to human health or the environment, persistent, bioaccumulative and toxic (PBT), very persistent, very bioaccumulative (vPvB), persistent, mobile and toxic (PMT), or very persistent, very mobile (vPvM) properties. The report should evaluate for which products the use of environmental claims is misleading and assess the need for restrictions or prohibitions on the use of explicit environmental claims for these products.

The report adds provisions stating that, in accordance with the recently adopted directive empowering consumers for the green transition, environmental claims that a product has a neutral, reduced or positive environmental impact based on the use of carbon credits would be banned.

Climate-related compensation and emission reduction claims based on carbon credits could only be used for residual emissions of a company through carbon credits certified under the recently agreed [regulation establishing an EU certification framework for carbon removals](#).

The Commission would set up a 'green claims consultation forum' involving Member States' representatives and stakeholders. The Commission would consult the forum, for instance, to develop delegated acts.

The proposed directive would apply to small companies by 42 months after its entry into force.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

N. Sajn, [Empowering consumers for the green transition](#), EPRS, European Parliament, June 2022.

OTHER SOURCES

[Substantiation and communication of explicit environmental claims \(green claims directive\), 2023/0085\(COD\)](#), Legislative Observatory, European Parliament.

ENDNOTES

- ¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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