



POSITION PAPER

Brussels, 20 July 2023

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

Executive summary

✔ What we support

- Reliable, coherent, understandable and verifiable environmental information.
- The key objectives of the Green Claims proposal laying down common criteria at EU level against greenwashing and misleading environmental claims.
- Requirements harmonised at EU level to secure the functioning of the internal market.
- Fair competition among economic operators.
- The scope – environmental claims in business-to-consumer commercial practices.
- Claims relying on widely recognised scientific evidence, using accurate information and taking into account relevant international standards.
- Possibility of using digital means to display the certificate of conformity and substantiate claims and labels.
- Ban on new national or regional environmental labelling schemes and continuation of existing schemes on the condition that they meet the requirements of this Directive.
- Appropriate measures at national level to support SMEs.

⚠ What concerns us

- Directive based on minimum harmonisation and not maximum harmonisation, thereby undermining the internal market, raising compliance costs and leading to forum shopping risks.
- Overlaps, duplication of efforts and double regulation between the various initiatives (Unfair Commercial Practices Directive, proposal on empowering consumers for the green transition & Green Claims proposal)
- Different methodologies for the same product group, which may result in the same product receiving a different score or rating depending on the scheme.
- Minimum requirements on third party verification
- Disproportionate documentation requirements and verification costs.
- Assessment of potential trade-offs between different product aspects.
- New restrictions on private schemes risk stifling innovation in areas where certification schemes and labels do not yet exist.
- Risk of mixing chemical legislation or other material environmental legislation in the proposal.

Introduction

Orgalim represents Europe's technology industries, providing innovative technology solutions which are underpinning the twin green and digital transitions and can unlock a greener, healthier and more prosperous future for the European Union and its citizens. Our industries stand ready to continue providing innovative, high-quality, functional and safe products that are efficient and affordable, last longer, and are designed for reuse, repair, and high-quality recycling.

We thank the European Commission for the opportunity to comment on the proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive).

Our industries welcomed the Commission's new Circular Economy Action Plan (see our position paper [here](#)), the Sustainable Products Initiative (see our position paper [here](#)) and the proposal for Ecodesign for Sustainable Products Regulation (see our position paper [here](#)) as key measures to further optimise the way resources are used throughout the economy and society. We also welcomed the proposal for a Directive laying down common rules promoting the repair of goods (see our position paper [here](#)). We now welcome the [proposal](#) from the Commission for a Directive on Green Claims which will address greenwashing by tackling false environmental claims made towards consumers, and stopping the proliferation of public and private environmental labels.

What we support

Our industries support the use and development of **reliable, coherent, understandable, and verifiable environmental information**. The existing situation with more than 200 environmental labels used on the EU market, presenting important differences in how they operate, has an impact on how reliable the information communicated on the environmental labels is.

We support the following **key objectives** of the Green Claims proposal laying down common criteria at EU level against greenwashing and misleading environmental claims:

- To increase the level of environmental protection and contribute to accelerating the green transition towards a circular, clean and climate-neutral economy in the EU;
- To protect consumers and companies from greenwashing and enable consumers to contribute actively to accelerating the green transition by making informed purchasing decisions based on credible environmental claims and labels, leading to a fairer marketplace and improved consumer trust;
- To improve the legal certainty as regards environmental claims and the level playing field on the internal market, boost the competitiveness of economic operators who make efforts to increase the environmental sustainability of their products and activities, and create cost saving opportunities for such operators who are trading across borders.

We support a **common set of rules at EU level** against greenwashing and misleading environmental claims as they will ensure a level playing field for economic operators in terms of requirements to be met when making an environmental claim, including the requirements on the information and data to be used. It is essential that **requirements are harmonised at EU level** to secure the functioning of the internal market and to safeguard the possibility for companies to develop efficient and successful circular solutions across Europe.

We support that the proposed Green Claims Directive aims to promote **fair competition among economic operators** on the internal market. By establishing common standards for substantiating environmental claims, it has the potential to create a level playing field for companies that offer truly sustainable products compared to those that do not, preventing an unfair advantage for those companies making unsubstantiated or misleading claims.

As to the **scope**, we support that the proposed Directive shall apply to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices (Article 1.1). This is in line with the empowering consumers initiative.

We support green claims requirements based on robust and prominent methodologies developed in full **transparency** with stakeholders and that the assessment to substantiate explicit environmental claims shall rely on widely recognised **scientific evidence**, using accurate information and taking into account relevant **international standards** (Article 3.1(b)).

- When reporting on improved performances, **we recommend** requiring more transparency towards consumers vis-a-vis the origin of improvement (e.g. whether it is based on improved vs new data).

Regarding the **communication of explicit environmental claims** (Article 5) and **comparative environmental claims** (Article 6), we welcome the possibility of using digital means to display the certificate of conformity and substantiate claims and labels.

- **We recommend** to further clarify whether all substantiation data (including LCAs, studies, etc) should be provided in the language of the Member State where the product is placed on the market.
- **We recommend** that substantiation information should differentiate between substantiation data made available to consumers vs data available to the authorities upon request. Information for consumers should be shared on a need-to-know basis to preserve confidential business data.
- **We recommend** that information shared with consumers should be simple and straightforward, while guaranteeing full transparency and giving them a complete picture of the assessments made. The certificate of conformity will assure consumers that the substantiation of labels/claims is robust.
- **We recommend** that in the case of future environmental claims, changes to the timeline should be permitted as part of the review of the claim in case of circumstances affecting its accuracy.

As to environmental labels (Article 7) and requirements for **environmental labelling schemes** (Article 8), we support that in order to avoid further proliferation of national or regional officially recognised EN ISO 14024 type I environmental labelling ('ecolabelling') schemes, and other environmental labelling schemes, and to ensure more harmonisation in the internal market, the Green Claims proposal **prohibits new national or regional environmental labelling schemes** to be established by public authorities of the Member States. We also support that the proposal clarifies that **existing** national or regional environmental labelling **schemes** may continue to award the environmental labels on the EU market, provided they meet the requirements of this Directive (Article 8.3).

- We recommend to support the incorporation of **appropriate measures at national level** taken by Member States **to support SMEs** in complying with the provisions regarding green claims (Article 12) and that the Commission will support companies **by making available funding** to provide data to support solid claims and develop calculation tools for SMEs.

What concerns us

We regret that this **Directive** is **based on minimum harmonisation** (Member States have the right to set higher standards than those set in the Directive) **and not maximum harmonisation** (Member States shall not maintain or introduce in their national law provisions diverging from those laid down in this Directive). This is undermining the internal market, raising compliance costs and leading to forum shopping risks.

- **We recommend** that the proposal for a Green Claims Directive be turned into a Regulation because a Regulation will ensure that the obligations will be implemented at the same time, and in the same way, in all EU Member States. In this way, consumers and companies will be subject to the same rights and responsibilities all across the Union.

To avoid **unnecessary burdens for companies** and ensure **consistency** between the various initiatives:

- **We recommend** policymakers to avoid overlaps, duplication of efforts and double regulation between the following different initiatives from the Commission:
 - The existing [Unfair Commercial Practices Directive](#) from 2005 that regulates unfair commercial practices including inaccurate information given to consumers or aggressive marketing techniques to influence their choices. The current proposal for a Directive on green claims constitutes special legislation, but still

constitutes marketing law regulation. It is therefore crucial that full coherence is ensured with the general rules on misleading marketing in the Unfair Commercial Practices Directive.

- The [proposal on empowering consumers for the green transition](#) which enables consumers to make informed purchasing decisions at the point of sale.
- This new [proposal](#) for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive).

It is very difficult for companies to compete on a fair level playing field if there are **different methodologies for the same product group**, which may result in the same product receiving a different score or rating depending on the scheme. This is contributing to the fragmentation of the internal market, risks putting smaller companies at a disadvantage, and is likely to further mislead consumers and undermine their trust in environmental labels.

- **We recommend** the Commission to continue working on developing a single harmonised methodology for all products or per specific product group to ensure coherence and comparability.
- **We recommend** that any regulation on data should be in line with the New Legislative Framework (NLF).
- **We recommend** the Commission to base their further work on developing a single harmonised methodology on:
 - European and internationally recognised standards, such as CENELEC EN 50693:2019, to ensure international harmonisation and to enable comparison of all actors in each supply chain given that many companies operate on the global market.
 - Existing Environmental Product Declaration Schemes (for example EPD) already implemented around the EU.

We note that a **growing number of companies choose not to communicate about their green initiatives** due to doubts about what is legal and illegal, as well as uncertainty about their reception in the media and the public. This hesitation fosters a relationship between consumers and companies that will not be optimal to a smooth green transition.

- **We recommend:**
 - Green claims rules should be clear and simple, so that consumers and other market actors can rely on the communication (no misleading actions or omissions), and so that companies do not refrain from informing about their initiatives to improve the sustainability of their products out of fear of illegality.
 - Green claims requirements should not be disproportionately burdensome, complex, or restrictive. Companies should still feel empowered to make environmental/sustainability claims (essential to help consumers make informed choices), thereby boosting market uptake of sustainable products.
 - Interpretation and enforcement should be uniform across the EU, which will limit the possible phenomena of forum shopping, lacked mutual recognition, differentiated consumers' rights and companies' opportunities. The different level of resources within Member States, and with verifiers, can also lead to diverging approaches in terms of timing and methodologies. While some verifiers may be overwhelmed with requests, others will have very few. This is why, to avoid potential bottlenecks in the verification process which risk delaying companies from being able to use relevant claims and labels, we recommend the Commission to consider establishing a standardised form to accelerate the process, as well as setting a clear timeline for the assessment by verifiers.
 - In line with recital 52, it should be clear that, once approved in one Member State, the translated version of an approved claim should be recognised all across the Union (i.e. no need to seek a renewed approval). Similarly, it would be helpful to specify whether a translation of the certificate of conformity would be required.

We have concerns regarding **potential trade-offs between different product aspects**. The proposed Directive states that whenever there is a trade-off, the environmental claims cannot be made (Recital 19 "*It would be misleading to consumers if an explicit environmental claim pointed to the benefits in terms of environmental impacts or environmental aspects while omitting that the achievement of those benefits leads to negative trade-offs on other environmental impacts or environmental aspects*"). In the field of sustainability there are multiple trade-offs and conflicting requirements, and

customers or companies need to take decisions based on the choices with the greatest environmental gain or the smallest loss. It is not always possible to know and assess all the different potential trade-offs.

We are also concerned about minimum requirements on **third party verification** (Article 11). Our concerns are multiple: on the one hand, we fear their certificates for conformity will not be recognised across the EU (leading to higher compliance costs or consumers and companies to be subject to different rules); on the other hand, due to workload reasons, we expect the verification processes to delay the marketing of green products. This will have an impact on both consumers (who will not have access to adequate information) and companies (who will experience profit losses). In addition, companies will have to bear verification costs without any reassurance as per their proportionality.

- **We recommend** verifiers to establish Union-wide recognition agreements, so that their certificate of conformity is valid across the Union.
- **We recommend** setting a time limit for verifiers to issue their certificate of conformity. This would provide predictability to companies and ensure consumers are timely and adequately informed about the products' or traders' sustainability.
- **We recommend** authorities to increase their enforcement and market surveillance activities on green claims so that companies are required to provide documentation when they are checked.
- **We recommend** establishing an element of proportionality for both documentation requirements and verification costs in order to avoid unnecessary burdens for companies.
- **We recommend** that the documentation requirements laid down in this Green Claims proposal will take into account the documentation already required by other EU legislation (e.g. the Corporate Sustainability Reporting Directive (CSRD) and the Ecodesign for Sustainable Products Regulation (ESPR)). When these require a verification, they should not be submitted for another verification. On the contrary, they could rather be used by the manufacturers to speed up their claims and can therefore reduce the workload for both the verifiers and the companies.

We find the **life cycle perspective** (Article 3.1.(c)) unclear; for example, whether a life cycle analysis must always be carried out for an environmental claim with explanation, and, if so, whether the life cycle analysis in question can simply focus on the part that relates to the specific environmental claim with explanation, or whether a life cycle analysis of the entire product is carried out (e.g. if a claim that specifically only relates to an improved environmental impact from the packaging cannot be made unless a life cycle analysis of the entire product is also carried out). It is not always necessary to carry out an LCA for the entire product. However, in case of a comparative assessment, the same basis of comparison is used to ensure that the same things are compared (e.g. different packaging options to cover the same m³ of product). We acknowledge that there is a knowledge gap due to differences in assumptions, datasets and databases, so the result of a comparative LCA cannot always be a reliable indicator when it comes to improved performance. Also, the results could sometimes be better in some categories of the LCA and worse in some other categories. Indeed, changing the use of high environmental impact raw material can, for instance, require a change in production process that will use more non-renewable energy. The 80% rule outlined in the proposed Directive may not be sufficient. Perhaps it is always worth outlining the underlying assumptions upon which a claim is made and ensuring to the greatest extent possible comparability. The customer is then empowered to make a decision based on the assumptions presented. Otherwise, it will be literally impossible to ever make a claim.

- **We recommend** guidance to be developed by policymakers on how the substantiation should identify trade-offs when there is no recognised methodology, such as, for instance, in case of non-LCA indicators such as biodiversity. Similarly, it might be worth considering introducing a cut-off for what is considered "significant" from an LCA-perspective when proving that the claim is relevant for the product/trader in question. We would like to caution that proof of significance should not be equivalent to conducting a full LCA study for all claims.

As to the requirements for **environmental labelling schemes** (Article 8), we are concerned that the new restrictions on private schemes risk stifling innovation in areas where certification schemes and labels do not yet exist.

- With regard to the authorisation of private labelling schemes (Article 8.5), **we recommend** further clarity on what is meant by “added value” in terms of their environmental ambition and their coverage of environmental impacts, as compared to the existing EU, national or regional schemes.
- **We recommend** a timely publication by the Commission of officially recognised environmental labels that are allowed to be used on the Union market. This would improve transparency for consumers and legal clarity for companies.

We are concerned about the risk of **mixing chemical legislation or other material environmental legislation** in the Green Claims proposal directly or indirectly. Chemical legislation belongs to REACH for reasons relating primarily to chemical safety.

- **We recommend** chemicals to be regulated under the REACH Regulation.
- **We recommend** that Article 21.3(b) concerning the evaluation and review of the Green Claims Directive does not define in advance which substances must be investigated (Article 21.3(b) states that “*Where the Commission finds it appropriate, the evaluation reportshall be accompanied by a legislative proposal for amendment of the relevant provisions of this Directive, including considering further provisions on facilitating transition towards toxic free environment by considering introducing a prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society in line with the criteria to be developed by the Commission*”). Conclusions about whether and what claims should be evaluated should first come as a result of the actual evaluation or an evaluation which has to be performed according to Article 21.

Regarding **compliance monitoring measures** (Article 15) **and penalties** (Article 17):

- **We recommend** the Directive to further clarify that economic operators making the claims and applying environmental schemes are responsible for ensuring compliance with the requirements set out in this Directive. They should therefore be held liable in case of non-compliance.
- **We recommend** that, by default, the certificate of conformity should be considered sufficient to prove compliance with the obligations of this Directive. It would therefore be helpful if the text clarified in which instances a verifier will be held liable when wrongly issuing a certificate of conformity.

As for the **transposition** (Article 25):

- **We recommend** extending the transition period for the rules to enter into force, to give all relevant stakeholders sufficient time to prepare to comply with the new obligations.

Orgalim represents Europe’s technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU’s largest manufacturing sector, generating annual turnover of over €2,906 billion, manufacturing one-third of all European exports and providing 11.19 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.