

Proposed Green Claims Directive – current developments

What to expect for Climate-related claims?

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Overview: legislative context

- Lex generalis (EU rules on consumer protection):
 - Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market
 - Directive 2011/83/EU on consumer rights

Both recently amended by **Directive 2024/825/EU, empowering consumers for the green transition through better protection against unfair practices and through better information**

- Lex specialis:
 - In March 2023, the EC proposed a **Directive on substantiation and communication of explicit environmental claims** (Green Claims Directive)

Sets minimum requirements on the substantiation and communication of explicit voluntary environmental claims and environmental labelling in business-to-consumer practices which are subject to third party verification, to be delivered prior to the claim being used in commercial communications.

Overview: key objectives

- (i) Increase the level of environmental protection and to accelerate the green transition;
- (ii) Protect consumers and companies from *greenwashing*;
- (iii) Enable consumers to contribute to accelerating the green transition by making informed purchasing decisions based on credible environmental claims and labels; and
- (iv) Improve the legal certainty on environmental claims;
- (v) Ensure a level playing field in the internal market;
- (vi) Boost the competitiveness of economic operators that make efforts to increase the environmental sustainability of their products and activities.

European Commission's Proposal (22.3.2023)

Scope (Article 1) Substantiation of explicit environmental claims (Article 3) [Environmental labels (Article 7)]

Explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.

Substantiation based on an assessment that:

- (i) demonstrates the significance of environmental impacts, aspects and performance **from a life-cycle perspective;**
- (ii) rely on widely **recognised scientific evidence;**
- (iii) demonstrates whether the claim is **accurate for the whole product/activity or only for parts of it;**
- (iv) demonstrates that the claim is **not equivalent to requirements imposed by law;**
- (v) provides information on whether the product performs environmentally significantly **better than what is common practice;**
- (vi) identifies **whether a positive achievement leads to significant worsening of impact;**
- (vii) includes accurate primary or secondary information; and
- (viii) ***“separate any GHG emissions offsets used from GHG emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate”*** (cf. article 3(1)(h)).

European Commission's Proposal (cont.)

Communication of explicit environmental claims (Article 5)

When communicated, all environmental claims shall, at least:

- (i) cover environmental impacts, aspects or performance that are assessed in accordance with the substantiation requirements and are identified as significant for the respective product or trader;
- (ii) shall be accompanied by information on the substantiation.

In addition, for climate-related explicit environmental claims that rely on GHG offsets, the communication shall include *“information to which extent they rely on offsets and whether these relate to emissions reductions or removals”* (cf. article 5(6)(f)).

Verification and certification of the substantiation and communication (Article 10)

An officially accredited body by the Member States (the ‘verifier’) will carry out the ex-ante verification of the claims submitted by the company wishing to use it.

Issue certificate of conformity which will be recognised across the EU, shared between Member States across the internal market.

The European Parliament amendments (12.3.2024)

- While making a distinction between compensation and contribution claims, the EP does not provide for any definition.
- It foresees that: **(i) compensation claims based on the use of carbon credits as an offset are only admissible in relation to residual emissions; and**
- **(ii) the units need to be certified under CFCR (i.e., essentially removal), this leads to a segment of carbon credits based on emissions reductions not to be included.**
- For *contribution claims*, the assessment shall “(..) *ensure that no financial contribution is used to claim an improved climate or environmental impact of the product, or trader (..).*”

Compromise text by the Presidency (April/May 2024)

- The initial version of the compromise text prepared by the Presidency followed the path of the EP. However, the third revision – version from May 22, 2024 – seems to entail a positive evolution in the wording:

*“(19d) ‘**contribution claim**’ means an explicit environmental claim related to climate, where the trader claims to have contributed to climate action by purchasing carbon credits, but without using those carbon credits for balancing out a share of its emissions;”*

*“(19e) ‘**offset claim**’ means an explicit environmental claim related to climate, where the trader claims to have balanced out a share of its emissions by purchasing carbon credits;”*

Compromise text by the Presidency – 3rd revision:

Scope (Article 1)	Applies to explicit environmental claims made voluntarily by traders about products or about traders, and to environmental labelling schemes that allow for the use of the corresponding environmental labels, in business-to-consumer commercial practices.
Substantiation of explicit environmental claims and environmental labels (Article 3)	Climate-related claims , including claims based on the use of carbon credits, the assessment shall take into the account the specific nature and aspects of that claim, to ensure that consumers are well informed about the use of the carbon credits and their effects. Offset claim , claiming that a trader has a neutral, reduced or positive impact on the environment in terms of GHG emissions, the assessment shall, as well: (i) demonstrate that the trader has set a net zero target as set out in ESRS; and (ii) disclose the percentage of total GHG emissions balanced out using carbon credits, for a specific time period.
Communication of explicit environmental claims and environmental labels (Article 5)	MS shall ensure that traders and environmental labelling scheme owners are required to communicate to consumers any explicit environmental claim or environmental label in a clear and comprehensible manner including the summary of the substantiation assessment.
Verification of the substantiation of explicit environmental claims, environmental labels and environmental labelling schemes (Article 10)	

Recent Developments

On 6 June 2024, the Coreper seemed to have found a consensus on the text. Among others, it foresees:

- **Simplified procedure:** (i) claims about exceeding the minimum legal requirements, (ii) claims based on environmental labels, (iii) claims about interventions under the Common Agricultural Policy (CAP), and (iv) certain types of explicit environmental claims defined in implementing acts to be adopted by the Commission.
- **‘explicit environmental claims’ and ‘environmental labels’:** clarification the different responsible parties (i.e. trader or environmental labelling scheme owner) for complying with the respective requirements.
- **Amending the provisions on verification to ensure that only the substantiation assessment shall be verified** before the environmental claims are made public, and not the communication requirements (Art. 10).
- **Setting up specific substantiation requirements for climate-related claims.**
- **Introducing a postponed application date of 36 months** instead of 30 months after the entry into force to allow enterprises, competent authorities, and verifiers to prepare for the application of the Green Claims Directive.

-> 17 June 2024 – Council of the European Union’s first reading position

Takeaways (1)

- Clear differences between the three current versions, but they all go in the direction of additional legislation and regulation and the tendency of overprotection and overregulation. One needs to ask if legislation is necessary and whether it leads to a reduction of individual responsibilities and innovation spirit in society.
- The proposed Green Claims directive was not originally designed to regulate (voluntary) carbon markets but rather to tackle misleading information in green claims (greenwashing) by ensuring transparency, credibility and accuracy of the claims through third-party verification.
- Restricting claims solely to residual emissions could severely stifle investment in carbon markets and removals for the next years.
- Climate-related claims – or environmental labels – based on the use of carbon credits ought to encompass both counterbalancing companies' emissions on the pathway to achieving net zero and residual emissions.

Takeaways (2)

- A more restrictive approach might have an initial chilling effect: we raise the question that instead of ensuring mitigation hierarchy, it might paralyse companies/sectors in the efforts to mitigate? If that is the case, it would seem counterproductive and contrary to objectives of the Directive, the European Climate Law and, ultimately, the Paris Agreement.
- Potential implications for the steel industry:
 - i) a certain degree of standardization/harmonization on the substantiation assessments, communication and verification of the claims should benefit the green steel labelling it may bring clarity and legal certainty.
 - ii) This would ensure:
 - For the side of steel producers – that the competitive environment remains fair and steel producers play the same rules;
 - For the side of the buyers – when procuring green steel products, the buyer is aware of the rationale behind the claims.

Thank you!