

Green Claims

EU Green Claims Directive Proposal (GCD)

Executive Summary

1. We fully support the European Commission's objective to tackle greenwashing in corporate communication. Misleading, unsubstantiated, or incomprehensible sustainability claims in corporate communication need to be eradicated. The environmental performance of products and organizations increasingly drives purchasing decisions. Environmental claims must not become a mere publicity stunt but need to be substantiated with facts and figures. Untransparent practice is not only confusing for consumers, but places companies at a competitive disadvantage that are undertaking legitimate efforts toward more sustainable practice.
2. Nevertheless, we oppose the introduction of a mandatory third-party verification for environmental claims. While organizations must be held fully accountable for their sustainability communication, upfront approval and certification by external verifiers would run counter to the directive's intention and lead to a paradoxical situation: The more information on sustainability disclosed, the higher the costs for a company.
3. Instead, Bosch advocates for a substantiation approach, whereby the conformity with the requirements is assessed by the trader and controlled by market surveillance. Well-established practice in European product safety legislation has shown that self-declaration is a reliable way of ensuring compliance in highly sensitive areas (e.g., for CE-marking). Third-party verification is costly, time-consuming, disproportionate, and, in part, unnecessary – given the current revision of the Consumer Rights Directive (CRD) and Unfair Commercial Practices Directive (UCPD). Inaccurate or false environmental claims already have severe legal and reputational consequences for companies. At worst, the GCD's ex-ante conformity approval leads to green hushing as it deters companies from making any environmental claims due to legal uncertainty and the costs linked to third-party verification. This would lower incentives to showcase and expose sustainable activities and discount the directive's overall objectives.
4. The current proposal risks undermining the functioning of the European Single Market, as key provisions of the directive depend on national implementation processes in 27 Member States as well as countless third-party bodies' interpretations of the law. For legal certainty and fair competition across the EU, equal and clearcut requirements must be ensured while vague formulations and unclear distinctions need to be avoided. Ambiguous definitions and concepts would inevitably lead to fragmentation in the EU. We would welcome further clarifications to improve the text.
5. We call for harmonization with existing and upcoming legislation to prevent double regulation. A clear distinction from the provisions of the UCPD is needed. Interferences with mandatorily audited

sustainability information (e.g., within the Corporate Sustainability Reporting Directive) must be avoided. Chemical safety regulation must remain exclusively under REACH.

On the legal instrument

Choosing a directive as legal instrument comes along with significant disadvantages. The proposal leaves too much discretion to the 27 Member States which will inevitably lead to an unequal transposition, application, and enforcement of the directive. For legal certainty and a level playing field in the Single Market, maximum harmonization must be ensured. We highlight that only harmonized and comparable standards would significantly empower consumers to make informed choices. This is already applied by the EU legislator e.g., by introducing product-specific information requirements via the Battery Regulation or the Ecodesign Regulation. It is remarkable that the Commission already anticipates unequal application, as the GCD proposes to adopt several delegated (Art. 3 (4), Art. 5 (8)) and implementing acts (Art. 8 (8), Art. 10 (9)) in the future to introduce more specific rules if, as specified in Art. 3 (4), “differences in the application of the requirements [...] create obstacles for the functioning of the internal market, or where the Commission identifies that the absence of requirements for specific claims leads to widespread misleading of consumers.” We therefore ask for a uniform approach from the very start to prevent diverging national applications and a distortion of competition. This could be achieved more easily through a regulation instead of a directive. However, a regulation is not a solution in itself since harmonization, irrespective of the legal instrument, will eventually be determined by unambiguous content of the legal text.

On the scope

The GCD is introduced as *lex specialis* to complement the UCPD. Yet, confusion arises with regard to the proposal’s exact scope. A clear distinction is lacking while the GCD’s added value can be questioned. The UCPD – currently under revision with the “directive on empowering consumers for the green transition” – already regulates misleading practices and consumer deception, including false environmental claims. It is challenging to distinguish between a “generic” environmental claim in the UCPD and “explicit” environmental claims in the GCD – especially if the distinction must be operated in 27 Member States individually. Irrespective of the GCD, false and misleading environmental claims are illegal already. Companies must substantiate their green claims and need to be held accountable if they are unable to.

Legal uncertainty and open questions

The GCD furthermore causes legal uncertainty as it remains vague on different counts:

- **Definitions:** The definition of “environmental claim” in Art. 2 (1) refers to the currently revised UCPD. The new UCPD’s definition is not passed into law at this point, as the legislative process is ongoing. The preliminary agreement negotiated in the trilogue leaves room for interpretation when applied in the GCD context as the scope of the two legal initiatives is not identical. The UCPD defines environmental claims as “any message or representation [...], including text, pictorial, graphic or symbolic [...] in the context of a commercial communication”. Most obligations of the GCD are however linked to explicit claims. In Art. 2 (1) of the proposal, an “explicit environmental claim” is plainly defined as “an environmental claim that is in textual form or contained in an environmental label” suggesting that the GCD’s applicability is determined by form, not by content of the claim. A clear distinction between a

“generic” and an “explicit” claim is missing, which makes it difficult to assess whether the UCPD or GCD applies. This is aggravated by the fact that the UCPD exclusively refers to products whereas the GCD additionally includes claims about traders. It is unclear if the GCD covers verbal statements by, for instance, company representatives in speeches and interviews or social media posts. Specifications are urgently needed to ensure that there is a common understanding and equal application across the Union.

- Article 3 sets out detailed yet vague rules for the substantiation of explicit environmental claims. Accordingly, traders carry out an assessment that would come along with massive bureaucratic burdens. Companies must show that their claims are “significant from a life-cycle perspective” (Art. 3 (1) point c)), “rely on widely recognized scientific evidence” (point b) and demonstrate that the product or trader “performs significantly better” than “what is common practice” (point f). With these ambiguous concepts to be transposed in different national legal regimes and approved by third-party verifiers prior to their communication, it remains unclear how compliance can be achieved. There are no universal standards or indicators for significant better performance and/or common industry practice. While the proposal seeks universal application for environmental claims about all products in the EU, provisions pertaining to life cycles or environmental performance are highly product specific. We thus recommend introducing either clear and harmonized criteria that are valid for all products or, alternatively, harmonized methodologies in product-specific regulations. Depending on the verifier’s individual understanding, the current provisions will lead to different interpretations, applications, fragmentation, and unfair competition across Member States. We draw on experience from similarly vague phrasings in other sustainability legislation in the past: For instance, the Taxonomy Regulation initially required manufacturers of low carbon technologies to perform life-cycle analyses and demonstrate emission savings compared to the best performing alternative on the market with verification by an independent third party. The Commission later clarified and amended these provisions for the automotive suppliers as they have led to massive confusion in the industry with potentially distorting effects on competition.
- Similarly, we apprehend that unspecific and disproportionate requirements such as the need to review the substantiation of environmental claims permanently and at least every five years (Art. 9), the obligation to take “appropriate corrective actions” within 30 days after detecting non-compliance (Art. 15 (3)) or demonstrating “added value” for new labelling schemes (Art. 8 (6) point c)) will lead to unequal handling in the Single Market. Moreover, the continuous obligation to review and update claims will create an enormous burden for traders as well as enforcement authorities. We would welcome clarification and harmonization here.

On ex-ante verification procedures

We reject the procedure proposed by the Commission to verify the substantiation and communication of environmental claims (Art. 10). Member States are asked to accredit independent third-party assessment bodies (Art. 11) to check companies’ environmental claims prior to their use. The text does neither consider potential delays nor costs of respective procedures for the recognition of claims. While issuing certificates of conformity might become a lucrative business model for auditors, we see little value to introduce across-the-board obligations for basically all external sustainability communication:

- Misleading green claims and consumer deception are already illegal and covered by the UCPD. The UCPD is currently under revision and adjusted to greenwashing practices.

- False claims cause devastating reputational damage for companies.
- Risk of green hushing: Advertising environmentally sustainable products must not be a matter of financial resources. A company that develops better performing and more sustainable products than others should be able to communicate their accomplishments without paying third-party verifiers to double-check their work. The absence of ex-ante verification does certainly not exempt companies from being held accountable for their claims and underlying methods.
- In advertisement, comparably strict requirements only exist for health claims under the Health Claims Regulation. In this field, it is, within a narrowly defined scope, well justified for consumer protection reasons as false or misleading claims (e.g., on food products) can have severe consequences. It is utterly disproportionate to introduce comparably far-reaching requirements for sustainability statements while, for instance, conformity with CE mark safety standards in consumer electronics is based on company affirmation (and working very well).
- A variety of relevant corporate data is already subject to external (sustainability) auditing and requires third-party verification– e.g., in line with the Corporate Sustainability Reporting Directive (CSRD) or the Taxonomy Regulation. This is a comprehensive and costly exercise for companies. This information should be usable without the need to be reaudited for different purposes such as external communications.
- Likewise, voluntary transparency on corporate sustainability activities – for example sustainability reporting that goes beyond legal requirements – would need up-front approval by third-party verifiers. Paradoxically, the more sustainable activities a company carries out, the more expensive it becomes to be transparent about it. Transparency would thus be punished.
- Since it is fully up to the Member States to set up procedures for verifying the trader’s substantiation against the directive’s requirements, national governments will adopt individual approaches. The bureaucratic burden could be unevenly shared, as some Member States might be inundated with requests for verification while others receive comparably few. Potential bottlenecks in the verification process are unpredictable with negative consequences for companies and public administrations alike.
- Furthermore, the added value of going through a third-party verification process is unclear and raises multiple implementation questions. For example, an LCA calculation that was already verified by a third party would possibly need to be recalculated and reverified once input data changes over the course of time. Different material with a lower material footprint would lead to a lower LCA output value overall. A new output based on the same methodology would need another costly verification of the result. This could disincentivize footprint reduction since already small changes would require another third-party verification.
- It is difficult to anticipate how long a third-party verification would take. The GCD does not mention any guarantees for companies. The possibility to react quickly to new (market) developments using flexible up-to-date communication is therefore limited and dependent on external parties. With regard to time and competition, a mandatory ex-ante verification would be extremely impractical – even more so, if the GCD included verbal statements by company individuals. Apart from the financial burden, it is highly questionable if third party bodies could handle requests in a timely manner.

- It remains unclear if and how a certified environmental claim could be legally challenged and who would be held accountable for its accuracy after a certificate of conformity has been issued by an accredited verifier (company v. verifier).

Instead of a mandatory ex-ante verification procedure, we suggest introducing an obligation for companies to declare compliance with clear-cut substantiation criteria. This would create a level playing field and reflect an effective, non-bureaucratic approach to substantiate environmental claims. While traders should declare compliance under the presumption of conformity, they must be held fully responsible and accountable for compliance while effective enforcement by market surveillance authorities needs to be ensured.

On double regulation

In addition to a clearer distinction from the UCPD, any potential double regulation or conflicting legal requirements must be ruled out. Chemical safety issues must remain under the REACH Regulation. We are therefore concerned that the Commission reserves the right to put forward a legislative proposal for amending the relevant provisions of the GCD “by considering introducing a prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society” in Art. 21 (3) point b. This paragraph should be deleted.

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