

Opinion of the European Economic and Social Committee on the proposal for a directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive)

(COM(2023) 166 final — 2023/0085 (COD))

(2023/C 293/13)

Rapporteur: **Angelo PAGLIARA**

Referral	European Parliament, 1.6.2023 Council, 2.6.2023
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	2.6.2023
Adopted at plenary	14.6.2023
Plenary session No	579
Outcome of vote (for/against/abstentions)	205/2/3

1. Conclusions and recommendations

1.1. The European Economic and Social Committee (EESC) firmly believes that sustainability is one of the pillars of the European Union's future development and that this new proposal provides an opportunity to strengthen the active role of public authorities and society in moving quickly toward a circular economy ⁽¹⁾ and developing a circular culture.

1.2. The EESC would encourage the Commission to continue to systematically involve the social partners and civil society organisations, in particular consumer organisations, in this process, so as to protect consumers and companies from greenwashing.

1.3. The EESC urges the Commission to ensure that the requirements set out in the Green Claims 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 introduction of sectoral legislation should not become a way to opt out of the provisions of the Green Claims Directive, introduce loopholes or reduce consumer protection.

1.4. The EESC points to a growing concern about the proliferation of environmental claims based on compensation via the use of offsetting credits and calls on the Commission to introduce a clear ban on claims based on offsetting.

1.5. The EESC welcomes the intention that has been announced to increase the legal certainty of environmental claims and calls on the Commission to ensure that the right conditions are in place for strengthening the competitiveness of the Single Market, notably via the introduction of common methodologies for substantiating different types of claims.

1.6. The EESC takes note of the opt-in option for microenterprises and asks the Commission to put in place all the measures necessary to include them in the checks carried out by the Member States. In addition, the EESC welcomes the attention being paid to market enforcement and stresses the need to ensure that the Directive is fully enforced.

1.7. The EESC would draw attention to the growing awareness of environmental issues and would encourage the Commission to develop specific tools to support those economic operators that intend to increase the environmental and social sustainability of their production methods and products.

⁽¹⁾ Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "A new Circular Economy Action Plan For a cleaner and more competitive Europe"' (COM(2020) 98 final) (OJ C 364, 28.10.2020, p. 94) and Opinion of the European Economic and Social Committee on 'Consumers in the circular economy' (OJ C 353, 18.10.2019, p. 11).

2. Gist of the Commission document

2.1. This proposal for a Directive aims to supplement the regulatory framework for supporting sustainable consumption by addressing specific aspects of and requirements for explicit environmental claims as regards their substantiation, communication and verification.

2.2. The proposal was one of the initiatives listed by the Commission for implementing the European Green Deal, supplementing the regulatory framework for environmental claims, thus ensuring that reliable, comparable and verifiable information is available to buyers so that they can make more sustainable decisions ⁽²⁾. The need to address greenwashing is also reflected in both the New Circular Economy Action Plan ⁽³⁾ and the New Consumer Agenda ⁽⁴⁾.

2.3. The proposal complements the proposal for a Directive on empowering consumers for the green transition ⁽⁵⁾, amending Directive 2005/29/EC of the European Parliament and of the Council ⁽⁶⁾. Together they establish a clear system for environmental claims, including environmental labels.

2.4. The proposal includes minimum sets of criteria for the substantiation and communication of environmental claims; new provisions on environmental labels and labelling schemes; the introduction of *ex ante* verification of environmental claims and labelling schemes; and enforcement measures such as regular compliance checks and sanctions.

2.5. However, the Directive does not include harmonised methodologies. It does introduce the possibility to adopt delegated acts or amendments at a later date to provide further requirements on specific issues such as climate claims, durability, reusability, reparability, recyclability, recycled content, use of natural content, including fibres, environmental performance and sustainability, bio-based elements, biodegradability, biodiversity, waste prevention and reduction.

3. General comments

3.1. The EESC urges the European Commission to develop specific instruments to promote a culture of circular economy and in particular to set up information campaigns to disseminate a 'circular culture', especially among the younger generation. The EESC would also encourage the Commission to collect the good practices in this domain that Member States have developed in their activities, and to consider disseminating them.

3.2. The general public, especially the younger generation, is now more attentive to environmental issues ⁽⁷⁾ ⁽⁸⁾ and for this reason green marketing is increasingly used as a competitive advantage.

3.3. Consumer and stakeholder expectations regarding sustainability and environmental protection are increasing, but there is not much trust in environmental claims ⁽⁹⁾. Beyond the trust issue, there is widespread misunderstanding as to what these claims mean. This finding has been reflected in multiple studies conducted not only by the European Commission but

⁽²⁾ COM(2019) 640 final, 11 December 2019.

⁽³⁾ COM(2020) 98 final, 11 March 2020.

⁽⁴⁾ COM(2020) 696 final, 13 November 2020.

⁽⁵⁾ Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM(2022) 143 final.

⁽⁶⁾ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council, and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) (OJ L 149, 11.6.2005, p. 22).

⁽⁷⁾ European Commission, Behavioural Study on Consumers' engagement in the circular economy, 2018, p. 10.

⁽⁸⁾ The Economist Intelligence Unit Limited, An Eco-wakening: Measuring global awareness, engagement and action for nature, 2021 (WWF).

⁽⁹⁾ Environmental claims for non-food products, study commissioned by DG JUST (2014) https://commission.europa.eu/publications/environmental-claims-non-food-products_en

also by national agencies, notably on the issue of climate claims ⁽¹⁰⁾. Enabling consumers now to make informed purchasing decisions based on reliable information is therefore of paramount importance.

3.4. The impact assessment identified a series of problems that give rise to growing concerns amongst consumers, such as: misleading commercial practices related to the sustainability of products; unclear or poorly substantiated environmental claims; and sustainability labels that are not always transparent or credible. In view of the results of the impact assessment, the EESC supports the Commission's initiative and believes that resolute action is needed in this field.

3.5. The EESC believes that consumers, if better informed, can play an active and crucial role in the environmental transition, helping achieve the objectives of the Green Deal. It is critical to ensure that sustainability plays a bigger part in consumers' decision-making processes, so that it has an impact both at the moment they make the purchase and later on (if necessary opting for repair, where available, rather than a new purchase, for example). This will complement new requirements for environmental information on products, stemming from initiatives such as the Ecodesign for Sustainable Products Regulation. It will ensure common rules for labels beyond existing legislation such as the EU Ecolabel Regulation, the Eco-Management and Audit Scheme (EMAS) and regulations on the organic farming label, energy labelling and CE marking.

3.6. Article 1 of the proposal excludes much sectoral legislation from the scope of the Directive, where the legislation concerned contains its own requirements on claims and labelling schemes. The EESC suggests that at least the same level of protection against greenwashing be reflected in sector-specific legislation. This should include, at the very least, an equivalent level of substantiation, communication (supporting documents) and (third-party) verification. Moreover, there is a need to clarify that only the claims covered in these pieces of legislation are excluded, rather than any claim regarding the products targeted by the sectoral legislation. If certain claims do not involve specific requirements, they should fall under the scope of the Green Claims Directive. For example, Article 1 excludes legislation on packaging and packaging waste, and that legislation only covers claims regarding recyclability and recycled content. This should mean that other claims (such as the life-cycle impact of certain packaging) should fall under the Green Claims Directive.

3.7. The EESC acknowledges that there are growing concerns about the proliferation of environmental claims based on compensation via the use of offsetting credits ('climate-neutral', 'plastic-compensated', etc.), which have been recognised by several consumer authorities — and in several court cases — as scientifically incorrect and always misleading to consumers. The EESC therefore urges the Commission to take these lessons fully on board and to introduce a clear ban on claims based on offsetting, in addition to requirements regarding the way that companies communicate their contributions to sustainability projects rather than claiming compensation. In particular, the Green Claims Directive must be fully aligned with the Directive on Empowering consumers for the green transition.

3.8. The EESC notes the decision to exclude microenterprises from some of the legislation's provisions on the grounds that the procedures require the companies making the claims to invest time and resources in gathering the necessary information and in going through the verification process. The EESC takes note of the opt-in option for microenterprises, allowing them to take advantage of the benefits flowing from certificates of conformity, should they decide to invest resources in these going through the verification procedure. The EESC also notes the provisions on supporting SMEs in general when applying the requirements flowing from the legislation. Nonetheless, the EESC recognises that there is a need to ensure that no companies feel that they are allowed to mislead consumers; it fully supports the fact that the opt-in element in the Green Claims Directive does not mean an opt-in to the Unfair Commercial Practices Directive. The Commission should introduce specific requirements to ensure that microenterprises are properly included in the checks carried out by Member States, as they are not de facto exempt from the broader legislation on unfair commercial practices.

⁽¹⁰⁾ Authority for Consumers & Markets: ACM consumers find claims regarding carbon offset unclear (accessed January 2023) <https://www.acm.nl/en/publications/acm-consumers-find-claims-regarding-carbon-offset-unclear>
Verbraucherzentrale (September 2022) Klimaneutrale Produkte: 89 Prozent für klare Regeln und geprüftes Siegel <https://www.verbraucherzentrale.nrw/presse-meldungen/presse-nrw/klimaneutrale-produkte-89-prozent-fuer-klare-regeln-und-geprueftes-siegel-77472>
ASA (October 2022) New Research into understanding of environmental claims <https://www.asa.org.uk/news/new-research-into-understanding-of-environmental-claims.html>
Kantar Public (2022) CO₂ Offset claims — Consumer survey <https://www.acm.nl/system/files/documents/acm-publishes-behavioral-research-into-co2-compensation-when-purchasing-airline-tickets.pdf>

3.9. The EESC would encourage the Commission to start work on the adoption of common rules to substantiate claims, as proposed in Article 3, which opens the door for the Commission to develop and adopt common methodologies for the substantiation of specific claims, based on the results of regular monitoring. The EESC believes that the Commission should already draw up a priority list of claims for which there is a need for common rules, based on information currently available, and start developing common methodologies, over and above life-cycle assessment. These are needed to ensure harmonised implementation across Europe, with clear rules for verifiers on how to assess the supporting documentation provided by companies. This would avert the risk of companies choosing to get their claims verified in countries where they know they have better chances of their claims being certified. It would also provide legal clarity for companies and avoid creating an asymmetry between, on the one hand, those companies that are able to develop in-house methods or access external services to tailor methodologies to their marketing strategies and, on the other, companies that do not have resources to do so.

3.10. The EESC notes the Commission's decision not to introduce the Product and Organisation Environmental Footprint methods as requirements for the substantiation of claims. However, in those cases where it is relevant, the EESC would encourage best use to be made of these methods when defining common methods for substantiation. Regarding Article 3.1(c) on the requirement to demonstrate that given elements of claims are significant from a life-cycle perspective, the EESC urges the Commission to further specify how this significance should be assessed.

3.11. The EESC strongly recommends that the Commission further specify the requirements regarding claims about the future environmental performance of a product or trader, set out in Article 5.4. First of all, the requirements should be fully aligned with the provisions of the Directive on Empowering consumers for the green transition. Secondly, the requirements should specify that such claims will only be accepted when they are not solely based on offsetting and when they are supported by clear, understandable supplementary information provided by the trader, setting out clear, objective, science-based and verifiable commitments and targets, as well as an implementation plan at trader level that includes implementing measures and concrete, verifiable interim targets that do not rely on offsets and that are consistent with achieving a long-term commitment. The implementation plan should have an adequate budget allocated to it and be based only on existing economically and technically viable technologies. The implementation plan, as well as progress achieved, should be made publicly available and included in the claim as supplementary information, and regular reports on this should be submitted. Claims relating to future environmental performance should also be subject to independent monitoring in order to verify the claims and to monitor traders' progress in respect of their commitments and targets, in addition to the certification process set out in Article 10. Claims relating to future environmental performance should only be allowed at trader level and not at product level, otherwise the environmental claims concerned could mislead consumers.

3.12. The EESC welcomes Article 7's ban on ratings and scores based on an aggregated indicator of environmental impacts, unless they are introduced in EU legislation. While their clear-cut communication is appealing to consumers, the lack of clarity as to the methodologies behind the scores, and the increasing number thereof, result in confusion and misunderstanding. The EESC would encourage the Commission to clarify what is covered in the scope of this ban, and especially what is deemed to be an 'environmental impact'. For example, it is understood that reparability scores are not included in the scope. This should be further clarified to ensure legal certainty.

3.13. The EESC welcomes the measures proposed in Article 8 for ending the proliferation of claims and labels that are introduced. They will provide greater clarity to consumers and ensure that only valuable and reliable information is communicated.

3.14. The EESC welcomes the importance attached to enforcement. While detailed requirements on claims substantiation do represent a clear step forward, one of the key persistent issues that consumers face is a lack of enforcement of regulations that they should be able to take for granted. The verification system has the potential to diminish the number of false claims on the market, but this will only be successful if enough resources are allocated to the work of the market monitoring authorities. The EESC urges the Commission to explore all possible channels for supporting national authorities and to encourage Member States to provide the necessary resources for monitoring. The obligation to report on enforcement activities is welcomed by the EESC.

3.15. The EESC also welcomes Article 16's provisions on access to justice for consumers and civil society organisations. Ensuring that consumer organisations can take legal action against misleading and unsubstantiated claims in order to protect consumers' collective interests is an effective way to support enforcement.

3.16. The EESC welcomes the provisions of Article 17, specifying the penalties that Member States should introduce. The Commission should consider some good practices in this domain.

3.17. The EESC would encourage the Commission to adopt all measures necessary — including involving the social partners in the process — to protect consumers and companies from greenwashing. In particular, the EESC suggests that provision be made for regular cross-checks between national authorities on the one hand, and social partners and civil society at national level on the other. On European-level measures, the EESC welcomes the committee procedure provided for in Article 19 and requests that it be able to participate in the committee as the European representative of civil society. Besides this committee procedure, there is a need for stakeholders to be properly involved, notably in the discussions on common methods for substantiation. The EESC suggests involving participatory forums, such as the Consultation Forum for Ecodesign and the EU Eco-labelling Board, or establishing a new round table specifically for the purpose of this legislation.

Brussels, 14 June 2023.

The President
of the European Economic and Social Committee
Oliver RÖPKE
