RÉPUBLIQUE FRANÇAISE
Liberté
Égalité
Fraternité

INSTITUT NATIONAL DE L'ORIGINE ET DE LA QUALITÉ

Une nouvelle règlementation pour l'utilisation des arômes en agriculture biologique

La règlementation biologique qui est entrée en application le 1er janvier 2022 comporte des nouveautés concernant les arômes pouvant être utilisés dans les produits transformés biologiques. En effet, elle restreint l'utilisation des arômes à une certaine catégorie d'arômes naturels, définit précisément ce qu'est un arôme biologique et inclut les arômes dans le calcul du pourcentage des ingrédients agricoles biologiques.

L'objectif de cette note est de présenter les modalités d'application de la règlementation biologique sur ce sujet.

1. Un cadre fixé par deux bases règlementaires complémentaires

- Le règlement (UE) n°2018/848 du Parlement Européen et du Conseil relatif à la production biologique et à l'étiquetage des produits biologiques

- Le règlement (CE) n°1334/2008 du Parlement Européen et du Conseil relatif aux arômes

Des lettres d'interprétation des services de la Commission Européenne ont par ailleurs été reçues le 11 décembre 2018, le 28 janvier 2019 et le 11 mai 2021.

Aucun acte délégué ou acte d'exécution supplémentaire n'est prévu pour le sujet « arômes » au titre de la nouvelle règlementation biologique. Par ailleurs, il n'est pas prévu de mesures transitoires spécifiques aux arômes entre les deux règlements biologiques.

L'article 60 du règlement (UE) n°2018/848, permettant de mettre sur le marché les produits obtenus conformément au règlement (CE) n°834/2007 avant le 1er janvier 2022 s'applique pour les produits transformés contenant des arômes ainsi que pour les arômes biologiques.

Les nouvelles dispositions concernant les arômes sont applicables depuis l'entrée en application du règlement (UE) n°2018/848.

2. Les arômes utilisables dans les produits biologiques dans le règlement (UE) N°2018/848

En préambule, il est important de rappeler qu'un arôme est composé d'une partie aromatisante et d'une partie non aromatisante pouvant contenir des additifs, des supports et d'autres ingrédients alimentaires, et que la règlementation applicable diffère selon la partie concernée.

Il est possible d'utiliser des arômes dans les denrées alimentaires biologiques, en application de l'Article 16, au point 2.2.2 b) de l'annexe II, partie IV, du règlement (UE) n°2018/848.

Cette autorisation est « directe », c'est-à-dire qu'ils ne nécessitent pas d'inscription dans des listes (Art. 24 du règlement (UE) n°2018/848) ni d'autorisation accordée par les Etats membres de l'Union Européenne (Art. 25 du règlement (UE) n°2018/848).

Les arômes utilisables dans les produits biologiques doivent respecter plusieurs critères :

- Leurs ingrédients et leurs process d'obtention doivent suivre les principes généraux de la production biologique et notamment les règles concernant l'interdiction des OGM (Art.11 du règlement (UE) n°2018/848), l'interdiction d'utilisation de rayonnements ionisants (Art. 9.4) et l'**exclusion des nanomatériaux manufacturés** (Art. 7.e) du règlement (UE) n°2018/848) ;

- Ils doivent être des « **arômes naturels de X** » au sens des articles 16.2, 16.3 et 16.4 du règlement (CE) N°1334/2008 relatif aux arômes (point 2.2.2 b) de l'annexe II, partie IV du règlement (UE) n°848/2018).

  Le qualificatif « naturel » ne peut être utilisé en association avec la référence à une denrée alimentaire, une catégorie de denrées alimentaires ou une source d'arôme végétale ou animale que si la partie aromatisante a été obtenue exclusivement ou à au moins 95 % p/p à partir du matériau de base visé.

  Il en résulte que les autres arômes définis à l'article 16 dans les paragraphes 5 (arômes naturels de X avec autres arômes naturels) et 6 (arômes naturels), du règlement (CE) n°1334/2008 ne peuvent plus être utilisés dans un produit transformé biologique.

- Selon le point 2.2.2 b) de l'annexe II, partie IV du règlement (UE) n°2018/848, la partie aromatisante des arômes doit être composée de :
  - Substances aromatisantes naturelles (SAN) (Art. 3.2.c du règlement (CE) n°1334/2008)
  - **Préparations aromatisantes (PA) obtenues à partir de denrées alimentaires** […](Art. 3.2.d. i) du règlement (CE) n°1334/2008)

    Le matériau de base d'arôme doit être une denrée alimentaire au sens du règlement CE n°178/2008, ou au sens du point 3 de l'article 3 du règlement « arômes », c'est-à-dire que son utilisation dans la production d'arôme doit être largement démontrée à ce jour.

De plus l'arôme fabriqué à partir d'un matériau de base ne doit poser aucun problème de sécurité pour la santé du consommateur et ne doit pas induire le consommateur en erreur, conformément à l'article 4 du règlement (CE) n°1334/2008.

- Concernant la partie non aromatisante des arômes. Cette partie peut être composée de plusieurs types d'ingrédients : soit des additifs de l'arôme, soit des additifs ou des ingrédients alimentaires (alcool éthylique, huile végétale, sucre, sirop de sucre...) incorporés à des fins technologiques et désignés sous le terme de supports. La définition des supports est donnée par le règlement (CE) n°1333/2008 du 16 décembre 2008 sur les additifs alimentaires en son annexe I.
  Le règlement (CE) n°1333/2008 liste dans son annexe III les additifs, y compris les supports pouvant être utilisés dans les arômes alimentaires (partie 4).
  Pour rappel, seuls les ingrédients alimentaires servant de support, peuvent être omis de la liste des ingrédients de la denrée finale, en application de l'article 20 du règlement INCO.

  Deux types d'additifs sont distingués :
  - ✓ Les additifs ayant une fonction technologique uniquement dans l'arôme

    Ceux-ci sont couverts par le point 2.2.2 (b) de l'Annexe II Partie IV du règlement (UE) N°2018/848 et sont donc autorisés. Ils doivent être listés dans l'Annexe III Partie IV du règlement (CE) n°1333/2008 sur les additifs alimentaires.

Il n'y a pas d'étiquetage à prévoir pour ceux-ci dans la liste des ingrédients du produit transformé, sous réserve qu'ils ne remplissent pas de rôle technologique dans le produit fini.

✓ <u>Les additifs ayant un impact dans le produit fini</u>

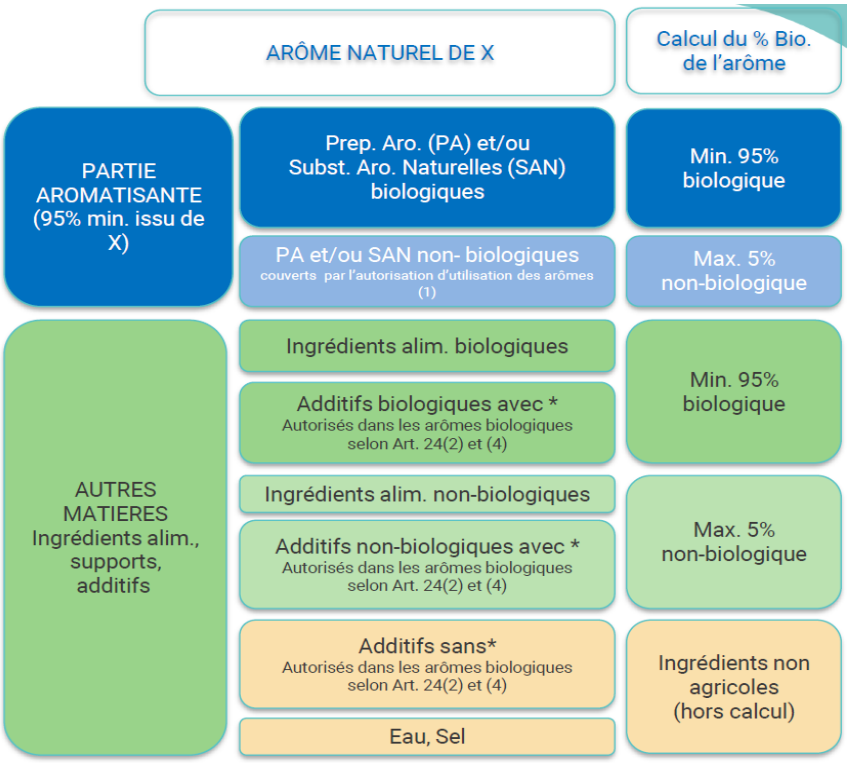
Ceux-ci doivent être listés en tant qu'additifs alimentaires autorisés dans la production biologique (Article 24 (2)(a) du règlement (UE) n°2018/848).
Leur étiquetage est à prévoir sur le produit transformé.

3. Les arômes biologiques selon le règlement (UE) n°2018/848

En plus des critères listés ci-dessus pour les arômes utilisables dans la transformation biologique, les arômes biologiques doivent respecter les conditions suivantes :

- ✓ Au minimum 95% en poids des ingrédients de la partie aromatisante de l'arôme doivent être biologiques (Art. 30.5a) iii) du règlement (UE) n°2018/848 et Lettre d'interprétation des services de la Commission Européenne du 11/12/2018)
- ✓ **Les 5% maximum en poids de la partie aromatisante non biologique bénéficient d'une autorisation directe** (Annexe II Partie IV 2.2.2 b du règlement (UE) n°2018/848)
- ✓ Au minimum 95% en poids des ingrédients agricoles de la partie non aromatisante doivent être biologiques (Art. 30.5a) iii) du règlement (UE) n°2018/848 et Lettre d'interprétation des services la Commission Européenne du 11/12/2018)
- ✓ Les 5% maximum en poids de la partie non aromatisante non biologiques doivent être autorisés (listés dans les annexes du règlement ou dérogation nationale) (Art. 24.2 et 24.4 du règlement (UE) n°2018/848)

<u>Schéma d'un arôme biologique</u> :



Source : SNIAA

Additifs* = d'origine agricole

4. Les arômes dans les produits transformés biologiques

Tout d'abord, l'annexe II, partie IV, point 2.2.4 du règlement (UE) n°2018/848 précise qu':

« Aux fins du calcul du pourcentage visé à l'article 30, paragraphe 5, les règles suivantes s'appliquent : b) les préparations et substances visées aux points 2.2.2 a), c), d), e) et f), ne sont pas considérées comme des ingrédients agricoles »

Les arômes sont visés au paragraphe 2.2.2 **point b)** et ne sont pas inclus dans la liste ci-dessus, **ils sont donc considérés comme des ingrédients d'origine agricole.**

Cette nouveauté a plusieurs implications :

- Les arômes utilisés dans la production biologique ne doivent pas obligatoirement être des arômes biologiques. Par contre, étant considérés comme des ingrédients d'origine agricole, **les arômes doivent être pris en compte dans leur globalité :**
    - **lors du calcul du pourcentage des ingrédients d'origine agricole dans un produit transformé biologique**
    - **lors du calcul du pourcentage des ingrédients biologiques dans un produit transformé biologique**
- Un produit biologique doit être constitué au minimum de 95% en poids d'ingrédients d'origine agricole biologiques (Art. 30.5 du règlement (UE) n°2018/848). **Cette règle s'applique donc pour les produits contenant des arômes.**
- La règle de la non concomitance d'ingrédients biologiques et non biologique dans un produit (Annexe II Partie IV 2.1 du règlement (UE) n°2018/848) s'applique pour les arômes :
    - les éléments composant un arôme biologique ne pourront pas être présents sous une forme biologique et non biologique
    - dans un produit transformé biologique, il ne sera pas possible d'avoir un arôme naturel de X biologique ainsi que le même arôme naturel de X non biologique.
- Lorsque l'Eurofeuille est utilisé, l'article 32.2 du règlement (UE) n°2018/848 impose une indication de l'endroit où les matières premières agricoles qui composent le produit ont été produites (voir II.4) du guide d'étiquetage).

  Pour les arômes biologiques mis sur le marché à destination du consommateur final, la provenance des matières premières agricoles de l'arôme devra donc être indiquée.

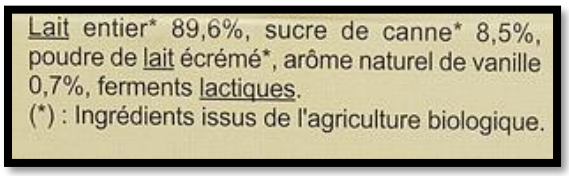
  Pour les arômes entrant dans la composition d'une denrée transformé biologique, il est important de noter que l'article 32.2 permet de ne pas prendre en compte des ingrédients présents en petite quantité (moins de 5% du poids total des ingrédients agricoles biologiques). Dans la majorité des produits transformés biologiques, les arômes sont dans cette situation, il sera donc possible de ne pas prendre en compte les arômes pour l'indication de provenance d'un produit transformé biologique. Dans certains cas, des transformateurs pourraient avoir besoin de l'information concernant la provenance. Le transformateur pourra demander à son fournisseur d'arômes (le plus en amont possible) la provenance des ingrédients agricoles constituant l'arôme.

Le tableau ci-dessous récapitule les différents cas pouvant être rencontrés par les opérateurs :

	Avant le 1er janvier 2022		**Après le 1er janvier 2022**	
Catégorie d'arômes (règlement n°1334/2008)	**Certifiable en AB ?**	**Utilisable dans des produits transformés biologiques ?**	**Certifiable en AB ?**	**Utilisable dans des produits transformés biologiques ?**
« Arôme »	NON selon le règlement n°834/2007	NON	NON selon le règlement n°2018/848	Ne peut pas être utilisé dans des produits transformés biologiques.
« Arôme naturel »	OUI selon le règlement n°834/2007	OUI	NON selon le règlement n°2018/848	Ne peut pas être utilisé dans des produits transformés biologiques. Un arôme naturel certifié bio avant le 1er janvier 2022 peut cependant être mis sur le marché.
« Arôme naturel de X et autres arômes »	OUI selon le règlement n°834/2007	OUI	NON selon le règlement n°2018/848	Ne peut pas être utilisé dans des produits transformés biologiques. Un arôme naturel certifié bio avant le 1er janvier 2022 peut cependant être mis sur le marché.
« Arôme naturel de X »	OUI selon le règlement n°834/2007	OUI	OUI selon le règlement n°2018/848	OUI

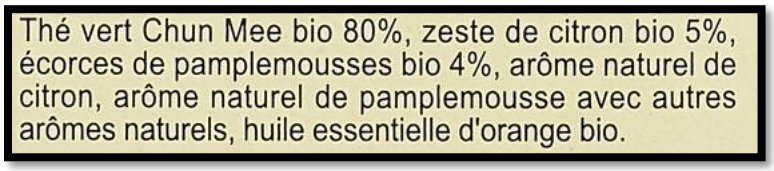
5. Exemples et questions/réponses

- Exemple 1


Lait entier* 89,6%, sucre de canne* 8,5%, poudre de lait écrémé*, arôme naturel de vanille 0,7%, ferments lactiques.
(*) : Ingrédients issus de l'agriculture biologique.

Ce produit pourra continuer à être certifié biologique à partir du 1er janvier 2022 (sous réserve du fait que l'arôme non biologique ne représente pas plus de 5% du poids total des ingrédients.

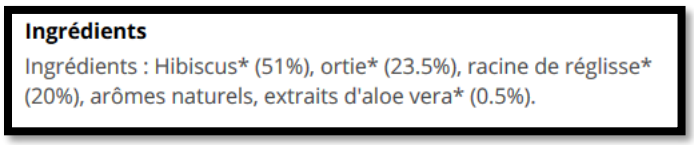
- Exemple 2


Thé vert Chun Mee bio 80%, zeste de citron bio 5%, écorces de pamplemousses bio 4%, arôme naturel de citron, arôme naturel de pamplemousse avec autres arômes naturels, huile essentielle d'orange bio.

Ce produit ne pourra plus être certifié biologique à partir du 1er janvier 2022.

L'arôme naturel de citron est bien un arôme naturel de X, de même que l'huile essentielle d'orange. La problématique provient de l'ingrédient « arôme naturel de pamplemousse avec autres arômes naturels » qui n'est pas un arôme naturel de X au sens des articles 16.2, 16.3 et 16.4 du règlement (CE) N°1334/2008 relatif aux arômes.

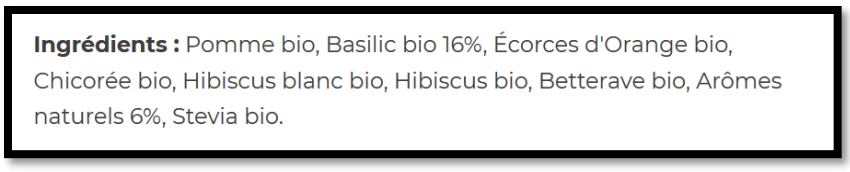
- Exemple 3


Ingrédients
Ingrédients : Hibiscus* (51%), ortie* (23.5%), racine de réglisse* (20%), arômes naturels, extraits d'aloe vera* (0.5%).

Ce produit ne pourra plus être certifié biologique à partir du 1er janvier 2022.

« Arômes naturels » n'est pas un arôme naturel de X au sens des articles 16.2, 16.3 et 16.4 du règlement (CE) N°1334/2008 relatif aux arômes.

- Exemple 4


Ingrédients : Pomme bio, Basilic bio 16%, Écorces d'Orange bio, Chicorée bio, Hibiscus blanc bio, Hibiscus bio, Betterave bio, Arômes naturels 6%, Stevia bio.

Ce produit ne pourra plus être certifié biologique à partir du 1er janvier 2022.

« Arômes naturels » n'est pas un arôme naturel de X au sens des articles 16.2, 16.3 et 16.4 du règlement (CE) N°1334/2008 relatif aux arômes. De plus, l'arôme non biologique ne doit pas être présent à plus de 5% dans la denrée transformée.

Les mélanges d'extraits (ex : mélange d'huiles essentielles) sont-ils autorisés dans la règlementation biologique ?

Il est possible d'utiliser plusieurs « arômes naturels de X » distincts ou plusieurs huiles essentielles.

Etiquetage des arômes

- **Dénominations spécifiques**

Selon l'Art. 15.1.a) du règlement « arômes », un arôme peut être désigné sur son étiquetage par un nom ou une description plus spécifique de l'arôme. Par exemple, un arôme qui est un extrait obtenu à 100 % de la source citée est un cas particulier d'un « arôme naturel de <X> » et peut donc également être désigné par son nom plus spécifique (ex : extrait de <X>, huile essentielle de <X>) lorsqu'il est utilisé dans l'alimentation biologique.

Quand plusieurs arômes naturels de X sont utilisés dans un produit, il est possible de n'avoir que le terme « arômes » dans la liste des ingrédients.

- **Fiche technique d'arômes**

L'Art. 15.1.e) du Règlement « Arômes » établit les exigences concernant les catégories d'arômes présentes. Ainsi le fabricant d'arômes doit énumérer « par ordre décroissant d'importance pondérale : i) des catégories d'arômes présentes; et ii) le nom de chacune des autres substances ou matières contenues dans le produit ou, le cas échéant, de leur numéro E; ». Le Règlement n'impose ainsi pas de détailler la composition de la partie aromatisante. Le statut réglementaire des arômes destinés aux produits biologiques (article 16 paragraphes 2, 3 et 4 du règlement arôme) doit être indiqué dans la fiche technique, via la dénomination de vente ou dans une rubrique dédiée par exemple « arôme conforme à l'article 16.4 ».

EUROPEAN COMMISSION
GROWTH DIRECTORATE-GENERAL

Single Market for goods
Prevention of Technical Barriers

Notification Number: 2023/116/F

Order specifying the details relating to the content and the conditions for presenting the information provided for in I and II of Article L. 5232-5 of the Public Health Code

Date received : 17/03/2023

End of Standstill : 19/06/2023

Message

Message 001

Communication de la Commission - TRIS/(2023) 00654
Directive (UE) 2015/1535
Notificación - Oznámení - Notifikation - Notifizierung - Teavitamine - Γνωστοποίηση - Notification - Notification - Notifica - Pieteikums - Pranešimas - Bejelentés - Notifika - Kennisgeving - Zawiadomienie - Notificação - Hlásenie-Obvestilo - Ilmoitus - Anmälan - Нотификация : 2023/0116/F - Notificare.

No abre el plazo - Nezahajuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai nepradedami - Nem nyitja meg a késéseket - Ma' jiftaħx il-perijodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - Не се предвижда период на прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 202300654.FR)

1. Structured Information Line
MSG 001 IND 2023 0116 F FR 17-03-2023 F NOTIF

2. Member State
F

3. Department Responsible
Ministères économiques et financiers
Direction générale des entreprises
SCIDE/SQUALPI - Pôle Normalisation et réglementation des produits
Bât. Sieyès -Teledoc 143
61, Bd Vincent Auriol
75703 PARIS Cedex 13

3. Originating Department

Bureau des produits chimiques à la Direction générale de la prévention des risques (Ministère de la transition écologique et de la cohésion des territoires) :
1 place Carpeaux
92055 La Défense Cedex

4. Notification Number
2023/0116/F - C00C

5. Title
Arrêté précisant les modalités relatives au contenu et aux conditions de présentation des informations prévues aux I et II de l'article L. 5232-5 du code de la santé publique

6. Products Concerned
Denrées alimentaires, substances, mélanges

7. Notification Under Another Act
-

8. Main Content
La loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire, dite « AGEC » prévoit à l'article 13-II que toute personne mettant sur le marché des produits à destination des consommateurs, contenant des substances dont l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES) qualifie les propriétés de perturbation endocrinienne d'avérées ou présumées doit « mettre à la disposition du public par voie électronique, dans un format ouvert, aisément réutilisable et exploitable par un système de traitement automatisé, pour chacun des produits concernés, les informations permettant d'identifier la présence de telles substances dans ces produits ». Cette obligation s'applique également à certaines catégories de produits présentant un risque d'exposition particulier, pour les substances dont l'ANSES qualifie les propriétés de perturbation endocrinienne de suspectées.

Les modalités d'application de cette disposition législative ont été définies aux articles R. 5232-19 à R. 5232-22 du code de la santé publique par décret n° 2021-1110 du 23 août 2021 relatif à la mise à disposition des informations permettant d'identifier les perturbateurs endocriniens dans un produit (le décret n° 2021-1110 du 23 août 2021 relatif à la mise à disposition des informations permettant d'identifier les perturbateurs endocriniens dans un produit a fait l'objet d'une précédente notification 2020/832/F). Le projet d'arrêté, objet de la présente notification est pris en application de ce décret.

L'article R. 5232-20 du code de la santé publique prévoit la publication de trois arrêtés, que les autorités françaises souhaitent publier de façon concomitante :

• Un arrêté fixant la liste des substances présentant des propriétés de perturbation endocrinienne mentionnées aux I et II de l'article L. 5232-5 du code de la santé publique et les catégories de produits présentant un risque d'exposition particulier mentionnées au II de l'article L. 5232-5 du code de la santé publique : arrêté ayant fait l'objet d'une précédente notification (référence 2021/0680) ;
• Un arrêté conjoint des ministres chargés de la santé et de l'environnement précisant les modalités relatives au contenu et aux conditions de présentation des informations prévues aux I et II de l'article L. 5232-5 du code de la santé publique : objet de la présente notification

• Un arrêté conjoint des ministres chargés de la santé et de l'environnement pour désigner l'application pouvant être utilisée de façon alternative à la mise à disposition sur une page internet dédiée de l'information sur la présence de substances de propriétés de perturbation endocrinienne dans un produit : arrêté faisant l'objet d'une notification concomitante à cette présente notification

La présente notification concerne l'arrêté conjoint des ministres chargés de la santé et de l'environnement précisant les modalités relatives au contenu et aux conditions de présentation des informations prévues aux I et II de l'article L. 5232-5 du code de la santé publique.
Pour certaines substances, du fait de leur caractère de nutriments (vitamines, minéraux) et de leurs bénéfices sur la santé jusqu'à une certaine dose (limites supérieures de sécurité), comme le cholécalciférol (vitamine D3), l'information sur la présence de substances présentant des propriétés de perturbation endocrinienne sera adaptée afin de mentionner que ces substances présentent des bénéfices sur la santé selon les précautions d'usage et la posologie précisées sur la notice ou l'étiquetage du produit et, en cas de doute qu'il convient de demander l'avis d'un professionnel de santé. Cette mention d'information spécifique se base notamment sur la note d'appui scientifique et technique de l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail du 29 septembre 2022 relative à l'application au cholécalciférol (vitamine D3) des dispositions relatives aux substances présentant des propriétés de perturbation endocrinienne au titre de la loi n° 2020-105 du 10 février 2020 dite « loi AGEC ».
Les substances concernées par cette information spécifique sont mentionnées dans les tableaux Abis et Bbis figurant en annexe de l'arrêté fixant la liste des substances présentant des propriétés de perturbation endocrinienne mentionnées au I et au II de l'article L. 5232-5 du code de la santé publique, mentionné à l'article R. 5232-19 du même code : cet arrêté a fait l'objet d'une précédente notification (référence 2021/0680). La rédaction de cet arrêté, qui n'a toujours pas été publiée à ce jour a été révisée suite aux observations émises par la Commission et les Etats-membres et à l'avis circonstancié de la Hongrie. Il est joint pour information à la présente notification.

9. Brief Statement of Grounds
Afin de permettre aux citoyens de procéder à des choix de consommation éclairés, le législateur a souhaité améliorer l'information sur la présence de substances présentant des propriétés de perturbateurs endocriniens dans les produits. Pour ce faire, l'information doit être mise à disposition du public sous un format dématérialisé selon les conditions de présentation précisées par arrêté.

10. Reference Documents - Basic Texts
Références aux textes de référence: Article 13-II de la loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire qui a modifié l'article L. 5232-5 du code de la santé publique.
Décret n° 2021-1110 du 23 août 2021 relatif à la mise à disposition des informations permettant d'identifier les perturbateurs endocriniens dans un produit : https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964950
Les textes de référence doivent être envoyés dans le cadre de précédente notification: 2020/832/F

11. Invocation of the Emergency Procedure
Non

12. Grounds for the Emergency
-

13. Confidentiality
Non

14. Fiscal measures
Non

15. Impact assessment
-

16. TBT and SPS aspects
Aspect OTC

NON - Le projet n'a pas un effet notable sur le commerce international.

Aspect SPS

Non - Le projet n'est pas une mesure sanitaire ou phytosanitaire.

****
Commission européenne

Point de contact Directive (UE) 2015/1535
Fax: +32 229 98043
email: grow-dir2015-1535-central@ec.europa.eu

RÉPUBLIQUE FRANÇAISE

Ministère de la transition écologique et de la cohésion des territoires

Ministère de la santé et de la prévention

Projet d'arrêté du

précisant les modalités relatives au contenu et aux conditions de présentation des informations prévues aux I et II de l'article L. 5232-5 du code de la santé publique

NOR : XXXXXXXXXX

Publics concernés : *Toute personne qui met sur le marché des produits à destination des consommateurs qui, au terme de leur fabrication, comportent des substances dont l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES) qualifie les propriétés de perturbation endocrinienne d'avérées, de présumées ou de suspectées*

Objet : *Cet arrêté précise les modalités relatives au contenu et aux conditions de présentation des informations prévues aux I et II d l'article L. 5232-5 du code de la santé publique concernant :*

- *la présence de substances présentant des propriétés de perturbation endocrinienne qualifiées d'avérées et de présumées dans les produits définis à l'article R. 5232-19 du code de la santé publique, ;*
- *la présence de substances présentant des propriétés de perturbation endocrinienne qualifiées de suspectées dans les catégories de produits présentant un risque d'exposition particulier mentionnés au II de l'article L. 5232-5 du code de la santé publique.*

Entrée en vigueur : *Le texte entre en vigueur le lendemain de sa publication.*

Notice : *La loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire, dite « AGEC » prévoit à l'article 13-II que toute personne mettant sur le marché des produits à destination des consommateurs, contenant des substances dont l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES) qualifie les propriétés de perturbation endocrinienne d'avérées ou présumées doit « mettre à la disposition du public par voie électronique, dans un format ouvert, aisément réutilisable et exploitable par un système de traitement automatisé, pour chacun des produits concernés, les informations permettant d'identifier la présence de telles substances dans ces produits ». Cette obligation s'applique également à certaines catégories de produits présentant un risque d'exposition particulier, pour les substances dont l'ANSES qualifie les propriétés de perturbation endocrinienne de suspectées.*

Cette obligation s'inscrit dans la lignée des objectifs de la deuxième Stratégie nationale sur les perturbateurs endocriniens (SNPE2). Elle vise à assurer aux citoyens une information transparente sur la présence de substances présentant des propriétés de perturbation endocrinienne dans les produits, au sens de substances, mélanges, articles et denrées alimentaires.

Elle s'applique aux produits mentionnés à l'article R. 5232-19 du code de la santé publique destinés aux consommateurs. Les produits d'emballage entrent dans le champ de cette obligation.

Les modalités d'application de cette disposition législative ont été définies aux articles R. 5232-19 à R. 5232-22 du code de la santé publique. L'article R. 5232-20 prévoit qu'un arrêté conjoint des ministres chargés de la santé et de l'environnement précise les modalités relatives au contenu et aux conditions de présentation des informations prévues aux I et II de l'article L. 5232-5 du présent code. La mise à disposition de ces informations s'applique à l'ensemble constitué du produit et de son emballage primaire ou emballage de vente au sens de l'article R. 543-43 du code de l'environnement (exemple : contenant, bouteille, flacon) tout en précisant de manière distincte, au sein de la même fiche produit si la (ou les) substance(s) concernée(s) est (sont) présente(s) dans le produit ou dans son emballage de vente.

Pour certaines substances, du fait de leur caractère de nutriments (vitamines, minéraux) et de leurs bénéfices sur la santé jusqu'à une certaine dose (limites supérieures de sécurité), comme le cholécalciférol (vitamine D3), l'information sur la présence de substances présentant des propriétés de perturbation endocrinienne sera adaptée afin de mentionner que ces substances présentent des bénéfices sur la santé selon les précautions d'usage et la posologie précisées sur la notice ou l'étiquetage du produit et, en cas de doute qu'il convient de demander l'avis d'un professionnel de santé. Cette mention d'information spécifique se base notamment sur la note d'appui scientifique et technique de l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail du 29 septembre 2022 relative à l'application au cholécalciférol (vitamine D3) des dispositions relatives aux substances présentant des propriétés de perturbation endocrinienne au titre de la loi n° 2020-105 du 10 février 2020 dite « loi AGEC ».
Les substances concernées par cette information spécifique sont mentionnées dans les tableaux Abis et Bbis figurant en annexe de l'arrêté fixant la liste des substances présentant des propriétés de perturbation endocrinienne mentionnées au I et au II de l'article L. 5232-5 du code de la santé publique, mentionné à l'article R. 5232-19 du même code.

Références : *le texte peut être consulté sur le site Légifrance (http://legifrance.gouv.fr).*

Le ministre de la transition écologique et de la cohésion des territoires et le ministre de la santé et de la prévention

Vu le règlement (CE) n°178/2002 du Parlement européen et du Conseil du 28 janvier 2002 établissant les principes généraux et les prescriptions générales de la législation alimentaire, instituant l'Autorité européenne de sécurité des aliments et fixant des procédures relatives à la sécurité des denrées alimentaires ;

Vu le règlement (CE) n° 1907/2006 du Parlement européen et du Conseil du 18 décembre 2006 concernant l'enregistrement, l'évaluation et l'autorisation des substances chimiques, ainsi que les restrictions applicables à ces substances (REACH), instituant une agence européenne des produits chimiques, modifiant la directive 1999/45/CE et abrogeant le règlement (CEE) n° 793/93 du Conseil et le règlement (CE) n° 1488/94 de la Commission ainsi que la directive 76/769/CEE du Conseil et les directives 91/155/CEE, 93/67/CEE, 93/105/CE et 2000/21/CE de la Commission ;

Vu le règlement (CE) n° 1107/2009 du Parlement européen et du Conseil du 21 octobre 2009 concernant la mise sur le marché des produits phytopharmaceutiques et abrogeant les directives 79/117/CEE et 91/414/CEE du Conseil ;

Vu le règlement (UE) n° 528/2012 du Parlement Européen et du Conseil du 22 mai 2012 concernant la mise à disposition sur le marché et l'utilisation des produits biocides ;

Vu le règlement (UE) n° 2017/745 du Parlement Européen et du Conseil du 5 avril 2017 relatif aux dispositifs médicaux, modifiant la directive 2001/83/CE, le règlement (CE) n° 178/2002 et le règlement (CE) n° 1223/2009 et abrogeant les directives du Conseil 90/385/CEE et 93/42/CEE ;

Vu la Directive (UE) 2015/1535 du Parlement européen et du Conseil du 9 septembre 2015 prévoyant une procédure d'information dans le domaine des réglementations techniques et des règles relatives aux services de la société de l'information et notamment la notification n° 2023/XXX/F ;

Vu le code de le santé publique, notamment son article L. 5232-5 dans sa rédaction résultant de l'article 13 de la loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire et son article R. 5232-20 ;

Arrêtent :

Article 1er

La mise à disposition des informations prévues aux I et II de l'article L. 5232-5 du code de la santé publique sur la présence de substances présentant des propriétés de perturbation endocrinienne avérées, présumées et suspectées s'applique aux produits mentionnés à l'article R. 5232-19 du même code acquis, à titre onéreux ou gratuit, par des consommateurs.

Elle est assurée par les producteurs, par les importateurs ou par les distributeurs pour ce qui concerne les produits mis sur le marché sous leur marque propre, de façon à être accessible à tous.

Article 2

La mise à disposition des informations prévues au I de l'article L. 5232-5 du code de la santé publique s'applique à l'ensemble constitué du produit et de son emballage primaire ou emballage de vente au sens de l'article R. 543-43 du code de l'environnement, dès lors que la concentration d'une substance présentant des propriétés de perturbation endocrinienne avérées ou présumées est supérieure à 0.1% en pourcentage massique soit dans le produit concerné, soit dans son emballage.

La mise à disposition des informations prévues au II de l'article L. 5232-5 du code de la santé publique s'applique à l'ensemble constitué du produit présentant un risque d'exposition particulier mentionné au même article et de son emballage primaire ou emballage de vente au sens de l'article R. 543-43 du code de l'environnement dès lors que la concentration d'une substance présentant des propriétés de perturbation endocrinienne suspectées est supérieure à 0.1% en pourcentage massique soit dans le produit concerné, soit dans son emballage.

Article 3

L'information prévue au I de l'article L. 5232-5 du code de la santé publique est exprimée sous la forme de la mention « contient une (ou des) substance(s) présentant des propriétés de perturbation endocrinienne avérées ou présumées : ».

L'information prévue au II de l'article L. 5232-5 du code de la santé publique est exprimée sous la forme de la mention « contient une (ou des) substance(s) présentant des propriétés de perturbation endocrinienne suspectées : ».

L'information est complétée du nom de la ou des substance(s) concernée(s) présente(s) dans le produit. Ce nom correspond à la dénomination de la substance telle que mentionnée dans les tableaux A, Abis, B ou Bbis de l'annexe I de l'arrêté conjoint des ministres chargés de la santé et de l'environnement pris en application de l'article R. 5232-19 du code de la santé publique.

L'information précise également si la (ou les) substance(s) concernée(s) est (sont) présente(s) dans le produit ou dans son emballage.

Lorsqu'une de ces substances figurent dans le tableau Abis de l'annexe I de l'arrêté conjoint des ministres chargés de la santé et de l'environnement pris en application de l'article R. 5232-19 du code de la santé publique et que le produit contenant cette substance est une denrée alimentaire telle que définie à l'article 2 du règlement (CE) n°178/2002 susvisé ou un dispositif médical tel que défini à l'article 2 du règlement (UE) n° 2017/745 susvisé, l'information prévue au I de l'article L. 5232-5 du code de la santé publique est exprimée sous la forme de la mention « contient la substance [complétée du nom de la substance telle que mentionnée dans le tableau Abis précité] : cette substance présente des bénéfices sur la santé selon les précautions d'usage et la posologie précisées sur la notice ou l'étiquetage du produit. En cas de doute, demandez l'avis d'un professionnel de santé. ».

Lorsqu'une de ces substances figurent dans le tableau Bbis de l'annexe I de l'arrêté conjoint des ministres chargés de la santé et de l'environnement pris en application de l'article R. 5232-19 du code de la santé publique et que le produit contenant cette substance est une denrée alimentaire telle que définie à l'article 2 du règlement (CE) n°178/2002 susvisé ou un dispositif médical tel que défini à l'article 2 du règlement (UE) n° 2017/745 susvisé, l'information prévue au II de l'article L. 5232-5 du code de la santé publique est exprimée sous la forme de la mention « contient la substance [complétée du nom de la substance telle que mentionnée dans le tableau Bbis précité] : cette substance présente des bénéfices sur la santé selon les précautions d'usage et la posologie précisées sur la notice ou l'étiquetage du produit. En cas de doute, demandez l'avis d'un professionnel de santé. ».

Article 4

Les dispositions du présent arrêté entrent en vigueur le lendemain de sa publication.

Article 5

Le présent arrêté sera publié au *Journal officiel* de la République française.

Fait le

Le ministre de la transition écologique et de la cohésion des territoires,
Pour le ministre et par délégation :
Le directeur général de la prévention des risques,

Cédric BOURILLET

Le ministre de la santé et de la prévention,
Pour le ministre et par délégation :
Le directeur général de la santé,

Jérôme SALOMON

RÉPUBLIQUE FRANÇAISE

Ministère de la transition écologique et de la cohésion des territoires

Ministère de la santé et de la prévention

Projet d'arrêté du

relatif à la mise à disposition des informations permettant d'identifier les perturbateurs endocriniens dans un produit au moyen d'une application

NOR : XXXXXXXXXX

Publics concernés : *Toute personne qui met sur le marché des produits à destination des consommateurs, qui, au terme de leur fabrication, comportent des substances dont l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (Anses) qualifie les propriétés de perturbation endocrinienne d'avérées, présumées ou suspectées.*

Objet : *Cet arrêté désigne une modalité alternative d'information du public relative à l'information sur la présence dans les produits de substances dont l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail qualifie les propriétés de perturbation endocrinienne d'avérées, présumées ou suspectées. Les produits s'entendent comme les denrées alimentaires telles que définies à l'article 2 du règlement (CE) n° 178/2002 et les substances, mélanges et articles tels que définis à l'article 3 du règlement (UE) n° 1907/2006 (« REACH »), à l'exception des médicaments.*

Entrée en vigueur : *Le texte entre en vigueur le lendemain de sa publication.*

Notice : *La loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire, dite « AGEC » prévoit à l'article 13-II que toute personne mettant sur le marché des produits à destination des consommateurs, contenant des substances dont l'Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail (ANSES) qualifie les propriétés de perturbation endocrinienne d'avérées ou présumées doit « mettre à la disposition du public par voie électronique, dans un format ouvert, aisément réutilisable et exploitable par un système de traitement automatisé, pour chacun des produits concernés, les informations permettant d'identifier la présence de telles substances dans ces produits ». Cette obligation s'applique également à certaines catégories de produits présentant un risque d'exposition particulier, pour les substances dont l'ANSES qualifie les propriétés de perturbation endocrinienne de suspectées.*

Cette obligation s'inscrit dans la lignée des objectifs de la deuxième Stratégie nationale sur les perturbateurs endocriniens (SNPE2). Elle vise à assurer aux citoyens une information transparente sur la présence de substances présentant des propriétés de perturbation

endocrinienne dans les produits, au sens de substances, mélanges, articles (tels que définis par le règlement REACH) et denrées alimentaires.

Elle s'applique aux produits mentionnés à l'article R. 5232-19 du code de la santé publique destinés aux consommateurs. La mise à disposition de ces informations s'applique à l'ensemble constitué du produit et de son emballage primaire ou emballage de vente au sens de l'article R. 543-43 du code de l'environnement

Les modalités d'application de cette disposition législative ont été définies aux articles R. 5232-19 à R. 5232-22 du code de la santé publique. L'article R. 5232-20 prévoit que la mise à disposition des informations prévue à l'article L. 5232-5 du code de la santé publique peut être réalisée par une application désignée par arrêté conjoint des ministres chargés de la santé et de l'environnement. Un projet financé par la Commission européenne dans le cadre du programme LIFE a donné lieu à la création d'une base de données à contributions volontaires des entreprises sur la présence de substances extrêmement préoccupantes dans les articles au sens du règlement REACH. La France est très investie dans ce projet qui constitue une des mesures phares du quatrième plan national santé environnement, au travers de la mobilisation de l'Institut national de l'environnement industriel et des risques (INERIS), soutenu par le ministère chargé de l'environnement. L'application smartphone Scan4Chem associée à cette base de données permet aux consommateurs d'obtenir les informations qui y figurent simplement en scannant le code-barres des produits. Ainsi, le présent arrêté désigne l'application Scan4Chem comme modalité possible de mise à disposition des informations sur la présence de substances extrêmement préoccupantes présentant des propriétés de perturbation endocrinienne avérées, présumées ou suspectées dans les articles au sens du règlement REACH.

Le ministre de la transition écologique et de la cohésion des territoires et le ministre de la santé et de la prévention

Vu le règlement (CE) n° 178/2002 du Parlement européen et du Conseil du 28 janvier 2002 établissant les principes généraux et les prescriptions générales de la législation alimentaire, instituant l'Autorité européenne de sécurité des aliments et fixant des procédures relatives à la sécurité des denrées alimentaires ;

Vu le Règlement (CE) 1907/2006 du Parlement européen et du Conseil du 18 Décembre 2006 concernant l'enregistrement, l'évaluation et l'autorisation des substances chimiques, ainsi que les restrictions applicables à ces substances (REACH) instituant une agence européenne des produits chimiques, modifiant la directive 1999/45/CE et abrogeant le règlement (CEE) n° 793/93 du Conseil et le règlement (CE) n° 1488/94 de la Commission ainsi que la directive 76/769/CEE du Conseil et les directives 91/155/CEE, 93/67/CEE, 93/105/CE et 2000/21/CE de la Commission ;

Vu la Directive (UE) 2015/1535 du Parlement européen et du Conseil du 9 septembre 2015 prévoyant une procédure d'information dans le domaine des réglementations techniques et des règles relatives aux services de la société de l'information et notamment la notification n° 2023/XXX/F ;

Vu le code de le santé publique, notamment son article L. 5232-5 dans sa rédaction résultant de l'article 13 de la loi n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire et ses articles R. 5232-19 et R. 5232-20 ;

Arrêtent :

Article 1er

La mise à disposition des informations prévues au I et au II de l'article L. 5232-5 du code de la santé publique peut être réalisée, conformément aux dispositions de l'article R. 5232-20 de ce même code, au moyen des applications listées en annexe sous réserve que celles-ci soient disponibles en langue française et permettent une identification univoque des produits.

Article 2

Les dispositions du présent arrêté entrent en vigueur le lendemain de sa publication.

Article 3

Le présent arrêté sera publié au *Journal officiel* de la République française.

Fait le

Le ministre de la transition écologique et de la cohésion des territoires,
Pour le ministre et par délégation :
Le directeur général de la prévention des risques,

Cédric BOURILLET

Le ministre de la santé et de la prévention,
Pour le ministre et par délégation :
Le directeur général de la santé,

Jérôme SALOMON

Annexe

Liste des applications désignées pour la mise à disposition du public des informations prévues aux I et II de l'article L. 5232-5 du code de la santé publique conformément à l'article R. 5232-20 de ce même code :

Nom de l'application
Scan4Chem

EUROPEAN
COMMISSION

Brussels, 22.3.2023
COM(2023) 166 final

2023/0085 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on substantiation and communication of explicit environmental claims (Green Claims Directive)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

In March 2022 the Commission proposed to update Union consumer law to ensure that consumers are protected and to empower them to contribute actively to the green transition[1]. This proposal provides more specific rules (*lex specialis*) and complements the proposed changes to the Unfair Commercial Practices Directive[2] (*lex generalis*). Both proposals aim at tackling a common set of problems by implementing different elements of the same preferred policy package identified in the Impact Assessment published together with the initiative on empowering consumers for the green transition[3].

1.1. Reasons for and objectives of the proposal

- **Role of consumers in accelerating the green transition**

In the European Green Deal[4] the Commission committed to ensure that consumers are empowered to make better informed choices and play an active role in the ecological transition. More specifically, the European Green Deal sets out a commitment to tackle false environmental claims by ensuring that buyers receive reliable, comparable and verifiable information to enable them to make more sustainable decisions and to reduce the risk of 'green washing'. The need to address greenwashing was subsequently set as a priority both under the New Circular Economy Action Plan[5] and the New Consumer Agenda[6]. The recently adopted Green Deal Industrial Plan[7] reiterates the need to allow consumers to make their choices based on transparent and reliable information on the sustainability, durability and carbon footprint of the products, and highlights that market transparency is a tool facilitating uptake of technologically and environmentally superior net zero products.

The European Parliament and the Council have called on the Commission to consider further action in the area. In December 2020, in its conclusions on making the recovery circular and green[8], the Council noted its appreciation of the Commission's intention to ensure the substantiation of environmental claims on the basis of environmental impacts along products' life cycles. In its resolution on the New Circular Economy Action Plan[9], the European Parliament strongly supported the Commission's intention to make proposals to regulate the use of environmental claims through the establishment of solid and harmonised calculation methods covering the full value chain.

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1 European Commission, 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, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0143&from=EN

2 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. 22–39,* as amended.

3 SWD(2022) 85 final; EUR-Lex - 52022SC0085 - EN - EUR-Lex (europa.eu)

4 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee of the Regions, The European Green Deal, COM(2019)640.

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

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

7 COM(2023)62final, 1 February 2023.

8 Council Conclusions, 14167/20.

9 European Parliament resolution of 10 February 2021 on the New Circular Economy Action Plan (2020/2077(INI))

Consumers want to be better informed on the environmental impacts of their consumption and make better choices. The requests of the Conference on the Future of Europe[10] include a call for more transparency as regards sustainability and environmental footprint of products, in particular in Proposal 5 on sustainable consumption, packaging and production and Proposal 20 on Defining standards within and outside the EU in environmental policies. The proposal on environmental claims is the Commission's reply to this call[11].

Completing the EU legislative framework supporting more sustainable consumption will contribute to reaching the Sustainable Development Goal 12.6 to encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle'.

Further EU action in this area will also have a positive impact on global value chains involving production processes in third countries. As a result, it will incentivise third country companies to contribute to the green transition, in particular the businesses trading within the EU internal market. Moreover, multilateral cooperation will be fostered with third countries to ensure a good understanding of the new regulatory framework and its benefits. Additionally, sustainable development chapters of the EU bilateral and region-to-region trade agreements can create opportunities for cooperation in line with the overall EU objectives to increase the sustainability dimension of its trade policy.

- **Barriers to boosting the potential of green markets in the EU through consumer empowerment**

In spite of consumers' willingness to contribute to a greener and more circular economy in their everyday lives[12], their active and effective role in this green transition is hampered by barriers to making environmentally sustainable consumption choices at the point of sale, notable a lack of trust in the credibility of environmental claims and the proliferation of misleading commercial practices related to the environmental sustainability of products.

The evidence collected to support the impact assessment[3] accompanying the proposal on empowering consumers for the green transition, which also accompanies the proposal on environmental claims both through its inception impact assessment[13] and its public consultation[14] together with an additional public consultation carried out in 2020[15], suggests that misleading practices, such as greenwashing and lack of transparency ad credibility of environmental labels, occur at various stages of the consumption journey: during the advertising stage, the purchasing stage or during the use of the products.

a) *Consumers are faced with the practice of making unclear or not well-substantiated environmental claims ('greenwashing')*

The proposal on empowering consumers for the green transition defines an *environmental claim* as any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on

10 Conference on the Future of Europe, Report on the final outcome, May 2022

11 COM(2022)404final

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

13 European Commission, Inception Impact Assessment: Empowering the consumer for the green transition, 2020.

14 A summary of the OPC is available via the European Commission's 'Have your Say' website: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Empowering-the-consumer-for-the-green-transition

15 Environmental performance of products & businesses – substantiating claims (europa.eu)

the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time[1].

The Commission carried out two inventories of environmental claims: one in 2014[16] and one in 2020[17]. The studies looked at a sample of 150 environmental claims for a wide range of products against the principles of the Unfair Commercial Practices Directive[2] (UCPD): clarity, unambiguity, accuracy and verifiability. The 2020 study found that a **considerable share of environmental claims (53.3%) provide vague, misleading or unfounded information** about products' environmental characteristics across the EU and across a wide range of product categories. The 2020 inventory of environmental claims also analysed the substantiation of such claims looking at their clarity, accuracy, and the extent to which they are substantiated with evidence that can be verified. The analysis found that **40% of claims were unsubstantiated**.

These results have also been confirmed by a sweep by the Consumer Protection Cooperation authorities carried out in November 2020[18]. Out of the 344 sustainability claims assessed, authorities considered that **in over half of the cases (57.5%), the trader did not provide sufficient elements allowing for judgement of the claim's accuracy**. In many cases, authorities had difficulties identifying whether the claim covered the whole product or only one of its components (50%), whether it referred to the company or only certain products (36%) and which stage of the products lifecycle it covered (75%)[19].

Moreover, most stakeholders consulted agreed that **greenwashing is a problem**, with the noticeable exception of industry representatives. More than half encountered misleading claims and expressed less trust in environmental statements and logos managed by companies or private entities[19]. In addition, most respondents to the targeted consultations indicated that consumers lack awareness of the environmental impacts of products because the information is not provided or not available[20].

In general, **consumer trust in environmental claims is quite low**. During the 2020 open public consultation[15], the general public did not agree with the statement that they trust environmental statements on products (1.57/ 4.00)[21]. The level of trust was higher for claims on traders[22], but still low (2.25/4.00).

b) *Consumers are faced with the use of sustainability labels that are not always transparent and credible*

Environmental labels are a subset of environmental claims. The labels are in a form of a trust mark, quality mark or equivalent setting apart and promoting a product/process or business with reference to its environmental aspects. These labels are sometimes based on certification schemes (environmental labelling schemes) which certify that a product/process or business meets the requirements set up by the scheme and monitor compliance.

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16 *Consumer Market Study on Environmental Claims for Non-Food Products*, European Commission 2014.

17 Environmental claims in the EU: Inventory and reliability assessment Final report, European Commission 2020. Available at https://ec.europa.eu/environment/eussd/smgp/pdf/2020_Greenclaims_inventory.zip

18 2020 – sweep on misleading sustainability claims, Sweeps (europa.eu)

19 Screening of websites for 'greenwashing': half of green claims lack evidence, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269

20 SWD(2022) 85 final, Annex 2, pp. 66

21 Replies given on 1-5 Likert scales. These were converted into points to help consistent presentation and reflect well the degree of agreement. "Do not know" replies received 0 points, "not interested at all" or "not effective at all replies" 1 – at the other end of the scale, "very interested" or "always" replies received 4 point.

22 A claim on a trader refers to any claim made by the trader on itself as an organisation as opposed to a claim made by the trader on one of its products (goods or services).

Environmental labels existing on the EU internal market are subject to different levels of robustness, supervision and transparency, i.e., different governance models. Additional confusion is expected to be caused by an increasing number of ecolabels covering different aspects, adopting different operational approaches and being subject to different levels of scrutiny (e.g. the openness of the process in developing them or the level and independence of auditing and verification)[23].

In the preparatory study to gather evidence on ways to empower consumers to play an active role in the green transition[24], an assessment of 232 active ecolabels in the EU also examined their verification and certification aspects and concluded that almost **half of the labels' verification was either weak or not carried out.** Moreover, consumers are not aware of the distinction between labels governed by third party certification schemes and those based on "self-certifications", i.e. not verified by any third party.

In the consultation for the inception impact assessment[24] and during the targeted consultations, the **proliferation of sustainability labels and logos was also identified as an important and persistent problem across the EU** by stakeholders from most stakeholder groups. Similarly, in the open public consultation, over a quarter (27%) of participants selected "the **proliferation and/or lack of transparency/ understanding/reliability** of sustainability logos/labels on products and services" **as a relevant obstacle** to empowering consumers for the green transition[15].

This proliferation of labels combined with their varied governance models implies that producers and retailers can apply a variety of strategies in opting for a specific sustainability label. Very often, this also translates into companies displaying various labels to vouch for the sustainability of their products. **34% of businesses identified the "the proliferation and/or lack of transparency / understanding / reliability of sustainability logos / labels" as an obstacle[15].** Indeed, companies that make the effort to adhere to or develop reliable environmental labelling schemes are disadvantaged compared to companies that use unreliable environmental labels as consumers often cannot tell the difference. This issue has been amplified by the rapid emergence of a number of (private/voluntary) labelling schemes at national / Member State level, **making comparability across products increasingly difficult for consumers**.

Feedback from stakeholders shows a particularly **strong support for EU action** capable of bringing about a common approach to the provision of sustainability information to consumers, **reinforce the level-playing field for business** and to limit the proliferation of labels and misleading environmental claims on the Single Market[14].

Companies that offer truly sustainable products are disadvantaged compared to those that do not. They also **risk unnecessarily high compliance costs** as EU countries start to introduce different national solutions to address the problems described above[25].

1.2. Consistency with existing policy provisions in the policy area

- **The EU initiative to empower consumers for the green transition**

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23 Preparatory study to gather evidence on ways to empower consumers to play an active role in the green transition, October 2021. Available at Proposal for a Directive on empowering consumers for the green transition and annex (europa.eu)

24 European Commission, Inception Impact Assessment: Empowering the consumer for the green transition, 2020- overview of consultations in Annex 2 of the Impact Assessment, page 69.

25 More on consequences of the problems for consumers market and environment included in Annex 12 of SWD(2022)85 final

The Unfair Commercial Practices Directive regulates misleading practices and misleading omissions with general provisions that can be applied to environmental claims in business-to-consumer transactions when they negatively affect consumers' transactional decisions. It calls on Member States' consumer protection authorities to assess these practices case-by-case following a transactional decision test (case-by-case assessment)[26]. It also establishes a blacklist of commercial practices[27] that shall in all circumstances be regarded as unfair without the need for case-by-case assessment. Non-compliance with the requirements of the directive is pursued by the consumer submitting a claim or a competent authority acting on own initiative.

The proposal to amend the Unfair Commercial Practices Directive[1] tackles in part the problems listed in Section 1.1 ("greenwashing" and untransparent sustainability labels). It implements a series of measures on environmental claims resulting from the preferred policy options, including:

(1) The list of **product characteristics about which a trader should not deceive a consumer** in Article 6(1) of Directive 2005/29/EC is amended to include '**environmental** or social **impact,** 'durability' and 'reparability'.

(2) The list of **actions which are to be considered misleading** if they cause or are likely to **cause** the average consumers to take a transactional decision that they would not have otherwise taken, in Article 6(2) of Directive 2005/29/EC, is amended to include *'making an environmental claim related to future environmental performance without clear, objective and verifiable commitments and targets and an independent monitoring system.*

(3) The list of **commercial practices which are considered unfair in all circumstances,** in Annex I of Directive 2005/29/EC, is extended to four practices associated with greenwashing:

- Displaying a sustainability label which is not based on a certification scheme or not established by public authorities.
- Making a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.
- Making an environmental claim about the entire product when it concerns only a certain aspect of the product.
- Presenting requirements imposed by law on all products in the relevant product category on the Union market as a distinctive feature of the trader's offer.

The proposal on empowering consumers for the green transition thus addresses a wide range of practices, products and sales methods in a more generalised way. It provides important safeguards to protect consumers from misleading environmental claims and unreliable labels.

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[26] Article 6 and 7 of the 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).

[27] Annex I of the 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).

- **Other EU acts encouraging sustainable consumption by providing environmental information**

On top of the consumer protection framework, there is an existing EU legislative framework that deals with the provision of environmental information, sets methodological requirements on measuring and calculating environmental impacts, such as the EU certification methodologies for carbon removals developed under the Carbon Removals Certification Regulation[28] (once adopted), or on information and labels on the environmental impacts, aspects or performance of a product or trader. For instance, The Ecodesign Directive[29] establishes a framework for setting mandatory ecodesign requirements for energy-related products to encourage their energy performance and circular design and foster new business models. The Commission also adopted a proposal for a new Ecodesign for Sustainable Products Regulation[30] in March 2022 to significantly improve the circularity, energy performance, environmental impacts and other environmental sustainability aspects for specific priority product groups. It will enable the setting of performance and information requirements for almost all categories of physical goods placed on the EU market. Under the Circular economy action plan and product policy, some other proposals made by the Commission include information requirements, for example under the proposed Regulations on marketing of construction products[31] and on batteries and waste batteries[32].

In addition, there are legal acts concerning labels developed at the EU level, both mandatory and voluntary, such as the EU Ecolabel. Established in 1992, the EU Ecolabel is the official voluntary label for environmental excellence of products in the EU demonstrating top performance. The EU Ecolabel Regulation[33] lays down rules for the establishment and application of this voluntary scheme. Other related EU legislation on labels include the Eco-Management and Audit Scheme (EMAS)[34], the Regulations on the organic farming label[35], the energy labelling[36] and the CE marking[37].

- **Completing the set of EU rules on environmental claims**

To continue to address the identified problem of greenwashing and unreliable environmental labels, the current framework could benefit from more specific requirements on unregulated claims, be it for specific product groups, specific sectors or for specific environmental impacts or environmental aspects. **This proposal on substantiating and communicating**

28 COM(2022) 672 final

29 Directive 2009/125/EC of the European parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products, L 285/10

30 COM(2022) 142 final

31 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

32 COM/2020/798 final.

33 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the Eu Ecolabel (OJ L 27, 30.1.2010, p. 1).

34 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

35 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007, OJ L 150, 14.6.2018, p. 1.

36 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

37 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10).

environmental claims complements as *lex specialis* the existing set of EU rules on consumer protection. The proposal will allow to implement fully the preferred policy options identified in the impact assessment, as described in Section 3.2.

The key objectives of the proposal on environmental claims are thus 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;

– Protect consumers and companies from greenwashing and enable consumers to contribute to accelerating the green transition by making informed purchasing decisions based on credible environmental claims and labels;

– Improve the legal certainty as regards environmental claims and the level playing fields on the internal market, boost the competitiveness of economic operators that make efforts to increase the environmental sustainability of their products and activities, and create cost saving opportunities for such operators that are trading across borders.

The scope of this proposal, being *lex specialis*, is aligned with the corresponding *lex generalis*. The revised Unfair Commercial Practices Directive covers all voluntary business-to-consumer commercial practices before, during and after a commercial transaction in relation to a product. The scope of this proposal covers the substantiation and communication of **voluntary *environmental* claims**.

In the same way, the proposal on empowering consumers for the green transition deals with sustainability labels which cover *environmental or social aspects or both.* This proposal is however limited to ***environmental* labels** only, i.e. those covering predominantly *environmental* aspects of a product or trader.

As mentioned, the proposal on environmental claims **is meant to act as a safety net for all sectors where environmental claims or labels are unregulated at EU level. It does not aim to change existing or future sectoral rules.** To the contrary, the assessment and communication requirements set out in other Union legislation will take precedence over the requirements set out in the proposal, and thus should be used to substantiate and communicate environmental claims in these specific areas.

1.3. Consistency with other Union policies

The proposal on environmental claims supports the objectives of the European Green Deal and contributes to resolving the triple crises of climate change, pollution, and biodiversity loss. It contributes to the fight against greenwashing that was identified as a priority in the Commission's new circular economy action plan[5] and new consumer agenda[6]. the proposal will also reinforce overarching strategies such as the zero pollution action plan[38] or the biodiversity strategy for 2030[39] and complement strategies targeting specific sectors, such as the Farm-to-Fork strategy[40], or issues, such as the calls for improving water efficiency and reuse in the EU strategy on adaptation to climate change[41].

As described, this proposal for a directive on environmental claims and the proposal amending the Unfair Commercial Practices Directive jointly establish a coherent policy framework to help the Union in the green transition by transforming consumption patterns in

38 https://ec.europa.eu/environment/strategy/zero-pollution-action-plan_en
39 COM(2020) 380 final
40 COM/2020/381 final.
41 COM(2021) 82

a more sustainable direction. They aim to contribute to a greener internal market by encouraging the reduction of the environmental footprint of products consumed in the Union. They will also contribute to reaching the objective of the European Climate Law of balancing greenhouse gas (GHG) emissions and removals within the Union at the latest by 2050 by tackling claims related to GHG emissions reductions and climate neutrality.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1 Legal basis

This proposal is based on Article 114 of the Treaty of the Functioning of the European Union (TFEU), which applies to measures that aim to establish or ensure the functioning of the internal market, while taking as a base a high level of environmental protection.

Different requirements imposed by national legislation or private initiatives regulating environmental claims create an unnecessary burden for companies when trading cross-border, as they need to comply with different requirements in each country. This affects their capacity to operate in and take advantage of the internal market. At the same time, market participants have difficulties with identifying reliable environmental claims and making optimal purchasing decisions on the internal market.

The proposal therefore aims to ensure the functioning of the internal market for economic actors operating in the internal market and consumers relying on environmental claims. The measures proposed in this Directive will increase the level of environmental protection, while leading to further harmonisation regarding the regulation of environmental claims, and would avoid market fragmentation due to diverging national approaches that were introduced or would be introduced in the absence of rules at EU level.
The internal market dimension of reaching the environmental objective is predominant and therefore Article 114 remains the appropriate legal basis.

2.2 Subsidiarity (for non-exclusive competence)

Putting in place a common set of rules within the EU internal market is essential to ensuring a level playing field for economic operators, If Member States act individually, the level of environmental protection would remain suboptimal and there is a risk that competing different systems, based on different methods and approaches, would be used.

The proposal on empowering consumers for the green transition does not specify what the companies should do to properly substantiate their environmental claims. This in turn can lead to significantly diverging approaches across the EU to substantiate claims. This would fragment the internal market by distorting the conditions of competition and necessitating the amendment/modifications of the claims each time internal borders are crossed. This in turn brings legal uncertainty and raises compliance costs as well as unfair competition in the Single Market and undermines efficient market functioning.

The EU is well placed to promote further harmonisation of methodological requirements to assess the environmental impacts of products, services and organisations across the Single Market, relying on experiences of Member States and private initiatives in this area. **The EU can bring an important added value**, and further co-ordination would bring cost savings for governments and the private sector.

Feedback from stakeholders shows a particularly strong support for EU action capable of bringing about a **common approach** to the provision of sustainability information to consumers and **to limit the proliferation of labels and misleading environmental claims.** If Member States were to act individually and without a guiding framework, there is a high risk

to end up with many competing different systems leading to a fragmented internal market, especially for cross-border services (for instance, digital services).

EU action is justified and necessary, because a harmonised and well-functioning internal EU market with regards to environmental claims would increase the level of environmental protection and set a level playing field for businesses operating in the EU. The proposal also alleviates the difficulties faced by national authorities in enforcing the existing principle-based provisions of the Unfair Commercial Practices Directive in such complex areas as misleading environmental claims. Further EU coordination brings cost savings for both governments and private actors involved, as well as strengthens leverage on related global processes, including global value chains.

2.3 Proportionality

The measures in the proposal do not go beyond what is necessary to enable consumers to make informed purchasing decisions and promoting sustainable consumption, based on reliable and verified information.

The proportionality of the general criteria for environmental claims used in marketing towards consumers is ensured by introducing uniform requirements which companies should follow when making such claims. This proposal does not require any specific assessment method for the substantiation of any particular environmental claims and relies upon general requirements that generate reliable information for consumers. The proposal will also provide competent national bodies with uniform criteria. **This will help them assess the fairness of any environmental claim, providing a high degree of legal certainty and facilitating enforcement activities.** It is also the result of thorough consideration of stakeholder input, in particular from businesses, including SMEs.

The proportionality of requirements on environmental labels concerns the fairness of their display in marketing to consumers. There are only a limited number of uniform requirements to ensure the transparency and credibility of such labels towards users. These uniform requirements ensure that entities running environmental labels, as well as the companies applying for those labels, do not face disproportionate costs. At the same time, it will ensure a high degree of legal certainty for companies. By providing competent national bodies with uniform criteria to assess the fairness of the use of any environmental label, this measure will also facilitate enforcement activities and pursue a high level of consumer protection.

2.4 Choice of the instrument

The proposal is a stand-alone legal instrument that would not amend existing legislation. It sets a framework for the substantiation of voluntary environmental claims. Given that it aims to ensure consumer protection in an area regulated by Directives, such legal form fits better the existing Union and national legal framework and the enforcement mechanisms established by the Member States. It is therefore considered that the most appropriate instrument is a Directive.

3. RESULTS OF STAKEHOLDERS CONSULTATIONS & IMPACT ASSESSMENT, COMPLIANCE WITH BETTER REGULATION PRINCIPLES & FUNDAMENTAL RIGHTS

3.1. Stakeholder consultations

In the preparatory process of this proposal, the Commission consulted stakeholders via:

– Several public consultations in the context of the proposal on empowering consumers for the green transition[15,42].

– A public consultation on the product policy framework for the circular economy, with a section dedicated to potential future policy options based on the Environmental Footprint methods (from 29 November 2018 to 24 January 2019)[43]. Out of the 291 respondents, some indicated that companies should be able to freely choose how to generate environmental information, provided that they meet minimum criteria to avoid greenwashing. Respondents also highlighted the need for flexibility regarding the medium of communication: it should not be mandatory to use a label or QR code to provide information, as the type of information and level of detail may depend on the target audience. The respondents also highlighted the need to offer an SME tool or support from the European Commission for implementation.

– Online targeted consultations that involved key stakeholders related to the Environmental Footprint methods (from12 November 2018 to 18 December 2018) with 124 respondents [44].

– An open public consultation on the green claims initiative, between 27 August and 3 December 2020, through which 362 contributions were made[16].

  - Some *business associations* suggested the use of independent certification/verification organizations that operate in accordance with ISO14025.
  - *Large companies* highlighted that the EU framework should allow for flexibility regarding the medium of communication used to make claims.
  - *Environmental NGOs* expressed that single environmental scores should, by no means, be a way to hide trade-offs, and should be avoided.
  - *Consumer NGOs* also indicated that environmental claims could be substantiated by existing tools such as the type 1 ecolabels, Eco Lighthouse, EMAS and ISO14001.
  - A few *public authorities'* representatives thought it should be possible to substantiate claims with 'official' ecolabels such as the Nordic Swan and EU Ecolabel. Public administrations slightly prefer independent certification and verification.
  - As for *citizens*, independent certification/verification by accredited organisations is the preferred option.

A stakeholder workshop with several sessions in November 2020 dedicated to overall feedback, feedback on communication options, on practical challenges for companies in substantiating environmental claims, on the reliability of information and on implications for ecolabels; with on average 200 stakeholders participated per session[45]. The workshops confirmed that greenwashing needs to be addressed and that there is the need for a

42 Overview of all consultations carried out in the context of the Impact Assessment can be found in Annex 2 of COM(2022)85 final

43 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1740-Towards-an-EU-Product-Policy-Framework-contributing-to-the-Circular-Economy_en

44 https://ec.europa.eu/environment/eussd/smgp/pdf/EF_stakeholdercons19.pdf

45 More information available at https://ec.europa.eu/environment/eussd/smgp/initiative_on_green_claims.htm

harmonised EU-level approach. Several stakeholders indicated the need to continue using the EU Ecolabel and other reliable type I ecolabels.

3.2 Impact assessment

3.2.1 Problem definition & preferred policy option

This proposal is based on the impact assessment published together with the Commission proposal for empowering consumers for the green transition[46]. The Commission's Regulatory Scrutiny Board (RSB) first issued a negative opinion with comprehensive comments on 5 February 2021. After a significant revision of the initial draft, the RSB provided a positive opinion with further comments on 17 September 2021[47]. Annex I of the impact assessment explains how the RSB comments were addressed.

The impact assessment identifies two problems divided into a number of sub-problems. This proposal focusses on one the two problems and two of its sub-problems.

Problem 2: Consumers face misleading commercial practices related to the sustainability of products.

Sub-Problem 2.2: Consumers are faced with unclear or poorly-substantiated environmental claims ('greenwashing') from companies.

Sub-problem 2.3: Consumers are faced with sustainability labels that are not always transparent or credible[48].

A number of policy options were considered for each individual sub-problem. The Unfair Commercial Practices Directive and its amendment are designed to act as *lex generalis*. As such, it was decided that some of the elements of the preferred policy options selected in the impact assessment to tackle sub-problem 2.2 and sub-problem 2.3 would not be implemented via the initiative on Empowering consumers for the green transition but via dedicated and complementary *lex specialis*, a proposal on environmental claims.

On the basis of a multi-criteria analysis, complemented by a cost-benefit analysis, and a qualitative assessment of the proportionality of the various options considered, a combination of two preferred policy options[49] were proposed to address these problems:

(1) Prohibition of environmental claims that do not fulfil a minimum set of criteria[50] (to address sub-problem 2.2)

The preferred option would ensure consumers are protected from greenwashing, since a certain standard will need to be met by those making such claims. It would also facilitate enforcement by consumer protection authorities.

(2) Prohibition of sustainability labels not meeting minimum transparency and credibility requirements[51] (to address sub-problem 2.3)

The preferred option would ensure consumers are protected from being misled by such labels and tools.

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46 SWD(2022) 85 final

47 SEC(2022) 165

48 This proposal does not focus on digital information tools which are addressed in the proposal on Empowering consumers for the green transition.

49 SWD(2022) 85 final, Section 7: Preferred Policy Options, pp 59.

50 SWD(2022)85 final, pp. 29-30

51 SWD(2022)85 final, pp. 31-32

Furthermore, in the course of the preparation of this initiative, the following additional measures were identified to increase the effectiveness and efficiency of the EU rules on environmental claims:

- **establishment of a verification mechanism** to facilitate the implementation and enforcement of ensuring that minimum criteria on substantiation of claims are respected, that a level playing field on the EU market is created, and that companies operating on the single market have more legal certainty and less burdens;
- **use of aggregated scores on environmental impacts** to be **limited** to environmental claims, including labels, established **at EU level only** with the aim to ensure **implementation** of the lessons learned from the work on a common standardised method at EU level (see box below);
- the possibility to **exclude microenterprises** from the requirements on substantiation **and** linked rules on communication to avoid disproportionate impacts on the smallest traders;
- to **effectively limit the proliferation of environmental labels** and focus efforts on increasing the take-up of existing public schemes and on developing EU level labelling requirements for the single market,
  - the creation of new private schemes should be approved by Member States only and if they provide added value, and
  - the creation of new public schemes at the national or regional level should be prohibited. New public schemes should be developed at the EU level only.

Lessons learnt from the work on a standard methodology to substantiate claims on environmental impacts

When initially preparing for an initiative on green claims, the European Commission launched work and consultations on the option of using a *standard methodology* to substantiate environmental claims. The scope of this work focused on the use of EU product and organisation environmental footprint methods to substantiate environmental claims. Depending on product category, these methods[52] allow to measure the environmental performance of a product or organisation throughout the value chain, from the extraction of raw materials to the end of life. The environmental footprint methods aim to provide robust and prominent methodologies developed in full transparency with stakeholders and based on scientific evidence.

In the preparatory work the Commission considered as one of these options to establish an EU legal framework requiring companies making claims related to the impacts covered by the environmental footprint methods[53] to substantiate them via those methods. However, even if the environmental footprint methods are helpful to businesses to identify the areas where they should improve their environmental impact and performance, and can adequately substantiate certain claims on several product categories, the methods do not yet cover all relevant impact

[52] More information on the methods and on the pilot phase during which they were tested can be found here: https://ec.europa.eu/environment/eussd/smgp/

[53] Climate change, ozone depletion, human toxicity – cancer, human toxicity – non-cancer, particulate matter, ionizing radiation – human health, photochemical ozone formation – human health, acidification, eutrophication – terrestrial, eutrophication – freshwater, eutrophication – marine, ecotoxicity – fresh water, land use, water use, resource use – minerals and metals, resource use – fossils.

categories for all product types (e.g. as regards marine fisheries – the sustainability of the targeted fish stock; as regards food and agricultural products – farm level biodiversity and nature protection, as well as different farming practices, as regards textiles- microplastics release) and may therefore give an incomplete picture of the environmental credentials of a product in the green claims context. In addition, many environmental claims are also made on environmental aspects (e.g. durability, reusability, reparability, recyclability, recycled content, use of natural content) for which the environmental footprint methods are not suited to serve as the only method for substantiation. Addressing the very wide and fast changing area of environmental claims by means of a single method has its limitations. Prescribing a single method like the environmental footprint as the standard methodology of substantiation for all environmental claims would not be appropriate and pose a risk for companies not being able to communicate on relevant environmental aspects or performance in relation to their products or activities.

For these reasons and based on the results of the consultation, an internal assessment of the implications in terms of burden to companies and further exchanges with stakeholders, the option of using *one standard methodology* to substantiate environmental claims was not pursued. Instead, a more flexible approach based on the preferred policy option from the impact assessment developed for the initiative on empowering consumers for the green transition was considered appropriate.

3.2.2. Impacts of the preferred policy option

The preferred policy option resulting from the cost-benefit analysis of the impact assessment has been translated in several provisions both in the proposal on empowering consumers for the green transition and the proposal on environmental claims. The impacts listed below concern the preferred policy option as a whole and thus encompass provisions from both proposals.

The proposal includes measures that are relevant for the Commission's 'one in one out' approach to reduce administrative burden and were previously reported and accounted for in the impact assessment accompanying the proposal on empowering consumers for the green transition.

- **Expected impacts of the set scope**

The proposal introduces minimum requirements on substantiation and communication of environmental claims which are subject to third party verification to be delivered prior to the claim being used in commercial communications. While this measure is expected to eliminate misleading or false claims and will help to ensure proper enforcement, it will put an additional cost on traders wishing to make such claims. The impact on smaller enterprises is expected to be proportionately higher than on larger companies. For this reason, and to ensure that the smallest companies (e.g. small family farms selling directly to consumers) are not disproportionately affected by this additional administrative cost, the proposal exempts microenterprises (fewer than 10 employees and annual turnover does not exceed EUR 2 million[54]) from the obligations of this proposal as regards substantiation and communication requirements linked to substantiation assessment. However, in case these smallest companies nevertheless wish to receive a certificate of conformity of the environmental claim that is recognised across the Union they should comply with all requirements of this proposal.

[54] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

All traders, however, including the smallest companies, remain within the scope of the Unfair Commercial Practices Directive. This means that its general rules on environmental claims will still apply, and the consumers affected by unfair commercial practices will still be able to table complaints to the competent authorities and seek redress in national and EU courts.

Moreover, the proposal also asks of Member States to take the appropriate measures to help small and medium-sized enterprises apply the requirements of the proposal. With facilitated access to measures such as financial support and organisational and technical assistance, it is expected that these companies will be encouraged to be part of the green transition.

- **Expected impacts of the requirements on substantiation of claims**

By forbidding claims that do not meet the minimum criteria, this measure will contribute to **improving the reliability of the information** provided to consumers and therefore will have a **positive impact on the decision making of consumers** facilitating the choice of products offering better environmental performance, and thus an increased consumer welfare. With certain consumers purchasing products that will be trully better for the environment, it is estimated that the **impacts on the environment will be highly positive.**.

In terms of **impacts on businesses**, claims that do not meet these minimum criteria will have to be removed. The removal of the claims will require adjustments to product packages, flyers, etc., but this will be a one-off adjustment cost[55].

In addition, **businesses will have to bear the cost of substantiation of claims**. This cost will depend to a large extent on the type of environmental claim the company voluntarily wishes to make and for how many products. Claims regarding environmental impact of a product along the life-cycle (e.g. reduction of GHG emissions across the life-cycle and value chain) will require a significantly higher investment than claims focusing on a specific environmental aspect (e.g. recycled content in the packaging). Depending on the nature and complexity of the claim, the related substantiation cost can vary significantly. For example, substantiation costs for a simple claim, e.g. on materials used in production, are estimated at EUR 500[56]. If a company decides, for instance, to make a claim on the environmental footprint of one of their products and choses to conduct a study using the product environmental footprint method, it would cost around EUR 8 000 (this can decrease to EUR 4000 in case a product environmental footprint category rules exists). If the chosen claim concerns, e.g., the footprint of the organisation itself, using the organisation environmental footrpint methods to substantiate the claim can amount to EUR 54 000 (in case sectoral rules do not exist)[57].

However, it remains a decision of companies to include (or not) environmental claims in their *voluntary* commercial communications. This means that the **companies can control their costs** by determining the scope of the claim (if any) considering its expected return on investment. In short, the costs of substantiation are of a voluntary nature to companies as they

55 For the very small share of products in stock just before the approval of the option, it is assumed that the claims will be removed by the seller (for example, by covering them with a sticker). This will impose some costs in the first two years of implementation of the option for the small share of products in stock, after which we assume that all these products have been sold.

56 In-house estimate for a specific claim on an individual impact (e.g. share in % of bio-based (or recycled) content of a product) for which the evidence is straightforward, i.e. a claim that can be substantiated based on readily available information/documents on materials used in production.

57 In-house estimate that concerns the validation of a claim on the environmental footprint of the entire organisation. Average values based on an additional, targeted survey made by DG ENV with inputs from seven of the main consultants that have been supporting PEFCR/OEFSR developments, cross-checked with other sources from the literature.

are part of one's marketing strategy and therefore credible estimations of the overall cost for the Union market are difficult.

When it comes to **enforcement costs and other costs**, the competent authorities will need to assess to what extent the specific claim complies with the criteria set out under this option, i.e. if the company making the claim holds a certificate of conformity delivered by an accredited verifier. However a number of the interviewed consumer protection authorities indicated that the option might lead to savings as it will mean that less resources are needed to substantiate their assessment of "greenwashing".

- **Expected impacts of the requirements on communication of claims**

It is expected that the rules on communication will result in clearer and more transparent claims and thus will **increase consumer welfare.** In terms of costs to businesses, once the assessment to substantiate the claim is in place, the additional cost of complying with the communication requirements will be negligible and will mostly be embedded in the cost of substantiation.

- **Expected impacts of the requirements on labelling schemes**

The introduction of minimum criteria for all environmental labels will increase the transparency and credibility of labels (and slow down or even reverse the current proliferation of these labels) and will enhance the quality of consumer decision-making. Consumers will be assured that the products holding a sustainability label will meet minimum requirement on transparency and credibility, improving consumer trust and understanding of the labels. These additional requirements on governance of the labelling schemes are expected to reduce the number of labels, as schemes that are not robust will be weaned out. It is to be noted that the conditions for joining environmental labelling schemes for small and medium sized enterprises are proportionate to the size and turnover of the companies.

The introduction of minimum criteria for assessing the fairness of sustainability labels, as envisaged under option 2.3.B, is expected to increase **consumer welfare**. When it comes to **impacts on businesses** this measure is expected to contribute to a level-playing field between products displaying labels as all will have to adhere to the same minimum criteria. Furthermore, it will also contribute to a level playing field between organisations running labels.

In addition, this measure is expected to contribute to reducing the barriers to cross-border trade by avoiding non-harmonised national approaches by the Member States concerned with the proliferation of labels/logos that are non-transparent or not credible. This will decrease legal uncertainty and costs to companies as they will have to adhere to similar rules within the internal market.

Some **administrative costs** are expected for the entities running and managing the labels/logos[58]. They will also have substantive **compliance costs** resulting from implementing the necessary changes in their internal processes, including carrying out third party certifications for each application (if they are not doing it already at the baseline). The costs incurred by the entities running and managing the labels, as quantified in the impact assessment, will be passed on to the manufacturers and sellers applying for the label.

As for **indirect costs**, the costs of applying for labels are expected to increase. On the other hand, the increased harmonisation might reduce the need to apply for several labels.

[58] Details on administrative cost break down in SWD(2022) 85 final, pp. 200

Enforcement costs for public administration estimated in the impact assessment are not expected to be significant since the proposed minimum criteria require all relevant information to be provided online and the labels require 3rd party verification.

Further measures on labelling, developed additionally to the impact assessment, will provide a strong support to the achievement of the objective to stop proliferation of environmental labelling schemes across the EU and improve the functioning of the Internal Market. By putting a halt on new public schemes, regional and national authorities will be prevented from developing labels and labelling schemes that will have to be reviewed or abandoned soon after the introduction of an equivalent label at the EU level. The period between the adoption of this measure and its implementation will provide time for planning and prevent those additional costs for public authorities. Developing labels at the EU level for the same product groups will also ensure a more efficient use of resources than if these were developed at the national level.

The uncontrolled establishment of new labelling schemes developed by private operators will also be reduced. Member State authorities will have to validate the development of such schemes based on their added value. This is expected to contribute to the reduction of the proliferation of schemes. The **administrative cost for public authorities** for developing and implementing the validation procedure is difficult to estimate because there is no certainty as to the possible number of applications. This measure is expected to incur an **administrative cost for companies** in submitting the information accompanying their request to Member State authorities to develop a private labelling scheme. This administrative cost has not yet been reported and is relevant for the 'one in one out' approach to reduce administrative burden. However, the costs are not expected to be significant, as the number of such submissions is expected to be relatively low due to an advance notice of limitations on establishment of such schemes resulting from the delay between the date this proposal is made and the date of transposition (expected to be around 4 years).

Limiting the possibility for labels to present a rating or score based on an aggregated indicator of environmental impacts to only those developed at the EU level aims at reducing consumer confusion and misinformation as well as overall proliferation of labels. There is a risk that the nature of an aggregate indicator could be used to dilute negative impacts of certain parameters of the product with more positive impacts of other parameters and transmit misleading information to the consumer regarding the actual main impacts of the product. It is essential to stop potential schemes with aggregate scoring at regional or national scale to ensure harmonisation in the internal market. Moreover, such labels are usually based on different methodologies for the same product group, which may result in the same product receiving different rating depending on the scheme.

- **Expected impacts of the ex-ante verification**

The ex-ante verification carried out by independent accredited bodies will facilitate and support the **enforcement of the proposal's requirements** without putting an excessive strain on the competent authorities' resources. The certificate of conformity allows the local competent authorities to easily check the reliability of a claim on the market. The complaints against claims for which a valid certificate of conformity exists could be handled quicker contributing to **cost savings of enforcement** as compared to business as usual.

Companies making environmental claims would **benefit from the process of certification** of claims because the certificate of conformity recognised across the EU would provide legal certainty and would require only one certification within the EU making the process of certification cheaper and easier for entities trading within the internal market.

As for **administrative costs for companies**, they would need to submit an ex-ante request to a 'verifier' for a certificate of conformity before making an environmental claim. This administrative cost will depend on the scope of every voluntary claim made and the expected quantities of claims, making the overall cost for the Union market difficult to estimate in a credible manner. For this reason this cost has not yet been reported while it is relevant for the 'one in one out' approach to reduce administrative burden.

- **Expected progress towards relevant sustainable development goals**

Regarding SDG 12 ensuring sustainable consumption and production patterns, the implementation of the preferred policy option in this proposal and in the proposal empowering consumers for the green transition is expected to lead to an increase in the purchase of products which do not deceive the consumer as to their environmental impact. The initiatives are expected to better protect consumers against unfair commercial practices such as greenwashing or non-transparent voluntary sustainability labels, which are not compatible with the green transition. As for SDG 13 on climate action, the initiatives are expected to lead to a saving of 5 – 7 MtCO2e over a period of 15 years[59].

3.3. Regulatory fitness and simplification

The proposal is a new initiative aiming to complement the general consumer law directives and specifically, as *lex specialis*, the proposal on empowering consumers for the green transition. The proposal aims directly at reducing regulatory burdens by strengthening the functioning of the internal market for green products and companies and by setting minimum criteria on environmental claims. It will reduce the risk of legal fragmentation of the single market and increase legal certainty. This, in turn, is expected to result in cost savings for businesses willing to make such claims and for competent authorities responsible for the enforcement of consumer law. Moreover, the proposal foresees a review clause six years after entry into force to assess if the directive achieved its objectives, and whether further harmonisation is needed as regards substantiation and communication of environmental claims to achieve these objectives in a more efficient manner. The proposal concerns environmental claims made in both the physical and digital environments and is thus considered digital-ready.

3.4. Fundamental rights

The proposal is in accordance with Article 38 of the Charter of Fundamental Rights, according to which the EU must ensure a high level of consumer protection. This will be ensured by ensuring the reliability, comparability and verifiability of environmental claims and by addressing greenwashing and the use of unreliable and non-transparent environmental claims and labels. The proposal will also enhance the right to a high level of environmental protection and the improvement of the quality of the environment, as enshrined in Article 37 of the Charter. In addition, by fighting greenwashing, the proposal will ensure a level playing field for businesses when marketing their greenness and therefore guarantees the freedom to conduct a business in accordance with Union law and national laws and practices.

4. BUDGETARY IMPLICATIONS

The initiative involves a budget of a total of approx. EUR 25 million until 2027 (i.e. under the current MFF).

[59] SWD(2022) 85 final

As detailed in the Legislative financial statement, the initiative foresees human resources and administrative expenditure to implement the Directive and prepare delegated and implementing acts.
It also foresees appropriations which will be fully financed through redeployment within the LIFE programme envelope. As detailed in the tables included in Section 3 of the Legislative Financial Statement, this amount covers the acquisition of environmental footprint and other required datasets to support companies, especially SMEs, in complying with the proposal on environmental claims. Indeed, public access to this information for SMEs, larger companies, public agencies and all interested parties will help reduce costs for developing and strengthening their own methodologies and potentially help decreasing the costs for the users of the developed methodologies. The access to environmental footprint datasets will also support the implementation of other EU policies on environmental sustainability and helping consumers to make the right choices, such as the proposal for Ecodesign for Sustainable Products Regulation (ESPR). The ESPR introduces the possibility to set mandatory information requirements, which may also be linked with labelling requirements, and will result in improved information flows through Digital Product Passports. The EF datasets will support the calculation and setting of information and performance requirements in delegated acts linked to the ESPR, e.g. related to carbon and environmental footprint, based on a harmonised set of high-quality secondary data. Together those data and evidence-based policies will lead to a better-informed consumer that can trust the environmental information provided by companies.

5. OTHER ELEMENTS – IMPLEMENTATION PLANS & MONITORING, EVALUATION & REPORTING ARRANGEMENT

The Commission will submit a report, assessing the achievement of objectives of this Directive, to the European Parliament and Council no later than six years after its adoption. Member States are to regularly monitor the application of this Directive based on an overview of environmental claims that have been notified to the enforcement authorities. Member States are to supply this information to the Commission on an annual basis. The European Environment Agency is to publish a bi-annual report with its assessment of the evolution of environmental claims and labelling schemes in each Member State.

6. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

6.1. Scope of the proposal

Article 1 sets the scope. The proposal sets minimum requirements on the substantiation and communication of voluntary environmental claims and environmental labelling in business-to-consumer commercial practices, without any prejudice to other Union legislation setting out conditions on environmental claims as regards certain products or sectors (as described in Section 1.2).

6.2. Requirements on substantiation of environmental claims

Article 3 of the proposal focuses on elements that have not been integrated to the consumer protection legislation, notably as regards the substantiation of claims, and in some instances provides additional clarifications. The proposal requires that the substantiation of explicit environmental claims shall be based on an assessment that meets the selected minimum criteria to prevent claims from being misleading, namely that the underpinning assessment:

– relies on recognised scientific evidence and state of the art technical knowledge;

– demonstrates the significance of impacts, aspects and performance from a life-cycle perspective;

– takes into account all significant aspects and impacts to assess the performance;

– demonstrates whether the claim is accurate for the whole product or only for parts of it (for the whole life cycle or only for certain stages, for all the trader's activities or only a part of them);

– demonstrates that the claim is not equivalent to requirements imposed by law;

– provides information on whether the product performs environmentally significantly better than what is common practice;

– identifies whether a positive achievement leads to significant worsening of another impact;

– requires greenhouse gas offsets to be reported in a transparent manner;

– includes accurate primary or secondary information.

Microenterprises (fewer than 10 employees and with an annual turnover not exceeding EUR 2 million[60]) are exempted from the requirements of this article unless they wish to receive a certificate of conformity of the environmental claim in which case they will have to comply with these requirements.

In addition, Article 4 sets out further requirements for comparative claims (i.e. claims that state or imply that a product or trader has less or more environmental impacts or performs better or worse regarding environmental aspects than other products or traders). These requirements are:

- the use of equivalent information for the assessment of environmental impacts, aspects or performance of compared products;
- the use of data generated or sourced in an equivalent manner for the products or traders that are subject to comparisons;
- the coverage of stages along the value chain is equivalent for the products and traders compared while ensuring that the most significant stages are taken into account for products and traders compared;
- the coverage of environmental impacts, aspects or performances is equivalent for the products and traders compared and ensures that those most significant are taken into account for all products and traders compared;
- the assumptions used for the comparison are set consistent for the products and traders compared.
- for comparative claims on improvement of impacts (compared to earlier version of product) include explaining the impact of improvement on other aspects and impacts and stating the baseline year.

Different types of claims will require different levels of substantiation. The proposal does not prescribe a single method and does not require conducting a full life-cycle analysis for each type of a claim. The assessment used to substantiate explicit environmental claims need to consider the life-cycle of the product or of the overall activities of the trader in order to

60 OJ L 124, 20.5.2003, p. 36

identify the relevant impacts which are subject to the claims, and to enable the trader to avoid omissions of any relevant aspects. This is also necessary to check if the benefits claimed result in a transfer of impacts to other stages of the life cycle or to significant increase of other environmental impacts.

For the assessment to be considered robust, it should include primary, company-specific data, for relevant aspects contributing significantly to the environmental performance of the product or trader referred to in the claim. Consumer protection authorities in some countries are starting to question product specific environmental claims if no primary data has been used in the substantiation. The right balance should be found between ensuring relevant and robust information for substantiating claims and the efforts needed to gather primary information considering the accessibility of primary information. The requirement to include primary information should consider how much influence the trader making the claim has over the respective process, and if primary information is available. The requirement should also consider if the processes are run by the trader making the claim and, in the case, where they are not, if the trader has access to primary information on the process. Moreover, if the process is not run by the trader making the claim and if primary information is not available, the use of secondary information should be permitted, even for processes that contribute significantly to the environmental performance of the product or trader. In any case, both primary and secondary, i.e., average data, should show a high level of quality and accuracy.

It is deemed appropriate to address climate-related claims based on offsets in a more transparent manner. Therefore, the proposal requires, for climate-related claims, to report separately from greenhouse gas emissions any greenhouse gas emissions *offsets* used by the traders, as additional environmental information, which is also the approach followed by the product environmental footprint/organisation environmental footprint methods. In addition, this information should also specify whether these offsets relate to emission reductions or removals and ensure that the offsets relied upon are of high integrity and accounted for correctly to coherently and transparently reflect the claimed impact on climate.

Microenterprises are exempted from the requirements of this article unless they wish to receive a certificate of conformity of the environmental claim in which case they will have to comply with these requirements.

The Commission should be empowered to adopt delegated acts to complement the requirements on substantiation for certain types of claims. These delegated acts should in principle follow the results of monitoring of evolution of environmental claims on the market to allow prioritising claims that are prone to misleading consumers. However, for some types of claims it may be necessary for the Commission to act prior to that.

6.3. Requirements on communication of environmental claims

The provisions of Article 5 respond to the problem of lack of reliable information on product's environmental characteristics[61] for those traders who make an environmental claim. These requirements also support the aim of ensuring that environmental claims are made on products or traders that offer environmental benefits as compared to common practice.

Notably, the proposal sets out that, when communicated, all claims:

[61] SWD(2022) 85 final, p.50: "In relation to sub-problem 1.1 (lack of reliable information on product's environmental characteristics at the point of sale), all options have been discarded at an early stage as their added value could not be demonstrated, and the measures taken under the Green Claims Initiative and the Sustainable Products Initiative are expected to reduce this sub-problem significantly."

- shall only cover environmental impacts, aspects or performance that are assessed in accordance with the substantiation requirements laid down in this proposal and are identified as significant for the respective product or trader;
- where relevant for the claim made, shall include information on how consumers may appropriately use the product to decrease environmental impacts;
- shall be accompanied by information on the substantiation (including information on product or activities of trader; aspects, impacts or performance covered by the claim; other recognised international standards, where relevant; underlying studies and calculations; how improvements that are subject to the claim are achieved; the certificate of conformity and coordinates of the verifier).

Microenterprises are exempted from the requirements of this article as regards provision of information on substantiation unless they wish to receive a certificate of conformity of the environmental claim in which case they will have to comply with these requirements.

The Commission should be empowered to adopt delegated acts to complement the requirements on communication for certain types of claims in case this is necessary to complement the supplementary rules on substantiation adopted under Article 3. Furthermore, Article 6 states that comparative claims on the improvement of an environmental impact of a product as compared to another product of the same trader, or that the trader no longer sells to consumers, shall be based on evidence that improvement is significant and achieved in the last five years.

6.4. Provisions on environmental labels and labelling schemes

These requirements should be seen as complementary to the requirements on displaying a sustainability label set out in the proposal on empowering consumers for the green transition and the Commission guidance on interpretation and application of the Unfair Commercial Practices Directive[62.]

On top of requirements on substantiation and communication applicable to all types of claims, this proposal builds on the requirements of the proposal on empowering consumers[63] banning labels based on self-certification[64], and provides additional safeguards to improve the quality of ecolabelling schemes by requiring the following transparency and credibility requirements (as per policy option from the impact assessment).

Article 7 ensures labels fulfil the requirements already set out in previous articles and subject labels to the verification in accordance with Article 11.

The proliferation of environmental labels and the ensuing consumer confusion, market fragmentation and increased burden from complying with requirements in different Member States necessitate ambitious measures that benefit both consumers and businesses. Therefore, in the course of the decision making process it was considered appropriate that the proposal on environmental claims foresees additional provisions to target proliferation of labels, beyond those assessed in the impact assessment accompanying this proposal and the proposal Empowering consumers for the green transition, notably the prohibition of labels presenting a

62 Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (OJ C 526, 29.12.2021, p. 1).

63 COM(2022) 143 final, Annex to the 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.

64 i.e. not based on a certification scheme, or not established by public authorities

rating or score based on an aggregated indicator representing cumulative environmental impacts unless these are established at the EU level.

Article 8 further details requirements for environmental labelling schemes. These requirements are relatively similar to the governance criteria of a number of well-known and reputable public and private sustainability labelling schemes, and include as follows:

- requirements on transparency and accessibility of information on ownership, decision-making body and objectives,
- the criteria underlying the award of labels are developed by experts and reviewed by stakeholders;
- the existence of complaint and resolution mechanism;
- procedures for dealing with non-compliance and possibility of withdrawal or suspension of labelling in case of persistent and flagrant non-compliance.

For the same reasons listed above on the proliferation of environmental labels and the ensuing consumer confusion, Article 8 also introduces additional provisions to target the proliferation of labelling schemes, notably:

- prohibition of establishment of new national or regional publicly owned schemes ;
- a validation procedure for new schemes established by private operators from the EU and third countries that should be assessed by national authorities and validated only if they demonstrate added value in terms of their environmental ambition, their coverage of environmental impacts, of product category group or sector and their ability to support the green transition of SMEs as compared to the existing Union, national or regional schemes.

New public schemes from third countries wishing to operate on the Union market have to meet the requirements of this proposal and shall be subject to prior notification and approval by the Commission with the aim of ensuring that these schemes provide added value in terms of environmental ambition, coverage of environmental impacts, product groups or sectors.

Article 9 sets the requirements for the review of environmental claims by traders.

6.5. Ex-ante verification of environmental claims and labelling schemes

Article 10 details how the substantiation and communication of environmental claims and labels will have to be 3rd party verified and certified to comply with the requirements of the Directive before the claim is used in a commercial communication. An officially accredited body (the 'verifier') will carry out this ex-ante verification of claims submitted by the company wishing to use it. This measure will ensure every claim that the consumer will be exposed to had been verified to be reliable and trustworthy. The proposal also defines detailed requirements for 'verifiers' to fulfil in order to be accredited by the Member States.

Once the 'verifier' has carried out the verification of the submitted claim, it will decide to issue (or not) a *certificate of conformity*. This certificate will be recognised across the EU, shared between Member States via the Internal Market Information System[65] and will allow companies to use the claim in a commercial communication to consumers across the internal market. The certificate of conformity of claims will provide businesses with certainty that

[65] Established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (OJ L 316, 14.11.2012, p. 1–11)

their certified claim will not be challenged by the competent authorities in another Member State. This procedure will also apply to the verification of labelling schemes in terms of their compliance with the governance provisions. The Commission will be empowered to adopt an implementing act specifying the format of certificate of conformity of claims.

Article 11 sets out that the 'verifier' must be an officially accredited[66] independent body, with no conflicts of interest to ensure independence of judgment and hold the highest degree of professional integrity. They must have the required expertise, equipment, and infrastructure to carry out the verifications as well as enough suitable personnel that observe professional secrecy.

6.6. Small and medium sized enterprises

Given the context of programmes from which small and medium sized enterprises can benefit, Article 12 ensures such initiatives are taken into account and the appropriate measures are taken to help them including financial support, access to finance, specialised management and staff training as well as organisational and technical assistance.

6.7. Enforcement of provisions

Article 13 foresees that each Member State will designate one or more appropriate competent authority as responsible to enforce the provisions set out in the proposal. As the consumer protection mechanisms vary between each Member State, it is more pertinent to let them designate the most efficient competent authority to carry out the enforcement including inspections, sanctions and judicial pursuits. In this way, the proposal leaves the possibility to Member States to choose the existing mechanisms under consumer protection law.

If more than one competent authority is designated on their territory, Member States will need to clarify the duties of each and establish the appropriate communication and coordination mechanisms, once again with the aim of efficiency.

Article 14 delineates the powers of the competent authorities to investigate and enforce the requirements. They include the power to access relevant information related to an infringement, to require access to relevant information to establish if there has been an infringement, to start investigations or proceedings, to require traders to adopt remedies and take action to end an infringement, to adopt injunctive relief where appropriate and to impose penalties.

Article 15 sets out that the competent authorities are also bestowed with the responsibility of monitoring the compliance of the proposal on the internal market. They are expected to perform regular checks of claims and labelling schemes (based on publicly available reports) as well as evaluating claims and labelling schemes that present a risk of infringement. Article 16 details the complaint handling mechanisms and requirements for access to justice.

When it comes to addressing infringements, Article 17 defines a series of obligations for Member States to respect when defining their penalty regime. The penalty must depend on the nature, gravity, extent and duration of the infringement, its character (i.e. intentional or negligent), the financial strength of the responsible party, the economic benefits derived from the infringement as well as any previous infringements or other aggravating factors. The penalties already imposed in other Member States for the same infringement shall also be considered.

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[66] In line with Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30)

Article 18 sets out the exercise of the delegation. The Committee procedure is set out in Article 19.

Article 20 sets out the monitoring requirements which is to be based on an overview of faulty environmental claims and labels provided by the Member States. The EEA shall publish on a bi-annual basis a report assessing the evolution of environmental claims in each Member State and the Union as a whole. An evaluation of the Directive is also foreseen in the provisions.

2023/0085 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on substantiation and communication of explicit environmental claims (Green Claims Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee

Having regard to the opinion of the Committee of the Regions[1],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Claiming to be "green" and sustainable has become a competitiveness factor, with green products registering greater growth than standard products. If goods and services offered and purchased on the internal market are not as environmentally friendly as presented, this would mislead the consumers, hamper the green transition and prevent the reduction of negative environmental impacts. The potential of green markets is not fully realised. Different requirements imposed by national legislation or private initiatives regulating environmental claims create a burden for companies in cross-border trade, as they need to comply with different requirements in each Member State. This affects their capacity to operate in and take advantage of the internal market. At the same time, market participants have difficulties with identifying reliable environmental claims and making optimal purchasing decisions on the internal market. With a proliferation of different labels and calculation methods on the market, it is difficult for consumers, businesses, investors and stakeholders to establish if claims are trustworthy.

(2) If environmental claims are not reliable, comparable and verifiable, consumers and other market actors cannot fully leverage their purchasing decisions to reward better environmental performance. Similarly, the lack of reliable, comparable and verifiable information hinders incentives for optimising environmental performance, which would typically go hand in hand with efficiency gains and cost savings for companies along the supply chain as well. These consequences are exacerbated by the lack of a common reference across the internal market and the ensuing confusion.

(3) For users of environmental information (consumers, businesses, investors, public administrations, NGOs) included in environmental claims, the lack of reliability,

[1] OJ C , , p. .

comparability and verifiability leads to an issue of trust in environmental information and confusion in interpreting heterogeneous, contradictory messages. This is detrimental to consumers and other market actors, as they may choose a product or a business transaction over other alternatives based on misleading information.

(4) It is therefore necessary to harmonise further the regulation of environmental claims. Such harmonisation will strengthen the market for more sustainable products and traders by avoiding market fragmentation due to diverging national approaches. It will also set a benchmark that can drive the global transition to a just, climate-neutral, resource-efficient and circular economy[2].

(5) Detailed Union rules on substantiation of explicit environmental claims, applicable to companies operating on the Union market in business to consumer communication, will contribute to the green transition towards a circular, climate-neutral and clean economy in the Union by enabling consumers to take informed purchasing decisions, and will help create a level-playing field for market operators making such claims.

(6) A regulatory framework for environmental claims is one of the actions proposed by the Commission to implement the European Green Deal[3], which recognises that reliable, comparable and verifiable information plays an important part in enabling buyers to make more sustainable decisions and reduces the risk of 'greenwashing', and includes commitments to step up regulatory and non-regulatory efforts to tackle false environmental claims. Together with other applicable Union regulatory frameworks, including the proposal for a Directive on empowering consumers for the green transition[4], amending Directive 2005/29/EC of the European Parliament and of the Council[5] that this proposal aims at complementing, they establish a clear regime for environmental claims, including environmental labels.

(7) This Directive is part of a set of interrelated initiatives to establish a strong and coherent product policy framework that will make environmentally sustainable products and business models the norm, and not the exception, and to transform consumption patterns so that no waste is produced in the first place. The Directive is complemented, amongst others, by interventions on the circular design of products, on fostering new business models and setting minimum requirements to prevent that environmentally harmful products are placed on the EU market through the proposal for an Eco-design for Sustainable Products Regulation[6].

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2 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

3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, COM/2019/640 final

4 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

5 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).

6 Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, COM(2022) 132 final

(8) The specific needs of individual economic sectors should be recognised and this Directive should therefore apply to voluntary explicit environmental claims and environmental labelling schemes that are not regulated by any other Union act as regards their substantiation or communication, or verification. This Directive should therefore not apply to explicit environmental claims for which the Union legislation lays down specific rules, including on methodological frameworks, assessment or accounting rules related to measuring and calculating environmental impacts, environmental aspects or environmental performance of products or traders, or providing mandatory and non-mandatory information to consumers on the environmental performance of products and traders or sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to the Union rules.

(9) Within the context of the European Green Deal, the Farm to Fork Strategy and the Biodiversity Strategy, and in accordance with the target of achieving 25% of EU agricultural land under organic farming by 2030 and a significant increase in organic aquaculture and with the Action Plan on the Development of Organic Production (COM(2021) 141), organic farming and organic production need to be developed further. As regards Regulation (EU) 2018/848 of the European Parliament and of the Council[7], this Directive should not apply to environmental claims on organically certified products substantiated on the basis of that Regulation, related, for instance, to the use of pesticides, fertilisers and anti-microbials or, for instance, to positive impacts of organic farming on biodiversity, soil or water[8]. It also has a positive impact on biodiversity, it creates jobs and attracts young farmers. Consumers recognise its value. In accordance with Regulation (EU) 2018/848, the terms “bio” and “eco” and their derivatives, whether alone or in combination, are only to be used in the Union for products, their ingredients or feed materials that fall under the scope of that Regulation where they have been produced in accordance with Regulation (EU) 2018/848. For instance, in order to call the cotton “eco”, it has to be certified as organic, as it falls within the scope of Regulation (EU) 2018/848. On the contrary, if the dishwasher detergent is called “eco”, this does not fall within the scope of Regulation (EU) 2018/848, and is instead regulated by the provisions of Directive 2005/29/EC.

(10) In addition, this Directive shall not apply to sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to the Union or national rules for financial services, such as rules relating to banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, investment firms, payment, portfolio management and investment advice, including the services listed in Annex I to Directive 2013/36[9] of the European Parliament and of the Council, as well as settlement and clearing activities and advisory, intermediation and other auxiliary financial services, includnig standards or certification schemes relating to such financial services.

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7 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

8 https://agriculture.ec.europa.eu/system/files/2023-01/agri-market-brief-20-organic-farming-eu_en_1.pdf

9 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(11) Furthermore, this Directive should not apply to environmental information reported by undertakings that apply European sustainability reporting standards on a mandatory or voluntary basis in accordance with Directive 2013/34/EU[10] and sustainability information reported on a voluntary basis by undertakings defined in articles 3(1), 3(2) or 3(3) of this Directive where that information is reported in accordance with standards referred to in Articles 29b or 29c of Directive 2013/34/EU or in accordance with other international, European or national sustainability reporting standards or guidelines.

(12) Offers to purchase goods or receive services conditional on the fulfilment of environmental criteria defined by the seller or service provider or offers where consumers receive more favourable contractual terms or prices upon the fulfilment of such criteria, for example the so-called green loans, green home insurance or financial service products with similar rewards for environmental actions or behaviour should not be subject to the rules of this Directive.

(13) In case future Union legislation lays down rules on environmental claims, environmental labels, or on the assessment or communication of environmental impacts, environmental aspects or environmental performance of certain products or traders in specific sectors, for example the announced "*Count Emissions EU*", the forthcoming Commission proposal on a legislative framework for a Union sustainable food system, the Eco-design for Sustainable Products Regulation[11] or Regulation (EU) No 1007/2011 of the European Parliament and of the Council[12], those rules should be applied to the explicit environmental claims in question instead of the rules set out in this Directive.

(14) The proposal for a Directive on empowering consumers for the green transition which amends Directive 2005/29/EC, sets out a number of specific requirements on environmental claims and prohibits generic environmental claims which are not based on recognised excellent environmental performance relevant to the claim. Examples of such generic environmental claims are 'eco-friendly', 'eco', 'green', 'nature's friend', 'ecological' and 'environmentally correct'. This Directive should complement the requirements set out in that proposal by addressing specific aspects and requirements for explicit environmental claims as regards their substantiation, communication and verification. The requirements set out in this Directive should apply to specific aspects of explicit environmental claims and will prevail over the requirements set out in Directive 2005/29/EC with regard to those aspects in case of conflict, pursuant to Article 3(4) of that Directive.

(15) In order to ensure that consumers are provided with reliable, comparable and verifiable information which enables them to make more environmentally sustainable decisions and to reduce the risk of 'greenwashing, it is necessary to establish requirements for substantiation of explicit environmental claims. Such substantiation should take into account internationally recognised scientific approaches to identifying and measuring

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10 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

11 COM(2022) 132 final

12 Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council (OJ L 272, 18.10.2011, p. 1).

environmental impacts, environmental aspects and environmental performance of products or traders, and it should result in reliable, transparent, comparable and verifiable information to the consumer.

(16) The assessment made to substantiate explicit environmental claims needs to consider the life-cycle of the product or of the overall activities of the trader and should not omit any relevant environmental aspects or environmental impacts. The benefits claimed should not result in an unjustified transfer of negative impacts to other stages of the life cycle of a product or trader, or to the creation or increase of other negative environmental impacts.

(17) The assessment substantiating the explicit environmental claim should make it possible to identify the environmental impacts and environmental aspects for the product or trader that jointly contribute significantly to the overall environmental performance of the product or trader ('relevant environmental impacts' and 'relevant environmental aspects'). Indications for the relevance of the environmental impacts and environmental aspects can stem from assessments taking into account the life-cycle, including from the studies based on Environmental Footprint (EF) methods, provided that these are complete on the impacts relevant to the product category and do not omit any important environmental impacts. For example, in the Commission Recommendation on the use of Environmental Footprint methods[13] the most relevant impact categories identified should together contribute to at least 80% of the single overall score. These indications for the relevance of the environmental impacts or environmental aspects can also result from the criteria set in various ecolabels type I, as for instance the EU Ecolabel, or in Union criteria for green public procurement, from requirements set by the Taxonomy Regulation[14], from product specific rules adopted under the Regulation …./…. of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products[15] or from other relevant Union rules.

(18) In line with Directive 2005/29/EC as amended by the proposal for a Directive on empowering consumers for the green transition, the trader should not present requirements imposed by law on products within a given product category as a distinctive feature of the trader's offer or advertise benefits for consumers that are considered as common practice in the relevant market. The information used to substantiate explicit environmental claims should therefore make it possible to identify the product's or trader's environmental performance in comparison to the common practice for products in the respective product group, such as food, or in the respective sector. This is necessary to underpin the assessment whether the explicit environmental claims can be made with regard to a given product or trader in line with the function of an environmental claim, which is to demonstrate that a product or trader has a positive impact or no impact on the environment, or that a product or a trader is less damaging to the environment than other products or traders. The common practice could be equivalent to the minimum legal requirements that are applicable to

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13 Commission Recommendation (EU) 2021/2279 of 15 December 2021 on the use of the Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organisations, OJ L 471, 30.12.2021, p. 1.

14 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

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the specific environmental aspect or environmental performance, for example as regards product composition, mandatory recycled content or end-of-life treatment. However, in case majority of products within the product group or majority of traders within the sector perform better than those legal requirements, the minimum legal requirements should not be considered as common practice.

(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. To this end the information used to substantiate explicit environmental claims should ensure that the interlinkages between the relevant environmental impacts and between environmental aspects and environmental impacts can be identified along with potential trade-offs. The assessment used to substantiate explicit environmental claims should identify if improvements on environmental impacts or environmental aspects lead to the kind of trade-offs that significantly worsen the performance as regards other environmental impacts or environmental aspects, for example if savings in water consumption lead to a notable increase in greenhouse gas emissions, or in the same environmental impact in another life-cycle stage of the product, for example CO2 savings in the stage of manufacturing leading to a notable increase of CO2 emissions in the use phase. For example, a claim on positive impacts from efficient use of resources in intensive agricultural practices may mislead consumers due to trade-offs linked to impacts on biodiversity, ecosystems or animal welfare. An environmental claim on textiles containing plastic polymer from recycled PET bottles may also mislead consumers as to the environmental benefit of that aspect if the use of this recycled polymer competes with the closed-loop recycling system for food contact materials which is considered more beneficial from the perspective of circularity.

(20) In order for the environmental claim to be considered robust, it should reflect as accurately as possible the environmental performance of the specific product or trader. The information used to substantiate explicit environmental claims therefore needs to include primary, company-specific data for relevant aspects contributing significantly to the environmental performance of the product or trader referred to in the claim. It is necessary to strike the right balance between ensuring relevant and robust information for substantiating environmental claims and the efforts needed to gather primary information. The requirement to use primary information should be considered in the light of the influence the trader making the claim has over the respective process and of the availability of primary information. If the process is not run by the trader making the claim and primary information is not available, accurate secondary information should be able to be used even for processes that contribute significantly to the environmental performance of the product or trader. This is especially relevant to not disadvantage SMEs and to keep the efforts needed to acquire primary data at a proportionate level. Moreover, the relevant environmental aspects are different for each type of environmental claim. For instance, for claims on recycled or bio-based content, the composition of the product should be covered by primary data. For claims on being environmentally less polluting in a certain life cycle stage, information on emissions and environmental impacts related to that life cycle stage should include primary data as well. Both primary data and secondary data, i.e. average data, should show a high level of quality and accuracy.

(21) Climate-related claims have been shown to be particularly prone to being unclear and ambiguous and to mislead consumers. This relates notably to environmental claims

that products or entities are “climate neutral”, “carbon neutral”, “100% CO2 compensated”, or will be “net-zero” by a given year, or similar. Such statements are often based on “offsetting” of greenhouse gas emissions through “carbon credits” generated outside the company’s value chain, for example from forestry or renewable energy projects. The methodologies underpinning offsets vary widely and are not always transparent, accurate, or consistent. This leads to significant risks of overestimations and double counting of avoided or reduced emissions, due to a lack of additionality, permanence, ambitious and dynamic crediting baselines that depart from business as usual, and accurate accounting. These factors result in offset credits of low environmental integrity and credibility that mislead consumers when they are relied upon in explicit environmental claims. Offsetting can also deter traders from emissions reductions in their own operations and value chains. In order to adequately contribute to global climate change mitigation targets, traders should prioritise effective reductions of emissions across their own operations and value chains instead of relying on offsets. Any resulting residual emissions will vary by sector-specific pathway in line with the global climate targets and will have to be addressed through removals enhancements. When offsets are used nonetheless, it is deemed appropriate to address climate-related claims, including claims on future environmental performance, based on offsets in a transparent manner. Therefore, the substantiation of climate-related claims should consider any greenhouse gas emissions offsets used by the traders separately from the trader’s or the product’s greenhouse gas emissions. In addition, this information should also specify the share of total emissions that are addressed through offsetting, whether these offsets relate to emission reductions or removals enhancement, and the methodology applied. The climate-related claims that include the use of offsets have to be substantiated by methodologies that ensure the integrity and correct accounting of these offsets and thus reflect coherently and transparently the resulting impact on the climate.

(22) Traders are more and more interested in making environmental claims related to future environmental performance of a product or trader, including by joining initiatives that are promoting practices which could be conducive to a reduced environmental impact or to more circularity. These claims should be substantiated in line with the rules applicable to all explicit environmental claims.

(23) The information used to substantiate explicit environmental claims should be science based, and any lack of consideration of certain environmental impacts or environmental aspects should be carefully considered.

(24) The EF methods can support the substantiation of explicit environmental claims on specific life-cycle environmental impacts that the methods cover, provided that these are complete on the impacts relevant to the product category and do not omit any important environmental impacts. The methods cover 16 environmental impacts, including climate change, and impacts related to water, air, soil, resources, land use and toxicity.

(25) The fact that a significant environmental impact of a product is not covered by any of the 16 impact categories of the EF methods should not justify the lack of consideration of such impacts. An economic actor making an explicit environmental claim on such product group should have an obligation of diligence to find evidence substantiating such claim. For instance, an economic actor making an explicit environmental claim about a fishery product as defined in Article 5 of Regulation (EU) No 1379/2013 of

the European Parliament and of the Council[16] should have an obligation of diligence to find evidence substantiating the sustainability of the targeted fish stock. Stock assessments by the International Council for the Exploration of the Sea and similar stock assessment bodies can be used for that purpose.

(26) Furthermore, there is not yet a reliable methodology for the assessment of life-cycle environmental impacts related to the release of microplastics. However, in case such release contributes to significant environmental impacts that are not subject to a claim, the trader making the claim on another aspect should not be allowed to ignore it, but should take into account available information and update the assessment once widely recognised scientific evidence becomes available.

(27) Consumers can also be misled by explicit environmental claims that state or imply that a product or trader has less or more environmental impacts or a better or worse environmental performance than other products or traders ('comparative environmental claims'). Without prejudice to the application, where appropriate, of Directive 2006/114/EC of the European Parliament and of the Council[17], in order to allow the consumers access to reliable information, it is necessary to ensure that comparative environmental claims can be compared in an adequate manner. For instance, choosing indicators on the same environmental aspects but using a different formula for quantification of such indicators makes comparisons impossible, and therefore there is a risk of misleading consumers. In case two traders make an environmental claim on climate change, where one considered only direct environmental impacts, whilst the other considered both direct and indirect environmental impacts, these results are not comparable. Also, a decision to make the comparison only at certain stages of a products life cycle can lead to misleading claims, if not made transparent. A comparative environmental claim needs to ensure that also for products with very different raw materials, uses and process chains, like bio-based plastics and fossil-based plastics, the most relevant stages of the life-cycle are taken into account for all products. For example, agriculture or forestry is relevant for bio-based plastics while raw oil extraction is relevant for fossil-based plastics and the question whether a relevant share of the product ends up in landfill is highly relevant to plastics that biodegrade well under landfill conditions but maybe less relevant for plastics that do not biodegrade under such conditions.

(28) When setting up the requirements for substantiation and communication of explicit environmental claims, including by delegated acts adopted by the Commission, the difficulties that traders may encounter in gathering information from actors throughout their value chain or on the product's overall life-cycle, especially for services or where there is insufficient scientific evidence, should be taken into account. This is important for example for services such as electronic communications services, for which it can be difficult to define the scope and system boundaries, e.g. where the life-cycle starts and where it finishes and even more where supply chains are complex and not stable, e.g. in cases where many equipment or components are manufactured by a multitude

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16 Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000 (OJ L 354, 28.12.2013, p. 1).

17 Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (OJ L 376, 27.12.2006, p. 21).

of enterprises outside the EU, and thus sustainability related information might not be easily accessible to EU traders concerned.

(29) For some sectors or for certain products or traders, significant environmental impacts or environmental aspects could be suspected but there might not yet be a recognised scientific method to fully assess those environmental impacts and environmental aspects. For such cases and while efforts are made to develop methods and gather evidence to enable the assessment of the respective environmental impact or environmental aspect for those sectors, traders or products, traders should be able to promote their sustainability efforts through publication of company sustainability reporting, factual reporting on the company's performance metrics and work to reduce energy consumption, including on their websites. This flexibility would maintain and promote the incentives of those sectors or traders to continue their efforts to develop common environmental assessments pursuant to this Directive while providing for the necessary time to complete such work.

(30) While unfair commercial practices, including misleading environmental claims, are prohibited for all traders pursuant to Directive 2005/29/EC[18], an administrative burden linked to substantiation and verification of environmental claims on the smallest companies could be disproportionate and should be avoided. To this end, microenterprises should be exempted from the requirements on substantiation of Article 3 and 4 unless these enterprises wish to obtain a certificate of conformity of explicit environmental claims that will be recognised by the competent authorities across the Union.

(31) In order to meet both the needs of traders regarding dynamic marketing strategies and the needs of consumers regarding more detailed, and more accurate, environmental information, the Commission may adopt delegated acts to supplement the provisions on substantiation of explicit environmental claims by further specifying the criteria for such substantiation with regard to certain claims (e.g. climate-related claims, including claims about offsets, "climate neutrality" or similar, recyclability and recycled content). The Commission should be empowered to further establish rules for measuring and calculating the environmental impacts, environmental aspects and environmental performance, by determining which activities, processes, materials, emissions or use of a product or trader contribute significantly or cannot contribute to the relevant environmental impacts and environmental aspects; by determining for which environmental aspects and environmental impacts primary information should be used; and by determining the criteria to assess the accuracy of primary and secondary information. While in most cases the Commission would consider the need for adopting these rules only after having the results of the monitoring of the evolution of environmental claims on the Union market, for some types of claims it may be necessary for the Commission to adopt supplementary rules before the results of this monitoring are available. For example, in case of climate-related claims it may be necessary to adopt such supplementary acts in order to operationalise the provisions on substantiation of claims based on offsets.

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[18] 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) as amended.

(32) The Commission Recommendation (EU) 2021/2279 contains guidance on how to measure the life cycle environmental performance of specific products or organisations and how to develop Product Environmental Footprint Category Rules (PEFCRs) and Organisation Environmental Footprint Sectorial Rules (OEFSRs) that allow comparison of products to a benchmark. Such category rules for specific products or traders can be used to support the substantiation of claims in line with the requirements of this Directive. Therefore, the Commission should be empowered to adopt delegated acts to establish product group or sector specific rules where this may have added value. However, in case the Product Environmental Footprint method does not yet cover an impact category, which is relevant for a product group, the adoption of PEFCR may take place only once these new relevant environmental impact categories have been added. For example, as regards marine fisheries, the PEFCR should for example reflect the fisheries-specific environmental impact categories, in particular the sustainability of the targeted stock. Concerning space, the PEFCR should reflect defence and space-specific environmental impact categories, including the orbital space use. As regards food and agricultural products, biodiversity and nature protection, as well as farming practices, including positive externalities of extensive farming and animal welfare, should, for example, also be integrated before the adoption of PEFCR could be considered. As regards textiles, the PEFCR should for example reflect the microplastics release, before the adoption of PEFCR could be considered.

(33) Since Directive 2005/29/EC already applies to misleading environmental claims, it enables the national courts and administrative authorities to stop and prohibit such claims. For example, in order to comply with Directive 2005/29/EC, environmental claims should relate only to aspects that are significant in terms of the product's or trader's environmental impact. Environmental claims should also be clear and unambiguous regarding which aspects of the product or trader they refer to and should not omit or hide important information about the environmental performance of the product or trader that consumers need in order to make informed choices. The wording, imagery and overall product presentation, including the layout, choice of colours, images, pictures, sounds, symbols or labels, included in the environmental claim should provide a truthful and accurate representation of the scale of the environmental benefit achieved, and should not overstate the environmental benefit achieved.

(34) Where the explicit environmental claim concerns a final product and relevant environmental impacts or environmental aspects of such product occur at the use phase and consumers can influence such environmental impacts or environmental aspects via appropriate behaviour, such as, for example, correct waste sorting or impacts of use patterns on product's longevity, the claim should also include information explaining to consumers how their behaviour can positively contribute to the protection of the environment.

(35) In order to facilitate consumers' choices of more sustainable products and to incentivise efforts of traders to lower their environmental impacts, when the claim communicated relates to future environmental performance, it should as a priority be based on improvements inside trader's own operations and value chains rather than relying on offsetting of greenhouse has emissions or other environmental impacts.

(36) Consumers should have easy access to the information on the product or the trader that is the subject of the explicit environmental claim and regarding information substantiating that claim. This information should also consider needs of older

consumers. For that purpose, traders should either provide this information in a physical form or provide a weblink, QR code or equivalent leading to a website where more detailed information on the substantiation of the explicit environmental claim is made available in at least one of the official languages of the Member State where the claim is made. In order to facilitate the enforcement of this Directive, the weblink, QR code or equivalent should also ensure easy access to the certificate of conformity regarding the substantiation of the explicit environmental claim and the contact information of the verifier who drew up that certificate.

(37) In order to avoid potential disproportionate impacts on the microenterprises, the smallest companies should be exempted from the requirements of Article 5 linked to information on the substantiation of explicit environmental claims unless these enterprises wish to obtain a certificate of conformity of explicit environmental claim that will be recognised by the competent authorities across the Union.

(38) When the Commission adopts delegated acts to supplement the provisions on substantiation of explicit environmental claims it may be necessary to also supplement the provisions on communication of such claims. For example, in case specific life-cycle-based rules on substantiation of explicit environmental claims for certain products group or sector are established, it may be necessary to add supplementary rules on presentation of environmental impacts assessed based on these rules by requiring that three main environmental impacts are presented next to the aggregated indicator of overall environmental performance. To this end the Commission should be empowered to adopt delegated acts to supplement the provisions on communication of explicit environmental claims.

(39) Currently, more than 200 environmental labels are used on the Union market. They present important differences in how they operate as regards for example the transparency and comprehensiveness of the standards or methods used, the frequency of revisions, or the level of auditing or verification. These differences have an impact on how reliable the information communicated on the environmental labels is. While claims based on the EU Ecolabel or its national equivalents follow a solid scientific basis, have a transparent development of criteria, require testing and third-party verification and foresee regular monitoring, evidence suggests that many environmental labels currently on the EU market are misleading. In particular, many environmental labels lack sufficient verification procedures. Therefore, explicit environmental claims made on environmental labels should be based on a certification scheme.

(40) In cases where an environmental label involves a commercial communication to consumers that suggests or creates the impression that a product has a positive or no impact on the environment, or is less damaging to the environment than competing products without the label, that environmental label also constitutes an explicit environmental claim. The content of such environmental label is therefore subject to the requirements on substantiation and communication of explicit environmental claims.

(41) The environmental labels often aim at providing consumers with an aggregated scoring presenting a cumulative environmental impact of products or traders to allow for direct comparisons between products or traders. Such aggregated scoring however presents risks of misleading consumers as the aggregated indicator may dilute negative environmental impacts of certain aspects of the product with more positive environmental impacts of other aspects of the product. In addition, when developed by

different operators, such labels usually differ in terms of specific methodology underlying the aggregated score such as the environmental impacts considered or the weighting attributed to these environmental impacts. This may result in the same product receiving different score or rating depending on the scheme. This concern arises in relation to schemes established in the Union and in third countries. 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. In order to avoid this risk and ensure better harmonisation within the single market, the explicit environmental claims, including environmental labels, based on an aggregated score representing a cumulative environmental impact of products or traders should not be deemed to be sufficiently substantiated, unless those aggregated scores stem from Union rules, including the delegated acts that the Commission is empowered to adopt under this Directive, resulting in Union-wide harmonised schemes for all products or per specific product group based on a single methodology to ensure coherence and comparability.

(42) In accordance with the proposal for a Directive on empowering consumers for the green transition, which amends Directive 2005/29/EC, displaying a sustainability label which is not based on a certification scheme or not established by public authorities constitutes an unfair commercial practice in all circumstances. This means that the 'self-certified' sustainability labels, where no third-party verification and regular monitoring takes place as regards compliance with the underlying requirements of the sustainability label are prohibited.

(43) In order to combat misleading explicit environmental claims communicated in the form of environmental labels and increase consumer trust in environmental labels, this Directive should establish governance criteria that all environmental labelling schemes are to comply with, complementing thus the requirements set in the said proposal amending Directive 2005/29/EC.

(44) 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, new national or regional environmental labelling schemes should be developed only under the Union law. Nevertheless, Member States can request the Commission to consider developing public labelling schemes at the Union level for product groups or sectors where such labels do not yet exist in Union law and where harmonisation would bring added value to achieve the sustainability and internal market objectives in an efficient manner.

(45) In order not to create unnecessary barriers to international trade and to ensure equal treatment with the public schemes established in the Union, the public authorities outside of the Union setting up new labelling schemes should be allowed to request approval from the Commission for use of the label on the Union market. This approval should be conditional on the scheme's contribution to reaching the objectives of this Directive and provided that the schemes demonstrate added value in terms of environmental ambition, coverage of environmental impacts, product group or sector and meet all the requirements of this Directive.

(46) Environmental labelling schemes established by private operators, if too many and overlapping in terms of scope, may create confusion in consumers or undermine their trust in environmental labels. Therefore, Member States should only allow that new environmental labelling schemes are established by private operators provided that

they offer significant added value as compared to the existing national or regional schemes in terms of environmental ambition of the criteria to award the label, coverage of relevant environmental impacts, and completeness of the underlying assessment. Member States should set up a procedure for the approval of new environmental labelling schemes based on a certificate of conformity drawn up by the independent verifier. This should apply to schemes established in the Union and outside of the Union.

(47) In order to provide legal certainty and facilitate enforcement of the provisions on new national and regional officially recognised environmental labelling schemes and new private labelling schemes, the Commission should publish a list of such schemes that may either continue to apply on the Union market or enter the Union market.

(48) In order to ensure a harmonised approach by the Member States to the assessment and approval of environmental labelling schemes developed by private operators, and to establish an approval procedure by the Commission for proposed schemes established by public authorities outside of the Union, implementing powers should be conferred on the Commission to adopt common rules specifying detailed requirements for approval of such environmental labelling schemes, the format and content of supporting documents and rules of procedure to approve such schemes. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[19].

(49) It is essential that explicit environmental claims reflect correctly the environmental performance and environmental impacts covered by the claim, and consider the latest scientific evidence. Member States should therefore ensure that the trader making the claim reviews and updates the substantiation and communication of the claims at least every 5 years to ensure compliance with the requirements of this Directive

(50) To ensure that explicit environmental claims are reliable, it is necessary that Member States set up procedure for verifying that the substantiation and communication of explicit environmental claims, including environmental labels, or the environmental labelling schemes, comply with the requirements set out in this Directive.

(51) In order to allow the competent authorities to control more efficiently the implementation of the provisions of this Directive and to prevent as much as possible unsubstantiated explicit environmental claims, including environmental labels, from appearing on the market, verifiers complying with the harmonised requirements set up by the Directive should check that both the information used for the substantiation and communication of explicit environmental claims meet the requirements of this Directive. In order to avoid misleading consumers, the verification should in any case take place before the environmental claims are made public or environmental labels are displayed. The verifier can, if appropriate, indicate several ways of communicating the explicit environmental claim that comply with the requirements of this Directive to avoid the need for continuous re-certification in case the way of communication is slightly modified without affecting the compliance with the requirements of this Directive. To facilitate the traders compliance with the rules on substantiation and communication of explicit environmental claims, including the environmental labels, the verification should take into account the nature and content of the claim or the

[19] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

environmental label, including whether they appear to be unfair in the light of Directive 2005/29/EC.

(52) In order to provide traders with legal certainty across the internal market as regards compliance of the explicit environmental claims with the requirements of this Directive, the certificate of conformity should be recognised by the competent authorities across the Union. Microenterprises should be allowed to request such certificate if they wish to certify their claims in line with the requirements of this Directive and benefit from the certificate's recognition across the Union. The certificate of conformity should however not prejudge the assessment of the environmental claim by the public authorities or courts which enforce Directive 2005/29/EC.

(53) In order to ensure uniform conditions for the provisions on verification of explicit environmental claims and environmental labelling schemes and to facilitate the enforcement of the provisions on verification of this Directive, implementing powers should be conferred on the Commission to adopt a common form for certificates of conformity and the technical means for issuing such certificates. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[20].

(54) Small and medium-sized enterprises (SMEs) should be able to benefit from the opportunities provided by the market for more sustainable products but they could face proportionately higher costs and difficulties with some of the requirements on substantiation and verification of explicit environmental claims. The Member States should provide adequate information and raise awareness of the ways to comply with the requirements of this Directive, ensure targeted and specialised training, and provide specific assistance and support, including financial, to SMEs wishing to make explicit environmental claims on their products or as regards their activities. Member States actions should be taken in respect of applicable State aid rules.

(55) In order to ensure a level-playing field on the Union market, where claims about the environmental performance of a product or a trader are based on reliable, comparable and verifiable information, it is necessary to establish common rules on enforcement and compliance.

(56) In order to ensure that the objectives of this Directive are achieved and the requirements are enforced effectively, Member States should designate their own competent authorities responsible for the application and enforcement of this Directive. However, in view of the close complementarity of Articles 5 and 6 of this Directive with the provisions of Directive 2005/29/EC, Member States should also be allowed to designate for their enforcement the same competent authorities as those responsible for the enforcement of Directive 2005/29/EC. For the sake of consistency, when Member States make that choice, they should be able to rely on the means and powers of enforcement that they have established in accordance with Article 11 of Directive 2005/29/EC, in derogation from the rules on enforcement laid down in this Directive. In cases where there is more than one designated competent authority in their territory and to ensure effective exercise of the duties of the competent

[20] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

authorities, Member State should ensure a close cooperation between all designated competent authorities.

(57) Without prejudice to the powers already conferred by Regulation (EU) 2017/2394[21] to consumer protection authorities, competent authorities should have a minimum set of investigation and enforcement powers in order to ensure compliance with this Directive, to cooperate with each other more quickly and more efficiently, and to deter market actors from infringing this Directive. Those powers should be sufficient to tackle the enforcement challenges of e-commerce and the digital environment effectively and to prevent non-compliant market actors from exploiting gaps in the enforcement system by relocating to Member States whose competent authorities may be less equipped to tackle unlawful practices.

(58) Competent authorities should be able to use all facts and circumstances of the case as evidence for the purpose of their investigation.

(59) In order to prevent the occurrence of misleading and unsubstantiated explicit environmental claims on the Union market, competent authorities should carry out regular checks of explicit environmental claims made, and the environmental labelling schemes applied, to verify that the requirements laid down in this Directive are fulfilled.

(60) When competent authorities detect an infringement of requirements of this Directive they should carry out an evaluation and based on its results notify the trader about the infringement detected and require that corrective actions are taken by the trader. To minimise the misleading effect on consumers of the non-compliant explicit environmental claim or non-compliant environmental labelling scheme, the trader should be required by the competent authorities to take an effective and rapid action to remediate that infringement. The corrective action required should be proportionate to the infringement detected and its expected harmful effects on the consumers.

(61) Where an infringement is not restricted to their national territory, and the explicit environmental claim has been advanced between traders, competent authorities should inform the other Member States of the results of evaluation they have carried out and of any action that they have required the trader responsible to take.

(62) Competent authorities should also carry out checks of explicit environmental claims on the Union market when in possession of and based on relevant information, including substantiated concerns submitted by third parties. Third parties submitting a concern should be able to demonstrate a sufficient interest or maintain the impairment of a right.

(63) In order to ensure that traders are effectively dissuaded from non-compliance with the requirements of this Directive, Member States should lay down rules on penalties applicable to infringements of this Directive and ensure that those rules are implemented. The penalties provided for should be effective, proportionate and dissuasive. To facilitate a more consistent application of penalties, it is necessary to establish common non-exhaustive criteria for determining the types and levels of penalties to be imposed in case of infringements. That criteria should include, *inter*

[21] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

alia, the nature and gravity of the infringement as well as the economic benefits derived from the infringement in order to ensure that those responsible are deprived of those benefits.

(64) When setting penalties and measures for infringements, the Member States should foresee that, based on the gravity of the infringement, the level of fines should effectively deprive the non-compliant trader from the economic benefit derived from using the misleading or unsubstantiated explicit environmental claim or non-compliant environmental labelling scheme, including in cases of repeated infringements. The measures for infringements foreseen by the Member States should therefore also include confiscation of the relevant product from the trader or revenues gained from the transactions affected by this infringement or a temporary exclusions or prohibitions from placing products or making available services on the Union market. The gravity of the infringement should be the leading criterion for the measures taken by the enforcement authorities. The maximum amount of fines should be dissuasive and set at least at the level of 4% of the trader's total annual turnover in the Member State or Member States concerned in case of widespread infringements with a Union dimension that are subject to coordinated investigation and enforcement measures in accordance with Regulation (EU) 2017/2394[22].

(65) When adopting delegated acts pursuant to Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[23]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(66) In order to assess the performance of the legislation against the objectives that it pursues, the Commission should carry out an evaluation of this Directive and present a report on the main findings to the European Parliament and the Council. In order to inform an evaluation of this Directive, Member States should regularly collect information on the application of this Directive and provide it to the Commission on an annual basis.

(67) Where based on the results of the monitoring and evaluation of this Directive the Commission finds it appropriate to propose a review of this Directive, the feasibility and appropriateness of further provisions on mandating the use of common method for substantiation of explicit environmental claims, the extension of prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society, or further harmonisation as regards requirements on the substantiation of specific environmental claims on environmental aspects or environmental impacts should also be considered.

(68) The use of the most harmful substances should ultimately be phased-out in the Union to avoid and prevent significant harm to human health and the environment, in

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22 Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

23 OJ L 123, 12.5.2016, p. 1.

particular their use in consumer products. Regulation (EC) 1272/2008 of the European Parliament and of the Council[24] prohibits the labelling of mixtures and substances that contain hazardous chemicals as 'non-toxic', 'non-harmful', 'non-polluting', 'ecological' or any other statements indicating that the substance or mixture is not hazardous or statements that are inconsistent with the classification of that substance or mixture. Member States are required to ensure that such obligation is fulfilled. As committed in the Chemicals Strategy for Sustainability the Commission will define criteria for essential uses to guide its application across relevant Union legislation. .

(69) Since the objectives of this Directive, namely to improve the functioning of the internal market for economic actors operating in the internal market and consumers relying on environmental claims, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(70) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[25], Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(71) The Annex to Regulation (EU) 1024/2012 of the European Parliament and of the Council[26] should be amended to include a reference to this Directive so as to facilitate the administrative cooperation between the competent authorities through the Internal Market Information System.

(72) The Annex to Regulation (EU) 2017/2394 of the European Parliament and of the Council[27] should be amended to include a reference to this Directive so as to facilitate cross-border cooperation on enforcement of this Directive.

(73) Annex I of Directive (EU) 2020/1828 of the European Parliament and of the Council[28] should be amended to include a reference to this Directive so as to ensure that the collective interests of consumers laid down in this Directive are protected.

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24 Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

25 OJ C 369, 17.12.2011, p. 14.

26 Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation') (OJ L 316, 14.11.2012, p. 1).

27 OJ L 345, 27.12.2017, p. 1

28 Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.

2. This Directive does not apply to environmental labelling schemes or to explicit environmental claims regulated by or substantiated by rules established in:

   (a) Regulation (EC) No 66/2010 of the European Parliament and of the Council[29],

   (b) Regulation (EU) 2018/848 of the European Parliament and of the Council[30],

   (c) Regulation (EU) 2017/1369 of the European Parliament and of the Council[31];

   (d) Directive 2009/125/EC of the European Parliament and of the Council[32],

   (e) Regulation (EU) No 305/2011 of the European Parliament and of the Council[33]

   (f) Regulation (EC) No 765/2008 of the European Parliament and of the Council[34];

   (g) Regulation (EC) No 1221/2009 of the European Parliament and of the Council[35];

   (h) Directive 1999/94/EC of the European Parliament and of the Council[36];

   (i) Regulation (EU) No 305/2011 of the European Parliament and of the Council[37];

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29 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

30 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

31 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

32 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10).

33 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

34 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

35 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

36 Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16).

37 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

(j) Directive 2006/66/EC of the European Parliament and of the Council[38];

(k) Directive 94/62/EC of the European Parliament and of the Council[39];

(l) Regulation (EU) 2020/852 of the European Parliament and of the Council[40]

(m) Regulation (EU) … /… of the European Parliament and of the Council[41];

(n) Directive 2012/27/EU of the European Parliament and of the Council[42];

(o) Directive 2013/34/EU of the European Parliament and of the Council[43] and other Union, national or international rules, standards or guidelines for financial services, financial instruments, and financial products;

(p) other existing or future Union rules setting out the conditions under which certain explicit environmental claims about certain products or traders may be or are to be made or Union rules laying down requirements on the assessment or communication of environmental impacts, environmental aspects or environmental performance of certain products or traders or conditions for environmental labelling schemes.

Article 2

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) ‘environmental claim’ means environmental claim as defined in Article 2, point (o), of Directive 2005/29/EC;

(2) ‘explicit environmental claim’ means an environmental claim that is in textual form or contained in an environmental label;

(3) ‘trader’ means trader as defined in Article 2, point (b), of Directive 2005/29/EC;

(4) ‘product’ means product as defined in Article 2, point (c), of Directive 2005/29/EC;

(5) ‘consumer’ means consumer as defined in Article 2, point (a), of Directive 2005/29/EC;

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38 Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1).

39 Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

40 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

41 Regulation (EU) … /… of the European Parliament and of the Council establishing a Union certification framework for carbon removals (OJ L …).

42 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

43 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(6) ‘business-to-consumer commercial practices’ means business-to-consumer commercial practices as defined in Article 2, point (d), of Directive 2005/29/EC;

(7) ‘sustainability label’ means sustainability label as defined in Article 2, point (r), of Directive 2005/29/EC;

(8) ‘environmental label’ means a sustainability label covering only or predominantly environmental aspects of a product, a process or a trader;

(9) ‘product group’ means a set of products that serve similar purposes or are similar in terms of use or have similar functional properties;

(10) ‘certification scheme’ means a certification scheme as defined in Article 2, point (s), of Directive 2005/29/EC;

(11) ‘verification’ means the conformity assessment process carried out by a verifier to verify whether the substantiation and communication of the explicit environmental claims are in compliance with the requirements set out in this Directive or whether environmental labelling schemes comply with this Directive;

(12) ‘value chain’ means all activities and processes that are part of the life cycle of a product or activity of a trader, including remanufacturing;

(13) ‘life cycle’ means the consecutive and interlinked stages of a product’s life, consisting of raw material acquisition or generation from natural resources, pre-processing, manufacturing, storage, distribution, installation, use, maintenance, repair, upgrading, refurbishment as well as re-use, and end-of-life;

(14) ‘primary information’ means information that is directly measured or collected by the trader from one or more facilities that are representative for the activities of the trader;

(15) ‘secondary information’ means information that is based on other sources than primary information including literature studies, engineering studies and patents.

(16) ‘public’ means one or more natural or legal persons and their associations, traders or groups;

(17) ‘environmental performance’ means the performance of a certain product or product group or trader or sector related to the environmental aspects or environmental impacts of that product or product group or the activities of that trader or sector;

(18) ‘environmental aspect’ means an element of a trader’s or sector’s activities or of products or product groups that interact or can interact with the environment.

(19) ‘environmental impact’ means any change to the environment, whether positive or negative, that wholly or partially results from a trader’s or sector’s activities or from a product or product group during its life cycle.

Article 3

Substantiation of explicit environmental claims

1. Member States shall ensure that traders carry out an assessment to substantiate explicit environmental claims. This assessment shall:

   (a) specify if the claim is related to the whole product, part of a product or certain aspects of a product, or to all activities of a trader or a certain part or aspect of these activities, as relevant to the claim;

(b) rely on widely recognised scientific evidence, use accurate information and take into account relevant international standards;

(c) demonstrate that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life-cycle perspective;

(d) where a claim is made on environmental performance, take into account all environmental aspects or environmental impacts which are significant to assessing the environmental performance;

(e) demonstrate that the claim is not equivalent to requirements imposed by law on products within the product group, or traders within the sector;

(f) provide information whether the product or trader which is subject to the claim performs significantly better regarding environmental impacts, environmental aspects or environmental performance which is subject to the claim than what is common practice for products in the relevant product group or traders in the relevant sector;

(g) identify whether improving environmental impacts, environmental aspects or environmental performance subject to the claim leads to significant harm in relation to environmental impacts on climate change, resource consumption and circularity, sustainable use and protection of water and marine resources, pollution, biodiversity, animal welfare and ecosystems;

(h) separate any greenhouse gas emissions offsets used from greenhouse gas 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;

(i) include primary information available to the trader for environmental impacts, environmental aspects or environmental performance, which are subject to the claim;

(j) include relevant secondary information for environmental impacts, environmental aspects, or environmental performance which is representative of the specific value chain of the product or the trader on which a claim is made, in cases where no primary information is available.

2. Where it is demonstrated that significant environmental impacts that are not subject to the claim exist but there is no widely recognised scientific evidence to perform the assessment referred to in point (c) of paragraph 1, the trader making the claim on another aspect shall take account of available information and, if necessary, update the assessment in accordance with paragraph 1 once widely recognised scientific evidence is available.

3. The requirements set out in paragraphs 1 and 2 shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC[44] unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

[44] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

4. When the regular monitoring of the evolution of environmental claims referred to in Article 20 reveals differences in the application of the requirements laid down in paragraph 1 for specific claims and such differences 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, the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for substantiation of explicit environmental claims laid down in paragraph 1 by:

   (a) determining the rules for assessing the environmental aspects, environmental impacts and environmental performance, including by determining the activities, processes, materials, emissions or use of a product, which contribute significantly or cannot contribute to the relevant environmental impacts, environmental aspects or environmental performance;

   (b) determining for which environmental aspects or environmental impacts primary information shall be provided and determining criteria based on which the accuracy of the primary information and secondary information can be assessed; or

   (c) establishing specific life-cycle-based rules on substantiation of explicit environmental claims for certain product groups and sectors.

5. When specifying further the requirements for substantiation of explicit environmental claims in accordance with previous paragraph, the Commission shall take into account scientific or other available technical information, including relevant international standards, and where relevant consider the following:

   (a) the specificities of the sectors and products that require a specific methodological approach;

   (b) the potential contribution of specific product groups or sectors to achieving Union climate and environmental objectives;

   (d) any relevant information derived from Union legislation;

   (e) ease of access to information and data for the assessment and use of this information and data by small and medium-sized enterprises (‘SMEs’).

Article 4

Substantiation of comparative explicit environmental claims

1. The substantiation of explicit environmental claims that state or imply that a product or trader has less environmental impacts or a better environmental performance than other products or traders (‘comparative environmental claims’) shall, in addition to the requirements set out in Article 3, comply with the following requirements:

   (a) the information and data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made, are equivalent to the information and data used for assessing the environmental impacts, environmental aspects or environmental performance of the product or trader which is subject to the claim;

(b) the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders is generated or sourced in an equivalent manner as the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made;

(c) the coverage of the stages along the value chain is equivalent for the products and traders compared and ensures that the most significant stages are taken into account for all products and traders;

(d) the coverage of environmental impacts, environmental aspects or environmental performances is equivalent for the products and traders compared and ensures that the most significant environmental impacts, environmental aspects or environmental performances are taken into account for all products and traders;

(e) assumptions used for the comparison are set in an equivalent manner for the products and traders compared.

2. Where a comparative environmental claim relates to an improvement in terms of environmental impacts, environmental aspects or environmental performance of a product that is subject to the claim compared to environmental impacts, environmental aspects or environmental performance of another product from the same trader, from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, the substantiation of the claim shall explain how that improvement affects other relevant environmental impacts, environmental aspects or environmental performance of the product subject to the claim and shall clearly state the baseline year for the comparison.

3. The requirements laid down in this Article shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC[45] unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

Article 5

Communication of explicit environmental claims

1. Member States shall ensure that a trader is required to communicate an explicit environmental claim in accordance with the requirements set out in this Article.

2. Explicit environmental claims may only cover environmental impacts, environmental aspects or environmental performance that are substantiated in accordance with the requirements laid down in Articles 3, 4 and 5 and that are identified as significant for the product or trader concerned in accordance with Article 3 paragraph (1) point (c) or (d).

3. Where the explicit environmental claim is related to a final product, and the use phase is among the most relevant life-cycle stages of that product, the claim shall include information on how the consumer should use the product in order to achieve

[45] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

the expected environmental performance of that product. That information shall be made available together with the claim.

4. Where the explicit environmental claim is related to future environmental performance of a product or trader it shall include a time-bound commitment for improvements inside own operations and value chains.

5. Explicit environmental claims on the cumulative environmental impacts of a product or trader based on an aggregated indicator of environmental impacts can be made only on the basis of rules to calculate such aggregated indicator that are established in the Union law.

6. Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent.

That information shall include at least the following:

(a) environmental aspects, environmental impacts or environmental performance covered by the claim;

(b) the relevant Union or the relevant international standards, where appropriate;

(c) the underlying studies or calculations used to assess, measure and monitor the environmental impacts, environmental aspects or environmental performance covered by the claim, without omitting the results of such studies or calculations and, explanations of their scope, assumptions and limitations, unless the information is a trade secret in line with Article 2 paragraph 1 of Directive (EU) 2016/943[46];

(d) a brief explanation how the improvements that are subject to the claim are achieved;

(e) the certificate of conformity referred to in Article 10 regarding the substantiation of the claim and the contact information of the verifier that drew up the certificate of conformity;

(f) for climate-related explicit environmental claims that rely on greenhouse gas emission offsets, information to which extent they rely on offsets and whether these relate to emissions reductions or removals;

(g) a summary of the assessment including the elements listed in this paragraph that is clear and understandable to the consumers targeted by the claim and that is provided in at least one of the official languages of the Member State where the claim is made.

7. The requirements set out in paragraphs 2, 3 and 6 shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

8. Where the substantiation of certain environmental impacts, environmental aspects or environmental performance is subject to the rules established in delegated acts

[46] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

referred to in Article 3, paragraph 4(a) and paragraph 4(c), the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for communication of explicit environmental claims set out in Article 5 by specifying further the information that can be or shall be communicated regarding such environmental impacts, environmental aspects or environmental performance, so as to make sure that the consumers are not misled.

Article 6

Communication of comparative environmental claims

Comparative environmental claims shall not relate to an improvement of the environmental impacts, environmental aspects or environmental performance of the product that is the subject of the claim compared to the environmental impacts, environmental aspects or environmental performance of another product from the same trader or from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, unless they are based on evidence proving that the improvement is significant and achieved in the last five years.

Article 7

Environmental labels

1. Member States shall ensure that environmental labels fulfil the requirements set out in Articles 3 to 6 and are subject to verification in accordance with Article 10.

2. Only environmental labels awarded under environmental labelling schemes established under Union law may present a rating or score of a product or trader based on an aggregated indicator of environmental impacts of a product or trader.

Article 8

Requirements for environmental labelling schemes

1. Environmental labelling scheme means a certification scheme which certifies that a product, a process or a trader complies with the requirements for an environmental label.

2. The environmental labelling schemes shall comply with the following requirements:

   (a) information about the ownership and the decision-making bodies of the environmental labelling scheme is transparent, accessible free of charge, easy to understand and sufficiently detailed;

   (b) information about the objectives of the environmental labelling scheme and the requirements and procedures to monitor compliance of the environmental labelling scheme are transparent, accessible free of charge, easy to understand and sufficiently detailed;

   (c) the conditions for joining the environmental labelling schemes are proportionate to the size and turnover of the companies in order not to exclude small and medium enterprises;

(d) the requirements for the environmental labelling scheme have been developed by experts that can ensure their scientific robustness and have been submitted for consultation to a heterogeneous group of stakeholders that has reviewed them and ensured their relevance from a societal perspective;

(e) the environmental labelling scheme has a complaint and dispute resolution mechanism in place;

(f) the environmental labelling scheme sets out procedures for dealing with non-compliance and foresees the withdrawal or suspension of the environmental label in case of persistent and flagrant non-compliance with the requirements of the scheme.

3. From [OP: Please insert the date = *the date of transposition of this Directive*] no new national or regional environmental labelling schemes shall be established by public authorities of the Member States. However, national or regional environmental labelling schemes established prior to that date may continue to award the environmental labels on the Union market, provided they meet the requirements of this Directive.

From the date referred to in the first subparagraph, environmental labelling schemes may only be established under Union law.

4. From [OP: Please insert the date = *the date of transposition of this Directive*] any new environmental labelling schemes established by public authorities in third countries awarding environmental labels to be used on the Union market, shall be subject to approval by the Commission prior to entering the Union market with the aim of ensuring that these labels provide added value in terms of their environmental ambition including notably their coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector, as compared to the existing Union, national or regional schemes referred to in paragraph 3, and meet the requirements of this Directive. Environmental labelling schemes established by public authorities in third countries prior to that date may continue to award the environmental labels which are to be used on the Union market, provided they meet the requirements of this Directive.

5. Member States shall ensure that environmental labelling schemes established by private operators after [OP: Please insert the date = *the date of transposition of this Directive*] are only approved if those schemes provide added value in terms of their environmental ambition, including notably their extent of coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector and their ability to support the green transition of SMEs, as compared to the existing Union, national or regional schemes referred to in paragraph 3, and meet the requirements of this Directive.

This procedure for approval of new environmental labelling schemes shall apply to schemes established by private operators in the Union and in third countries.

Member States shall notify the Commission when new private schemes are approved.

6. In order to receive the approvals referred to in paragraphs 4 and 5, the operators of new environmental labelling schemes shall provide supporting documents setting out the following:

(a) the rationale underlying the development of the scheme

(b) the proposed scope of the scheme,

(c) the evidence the scheme will provide added value as set out in in paragraph 4 for environmental labelling schemes established by public authorities in third countries, or in paragraph 5 for environmental labelling schemes established by private operators;

(d) a proposal for draft criteria and the methodology used to develop and award the environmental label and the expected impacts on the market;

(e) a detailed description of the ownership and the decision-making bodies of the environmental labelling scheme.

The documents referred to in the first subparagraph shall be submitted to the Commission in case of schemes referred to in paragraph 4 or to the Member States' authorities in case of schemes referred to in paragraph 5, together with the certificate of conformity for environmental labelling schemes drawn up in accordance with Article 10.

7. The Commission shall publish and keep-up-to date a list of officially recognised environmental labels that are allowed to be used on the Union market after [OP: Please insert the date = *the date of transposition of this Directive*] pursuant to paragraphs 3, 4 and 5.

8. In order to ensure a uniform application across the Union, the Commission shall adopt implementing acts to:

(a) provide detailed requirements for approval of environmental labelling schemes pursuant to the criteria referred to in paragraphs 4 and 5;

(b) specify further the format and content of supporting documents referred to in paragraph 6;

(c) provide detailed rules on the procedure for the approval referred to in paragraph 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

Article 9

Review of the substantiation of explicit environmental claims

Member States shall ensure that the information used for substantiation of explicit environmental claims is reviewed and updated by traders when there are circumstances that may affect the accuracy of a claim, and no later than 5 years from the date when the information referred to in Article 5(6) is provided. In the review, the trader shall revise the used underlying information to ensure that the requirements of Articles 3 and 4 are fully complied with.

The updated explicit environmental claim shall be subject to verification in accordance with Article 10.

Article 10

Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes

1. Member States shall set up procedures for verifying the substantiation and communication of explicit environmental claims against the requirements set out in Articles 3 to 7.

2. Member States shall set up procedures for verifying the compliance of environmental labelling schemes with the requirements set out in Article 8.

3. The verification and certification requirements shall apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC only if they so request.

4. The verification shall be undertaken by a verifier fulfilling the requirements set out in Article 11, in accordance with the procedures referred to in paragraphs 1 and 2, before the environmental claim is made public or the environmental label is displayed by a trader.

5. For the purposes of the verification the verifier shall take into account the nature and content of the explicit environmental claim or the environmental label.

6. Upon completion of the verification, the verifier shall draw up, where appropriate, a certificate of conformity certifying that the explicit environmental claim or the environmental label complies with the requirements set out in this Directive.

7. The certificate of conformity shall be recognised by the competent authorities responsible for the application and enforcement of this Directive. Member States shall notify the list of certificates of conformity via the Internal Market Information System established by Regulation (EU) No 1024/2012.

8. The certificate of conformity shall not prejudge the assessment of the environmental claim by national authorities or courts in accordance with Directive 2005/29/EC.

9. The Commission shall adopt implementing acts to set out details regarding the form of the certificate of conformity referred to in paragraph 5 and the technical means for issuing such certificate of conformity. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

Article 11

Verifier

1. The verifier shall be a third-party conformity assessment body accredited in accordance with Regulation (EC) No 765/2008[47].

2. The accreditation shall, in particular, include the evaluation of compliance with the requirements in paragraph 3.

3. The verifier shall comply with the following requirements:

[47] Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

(a) the verifier shall be independent of the product bearing, or the trader associated to, the environmental claim;

(b) the verifier, its top-level management and the personnel responsible for carrying out the verification tasks shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to the verification activities;

(c) the verifier and its personnel shall carry out the verification activities with the highest degree of professional integrity and the requisite technical competence and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their verification activities,

(d) the verifier shall have the expertise, equipment and infrastructure required to perform the verification activities in relation to which it has been accredited;

(e) the verifier shall have a sufficient number of suitably qualified and experienced personnel responsible for carrying out the verification tasks;

(f) the personnel of a verifier shall observe professional secrecy with regard to all information obtained in carrying out the verification tasks;

(g) where a verifier subcontracts specific tasks connected with verification or has recourse to a subsidiary, it shall take full responsibility for the tasks performed by subcontractors or subsidiaries and shall assess and monitor the qualifications of the subcontractor or the subsidiary and the work carried out by them.

Article 12

Small and medium sized enterprises

Member States shall take appropriate measures to help small and medium sized enterprises apply the requirements set out in this Directive. Those measures shall at least include guidelines or similar mechanisms to raise awareness of ways to comply with the requirements on explicit environmental claims. In addition, without prejudice to applicable state aid rules, such measures may include:

(a) financial support;

(b) access to finance;

(c) specialised management and staff training;

(d) organisational and technical assistance.

Article 13

Designation of competent authorities and coordination mechanism

1. Member States shall designate one or more competent authorities as responsible for the application and enforcement of this Directive.

2. For the purpose of the enforcement of Articles 5 and 6, Member States may designate the national authorities or courts responsible for the enforcement of Directive 2005/29/EC. In that case, Member States may derogate from Articles 14 to

17 of this Directive and apply the enforcement rules adopted in accordance with Articles 11 to 13 of Directive 2005/29/EC.

3. Where there is more than one competent authority in their territory, Member States shall ensure that the respective duties of those authorities are clearly defined and that appropriate communication and coordination mechanisms are established.

4. Member States shall notify the Commission and other Member States without delay of the identity of the competent authorities in their Member State and the areas of competence of those authorities.

Article 14

Powers of the competent authorities

1. Member States shall confer on their competent authorities the powers of inspection and enforcement necessary to ensure compliance with this Directive.

2. The powers conferred on competent authorities under paragraph 1 shall include at least the following:

   (a) the power of access to any relevant documents, data or information related to an infringement of this Directive, in any form or format and irrespective of their storage medium, or the place where they are stored, and the power to take or obtain copies thereof;

   (b) the power to require any natural or legal person to provide any relevant information, data or documents, in any form or format and irrespective of their storage medium or the place where they are stored, for the purposes of establishing whether an infringement of this Directive has occurred or is occurring and the details of such infringement;

   (c) the power to start investigations or proceedings on their own initiative to bring about the cessation or prohibition of infringements of this Directive;

   (d) the power to require traders to adopt adequate and effective remedies and take appropriate action to bring an infringement of this Directive to an end;

   (e) the power to adopt, where appropriate, injunctive relief with regard to infringements of this Directive;

   (f) the power to impose penalties for infringements of this Directive in accordance with Article 17.

3. Competent authorities may use any information, document, finding, statement or intelligence as evidence for the purpose of their investigations, irrespective of the format in which or medium on which they are stored.

Article 15

Compliance monitoring measures

1. Competent authorities of the Member States designated in accordance with Article 13 shall undertake regular checks of the explicit environmental claims made and the environmental labelling schemes applied, on the Union market. The reports detailing the result of those checks shall be made available to the public online.

2. Where the competent authorities of a Member State detect an infringement of an obligation set out in this Directive, they shall carry out an evaluation covering all relevant requirements laid down in this Directive.

3. Where, further to the evaluation referred to in the first subparagraph, the competent authorities find that the substantiation and communication of the explicit environmental claim or the environmental labelling scheme does not comply with the requirements laid down in this Directive, they shall notify the trader making the claim about the non-compliance and require that trader to take all appropriate corrective action within 30 days to bring the explicit environmental claim or the environmental labelling scheme into compliance with this Directive or to cease the use of and references to the non-compliant explicit environmental claim. Such action shall be as effective and rapid as possible, while complying with the principle of proportionality and the right to be heard.

Article 16

Complaint-handling and access to justice

1. Natural or legal persons or organisations regarded under Union or national law as having a legitimate interest shall be entitled to submit substantiated complaints to competent authorities when they deem, on the basis of objective circumstances, that a trader is failing to comply with the provisions of this Directive.

2. For the purposes of the first subparagraph, non-governmental entities or organisations promoting human health, environmental or consumer protection and meeting any requirements under national law shall be deemed to have sufficient interest.

3. Competent authorities shall assess the substantiated complaint referred to in paragraph 1 and, where necessary, take the necessary steps, including inspections and hearings of the person or organisation, with a view to verify those complaints. If confirmed, the competent authorities shall take the necessary actions in accordance with Article 15.

4. Competent authorities shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the person or organisation referred to in paragraph 1 that submitted the complaint of its decision to accede to or refuse the request for action put forward in the complaint and shall provide the reasons for it.

5. Member States shall ensure that a person or organisation referred to in paragraph 1 submitting a substantiated complaint shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive, without prejudice to any provisions of national law which require that administrative review procedures be exhausted prior to recourse to judicial proceedings. Those judicial review procedures shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary.

6. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.

Article 17

Penalties

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC40[48], Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States shall give due regard to the following:

   (a) the nature, gravity, extent and duration of the infringement;

   (b) the intentional or negligent character of the infringement and any action taken by the trader to mitigate or remedy the damage suffered by consumers, where applicable;

   (c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;

   (d) the economic benefits derived from the infringement by those responsible;

   (e) any previous infringements by the natural or legal person held responsible;

   (f) any other aggravating or mitigating factor applicable to the circumstances of the case;

   (g) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394, where applicable.

3. Member States shall provide that penalties and measures for infringements of this Directive shall include:

   (a) fines which effectively deprive those responsible of the economic benefits derived from their infringements, and increasing the level of such fines for repeated infringements;

   (b) confiscation of revenues gained by the trader from a transaction with the relevant products concerned;

   (c) temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions.

For the purposes of point (a), Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394[49], the maximum amount of such fines being at least at 4 % of the trader's annual turnover in the Member State or Member States concerned.

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48 Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

49 OJ L 345, 27.12.2017, p. 1.

Article 18

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts as referred to in Article 3(4) and Article 5(8) shall be conferred on the Commission for a period of five years from [*OP please insert the date = the date of transposition of this Directive*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 3(4) and Article 5(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. A delegated act adopted pursuant to Article 3(4) and Article 5(8) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 19

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 20

Monitoring

1. Member States shall regularly monitor the application of this Directive based on:

(a) an overview of the types of explicit environmental claims and of environmental labelling schemes which have been subject to substantiated complaints in accordance with Article 16;

(b) an overview of explicit environmental claims and of environmental labelling schemes with regard to which competent authorities have required the trader to take corrective action, in accordance with Article 15, or have imposed penalties in accordance with Article 17.

2. The information referred to in paragraph 1 shall specify the explicit environmental claim or environmental labelling scheme, the nature of the alleged infringement, the nature and duration of the corrective action and, if applicable, the penalty imposed.

3. Member States shall provide the information referred to in paragraph 1 to the Commission on an annual basis.

4. Based on the information collected pursuant to paragraph 3 and the information made available by the Member States pursuant to Article 15(1), and, if necessary, additional consultations with competent authorities, the European Environmental Agency shall publish, every two years, a report containing an assessment of the evolution of explicit environmental claims and environmental labelling schemes in each Member State and for the Union as a whole. The report shall enable a differentiation according to the size of the trader making the claim and according to the quality of the substantiation.

Article 21

Evaluation and review

1. By [*OP please insert the date = 5 years after the date of transposition of this Directive*], the Commission shall carry out an evaluation of this Directive in light of the objectives that it pursues and present a report on the main findings to the European Parliament and the Council.

2. The report referred to in paragraph 1 shall assess whether this Directive has achieved its objective, in particular with regard to:

(a) ensuring that explicit environmental claims made about the environmental performance of a product or trader are based on reliable, comparable and verifiable information;

(b) ensuring that environment labelling schemes are based on certification schemes and meet the relevant requirements set out in Article 8;

(c) ensuring that new private environmental labelling schemes concerning products or traders already covered by existing schemes are approved by the Member States only if they provide added value as compared to the existing schemes;

(d) setting out the rules for communicating explicit environmental claims on the Union market, and avoiding duplication of costs when communicating such claims;

(e) strengthening the functioning of the internal market.

3. Where the Commission finds it appropriate, the report referred to in paragraph 1 shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Directive, including considering further provisions on:

(a) unlocking opportunities for the circular, bio and green economy by assessing the appropriateness and feasibility of mandating the use of common, and where relevant life-cycle based, method for substantiation of environmental claims;

(b) 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;

(c) further harmonisation as regards requirements on the substantiation of specific environmental claims on environmental aspects or impacts such as durability, reusability, reparability, recyclability, recycled content, use of natural content, including fibers, environmental performance or sustainability, bio-based elements, biodegradability, biodiversity, waste prevention and reduction.

Article 22

Amendment to Regulation (EU) 1024/2012

In the Annex to Regulation (EU) 1024/2012, the following point is added:

'X. [OP: Please insert the next consecutive number] Directive (EU) … of the European Parliament and of the Council of … on substantiation and communication of explicit environmental claims (OJ L …, date, page: Articles 13(3) and 15)'.

Article 23

Amendments to Regulation (EU) 2017/2394

In the Annex to Regulation (EU) 2017/2394, the following point is added:

'X. [OP: Please insert the next consecutive number] Directive (EU) … of the European Parliament and of the Council of … on substantiation and communication of explicit environmental claims (OJ L …, date, page).'

Article 24

Amendment to Directive (EU) 2020/1828

In Annex I to Directive (EU) 2020/1828, the following point is added:

'(X) [OP: Please insert the next consecutive number] Directive (EU) … of the European Parliament and of the Council of … on substantiation and communication of explicit environmental claims (OJ L …, date, page)'.

Article 25

Transposition

1. Member States shall adopt and publish by [OP please insert the date = *18 months after the date of entry into force of this Directive*] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

   They shall apply those measures from [OP please insert the date = *24 months after the date of entry into force of this Directive*].

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Green Claims: proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims

1.2. Policy area(s) concerned

09 - Environment & Climate Action[116]

1.3. The proposal/initiative relates to:

☒ **a new action**

☐ **a new action following a pilot project/preparatory action[117]**

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Objective(s)

1.4.1. General objective(s)

The objective of this initiative is 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, protect consumers and companies from greenwashing and enable consumers to contribute to accelerating the green transition by making informed purchasing decisions based on credible environmental claims and labels, improve the legal certainty as regards environmental claims and the level playing fields on the internal market, boost the competitiveness of economic operators that make efforts to increase the environmental sustainability of their products and activities, and create cost saving opportunities for such operators that are trading across borders.
It complements the proposed changes to the proposed Unfair Commercial Practices.

1.4.2. Specific objective(s)

Establish EU rules on voluntary green claims, applicable to traders operating in the European Union (with the exception of microenterprises for some provisions) on the substantiation, communication and verification of environmental claims/environmental labelling schemes.

1.4.3. Expected result(s) and impact

By reaching the specific objectives, more market operators would be able to integrate reliable environmental information into their decision-making (e.g. purchasing decisions, choice of suppliers or co-operation with suppliers and business partners, product design, procurement choices).

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116 For the Green Claims, the legal basis of the initiative is the Single Market but budgetary resources come from 09 – Environment and Climate Action.

117 As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

Consumers would be able to trust the environmental claims on the products they buy, enabling them to integrate environmental considerations more systematically in their purchasing decisions.

This would trigger more demand for greener products and solutions, driving growth in green markets. It would unlock opportunities in the supply chain for more efficiency and better environmental performance. This would then contribute to the general objective of unlocking opportunities for the circular and green economy. Establishing an EU approach to environmental claims would address the general objective of strengthening the functioning of the internal market, specifically of green markets.

A common EU approach answering the objective of reliability, comparability and verifiability would make it easier for enforcers to check claims, further enhancing their effect. This would further strengthen drivers for better environmental performance of products and traders, contributing to European Green Deal objectives.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

1. Environmental claims on products and companies are reliable, comparable and verifiable: increasing share of reliable environmental claims, and correspondingly decreasing share of misleading environmental claims monitored through:

o Number of environmental claims that respect (or not) the requirements of the green claims initiative;

o Effective implementation of the green claims initiative;

o Share of national authorities that consider that the Directive has made it easier to address greenwashing.

2. **Users of information trust environmental information:** increasing trust of users of information (consumers, businesses, investors, public administrations and NGOs) in environmental claims monitored through:

o Level of consumer trust in environmental claims;

o Level of consumer trust in sustainability labels;

o Level of trust of other users of information (businesses, investors, public administrations, NGOs) in environmental claims in scope.

3. Environmental performance of products and organisations improves: positive evolution of benchmark values in Product Environmental Footprint Category Rules (PEFCRs) and Product Environmental Footprint (PEF) and Organization Environmental Footprint (OEF) profile results showing a trend that products and organisations are becoming greener; decreasing consumption footprint of EU (as per the consumption footprint indicator developed by JRC), covering all 16 environmental impacts of the Environmental Footprint methods. This will be monitored by the following indicators:

o Evolution of benchmark values in PEFCRs;

o Evolution of EF profile results on PEF and OEF over time;

o Evolution of consumption footprint in the EU.

4. **Obstacles on green markets are reduced:** obstacles related to complying with multiple methods and to provide environmental information are reduced. This will be monitored by the following indicators:

o Perception of businesses on the internal market of green products.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

Short-term requirements

The Member States will have two years to transpose the Directive. This proposal is closely linked with the review of Unfair Commercial Practices Directive, proposed by the Commission in March 2022, and it is expected that the two Directives may be transposed jointly.

In addition to the transposition of the rules on substantiation and communication of environmental claims, the Member States will have to set up a procedure for verifying the substantiation of environmental claims on products/traders put on the market, , and ecolabelling schemes, designate competent authorities and a coordination mechanism.

The proposal foresees that voluntary environmental claims have to be substantiated based on an assessment that meets specific requirements set out in Article 3. In cases where the Commission adopts delegated acts establishing life-cycle based rules for specific product groups or sectors, the economic operators will be able to substantiate specific claims on environmental impacts on their basis.

In support of the implementation of this Directive, and shortly after its entry into force, the Commission will adopt an implementing act to provide details regarding the form of certificate to be issued by the verifier of environmental claims as per Article 12.

On-going requirements

The competent authorities will be obliged to undertake regular checks of the environmental claims used on the EU market.

The Member States will be obliged to regularly monitor the application of the Directive based on an overview of environmental claims which have been notified to enforcement authorities; an overview of environmental claims with regard to whom enforcement authorities have required the organisation responsible to take corrective action, and, if applicable, have taken enforcement measures. Member States will supply this information to the Commission on an annual basis.

Five years after the date of entry into force of this Directive, the Commission shall carry out an evaluation of this Directive in light of the objectives that it pursues and present a report on the main findings and where appropriate a legislative proposal for amendment of the relevant provisions of this Directive.

The Commission will be empowered to adopt delegated acts according to Article 3(4) on further specifying the requirements for the substantiation of explicit environmental claims. This will be an ongoing process to develop further substantiation methods.

The Commission will also be empowered to adopt delegated and implementing acts to supplement the requirements for environmental labelling schemes in line with Article 8(8) and (9).

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.*

It is essential to 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, by putting in place a common set of rules within the EU internal market.

Based on the status quo, and if Member States were to act individually, there is a high risk to end up with many competing different systems, based on different and uncomparable methods and approaches, leading to a fragmented internal market, especially for cross-border products traded on the internal market, increasing the risk of having uneven awareness and information levels on the environmental performance of products and organisations across EU, and additional costs for companies trading cross-border (especially if they have to use different methods or comply with different labelling schemes).

In the absence of EU-level action, the market operators will continue to be faced with misleading information on environmental aspects, while obstacles on the internal market would impede businesses to operate in equivalent conditions. In addition, certain aspects, like the development of methods to underpin specific claims and the establishment of related databases (if needed) cannot be achieved at national level, given their scope in terms of coverage of products, sectors or geographical regions.

There is a clear added value in setting common requirements at EU level, because a harmonised and well-functioning internal EU market would set a level playing field for businesses operating in the EU.

It is expected that following the action at EU level Member States will be prevented from introducing unilaterally specific measures and the Directive will to reduce the risk of legal fragmentation of the single market and will bring cost savings for governments and the private sector.

1.5.3. Lessons learned from similar experiences in the past

The initiative complements the proposed changes to the proposed Unfair Commercial Practices Directive (UCPD) made by the European Commission to the European Parliament and to the Council. It builds on the lessons learned on the implementation of the UCPD and the need for specific rules on the substantiation of explicit green claims, on communication and verification. It also draws the lessons on the proliferation of ecolabelling schemes. Other lessons learned are related to the development of the EU Ecolabel, EMAS, and the development of the environmental footprint methods.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

The initiatives fall under the umbrella of the European Green Deal, which guides the EU's recovery strategy. The Green Deal recognises the advantages of investing in our competitive sustainability by building a fairer, greener and more digital Europe.

The initiative is financed under Heading 3 (Natural Resources and the Environment), Title 9 (Environment and Climate Action) of the Multiannual Financial Framework. As detailed below, the implementation will require additional human resources, spending under the LIFE programme and some supporting expenditure in the EEA. The corresponding increase of the EEA subsidy will be offset from the EU programme for the environment and climate action (LIFE).

Other policy areas could provide support to businesses for implementing the requirements for substantiating and communicating environmental claims, e.g. as laid down in delegated acts according to Art 3, in particular EU funding provided on innovation and investments to businesses, in particular to SMEs. The European Regional Development Fund, through smart specialisation, LIFE and Horizon Europe complements private innovation funding and support the whole innovation cycle with the aim to bring solutions to the market. The Digital Europe Programme launched in 2022 the Concerted Action CIRPASS with the objective to open up possibilities for innovative workflows, especially to further the circularity of the flow of tangible goods, but also for consumer information by defining a cross-sectoral product data model for the digital product passport with demonstrated usefulness for the Circular Economy.

The Innovation Fund is one of the world’s largest funding programmes for the demonstration of innovative low-carbon technologies and solutions. It will provide around EUR 10 billion of support over 2020-2030, aiming to bring to the market industrial solutions to decarbonise Europe and support its transition to climate neutrality.

1.5.5. Assessment of the different available financing options, including scope for redeployment

Several options were assessed, including coverage by ENV services only with a mix of procuring services for datasets, to exploring cooperation with other services and agencies. The best option retained combines procuring services for datasets by DG ENV and a contribution to the EEA to seek expertise from their staff.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☒ **unlimited duration**

– Implementation with a start-up period from 2024 to 2027,

– followed by full-scale operation.

1.7. Management mode(s) planned[118]

☒ **Direct management** by the Commission

– ☒ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☐ **Shared management** with the Member States

☒ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☒ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

[118] Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The initiatives involve procurement, administrative arrangement with the JRC, increase of the contribution to the EEA and impact on the COM HR. Standard rules for this type of expenditure apply.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

N/A – cf. above.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

N/A – cf. above.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

N/A – cf. above.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

N/A – cf. above.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[119]	from EFTA countries [120]	from candidate countries and potential candidates [121]	fromother third countries	other assigned revenue
3	09 02 02 Circular Economy and quality of life	Diff.	YES	NO	YES	NO
3	09 10 02 European Environment Agency	Diff.	YES	YES	NO	NO
7	20 01 02 01 – Remuneration and allowances	Non-diff.	NO	NO	NO	NO
7	20 02 01 03 – National civil servants temporarily assigned to the institution	Non-diff.	NO	NO	NO	NO
7	20 02 06 02 – Meetings, expert groups	Non-diff.	NO	NO	NO	NO

- New budget lines requested

N/A

[119] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[120] EFTA: European Free Trade Association.
[121] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

– ☐ The proposal/initiative does not require the use of operational appropriations

– ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	**3**	Natural resources and environment

DG: ENV			**2024**	**2025**	**2026**	**2027 and beyond**	**TOTAL**
○ Operational appropriations							
09 02 02 Circular Economy and quality of life	Commitments	(1)	2,540	6,964	5,264	5,214	**19,982**
	Payments	(2)	2,540	6,964	5,264	5,214	**19,982**
TOTAL appropriations for DG ENV	Commitments	=(1)	2,540	**6,964**	**5**,264	**5,214**	**19,982**
	Payments	=(2)	2,540	**6,964**	**5**,264	**5,214**	**19,982**

The amount reported above will be needed to finance the following actions:

- The acquisition of the secondary Environmental Footprint (EF) datasets providing key average data on resource consumption and emissions for key processes that can be used by many companies to assess their value chains , the acquisition and development of data to fill possible data gaps, the development costs of an IT platform for the EF database as well as the maintenance of the database for the period 2026-2027 (EUR 10,095 million). The access to EF datasets will support companies, especially SMEs, in complying with the Green Claims Directive in a more cost efficient and less burdensome manner. The easy access to high quality data related to the environmental perfromance of products will be a key enabler for all companies, but especially for SMEs, to substantiate their environmental claims in a robust manner unrelated to the question if delegated acts based on Art 3 of this proposal on environmental claims are in place or not. The access to EF datasets will also support the implementation of other EU policies on environmental

sustainability and helping consumers to make the right choices, such as the proposal for Ecodesign for Sustainable Products Regulation (ESPR) [122]. The ESPR introduces the possibility to set mandatory information requirements, which may also be linked with labelling requirements, and it will result in improved information flows through Digital Product Passports. The EF datasets will support the calculation and setting of information and performance requirements e.g. related to carbon and environmental footprint, as foreseen by the ESPR proposal, based on a harmonised set of high-quality secondary data.

- The procurement of studies and surveys regarding the use of methods used for substantiation by stakeholders and the evaluation of the Directive on Green Claims (EUR 0,150 million)
- JRC will play a key role in supporting the Commission with some of the technical work required. The Administrative Arrangement is expected to represent a cost around EUR 1,700 millions
- Administrative and technical support for the preparation of delegated acts according to Art 3(4) on further specifying the requirements for the substantiation of explicit environmental claims setting life-cycle based rules for specific product groups or sectors, will be also an important expenditure. This budget line accounts for the preparation of 6 such delegated acts (EUR 6,827 million)
- Flanking measures to help SMEs to adapt to this directive, including the development of calculation tools based on the requirements described in delegated acts according to Art 3(4) (EUR 1,210 million).

Agency: EEA			**2025**	**2026**	**2027**	**TOTAL**
Title 1: Staff expenditure	Commitments	(1a)	0,180	0,367	0,375	**0,922**
	Payments	(2a)	0,180	0,367	0,375	0,922
Title 2: Infrastructure	Commitments	(1b)				
	Payments	(2b)				
Title 3: Operational expenditure	Commitments	(1c)	0,095	0,065	0,065	**0,225**
	Payments	(2c)	0,095	0,065	0,065	**0,225**
TOTAL appropriations	Commitments	=1a+1b +1c	**0,275**	**0,432**	**0,440**	**1,147**

[122] Available at https://environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-products-regulation_en

for agency EEA	Payments	=2a+2b +2c	**0,275**	**0,432**	**0,440**	**1,147**

EEA costs include costs for 2 additional FTE (1 TA and 1 CA), as well as operational expenditure, for the purpose of the monitoring of the environmental claims put on the EU market following the implementation of the directive as per Article 20(4). The Agency will be tasked with a detailed analysis of information reported by the Member States as per Article 20(1) – (3) and publish reports every two years with the assessment of the evolution of green claims across the EU. This estimate includes most evidence for the biannual reports to be compiled by the Member States and reported to the European level via questionnaires. EEA will propose these questionnaires in agreement with DG ENV and enable them by means of a standard electronic tool. The information reported by the Member States will be a combination of statistics around claims in their national markets and qualitative description of the nature of false claims and corrective actions implemented. The tasks of these staff will be of permanent nature to report from countries and produce the analytical report every two years as well as supporting tasks that are necessary in the background (administration, communication, IT development, business support, etc.).

□ TOTAL operational appropriations			**2024**	**2025**	**2026**	**2027**	**TOTAL**
	Commitments	(4)	**2,540**	**7,239**	**5,696**	**5,654**	**21,129**
	Payments	(5)	**2,540**	**7,239**	**5,696**	**5,654**	**21,129**
TOTAL appropriations under HEADING 1 to 3 of the multiannual financial framework	Commitments	=4	**2,540**	**7,239**	**5,696**	**5,654**	**21,129**

Heading of multiannual financial framework	**7**	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

	2024	**2025**	**2026**	**2027 and beyond**	**TOTAL**

DG: ENV						
□ Human resources		0,606	0,606	0,606	0,606	**2,424**
□ Other administrative expenditure		0,180	0,180	0,180	0,180	**0,720**
TOTAL DG ENV	Appropriations	**0,786**	**0,786**	**0,786**	**0,786**	**3,144**

Current staff in DG ENV comprises 2 FTE officials (AD) dealing with policy-related matters and 2 FTE officials (AD) dealing with methodological issues. This staff will continue to be essential in the future and is expected to deal with the following tasks:

- Activities related to the green claim initiative such as policy coordination, green claim initiative's work plan (including a partial coverage of development of further requirements related to specific claims), team coordination, monitoring, stakeholder relation. These activities need the resources of 2 FTE officials.
- Futher development of the EF and other methods for substantiating green claims in line with Art 3: running expert groups, management of the transition phase PEFCRs/OEFSRs (including additional task of EC adoption if parts incorporatted in delegated acts according to Art 3(4) on further specifying the requirements for the substantiation of explicit environmental claim in the future). These activities need the resources of 1 FTE official.
- Managing secondary EF data: management of contracts, data checks, building database, etc. These activities need the resources of 1 FTE official.

In general Life Cycle Assessment (LCA) related tasks (e.g. method and data development) and task related to method and data development for substatiating green claims requires specialised technical/scientific knowledge with scientific PhD-level education and years of experience in the field. Attracting such staff with contract agent conditions is not possible. Therefore, these tasks should be covered via official posts, which, if no specialised staff is available in-house, should be opened to temporary agent posts.

Therefore DG ENV requests additional staff (**3 AD and 1 END** as per the distribution of the positions below) who will:

- prepare approximately 6-7 delegated acts according to Art 3(4) on further specifying the requirements for the substantiation of explicit environmental claims to regulate specific claims, e.g. on repairability, recyclability, durability or establishing specific life-cycle-based rules for certain product groups and sectors;
- prepare implementing acts setting out relevant procedures for approval of new private labelling schemes by the national authorties and the format of certificate of conformity of claims and labelling schemes;

- prepare delegated acts further specifying the criteria for approval of environmental labelling schemes referred to in Article 8 in order to ensure a uniform application across the Union;
- evaluate notified environmental labelling schemes established by public authorities in third countries aiming to operate on the Union market and prepare repsective approval decisions by the Commission with the aim of ensuring that these schemes provide added value in terms of their environmental ambition, their coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector, and meet the requirements of this Directive;
- supervise preparatory, review studies and other studies in preparation of delegated acts;
- develop and manage the EF database relevant for this and other policies such as ESPR, Batteries regulation or taxonomy;

In addition, there are 2 expert groups involved in this policy and the budget should cover three meetings/year per each expert group.

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	**0,786**	**0,786**	**0,786**	**0,786**	**3,144**

EUR million (to three decimal places)

		2024	**2025**	**2026**	**2027 and beyond**	**TOTAL**
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	**3,326**	**8,025**	**6,482**	**6,440**	**24,273**
	Payments	**3,326**	**8,025**	**6,482**	**6,440**	**24,273**

3.2.2. Estimated output funded with operational appropriations

Commitment appropriations in EUR million (to three decimal places)

Indicate			Year	Year	Year	Year	Enter as many years as necessary to show the	**TOTAL**

objectives and outputs			N		N+1		N+2		N+3		duration of the impact (see point 1.6)							
	OUTPUTS																	
⇩	Type [123]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[124]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTALS																		

123 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

124 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Estimated impact on the EEA and COM administrative appropriations

3.2.3.1. Estimated impact on EEA human resources

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2025	**2026**	**2027**	**TOTAL**
Temporary agents (AD Grades)	0,117	0,240	0,244	**0,602**
Temporary agents (AST grades)				
Contract staff	0,063	0,128	0,130	**0,320**
Seconded National Experts				
TOTAL	**0,180**	**0,367**	**0,375**	**0,922**

Staff requirements (FTE):

	2025	**2026**	**2027**	**TOTAL**
Temporary agents (AD Grades)	1	1	1	
Temporary agents (AST grades)				
Contract staff	1	1	1	
Seconded National Experts				
TOTAL	**2**	**2**	**2**	

3.2.3.2. Estimated requirements on administrative appropriations in the Commission

3.2.3.3. Summary of estimated impact on administrative appropriations

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2024	2025	2026	2027 and beyond	TOTAL
HEADING 7 of the multiannual financial framework					
Human resources	0,606	0,606	0,606	0,606	**2,424**
Other administrative expenditure	0,180	0,180	0,180	0,180	**0,720**
Subtotal HEADING 7 of the multiannual financial framework	0,786	0,786	0,786	0,786	**3,144**
Outside HEADING 7[125] of the multiannual financial framework	N/A	N/A	N/A	N/A	N/A
Human resources					
Other expenditure of an administrative nature					
Subtotal outside HEADING 7 of the multiannual financial framework	N/A	N/A	N/A	N/A	N/A
TOTAL	0,786	0,786	0,786	0,786	**3,144**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.3.4. Estimated requirements of human resources

– ☐ The proposal/initiative does not require the use of human resources.

125 Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

– ☒ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		2024	**2025**	**2026**	**2027 and beyond**
20 01 02 01 (Headquarters and Commission's Representation Offices)		3	3	3	3
20 01 02 03 (Delegations)					
01 01 01 01 (Indirect research)					
01 01 01 11 (Direct research)					
Other budget lines (specify)					
20 02 01 (AC, END, INT from the 'global envelope')		1	1	1	1
20 02 03 (AC, AL, END, INT and JPD in the delegations)					
XX 01 xx **yy zz** 126	- at Headquarters				
	- in Delegations				
01 01 01 02 (AC, END, INT - Indirect research)					
01 01 01 12 (AC, END, INT - Direct research)					
Other budget lines (specify)					
TOTAL		4	4	4	4

Description of tasks to be carried out:

Officials and temporary staff	Cf. explanation provided for H7 in section 3.2.1.
External staff	Cf. explanation provided for H7 in section 3.2.1.

126 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. Compatibility with the current multiannual financial framework

The proposal/initiative:

– ☒ can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

The LIFE envelope (budget lines 09.02.02) will be used to offset the increase of the EEA subsidy.

– ☐ requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

– ☐ requires a revision of the MFF.

3.2.5. Third-party contributions

The proposal/initiative:

– ☒ does not provide for co-financing by third parties

– ☐ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year **N**[127]	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[127] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.3. Estimated impact on revenue

– ☒ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[128]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[128] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

Décret n° [ ] du [ ]

relatif aux conditions de production des eaux réutilisées et à leur usage dans les entreprises alimentaires en vue de la préparation, de la transformation et de la conservation de toutes denrées et marchandises destinées à l'alimentation humaine

NOR : […]

Publics concernés *: exploitants de toute entreprise publique ou privée assurant, dans un but lucratif ou non, des activités liées aux étapes de la production, de la transformation, de l'entreposage et de la distribution des denrées alimentaires*

Objet *: mise en place d'une procédure définissant les modalités d'autorisation des eaux impropres à la consommation, recyclées pour la préparation et la conservation de toutes denrées et marchandises destinées à l'alimentation humaine.*

Entrée en vigueur *: le texte entre en vigueur le lendemain de sa publication.*

Notice *: le décret définit les conditions requises pour la production et l'usage d'eaux réutilisées en vue de la préparation et la conservation de toutes denrées et marchandises destinées à l'alimentation humaine y compris dans l'environnement de production. Il précise notamment les catégories d'usages possibles, la procédure d'autorisation des projets de production d'eau recyclée (le contenu de l'arrêté préfectoral d'autorisation) et les modalités de surveillance à mettre en place pour s'assurer que la production et l'utilisation des eaux réutilisées sont compatibles avec les impératifs en matière de sécurité sanitaire des aliments.*

Références *: le décret est pris en application de l'article L. 1322-14 du code de la santé publique. Il peut être consulté sur le site Légifrance (https://www.legifrance.gouv.fr).*

La Première ministre,

Sur le rapport du ministre de l'agriculture et de la souveraineté alimentaire et du ministre de la santé et de la prévention ;

Vu le règlement (CE) n° 178/2002 du Parlement européen et du Conseil du 28 janvier 2002 établissant les principes généraux et les prescriptions générales de la législation alimentaire, instituant l'Autorité européenne de sécurité des aliments et fixant des procédures relatives à la sécurité des denrées alimentaires

Vu le règlement (CE) n° 852/2004 du Parlement européen et du Conseil du 29 avril 2004 relatif à l'hygiène des denrées alimentaires ;

Vu le règlement (CE) n°853/2004 du Parlement européen et du Conseil du 29 avril 2004 fixant les règles spécifiques d'hygiène applicables aux denrées alimentaires d'origine animale ;

Vu la directive (UE) 2020/2184 du Parlement européen et du Conseil du 16 décembre 2020 relative à la qualité des eaux destinées à la consommation humaine (refonte)

Vu le code rural et de la pêche maritime, et notamment son article L.233-2 ;

Vu le code des relations entre le public et l'administration, notamment ses articles L.231-4 et L. 231-6 ;

Vu le code de la santé publique, notamment les articles L. 1321-1 et L.1322-14 ;

Vu le décret n°73-138 du 12 février 1973 portant application de la loi du 1er août 1905 sur la répression des fraudes en ce qui concerne les produits chimiques dans l'alimentation humaine et les matériaux et objets au contact des denrées, produits et boissons destinés à l'alimentation de l'homme et des animaux ainsi que les procédés et produits utilisés pour le nettoyage de ces matériaux et objets ;

Vu l'avis de l'agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail en date du [ ] ;

Vu l'avis de la mission interministérielle de l'eau en date du [ ] ;

Vu l'avis du Conseil national d'évaluation des normes en date du [ ] ;

Le Conseil d'Etat (section [ ]) entendu,

Décrète :

Article 1er

Au chapitre II bis du titre II du livre III de la première partie du code de la santé publique, il est inséré, après l'article R. 1322-75, une section 2 ainsi rédigée :

« Section 2 : Utilisation d'eau réutilisée en entreprise du secteur alimentaire

Sous-section 1 : Définition et champ d'application

« Art. R. 1322-76

« Pour l'application de la présente section, on entend par :

« 1° « Eaux usées » : l'ensemble des eaux résiduaires et autres rejets liquides générés par une entreprise alimentaire. Elles sont notamment constituées des eaux issues des opérations de nettoyage des locaux et des installations, des opérations de préparation et de conservation de toutes denrées et marchandises destinées à l'alimentation humaine ainsi que des eaux vannes de l'entreprise lorsque cette dernière n'est pas raccordée au réseau d'assainissement collectif de la collectivité ;

« 2° « Eaux réutilisées » : eaux issues d'une entreprise du secteur alimentaire et destinées à être réutilisées, avec ou sans traitement préalable, au cours d'une étape des opérations de transformation des aliments. Les eaux réutilisées incluent les eaux récupérées, les eaux réemployées et les eaux recyclées ;

« 3° « Eaux récupérées » : eaux qui étaient à l'origine un constituant d'une matière première alimentaire, qui ont en été extraites au cours d'une étape du processus de préparation, de transformation ou de conservation mis en œuvre par une entreprise alimentaire pour être ensuite utilisée directement dans le processus industriel ;

« 4° « Eaux réemployées » : eaux qui ont été utilisées au cours d'une étape du processus de transformation et qui sont collectées directement après une utilisation pour une réutilisation dans le processus industriel avec ou sans nécessité d'un traitement préalable ;

« 5° « Eaux recyclées » : les eaux usées traitées, impropres à la consommation humaine, traitées en vue de de leur utilisation pour les catégories d'usages mentionnés à l'article R. 1322-77 ;

« 6° « Production des eaux recyclées » : le fait, pour l'exploitant ou le maître d'ouvrage de l'établissement produisant des eaux usées et de l'installation de traitement de ces eaux, de produire des eaux recyclées pouvant être utilisées pour les catégories d'usages mentionnés à l'article R. 1322-77 au sein de la même entreprise du secteur alimentaire ;

« 7° « Utilisation des eaux recyclées » : le fait, pour un exploitant du secteur alimentaire tel que défini à l'article 3 du règlement (CE) n°178/2002 du Parlement européen et du Conseil du 28 janvier 2002 d'utiliser les eaux recyclées produites au sein d'une entreprise du secteur alimentaire, pour les catégories d'usages mentionnés à l'article R.1322-77 et dans les conditions définies dans la présente section ;

« 8° « Entreprise du secteur alimentaire » : toute entreprise publique ou privée assurant, dans un but lucratif ou non, des activités liées aux étapes de la production, de la transformation et de la distribution de denrées alimentaires, telles que définies à l'article 3 du règlement (CE) n°178/2002. Cette entreprise est identifiée individuellement au moyen d'un numéro SIREN.

« 9° « Etablissement » : toute unité d'une entreprise du secteur alimentaire, tel que défini à l'article 3 du règlement (CE) n°178/2002. Cette unité est identifiée individuellement au moyen d'un numéro SIRET.

« Art. R. 1322-77

« I. L'utilisation des eaux recyclées peut être autorisée dans les entreprises alimentaires en vue notamment des catégories d'usages suivants :

« 1° l'utilisation au cours des étapes de préparation et conservation de toutes denrées et marchandises destinées à l'alimentation humaine, y compris le nettoyage des locaux, des installations et des équipements utilisés au cours de ces étapes, sans contact direct ou indirect avec les produits primaires, la denrée alimentaire en cours de préparation ou avec la denrée alimentaire finale ;

« 2° l'utilisation au cours des étapes de préparation et conservation de toutes denrées et marchandises destinées à l'alimentation humaine, y compris le nettoyage des locaux, des installations et des équipements utilisés au cours de ces étapes, dès lors que l'eau recyclée entre au contact direct ou indirect avec les produits primaires, la denrée alimentaire en cours de préparation ou avec la denrée alimentaire finale ;

« 3° l'utilisation en tant qu'ingrédient dans la composition de la denrée alimentaire finale.

« II. L'utilisation d'eaux recyclées peut être autorisée à condition que les caractéristiques de ces eaux et les usages qui en sont faits soient compatibles avec les exigences de sécurité sanitaire des aliments. Ces eaux ne doivent avoir aucune influence, directe ou indirecte, sur la santé du consommateur finalet sur la salubrité de la denrée alimentaire finale.

« III. L'utilisation d'eaux recyclées en vue des catégories d'usages mentionnées au I du présent article est effectuée dans la limite de l'implantation géographique de l'entreprise du secteur alimentaire dans laquelle les eaux usées sont collectées et les eaux recyclées sont produites.

« IV. Un arrêté conjoint du ministre chargé de l'agriculture et du ministre chargé de la santé pris après avis de l'agence nationale de sécurité sanitaire des aliments, de

l'environnement et du travail précise les usages d'eau recyclée autorisés ainsi que, pour chaque type d'usage, les exigences de qualité auxquelles l'eau recyclée doit satisfaire.

« Sous-section 2 : Conditions de production et d'utilisation d'eau réutilisée

« Art. R. 1322-78

« I. Tout projet de production et d'utilisation d'eau recyclée en vue de son utilisation pour les catégories d'usages mentionnés à l'article R.1322-77 est soumis à autorisation du préfet de département dans lequel est située l'installation de production de l'eau recyclée.

« II. Le dossier de demande doit démontrer la compatibilité des usages de l'eau recyclée avec les exigences de sécurité sanitaire des aliments et le respect des exigences de qualité définies pour ces usages par l'arrêté mentionné à l'article R. 1322-77. Ce même arrêté précise le contenu du dossier de demande d'autorisation.

« III. Les frais de constitution du dossier sont à la charge du demandeur.

« IV. L'autorisation de production et d'utilisation d'eau recyclée ne peut être accordée qu'aux entreprises du secteur alimentaire dont le dossier est complet et jugé recevable et pour lesquelles la conformité aux conditions sanitaires des installations, des équipements et du fonctionnement fixées par la réglementation a été constatée par un agent habilité conformément à l'article R. 206-1 ou au 2° du I de l'article R. 231-3-7-1 du code rural et de la pêche maritime au cours d'une inspection de l'établissement ou des établissements réalisant la production et l'utilisation d'eau recyclée. .

Lorsque la production et l'utilisation d'eau recyclée sont réalisés au bénéfice de plusieurs établissements situés sur une même implantation géographique de l'entreprise du secteur alimentaire, l'autorisation accordée à l'entreprise couvre l'ensemble de ces établissements.

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« Art. R. 1322-79

« I. Le préfet, après information du conseil départemental de l'environnement et des risques sanitaires et technologiques, statue par un arrêté motivé sur la demande d'autorisation de production et d'utilisation d'eau recyclée, sur la base des éléments transmis par le demandeur. L'arrêté préfectoral d'autorisation de production et d'utilisation indique notamment :

« 1° L'identité du titulaire de cette autorisation de production et d'utilisation d'eaux recyclées ;

« 2° L'origine des eaux usées utilisées en vue de la production d'eaux recyclées ;

« 3° Les traitements auxquels sont soumises les eaux usées en vue de leur recyclage ;

« 4° Les usages pour lesquels l'utilisation de l'eau recyclée est autorisée, conformément aux dispositions de l'article R. 1322-77 ;

« 5° Les exigences de qualité à respecter pour l'eau recyclée destinée à ces usages ;

« 6° Les débits et les volumes journaliers d'eau recyclée qu'il est autorisé de produire ;

« 7° Les modalités de surveillance de la qualité de l'eau recyclée produite, et notamment, selon les volumes traités et en fonction des différentes catégories d'usages autorisés, la nature des analyses, les fréquences minimales de prélèvements et d'analyse ainsi que les modalités de leur réalisation ;

« 8° Les modalités d'échanges entre le titulaire d'une autorisation de production et d'utilisation d'eau recyclée et le préfet, notamment en cas de manquement.

« II. Le silence gardé par l'administration à l'issue d'un délai de six mois à compter de la date de l'accusé de réception attestant du caractère complet du dossier vaut décision de rejet.

« III. Le changement de titulaire de l'autorisation, sans modification des conditions d'exploitation, fait l'objet d'une déclaration préalable auprès du préfet, qui modifie l'arrêté d'autorisation existant.

« IV. Toute modification des conditions de production et d'utilisation d'eau recyclée doit faire l'objet d'une demande de modification de l'arrêté préfectoral d'autorisation en vigueur. Le titulaire de l'autorisation transmet au préfet tous les éléments utiles pour l'évaluation du projet, préalablement à son exécution.

« Art. R. 1322-80

L'utilisation d'eaux récupérées et réemployées au sens du 3° et du 4° de l'article R. 1322-76 peut être mise en œuvre sous réserve d'une évaluation préalable du risque par l'entreprise, de la description du processus d'utilisation et de sa surveillance dans son plan de maitrise sanitaire établi pour l'application des règlements (CE) n°852/2004 et 853/2004 susvisés. Cette utilisation constitue une pratique à risque à maîtriser au sein du processus de transformation et doit faire l'objet d'une déclaration d'utilisation adressée au préfet du département dans lequel est située l'entreprise produisant cette eau récupérée ou réemployée.

Sous-section 3 : Utilisation de l'eau recyclée

« Art. R. 1322-81

« I. L'utilisation de l'eau recyclée pour les catégories d'usages mentionnés à l'article R. 1322-77 est mise en œuvre sous la responsabilité de l'entreprise du secteur alimentaire qui l'utilise. La charge de la preuve de l'innocuité de cette eau recyclée au regard des processus mis en œuvre lui incombe dans le respect des obligations de traitement et de surveillance prévues par l'arrêté préfectoral d'autorisation mentionné à l'article R. 1322-80.

« II. Lorsque de l'eau recyclée est utilisée, elle doit circuler dans un réseau séparé dûment signalé. L'interconnexion avec un réseau d'eau destinée à la consommation humaine au sens du premier alinéa de l'article L. 1321-1 du code de la santé publique est interdite.

« III. En cas d'utilisation d'eau recyclée dans un établissement agréé au titre du règlement (CE) n°853/2004 du Parlement européen et du Conseil du 29 avril 2004 fixant les règles spécifiques d'hygiène applicables aux denrées alimentaires d'origine animale conformément à l'article L.233-2 du code rural et de la pêche maritime, la copie de l'arrêté d'autorisation en vigueur est jointe au dossier d'agrément de l'établissement.

« Sous-section 4 : Qualité de l'eau réutilisées et surveillance

« Art R. 1322-82

« I. L'exploitant titulaire de l'autorisation de production et d'utilisation d'eau recyclée surveille en permanence la qualité de cette eau recyclée et vérifie régulièrement le bon fonctionnement des installations de production et d'utilisation des eaux recyclées au moyen d'un programme de tests et d'analyses effectués sur des points de surveillance déterminés en fonction des dangers identifiés.

« II. L'exploitant titulaire de l'autorisation de production et d'utilisation d'eau recyclée adresse chaque année au préfet un bilan des résultats de la surveillance de la qualité de l'eau recyclée et tient à sa disposition les résultats de cette surveillance. Ces informations, ainsi que toute information en lien avec la qualité de l'eau recyclée, sont conservées par l'exploitant pendant une période minimale de 10 ans.

« III. Le préfet peut diligenter des inspections réalisées par un agent habilité conformément à l'article R. 206-1 ou au 2° du I de l'article R. 231-3-7-1 du code rural et de la pêche maritime et faire procéder par l'exploitant titulaire de l'autorisation de production et d'utilisation à des prélèvements et à des analyses supplémentaires dont le coût incombe à l'exploitant titulaire de l'autorisation de production et d'utilisation d'eau recyclée.

« Art. R. 1322-83

« I. Lorsque les exigences de qualité fixées dans l'arrêté mentionné à l'article R. 1322-79 ne sont pas respectées pour l'eau recyclée ou en cas de survenue d'un danger susceptible de compromettre la sécurité sanitaire des aliments, l'exploitant titulaire de l'autorisation de production et d'utilisation d'eau recyclée est tenu :

« - d'arrêter immédiatement l'utilisation d'eau recyclée tant que ces exigences de qualité ne sont pas respectées ;

« - de mettre en place les actions correctives et les mesures de gestion des non-conformités appropriées au niveau des produits, telles que prévues dans le plan de maitrise sanitaire de l'établissement ;

« - de prendre les mesures correctives nécessaires afin de rétablir la qualité de l'eau recyclée produite ;

« - d'en informer immédiatement le préfet territorialement compétent qui peut prescrire, le cas échéant, des mesures correctives complémentaires ;

« - d’informer le préfet territorialement compétent de l’application effective des mesures prises et des contrôles effectués pour s’assurer de la conformité aux exigences de qualité, conformément aux dispositions de l’article L. 201-7 du code rural et de la pêche maritime.

« II. Dès qu'il a connaissance de tout résultat d'examen indiquant que les eaux récupérées ou réemployées définies à l’article R. 1322-76 sont susceptibles de rendre des produits préjudiciables à la santé humaine, l’exploitant informe immédiatement le préfet des mesures prises pour satisfaire aux exigences de sécurité sanitaire des denrées alimentaires produites.

« Sous-section 5 : Elaboration de guides de bonnes pratiques

« Art. R. 1322-84

« I. Conformément aux dispositions du règlement (CE) n°852/2004, chaque filière du secteur alimentaire peut élaborer et diffuser des guides nationaux de bonnes pratiques relatifs à la production et à l’utilisation d’eaux recyclées pour la préparation et la conservation de toutes denrées et marchandises destinées à l’alimentation humaine dans les entreprises alimentaires. Ces guides sont élaborés :

« - après consultations des représentants de milieux, tels que les autorités compétentes et les associations de consommateurs dont les intérêts sont corrélés au respect de bonnes pratiques,

« - en se référant aux codes d’usages pertinents du Codex alimentarius.

« II. Le ministère chargé de l’agriculture évalue ces guides pour s’assurer :

« - qu’ils ont été élaborés conformément au paragraphe I ;

« - que leur contenu peut être mis en pratique dans les secteurs auxquels ils se réfèrent ;

« - et qu’ils sont appropriés pour assurer le respect par les exploitants du secteur alimentaire de leurs obligations, et en particulier celles définies dans les articles 3, 4 et 5 du règlement (CE) n°852/2004.

« Sous-section 6 : Mesures de police administrative

« Art. R. 1322-85

« I. En cas de non-respect des dispositions de la présente section ou des décisions individuelles prises pour son application, le préfet adresse à l’exploitant titulaire de l’autorisation de production et d’utilisation d’eau recyclée une mise en demeure de faire cesser les manquements constatés dans un délai qu’il fixe. Si l’exploitant titulaire de l’autorisation de production et d’utilisation d’eau recyclée ne se conforme pas aux prescriptions de la mise en demeure, le préfet peut interdire la production et l’utilisation d’eau recyclée dans l’installation en cause jusqu’à sa mise en conformité avec les obligations résultant des dispositions précitées.

« II. Sans préjudice des dispositions de l'article R. 1322-83, lorsque l'eau recyclée produite et utilisée présente un risque imminent pour la santé publique, le préfet peut ordonner sans formalité préalable l'arrêt de la production et de l'utilisation de l'eau recyclée.

Article 2

La section 1 du chapitre I du titre II du livre III de la première partie du code de la santé publique est ainsi modifiée :

1° Au 4° de l'article R. 1321-5, les mots : « et dans le produit fini » sont supprimés ;

2° Au II de l'article R. 1321-7, le mot : « Le » est remplacé par les mots : « Lorsque la demande d'autorisation porte sur l'utilisation d'une eau prélevée dans le milieu naturel ne respectant pas une des limites de qualité portant sur des paramètres microbiologiques et physico-chimiques, définies par arrêté du ministre chargé de la santé, le » ;

3° Au 2° de l'article R. 1321-39, les mots : « valeurs limites impératives » sont remplacés par les mots : « limites de qualité ».

Article 3

Le ministre de l'agriculture et de la souveraineté alimentaire et le ministre de la santé et de la prévention sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret, qui sera publié au Journal officiel de la République française.

Fait le [ ].

Elisabeth BORNE

Par la Première ministre :

Le ministre de l'agriculture et de la souveraineté alimentaire,

Marc FESNEAU

Le ministre de la santé et de la prévention,

François BRAUN

Questions et réponses sur les allégations écologiques européennes

Brussels, le 22 mars 2023

Quels sont les avantages de cette proposition pour les consommateurs? Comment l'initiative protégera-t-elle les consommateurs contre l'écoblanchiment?

94 % des Européens déclarent que la protection de l'environnement est importante pour eux personnellement, et **68 % reconnaissent que leurs habitudes de consommation ont un impact négatif** sur l'environnement en Europe et dans le monde (Eurobaromètre spécial 501). Pour cela, ils ont besoin d'informations fiables et vérifiables.

Les entreprises opérant dans l'Union européenne formulent souvent des **allégations environnementales volontaires** sans justification ni preuves suffisantes pour les étayer. Cela peut se traduire par de l'**«écoblanchiment»**, lorsque l'on tente de faire croire que des produits ou des processus sont plus respectueux de l'environnement qu'ils ne le sont en réalité. Cette pratique est à la fois **trompeuse pour les clients et déloyale à l'égard des entreprises** qui s'efforcent véritablement d'améliorer leurs performances environnementales.

Une étude de la Commission de 2020 a révélé que **53,3 % des allégations examinées étaient vagues, trompeuses ou infondées, et que 40 % d'entre elles n'étaient absolument pas étayées**. Il a également été noté que la grande variété de labels «verts» (environ 230 ont été recensés) était en soi préjudiciable à la confiance des consommateurs, car les labels différaient considérablement en termes de rigueur et de fiabilité, ce qui a suscité un scepticisme généralisé.

La **proposition de directive sur les allégations écologiques** permettra de lutter contre l'écoblanchiment en s'attaquant aux fausses allégations environnementales faites aux consommateurs et en mettant un terme à la prolifération des labels environnementaux publics et privés. Avec la proposition de directive visant à donner aux consommateurs les moyens d'agir en faveur de la transition écologique de mars 2022, les nouvelles règles établissent un régime clair pour les allégations et les labels environnementaux. Elles visent à garantir que les consommateurs reçoivent des informations fiables sur les qualités environnementales des produits qu'ils achètent.

En outre, la proposition relative à des règles communes visant à promouvoir la réparation des biens (également adoptée aujourd'hui) contribuera également à la consommation durable grâce à une série de mesures visant à promouvoir la réparation et à la rendre plus facile et plus attrayante pour les consommateurs dont les biens présentent des défauts tout au long du cycle de vie. Ces deux propositions constituent un élément important de la mise en œuvre des objectifs de l'économie circulaire, telle qu'elle est définie dans le plan d'action en faveur de l'économie circulaire.

Quels types d'allégations sont concernées par cette proposition?

La proposition de directive sur les allégations écologiques vise les **«allégations écologiques» formulées par des entreprises qui déclarent ou suggèrent que leurs produits, services ou organisations ont un impact positif sur l'environnement**, un impact négatif moindre, un impact nul ou un impact qui s'améliore au fil du temps. **La proposition exige que ces allégations écologiques**, telles que «emballage composé de 30 % de plastique recyclé», « jus respectueux des abeilles», «trajet dont les émissions de carbone sont compensées» ou «engagement à réduire les émissions de CO2 liées à la production de ce produit de 50 % d'ici 2030 par rapport à 2020», **soient justifiées, et que ces justifications soient vérifiées préalablement**.

La proposition couvre les allégations explicites formulées **volontairement** par les entreprises à l'intention des consommateurs, qui portent sur l'**impact environnemental**, l'aspect ou la performance d'un produit ou sur le professionnel lui-même, et adoptent une **approche fondée sur le «cycle de vie»**, depuis les matières premières jusqu'à la fin du cycle de vie.

La proposition s'intéresse également aux **systèmes d'étiquetage environnemental**, en mettant fin à la prolifération des labels publics et privés et en garantissant la transparence et la rigueur des systèmes d'étiquetage.

Elle ne concerne que les **allégations qui ne sont pas actuellement couvertes par d'autres règles de l'UE**. Cela signifie que si la législation de l'UE établit des règles plus spécifiques concernant les allégations environnementales pour un secteur ou une catégorie de produits particulier, comme le label écologique de l'UE, le label d'efficacité énergétique ou le label de l'agriculture biologique, ces règles prévaudront sur celles de la proposition.

Il a été démontré que les allégations liées au climat basées sur des compensations ou des crédits carbone sont particulièrement susceptibles de manquer de clarté, d'être ambigües et d'induire les consommateurs en erreur. Cela concerne notamment les allégations environnementales selon lesquelles les produits ou entités sont «neutres pour le climat», «neutres en carbone», avec «CO2 compensé à 100 %» ou toute autre allégation similaire. La proposition relative aux allégations écologiques s'attaque également aux **allégations fondées sur la compensation**. Les entreprises devraient se concentrer sur la réduction des émissions au sein de leur propre organisation ou chaîne de valeur. Lorsqu'elles formulent des allégations liées au climat, les entreprises doivent faire preuve de transparence en dissociant la partie de l'allégation qui concerne leurs propres activités de la partie qui repose sur l'achat de compensations. Il existe également des exigences relatives à l'intégrité des compensations elles-mêmes ainsi qu'à l'exactitude de leur comptabilisation.

Comment fonctionneront exactement la vérification et l'application des allégations écologiques?

La directive proposée exigera des États membres qu'ils veillent à ce que les **exigences minimales en matière de justification et de communication** soient respectées par les entreprises lorsqu'elles formulent des allégations écologiques volontaires. Les États membres seront chargés de mettre en place des **procédures de vérification et d'application, qui seront exécutées par des vérificateurs indépendants et accrédités**, comme suit:

- **Les allégations doivent être justifiées par des preuves scientifiques** largement reconnues, définissant les impacts environnementaux pertinents et tout compromis entre eux.
- Si des produits ou des organisations sont comparés à d'autres produits et organisations, ces **comparaisons doivent être équitables** et fondées sur des informations et des données équivalentes.
- Les allégations ou les labels utilisant une **notation globale** de l'impact environnemental global du produit, par exemple sur la biodiversité, le climat, la consommation d'eau, le sol, etc., **ne sont pas autorisées**, sauf si les règles de l'UE le prévoient.
- Les systèmes d'étiquetage environnemental devront être solides et fiables, et leur prolifération devra être contrôlée. Les **systèmes au niveau de l'UE** doivent être encouragés; les **nouveaux systèmes publics ne doivent pas être autorisés s'ils ne sont pas élaborés au niveau de l'UE**, et les nouveaux systèmes privés ne doivent être autorisés que s'ils peuvent démontrer une ambition environnementale plus élevée que les systèmes existants et s'ils ont obtenu une approbation préalable.
- Les labels environnementaux doivent être transparents, vérifiés par un tiers et régulièrement réexaminés.

Les représentants des consommateurs peuvent-ils intenter des actions collectives contre les professionnels qui ne respectent pas la nouvelle directive?

La proposition de la Commission relative aux allégations écologiques prévoit que, grâce à la directive (UE) 2020/1828 relative aux actions représentatives, les «entités qualifiées», telles que les **organisations de consommateurs, pourront intenter des actions en justice pour protéger les intérêts collectifs** des consommateurs. Cela s'appliquera, par exemple, si un professionnel formule des allégations écologiques (implicitement ou explicitement) en assurant qu'il a respecté les exigences minimales de justification, mais est soupçonné du contraire.

Comment la proposition complétera-t-elle les initiatives existantes visant à donner aux consommateurs les moyens d'agir en faveur de la transition écologique et à lutter contre les pratiques trompeuses?

La **directive sur les pratiques commerciales déloyales** (DPCD) est un instrument transversal qui couvre un large éventail de pratiques de publicité et de vente des entreprises vis-à-vis des consommateurs. Elle prévoit une interdiction générale des pratiques commerciales trompeuses qui

s'applique également aux allégations écologiques environnementales, sous réserve d'une évaluation au cas par cas. Elle est en cours de révision par le Parlement européen et le Conseil sur la base de la proposition de directive de la Commission visant à donner aux consommateurs les moyens d'agir en faveur de la transition écologique, présentée le 30 mars 2022. La **proposition visant à donner aux consommateurs les moyens d'agir** renforce la DPCD afin de lutter plus efficacement contre les pratiques d'écoblanchiment, notamment en interdisant les pratiques d'écoblanchiment spécifiques et récurrentes en toutes circonstances par leur inscription sur une liste noire des pratiques commerciales déloyales («annexe I» de la proposition).

La proposition relative aux allégations écologiques présentée aujourd'hui complète la DPCD en établissant des règles spécifiques concernant la justification, la vérification et la communication des allégations environnementales volontaires et des systèmes d'étiquetage environnemental sur le marché de l'UE. Surtout, elle introduit des exigences de vérification *avant* que des allégations puissent être faites et apparaître sur le marché.

Quel impact ces nouvelles règles auront-elles sur les entreprises de l'UE?

La proposition présentée aujourd'hui introduit des **exigences minimales** en matière de justification, de communication et de vérification pour les entreprises qui souhaiteraient formuler des allégations volontaires.

Les entreprises devront **garantir la fiabilité de leurs allégations environnementales volontaires** et les communiquer de manière transparente. Leurs allégations devront être vérifiées par un vérificateur indépendant au regard des exigences de la directive. Le vérificateur délivrera ensuite un certificat de conformité reconnu dans toute l'UE.

En mettant en place cet ensemble commun de règles au sein du marché intérieur de l'UE, la proposition conférera un **avantage concurrentiel aux entreprises qui font un réel effort** pour développer des produits, des services et des pratiques organisationnelles respectueux de l'environnement, et qui réduisent leur impact sur l'environnement.

Cela devrait également **réduire le risque de fragmentation juridique** du marché unique, ce qui permettra d'économiser les coûts pour les entreprises dont les allégations sont certifiées par un vérificateur accrédité. Les règles harmonisées **réduiront les coûts pour les entreprises** qui exercent des activités transfrontières à l'intérieur du marché intérieur et renforceront la crédibilité de nos industries en dehors de l'UE.

Quel impact la proposition aura-t-elle sur les petites et moyennes entreprises?

Afin d'éviter une incidence disproportionnée des exigences sur les petites entreprises par rapport aux plus grandes, les **microentreprises** (moins de 10 salariés et moins de 2 millions d'euros de chiffre d'affaires) **sont exemptées** des obligations prévues par la présente proposition, à moins qu'elles ne souhaitent elles-mêmes utiliser ces règles.

Afin d'encourager les PME à participer à la transition écologique et de favoriser les allégations environnementales légitimes, la proposition invite les États membres à prendre des mesures pour aider les PME à appliquer les exigences en facilitant l'accès à un soutien financier ainsi qu'à une assistance organisationnelle et technique. La **Commission européenne soutiendra également les entreprises en mettant à disposition des fonds** pour fournir des données permettant d'étayer des allégations solides et de développer des outils de calcul pour les PME.

Quelle sera l'incidence de la proposition pour les partenaires commerciaux internationaux?

Les **entreprises** établies **en dehors de l'UE** et qui formulent des **allégations environnementales volontaires à l'intention des consommateurs de l'UE devront également respecter les exigences** énoncées dans la proposition de directive. Cela encourage les partenaires mondiaux à contribuer à la transition écologique, en particulier les entreprises qui exercent des activités commerciales au sein du marché intérieur.

Les mesures prévues comprennent l'interdiction de nouveaux systèmes d'étiquetage environnemental mis au point par des opérateurs privés dans l'UE ou par des partenaires extérieurs qui opèrent sur le marché de l'UE, à moins qu'ils ne puissent prouver aux États membres leur valeur ajoutée pour le marché de l'UE en termes d'ambition environnementale ou de couverture des impacts. Ces systèmes seront soumis à une notification et à l'approbation de la Commission.

Quel est le lien entre la proposition relative aux allégations environnementales et le label écologique de l'UE?

Le label écologique de l'UE est le label volontaire officiel de l'Union européenne pour l'excellence environnementale, qui oriente les consommateurs vers des produits à faible impact environnemental garanti vérifié par des experts indépendants. La législation de l'Union fixe des exigences concernant l'obtention et la communication du label écologique de l'UE, notamment des critères stricts par groupe de produits établis sur une base scientifique solide, dans le cadre d'un processus transparent de consultation multipartite et d'une certification indépendante par des tiers. Étant donné que le label écologique de l'UE est déjà réglementé par une législation de l'Union qui en garantit la fiabilité et la crédibilité, son utilisation n'est pas soumise aux règles de la proposition relative aux allégations écologiques. Dans le même temps, la proposition relative aux allégations écologiques peut donner une impulsion au label écologique de l'UE et à son développement, étant donné que de nouveaux systèmes publics d'étiquetage ne sont pas autorisés et que les États membres sont encouragés à travailler ensemble sur des systèmes à l'échelle de l'UE, le label écologique de l'UE étant l'un des plus importants.

Quel est le lien entre la proposition relative aux allégations environnementales et le système de management environnemental et d'audit?

Alors que le label écologique de l'UE est le label d'excellence environnementale des produits, le système de management environnemental et d'audit (EMAS) vise à améliorer les performances environnementales des entreprises. Le système de management environnemental et d'audit de l'UE est le système officiel de gestion et d'audit de l'UE mis au point pour permettre aux entreprises d'évaluer, de rendre compte et d'améliorer leurs performances environnementales, contrôlées par des vérificateurs indépendants. Grâce à l'EMAS, les entreprises réduisent leur impact climatique et environnemental dans leur gestion quotidienne. Étant donné l'EMAS est déjà réglementé par une législation de l'Union qui en garantit la fiabilité et la crédibilité, son utilisation n'est pas soumise aux règles de la proposition relative aux allégations environnementales.

Pour en savoir plus

Proposition de directive sur les allégations écologiques

Communiqué de presse

Fiche d'information

Page web sur les allégations écologiques

Proposition de directive établissant des règles communes visant à promouvoir la réparation des biens

Communiqué de presse - Promouvoir la réparation et la réutilisation

Questions et réponses - Promouvoir la réparation et la réutilisation

Promouvoir la réparation et la réutilisation - site web

QANDA/23/1693

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