

Position paper Green Claims Directive

“Directive on Substantiation and Communication of Explicit Environmental Claims”

Abstract

The EU wants to strengthen the rights of consumers and has set itself the goal of increasing the informative value of environmental labels and environmental claims on products and companies. The EU wants explicit environmental claims on products and companies to be subject to stricter rules in future.

ZVEI e.V. is the association of the electrical and digital industry in Germany and represents numerous companies that engage in consumer communication. The ZVEI explicitly supports the desire to substantiate environmental claims in future and to make information about them available to consumers. It is important that information on environmental performance is reliable, comparable and verifiable throughout the EU. Only then consumers will receive comparable information that can contribute to environmentally friendly decisions. At the same time, this can prevent “greenwashing” by companies and the associated distortions of competition. In order to achieve these goals effectively and enable companies to act in a legally compliant manner, it is important that the directive is designed precisely and implemented in a harmonised manner in the member states. In this context, we would like to point out a few key aspects:

- Clear and unambiguous definitions and delimitations from other EU legal acts
- No interlinking of environmental properties, specific environmental statements must be possible
- EU-wide harmonised implementation of the Green Claims Directive
- Scientifically sound environmental statements
- Different methods for verifying environmental statements
- No unnecessary verification & updating of environmental information
- Longer transition period and clear rules for applicability

What we are in favour of

The ZVEI is in favour of the principle of the Green Claims Directive proposal that consumers must not be misled by unfounded sustainability claims.

A key concern is the EU-wide harmonisation of criteria for environmental claims. The ZVEI is explicitly in favour of creating fair competitive conditions, but also points to the urgent need to implement and enforce practicable regulations in this regard. The creation of EU-equivalent standards, for example based on the EN ISO 14040 series, and functioning market surveillance are important.

The scientific foundation of environmental statements is an essential element for substantiation and can contribute to transparency. Sustainability is an increasingly important competitive factor. Products labelled as “green” tend to be in greater demand in the EU¹, but the quality of environmental claims varies greatly, which can be misleading. In this respect, protecting consumers from misleading claims is just as important as providing them with sound information to enable them to make sustainable purchasing decisions.

Most important requirements

Clear definitions and demarcations

A clear scope of application and clear definitions underlying the substantiation and notification of claims are essential to ensure legal certainty and enable a level playing field.

¹ Cf. e.g. GfK "Consumer Life Germany" 2022 on the expectations of consumers regarding the environmentally conscious behaviour of companies

Consistency in the definitions used and a clear delimitation of the scope of application is particularly necessary in relation to the Unfair Commercial Practices Directive (UCPD), which was updated and adapted as part of the “Empowering Consumers Directive”. The UCPD regulates the permissibility of general environmental claims, whereas the GCD focuses on explicit environmental claims in communications aimed at consumers.

The ZVEI demands: The directives should be harmonised with each other in order to create the greatest possible legal certainty and reliability and to avoid double regulation – particularly with regard to the scope of application: the scope of application of the GCD should be fully consistent with the scope of application of the UCPD, which only applies to “commercial practices ... before, during and after the conclusion of a commercial transaction relating to a *product*” (Article 3(1)).

No mixing with substance policy regulation

Various amendments by the lead committees of the European Parliament (IMCO and ENVI) provide for products containing certain substances to be excluded from the possibility of making environmental claims. This essentially covers substances that are subject to restrictions in the EU or that have certain properties that are potentially harmful to health but whose use is not prohibited. The focus is on the protection of consumers.

Electrical and electronic devices are complex products that must fulfil safety aspects, among others, in order to be placed on the market in the EU. It is not possible to manufacture consumer devices without using some of these substances. As a consequence of the amendments aimed at these substances, all consumer devices, including all electrical household appliances, electrical appliances and ICT and consumer electronics, would be exempt from any environmental claims. It would no longer be possible to inform buyers of the vast majority of electrical and electronic appliances about their environmental performance. As a result, investments in sustainability that go beyond the legal minimum would be cancelled out. A blanket ban on environmental claims is a major obstacle to investment in sustainability. Even if a possibility were to be created to define exemptions and limit values in complex procedures through delegated acts², this would not change these factors and would result in further legal uncertainty. This is because the lists of substances that are restricted in the EU are subject to constant change and expansion. The ‘advertising ban’ instrument will not lead to an accelerated phasing out of substances, but threatens to block investments in sustainability.

The ZVEI is therefore calling for the Green Claims Directive to refrain completely from regulating substances. The risk associated with different applications varies and is already adequately regulated by the chemicals regulations. Compliance with the relevant chemicals regulation should not stand in the way of environmental claims for other criteria.

Ensure harmonised implementation across the EU

The directive must be transposed into national law in the member states. As it stipulates minimum standards in the proposed version, different national approaches and varying degrees of strictness are possible and to be expected. This runs counter to the aim of harmonised conditions throughout the EU. **The ZVEI calls for the same conditions to be ensured throughout Europe in order to guarantee a functioning internal market.**

This also means that an environmental claim verified in one Member State is recognised throughout the European Union in line with the principle of mutual recognition in the internal market. However, harmonised regulations are only one component. In addition, effective market surveillance must be guaranteed in all Member States to ensure that the directive is enforced effectively and regarding all market participants.

Substantiate environmental statements and enable various verification methods

The draft directive provides for a review of environmental claims and new environmental labels. To provide meaningful and therefore useful information for consumers, it is necessary to substantiate environmental claims and provide evidence of their truthfulness.

² Compromise Amendment 60 of IMCO and ENVI provides for this.

The ZVEI demands:

- Environmental statements must be based on scientific findings. The methods and standards used for substantiation and substantiation must be suitable, reliable and verifiable.
- A singular methodology such as the Product Environmental Footprint (PEF) cannot be used as a basis. To date, there are no generally applicable rules for determining the environmental footprint of products and the PEF does not include all environmental aspects.
- Existing standards, such as Life Cycle Assessment (LCA), defined within the framework of standardisation, should be considered. The fundamental LCA principles and frameworks are based on the EN ISO 14040 series of standards³ and form the basis for a holistic life cycle assessment and the environmental statements based on it. The product category rules (PCR) defined by DIN EN 50693⁴ must be supplemented by additional product-specific rules (PSR), which contain further specifications such as functional units and standard scenarios in a product-specific context. The application of the series of standards already ensures that environmental statements are well-founded and comprehensible. If not sufficient, these standards must be supplemented or new standards developed. All necessary standards to substantiate and verify the environmental claims must be available well in advance of the directive becoming applicable.

In addition to the basic requirements for environmental claims and labels, Article 10 of the Commission proposal establishes an additional mandatory ex ante third-party certification. However, it is not clear whether every explicit individual claim on products/companies must be subject to ex ante certification by a third party. The more demanding the certification of claims is and the higher the structural requirements placed on them, the greater the associated bureaucratic and financial burden for companies wishing to make environmental claims. This is particularly true for SMEs.

The ZVEI rejects third-party certification of any explicit claims. Third-party certification would first require suitable and qualified certification bodies. In view of the complexity of the requirements and their verification (see Articles 3 to 6 of the Commission proposal), it is unclear, irrespective of the question of the availability of potential certification bodies, how long and what costs can be expected for third-party certification. The duration aspect in particular is problematic with regard to the objective of providing consumers with well-founded information on the environmental performance of products. This is because in the event of lengthy or delayed certification processes, it would not be possible to provide information about the environmental performance of the products concerned.

The ZVEI is calling for certification on a voluntary basis. Numerous labels are already an important guide for consumers and support them in their decision-making. Companies wishing to obtain eco-labelling invest a lot of time and resources in complying with the criteria for the relevant labels and in adapting their products. Article 7 of the proposed directive stipulates that ecolabels must comply with Articles 3 to 6. This would provide quality standards for ecolabels in the future, so the directive should also ensure that existing certified, well-established schemes can continue to exist and award their ecolabels, e.g. based on the above-mentioned ISO EN ISO 14040 series of standards.

The ZVEI rejects any further certification that may be required for eco-labels obtained in this way, as this would lead to double regulation.

No unnecessary checking & updating of environmental information

The Commission draft provides for a regular review and, if necessary, an update of environmental information no later than five years after the date on which the underlying studies or calculations were carried out (Art. 9). The request to review any outdated information or data is understandable but should be proportionate. Such a review and update causes additional costs as well as additional administrative work.

The ZVEI demands that small changes to complex products, such as minimal material changes or altered compositions in a product series, do not automatically result in a mandatory inspection.

³ i.e. EN ISO 14040, Environmental management – Life cycle assessment – Principles and framework, EN ISO 14044:2006, Environmental management – Life cycle assessment – Requirements and guidance, EN ISO 14020, Environmental labels and declarations – General principles, EN ISO 14021:2016, Environmental labels and declarations – Environmental supplier declarations (Type II environmental labelling) EN ISO 14025, Environmental labels and declarations – Type III environmental declarations – Principles and procedures and CEN ISO/TS 14027, Environmental labels and declarations – Development of product category rules)

⁴ DIN EN 50693 specifies procedures for quantitative, environmentally compatible product design by means of life cycle assessments and environmental declarations using product category rules for electronic and electrotechnical devices.

Longer transition period and clear rules for applicability

A period of 18 months has been set for transposing the directive into national law and a further six months for applying the rules (Art. 25). As legal certainty is only achieved once the member states have fully transposed the EU requirements into national law, companies effectively only have six months to justify and review existing and planned disclosures in accordance with the new regulations and to adapt the corresponding communication. The timeframe can be shortened even further if implementation in the member states is delayed. In view of the complex requirements, the specifications for substantiation and, if necessary, certification, including the need to first establish the necessary structures, the envisaged transition period is inadequate.

In particular, the designation of suitable conformity assessment bodies for certification is likely to take a long time, especially if the accreditation of such assessors is only possible after full transposition by the Member States. This is likely to mean that most environmental claims will not be allowed to be used within 24 months of the Directive coming into force – including many claims that are very well founded and could fulfil the requirements of the Directive – simply because there are not enough certification bodies available in time.

It is also completely unclear how to deal with environmental claims on materials, e.g. flyers, packaging, catalogues etc., that are already in use before the date of application. If timely certification before the date of use cannot be guaranteed, there is a risk that products and their packaging and marketing materials will have to be recalled in large quantities and possibly destroyed, which would lead to unnecessary environmental pollution.

The ZVEI is calling for a transitional period of 18 months after transposition into national law.

Contact

Dr. Karina Strübbe • Manager Consumer • Consumer Division •
phone: +49 69 6302 312 • mobile: +49 151 26441 136 • e-mail: Karina.Struebbe@zvei.org

ZVEI e. V. • Electro and Digital Industry Association • Lyoner Straße 9 • 60528 Frankfurt am Main • Germany
Lobbying Register ID.: R002101 • EU Transparency Register ID: 94770746469-09 • www.zvei.org

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