

Position Paper

December 2024

Green Claims Directive: Key issues for trilogue negotiations

[Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims \(Green Claims Directive\)](#)

In March 2023, the European Commission proposed a directive on green claims. Bitkom has submitted detailed comments on the proposed directive.¹ We have also contributed to the negotiations in the European Parliament and the Council of the EU, pointing out in particular the inappropriate proposal to introduce a reservation for the verification of environmental claims and a third-party certification procedure, and calling for a simplification of the verification process for environmental claims.

In view of the newly elected European Parliament and the urgency to increase European competitiveness in line with the Commission President's priorities for the 2024-2029 mandate, we reiterate the significant shortcomings of the proposed Directive. While it would fail to effectively tackle greenwashing, impracticable and bureaucratic rules will burden companies with additional sustainability reporting requirements. We have expressed our strong reservations about the proposal in the last parliamentary term and would highly welcome a thorough reconsideration in the current term.

Even after the negotiations in the EP and Council, we believe that the current proposal on verifying environmental claims remains highly problematic and would therefore like to contribute to the trilogue negotiations with constructive proposals on key issues.

¹ [EU-Proposal for a Green Claims Directive | Position Paper | Bitkom e. V.](#)

General remarks: Ex ante third-party certification of environmental claims disproportionate and impractical

In general, Bitkom welcomes the underlying objective of the European Commission's draft directive to create more transparency in competition with regard to environmental claims and to prevent greenwashing. **However, the reservation of authorisation for environmental claims contained in Art. 10 and the resulting third-party conformity assessment and verification procedure are neither appropriate nor necessary to achieve these objectives.** On the contrary, the draft would lead to a significant increase in bureaucracy and additional burdens, both for administrations and, in particular, for companies. It would also significantly reduce the visibility of sustainability claims in the public domain, which would be counterproductive to the objective of achieving broad support for the achievement of climate and environmental objectives.

Even a simplified procedure, as proposed by both the EP and the Council, is not a sufficient solution to the problems mentioned. Such an approach entails many (legal) uncertainties and is no less bureaucratic than the Commission's proposal with regard to the question of which claims are ultimately eligible for a simplified procedure. This would then depend entirely on the implementing acts that the Commission will present in the future. In view of the variety of possible environmental claims, even such a "simplified procedure" would entail a massive regulatory burden once the Directive is adopted. It would be very difficult for companies to distinguish between *a) general claims* covered by the Unfair Commercial Practices Directive, *b) explicit claims* requiring third party verification under the Green Claims Directive and *c) explicit claims suitable for a simplified procedure* once defined in implementing legislation.

Art. 10 should therefore either be abolished altogether or the mandatory ex ante scrutiny should be limited to environmental labelling schemes (see point on Art. 10).

In any case, the verification process for environmental claims should never be conducted at the product level, as this approach ultimately increases the bureaucratic and financial burden, stifles innovation, and undermines the goal of strengthening sustainability as well as Commission President von der Leyen's promise to cut red tape. In addition, we have concerns about the capacity of third-party certifiers to ensure speedy processing. Therefore, we strongly recommend allowing certification for products of the same type or category, as well as for processes that verify environmental claims.

The current proposal also lacks clarity on the validity of environmental claims or labels in other European markets beyond the national market where the certification was obtained. This ambiguity could create disproportionate burdens for cross-border product placement. The classification of products and services, similar to the Nice Classification system for trademarks, has proved successful and should be applied to the Green Claims Directive. This would significantly reduce the administrative burden while maintaining ambitious objectives.

Abolish Article 10:
Time-consuming and costly ex-ante certification is fundamentally at odds with sustainability and climate goals.

There is no solution for legacy claims (Art. 1)

Article 1: Limit the scope to claims *after* a certain date.

The scope of the Directive, as set out in the Commission's proposal, covers both product and company claims, including those published before the entry into force and practical application of the Directive. In practice, it will not be possible to comply by the cut-off date. Theoretically, all claims ever made anywhere - on leaflets, in catalogues, online, at POS, on packaging, on products, etc. - would be covered by the Directive and would either a) have to be verified and certified by the application date or b) disappear from the face of the earth, both of which are impossible. We need a practical solution to this problem: one way would be to limit the scope to claims *after* a certain date. This would create a manageable limit, and existing claims would be out of scope. If this solution is not politically desirable, the only alternative is to provide for a very generous phase-out period during which existing applications that have not yet been certified will be given a provisional certificate of compliance to give certification bodies sufficient time to process the backlog as well as new applications (see point on Article 25).

The definition of 'explicit environmental claim' should not cover oral claims (Art. 2)

Article 2: We support the Parliament and Commission position.

The Council defines an "explicit environmental claim" as "*a statement made in written or oral form, including through audiovisual media, but excluding environmental labels*". The inclusion of the term "oral" raises significant concerns as it raises the question of how market surveillance authorities could effectively enforce oral environmental claims. Monitoring and verifying oral claims would be highly impractical, if not impossible, and would place an undue burden on companies. For these reasons, we strongly support the position of the European Parliament in maintaining its more practical definition excluding oral environmental claims.

The bureaucracy of an ex-ante verification of environmental claims needs to be reduced (Art. 10)

Article 10: Delete the Article or limit the ex-ante verification to environmental labelling schemes.

Art. 10 stipulates that any environmental statement must be verified by an independent verifier before made public. Such a conformity assessment and certification procedure has not been known to competition law so far. It would constitute a significant burden on businesses and administrations and, ultimately, a

disproportionate interference with the freedom of entrepreneurship of the companies concerned. Furthermore, with a pre-approval process it will take a very long time for claims to be approved. If our goal is to enable consumers to opt for more sustainable products, such a pre-approval process would be counterproductive, as companies would reduce the information they provide in order to save costs and time. It will also run counter to REFIT (“making EU law simpler, less costly and future proof”).

Art. 10 should therefore either be abolished altogether or the mandatory ex ante scrutiny should be limited to environmental labelling schemes: *“The verification of **environmental labelling schemes** shall be undertaken by a verifier fulfilling the requirements set out in Article 11, in accordance with the procedures referred to in paragraphs 2, before ~~the environmental claim is made public or~~ the environmental label is displayed by a trader.”*

In this regard, we strongly support a maximum 30-day verification period for the verifier (Art. 10, 4(a), European Parliament proposal). We have significant concerns about the capacity of national competent authorities and verifiers to cope with the expected high numbers of requests. It is crucial to ensure that the verification process is efficient and does not hamper innovation and the ability of companies to communicate. It is therefore essential to introduce a precise timetable for notifying companies of the results of the examination of their applications. Long and costly verification procedures prevent efficient communication to consumers.

However, there is still the crucial question of what happens if there is no response from the certification body. Particularly regarding the relevant factor of ‘planning of campaigns’, a final decision at the end of the verification period (preferably the fiction of an authorization) is needed, in case that the verification is not delivered on time. Otherwise, companies would probably only have recourse to the administrative courts (duration of approx. 2 years in the first instance).

In addition, it should be clarified how business secrets can be protected throughout the certification process.

Furthermore, private labels that would typically not be allowed under the Green Claims Directive, but are often at the core business for companies and protected as registered trademarks, should be allowed under specific circumstances. The private label should be considered a certified “normal” claim, provided they are accompanied by additional transparent information for the consumer to ensure it is not misleading. This could prevent a conflict with IP-rights in particular trademark law.

If there is no change in Art. 10, the simplified procedure must quickly provide legal certainty (Art. 3a & 12a)

Article 3a & 12a: We support the Council position.

It is important that the Directive allows companies to continue to make environmental claims in a pragmatic way, while respecting the principles of transparency and accuracy. Both the Council's and the European Parliament's positions introduce a "simplified verification procedure", which provides for a streamlined verification process for certain environmental claims. As outlined above, we consider ex-ante verification, even with a simplified procedure, to be extremely problematic and are strongly in favour of removing it or limiting it to labels. However, if a political majority cannot be found for this, we support the initiative for a simplified procedure. The Council version is more convincing in this respect as it includes claims going beyond the legal requirements and claims based on labelling. However, there is still uncertainty as to which types of claims will actually benefit from this simplified procedure. It is crucial to quickly establish a list of environmental claims that do not require third party verification and yet are eligible for the simplified verification procedure. This list should be established no later than the proposed 18 months after entry into force. The timely development of a clear list of claims is essential to avoid legal uncertainty for affected companies. To this end, we urge the European Parliament and the Council to ensure that the European Commission works quickly and closely with stakeholders and industry associations.

We need a gradual entry into force, a sufficient transition period and the timely establishment of verification bodies (Article 25)

Article 25: We support the Council position (with changes).

The Council's position provides for a national transposition period of 24 months, followed by a transitional period of 12 months. We believe that the Council's position calling for a total transposition period of 36 months is a good step in the right direction, as the implementation of this Directive will require a reorientation of public authorities, certification bodies and companies. However, we believe that it would be more beneficial for all parties (also in terms of legal certainty) if the transitional period were extended to 18 months, giving a total transposition period of 42 months. The minimum common denominator should be at least 18 months for national transposition (and establishment of the list of claims covered by the simplified procedure) and a further 18 months to ensure compliance. For this system to work, it must be ensured that the relevant verification and certification bodies are in place by the end of the national transposition period. Otherwise, companies will not be able to comply for claims that cannot benefit from the simplified procedure, especially

considering the backlog of existing claims (see point on Article 1). We also support the fact that the certification bodies must deliver within a certain time (Art. 10, 4(a), European Parliament proposal). However, more clarity is needed. We suggest that companies should be granted a (temporary) certificate of conformity in case of a delayed certification process (see point on Article 10).

Bitkom represents more than 2,200 companies from the digital economy. They generate an annual turnover of 200 billion euros in Germany and employ more than 2 million people. Among the members are 1,000 small and medium-sized businesses, over 500 start-ups and almost all global players. These companies provide services in software, IT, telecommunications or the internet, produce hardware and consumer electronics, work in digital media, create content, operate platforms or are in other ways affiliated with the digital economy. 82 percent of the members' headquarters are in Germany, 8 percent in the rest of the EU and 7 percent in the US. 3 percent are from other regions of the world. Bitkom promotes and drives the digital transformation of the German economy and advocates for citizens to participate in and benefit from digitalisation. At the heart of Bitkom's concerns are ensuring a strong European digital policy and a fully integrated digital single market, as well as making Germany a key driver of digital change in Europe and the world.

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