Substantiation and communication of explicit environmental claims (Green Claims Directive)

2023/0085(COD) - 22/03/2023 - Legislative proposal

PURPOSE: to lay down new rules to stop companies from making misleading claims about environmental merits of their products and services and allow consumers to make informed environmental choices (Green Claims Directive).

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: 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.

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.

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.

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. This proposal provides more specific rules (lex specialis) and complements the proposed changes to the Unfair Commercial Practices Directive (lex generalis).

CONTENT: according to the proposal, when companies choose to make a green claim' about their products or services, they will have to respect minimum norms on how they substantiate these claims and how they communicate them. The proposal applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices. It aims 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;

- 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.

Scope of the proposal

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.

Requirements for substantiation of environmental claims

The proposal requires that the substantiation of explicit environmental claims be based on an assessment that meets selected minimum criteria to prevent the claims from being misleading. In particular, the underlying assessment should:

- be based on recognised scientific evidence and state-of-the-art technical knowledge;

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

- consider all significant aspects and impacts in assessing performance;

- provide information on whether the product is significantly better environmentally than current practice;

- require that greenhouse gas emission offsets be reported in a transparent manner.

Microenterprises (fewer than 10 employees and with an annual turnover not exceeding EUR 2 million) 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.

If products or organisations are compared to other products and organisations, these comparisons should be fair and based on equivalent information and data.

Environmental labelling

The proposal will also regulate environmental labels. To control the proliferation of such labels, new public labelling schemes will not be

allowed, unless developed at EU level, and any new private schemes will need to show higher environmental ambition than existing ones and get a pre-approval to be allowed. There are detailed rules about environmental labels in general: they must also be reliable, transparent, independently verified, and regularly reviewed.

Aggregated scoring

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.

Claims or labels that use aggregate scoring of the product's overall environmental impact, will no longer be permitted according to the proposal.

Enforcement of provisions

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 proposed 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.

Budgetary implications

The proposal involves a budget of a total of approx. EUR 25 million until 2027 (i.e. under the current multi-financial framework).