



ICC proposed amendments to the Directive on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)

The International Chamber of Commerce (ICC) recognises and applauds the efforts to expedite the green transition, empower consumers in making sustainable choices and foster the competitiveness of businesses that take ambitious actions on environmental sustainability. However, ICC wishes to reiterate its concerns, specifically regarding the proposed ex-ante verification procedure outlined in the Green Claims Directive.

ICC has been the major rule-setter in international advertising self-regulation since 1937, when the ICC Global Marketing and Advertising Commission issued the [first ICC Code of Advertising and Marketing Communications](#) (the ICC Code) – one of the most successful examples of business self-regulation ever developed. Consistent with its established commitment to make sure the ICC Code is up to date, the ICC has recently completed its most comprehensive review and revision to date. The revised Code is now awaiting imminent approval by ICC's Executive Board, which will convene in early June 2024. The new version features enhanced guidance on environmental claims in its chapter D, which also inspired the creation of a detailed [Framework for Responsible Environmental Marketing Communications](#) (the ICC Environmental Framework). This framework offers practical commentary and guidance to help practitioners apply the Code's principles to environmental advertising.

As highlighted in [its response](#) during last year's European Commission's public consultation, ICC is deeply worried that the suggested ex-ante verification process may inadvertently compromise the primary objective of the Directive, which is to assist consumers in making informed green choices. Feedback from our member companies, which actively pursue high climate ambitions, underscores this apprehension due to the anticipated administrative burdens, increased costs, the broad scope, and the risk to conflict with constitutional provisions that explicitly forbid censorship, which we have previously highlighted in detail.

The pre-verification requirement also risks creating a false sense of certainty for businesses. While giving the impression that a claim is approved, a certificate of conformity would in fact not be a guarantee that a marketing message is not misleading, since marketing communications are regulated based on the overall impression they create. The assessment of a verifier in the certificate of conformity, will not prejudice the assessment of the environmental claims by national authorities or courts which enforce Directive 2005/29/EC. This creates legal uncertainty for

companies, as they may face different interpretations and assessments despite having obtained the certificate. Such ambiguity can lead to inconsistent enforcement and compliance challenges across different jurisdictions, making it difficult for businesses to navigate the regulatory landscape. Thus, the claimed benefit for companies, that they will receive approval and legal certainty in advance will not materialise, and only the disadvantage of a significantly increased administrative burden remain.

In light of these expected costs, risks, and uncertainties, our member companies have communicated that they might be forced to discontinue the communication of their environmental and climate efforts to consumers altogether should the proposed ex-ante verification procedure be adopted. This would in turn hinder their ability to guide customers toward the most informed and sustainable decisions and thus undermine the purpose of the proposal.

In addition to the negative impact on businesses, the pre-verification process for all explicit environmental claims also risks overwhelming regulatory bodies, leading to delays and inefficiencies, since the responsibility for ensuring that third-party verifiers comply with established standards typically falls to regulatory bodies. By narrowing the scope and removing these claims from mandatory pre-verification, regulatory authorities can focus their resources on instead monitoring the compliance of traders ex-post, ensuring a more efficient and effective oversight process.

ICC urges decision-makers involved in the legislative process to consider the negative implications the ex-ante verification procedure would have on the private sector and the green transition as well as regulators. Instead of a burdensome ex-ante procedure, we suggest strengthening ex-post enforcement to better support businesses in their sustainability efforts while not undermining the purpose of addressing greenwashing. This would mean removing 'explicit environmental claims' from the scope of the pre-verification mechanism, without impacting the strict substantiation requirements for explicit environmental claims or the levels of robustness and transparency expected of environmental labels.

In addition, discussions in the Council have looked into requirements for climate claims. ICC, as the principal business voice to the UN Framework Convention on Climate Change, has a longstanding involvement in climate action and stands squarely behind collective efforts to tackle climate change and limit global temperature increase to 1.5°C. In line with the Paris Agreement, ICC recognises the importance of international cooperation and coordinated solutions at all levels in order to allow for higher climate ambition and action. High integrity carbon credit markets for both emission reduction and emission removals can play an important role in achieving our common climate goals, whilst effective reduction of emissions should remain the prime target, including the prevention of GHG leakage.¹

¹ ICC Carbon Pricing Principles [2021-cop26-icc-carbon-pricing-principles.pdf \(iccwbo.org\)](https://www.iccwbo.org/files/press-releases/2021-cop26-icc-carbon-pricing-principles.pdf)

Provisions in the proposed Directive in relation to climate related claims must align with the best available science and the EU climate commitments under the Paris Agreement and should take into account applicable international standards, while also avoiding duplication and overlaps with prevailing norms.

Environmental labels other than EU ecolabel: limiting environmental labels to those awarded under environmental labelling schemes established under Union law will limit the products awarded environmental labels due to the limited scope of products currently covered. There are many well accepted and respected international environmental labels (e.g., EN ISO 14024 type I ecolabels, EPEAT, TCO, etc.) that present a rating or score of a product based on an aggregated indicator of environmental impacts that should be accepted and allowed to continue guiding consumers.

Ensure alignment with the Corporate Sustainability Reporting Directive (CSRD): CSRD reporting requires an unprecedented level of details subject to third-party assurance by EU recognised auditors, and another review by another third party would be duplicative without adding any additional assurance or information. This effort should be recognised to streamline additional administrative burden and facilitate the use of information published in the CSRD reporting as substantiated and verified claims.

Harmonisation of methodologies: ICC encourages the Council to follow a similar approach to the Commission’s proposal and European Parliament’s position and consider methodologies beyond the product environmental footprint methodology (PEF) which is not equally suitable for all product groups.

Longer transition period: certifying claims and phasing out products that have non-compliant claims will require adequate transition time. We support an extended transition time for application of the new rules, granting companies at least an 18-month transition period following Member States’ national transposition during which existing claims could still be used, in line with the European Parliament’s adopted position.

ICC’s proposed amendments to the Directive are detailed below:

Article 2(2)

Commission text

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

ICC proposed amendment

‘explicit environmental claim’ means an environmental claim made in written form or orally, including through audiovisual media [...] excluding environmental labels;

Justification:

To ensure clarity and alignment with Council discussions, we suggest revising the definition as above.

Article 2(11)

Commission text	ICC proposed amendment
‘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;	‘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;

Justification:

In order that explicit environmental claims should not be in scope for the pre-verificaiton requirements, the definition of ‘verification’ would need to be amended accordingly.

Article 5(6)

Commission text	ICC proposed amendment
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.	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:	That information shall include at least the following: (a) environmental aspects, environmental impacts or environmental performance covered by the claim;

(a) environmental aspects, environmental impacts or environmental performance covered by the claim;	(b) the relevant Union or the relevant international standards, where appropriate;
(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 ;
(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 ;	(d) a brief explanation how the improvements that are subject to the claim are achieved;
(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;
(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;	(e) (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;
(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;	(f) (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.
(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.	

Justification:

In order to align the information requirements on the product or trader that is subject of the explicit environmental claim with the removal of the pre-verification requirement, 5(6e) should be deleted.

Take note that this would not impact the substantiation requirements for such claims and for traders to have the information to support those claims. With the removal of the pre-verification requirement for individual explicit environmental claims, there is also no longer a need to make exemptions for traders that are microenterprise, see Article 3(3), 4(3), and 5(7). In fact, it is important that the substantiation requirements apply to all traders and that they have the information to support the environmental claims that they make.

Article 9

Commission text

ICC proposed amendment

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.

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.

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Justification:

In its current form, the definition of “explicit environmental claims” in the proposal encompasses all textual or label-based representations related to the environment, resulting in unjustified burdens and costs for businesses. They should be removed from the scope of communications that will need to be pre-verified.

Article 10

Commission text

ICC proposed amendment

TITLE

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

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

Justification:

In its current form, the definition of “explicit environmental claims” in the proposal encompasses all textual or label-based representations related to the environment and a very broad scope, resulting in unjustified burdens and costs for businesses. This should be removed from the scope of communications that will need to be pre-verified. As the certificate of conformity does not prejudice the assessment of the environmental claim by national authorities or courts in accordance with Directive 2005/29/EC, this procedure would otherwise also entail significant legal uncertainty for businesses. They may face differing interpretations and assessments from various national bodies despite having obtained the certificate. This legal ambiguity poses additional risks and potential compliance challenges for businesses operating under this directive.

Commission text

ICC proposed amendment

Article 10(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.

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.

Justification:

See above.

Commission text

ICC proposed amendment

Article 10(5)

For the purposes of the verification the verifier shall take into account the nature and content

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of the explicit environmental claim or the environmental label.	of the explicit environmental claim or the environmental label.
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Justification:

See above.

Commission text

ICC proposed amendment

[Article 10\(6\)](#)

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.

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.

Justification:

See above.

Commission text

ICC proposed amendment

[Article 10\(8\)](#)

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

The certificate of conformity shall ~~not~~ **neither** prejudice the assessment of ~~the environmental claim~~ by national authorities or courts in accordance with Directive 2005/29/EC, **nor by self-regulatory organisations in accordance with Codes of Conducts, as referred to in Article 10 of Directive 2005/29/EC.**

Justification:

Member States should ensure that all effective ex-post enforcement measures are put in place. In addition to national regulatory bodies, self-regulatory organisations fulfil an important role today in evaluating and assessing marketing communication including green claims. For the aim of this directive its vital that they may continue doing this.

Article 13

Commission text

ICC proposed amendment

TITLE

Designation of competent authorities and coordination mechanism

Enforcement, designation of competent authorities and coordination mechanism

Justification:

Member States should ensure that effective ex-post enforcement measures are put in place and competent authorities charged with ensuring compliance with this Directive.

Commission text

ICC proposed amendment

Article 13(2) **NEW**

The enforcement shall be undertaken by the competent authorities to take appropriate actions against parties that fail to comply with the requirements set out in this Directive, including effective compliance monitoring measures as set out in Article 15.

Justification:

See above.