

EEB comments on provisions on sustainability labels and green claims in the proposal on empowering the consumers for the green transition

15 September 2022

Sustainability labelling and sustainability information tools

The EEB supports the aim of the Commission proposal to curb the proliferation of labels that confuse and mislead consumers, prevent a level playing field for companies (harming those making efforts to go beyond legislation and differentiate their products/services from the conventional ones) and do not make a real difference for the environment.

We see the proposal to build on certification schemes as a good step in the right direction, but we see crucial elements that need to be preserved in the negotiations of the EP and the Council and important aspects that should be improved.

Notably, **the principle of third-party verification should be retained**, in light of proliferation of private labels which are based on self-assessment by industry and biased interests. If this provision is weakened the reform of the Unfair Commercial Practice Directive (UCDP) will not contribute to counter the proliferation of unreliable labels, which is one of the major problems which the proposal aims to tackle.

We do not agree with some views, advocated notably by industry players, on the higher costs for companies associated to the use of certification to underpin their labelling. In the experience of the EU Ecolabel scheme, most of the companies using the label are SMEs¹, with a lower representation of big companies who use their own brands to market their products. Costs that companies might face to obtain the EU Ecolabel or other national ecolabels are compensated by other factors, such as higher market recognition by consumers, easier access to green public procurement or available guidance with respect to products sustainability.

The EU Ecolabel Regulation sets limits to certification costs to adapt them to SMEs and some authorities provide financial support². It also requires that requirements do not represent disproportionate administrative and economic burden (Art. 8.4). The main costs for companies seeking certification with

¹ According to statistical data shared by DG ENV (July 2022) a majority of license holders in Italy are SMEs (59% on average but even more in some sectors such as tourism accounting for 66%). Information shared by the Dutch Ecolabelling Body, shows that in the Netherlands 75% of licence holders of the EU Ecolabel are SMEs. Common arguments raised by companies in to seek certification in this country are to distinguish themselves from competitors, to qualify for Green Public Procurement, or because retailers request the certification. In the case of Denmark, approx. 2/3 of licence holders of the Nordic Swan are SMEs (in 2020).

² See [ADEME in France](#) as example.

the EU Ecolabel and equivalent schemes are related to changes in design, production processes or tests necessary to measure and reduce health and environmental impacts of their products.

While one can expect that companies make certain investments to improve their products to match higher environmental performance, allowing unreliable labels in the market would penalise those that are making extra efforts.

Additionally, **the definition of certification schemes in art. 2 (s) should be amended to integrate additional fundamental principles** enhancing the reliability and transparency of labelling schemes. Notably the following are currently missing:

- *requirements are publicly available, developed in independent processes, reflecting significant improvement compared to baseline legislation and conventional products. Complaints and dispute resolution mechanisms.*

These aspects are integrated in robust standards for certification schemes such as provided within standard ISO 14024 for ISO Type I Ecolabels. Some of these aspects were also integrated in the minimum criteria identified in the Commission's preparatory study (annex II, p.38³)

Beyond this improvement, **we support the integration of a pre-approval of sustainability labels and digital information tools via an EU body and national authorities.** This framework would provide better legal certainty for companies, better protection for consumers and enforcement by market surveillance authorities.

This option was assessed in the Impact Assessment (page 187) as having a significant positive impact for consumer protection, as well as for business with respect to level playing field and reduced barriers to cross-border trade. The IA points to a slightly higher impact of the pre-approval of sustainability labels due to better compliance (page 47)⁴, but rejected this option due to estimated higher costs for setting up an EU body.

We advocate for reconsideration of this option with the possibility of assigning this role to already existing bodies at EU level (e.g. European Environment Agency) and national level (with possibility of mutual recognition) to reduce costs. A precedent exists already through the Health and Nutrient Claims Regulation, with EFSA acting as the EU body overseeing food claims.

The EU body would be in charge of maintaining a public list of labels which are authorised and to which companies and market surveillance authorities can refer.

Taking inspiration on the food regulation, this body could play a wider role with respect to market use of green claims (see next point on green claims).

Finally, it would be crucial to amend Annex (1) 2a of the UCPD to include also sustainability information tools. The provision 2a of the Annex is currently limited to the display of sustainability labels. However, traders are increasingly using digital sustainability information tools (in light of e-commerce uptake).

³ https://ec.europa.eu/info/sites/default/files/6_1_186789_ann_prep_stu_prop_em_co_en.pdf

⁴ [4_1_186783_ia_sum_prop_em_co_en.pdf](https://ec.europa.eu/info/sites/default/files/4_1_186783_ia_sum_prop_em_co_en.pdf) (europa.eu)

Generic environmental claims

We support the need for companies making general claims on their overall better environmental performance to underpin them through robust methodologies based on a life cycle approach such as through the EU Ecolabel and equivalent.

However, the proposal allows for the use of **environmental claims** covering specific impacts (e.g. biodegradability) without providing an harmonised definition for such claims including references to recognised methods. Although the UFCD might not be suitable to develop technical definitions, the Annex could be complemented by including a prohibit of specific environmental claims which cannot be substantiated according to EU law. This would mean that unless the claims are covered under the future Green Claims Regulation or other Union legislation, they cannot be made by companies. In this way, any loopholes between this legislation and the GCR will be avoided.

We would like to underly that the Commission has repeatedly presented the Green Claims Regulation as a framework to cover those claims that can be substantiated through the Product Environmental Footprint method, while the legislation on empowering the consumers for the green transition was meant to cover other claims not addressed by PEF as a safety net. However, there is a risk of a critical gap as the proposal to amend the UFCD by the Commission has failed to specify definitions and conditions for claims which cannot be assessed through the PEF method.

While uncertain, we hope that the upcoming GCR proposal will finally not limit its scope to the PEF method but that it will also include definitions and reference methods for other types of claims authorised in the market. We think that a potential EU body in charge of the pre-approval of labels, could also play a role in approving green claims which might emerge due to future technological and market developments (assessing such claims to support appropriate update of the GCR)⁵.

This EU Body could also be in charge of keeping a registry/database for green claims made by companies (where supporting evidence is submitted too). A sample of green claims could be checked periodically to assess compliance of the claim and the evidence supporting it. This could implement a principle of “No data, no claim”.

Climate neutral claims

Carbon neutral claims should be banned. According to the French Environment Agency (ADEME)⁶, carbon neutrality can only be achieved on a global/system level and not at the level of specific products or companies. Such claims give the impression to consumers that products do not have an impact, whereas behind offsetting of emissions is hidden relying on project and compensation schemes which do not have an impact in the reduction of emissions associated to the product and company activities.

⁵ EFSA is playing a similar role for the approval of claims made in food.

⁶ [Avis d'Experts : "Utilisation de l'argument de « neutralité carbone » dans les communications](#) », ADEME, published in February 2022.

Carbon neutral claims are often made by highly polluting companies (e.g. fossil fuels, aviation, meat...) to greenwashing their image, providing the false impression to consumers that they offer sustainable alternatives.

Claims about future environmental performance

More stringent rules on claims on future performance should also be considered, notably banning future claims which rely on offsetting schemes or technology which has not been proven at scale.

If they are not prohibited, they should be allowed only under strict conditions⁷:

- Annual reporting with quantified results, including methodology used to create reporting
- Annual update of the timeline based on annual results and the originally foreseen timeline (e.g. based on actual emissions)
- Monitoring through a pre-approved scheme
- Claim should not be allowed if the reports do not show sufficient progress

More details:

- [EEB feedback on the proposal for a directive on empowering the consumers for the green transition](#) (May 2022)
- [EEB assessment of the CE package presented by the Commission on 30 March 2022, including the proposal on empowering the consumers for the green transition](#) (April 2022)
- [EEB feedback on the Green Claims Initiative](#) (December 2020)
- [ECOS position paper on empowering the consumers for the green transition](#) (May 2022)
- [BEUC position paper on the pre-approval of green claims and labels](#) (December 2020)

⁷ Partially based on French decree on climate claims reporting:
<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045570611>