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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 7777/23
Subject:	Green Claims Directive: Follow-up of the WPE meeting on 1 June 2023 - Comments by delegations

Following the call for comments (WK 7308/23), delegations will find attached the contribution received from the FR delegation, followed by a courtesy translation, and the NL delegation.

NETHERLANDS

Written comments for the Green Claims Directive

Article 7 – 11

Art 2.5

Definition 2.5 'consumer' should preferably be in line with the definition in the ESPR, where a reference is made to Directive (EU) 2019/771.

Suggestion:

'consumer' means a consumer as defined in Article 2, point (2), of Directive (EU) 2019/771.

Article 8 Requirements for environmental labelling schemes

- We cannot support this article which obliges Member States to assess the added value of private environmental labelling schemes. The Directive does currently not clearly state which criteria would apply for the assessment of private schemes, meaning that outcomes of the assessments can diverge between Member States. Owners of environmental labelling schemes could opt for assessment in the most lenient Member States meaning the internal market would be fragmented.
- The proposal does not clarify how the added value of environmental labelling schemes would be measured. Added value is strongly dependent on (varying) consumer preferences.
- Solely assessing the added value of *new* environmental labelling schemes creates an unfair playing field for actors who would like to develop a labelling scheme.
- We urge the presidency to set strict 'procedural' requirements, for example on the verification and the verification method, for both existing and new environmental labelling schemes instead. Furthermore, the number of labels should be monitored in the coming years.

Proposed changes to Article 8

Article 8 (2)

We propose adding the following wording to 8 (2) b:

Information about the objectives of the environmental labelling scheme, the requirements, the criteria and the methodology used to develop and award the environmental label, the requirements and the procedures to monitor compliance of the environmental labelling scheme are transparent, accessible and free of charge, understandable for the average consumer and sufficiently detailed to be assessed by the national competent authorities.

Since we do not support assessing the added value of new environmental labelling schemes, we propose the deletion of Article 8 (4), 8 (5), 8 (6), 8(7) and 8(8).

Article 9 Review of the substantiation of explicit environmental claims

- Economic operators making the claim should be obliged to adjust the claim whenever the circumstances and elements related to the assessment of the environmental claims, which are named in Article 3 and 4, have changed.
- We propose a clarification to Article 9 which indicates that an economic operator should be responsible for the claims made and for the correctness and substantiation of that claim. As a result, member states should ensure that economic operators take their responsibility to review and update claims in a timely manner.

Proposed changes to Article 9

Member states shall ensure that the economic operator making the claim reviews and updates the information used for the substantiation of explicit environmental claims ~~when there are circumstances that affect the accuracy of the claim~~ when one or more elements related to the substantiation of explicit environmental claims, as listed in Article 3 and 4, have changed and thus affect the accuracy of a claim, or no later than 5 years from the date when the information referred to in Article 5 (6) is provided. In the review, the ~~trader~~ economic operator making the claim shall revise the used underlying information to ensure that the requirements of Article 3 and 4 are fully complied with.

The updated explicit environmental claim shall be subject to verification in accordance with Article 10.

Article 10 Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes

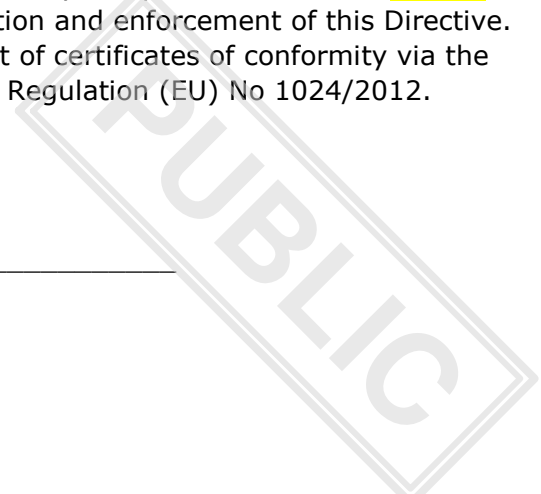
- Setting up national procedures for verifying the substantiation and communication of explicit claims will be problematic when a uniform method for substantiating environmental claims is missing in this proposal. The verification procedures would differ between Member States since they build on different methods.
- We worry that the robustness of the procedures will vary between Member States, meaning that the level playing field cannot be guaranteed and the internal market would be fragmented.
- In our opinion, harmonized verification procedures determined at the EU level and applicable to all Member States would be better suited. The European Commission has a better grasp of the variety of explicit environmental claims and the life cycle assessment methods available, which is essential knowledge when setting verification procedures. Letting member states go through similar processes in order to develop verification procedures seems quite inefficient as it would mean devoting significant resources to establishing the procedures.

Proposed changes

~~10.1. Member states~~ The Commission shall set up procedures for verifying the substantiation and communication of explicit environmental claims against the requirements set out in Articles 3 to 7.

~~10.2 Member states~~ The Commission shall set up procedures for verifying the compliance of environmental labelling schemes with the requirements set out in Article 8.

10.7 The certificate of conformity shall be recognized by competent authorities market surveillance authorities responsible for the application and enforcement of this Directive. Member States The Commission shall notify the list of certificates of conformity via the Internal Market information system established by Regulation (EU) No 1024/2012.



Paris, le 20 juin 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits des autorités françaises suite au groupe du 1^{er} juin sur le projet de directive relatif à la justification et la communication des allégations environnementales explicites

Les autorités françaises partagent le constat de la Commission d'un besoin de mieux encadrer les allégations environnementales dans un objectif de double protection de l'environnement et du consommateur. Dans ce contexte, les autorités françaises soutiennent, de manière générale, les objectifs de cette proposition de directive. Elles souhaitent néanmoins faire part des commentaires suivants :

1. Cluster 1 - articles relatifs aux allégations environnementales explicites

Article 1 – Champ

Les autorités françaises estiment qu'il convient d'explicitier dans le champ que la directive s'applique aux allégations environnementales explicites de nature volontaire. Cette précision permettra de lever des interrogations récurrentes, de la part des Etats membres comme des parties prenantes, sur la nature des allégations visées.

Proposition d'amendement :

Article 1

1. This Directive applies to voluntary explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.

Article 2 – Définitions

Les autorités françaises proposent d'inclure des définitions de « allégations environnementales comparatives ».

- S'agissant de la définition de « allégations environnementales comparatives », les autorités françaises proposent la définition suivante : « allégation environnementale explicite comparant les performances environnementales d'un produit ou d'un service par rapport à ceux proposés par la concurrence ou à une version antérieure proposée par le même opérateur »

Proposition amendement:

Article 2

[...]

2(bis) ‘comparative environmental claim’ means any explicit environmental claim which compares the environmental impacts or performances of a product or a service with those offered by the competition or with an earlier version offered by the same trader.

Les autorités françaises proposent également de différencier dans ces définitions l'information environnementale d'un produit de l'allégation environnementale. Les autorités françaises se proposent de contribuer à la réflexion quant à cette différenciation. Elles pourront à ce titre contribuer à la rédaction d'une définition.

Proposition d'amendement :

Article 2

[...]

S'agissant des définitions 14 et 15 relatives au type d'informations, les autorités françaises proposent d'ajouter, à la définition 15, les bases de données cycle de vie dans les exemples de sources d'informations secondaires.

Proposition d'amendement :

Article 2

(15) ‘secondary information’ means information that is based on other sources than primary information including literature studies, engineering studies, ***life-cycle databases***, and patents.

Article 3 – Justification des allégations environnementales

De manière générale, les autorités françaises souhaiteraient des clarifications sur la façon dont il est attendu que les Etats membres veillent à ce que les opérateurs économiques procèdent à une évaluation pour justifier leurs allégations environnementales explicites.

S'agissant du point 1 (c), la Commission a précisé, lors du groupe du 1^{er} juin, que l'exigence de démontrer que les incidences environnementales, les caractéristiques environnementales ou la performance environnementale faisant l'objet de l'allégation sont significatives du point de vue du cycle de vie n'entraîne pas d'obligation pour les professionnels de faire une analyse cycle de vie pour chaque allégation environnementale. Les autorités françaises considèrent qu'il **conviendrait de préciser ceci dans le texte de la directive**.

Proposition d'amendement :

Article 3

(1 – c) demonstrate, ***by means, for instance, of sector life-cycle assessment literature***, that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life-cycle perspective;

Les autorités françaises sont de l'avis que la justification des informations relatives aux compensations carbone doit être renforcée (point 1-h). En effet ce type d'information peut être source de pratiques d'éco-blanchiment et de confusion pour le consommateur. **Dès lors, les autorités françaises souhaitent que l'obligation pour le professionnel faisant une allégation de compensation carbone de réaliser un bilan des émissions de gaz à effet de serre sur l'ensemble du cycle de vie du produit et de publier un rapport accessible au public soit explicitée et incluse dans le texte.** De plus, les autorités françaises estiment **que ce bilan doit être tenu à jour sur une base annuelle.** Le professionnel doit également **indiquer clairement la trajectoire de réduction prévue de ces émissions.**

Proposition d'amendement :

Article 3

(1-h) separate any greenhouse gas emissions offsets used from greenhouse gas emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate; **for this purpose, realise a greenhouse gas emissions assessment, to be updated annually, and report it publicly; additionally, clearly indicate the planned emissions reduction pathway.**

Au point 3, les autorités françaises estiment que **l'exemption des microentreprises risque de réduire de façon significative la portée du texte**, notamment dans certains secteurs où les entreprises de moins de 10 salariés et moins de deux millions d'euros de chiffre d'affaires annuel sont très nombreuses. Les autorités françaises préconiseraient donc de **remplacer cette exemption par des mécanismes de soutien**.

Article 5 – Communication des allégations environnementales explicites

Les autorités françaises **soutiennent particulièrement le point 3 relatif aux informations à fournir au consommateur sur la manière dont le consommateur doit utiliser le produit pour obtenir la performance environnementale attendue**, s'agissant des produits pour lesquels la phase d'utilisation fait partie des étapes du cycle de vie les plus importantes. En effet pour ces produits le rôle du consommateur peut être déterminant pour l'atteinte de la performance environnementale mise en avant.

Au point 4 sur les allégations relatives aux performances environnementales futures, les autorités françaises insistent sur le besoin de **mise en cohérence avec la directive transition écologique** (COM(2022) 143).

S'agissant du point 6, les autorités françaises insistent sur le besoin que **l'accès aux informations justifiant l'allégation apparaisse clairement au consommateur**, notamment afin que celui-ci puisse y avoir clairement et facilement accès, notamment au moment de l'acte d'achat. Ainsi, quand l'information est déportée sous la forme d'un lien internet ou d'un code QR, ces derniers doivent être placés au plus près de l'allégation, accompagnés d'un court texte explicatif de type « Plus d'informations sur cette allégation. Quant au format dématérialisé, les justifications des allégations environnementales trouvent leur place dans le passeport produit dès lors que ces informations sont intimement liées à la conception du produit. Aussi, les autorités françaises proposent qu'un lien plus explicite soit fait avec ce passeport produit prévu par le projet de règlement écoconception.

Aussi les autorités françaises resteront attentives à la question du support utilisé pour la justification des allégations. En effet, le point 6. prévoit la possibilité d'utiliser le support physique afin de fournir les justifications relatives aux allégations environnementales utilisées, cependant, ces justifications ne doivent pas nuire à la bonne compréhension des informations à destination des consommateurs.

Enfin, les autorités françaises souhaitent préciser que les informations justifiant les allégations environnementales doivent être mises à disposition des consommateurs de manière gratuite :

Proposition d'amendement :

Article 5

6. Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall **clearly** be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent. **When the information is provided in the shape of a web link, a QR code or equivalent, there should be a clear mention that the consumer can find more information about the environmental claim via this mean.**

Those free of charge information shall be included in the digital product passport in line with article 8 of the Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC.

Au point 6 (c) relatif aux études et calculs relatifs à l'allégation à mettre à disposition, les autorités françaises estiment que **la somme des informations exigées est trop lourde, ce qui risque de constituer un frein à l'information environnementale**. Elles proposent que **seul le résumé prévu au point g soit mis à disposition de manière systématique et obligatoire et que les études et les calculs détaillés soient**

rendus disponibles, de manière obligatoire, uniquement sur demande. On peut s'attendre en effet à ce que seuls les acteurs les plus motivés (par exemple, des autorités, des concurrents ou des associations de consommateurs) fassent la démarche d'examiner les pièces justificatives dans les détails. De plus, il conviendrait d'introduire un délai maximal de mise à disposition des informations demandées.

Proposition d'amendement:

Article 5

(6–c) ***upon request***, 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) 2016/94346; ***the trader shall make the requested information available within five working days maximum;***

Point 7 : voir commentaire à l'article 3 (3).

Au point 8, comme pour le point 4 de l'article 3, les autorités françaises, même si elles ne s'opposent pas, sur le principe, à la possibilité donnée à la Commission d'adopter des règles communes, souhaitent que celles-ci soient adoptées par le biais d'actes d'exécution, permettant ainsi d'associer étroitement les Etats membres au processus de décision.

Article 6 – Communication des allégations environnementales comparatives Les autorités françaises souhaitent confirmation que cet article s'apprécie au regard des directives 2005/29/CE relative aux pratiques commerciales déloyales des entreprises vis-à-vis des consommateurs dans le marché intérieur et 2006/114/CE en matière de publicité trompeuse et de publicité comparative. Auquel cas, les autorités françaises proposent l'ajout de références à ces directives afin d'explicitier le fait que les critères liés aux allégations environnementales comparatives sont complémentaires aux règles en matière de pratiques commerciales déloyales et de publicité comparative.

Par ailleurs, les autorités françaises suggèrent d'ajouter la précision selon laquelle les allégations environnementales comparatives doivent concerner des biens ou des services répondant aux mêmes besoins ou ayant le même objectif.

Proposition d'amendement :

Article 6

Communication of comparative environmental claims

Comparative environmental claims shall be in line with directives 2005/29/CE and 2006/114/CE when used as a commercial argument. They must relate to similar goods which have the same characteristics and uses.

However, those comparative environment claims shall not relate to an improvement of the environmental impact, environmental aspect or environmental performance of the product that is the subject of the claim compared to the environmental impacts, environmental aspects or environmental performance of another product from the same trader or from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, unless they are based on evidence proving that the improvement is significant and achieved in the last five years.

Article 9 - Examen de la justification des déclarations environnementales explicites

Les autorités françaises souhaitent davantage de précisions **concernant la façon dont il est attendu que les Etats membres puissent s'assurer que les informations justifiant les allégations environnementales explicites soient mises à jour tous les cinq ans, et sur la charge induite.**

Les autorités françaises font part de leur questionnement quant à la faisabilité pour les autorités publiques de suivre l'ensemble des allégations environnementales explicites et de s'assurer de leur mise à jour régulière.

Au groupe du 1^{er} juin, la Lettonie a proposé de **faire plutôt peser la charge directement sur les professionnels, en imposant une mise à jour tous les cinq ans de manière réglementaire. Aux yeux des autorités françaises, cette approche, couplée à des contrôles aléatoires du marché, pourrait constituer une solution. Les autorités françaises se réservent le droit d'affiner leur position sur ce point.**

Par ailleurs, s'agissant des **allégations relatives aux compensations carbone, les autorités françaises sont de l'avis que les données qui les sous-tendent doivent être mises à jour annuellement** – ainsi que l'allégation au cas où l'évolution des données implique un changement de celle-ci.

Cluster 2 (articles 1.2, 2.7-2.10)

Article 1.2 – Champ

Les autorités françaises soutiennent l'exclusion du champ de la directive des programmes de labels environnementaux et des allégations environnementales explicites issus de réglementations européennes, ainsi que la liste des réglementations européennes concernées par cette disposition.

Néanmoins, elles insistent sur **le besoin d'également exclure du champ les programmes de labels environnementaux et les allégations environnementales explicites issus de réglementations nationales.** Ceux-ci étant établis sous l'égide d'une réglementation, ils ne doivent pas se voir imposer des contraintes de justification supplémentaires. Il est en effet possible de les considérer, à l'instar de ceux établis par le droit de l'Union, comme fiables et robustes. C'est d'ailleurs le postulat envisagé dans la directive « transition écologique » (COM(2022) 143) dans laquelle les labels de durabilité établis par les autorités publiques ne sont pas soumis à l'obligation d'être certifiés (pratique 2a de l'annexe).

Propositions d'amendements :

Recital (8)

The specific needs of individual economic sectors should be recognised and this Directive should therefore apply to voluntary explicit environmental claims and environmental labelling schemes that are not regulated by any other Union act as regards their substantiation or communication, or verification. This Directive should therefore not apply to explicit environmental claims for which **the Union** legislation **from the Union or Member States** lays down specific rules, including on methodological frameworks, assessment or accounting rules related to measuring and calculating environmental impacts, environmental aspects or environmental performance of products or traders, or providing mandatory and non-mandatory information to consumers on the environmental performance of products and traders or sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to **the Union or national** rules.

Article 1

2. This Directive does not apply to environmental labelling schemes or to explicit environmental claims regulated by or substantiated by rules established **by public authorities, notably** in:

Article 2 – Définitions (7 à 10)

S'agissant des définitions 2.7 («label de durabilité») et 2.10 («système de certification»), les autorités françaises se déclarent satisfaites de la reprise des définitions de la directive 2005/29/CE.

S'agissant de la définition de «label environnemental», les autorités françaises se questionnent quant à la notion de « principalement » et sur la façon de la justifier. Les Autorités françaises pourront contribuer à préciser la proposition de définition.

Article 7 – Labels environnementaux

Au point 1, il semble que la directive demande aux Etats membres de mettre en place un dispositif assurant une vérification ex-ante de tout label environnemental. Les autorités françaises s'interrogent quant à la **charge induite tant pour les Etats membres que pour les entreprises**, notamment les PME, et le risque de décourager le développement de labels. De plus, certains labels sont vérifiés par le biais de contrôles aléatoires du marché permettant de dissuader les mauvaises pratiques tout en évitant de faire peser une charge trop forte en termes de vérification systématique. **Les autorités françaises souhaitent contribuer à la réflexion quant au bon équilibre à trouver entre niveau de contrôle et coûts.**

Au point 2, les autorités françaises rejoignent le constat du besoin de davantage encadrer les notations environnementales agrégées. Toutefois, la proposition de la Commission reste en réserve d'examen.

Article 8 – Exigences pour les programmes de labels environnementaux

Au point 2 relatif aux exigences pour les programmes de labels environnementaux, les autorités françaises sont de l'avis qu'il **manque une exigence de transparence sur les critères du label et les méthodes associées.**

Proposition d'amendement :

Article 8

2. The environmental labelling schemes shall comply with the following requirements:

new (c) information about the label criteria and the associated methods is transparent, accessible free of charge, and sufficiently detailed;

Les autorités françaises font part de leurs questionnements quant au **point 3**, qui semble interdire l'établissement de nouveaux programmes de labels environnementaux publics (alors même que les Etats membres pourraient continuer à agréer des labels privés), et qui met en place davantage de restrictions sur les labels publics, par rapport aux labels privés, alors même que ce sont ces derniers qui sont source de confusion pour les consommateurs. Les autorités françaises se demandent si **cette approche n'est pas trop restrictive** et ne risque pas d'étouffer toute possibilité d'initiative et toute créativité des politiques publiques aux niveaux national et régional. Elles maintiennent la proposition de la Commission en réserve d'examen.

Aux points 4 et 5, la notion de « valeur ajoutée » (en matière de critère d'ambition environnementale des systèmes de labels) paraît floue aux yeux des autorités françaises. Toutefois, celles-ci ont pris bonne note des intentions de la Commission de préciser cette notion dans le cadre des actes d'exécution prévus au point 8.

Cluster 3

Articles 2.11 et 11

Pas de commentaire particulier.

Article 10 - Vérification et certification de la justification et de la communication des allégations environnementales et des systèmes de labels environnementaux

Les autorités françaises soulignent, de manière générale, le manque de clarté quant aux procédures à mettre en place par les Etats membres, et la charge induite.

S'agissant, au point 1, de la vérification des allégations environnementales, les autorités françaises font part des mêmes commentaires que pour la vérification des labels à l'article 7(1) – notamment leur questionnement par rapport à la **faisabilité de la mise en place d'une vérification ex-ante systématique de toutes les allégations environnementales et par rapport au bon équilibre à trouver entre vérifications ex-ante et contrôles aléatoires du marché ex-post**. Dès lors, les autorités françaises font part d'une réserve quant à l'économie générale de cet article qui prévoit au point 4 la vérification ex ante des allégations environnementales comme des labels environnementaux, ce qui pourrait constituer, en termes, notamment, de coûts, un **frein à l'information environnementale sur les produits**.

S'agissant, au point 2, de la **vérification des systèmes de labels environnementaux**, les autorités françaises, partant du constat d'une multiplication des labels privés, dont certains présentant peu de preuves de leur fiabilité, peuvent **soutenir cette approche sur le principe** (même si les modalités restent en réserve d'examen).

Courtesy translation

Objet : Written comments from French authorities following the group meeting on 1 June on the draft directive on the justification and communication of explicit environmental claims

French authorities share the Commission's view that environmental claims need to be better regulated in order to protect both the environment and the consumer. In this context, French authorities generally support the objectives of this proposal for a directive. However, they would like to make the following comments:

1. Cluster 1 - articles related to explicit environmental claims

Article 1 – Scope

French authorities believe that it **should be made clear in the scope that the directive applies to explicit environmental claims of a voluntary nature**. This clarification will make it possible to dispel recurring questions, from Member States and stakeholders alike, about the nature of the claims in question.

Amendment proposal :

Article 1

1. This Directive applies to **voluntary** explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.

Article 2 – Definitions

- **NEW definition** : French authorities recommend to include a new definition **2(bis) 'comparative environmental claim'** as follows :

2(bis) 'comparative environmental claim' means any explicit environmental claim which compare the environmental impacts or performances of a product or a service with those offered by the competition or with an earlier version offered by the same trader.

- With regard to definitions 14 and 15 concerning the type of information, French authorities propose adding life cycle databases to the examples of secondary sources of information in definition 15.

Amendment proposal :

Article 2

(15) 'secondary information' means information that is based on other sources than primary information including literature studies, engineering studies, **life-cycle databases**, and patents.

Article 3 – Substantiation of explicit environmental claims

Generally speaking, French authorities would like clarification on the way in which Member States are expected to ensure that economic operators carry out an assessment to justify their explicit environmental claims.

With regard to point 1 (c), the Commission specified, at the meeting of 1 June, that the requirement to demonstrate that the environmental impact, environmental characteristics or environmental performance for which the claim is made are significant from a life-cycle point of view does not oblige professionals to carry out a life-cycle analysis for each environmental claim. French authorities consider that **this should be clarified in the text of the directive.**

Amendment proposal :

Article 3

(1 – c) demonstrate, ***by means, for instance, of sector life-cycle assessment literature***, that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life-cycle perspective;

French authorities believe that the justification of information relating to carbon offsets should be strengthened (point 1-h). This type of information can be a source of greenwashing practices and confusion for consumers. **Consequently, French authorities would like any professional (marketers, manufacturers, importers, introducers and digital platforms) making a carbon offset claim to be obliged to carry out a greenhouse gas emissions assessment over the entire life cycle of the product and to publish the report in a way that is accessible and readable to the public to be made explicit and included in the text.** In addition, French authorities believe that this report should be **updated on an annual basis**. The professional must also clearly indicate the **planned trajectory for reducing these emissions over a minimum of 10 years**.

Amendment proposal :

Article 3

(1-h) separate any greenhouse gas emissions offsets used from greenhouse gas emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate; ***for this purpose, realise a greenhouse gas emissions assessment, to be updated annually, and report it publicly; additionally, clearly indicate the planned emissions reduction pathway.***

In point 3, French authorities consider that **the exemption of micro-enterprises risks significantly reducing the scope of the text**, particularly in certain sectors where there are a large number of companies with fewer than 10 employees and less than €2 million in annual turnover. French authorities would therefore recommend **replacing this exemption with support mechanisms**.

Article 5 – Communication of explicit environmental claims

French authorities are particularly **supportive of point 3 on the information to be provided to the consumer on how the consumer should use the product to achieve the expected environmental performance**, in the case of products for which the use phase is one of the most important stages in the life cycle. For these products, the consumer's role can be decisive in achieving the environmental performance being promoted.

In point 4 on claims relating to future environmental performance, French authorities stress the **need for consistency with the Ecological Transition Directive** (COM(2022) 143).

With regard to point 6, French authorities stress the need for **access to the information substantiating the claim to be made clear to the consumer**, in particular so that he or she can access it clearly and easily, especially at the time of purchase. Therefore, when the information is in the form of a web link or QR code, these must be placed as close as possible to the claim, accompanied by a short explanatory text such as "More information on this claim". Regarding the dematerialised format, justifications for environmental claims have their place in the product passport since this information is closely linked to the design of the product. French authorities therefore recommend that a more explicit link be made with the product passport provided for in the draft ecodesign regulation.

The French authorities will also remain attentive to the issue of the support used to substantiate claims. Point 6 provides for the possibility of using a physical support to provide justification for the environmental claims made. However, this justification must not hinder the proper understanding of the information provided to consumers.

Finally, French authorities wish to specify that the information justifying the environmental claims must be made available to consumers free of charge.

Amendment proposal :

Article 5

6. Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall ***clearly*** be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent. ***When the information is provided in the shape of a web link, a QR code or equivalent, there should be a clear mention that the consumer can find more information about the environmental claim via this mean.***

Those free of charge information shall be included in the digital product passport in line with article 8 of the Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC.

In point 6 (c) on the studies and calculations relating to the claim to be made available, French authorities consider that **the amount of information required is too much**, which is likely to act as a brake on product environmental information. They propose that only the summary provided for in point g should be systematically and compulsorily made available and that the detailed studies and calculations should be made available, on a compulsory basis, **only on request**. It is to be expected that only the most motivated players (e.g. authorities, competitors or consumer associations) will take the trouble to examine the supporting documents in detail. In addition, a maximum time limit should be introduced for making the requested information available.

Amendment proposal:

Article 5

(6-c) ***upon request***, 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) 2016/94346; ***the trader shall make the requested information available within five working days maximum;***

Point 7 : see comments on article 3 (3).

With regard to point 8, as with point 4 of Article 3, French authorities, although not opposed in principle to the possibility given to the Commission to adopt common rules, would like these to be adopted by means of implementing acts, thus allowing the Member States to be closely involved in the decision-making process.

Article 6 – Communication of comparative environmental claims

French authorities wish to ascertain whether this article should be assessed in the light of Directives 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market and 2006/114/EC concerning misleading and comparative advertising. In this case, French authorities propose adding references to these directives in order to clarify the fact that the criteria relating to comparative environmental claims are complementary to the rules on unfair commercial practices and comparative advertising.

In addition, French authorities recommend that it should be made clear that comparative environmental claims must relate to goods or services that meet the same needs or serve the same purpose.

Article 6
Communication of comparative environmental claims

Comparative environmental claims shall be in line with directives 2005/29/CE and 2006/114/CE when used as a commercial argument. They must relate to similar goods which have the same characteristics and uses.

However, those comparative environment claims shall not relate to an improvement of the environmental impact, environmental aspect or environmental performance of the product that is the subject of the claim compared to the environmental impacts, environmental aspects or environmental performance of another product from the same trader or from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, unless they are based on evidence proving that the improvement is significant and achieved in the last five years.

Article 9 - Review of the substantiation of explicit environmental claims

French authorities would like **more details on how Member States are expected to ensure that the information justifying explicit environmental claims is updated every five years**, and on the burden involved.

French authorities question the **feasibility of public authorities monitoring all explicit environmental claims and ensuring that they are regularly updated.**

At the 1 June group meeting, Latvia proposed that the burden should be placed directly on the industry, by imposing a regulatory requirement for updates every five years. In the view of the French authorities, this approach, coupled with random market checks, could provide a solution. French authorities reserve the right to refine their position on this point.

Furthermore, with regard to claims relating to carbon offsets, French authorities are of the opinion that the data underlying them should be updated annually - as should the claim in the event that the evolution of the data implies a change in the claim.

Cluster 2 (articles 1.2, 2.7-2.10)

Article 1.2 – Scope

French authorities support the exclusion from the scope of the directive of environmental labelling programmes and explicit environmental claims arising from European regulations, as well as the list of European regulations concerned by this provision.

Nevertheless, they insist on the **need to also exclude from the scope environmental labelling programmes and explicit environmental claims arising from national regulations**. As these are established under the aegis of a regulation, they should not be subject to additional justification requirements. It is in fact possible to consider them, like those established by EU law, to be reliable and robust. This is, moreover, the premise envisaged in the "ecological transition" directive (COM(2022) 143), in which sustainability labels established by public authorities are not subject to the obligation to be certified (practice 2a of the annex).

Amendment proposal :

Recital (8)

The specific needs of individual economic sectors should be recognised and this Directive should therefore apply to voluntary explicit environmental claims and environmental labelling schemes that are not regulated by any other Union act as regards their substantiation or communication, or verification. This Directive should therefore not apply to explicit environmental claims for which ~~the~~ **Union** legislation **from the Union or Member States** lays down specific rules, including on methodological frameworks, assessment or accounting rules related to measuring and calculating environmental impacts, environmental aspects or environmental performance of products or traders, or providing mandatory and non-mandatory information to consumers on the environmental performance of products and traders or sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to ~~the~~ **Union** **or national** rules.

Article 1

2. This Directive does not apply to environmental labelling schemes or to explicit environmental claims regulated by or substantiated by rules established **by public authorities, notably** in:

Article 2 – Definitions (7 à 10)

With regard to definitions 2.7 ("sustainability label") and 2.10 ("certification system"), French authorities are satisfied that the definitions in Directive 2005/29/EC have been incorporated.

With regard to the definition of "environmental label", French authorities are questioning the notion of "mainly" and how it can be justified. French authorities will be able to help clarify the proposed definition.

Article 7 – Environmental labels

In point 1, it seems that the directive requires Member States to put in place a system for the ex-ante verification of all environmental labels. **French authorities are concerned about the burden this would place on both Member States and businesses, particularly SMEs, and the risk of discouraging the development of labels.** In addition, some labels are verified by means of random market checks, which discourage bad practice while avoiding imposing too heavy a burden in terms of systematic verification. **French authorities wish to contribute to the debate on the right balance to be struck between the level of control and costs.**

In point 2, French authorities agree with the need for greater supervision of aggregate environmental ratings. However, the Commission's proposal remains under scrutiny.

Article 8 – Requirements for environmental labelling schemes

With regard to point 2 on the requirements for environmental labelling schemes, French authorities believe that there is a **lack of transparency regarding the criteria for the label and the associated methods**.

Amendment proposal :

Article 8

2. The environmental labelling schemes shall comply with the following requirements:

new (c) information about the label criteria and the associated methods is transparent, accessible free of charge, and sufficiently detailed;

French authorities question point 3, which appears to prohibit the establishment of new public environmental labelling schemes (even though Member States could continue to approve private labels), and which places greater restrictions on public labels than on private labels, even though it is the latter that are a source of confusion for consumers. French authorities wonder whether **this approach is not too restrictive** and might not stifle any possibility of initiative and creativity in public policy at national and regional level. They are keeping the Commission's proposal under scrutiny.

In points 4 and 5, the notion of "added value" (in terms of the environmental ambition of the labelling systems) seems vague in the eyes of French authorities. However, they have taken good note of the Commission's intention to clarify this concept in the context of the implementing acts provided for in point 8.

Cluster 3

Articles 2.11 et 11

No particular comment.

Article 10 - Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes

In general, French authorities stress the lack of clarity regarding the procedures to be put in place by the Member States, and the resulting burden.

With regard to the verification of environmental claims in point 1, French authorities make the same comments as for the verification of labels in Article 7(1) - in particular, they question the **feasibility of introducing systematic ex-ante verification of all environmental claims and the right balance to be struck between ex-ante verification and random ex-post market checks**. Consequently, French authorities have reservations about the general structure of this article, which in point 4 provides for the ex-ante verification of environmental claims such as environmental labels, which could act as a brake on environmental information on products, particularly in terms of cost.

With regard to point 2 on the verification of environmental labelling schemes, French authorities, having noted the proliferation of private labels, some of which offer little proof of reliability, can support this approach in principle (even if the details remain under scrutiny).
