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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 a delegation

Following the call for comments (WK 7308/23), delegations will find attached the contribution received from the HR delegation.

CROATIA

Comments on the Green Claims Directive, on Cluster 1, and 2.

Croatia welcomes the proposal for a Directive on substantiation and communication of explicit environmental claims. We believe that it is important to involve consumers more in the process of green transition, and that efforts should be made to remove all barriers that mislead consumers who want to buy reliable green products and services. Greenwash is a major threat that undermines efforts for a green transition, and a serious approach to solving this problem should be taken. The proposal of the Directive should create conditions to prevent greenwash and create conditions for that will promote the transparency and credibility of green claims and ecolabels.

We maintain scrutiny reservation at this stage as we are currently analysing the proposal.

In the following, you can find some preliminary considerations.

Like other Member States, we want to highlight the direct link between the Green Claims proposal and the Empowering Consumers proposal. Some overlaps have to be clarified in order to have coherent laws including determining clear definitions of terms. Additionally, our preliminary general comment is that rules should be harmonized as much as possible at EU level and not be left to Member States to make their own judgments as this may cause different interpretations and implementation.

Regarding **Article 2** and definitions we have two comments:

point (2) - Croatia is of the opinion that “environmental claim” definition is not clear and is too narrow and only includes what is written and not what is advertised in a different way. Wording “textual form” suggests that definition of “explicit environmental claims” is limited to written messages. We think that it should also include spoken messages, for example radio, voice messages in TV commercials that are related to the sustainability of the goods or traders’ activity. We believe that there is no justification to exclude explicit and unambiguous spoken messages from the scope of this definition.

point (16) – from our perspective the wording of the definition “public” has no added value and we do not see the need to define this term.

For **Article 3** we consider it particularly important to have common and uniform understanding how to carry out an assessment to substantiate explicit environmental claims. In Article 3 there are many terms that are not specified which can be subject of different interpretation and could undermine the harmonized implementation of this Directive across the EU. Therefore, we find it necessary to clarify the meaning of *significant*, *common practice*, *essential environmental parameters*, *significant harm*, *high integrity* and other undefined terms that are appearing in this article.

We would like to avoid the existence of unfair rules in the EU single market. Therefore, we find that consideration should be given to setting common thresholds wherever possible.

Article 3 and 4 we would like to point out that it is important to use comparable methods to assess the environmental aspects or environmental performance of products or traders. The work on the Product Environmental Footprint Category Rules illustrates that in order to compare products, there is a need for clear guidance on the product aspects which are compared. The Product Environmental Footprint Category Rules are important in this sense and could be used and further developed through this Directive.

Article 3, paragraph 1 – in our opinion here the responsibility should be placed on the trader who will carry out the assessment and not on the member state, therefore we propose the following change.

~~"Member States Trader shall ensure that traders carry out an assessment to substantiate explicit environmental claims..."~~

Point (f) - in line with Empowerment directive GA, we suggest deletion of this provision.

Alternatively, we could support keeping this provision if we are regulating providing information that are considered as common practice "in the market of a particular Member State where the claim has been made". HR understands the need for harmonized rules, and harmonized enforcement, however HR is of the opinion that provision is unclear, and it doesn't take into consideration that definition of product includes not only goods but also services which common features can differ territorially. Therefore, HR is of the opinion that without any criteria to determine common practice territorially, this provision will definitely result with different approach of enforcement bodies.

Article 3, paragraph 3 - we express our concern that microenterprises (*of which there are many in Croatia, almost 1/3*) are excluded because this can have a negative effect on consumers, and we suggest a discussion on how to include them, taking into account cost efficiency.

Prohibition of unfair commercial practices on green claims should be equally applicable to all traders, regardless of their size. If compliance with obligations prescribed in paragraphs 1 and 2 constitutes excessive burden for the traders and they cannot substantiate their claims, they should refrain from giving such claims all together. Relevant provision is not disproportionate for micro (and small) entrepreneurs and the cost that will be incurred by them is justified, and in any case it will be amortized through total price of the product. Therefore, HR suggests deleting this provision.

Regarding Article 4/ Recital 27 - HR asks for better understanding of this provision and its necessity in relation with the regulation of Directive 2006/114/EC. There still unclear difference between misleading and comparative advertising regulated by Directive 2006/114/EC and comparative explicit environmental claims. We are of the opinion that the recital 27 doesn't provide adequate explanation on this matter and should be amended with examples.

Article 4, paragraph 2 – we consider that comparative claims regarding products which are no longer in the market (because the trader no longer active) should be forbidden in all circumstances, therefore we suggest deleting this paragraph together with the Article 6.

We are concerned about the administrative burden for the Member State in the implementation of **Article 5, 6, and 9** and we wonder who will do the calculations necessary for their implementation?

These are new topics and it will take some time to develop capacities and competencies in the Member States.

Related to **Article 5, paragraph 3** - HR proposes following change in wording in order to avoid different interpretations of the meaning of the words "together with the claim":

Where the explicit environmental claim is related to a final product, and the use phase is among the most relevant life-cycle stages of that product, the claim shall include information on how the consumer should use the product in order to achieve the expected environmental performance of that product. That information shall be made available ~~together with the claim~~ on the same medium as the claim.

Article 5, paragraph 4 - related to the references to the future environmental efficiency of the product is understood as intentional, but the question is who and how will monitor and how to evaluate it, and we believe that this can only be related to the retailer and not to the product.

Article 5, paragraph 6 – we consider it relevant that all information is given on the same medium as the explicit environmental claim. QR codes and other means of e-communication should be only additional means of consumer information on generic environmental claims, given that that there is still some MS (as HR) where digital literacy is still low and technical devices necessary for reproduction

of digital content still aren't accessible to all consumers. Therefore, HR suggests following change in wording:

"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. In addition, information on the product can be in the form of a weblink, QR code or equivalent."

Article 6 – for us is not clear what is the meaning of this article, and we would appreciate any clarifications in that regard.

Regarding Article 9 – we suggest addressing this provision exclusively on trader, not on MS.

Regarding article **10, paragraph 9** - refers to the certificate of conformity, which is not found in paragraph 5 but in paragraph 6, so we suggest checking the citation of the paragraph.
