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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 BE and CY delegations.

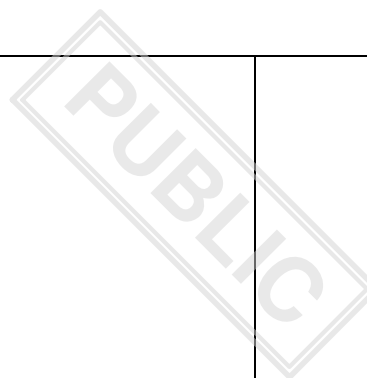
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Written Input: Article 1 – 11 of Green Claims Directive

COM Proposal	BE Comments	BE proposed amendments
<p><i>Article 1</i></p> <p><i>Scope</i></p> <p>1. This Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.</p> <p>2. This Directive does not apply to environmental labelling schemes or to explicit environmental claims regulated by or substantiated by rules established in:</p> <p>(a) Regulation (EC) No 66/2010 of the European Parliament and of the Council²⁹,</p> <p>(b) Regulation (EU) 2018/848 of the European Parliament and of the Council³⁰,</p> <p>(c) Regulation (EU) 2017/1369 of the European Parliament and of the Council³¹;</p> <p>(d) Directive 2009/125/EC of the European Parliament and of the Council³²,</p> <p>(e) Regulation (EU) No 305/2011 of the European Parliament and of the Council³³</p> <p>(f) Regulation (EC) No 765/2008 of the European Parliament and of the Council³⁴;</p> <p>(g) Regulation (EC) No 1221/2009 of the European Parliament and of the Council³⁵;</p> <p>(h) Directive 1999/94/EC of the European Parliament and of the Council³⁶;</p>	<p>Related to Article 1 paragraph 2(m), we would like to receive clarification on the link between the Green Claims Directive and the Carbon Removal Certificate Framework Directive. Regarding the use of offsets for example (cf Article 3.1(h), we need clarification on which type of offsets can be used for which purposes and under which conditions and double counting must be avoided. Any links with the requirements from the CRCF should be clarified in this regard.</p>	

(i) Regulation (EU) No 305/2011 of the European Parliament and of the Council ³⁷ ; (j) Directive 2006/66/EC of the European Parliament and of the Council ³⁸ ; (k) Directive 94/62/EC of the European Parliament and of the Council ³⁹ ; (l) Regulation (EU) 2020/852 of the European Parliament and of the Council ⁴⁰		
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<p>(m) Regulation (EU) ... /... of the European Parliament and of the Council⁴¹;</p> <p>(n) Directive 2012/27/EU of the European Parliament and of the Council⁴²;</p> <p>(o) Directive 2013/34/EU of the European Parliament and of the Council⁴³ and other Union, national or international rules, standards or guidelines for financial services, financial instruments, and financial products;</p> <p>(p) other existing or future Union rules setting out the conditions under which certain explicit environmental claims about certain products or traders may be or are to be made or Union rules laying down requirements on the assessment or communication of environmental impacts, environmental aspects or environmental performance of certain products or traders or conditions for environmental labelling schemes.</p> <p>-----</p> <p>29 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1). 30 Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).</p> <p>31 Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).</p> <p>32 Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of</p>		
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<p>ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10).</p> <p>33 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).</p> <p>34 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).</p> <p>35 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).</p> <p>36 Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16).</p> <p>37 Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).</p> <p>38 Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries</p>		
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<p>and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1).</p> <p>39 Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).</p> <p>40 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).</p> <p>41 Regulation (EU) ... /... of the European Parliament and of the Council establishing a Union certification framework for carbon removals (OJ L ...).</p> <p>42 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).</p> <p>43 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).</p>		
<p><i>Article 2</i></p> <p><i>Definitions</i></p> <p>For the purposes of this Directive, the following definitions shall apply:</p>	<p>Definition (2) of explicit environmental claim needs clarification on the interpretation of ‘textual’. We would like to stress that the Directive should apply to all kinds of explicit claims, not only the ones on the packaging of a product, so</p>	<p>(2) ‘explicit environmental claim’ means an environmental claim that is in textual form, <u>oral or written</u>, or contained in an environmental label;</p>

<p>(1) 'environmental claim' means environmental claim as defined in Article 2, point (o), of Directive 2005/29/EC;</p> <p>(2) 'explicit environmental claim' means an environmental claim that is in textual form or contained in an environmental label; (3) 'trader' means trader as defined in Article 2, point (b), of Directive 2005/29/EC;</p> <p>(4) 'product' means product as defined in Article 2, point (c), of Directive 2005/29/EC; (5) 'consumer' means consumer as defined in Article 2, point (a), of Directive 2005/29/EC;</p> <p>(6) 'business-to-consumer commercial practices' means business-to-consumer commercial practices as defined in Article 2, point (d), of Directive 2005/29/EC;</p> <p>(7) 'sustainability label' means sustainability label as defined in Article 2, point (r), of Directive 2005/29/EC;</p> <p>(8) 'environmental label' means a sustainability label covering only or predominantly environmental aspects of a product, a process or a trader;</p> <p>(9) 'product group' means a set of products that serve similar purposes or are similar in terms of use or have similar functional properties;</p>	<p>including those made on TV, radio etc. So textual should be defined as f.e. in oral and written form</p>	
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(10) 'certification scheme' means a certification scheme as defined in Article 2, point (s), of Directive 2005/29/EC;

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<p>(11) ‘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;</p> <p>(12) ‘value chain’ means all activities and processes that are part of the life cycle of a product or activity of a trader, including remanufacturing;</p> <p>(13) ‘life cycle’ means the consecutive and interlinked stages of a product’s life, consisting of raw material acquisition or generation from natural resources, pre-processing, manufacturing, storage, distribution, installation, use, maintenance, repair, upgrading, refurbishment as well as re-use, and end-of-life;</p> <p>(14) ‘primary information’ means information that is directly measured or collected by the trader from one or more facilities that are representative for the activities of the trader;</p> <p>(15) ‘secondary information’ means information that is based on other sources than primary information including literature studies, engineering studies and patents.</p> <p>(16) ‘public’ means one or more natural or legal persons and their associations, traders or groups;</p> <p>(17) ‘environmental performance’ means the performance of a certain product or product group</p>		
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or trader or sector related to the environmental aspects or environmental impacts of that product

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<p>or product group or the activities of that trader or sector;</p> <p>(18) ‘environmental aspect’ means an element of a trader’s or sector’s activities or of products or product groups that interact or can interact with the environment.</p> <p>(19) ‘environmental impact’ means any change to the environment, whether positive or negative, that wholly or partially results from a trader’s or sector’s activities or from a product or product group during its life cycle.</p>		
<p><i>Article 3</i> <i>Substantiation of explicit environmental claims</i> 1. Member States shall ensure that traders carry out an assessment to substantiate explicit environmental claims. This assessment shall:</p> <p>(a) specify if the claim is related to the whole product, part of a product or certain aspects of a product, or to all activities of a trader or a certain part or aspect of these activities, as relevant to the claim;</p> <p>(b) rely on widely recognised scientific evidence, use accurate information and take into account relevant international standards;</p> <p>(c) demonstrate that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life-cycle perspective;</p>	<p>We have doubts about not having a clear methodology in Article 3 that traders should use to substantiate their claims. The requirements framed in paragraph 1 could be assessed subjectively. For example, how will points c, d, f and g in paragraph 1 be assessed when there is no benchmark? Will this ensure a level playing field? Will claims be comparable when different methods are allowed? Will it not be difficult for Member States to check if claims are substantiated compliant with the requirements if completely different environmental assessment methods can be used?</p> <p>In Article 3 paragraph 1(a), it is stated that the trader shall carry out an assessment specifying if the claim is related to the whole product, part of a product or certain aspects of the product. There is however no requirement that this shall be clearly stated on the product.</p>	

<p>(d) where a claim is made on environmental performance, take into account all environmental aspects or environmental impacts which are significant to assessing the environmental performance;</p> <p>(e) demonstrate that the claim is not equivalent to requirements imposed by law on products within the product group, or traders within the sector;</p> <p>(f) provide information whether the product or trader which is subject to the claim performs significantly better regarding environmental impacts, environmental aspects or environmental performance which is subject to the claim than what is common practice for products in the relevant product group or traders in the relevant sector;</p> <p>(g) identify whether improving environmental impacts, environmental aspects or environmental performance subject to the claim leads to significant harm in relation to environmental impacts on climate change, resource consumption and circularity, sustainable use and protection of water and marine resources, pollution, biodiversity, animal welfare and ecosystems;</p> <p>(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;</p>	<p>Related to Article 3 paragraph 1(b), will an overview of relevant international standards be provided?</p> <p>Regarding Article 3 paragraph 1(h): we support the request to separate offsets and GHG emissions. We believe however that clarification is needed on what is an offset of 'high integrity' and what is 'accounted correctly'. Clarification is needed on this complex issue to avoid double counting and 'easy' achievement of good climate performances. We should ensure, for example, that (1) an offset is not already counted toward other targets, and (2) offsetting is used to compensate remaining 'difficult to abate emissions' after internal reduction efforts were achieved and on the basis of a trajectory to climate neutrality.</p> <p>Furthermore, in Article 3 paragraph 3, we would like to have a clarification on why microenterprises are systematically exempted from the requirements for the substantiation of explicit environmental claims. We understand the need for proportionality, but how will this ensure a level playing field? The same comment applies to Article 4 paragraph 3 and Article 5 paragraph 7.</p> <p>In Article 3 paragraph 4, we welcome the fact that the Commission can adopt delegated acts to supplement the requirements for substantiation of explicit environmental claims. However, we would like to know how it will be evaluated if it is necessary to supplement the requirements. Would it be an option for the Commission to already in this stage prepare the development of for example Product Environmental Footprint Category Rules in secondary acts for priority product groups, for</p>	
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<p>(i) include primary information available to the trader for environmental impacts, environmental aspects or environmental performance, which are subject to the claim;</p> <p>(j) include relevant secondary information for environmental impacts, environmental aspects, or environmental performance which is representative of the specific value chain of the product or the trader on which a claim is made, in cases where no primary information is available.</p> <p>2. Where it is demonstrated that significant environmental impacts that are not subject to the claim exist but there is no widely recognised scientific evidence to perform the assessment referred to in point (c) of paragraph 1, the trader making the claim on another aspect shall take account of available information and, if necessary, update the assessment in accordance with paragraph 1 once widely recognised scientific evidence is available.</p> <p>3. The requirements set out in paragraphs 1 and 2 shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC44 unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.</p> <p>4. When the regular monitoring of the evolution of environmental claims referred to in Article 20 reveals differences in the application of</p>	<p>which we know that many misleading claims are made currently from the Commission's impact assessment (like textiles, cosmetics/personal care goods, household equipment...)?</p> <p>Apart from the substantiation of claims, we wonder if a reference will be made to ISO 14021; to rules about claims themselves, e.g. claims shall not be misleading, vague, on parts of the product...</p>	
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the requirements laid down in paragraph 1 for
specific claims and such differences create

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<p>obstacles for the functioning of the internal market, or where the Commission identifies that the absence of requirements for specific claims leads to widespread misleading of consumers, the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for substantiation of explicit environmental claims laid down in paragraph 1 by:</p> <p>(a) determining the rules for assessing the environmental aspects, environmental impacts and environmental performance, including by determining the activities, processes, materials, emissions or use of a product, which contribute significantly or cannot contribute to the relevant environmental impacts, environmental aspects or environmental performance;</p> <p>(b) determining for which environmental aspects or environmental impacts primary information shall be provided and determining criteria based on which the accuracy of the primary information and secondary information can be assessed; or</p> <p>(c) establishing specific life-cycle-based rules on substantiation of explicit environmental claims for certain product groups and sectors.</p> <p>5. When specifying further the requirements for substantiation of explicit environmental claims in accordance with previous paragraph, the Commission shall take into account scientific or other available technical information, including</p>		
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relevant international standards, and where relevant consider the following:

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(a) the specificities of the sectors and products that require a specific methodological approach;

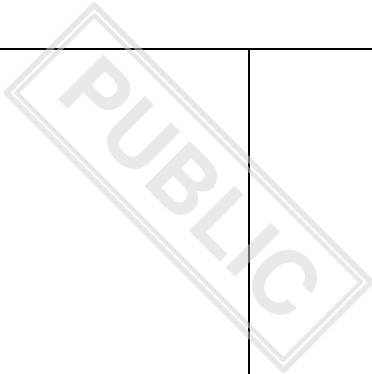
(b) the potential contribution of specific product groups or sectors to achieving Union climate and environmental objectives;

(d) any relevant information derived from Union legislation;

(e) ease of access to information and data for the assessment and use of this information and data by small and medium-sized enterprises ('SMEs').

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<p><i>Article 4</i> <i>Substantiation of comparative explicit environmental claims</i></p> <p>1. The substantiation of explicit environmental claims that state or imply that a product or trader has less environmental impacts or a better environmental performance than other products or traders ('comparative environmental claims') shall, in addition to the requirements set out in Article 3, comply with the following requirements:</p> <p>(a) the information and data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made, are equivalent to the information and data used for assessing the environmental impacts, environmental aspects or environmental</p>	<p>For Article 4, paragraph 1, we wonder how traders will be able to make comparative claims in practice. How can it be ensured that the claims are based on equivalent information, data and assumptions?</p>	
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<p>performance of the product or trader which is subject to the claim;</p> <p>(b) the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders is generated or sourced in an equivalent manner as the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made;</p> <p>(c) the coverage of the stages along the value chain is equivalent for the products and traders compared and ensures that the most significant stages are taken into account for all products and traders;</p> <p>(d) the coverage of environmental impacts, environmental aspects or environmental performances is equivalent for the products and traders compared and ensures that the most significant environmental impacts, environmental aspects or environmental performances are taken into account for all products and traders;</p> <p>(e) assumptions used for the comparison are set in an equivalent manner for the products and traders compared.</p> <p>2. Where a comparative environmental claim relates to an improvement in terms of environmental impacts, environmental aspects or environmental performance of a product that is subject to the claim compared to environmental impacts, environmental aspects or environmental</p>		
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<p>performance of another product from the same trader, from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, the substantiation of the claim shall explain how that improvement affects other relevant environmental impacts, environmental aspects or environmental performance of the product subject to the claim and shall clearly state the baseline year for the comparison.</p> <p>3. The requirements laid down in this Article shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC45 unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.</p>		
<p><i>Article 5</i> <i>Communication of explicit environmental claims</i></p> <p>1. Member States shall ensure that a trader is required to communicate an explicit environmental claim in accordance with the requirements set out in this Article.</p> <p>2. Explicit environmental claims may only cover environmental impacts, environmental aspects or environmental performance that are substantiated in accordance with the requirements laid down in Articles 3, 4 and 5 and that are identified as significant for the product or trader concerned in accordance with Article 3 paragraph (1) point (c) or (d).</p>	<p>In Article 5, paragraph 4, we wonder if it is acceptable to make claims related to future environmental performance, because how can a trader already prove something about which it cannot be sure yet?</p> <p>We understand, however, that this type of claim is particularly relevant for climate-related claims (e.g., 80% reduction of CO2 by 2050). Nevertheless, conditions for making such claims should be strict and clear, so that no empty promises are made.</p> <p>Regarding future environmental performance for climate claims, we therefore propose the following: the time bound commitment should be</p>	

<p>3. 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.</p> <p>4. Where the explicit environmental claim is related to future environmental performance of a product or trader it shall include a time-bound commitment for improvements inside own operations and value chains.</p> <p>5. Explicit environmental claims on the cumulative environmental impacts of a product or trader based on an aggregated indicator of environmental impacts can be made only on the basis of rules to calculate such aggregated indicator that are established in the Union law.</p> <p>6. 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:</p> <p>(a) environmental aspects, environmental impacts or environmental performance covered by the claim;</p>	<p>based on information on the scope/coverage of the commitment (i.e., what are the emissions covered by this commitment) and on the means to achieve it (i.e., it is through own reduction of emissions or through offsetting?).</p> <p>In Article 5, paragraph 5, we miss a reference to a methodology.</p>	
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<p>(b) the relevant Union or the relevant international standards, where appropriate;</p> <p>(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) 2016/94346;</p> <p>(d) a brief explanation how the improvements that are subject to the claim are achieved;</p> <p>(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;</p> <p>(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;</p> <p>(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.</p> <p>7. The requirements set out in paragraphs 2, 3 and 6 shall not apply to traders that are microenterprises within the meaning of</p>		
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<p>Commission Recommendation 2003/361/EC unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.</p> <p>8. Where the substantiation of certain environmental impacts, environmental aspects or environmental performance is subject to the rules established in delegated acts referred to in Article 3, paragraph 4(a) and paragraph 4(c), the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for communication of explicit environmental claims set out in Article 5 by specifying further the information that can be or shall be communicated regarding such environmental impacts, environmental aspects or environmental performance, so as to make sure that the consumers are not misled.</p>		
<p><i>Article 6</i> <i>Communication of comparative environmental claims</i> Comparative environmental claims shall not relate to an improvement of the environmental impacts, environmental aspects 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</p>		

on evidence proving that the improvement is significant and achieved in the last five years.		
<p><i>Article 7</i> <i>Environmental labels</i></p> <p>1. Member States shall ensure that environmental labels fulfil the requirements set out in Articles 3 to 6 and are subject to verification in accordance with Article 10.</p> <p>2. Only environmental labels awarded under environmental labelling schemes established under Union law may present a rating or score of a product or trader based on an aggregated indicator of environmental impacts of a product or trader</p>	<p>Labels operate internationally. If the requirements by Member States differ, every Member State must assess every label on their market. This is not possible and a waste of effort. The previous point goes together with the lack of laid down methodology. We acknowledge that this is challenging, because it depends on the criteria but also on the product group. PEF could be one way, but for construction products EN 15804 is possible.</p>	
<p><i>Article 8</i> <i>Requirements for environmental labelling schemes</i></p> <p>1. Environmental labelling scheme means a certification scheme which certifies that a product, a process or a trader complies with the requirements for an environmental label.</p> <p>2. The environmental labelling schemes shall comply with the following requirements:</p> <p>(a) information about the ownership and the decision-making bodies of the environmental labelling scheme is transparent, accessible free of charge, easy to understand and sufficiently detailed;</p>	<p>What considers Article 8 paragraph 3, 4 and 5, we agree that the proliferation of green labels and their lack of transparency and credibility needs to be addressed, since the different types of labels and often questionable labelling schemes create confusion and distrust among consumers and an uneven playing field for companies. We question however if putting a halt to the introduction of new national/regional environmental labeling schemes by public authorities of the Member States is fair, considering that already established national/regional environmental labels can keep on existing and private operators and public authorities in third countries are still allowed to award environmental labels, given that certain conditions are met.</p>	

<p>(b) information about the objectives of the environmental labelling scheme and the requirements and procedures to monitor compliance of the environmental labelling scheme are transparent, accessible free of charge, easy to understand and sufficiently detailed;</p> <p>(c) the conditions for joining the environmental labelling schemes are proportionate to the size and turnover of the companies in order not to exclude small and medium enterprises;</p> <p>(d) the requirements for the environmental labelling scheme have been developed by experts that can ensure their scientific robustness and have been submitted for consultation to a heterogeneous group of stakeholders that has reviewed them and ensured their relevance from a societal perspective;</p> <p>(e) the environmental labelling scheme has a complaint and dispute resolution mechanism in place;</p> <p>(f) the environmental labelling scheme sets out procedures for dealing with non-compliance and foresees the withdrawal or suspension of the environmental label in case of persistent and flagrant non-compliance with the requirements of the scheme.</p> <p>3. From [OP: Please insert the date = <i>the date of transposition of this Directive</i>] no new national or regional environmental labelling schemes shall be established by public authorities of the Member States. However, national or regional</p>	<p>Furthermore, we are wondering how 'added value', as formulated in paragraph 4 and 5, will be proven in practice.</p> <p>In paragraph 5, we also do not understand completely why for private labels which are established prior to the date of transposition of the Directive, it is not specified that they may continue to award the environmental labels on the Union market only provided they meet the requirements of this Directive (like in paragraph 3 for national or regional environmental labeling schemes).</p>	
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environmental labelling schemes established prior to that date may continue to award the environmental labels on the Union market, provided they meet the requirements of this Directive.

From the date referred to in the first subparagraph, environmental labelling schemes may only be established under Union law.

4. From [OP: Please insert the date = *the date of transposition of this Directive*] any new environmental labelling schemes established by public authorities in third countries awarding environmental labels to be used on the Union market, shall be subject to approval by the Commission prior to entering the Union market with the aim of ensuring that these labels provide added value in terms of their environmental ambition including notably their coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector, as compared to the existing Union, national or regional schemes referred to in paragraph 3, and meet the requirements of this Directive. Environmental labelling schemes established by public authorities in third countries prior to that date may continue to award the environmental labels which are to be used on the Union market, provided they meet the requirements of this Directive.

5. Member States shall ensure that environmental labelling schemes established by private operators after [OP: Please insert the date = *the date of*

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transposition of this Directive] are only approved if those schemes provide added value in terms of their environmental ambition, including notably their extent of coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector and their ability to support the green transition of SMEs, as compared to the existing Union, national or regional schemes referred to in paragraph 3, and meet the requirements of this Directive.

This procedure for approval of new environmental labelling schemes shall apply to schemes established by private operators in the Union and in third countries.

Member States shall notify the Commission when new private schemes are approved.

6. In order to receive the approvals referred to in paragraphs 4 and 5, the operators of new environmental labelling schemes shall provide supporting documents setting out the following:

- (a) the rationale underlying the development of the scheme
- (b) the proposed scope of the scheme,
- (c) the evidence the scheme will provide added value as set out in in paragraph 4 for environmental labelling schemes established by public authorities in third countries, or in paragraph 5 for environmental labelling schemes established by private operators;

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<p>(d) a proposal for draft criteria and the methodology used to develop and award the environmental label and the expected impacts on the market;</p> <p>(e) a detailed description of the ownership and the decision-making bodies of the environmental labelling scheme.</p> <p>(a) provide detailed requirements for approval of environmental labelling schemes pursuant to the criteria referred to in paragraphs 4 and 5;</p> <p>(b) specify further the format and content of supporting documents referred to in paragraph 6;</p> <p>(c) provide detailed rules on the procedure for the approval referred to in paragraph 4.</p> <p>The documents referred to in the first subparagraph shall be submitted to the Commission in case of schemes referred to in paragraph 4 or to the Member States' authorities in case of schemes referred to in paragraph 5, together with the certificate of conformity for environmental labelling schemes drawn up in accordance with Article 10.</p> <p>7. The Commission shall publish and keep-up-to-date a list of officially recognised environmental labels that are allowed to be used on the Union market after [OP: Please insert the date = <i>the date of transposition of this Directive</i>] pursuant to paragraphs 3, 4 and 5.</p>		
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<p>8. In order to ensure a uniform application across the Union, the Commission shall adopt implementing acts to:</p> <p>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.</p>		
<p><i>Article 9</i> <i>Review of the substantiation of explicit environmental claims</i></p> <p>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.</p> <p>The updated explicit environmental claim shall be subject to verification in accordance with Article 10.</p>		

Article 10

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

1. Member States shall set up procedures for verifying the substantiation and communication of explicit environmental claims against the requirements set out in Articles 3 to 7.
2. Member States shall set up procedures for verifying the compliance of environmental labelling schemes with the requirements set out in Article 8.
3. The verification and certification requirements shall apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC only if they so request.
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.
5. For the purposes of the verification the verifier shall take into account the nature and content of the explicit environmental claim or the environmental label.
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.

Does the Commission see a risk of fragmentation between the MS, considering verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes, as it will be executed by individual MS? To enable coherent verification, we are in favor of more specification of rules and guidance from the Commission on verifying and certifying of communication and substantiation of claims/labels.

7. The certificate of conformity shall be recognised by the competent authorities responsible for the application and enforcement of this Directive. Member States shall notify the list of certificates of conformity via the Internal Market Information System established by Regulation (EU) No 1024/2012.

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.

9. The Commission shall adopt implementing acts to set out details regarding the form of the certificate of conformity referred to in paragraph 5 and the technical means for issuing such certificate of conformity. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

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Article 11

Verifier

1. The verifier shall be a third-party conformity assessment body accredited in accordance with Regulation (EC) No 765/2008⁴⁷.

2. The accreditation shall, in particular, include the evaluation of compliance with the requirements in paragraph 3.

3. The verifier shall comply with the following requirements:

(a) the verifier shall be independent of the product bearing, or the trader associated to, the environmental claim;

(b) the verifier, its top-level management and the personnel responsible for carrying out the verification tasks shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to the verification activities;

(c) the verifier and its personnel shall carry out the verification activities with the highest degree of professional integrity and the requisite technical competence and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their verification activities,

(d) the verifier shall have the expertise, equipment and infrastructure required to perform the verification activities in relation to which it has been accredited;

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(e) the verifier shall have a sufficient number of suitably qualified and experienced personnel responsible for carrying out the verification tasks;

(f) the personnel of a verifier shall observe professional secrecy with regard to all information obtained in carrying out the verification tasks;

(g) where a verifier subcontracts specific tasks connected with verification or has recourse to a subsidiary, it shall take full responsibility for the tasks performed by subcontractors or subsidiaries and shall assess and monitor the qualifications of the subcontractor or the subsidiary and the work carried out by them.

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CYPRUS

Comments related to WPE on Green Claims

Cyprus, welcomes the proposal of the European Commission for the Green Claims Directive. We recognize the importance of such legislation and agree that coordinated action at the EU level is necessary so as to effectively tackle greenwashing.

Overall, however, we raise concerns about the resulting administrative burden and would like to emphasize that the role of independent verifiers and the criteria for evaluating environmental claims should be clear.

Comments and questions on articles (1.2, 2.7-2.11, 5, 6, 7, 8, 9, 10, 11, 12-15, 16-17, 18-27)

General question/comment: Can environmental claims constitute compliance with specific parameters or criteria of the various ecolabels and be compared with them? This should be clear. It is important also for contracting authorities to know how they could use environmental claims in their tender documents.

Article 1.2

Regulation 305/2011/EU is repeated. Check article 1.2(e) and 1.2 (i)

Article 3 & 5

Cyprus expresses its concerns and does not support the exemption of microenterprises. This will create many problems and does not provide for equal treatment in the market. CY recommends a more simplified process, where this is possible.

A list of all certified “green” products and services (including the environmental aspects or performance) would be useful and provides transparency of the information.

In Article 5 (6), we suggest to delete the word “or equivalent” to avoid any confusion and to have a common way of displaying the environmental claims in all MS’s.

Article 7

“MS shall ensure that environmental labels fulfil the requirements set out in Articles 3 to 6 and are subject to verification in accordance with Article 10”.

We consider that MS should ensure that their own existing national environmental labels fulfil the requirements of article (3-6) and verify them according to article 10. However, we support that there should be no private environmental labels

Article 8

According to article 8(3), “no new national or regional environmental labelling schemes shall be established by public authorities of the Member States”.

We consider that this prohibition was incorporated in order to promote the strengthening of already existing environmental labels and we agree that any future national or regional labels should only be developed in accordance with EU legislation.

According to article 8(5), new environmental labelling schemes are allowed to be established by private operators. Could you please explain the thought behind allowing private environmental labels? Furthermore, we believe that any private environmental labelling schemes should be approved by the EU.

Also, Cyprus believes that the responsibility for approving third countries ecolabel systems (existing systems and new systems) should be carried out by the EC.

Regarding the list of officially recognized environmental labels, it would be useful to also include information about their equivalence – list of common criteria and differences – as this would be useful to contracting authorities.

Article 10

We consider that it is very important to establish through the Directive, a common certificate of conformity for all MS. This will be an important tool for Contracting Authorities to be used in their public procurements as a requirement (in conjunction with the lists to be published under articles 8(7) and 10(7)).

At the same time, it is also important to clarify whether traders should apply for this certificate in the Member State in which they are established or if it will be the possibility to apply to another member state if their product is offered there as well?

Article 10.9, is the reference to paragraph 5 correct or should it be paragraph 6?

We support that it is necessary to have a common form for the certificates of conformity and procedures for issuing such certificates.

Article 12

It would be useful to have a common guideline document and mechanisms to raise awareness of ways to comply with the requirements on explicit environmental claims.

Article 20

It should be clarified, in case of derogation from articles 14-17 according to article 13, which article of Directive 2005/29/EC should be applied (as a replacement of articles 15, 16 and 17 which are mentioned in paragraph 1(a) and 1(b))

Article 21

Concerns have been already expressed according to the approval of private ecolabel systems by the MSs.
