GERMANY

Questions and preliminary comments on the Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims ("Green Claims Directive")

In the follow-up to the Council Working Group on the Environment on 01 June 2023 for Germany, we would like to submit our questions in writing and take the opportunity to explain them in more detail.

Our general review reservation remains unaffected by this.

First, we have two general requests to the COM:

- The requirements for substantiation and communication of environmental claims and eco-labels contained in the proposed directive are very complex. Partly the requirements are not very concrete. We ask COM to give a presentation of an exemplary example of an environmental claim and an environmental label; from the idea at a company, to substantiation and communication, to verification.
- We ask KOM to disclose the calculation examples used to determine the costs for individual environmental claims.

Further, we have the following questions regarding individual provisions in the articles that were negotiated on June 1:

Article 1 § 2

a) According to the COM, who decides whether the listed exceptions apply or are applied correctly?
b) Who decides whether a verifier must be consulted? Example: If the Packaging Regulation allows to show "20% recycled content" on a package, is it allowed to advertise with "environmentally friendly because 20% recycled content"? May only specific environmental claims be made that are covered in the respective criteria of the exemptions? Or is it allowed to make links, e.g. "good for the environment because with 20% recycled plastic" (Verpack-VO).

c) Where does KOM see the market surveillance to check the exemptions listed in Art. 1, § 2?

The mentioned regulatory acts partly already contain evaluations and partly only descriptive interpretations. Therefore, it may be difficult to assess in which cases these legal acts prevail.

Artikel 5, § 2 in conjunction with Article 3, § 1 (c) und (d):

a) DE asks COM for example claims covering "environmental performance", "environmental impacts" or "environmental aspects". Legal and planning certainty for companies could possibly be increased by graphic and written examples that marketing managers and advertising agencies can use as a guide. Why did the COM not follow the detailed definitions of environmental aspects in Art. 2 No. 4 to 7 in connection with Annex I No. 4.7? Annex I No. 4.1 and 4.2 of Regulation 1221/2009 (EMAS Regulation)?
b) Why should communication of environmental claims be restricted to claims which are identified as significant for the product or trader in accordance with Article 3 (1) (c) or (d)?
c) Recital 33 explains that "the description, visual presentation and overall presentation of the product, including layout, color choice, illustrations, sounds, symbols or labels that are part of the environmental claim should truthfully and accurately reflect the extent of the environmental benefits achieved and should not exaggerate in this respect." Article 5 does not address this. Why not? In addition, we would like clarification on how these undefined specifications will be evaluated and tested.
d) For this, can KOM give examples of which cases fall under Article 5 number 3 sentence 1 GCD? According to Article 5 number 3 sentence 2 GCD the information from sentence 1 shall be made available "together with the claim". How does COM understand the term "together", temporally or spatially?

COM is asked to provide examples that illustrate the requirements in practice. The requirements of the GCD are partly not very concrete and can be interpreted differently. This is seen as a high potential for misunderstanding and misinterpretation when the

GCD is applied. It cannot be assumed that there will be a scientific consensus on this. Legal and planning certainty for companies could possibly be increased by graphic and written examples, which marketing managers and advertising agencies can use as orientation.

In addition, Recital 33 explains that "the description, visual presentation and overall presentation of the product, including layout, choice of colors, illustrations, sounds, symbols or labels that are part of the environmental claim should truthfully and accurately reflect the extent of the environmental benefit achieved and should not exaggerate in this respect." Article 5 does not address this.

It is also questionable how, in legal practice, it should be evaluated at what point, for example, a color or tone does not represent the extent of an environmental benefit truthfully, accurately, or exaggeratedly.

Article 5 § 4

a) What exactly are the "time-bound commitments for improvements inside own operations and value chains" supposed to be?
b) Why does this regulation only apply to claims that lie in the future? Wouldn't a similar specific regulation for "climate-related explicit claims" based on offsetting also make sense?

Artikel 5, § 6

a) What does COM mean by "physical form"?
b) How does COM define "made available together with the claim"? For example, is it hang tags that are attached **directly** to the product, or does it also mean, for example, an instruction manual that is **attached**?
c) Is the intention of the COM to make the relevant information **directly** visible to consumers on the product or at the (digital) point of sale?

In the case of the digital product passport, COM has formulated that this must be accessible to consumers prior to purchase, if desired. COM is asked explain whether it

also understands **"physical form"** to mean, for example, an instruction manual that is expanded to include such information.

Article 5, § 6 (c)

a) What does the COM mean by "studies or calculations"? Do these have to be from independent third parties or is it sufficient that they are, for example, from the contractor or have been commissioned by him?
b) Does COM assume that companies must make available to consumers **all** studies that they have previously submitted to the **Verifier**? If not, who determines what must be made publicly available - the Verifier or the company?
c) Does COM assume that the Verifier will make a **qualitative assessment** of the studies submitted by companies? How should the Verifier behave if (also) **unsuitable** studies are submitted by companies? Does the Verifier then prohibit publication? Who makes the final decision as to what is classified as **trade secret**?

Companies must submit studies to the Verifier that ensure the scientific substantiation of the claims they wish to make. However, it may occur that studies are also submitted that do not represent adequate scientific substantiation. Who is in a position to judge this correctly? This requires a high level of knowledge on the part of the verifiers. Furthermore, who makes the decision as to which studies are to be made known to consumers? Who prohibits publication, if necessary? This decision is not trivial: the certified evidence of a specific environmental claim with a scientifically flawed study potentially reverses the intent of the GCD. Moreover, who makes the decision as to what constitutes a trade secret and/or what is subject to publication?

Artikel 5 § 6 lit. f

a) Shouldn't there also be a requirement here to present which activities generate compensation credits/"offsets"? There should be clear communication on whether offsets are generated through reductions/offsets that are credited to an National Detemined Contributions (NDCs) or are additional to NDCs.
b) What other qualitative aspects for offset credits are relevant?
c) What are the minimum standards that offset credits must meet? In this context, we ask to clarify: Is Article 1(2) to be understood as meaning that the listed legal

acts only take precedence to the extent that they themselves regulate eco-labelling schemes and environmental claims and, in the event that they do not contain any regulations, the GCD applies.

d) Or is e.g. Art. 1 para. 2 lit. m to be understood in such a way that the GCD applies to the use of certificates according to the draft regulation on the creation of a Union framework for the certification of CO2 removals ("Carbon Removal Certification Framework", CRCF), if no further regulations on substantiation are made there? In the RAG on the CRCF, the Commission stated on several occasions that the use of the certificates is also based on the GCD in particular.
e) Is the draft regulation for the certification framework for CO2 removal (CRCF) to have a prominent role here and how does this compare to generated credits under Art. 6 of the OAP (Paris Agreement) as well as other certification systems?

In order to create legal certainty, we suggest including a definition in Article 2 as to what exactly is covered by the term "offsets" or "green gas emissions offsets".

Article 5, § 6 (g)

a) Who writes the "summary of the assessment"? The verifier or the company?
b) Wouldn't only the summary required in lit. g be sufficient for external communication (e.g. towards consumers), e.g. to ensure informed and at the same time quick purchase decisions in the everyday life of consumers?
c) In the view of the Commission, what is the added value of providing consumers not only with the summary, but also with the detailed and numerous pieces of information required under lit. a-f?

Article 5 § 7 (as well as Article 3 § 3), recital 37

a) Can COM explain why the maximum number of employees was chosen to be 9 (nine) with regard to the exemption?
b) Have there been or are there any considerations to extend this maximum number to 49 (forty-nine) employees, which would meet the definition of a small business?
c) How does COM deal with the situation that trainees in microenterprises can lead to exceeding the threshold of 9 (nine) employees?

d) How can traders react if they do not wish to opt in but their turnover fluctuates from year to year and the threshold for microenterprises of EUR 2 m is exceeded in one year, but not in the next year?

Article 6:

a) What is the purpose of the regulation with the three variants mentioned?

b) Does "that is no longer active on the market" refer to "a competing trader" or to "another product from the same trader"? Or to both?

c) How does KOM operationalize "significant"? Are there any **guidelines** for this? GER asks COM for **examples** of what is (still) allowed under Article 6 - and what is not (anymore).

d) Why should a trader not be allowed to compare the environmental impacts of his own products?

COM is asked for further explanation of the article. The wording of the article can - see above - be interpreted as misleading. With "significant" - as in Art. 3, § 1 (c) - a not clearly interpretable term is used. COM is asked to give examples of what is allowed under Article 6 and what is not.

Article 7

a) What is the rationale behind the reference in Article 7 (1) to Article 3 and 4? Does every trader who wants to use a label have to fulfil the requirements in Article 3 and 4? If this is not the case: how can an environmental label comply with the requirements in Article 3 and 4?

b) What is the rationale behind the reference in Article 7 (1) to Article 5? Are the mentioned information to be provided related to the trader or the label?

Article 8, § 3, § 5

a) Why does the Commission distinguish between state/regional and private providers in new environmental labeling schemes? Why are new state/regional

environmental labeling schemes not required to provide added value? This could be an alternative to a ban.

b) What does the Commission mean by "added value"? Why would it not be sufficient if the requirements of the directive now under negotiation are met?

c) What does the Commission mean by "regional"? Can an example of a regional certification system be given?

d) How does COM understand the grandfathering formulated in Art. 8, § 3? Does this only apply to existing environmental labeling schemes offered by public authorities or also to private environmental labeling schemes? If grandfathering only applies to public schemes: Why is grandfathering limited to public schemes and not also to private schemes?

Article 8 grants grandfathering for national or regional "environmental labeling schemes". This also includes the Blue Angel, the German government's environmental label. It is still unclear and the subject of a request to the COM whether existing private labels that were on the market before the directive came into force and that meet the requirements of the directive are also protected. § Section 3 prohibits new national or regional environmental labeling schemes established by state institutions. On the other hand, § 5 continues to allow new "environmental labeling schemes" in private ownership if they provide an unspecified "added value" and meet the requirements of the GCD.

Artikel 9

a) What circumstances does COM think of that could negatively influence the diligence / correctness ("accuracy") of a claim? Are these **external** circumstances, such as new scientific findings or the release of extracted greenhouse gases? Or **internal** circumstances, such as a change in formulation or production methods, change in manufacturing location, change in a supplier or product design?

b) Which circumstances should **always** lead to a lack of compliance of the "certificate of conformity"? In which form does COM see the member states in the obligation here? Is COM thinking here of the verifiers or of the "competent authorities"?

c) How should it be ensured that identical standards are applied in all member states? What are the legal consequences if an environmental claim is not updated (e.g. for products that are already on the market)?
d) d) Do special conditions apply here for claims based on the EU's own certification systems (e.g. CRCF)?

COM is asked to communicate which circumstances lead to the fact that a claim previously approved by the verifier has to be verified and may need to be verified again. Based on the experience with the German government's "Blue Angel" eco-label, these can be external circumstances, such as new scientific findings, or internal circumstances, such as a change in formulation or product design. COM is asked to specify which circumstances always lead to a loss of the "certificate of conformity". The statement "member states shall ensure" raises questions: Is KOM thinking here of the verifiers or of the "competent authorities"? How is it to be ensured that identical standards are applied in all member states - again, in order to provide companies with legal and planning certainty?

Article 10
§ 1 + § 2:

a) Is COM considering proposing a uniform procedure to MS to prevent distortion of competition between MS? The new regulations should lead to more harmonization in the internal market.
b) To what extent does COM consider the certification procedure as envisioned in the Carbon Removal Certification Framework (CRCF) a blueprint for verifying other environmental claims regulated under this Directive?
c) How can sufficiently qualified "verifiers" be accredited and active in the Member States in sufficient numbers within the timeframe of 24 months from the entry into force of the Directive and 6 months from its implementation by the Member States, as provided for in the draft? Is the COM open to a longer transitional arrangements/transition periods?

These deadlines could be tight, especially with regard to environmental advertising claims already in use, which are supposed to at least partially meet the substantive

requirements of the new directive, but have not yet been able to go through the formality of verification. Thus, what might be needed here is the creation of much longer transitional regulations for environment-related advertising claims on product packaging that is already on the market when the new requirements take effect.

§ 4:

d) Is it necessary to choose a verifier in the MS where the company is located? Or is COM thinking of a cross-border service?
e) What about claims already in use and existing labels? Is COM thinking of transitional periods until when these have to visit a verifier after the Directive enters into force?

§ 9:

a) Does COM also consider the integration of the digital "certificate of conformity" into digital product passports? Who is responsible for the upload, if applicable?

COM does name potential costs for substantiating specific environmental claims, but the fees for verification services raise questions: Is COM thinking here also of cross-border offers or even pure online verifiers?
COM should outline its ideas on how an integration of the "certificates of conformity" into digital product passports is envisaged: Who is responsible for the upload into the DPP?

b) Does COM intend to set the maximum duration of a verification procedure? Setting a maximum duration of a verification procedure would ensure that the verification by a "verifier" is carried out in such a speedy manner that products showing environmental benefits cannot be brought to the market only after a significant delay.

COM should state whether it also intends to include provisions for dispute resolution between the advertising company and the verifier. Art. 16, which regulates "access to justice", does not contain any regulation for the case that a "verifier" does not want to issue the certificate required by the company, as there is no agreement between the two as to whether the conditions specified in the directive for this are fulfilled.

Article 11

§ 3 (a):

a) Does COM believe that the verifier should be independent of the scientific substantiation of the specific environmental claim?
b) Or may verifiers also offer the service of substantiation of environmental claims themselves and equally issue a "certificate of conformity"?

§ 3 (d):

c) Who defines what expertise the verifier must have?
d) Does COM see this covered by the obligation of accreditation?

§ 3 (e):

e) Can individuals also be verifiers (experts), or does "sufficient number of suitably qualified and experienced personnel" mean that COM basically thinks of an institution with several persons?

The qualification of the verifiers is of elementary importance for an authentication of the scientific substantiation of specific environmental claims. COM should please explain in how far a governmental accreditation is seen as an added value here. Already in EmpCo there was a discussion about the passage "third party" / "third party expert". The text of the GCD suggests that COM does not see verifiers as individuals (experts) but as an institution with several employees. For this, COM should explain their motives.

Article 13

How does the Commission understand the reference to Articles 5 and 6 made Article 13 (2)?

- Will it be possible for Member States to derogate from Articles 14 to 17 **only** regarding the communication requirements mentioned in Articles 5 and 6 or
- will it be possible to derogate from Articles 14 to 17 regarding the substantiation requirements mentioned in Articles 3 and 4 **and** the communication requirements mentioned in Articles 5 and 6?

This question arises because Article 5 (2) is referring to the requirements laid down in Articles 3 and 4. It is important for Member States to know to what extend they can make use of the derogation in Article 13 (2).

Council of the European Union
General Secretariat

Interinstitutional files:
2023/0085 (COD)

Brussels, 22 June 2023

WK 8499/2023 INIT

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CONTRIBUTION

From: To:	General Secretariat of the Council 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 DK, DE and AT delegations.

DENMARK

Written comments on article 7-11 of the Green Claims Directive, 20th June 2023

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

General comments
Denmark would like to underline the importance of this file and therefore urge the Presidency to ensure that the negotiations on the file progresses with a pace that enables the directive to be adopted before the European elections in 2024.

In addition, we look forward to receive the written answers by the Commission as announced at the last working party.

Article 7 – Environmental labels
We would like to thank the Commission on clarifying that this paragraph is valid for labels that address several environmental impact categories in an aggregated manner (i.e. impacts on climate, biodiversity etc.). We support the goal of controlling subjective weighting and normalization procedures, which could lead to misleading information and varying results. Consequently, we suggest the following wording:

7(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 aggregated indicator ***of two or more*** *environmental impacts of a product or trader.*

Article 8 – Requirements for environmental labelling schemes
First, we would like to thank the Commission for explaining that the provision to ban new nationally recognized labels in article 8(3) will not affect a Danish Climate label for food if this is established prior to 2026, which we understood from the Commission is the earliest year of transposition of the Directive. We wish to add a new sentence to 8(3):

From [OP: Please insert the date = the date of transposition of this Directive] no new national or regional environmental labelling schemes shall be established by public authorities of the Member States. However, national or regional 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. ***National labels under development prior to [OP please insert the date, i.e. 31. December 2023] can be established up to 24 months after the date of entry into force of this Directive.***

We recognize the need to end the proliferation of new environmental labels, which cause confusion for consumers. However, if new private labels can have "added value", we do not see why this could not be the case for nationally recognized labels, which from our experience have a higher level of credibility.

Inserting a transition clause for existing labels

We are concerned that the missing mentioning of a transition clause specifying when existing environmental labelling schemes should be verified leads to a scenario where a large share of schemes are not verified. This would create unfair competition amongst environmental labels and prevent the efficiency of the directive by allowing non-credible labels on the market. Consequently, we consider it important to clearly state that there is a transition clause for existing environmental ecolabels, which could be achieved by a new paragraph.

(2a) Environmental labels existing prior to the date of entry into force must comply with the requirements in paragraph 2 and be verified no later than [OP please insert the date = 24 months after the date of entry into force of this Directive]

In addition, we hope that the Commission would help clarifying if conditions for joining environmental labelling schemes in article 8(2)(c) refers to criteria, application process or fees.

We support that product group specific criteria for environmental labelling schemes has to be developed by experts, which will ensure scientific robustness and that there has to be a consultation for a heterogenous group. However, we see a need to specify that the consultation should be open and that the environmental should address the consultation feedback and considerations related to this. We find it important that environmental labelling scheme evaluates and revises the criteria periodically to follow societal and technological developments.

Need for overarching rules for establishing new private environmental labelling schemes

We recognize the Commission's intention to adopt an implementing act with detailed rules for approval of new private environmental label schemes. At the same time, we are concerned that the implementing act will not be adopted and enter into force by the date of transposition of this directive. This means that there will be years where it will be left for Member States to define "added value", which could lead to unequal implementation and a fragmented market.

Ideally, the Commission would undertake approving new private environmental labelling schemes, which is the case for schemes coming from third countries. This would alleviate our concerns and ensure new schemes are based on the same criteria. The criteria for added value should as a minimum cover the following three elements:

- Assessing if existing labelling schemes cover the same product group(s) and sector(s), and set criteria for similar environmental aspects, impacts and performance.
- Consider ongoing work at EU level to establish a label for the product group and the criteria this would include.
- Assess if the environmental aspects, impacts and performance to be included in the label are relevant from a life cycle perspective for the product group(s).

We therefore propose the following to changes:

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

And;

"8. In order to ensure a uniform application across the Union, the Commission shall adopt implementing acts to:

(a)provide detailed requirements for approval of environmental labelling schemes pursuant to the criteria referred to in paragraphs 4 and 5;
(b)specify further the format and content of supporting documents referred to in paragraph 6;
(c)provide detailed rules on the procedure for the approval referred to in paragraph 4.

When setting detailed requirements and rules in point a and c, the implementing act shall as a minimum include:

- ***(a) Assessment of if existing environmental labelling schemes cover the product group and sets requirements for similar environmental aspects, environmental impact or environmental performance;***
- ***(b) Consideration any ongoing work on a labelling schemes at Union level for the relevant product group(s); and***
- ***(c) Assessment of if the environmental aspects, environmental impacts or environmental performance intended to be included in the labelling schemes is relevant for the product groups to be covered from a lifecycle perspective.***

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19."

Article 9 – Review of the substantiation of explicit environmental claims
Denmark does not have any comments to article 9 at this stage and is overall supportive for the requirement to evaluate explicit environmental claims.

Article 10 – Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes
Denmark is overall positive towards the introduction of *ex-ante* verification. We expect a high demand for verification immediately after the proposal is transposed and would like to ensure that the system can handle the demand. We would therefore welcome if the Commission

could explain how this worked from the regulation on health claims for food and if there are any lessons learned that we should take into consideration.

Regarding article 10(5), article 10/6) and recital (51), it should be clarified what the verifier "shall take into account" and what "the nature and content of the explicit environmental claim" means in relation to Directive 2005/29/EF. It is not clear, if the verifier must assess whether or not the explicit environmental claim is misleading or not according to Directive 2005/29/EF.

Further, in relation to article 10(8) it is unclear whether the verifier's assessment of whether the explicit environmental claim is misleading or not, can be assessed by the competent authorities enforcing the Directive 2005/29/EF, or if they need to be appointed in accordance with this Directive article 13. As we understand the current wording, Directive 2005/29/EF is a "safety net", which means that the case always can be assessed in relation to Directive 2005/29/EF and whether the case is compliant with Directive 2005/29/EF articles 5-9.

We are concerned about recital 51, where it is stated that that a verifier can indicate several ways of communicating the explicit environmental claim that comply with the requirements of this Directive. How should that assessment be made? Another concern is whether the verifier needs to take into account the assessment of whether or not the different ways can be misleading.

There is a risk that verifiers wrongfully draw up a certificate of conformity despite the claim not fulfilling the provisions of this directive, which would mean that greenwashing still occurs. We therefore see a need to clarify that Member State authorities can evaluate if claims with a certificate of conformity fulfil the rules of the Green Claims Directive. This provision would also ensure that Member States can fulfil the monitoring requirements in article 20. Consequently, we consider article 10(8) should be clarified as follows:

8. The certificate of conformity shall not prejudge the assessment of the environmental claim ***and certificate of conformity*** *by national authorities or courts in accordance with* ***this directive or*** *Directive 2005/29/EC.*

For article 10(6), we would like to clarify that "where appropriate" refers to when the rules of this directive are adhered to avoid confusion. This could be done with the following:

6. Upon completion of the verification, the verifier shall draw up, where ***the claim fulfil the criteria of this directive*** ~~***appropriate***~~*, a certificate of conformity certifying that the explicit environmental claim or the environmental label complies with the requirements set out in this Directive.*

Article 11 – Verifier

With the amount of flexibility for Member States to implement the directive, there is a risk that all verifiers will not have the same standard and therefore not improve the functioning of the internal market. We therefore consider that there is a need to further specify the requirements to ensure that verifiers have equal standards across Member States. This could

be by requiring that verifiers fulfil the requirements in EN ISO/IEC 17020:2012 as regards independence.

In addition, there could be added requirements to what the verifier needs to assess. For example, that verifiers have to consider the following when validating data:

- Coverage, precision, completeness, representativeness, consistency, reproducibility, sources and uncertainty,
- Plausibility, quality and accuracy of the LCA-based data;
- Quality and accuracy of additional environmental and technical information; and
- Quality and accuracy of the supporting information.

We would like to understand the potential consequences of allowing the use of non-accredited subcontractors in article 11 (3)(g). We would also like to understand the consequences for the verifier in case the subcontractor does not fulfil the requirements in this directive.

Further, it could be clarified what the relationship is between article 11 and ECGT article 1(2)(b) regarding environmental claims related to future environmental performance. According to ECGT article 1(2)(b) an environmental claim related to future environmental performance must be verified by an independent third-party expert. Would this be or can it be a verifier according to article 11 in this Directive?

AUSTRIA

Comments: Green Claims Directive - Cluster 1, 2 and 3 (WK 7308/23)

General remark:
The following comments are of preliminary nature. Regarding Articles 5 to 11, we would like to repeat some of our comments from the WP meeting on 1 June 2023 as some issues are still open. We would kindly ask the Commission for clarifications.

Generic vs. specific
It is important that the scope of the Green Claims dossier is properly defined. Even though there was given a presentation on the different types of environmental claims in the previous working party, the relationship between explicit claims (as used in the GCD) and generic claims (as used in the Empowering Consumers Directive) is still not clear to us.

According to the presentation, generic claims are a subcategory of explicit claims, but are not regulated in the GCD. Another subcategory are specific claims. The GCD should apply to explicit claims with the exception of generic explicit claims. It therefore only covers specific explicit claims. In our opinion, this differentiation leads to a valuation conflict since claims that are vaguely formulated and therefore fall under the term “generic claim” need less substantiation and verification than claims that have already been specified. Why do specific claims like the recycled content in % of a product need further substantiation? What should be further substantiated here? Would this mean that a specific claim such as "palm oil free" has to be verified ex ante according to the requirements of the GCD?

In addition to that, recital 14 states that the requirements set out in the GCD should apply to specific aspects of explicit environmental claims and will prevail over the requirements set out in the Directive 2005/29/EC with regard to those aspects in case of conflict. Does this mean that the provisions set out in the GCD prevail over those set out in the Empower Consumers Directive? What does this mean with regard to the fact that generic claims form a subcategory of explicit claims? Following the presentation in the WP, we would conclude that even though generic claims are a subcategory of explicit claims, the rules set out in the GCD do not apply and generic claims therefore form an exception to the GCD. This would mean that the rules set out in the Empower Consumers Directive would prevail over those set out in the GCD when it comes to generic claims. This understanding would be diametrically opposed to what is stated in recital 14. Could the Commission please give precise information and clarification on that matter? If the Green Claims proposal only applies to specific explicit environmental claims, this should be explicitly stated in the Directive.

Another overlap with the Empowering Consumers proposal that has to be solved is the following: As microenterprises are not exempt in the Empowering Consumers Proposal, it should be clarified what is permissible for microenterprises and what is not. The Empowering Consumers proposal requires third-party certifications for sustainable labels. If a microenterprise issues a sustainable label that predominantly addresses green aspects, is this label then exempt from a third-party certification according to the Empowering Consumers proposal or only from the certification and verification procedure according to the GCD? Often green labels are developed by consultancies - does this exemption also apply to consultants or only to traders?

SME

We consider it very important that producers in the EU do not suffer competitive disadvantages from facing bureaucratic obstacles compared to their third country competitors. It should not be the goal or the effect of this Directive to make third party competitors gain advantages over producers within the EU. As research shows and practical experience confirms, SMEs are much more burdened by such regulations than large companies are. Financial support from the state is limited and SMEs do not have the time for training measures, as they have to work productively in order to keep up with competition. Therefore, the administrative burden of the proposed provisions in the GCD on SME must be reconsidered and adequate solutions have to be found for small undertakings. SME must continue to be able to communicate their environmental performance to consumers without being unable to fulfill the specific requirements defined in Articles 3 and 4. Those requirements must be simple, clear and easily manageable. Small companies must not be put at a disadvantage alongside large competitors that have their own marketing departments and can manage the administrative burden. There should be further discussions, how the "think small first" principle can be best achieved in the GCD.

Furthermore, we strongly suggest that the SME envoys network examine the proposal:
The Green Claims proposal was not scrutinised, as there was no public consultation (via the Have your say-portal) as the Commission also did not prepare an Impact Assessment. The SME envoys network should be involved as soon as possible because of its high relevance for SMEs.

Overall costs for businesses

Before discussing individual articles, we would also like to point out the costs that businesses would face in order to fulfil the requirements of this Directive. Ex ante verification and the requirements for substantiation and communication set out in this Directive can be associated with high costs, e.g. when a life-cycle analysis is carried out. Those costs can inter alia lead to companies increasing their prices in order to pass them on to consumers. Businesses are therefore confronted with a trade-off between either having to increase their prices as result of the higher costs they are facing or simply not being able to use green claims as part of their advertisement strategy anymore. Businesses increasing their prices then might lead to an overall increase in price levels that might fuel inflation. Such an effect cannot be intended with the GCD and should be avoided. Administrative burden should therefore be kept low. The possible costs for small undertakings should be presented in detail by the Commission. Furthermore, (financial) support measures should be provided by the Commission.

<u>Cluster 1 - Article 5, 6 and 9</u>

Article 5

In Art. 5 (2) the reference to Art. 5 does not seem necessary as the requirements for the substantiation of environmental claims are laid down in Art. 3 and 4: *" 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~~,~~ **and** 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). "*.

Art. 5 (3) should be aligned to Art. 5 (6): "[…] That information shall be made available together with the claim **in a physical form or in the form of a weblink, QR code or equivalent**." In addition to that we ask for clarification on why the word "final product" was used instead of just "product". Could the Commission explain the word "final product"? Furthermore, it is unclear when the use phase would be "among the most relevant life-cycle stages". Could the Commission please give

examples and explain why the addition of the phrase “where the use phase is among the most relevant life cycle stages of that product” is necessary.

Furthermore, we kindly ask for clarification how Art. 5 (4) relates to Art. 6 (2) point (d) of the UCPD as amended by the Empowering Consumers proposal. According to the Empowering Consumers Proposal, it is already necessary to have a “realistic implementation plan” that is “*verified by an independent third-party expert*” when making an environmental claim related to future environmental performance.

Regarding Art. 5 (6), traders should not be misled by trade offs. Are there any criteria how all the information required according to para 6 should be provided? Furthermore it is questionable whether all the information that needs to be provided will be taken into account by the consumer. In order not to overwhelm the consumer with an overload of information it would be necessary to clarify which of the information is helpful and supportive for a purchase decision and which might not be necessary and can therefore be deleted from Art. 5 (6).

We see a need for further discussion on para 7. As mentioned above, we do not consider the objectives and regulations to be SME-friendly and that the goal of avoiding administrative burdens is sufficiently taken into account. As mentioned, these bureaucratic burdens will lead to EU producers being worse off in the competition with third country producers which can certainly not be the intention behind this Directive.

Article 6 and Article 4 (2)
We are wondering, how Art. 6 relates to Art. 4 (2). Art. 6 sets out general requirements for the use of comparative environmental claims related to an improvement of environmental impacts/aspects or performance. Art. 4 (2) provides for specific provision when using such comparative environmental claims which are not understandable (why are explanations of effects on “*other*” relevant environmental impacts/aspects/performance needed?). Therefore Art. 4 (2) should be rechecked. Furthermore, it should be considered to integrate Art. 4 (2) into Art. 6.

Regarding the wording of Art. 6, we have several questions, e.g. regarding the terms “*on the market*” or, “*trader that no longer sells to consumers*” or “*significant improvement*”.

In addition to that, it is questionable at what point in time the five-year period should begin and how this period is applicable to particularly durable products such as books, second-hand products etc. Why did the Commission choose a period of 5 years? It is suggested that the date of placing the product on the market should be taken as the starting point.

Furthermore, it should be noted that the exemption for micro-enterprises (as provided for in Art. 3 (3), Art. 4 (3), Art. 5 (7)) should also be extended to Art. 6, as they also face similar disproportionate challenges under this Article.

Article 9
If the criteria on which the labels are based on change, does this mean that a new certificate of conformity is necessary? Some EU Ecolabel guidelines have a validity of 8 years. Will this period now also be reduced to 5 years? Regarding the start of the 5-year period, the question arises as to what "after the date on which the information was provided" actually means. Does this point in time already start to run before receipt of the certificate of conformity according to Art. 10?

Cluster 2 - Articles 1 (2), 2, 7 and 8

Article 1 (2)

As already mentioned in previous WP meetings, the list in Art. 1 (2) should be rechecked. Furthermore, Art. 1 (2) point (a) refers to the Ecolabel Regulation. Not only the EU Ecolabel, but also state commissioned type I ecolabels should be exempt. In the Empowering Consumers proposal, national type I labels have "*recognised excellent environmental performance*". Therefore, such labels should be added to the list in (2) with the following wording: *"**(x) national or regional EN ISO 14024 type I ecolabeling schemes officially recognised in the Member States**"*.

Article 2 (8)

Due to the fact that the term "*or predominantly*" is too unclear, it was already deleted in the Empowering Consumers proposal, therefore it should not be used in the Green Claims either: *"(8) 'environmental label' means a sustainability label covering only ~~or predominantly~~ environmental aspects of a product, a process or a trader;"*.

Article 7

What does „labelling schemes established under Union law" mean in practice? Are only labelling schemes based on European legal acts (e.g. energy labels) to be understood or also all labelling schemes that have to comply with European legal acts but are not based on them?

Article 8

Regarding Art. 8 (2), we have some questions: What does "proportionate to the size and turnover of the companies in order not to exclude small and medium enterprises" mean for the verification process? On what grounds should experts justify its "scientific robustness"?

Regarding Art. 8 (3), we do not understand why new national or regional labels should not be allowed anymore while new private labels are not generally forbidden. In addition, the question arises whether existing labels must also be verified ex ante and, if so, whether communication with existing labels would then have to be dispensed from the entry into force of the directive until verification.

Regarding the wording "added value" in para 4, 5 and 6, a definition would be necessary. Furthermore, we kindly ask for clarification on what happens with existing private labels.

Art. 8 (6)(d) requires that operators of new environmental labelling schemes must submit a proposal for draft criteria, as well as the methodology used for the development and award of the label. This requirement is a central point in the Directive, but the question of which criteria should be used as a basis for approval seems to be completely unclear. Is it intended to clarify this question only in the form of implementing acts?

Where will the Commission publish the list in Art. 8 (7)?

Cluster 3 - Articles 10 and 11

Article 10

The verification of every single explicit environmental claim seems very time-consuming and will lead to the creation of a new verifier industry. This also means a paradigm shift for companies that live from communication about their products and therefore needs to be assessed carefully. In a free market economy that is based on competition between companies, it is necessary for companies to be allowed to promote their products in order to achieve advantages over their competitors. We cannot ignore this principle. Therefore, we should have detailed discussions regarding the ex ante verification of every single explicit environmental claim compared to the ex ante verification of labels. Concerning the verification process a differentiated approach between claims and labelling schemes is necessary. There might be other, less burdensome and less excessive, possibilities to ensure transparency than mandatory ex ante verification, which should be considered for claims as an obligation for ex ante verification of every single claims does not seem proportionate.

In addition, the reference to Art. 7 in Art. 10 (1) seems inappropriate, as Art. 7 already contains provisions on labels. Art. 10 (1) should therefore only refer to Art. 3 to 6.

Regarding Art. 10 (2), it is proposed to include a reference to Art. 7. MS should therefore set up procedures for verifying the compliance of environmental labelling schemes with the requirements set out in Article 7 and 8.

In Art. 10 (7), we request confirmation that "shall be recognized by the competent authorities" is to be understood as direct mutual recognition of certificates of conformity in the MS. Furthermore, we kindly ask for clarification whether the environmental claims can be used directly after receipt of a certificate of conformity in all MS?

Is Art. 10 (8) to be understood in a way that an environmental claim can still be unfair despite verification by the verifying body certifying that the claim is reliable and trustworthy, which would have to be determined by a national court? How is this compatible with the objective of legal certainty?

Article 11

We request the Commission to explain the background of the chosen form of regulation (accredited inspection body as a verifier). Why was verification by government agencies not chosen?
