

European Furniture Industries Confederation position on the European Commission proposal for a Directive on Green Claims

20 July 2023

The European Furniture Industries Confederation (EFIC) welcomes the opportunity to provide comments to the ongoing consultation on the Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)¹. The Furniture sector is in favour of actions to protect the market from greenwashing and advocates for harmonized rules at EU level.

Please see below our comments, recommendations and open questions on the proposal. EFIC key concerns are related to Articles 1, 2, 3, 7, 8, 10, 12, 15, and 17 of the proposal.

Summary

- The furniture industry recommends that the definitions are aligned across all EU legislation, including the proposal for a Directive amending Directives 2005/29/EC and 2011/83/EU, and other pieces of legislation that are being adopted at the moment, such as the future Ecodesign for Sustainable Products Regulation and the Corporate Sustainability Reporting Directive.
- Rules on corporate environmental claims rules must be coherent with the corporate sustainability reporting obligations established in the Corporate Sustainability Reporting Directive (CSRD).
- ‘Business-to-consumers’ commercial practices must be defined, as well as the rules that will apply to business-to-business commercial practices.
- Regarding ‘widely recognized scientific evidence’ (Article 3.1(b)), clarity is needed about what is considered as “widely recognized” and how companies should assess this.
- It seems that explicit environmental claims should be compared with common practices. Legal requirements should be regarded as common practice, unless a majority of the products perform better than the requirements of the law. Clarification is needed with regards to what should apply.
- Clarification is needed regarding how traders can show/prove that their environmental claims do not lead to significant harm on climate change, resource consumption and circularity, etc.
- Environmental labels must comply with articles 3 to 6. Clarification is needed regarding the impact of this Directive on some type 1 labels that do not have an LCA-approach, such as EU Ecolabel and Nordic Swan, and to the possibility for type 1 labels to expand with new types of products.
- The furniture industry welcomes EU harmonization of scoring systems, and recommends that other (e.g. private) schemes are accepted when they fulfil certain criteria.
- Clarity is needed with regards to investigation and sanctions applied to a company, but also on the division of the liability between companies and verifiers. Articles 10 and 15 leave most of the responsibility to Member States, which could lead to an unclear regulatory environment.
- The cost/waiting time in the procedure, uncertainties on the recognition of the verified claims can lead to companies not bearing the risk to communicate about their environmental goals/results. While the industry agrees with the principle embedded in this legislation, a reasonable level of expectations and legal certainty is needed.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0166>

Detailed recommendations

Article 1 - Scope

Text of the proposal: 1 *“This Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.”*

Comments:

Article 1 states that the proposal applies to business-to-consumers commercial practices. However, ‘business-to-consumers’ is not defined and it is not clear what rules will apply to business-to-business commercial practices. Many environmental labels are aimed both at private consumers and at companies as well as public procurement.

Moreover, the proposal applies to claims made about the company/organization. The inclusion of corporate environmental claims is understandable, however the measurements and definitions must be coherent with the obligations established in the Corporate Sustainability Reporting Directive (CSRD).

In addition, if third party verification remains as a pre-condition for all environmental claims, whether voluntary (Green Claims Directive) or based on legal requirements (CSRD), it is important that enough implementation time is given to companies to prepare. Both the CSRD (for companies in scope) and the Green Claims Directive will create an unprecedented demand for third party verification, which could lead to not having a fully functioning system ready in the short term to verify all claims. The furniture industry recommends putting in place a reasonable plan allowing enough implementation time for companies.

Article 2 - Definitions

Text of the proposal

For the purposes of this Directive, the following definitions shall apply:

(1) ‘environmental claim’ means environmental claim as defined in Article 2, point (o), of Directive 2005/29/EC

(3) ‘trader’ means trader as defined in Article 2, point (b), of Directive 2005/29/EC;

(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;

(6) ‘business-to-consumer commercial practices’ means business-to-consumer commercial practices as defined in Article 2, point (d), of Directive 2005/29/EC;

(7) ‘sustainability label’ means sustainability label as defined in Article 2, point (r), of Directive 2005/29/EC;

(10) ‘certification scheme’ means a certification scheme as defined in Article 2, point (s), of Directive 2005/29/EC;

Comments:

The furniture industry recommends that the definitions are aligned across all EU legislation, including the Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, that is being amended by the proposal for a Directive amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, and other pieces of legislation that are being adopted at the moment, such as the Ecodesign for Sustainable Products Regulation and the Corporate Sustainability Reporting Directive.

Article 3 - Substantiation of explicit environmental claims

Text of the proposal:

3.1 “Member States shall ensure that traders carry out an assessment to substantiate explicit environmental claims. This assessment shall:

3.1 b. rely on widely recognised scientific evidence, use accurate information and take into account relevant international standards;

Comments:

Regarding widely recognized scientific evidence, clarity is needed about what is considered as “widely recognized” and how companies should assess this. The furniture industry recommends the following approach: the threshold for scientific evidence should be an open and transparent quality review (peer-review) that meets a high standard and has been published in a scientific journal. A solid guidance from the Commission is needed in this regard, for both companies and authorities.

3.1 c. demonstrate that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life cycle perspective”

Comments:

The proposal does not prescribe a single method, nor does it require a full Life Cycle Analysis (LCA), while the assessment used to substantiate an explicit claim must consider the life cycle of the product. Clarification is needed to better identify the practical implications. The furniture industry believes that the current wording, in particular the word ‘significant’, risks bringing unclarity in practice as the proposal does not prescribe a specific method for conducting a life-cycle analysis nor provides any indication of the values and parameters that should be considered. Moreover, the term ‘life cycle’ requires a definition of the system boundaries to be considered. If the designation of these system boundaries is chosen differently among stakeholders, green claims may in the end not be comparable.

3.1 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”

Comments:

In the explanatory memorandum, the Product Environmental Footprint (PEF) is discarded since it does not take all relevant impacts into consideration, although it includes 16 environmental impact factors. Clarification is needed regarding how the relevant impact factors will be chosen for a certain product. Moreover, the part ‘take into account *all* environmental aspects or environmental impacts which are significant’ leaves too much room for interpretation.

3.1 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”

Comments:

It seems that explicit environmental claims should be compared with common practices. Legal requirements should be regarded as common practice, unless a majority of the products perform better than the requirements of the law. Clarification is needed with regards to what should apply.

3.1 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”

Comments:

Clarification is needed regarding how traders can show/prove that their environmental claims do not lead to significant harm on climate change, resource consumption and circularity, etc. Moreover, article 3.1 g lacks clarity on the process to check the benefits claimed on all the life-cycle stages.

General comments on Article 3:

The furniture industry asks for clarity regarding the liability between businesses and verifiers. In particular, whether the verifier is liable in case of a weak methodology to prove the claim or wrong calculations/assessment. Moreover, it is not clear how potential conflicts can be solved, especially in the lack of common methodologies. Also, the responsibility for the validity of the green claims should be distinguished in such a way that, for example, a manufacturer cannot be held liable for what the marketing department of a retailer makes of the manufacturer's green claims downstream.

Clarifications in Article 3 are of particular importance for our sector. This article remains very unclear and leaves too much room for interpretation. This could lead to considerable problems for both the companies covered by the directive and the national authorities that must exercise supervision and market control.

Article 7 - Environmental labels

Text of the proposal:

7.1 “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.”

Comments:

Environmental labels must comply with articles 3 to 6. Clarification is needed regarding the impact of this Directive on some type 1 labels that do not have an LCA-approach, such as EU Ecolabel and Nordic Swan.

Moreover, it is not clear how labeling systems, certifications or standards certifying part of a company's manufacturing process or chain-of-custody (for example wood or timber) or certifications that verify that the raw material has been produced in an environmentally sustainable manner (e.g. recycled cotton) must be interpreted in this proposal. It is important that companies have flexibility to continue using markings and certifications relevant to their industry that prove particularly important parts of a product's value chain, however, on the condition that these also live up to the (revised) requirements in articles 3 – 6.

Text of the proposal:

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 an aggregated indicator of environmental impacts of a product or trader.”

Comments:

The furniture industry welcomes EU harmonization of scoring systems. The furniture industry recommends that other (e.g. private) schemes are accepted when they fulfil certain criteria, for instance, 1) they are done at international or EU level; 2) they follow strict transparency criteria (e.g. on how scores are regulated). For the second criteria, especially in case of private initiatives, they should be accepted when managed under accreditation (according to EN ISO/IEC 17065 or similar), as a guarantee of transparency, impartiality and recognition at supranational level.

Article 8 - Requirements for environmental labelling schemes

Text of the proposal:

8.2 *“The environmental labelling schemes shall comply with the following requirements:*

(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;

(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;

(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;

(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;

(e) the environmental labelling scheme has a complaint and dispute resolution mechanism in place;

(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.”

Comments

It is unclear for the furniture industry whether a label fulfilling ISO type 1 will automatically qualify the methodology or not. If this is the case, ISO 14024 should be explicitly referred 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.
From the date referred to in the first subparagraph, environmental labelling schemes may only be established under Union law.”*

Comments

According to Article 8.3, public authorities will not be allowed to introduce new national or regional labelling schemes. Article 8.3 proposes a ban on new national or regional labeling systems and Article 8.5 proposes a ban on new private labels at national level that do not contribute a certain added value. The industry welcomes that the Commission aims to avoid multiple environmental labels at national level, however, it can be problematic if the management of such labels is fully controlled at the national level. The industry does not support the proposal to ban new private labels in Article 8.3 and believes that the (revised) requirements in Articles 3 – 6 should form the basis of which labels are allowed to exist on the market. If the ambiguities identified in these articles are clarified and the Commission produces clear guidance, the threshold for what is required of an ecolabel will be raised without hampering competition and the power of innovation to develop new methods and labels.

Moreover, the article does not specify what will happen to competing labels.

*8.5 “Member States 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.”*

Comments

Article 8.5 states that it will not be possible to start new private type 1 labels, unless they provide added value in comparison to the existing ones. However, the article does not specify if the private labels established prior to the Directive will continue to exist, providing that they meet the requirements of the Directive.

Moreover, it is not clear whether the existing labelling schemes without an LCA-perspective will be forbidden or not.

Finally, the industry asks for clarification regarding the solutions and regulations for labels that are aimed at consumers or at businesses and public procurement, in particular if these solutions will differ between the different groups.

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

Text of the proposal:

- 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.*
- 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.*

Article 15 - Compliance monitoring measures

Text of the proposal:

1. Competent authorities of the Member States designated in accordance with Article 13 shall undertake regular checks of the explicit environmental claims made and the environmental labelling schemes applied, on the Union market. The reports detailing the result of those checks shall be made available to the public online.

2. Where the competent authorities of a Member State detect an infringement of an obligation set out in this Directive, they shall carry out an evaluation covering all relevant requirements laid down in this Directive.

3. Where, further to the evaluation referred to in the first subparagraph, the competent authorities find that the substantiation and communication of the explicit environmental claim or the environmental labelling scheme does not comply with the requirements laid down in this Directive, they shall notify the trader making the claim about the non-compliance and require that trader to take all appropriate corrective action within 30 days to bring the explicit environmental claim or the environmental labelling scheme into compliance with this Directive or to cease the use of and references to the non-compliant explicit environmental claim. Such action shall be as effective and rapid as possible, while complying with the principle of proportionality and the right to be heard.

Comments (on Article 10 & 15)

Clarity is needed with regards to investigation and sanctions applied to a company, as well as the overall liability regime. Articles 10 and 15 leave most of it to Member States and this can create an unclear regulatory environment, in addition to an unlevel playing field.

One essential element is to make sure that the certificate of conformity is truly recognized by national authorities. While article 10 paragraph 7 cater for mutual recognition in principle, art 7 paragraph 8 leaves the possibility for national authorities to still question its validity. In the lack of EU-wide common standards and methodologies set for substantiation, there is a higher risk that national authorities will have a divergent view on which are the most appropriate substantiation methods and may feel that the certificates of conformity are not bearing the same level of robustness. However, companies cannot have an uncertain legal framework, where certificates obtained following the rules of this Directive can be challenged too easily. Therefore, it is very important that there is no room for different interpretations in different Member States and that national authorities exercise supervision in widely different ways. It is also important for the individual consumer to know that an environmental claim or an environmental label meets the same high standard and is scientifically substantiated regardless of the Member State. To overcome this challenge, the Directive should at least determine the exceptional cases under which a pre-approved claim that has obtained a certificate can be challenged ex-post by an authority in the EU market.

Another important element that the Directive should address is a fair division of liability between companies and verifiers, considering cases in which a potential infringement is imputable to the third party verifier rather than the trader. A strong implementation of the mutual recognition principle (written down in the Directive) is needed to avoid situations of legal uncertainty as per the above example. The lack of common standards is also an issue that can affect the overall functioning of the system.

Article 12 - Small and medium sized enterprises

Text of the proposal:

Member States shall take appropriate measures to help small and medium sized enterprises apply the requirements set out in this Directive. Those measures shall at least include guidelines or similar mechanisms to raise awareness of ways to comply with the requirements on explicit environmental claims. In addition, without prejudice to applicable state aid rules, such measures may include:

- (a) financial support;*
- (b) access to finance;*
- (c) specialised management and staff training;*
- (d) organisational and technical assistance.*

Comments

It is positive that it is explicitly stated in the proposal that Member States should provide guidelines and assistance to SMEs. However, the furniture industry anticipates the risk that the responsible national authority may not provide clear guidance unless the European Commission first develops its own form of guidance. Therefore, the furniture industry recommends that the Commission develops guidance specifically targeted at responsible authorities at the national level. This will also help to ensure a level playing field.

Article 17 - Penalties

Text of the proposal:

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC 40 114 , Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2. When determining the type and level of penalties to be imposed in case of infringements, the competent authorities of the Member States shall give due regard to the following:

- (a) the nature, gravity, extent and duration of the infringement;*
- (b) the intentional or negligent character of the infringement and any action taken by the trader to mitigate or remedy the damage suffered by consumers, where applicable;*
- (c) the financial strength of the natural or legal person held responsible, as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;*
- (d) the economic benefits derived from the infringement by those responsible;*
- (e) any previous infringements by the natural or legal person held responsible;*
- (f) any other aggravating or mitigating factor applicable to the circumstances of the case;*

(g) penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by Regulation (EU) 2017/2394, where applicable.

3. Member States shall provide that penalties and measures for infringements of this Directive shall include:

(a) fines which effectively deprive those responsible of the economic benefits derived from their infringements, and increasing the level of such fines for repeated infringements;

(b) confiscation of revenues gained by the trader from a transaction with the relevant products concerned;

(c) temporary exclusion for a maximum period of 12 months from public procurement processes and from access to public funding, including tendering procedures, grants and concessions.

For the purposes of point (a), Member States shall ensure that when penalties are to be imposed in accordance with Article 21 of Regulation (EU) 2017/2394 115 , the maximum amount of such fines being at least at 4 % of the trader's annual turnover in the Member State or Member States concerned.

Comments:

The cost/waiting time in the procedure, uncertainties on the recognition of the verified claims and the fact that companies may be sanctioned multiple times for the same error can lead to companies not bearing the risk to communicate about their environmental goals/results. While the industry agrees with the principle embedded in this legislation, a reasonable level of expectations, proportionate obligations and legal certainty are needed.

EFIC is the European Furniture Industries Confederation, representing over 70% of the total turnover of the European Furniture Industries, a sector employing 1 million people in about 120.000 enterprises across the EU and generating a turnover of over 100 billion Euros. The EFIC membership is composed of 18 national associations, one individual company member and several clusters. Further information can be found on our website: <https://www.efic.eu/>

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