

ICC Sweden Comments on the EU Green Claims Directive Proposal

We would like to take this opportunity to share with you our comments on the proposal by the European Commission for a [Green Claims Directive](#) to regulate the substantiation and communication of explicit environmental claims on the EU single market. We deem it of utmost importance that ICC globally responds to the ongoing EU consultation, reinforces the importance and value of industry self-regulation, and highlights the role of the existing ICC rules. The proposal, in its current form, risks undermining the status of the Code and self-regulation in general on the Single Market, and by that the work of the ICC in the field of marketing and advertising.

The following comments have been prepared in close dialogue with members of the ICC Sweden Marketing & Advertising Committee. The Committee gathers corporate representatives from different consumer-facing sectors, industry associations, representatives from the national self-regulatory body, and lawyers specialized in marketing. We hope that this input may inform a global ICC response to the directive and are happy to liaise further on this topic. The points enumerated below also serve as ICC Sweden's position in our contacts with the Swedish government regarding the proposal.

General Comments

- We agree with the overarching aims of the directive, i.e., the importance of accelerating the green transition and the need to ensure that environmental claims are well-substantiated to avoid greenwashing and empower consumers to make environmentally sound choices.
- Ensuring that marketing communications are legal, decent, honest, and truthful is of central importance to the global business community to build consumer trust and uphold the principles of fair competition between businesses. This holds especially true when it comes to environmental marketing, seeing the proliferation of such claims and how consumers increasingly wish to actively contribute to the green transition by making informed choices. This is why the business community has developed self-regulatory rules and measures to address this issue and ensure a high ethical standard in all marketing and advertising.
- In general, we welcome the strict requirements regarding substantiation of environmental claims and the aim of greater robustness and transparency of environmental labels but find the verification procedure envisioned to be administratively burdensome, costly, and time-consuming, and may ultimately result in businesses instead refraining from making environmental claims altogether.

- It is concerning that the proposal does not at all consider existing self-regulatory measures by industry, such as the *ICC Advertising and Marketing Code*, which serves as the global gold standard for responsible marketing self-regulation, and the specific rules and guidelines set out in the *ICC Framework for Responsible Environmental Marketing*. Not only are the ICC rules applied by self-regulatory organisations but are also recognised by and have inspired national marketing legislation across the globe. Aligning the proposal with the rules of the Code not only secures a high ethical standard, but also counteracts regulatory fragmentation at an international level.
- We do not agree that micro-enterprises should be exempt from the directive. It is important that all environmental marketing claims, no matter who the marketer is, are well-substantiated. Not only should unsubstantiated claims be avoided by all enterprises, but having such an exemption would in theory make it possible to circumvent the directive by setting up small subsidiaries that could then make the claims instead. It should also be considered that if the proposal is deemed to be so burdensome to micro-enterprises that an exception is needed, the problem lies in the nature of the proposal itself, rather than in the size of the companies that must comply.

Substantiation

- Businesses are investing heavily in reducing their emissions and transitioning to greener and more circular sourcing, production, and operations, recognising that sustainable businesses are also more profitable in the long term. Fair competition and a level playing field that ensure that these investments pay off are key.
- We, therefore, agree with the proposal about the importance that environmental marketing claims are well-substantiated so that companies that offer truly sustainable products are not disadvantaged compared to those that do not.
- In terms of substantiation, the proposal is well aligned with existing requirements under the ICC Code and Environmental Marketing Framework which requires “reliable scientific evidence” and stresses the importance of avoiding vague and non-specific claims, not presenting requirements imposed by law as a distinctive environmental feature of a product, ensuring that comparative environmental claims are adequate etc.
- We would like to emphasize the importance of harmonized rules throughout the Single Market and would therefore like to stress the need for clear language on the rules of the directive to avoid divergences and fragmentation in how the directive is implemented in the national laws and regulations of the different member states.

Verification

- While we welcome the proposed requirements regarding substantiation, it should be recognised that rules, such as the ICC Code and Framework are already in place and applicable. The issue is not a lack of explicit and robust rules but an issue of insufficient enforcement. More needs to be done to ensure compliance with existing rules, e.g., through supporting the work of self-regulatory organisations and through

market courts and consumer protection agencies. However, the approach of the current proposal to replace enforcement measures after non-compliance with pre-approval requirements is a step in the wrong direction.

- We are deeply concerned with the proposed requirements for pre-approval on a claim-to-claim basis by a third-party verifier. The system envisioned will be administratively burdensome, and costly, and will risk that companies due to this and the fear of reprisals instead will opt not to communicate about sustainable aspects of their goods and services, so-called greenhushing.
- A claim-by-claim verification will be costly and time-consuming. There is no upper limit to the cost of verifying a claim, which means that the cost of making an environmental claim risks becoming larger than the benefit. That would undermine the purpose of the directive to accelerate the green transition by giving consumers access to the information needed to make environmentally sound purchasing choices.
- The scope of the directive is insufficiently defined. Where will the line be drawn between commercial marketing communications and corporate communications? It is important for companies to inform shareholders and other stakeholders about news, goals, etc. related to climate action and sustainability. E.g., will aspirational climate goals need to be verified before being communicated? It is also unclear if the analysis and the proposal have taken into account the broad nature of communications that will fall under the scope. If a company, as is often the case, has a web page that informs consumers, clients and stakeholders on how they work to become more sustainable and to take climate action, it would have to be verified. It makes it increasingly more difficult and costly for companies to communicate their efforts to support the green and circular transition, while making the volume of communications that need pre-approval by verifiers enormous.
- There is no upper limit to the time it will take to get a claim verified. For seasonal goods especially this becomes an issue, as the time to verify a claim can potentially be longer than the time during which the sale of the product is relevant. Moreover, the time issue risks adding a large dose of uncertainty to a company's operations, as a marketing strategy is often an interrelated part of an investment decision.
- The time variable also becomes an issue when one considers the fact that a whole new ecosystem of verifiers would have to be created to meet the requirements of the proposal. This means that as the directive is implemented there will most probably be a long backlog of environmental claims awaiting verification. Again, this might lead to businesses opting not to make an environmental claim in the first place and to consumers thus being less well-informed about the environmental properties of the products that they consume.
- Furthermore, the strict measures for non-compliance, including a maximum penalty amounting to at least 4 % of the trader's annual turnover in the Member State(s) concerned and a temporary exclusion from public procurement processes and access

to public funding, is another factor that risks seeing businesses avoiding making environmental claims at all.

- From a Swedish perspective, we are also concerned about the fact that the proposal of pre-approval of marketing communications would most likely be in conflict with the Constitution of Sweden and more specifically the Fundamental Law on the Freedom of Expression, which prohibits censorship. There is no consideration of this in the proposal.

Environmental Labels

- Regarding environmental labels, we agree with the importance of addressing unreliable environmental labels and ensuring a level playing field to not disadvantage labels with robust and reliable governance models. However, we believe that clarifications are needed regarding the requirements that will apply to the continued use of existing private labels. The need for further clarification also applies to how existing brands that for example use the word “eco” in the brand name will be impacted. There are many well-established such brands that provide value to consumers and have taken great care to build consumer trust. Will the use of such brands be affected by the proposal, and if so, how can it be ensured that companies can retain them e.g., in combination with an approved environmental label? Here it would also be useful to receive further guidance on how the proposal relates to Regulation (EU) 2018/848 on organic production and labelling of organic products. Similar questions arise regarding registered company names that include for example the word “green”.