



# ICC comments in response to European Commission's Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)

The International Chamber of Commerce (ICC) is grateful for the opportunity to provide feedback on European Commission's [Directive on substantiation and communication of explicit environmental claims](#) (Green Claims Directive) and extends its appreciation for allowing this key process to be held in an open, transparent and inclusive manner.

ICC reiterates the importance of a harmonised view on how to substantiate environmental claims and has long standing expertise in helping marketers craft environmental messages that adhere to the basic global principles of truthful, honest and socially responsible communications. To that end, environmental claims must be clear and substantiated by sound scientific evidence.

ICC has been the major rule-setter in international advertising self-regulation since 1937, when the ICC Global Marketing and Advertising Commission issued the [first ICC Code of Advertising and Marketing Communications](#) (ICC Marketing Code) – one of the most successful examples of business self-regulation ever developed. Consistent with its established commitment to make sure the ICC Marketing Code is up to date, it is now undergoing another comprehensive review and revision. ICC encourages the European Commission to take note of the ICC Marketing Code and also encourages consideration of its [Framework for Responsible Environmental Marketing Communications](#) (the ICC Environmental Framework). Updated in November 2021 the framework provides practical commentary and guidance to help practitioners apply the principles of the Code to environmental advertising. Moreover, [ICC's re-branded Environmental Claims Checklist](#) of the Environmental Framework is an additional resource to help marketers identify when they are making an environmental claim, offering guidance on questions about such claims in an easy-to-follow format.

As a leader in responsible marketing worldwide, ICC intends for the ICC Marketing Code and the Environmental Framework to serve as a practical resource for practitioners developing environmental claims and campaigns. ICC continues its commitment to working with the European Commission and global policymakers to ensure that the basic global principles of truthful, honest and socially responsible communications are recognised and implemented.

ICC's feedback was prepared through an open consultative process with members from its global network and respectfully submits the following comments in response to European Commission's Green Claims Directive:

## General Comments

- ICC agrees 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.
- However, ICC believes that the proposed Directive is likely to add costs and complexity, rather than taking into account the important role served by self-regulation. The additional time and expense is likely to result in companies avoiding environmental messaging, which could further lead companies to reduce their environmental efforts, as the costs of marketing environmental initiatives may outweigh the potential benefits.

## Key areas for further consideration

- In general, ICC supports the strict requirements regarding **substantiation** of environmental claims and the aim of greater robustness and transparency of environmental claims and labels, which reflect longstanding principles which are core to the ICC Marketing Code and Environmental Framework. ICC finds the **verification procedure** envisioned to be administratively burdensome, costly, and time-consuming, and may ultimately result in businesses 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 Communications 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 Communications](#). Not only are the ICC Marketing Code provisions and interpretations applied by self-regulatory organisations, they are also recognised by and have inspired national marketing legislation and self-regulatory initiatives across the globe. Aligning the proposal with the rules of the ICC Code not only secures a high ethical standard, but also counteracts regulatory fragmentation at an international level.
- **Derogations to responsible marketing and advertising standards risk creating perverse market incentives and ultimately undermine consumer trust.** For this reason, ICC does not agree that micro-enterprises should be exempt from the directive. 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 is essential that any future EU Directive is framed and calibrated in such a way as to be capable of being implemented across the economy

as a whole – without unduly compromising the competitiveness of small businesses in Europe, nor their ability to penetrate “green” markets.

### **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.
- ICC, therefore, agrees 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, but that requirement is embedded in existing legal rules, such as the Unfair Commercial Practices Directive, and in advertising laws across the EU. Moreover, it is regrettable that the revision of the Unfair Commercial Practices Directive is not synchronised with the Green Claims Directive. Consequently, these two initiatives may potentially conflict with each other.
- 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, and ensuring that comparative environmental claims are fair and adequately supported.
- ICC would like to emphasise the importance of harmonised rules throughout the Single Market. ICC encourages the EU institutions to consult widely with industry before electing a particular assessment methodology to ensure their workability and cost-effectiveness. ICC Marketing Code and Framework provide an example of a suitable approach in both principles and language to achieve that end. We are concerned that the format of the proposed directive could result in divergences and fragmentation in how the directive is implemented in the national laws and regulations of the different member states, counter to the goal of harmonisation.

### **Verification**

- As noted above, it should be recognised that the ICC Code and Framework offer a globally-accepted set of principles for environmental claims that are already in place and applicable. The issue is not a lack of explicit and robust rules, but rather insufficient enforcement of existing sound rules. ICC urges the European Commission to devote more resources and attention to ensuring compliance with existing rules, e.g., through supporting the work of self-regulatory organisations across the EU, and through market courts and consumer protection agencies, prior to moving forward with the proposed directive. The approach of the current proposal - to ignore the lack of enforcement measures after non-compliance and substitute a scheme of pre-approval requirements is a step in the wrong direction.
- ICC is deeply concerned with the proposed requirements for pre-approval on a claim-to-claim basis by a third-party verifier approved at EU level. The system envisioned will be administratively burdensome, and costly, and will risk that companies opt not to communicate about sustainable aspects of their goods and services because it is

prohibitively expensive, so-called greenwashing. Furthermore, it is crucial to ensure that the system does not hinder innovation or result in a decrease in innovative efforts.

- 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 that reflect their values and 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, and new requirements, like the Corporate Sustainability Reporting Directive (CSRD), require that. Will statements in response to CSRD and other mandates have to be third-party verified under two regimes? 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 action to reduce climate impacts, 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 product will be sold. 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. ICC believes it would be appropriate for the European Commission to conduct a regulatory impact assessment on the likely costs to the real economy of such ex-ante verification requirements.
- 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.
- ICC is also concerned about the fact that the proposal of pre-approval of marketing communications would most likely be in conflict with national constitutions, such as in Sweden, whose Constitution, and more specifically the Fundamental Law on the Freedom of Expression, prohibits censorship. Similarly, mandatory pre-verification by third bodies is

counterproductive and represents an instrument that has hitherto been foreign to German and European competition law and would constitute a disproportionate encroachment on the protected legal positions of the companies concerned. There is no consideration of legal barriers to implementation at national level of this sort in the proposal.

- Implementation deadlines should be assessed at the end of the legislative process contingent on the ultimate shape and complexity of any verification requirements. This should take into full account the compliance challenges that may be faced by smaller companies and the need to ensure adequate supply of, for instance, verification services.

### **Environmental Labels**

- Regarding environmental labels, ICC agrees 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, ICC believes 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. 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? Similar questions arise regarding registered company names that include for example the word “green”. Here it would also be useful to receive further guidance on how the proposal aligns with Regulation (EU) 2018/848 on organic production and labelling of organic products. In this sense, ICC believes that organic products should not be exempted from the scope of the Green Claims Directive.

Ensuring responsible marketing practices has been a long-standing priority for the International Chamber of Commerce across the globe and ICC will continue to work with self-regulatory agencies and businesses to enforce advertising standards through adherence to both its [ICC Advertising and Marketing Communications Code](#) and the specific rules and guidelines set out in the [ICC Framework for Responsible Environmental Marketing Communications](#). In essence, ICC [supports](#) the aims of the proposed Green Claims Directive but considers the proposed approach to be misguided. ICC advocates for a constructive dialogue between our organisations to ensure the practicality and effectiveness of the directive, drawing upon ICC's extensive experience in promoting sound marketing and advertising practices.

ICC hopes the European Commission will find this contribution useful and, of course, will gladly provide further elaboration of its views if requested.