



Stockholm, 17 January 2024

**OPEN LETTER TO: European Union's member states on ex-ante verification of claims in the European Commission's Directive on substantiation and communication of explicit environmental claims (green claims directive)**

Dear Sir/Madam,

We write to express our appreciation for the commendable efforts undertaken by Sweden in addressing the European Commission's Directive on Substantiation and Communication of Explicit Environmental Claims.

As representatives of the International Chamber of Commerce (ICC), a solid guardian of one of the most comprehensive sets of global self-regulatory ethical marketing and advertising principles, namely the [ICC Advertising and Marketing Communications Code](#), we recognise and applaud Sweden's commitment to upholding high environmental standards. ICC's Advertising and Marketing Communications Code, first established in 1937, has proven its efficacy over the decades, and we take pride in actively overseeing these principles as integral components of responsible marketing practices worldwide.

Reflecting our role as authoritative issuers of global ethical marketing standards and the impact the Directive will have on businesses across the union, we participated with [constructive feedback](#) during the public consultation last summer, with the goal to enhance the policy's overall intent and effectiveness, and its applicability in the real economy.

In alignment with our previous communications, we commend the initiatives introduced by the European Union to expedite the green transition, empower consumer rights in making sustainable choices, and foster the competitiveness of businesses that take ambitious actions on environmental sustainability. However, we wish to reiterate our concerns, as previously highlighted, specifically regarding the proposed ex-ante verification procedure outlined in the Green Claims Directive.

We are worried that the suggested ex-ante verification process may inadvertently compromise the primary objective of the Directive, which is to assist consumers in making informed green choices. Feedback from our member companies, which actively pursue high climate ambitions, underscores this apprehension due to anticipated administrative burdens, increased costs, compliance risks, and the looming threat of sanctions. Regrettably, many of our member companies have, in light of these expected costs and risks, communicated their intent to discontinue the communication of their environmental and climate efforts to consumers altogether should the proposed ex-ante verification procedure be adopted.

This would in turn hinder their ability to guide customers toward the most informed and sustainable decisions. The practical reality is that consumers, when faced with two seemingly identical products, will opt for the more affordable and less sustainable option in the absence of additional information beyond pricing.

The main concerns relating to the ex-ante verification procedure include:

### **The cost of pre-verifying claims**

- While it is difficult to make an exact estimate, member companies anticipate that fees will range between EUR 2,000-10,000 per verification, without a defined cost limit. The criteria for what constitute a claim to be verified also remains unclear, whether it is the entire communicated message (e.g., a full press release) or on a word-by-word basis within the selected format.
- The mentioned costs do not cover the implementation of internal compliance measures or the actual substantiation of the claims.

### **The time it will take to get a claim verified**

- The proposal lacks a specified upper limit for approval timelines. Drawing insights from the verification of health claims in EU Regulation 1924/2006, the process may span 2-12 months for a claim to be verified. Experiences from the Regulation on nutrition and health claims even show that approval times might be upward of 24 months. This would not be feasible timelines for getting individual environmental claims approved and does not align with the business cycles of many consumer-facing businesses. For instance, asserting an environmental claim regarding winter clothing becomes unfeasible if uncertainty persists about approval before the season concludes.
- Marketing decisions, integral to overarching business strategies, face hindrances when building strategies that include environmental claims, given the varying approval times ranging from months to a year or more for individual claims.
- To be viable, companies insist that verifications, when approved without modifications, should conclude within a maximum of 15 days.

### **The broad scope of communications that will need to be pre-verified**

- In its current form, the definition of 'explicit environmental claims' in the proposal encompasses all textual or label-based representations related to the environment. This includes a wide range, from marketing and advertising messages to press releases, web content, and voluntary sustainability reports. As the proposal currently reads, all these elements will require pre-verification, resulting in unjustified burdens and costs for businesses.
- Companies have raised further concerns about the scope, especially in scenarios where identical products are produced in different factories or when there are variations such as different colors or sizes for the same product. The question arises: should pre-verification apply universally to all product versions (potentially using an average or interval claim for the entire product line), or should each variant necessitate a separate pre-verification?
- Additionally, there is ambiguity surrounding what qualifies as a claim. Should a webpage providing information to potential consumers about a company's sustainability practices be verified as a whole, or must each individual claim on the page undergo separate pre-verification? This consideration also ties back to our initial remarks on cost implications.

### **The false sense of certainty that pre-verification provides**

- While the pre-verification procedure aims to ensure that businesses will not mislead consumers regarding the environmental attributes of their products, it must be recognized that the proposal rather underscores the lack of certainty. Pre-verifying a textual environmental claim does not guarantee that the overall message is not misleading. The determination of whether marketing communication is misleading relies on various factors beyond textual content, such as images, context, and the target audience. Consequently, the pre-verification process risks fostering a misleading perception and a false sense of certainty that as long as an environmental claim undergoes pre-verification, it is acceptable for communication, which may not necessarily be accurate.

### **The compatibility with national constitutions**

- In countries where constitutional provisions explicitly forbid censorship, like Sweden, ex-ante verification of claims would conflict with the rights and liberties safeguarded by the constitution. To enforce the directive, such countries would need to amend their constitutional frameworks.

In light of these potential ramifications, we urge your government to carefully reconsider the proposed ex-ante verification procedure and its impact on businesses with commendable environmental ambitions and instead consider how to strengthen ex-post enforcement. Striking a balance between regulatory diligence and supporting businesses in their pursuit of sustainability goals is crucial for the success of the Green Claims Directive.

We remain committed to collaborating with the Swedish government and the European Union in fostering sustainable practices and are open to further dialogue to ensure that the final directive effectively serves its intended purpose without inadvertently discouraging businesses from their commendable environmental initiatives.

Thank you for your attention to this matter. We look forward to the opportunity for continued collaboration on this important issue.

Yours sincerely,



Susanna Zeko  
Secretary-General  
ICC Sweden