WIRTSCHAFTSKAMMER ÖSTERREICH

Green Claims Directive
Position Paper

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Directive proposal on substantiation and communication of explicit environmental claims (Green Claims Directive)

Austrian Federal Economic Chamber (WKO)
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WKO Position Paper Short Summary - Proposal for a Green Claims Directive:

- less restrictions for the benefit of consumer orientation
- more exemptions and support for SMEs, implementation leeway needed
- substantiation to be simplified radically
- verification and authority-OK to be deleted
- national, regional and private labels to be exempted from verification in any case.

At the European level, preparations are in progress for a new Directive regarding substantiation and communication of explicit environmental claims (Green Claims Directive - COM(2023) 166, 22.3.2023, **Link**). WKO calls for a balance between the requirements of well-informed consumers and **confidence in fair environmental practices** of businesses as well as **less burdensome restrictions and EU support** regarding provisions for substantiation, verification, authority recognition and communication.

European businesses are already taking ambitious environmental measures. **The proposal runs the risk of companies abandoning both environmental communication and voluntary environmental measures beyond legal compliance because of the restrictions stated above.** It thus excludes consumer needs and prevents communication on the environmental characteristics of products, which would otherwise be available to consumers and could provide more orientation when purchasing. **Hence, the proposal achieves the opposite of the Commission's objective of enabling consumers to make informed purchasing decisions** and to act on their own responsibility, as it might result in limited communication of the companies.

The proposed directive needs to be massively toned down and adapted to the needs of companies, consumers and authorities in order to be supported by businesses. The proposed measures would be very **time-consuming and cost-intensive – for both businesses and authorities -** to implement and would mean massive cuts and restrictions in communication regarding the environmental characteristics of products and companies – businesses must receive significant **support concerning the implementation from the Commission and Member States**. Finally, authorities being over-burdened with green claims would not be helpful to push forward the approval of necessary energy transition projects. In the following, the most important points of criticism and necessary adaption points of the proposal are being highlighted:

Extension of Exemptions

- WKO generally welcomes the approach of creating exemptions from the Directive, those in Art 1 regarding claim-relevant EU legal acts as well as the exemption for microenterprises in several Articles (e.g. Art 3, 4, 5 leg cit). Nevertheless, they could turn out to **be a "placebo" in practice**. The microenterprise exemption could eventually prove to be useless due to requirements of other players in the supply chain. The list of exempted claim-relevant legal acts in Art 1(2) refers in many cases to minimum standards that cannot be meaningfully considered as the subject of claims. **Hence, both exemptions must be better secured** and – at the same time - **be massively extended**.
- Furthermore, the **exemption** for microenterprises (according to Art 3(3) and Art 4(3)) should be extended **to small and medium-sized enterprises** (number of employees up to 250 according to the definition in the Commission Recommendation 2003/361/EC). In addition, the **turnover requirement** as a criterion for determining the size of the

enterprise (as provided for in 2003/361/EC) **should be eliminated** because of the volatility and the associated **planning uncertainty** for enterprises. Only the criterion of the number of employees should be used for the determination.
    - A further concern is that the exemption for microenterprises (and desirably also for SMEs) does not apply if those enterprises are **forced to comply with the proposed directive via the supply chain**. This would be the case, for example, if larger companies purchase parts of the product to which the claim relates, from a microenterprise (or SME) and require it to comply with the points laid down in the Directive. For such cases, **the effectiveness of the exemption must be ensured**.
- The list of exempted legal acts should at least be supplemented by:
    - Deforestation Regulation - soon to be published in the Official Journal, CSDD "Supply Chain Act"
    - CSRD - predecessor act NFI Directive 2014/95 is contained in Annual Accounts Directive 2013/34
    - Chemicals - EC recommendation "safe and sustainable by design chemicals and materials
    - Industry standards generally used in Europe - e.g. Aluminium Stewardship Initiative "ASI", Green Steel for Europe "GREENSTEEL"
    - In any case – the ISO 14001 and ISO 50001 series of standards should be covered from this exemption, further ISO standards are to be considered for this exemption.
    - The food sector should by all means clearly be exempted from this directive since a separate regime including requirements for labelling is about to be presented by the Commission.
- The exemption from the Green Claims Directive should also apply in the case of over-fulfillment of the minimum standards named in these EU legal acts (such as the Packaging Directive).
- **The catch-all provision** in paragraph 2 lit p should be positively emphasised.

Simplification of Requirements for Substantiation – deletion of Verification & Certification

- **Verification to be deleted:** Firstly, the verification should be deleted at all. If there is a label being used for the substantiation a kind of certification process has already taken place for the product related to the claim.
- **LCA communication sufficient:** Secondly, if there is a "new" LCA (life-cycle assessment) to be made (in the absence of a label), the communication of this LCA should be sufficient in the first place – so that a verification can be avoided in the same way as in the case above with a label.
- **Authority-OK if ever, then "tacit consent":** Thirdly, a main point of criticism regarding communication and verification/certification is the **ex-ante requirement** and a possibly necessary active "go" from the competent authority that the environmental claim may be used. It should be clearly determined in the text of the directive that a "tacit consent" is sufficient if it is politically not possible to delete the authority-OK at all.
    - It is not helpful on the one hand to over-burden authorities with an explicit recognition of verifications (authorities which are already suffering from shrinking capacities in terms of staff and finance would need extra expertise for that, too). These capacities are urgently needed f.e. for approving vital projects for the energy transition. On the other hand, a business that has to

wait possibly months for an authority-OK (after maybe months of substantiation and verification) would be blocked for a long time to communicate about the environmental impact of its product or organisation and would finally be discouraged to do so at all.

- **Substantiation to be simplified:** Fourthly, in the preliminary stage, which is highly time-consuming and most costly, the **substantiation** of the environmental claims, should be **significantly facilitated**. In substantiating the claims, the high effort and costs (staff, administration and finance) must be emphasised and the necessary extension of the **exemption** for microenterprises mentioned above has to be re-emphasised. There is an urgent need to find ways to make the strict criteria of Art 3(1) manageable. For example, enterprises **should not be obliged to fulfil the criteria of Art 3(1) cumulatively, but to meet the requirements "as a whole"**.
- **Review of information for substantiation:** According to **Art 9**, the used information for substantiation of explicit environmental claims would have to be reviewed **every 5 years**, after the claims have been made. In view of the high effort involved in substantiation, this time span is to be criticised as far too short and should at least be extended **to 10 years**.

Supporting Measures by the Commission

- Increased support, especially for SMEs, concerning the fulfillment of all obligations of this directive, is urgently necessary. Support measures should not only be provided by Member States (as layed down in Art 12), but especially and above all **by the European Commission**, also with regard to a level playing field within the EU. Support measures can be know-how, administration and finance.

Simplification of Communication Requirements

- According to Art 5(6), **information on the claim** (about the product or company) must be **made available physically, via a QR code, a web link or something equivalent**. This gives rise to fears of a **high effort,** whereby it is questionable whether the consumers will be able to take this **"information flood"** into account.

Less restrictive Handling of the Labels

- Art 8(3) **prohibits the creation of new national or regional labels per se. This is not comprehensible**. The Commission's aim is to take action against the abundance of labels. However, the fact that the creation of new (and meaningful) national or regional labels is absolutely prevented is incomprehensible and **runs counter to the purpose of the proposed directive, which is to offer consumers more orientation** when buying products.
- In addition, **some points in connection with labels are to be clarified**, such as the question of which institution is responsible for approving existing national or regional labels.
- The definition of the required "**added value**" when approving new private labels discriminates private versus public labels, therefore this criterion is to be deleted.

More Clarification of Definitions needed

- Definitions in Art 2 need more care and precision, such as: "trader", "product" and the prioritisation of "environmental impacts" versus "environmental performance" and "environmental aspect" – the two latter ones are to be deleted. The policy goal of harmonisation throughout the EU cannot be achieved with intangible terminology. The EU Commission should take more time to develop balanced and workable definitions.

Delegated Acts by the Commission

- The broad authorisation of the Commission to specify certain requirements in more detail by means of delegated acts is to be criticised. The purpose of the comitology powers is to keep the text of the directive short of technical details and to keep it readable and clear. However, it is precisely these **implementation-relevant details** of this proposal that are essential for the companies concerned in their planning, as they indicate what is expected of them in practice at the end of the day. Therefore, **legal and planning certainty endangered** by the proposed directive is lacking (e.g. Art 3 on specification of rules for green claims, keyword: **PEF** via the back-door) and therefore to be improved enormously.

Complaints Procedures, Penalties

- Scope and extent of the complaints procedures and penalties go **far beyond the purpose**. Art 15 (1) raises fears of **naming and shaming** if the results of the ("regularly conducted") checks are to be published. This can lead to unjustified and massive disadvantages - especially after corrective measures have been taken by the companies.
- Furthermore, in Art 15(3), it is unclear what exactly is meant by "**appropriate corrective action**" and, in any case, the proposed deadline of 30 days to take corrective action is definitely too short.
- The **catalogue of sanctions** in Art 17(3) is **cumulative**, i.e. the MS must provide for all three forms of sanctions (lit a, b and c lit cit). This can lead to excessive penalties for companies. Paragraph 3 is therefore up to deletion.
    - Here, and in Art 17 as a whole, the **competent authorities' discretionary powers should be increased**. In addition, **counselling should be prioritised to penalties**.

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