

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee

Having regard to the opinion of the Committee of the Regions¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Claiming to be “green” and sustainable has become a competitiveness factor, with green products registering greater growth than standard products. If goods and services offered and purchased on the internal market are not as environmentally friendly as presented, this would mislead the consumers, hamper the green transition and prevent the reduction of negative environmental impacts. The potential of green markets is not fully realised. Different requirements imposed by national legislation or private initiatives regulating environmental claims create a burden for companies in cross-border trade, as they need to comply with different requirements in each Member State. This affects their capacity to operate in and take advantage of the internal market. At the same time, market participants have difficulties with identifying reliable environmental claims and making optimal purchasing decisions on the internal market. With a proliferation of different labels and calculation methods on the market, it is difficult for consumers, businesses, investors and stakeholders to establish if claims are trustworthy.
- (2) If environmental claims are not reliable, comparable and verifiable, consumers and other market actors cannot fully leverage their purchasing decisions to reward better environmental performance. Similarly, the lack of reliable, comparable and verifiable information hinders incentives for optimising environmental performance, which would typically go hand in hand with efficiency gains and cost savings for companies along the supply chain as well. These consequences are exacerbated by the lack of a common reference across the internal market and the ensuing confusion.
- (3) For users of environmental information (consumers, businesses, investors, public administrations, NGOs) included in environmental claims, the lack of reliability,

¹ OJ C , , p. .

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.
2. This Directive does not apply to environmental labelling schemes or to explicit environmental claims regulated by or substantiated by rules established in:
 - (a) Regulation (EC) No 66/2010 of the European Parliament and of the Council²⁹,
 - (b) Regulation (EU) 2018/848 of the European Parliament and of the Council³⁰,
 - (c) Regulation (EU) 2017/1369 of the European Parliament and of the Council³¹;
 - (d) Directive 2009/125/EC of the European Parliament and of the Council³²,
 - (e) Regulation (EU) No 305/2011 of the European Parliament and of the Council³³
 - (f) Regulation (EC) No 765/2008 of the European Parliament and of the Council³⁴;
 - (g) Regulation (EC) No 1221/2009 of the European Parliament and of the Council³⁵;
 - (h) Directive 1999/94/EC of the European Parliament and of the Council³⁶;
 - (i) Regulation (EU) No 305/2011 of the European Parliament and of the Council³⁷;

²⁹ Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

³⁰ Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

³¹ Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

³² Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast) (OJ L 285, 31.10.2009, p. 10).

³³ Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

³⁴ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

³⁵ Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

³⁶ Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO₂ emissions in respect of the marketing of new passenger cars (OJ L 12, 18.1.2000, p. 16).

³⁷ Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ L 88, 4.4.2011, p. 5).

- (j) Directive 2006/66/EC of the European Parliament and of the Council³⁸;
- (k) Directive 94/62/EC of the European Parliament and of the Council³⁹;
- (l) Regulation (EU) 2020/852 of the European Parliament and of the Council⁴⁰
- (m) Regulation (EU) ... /... of the European Parliament and of the Council⁴¹;
- (n) Directive 2012/27/EU of the European Parliament and of the Council⁴²;
- (o) Directive 2013/34/EU of the European Parliament and of the Council⁴³ and other Union, national or international rules, standards or guidelines for financial services, financial instruments, and financial products;
- (p) other existing or future Union rules setting out the conditions under which certain explicit environmental claims about certain products or traders may be or are to be made or Union rules laying down requirements on the assessment or communication of environmental impacts, environmental aspects or environmental performance of certain products or traders or conditions for environmental labelling schemes.

Article 2

Definitions

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;
- (2) ‘explicit environmental claim’ means an environmental claim that is in textual form or contained in an environmental label;
- (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;

³⁸ Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1).

³⁹ Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

⁴⁰ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

⁴¹ Regulation (EU) ... /... of the European Parliament and of the Council establishing a Union certification framework for carbon removals (OJ L ...).

⁴² Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

⁴³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (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;
- (8) ‘environmental label’ means a sustainability label covering only or predominantly environmental aspects of a product, a process or a trader;
- (9) ‘product group’ means a set of products that serve similar purposes or are similar in terms of use or have similar functional properties;
- (10) ‘certification scheme’ means a certification scheme as defined in Article 2, point (s), of Directive 2005/29/EC;
- (11) ‘verification’ means the conformity assessment process carried out by a verifier to verify whether the substantiation and communication of the explicit environmental claims are in compliance with the requirements set out in this Directive or whether environmental labelling schemes comply with this Directive;
- (12) ‘value chain’ means all activities and processes that are part of the life cycle of a product or activity of a trader, including remanufacturing;
- (13) ‘life cycle’ means the consecutive and interlinked stages of a product’s life, consisting of raw material acquisition or generation from natural resources, pre-processing, manufacturing, storage, distribution, installation, use, maintenance, repair, upgrading, refurbishment as well as re-use, and end-of-life;
- (14) ‘primary information’ means information that is directly measured or collected by the trader from one or more facilities that are representative for the activities of the trader;
- (15) ‘secondary information’ means information that is based on other sources than primary information including literature studies, engineering studies and patents.
- (16) ‘public’ means one or more natural or legal persons and their associations, traders or groups;
- (17) ‘environmental performance’ means the performance of a certain product or product group or trader or sector related to the environmental aspects or environmental impacts of that product or product group or the activities of that trader or sector;
- (18) ‘environmental aspect’ means an element of a trader’s or sector’s activities or of products or product groups that interact or can interact with the environment.
- (19) ‘environmental impact’ means any change to the environment, whether positive or negative, that wholly or partially results from a trader’s or sector’s activities or from a product or product group during its life cycle.

Article 3

Substantiation of explicit environmental claims

1. Member States shall ensure that traders carry out an assessment to substantiate explicit environmental claims. This assessment shall:
 - (a) specify if the claim is related to the whole product, part of a product or certain aspects of a product, or to all activities of a trader or a certain part or aspect of these activities, as relevant to the claim;

- (b) rely on widely recognised scientific evidence, use accurate information and take into account relevant international standards;
 - (c) demonstrate that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life-cycle perspective;
 - (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;
 - (e) demonstrate that the claim is not equivalent to requirements imposed by law on products within the product group, or traders within the sector;
 - (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;
 - (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;
 - (h) separate any greenhouse gas emissions offsets used from greenhouse gas emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate;
 - (i) include primary information available to the trader for environmental impacts, environmental aspects or environmental performance, which are subject to the claim;
 - (j) include relevant secondary information for environmental impacts, environmental aspects, or environmental performance which is representative of the specific value chain of the product or the trader on which a claim is made, in cases where no primary information is available.
2. Where it is demonstrated that significant environmental impacts that are not subject to the claim exist but there is no widely recognised scientific evidence to perform the assessment referred to in point (c) of paragraph 1, the trader making the claim on another aspect shall take account of available information and, if necessary, update the assessment in accordance with paragraph 1 once widely recognised scientific evidence is available.
3. The requirements set out in paragraphs 1 and 2 shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC⁴⁴ unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

⁴⁴ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([OJ L 124, 20.5.2003, p. 36](#)).

4. When the regular monitoring of the evolution of environmental claims referred to in Article 20 reveals differences in the application of the requirements laid down in paragraph 1 for specific claims and such differences create obstacles for the functioning of the internal market, or where the Commission identifies that the absence of requirements for specific claims leads to widespread misleading of consumers, the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for substantiation of explicit environmental claims laid down in paragraph 1 by:
 - (a) determining the rules for assessing the environmental aspects, environmental impacts and environmental performance, including by determining the activities, processes, materials, emissions or use of a product, which contribute significantly or cannot contribute to the relevant environmental impacts, environmental aspects or environmental performance;
 - (b) determining for which environmental aspects or environmental impacts primary information shall be provided and determining criteria based on which the accuracy of the primary information and secondary information can be assessed; or
 - (c) establishing specific life-cycle-based rules on substantiation of explicit environmental claims for certain product groups and sectors.
5. When specifying further the requirements for substantiation of explicit environmental claims in accordance with previous paragraph, the Commission shall take into account scientific or other available technical information, including relevant international standards, and where relevant consider the following:
 - (a) the specificities of the sectors and products that require a specific methodological approach;
 - (b) the potential contribution of specific product groups or sectors to achieving Union climate and environmental objectives;
 - (d) any relevant information derived from Union legislation;
 - (e) ease of access to information and data for the assessment and use of this information and data by small and medium-sized enterprises ('SMEs').

Article 4

Substantiation of comparative explicit environmental claims

1. The substantiation of explicit environmental claims that state or imply that a product or trader has less environmental impacts or a better environmental performance than other products or traders ('comparative environmental claims') shall, in addition to the requirements set out in Article 3, comply with the following requirements:
 - (a) the information and data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made, are equivalent to the information and data used for assessing the environmental impacts, environmental aspects or environmental performance of the product or trader which is subject to the claim;

- (b) the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders is generated or sourced in an equivalent manner as the data used for assessing the environmental impacts, environmental aspects or environmental performance of the products or traders against which the comparison is made;
 - (c) the coverage of the stages along the value chain is equivalent for the products and traders compared and ensures that the most significant stages are taken into account for all products and traders;
 - (d) the coverage of environmental impacts, environmental aspects or environmental performances is equivalent for the products and traders compared and ensures that the most significant environmental impacts, environmental aspects or environmental performances are taken into account for all products and traders;
 - (e) assumptions used for the comparison are set in an equivalent manner for the products and traders compared.
2. Where a comparative environmental claim relates to an improvement in terms of environmental impacts, environmental aspects or environmental performance of a product that is subject to the claim compared to environmental impacts, environmental aspects or environmental performance of another product from the same trader, from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, the substantiation of the claim shall explain how that improvement affects other relevant environmental impacts, environmental aspects or environmental performance of the product subject to the claim and shall clearly state the baseline year for the comparison.
3. The requirements laid down in this Article shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC⁴⁵ unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.

Article 5

Communication of explicit environmental claims

1. Member States shall ensure that a trader is required to communicate an explicit environmental claim in accordance with the requirements set out in this Article.
2. Explicit environmental claims may only cover environmental impacts, environmental aspects or environmental performance that are substantiated in accordance with the requirements laid down in Articles 3, 4 and 5 and that are identified as significant for the product or trader concerned in accordance with Article 3 paragraph (1) point (c) or (d).
3. Where the explicit environmental claim is related to a final product, and the use phase is among the most relevant life-cycle stages of that product, the claim shall include information on how the consumer should use the product in order to achieve

⁴⁵ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ([OJ L 124, 20.5.2003, p. 36](#)).

the expected environmental performance of that product. That information shall be made available together with the claim.

4. Where the explicit environmental claim is related to future environmental performance of a product or trader it shall include a time-bound commitment for improvements inside own operations and value chains.
5. Explicit environmental claims on the cumulative environmental impacts of a product or trader based on an aggregated indicator of environmental impacts can be made only on the basis of rules to calculate such aggregated indicator that are established in the Union law.
6. Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent.

That information shall include at least the following:

- (a) environmental aspects, environmental impacts or environmental performance covered by the claim;
 - (b) the relevant Union or the relevant international standards, where appropriate;
 - (c) the underlying studies or calculations used to assess, measure and monitor the environmental impacts, environmental aspects or environmental performance covered by the claim, without omitting the results of such studies or calculations and, explanations of their scope, assumptions and limitations, unless the information is a trade secret in line with Article 2 paragraph 1 of Directive (EU) 2016/943⁴⁶;
 - (d) a brief explanation how the improvements that are subject to the claim are achieved;
 - (e) the certificate of conformity referred to in Article 10 regarding the substantiation of the claim and the contact information of the verifier that drew up the certificate of conformity;
 - (f) for climate-related explicit environmental claims that rely on greenhouse gas emission offsets, information to which extent they rely on offsets and whether these relate to emissions reductions or removals;
 - (g) a summary of the assessment including the elements listed in this paragraph that is clear and understandable to the consumers targeted by the claim and that is provided in at least one of the official languages of the Member State where the claim is made.
7. The requirements set out in paragraphs 2, 3 and 6 shall not apply to traders that are microenterprises within the meaning of Commission Recommendation 2003/361/EC unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10.
 8. Where the substantiation of certain environmental impacts, environmental aspects or environmental performance is subject to the rules established in delegated acts

⁴⁶ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

referred to in Article 3, paragraph 4(a) and paragraph 4(c), the Commission may adopt delegated acts in accordance with Article 18 to supplement the requirements for communication of explicit environmental claims set out in Article 5 by specifying further the information that can be or shall be communicated regarding such environmental impacts, environmental aspects or environmental performance, so as to make sure that the consumers are not misled.

Article 6

Communication of comparative environmental claims

Comparative environmental claims shall not relate to an improvement of the environmental impacts, environmental aspects or environmental performance of the product that is the subject of the claim compared to the environmental impacts, environmental aspects or environmental performance of another product from the same trader or from a competing trader that is no longer active on the market or from a trader that no longer sells to consumers, unless they are based on evidence proving that the improvement is significant and achieved in the last five years.

Article 7

Environmental labels

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.
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.

Article 8

Requirements for environmental labelling schemes

1. Environmental labelling scheme means a certification scheme which certifies that a product, a process or a trader complies with the requirements for an environmental label.
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.

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.

4. From [OP: Please insert the date = *the date of transposition of this Directive*] any new environmental labelling schemes established by public authorities in third countries awarding environmental labels to be used on the Union market, shall be subject to approval by the Commission prior to entering the Union market with the aim of ensuring that these labels provide added value in terms of their environmental ambition including notably their coverage of environmental impacts, environmental aspects or environmental performance, or of a certain product group or sector, as compared to the existing Union, national or regional schemes referred to in paragraph 3, and meet the requirements of this Directive. Environmental labelling schemes established by public authorities in third countries prior to that date may continue to award the environmental labels which are to be used on the Union market, provided they meet the requirements of this Directive.

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.

6. In order to receive the approvals referred to in paragraphs 4 and 5, the operators of new environmental labelling schemes shall provide supporting documents setting out the following:
- (a) the rationale underlying the development of the scheme

- (b) the proposed scope of the scheme,
- (c) the evidence the scheme will provide added value as set out in in paragraph 4 for environmental labelling schemes established by public authorities in third countries, or in paragraph 5 for environmental labelling schemes established by private operators;
- (d) a proposal for draft criteria and the methodology used to develop and award the environmental label and the expected impacts on the market;
- (e) a detailed description of the ownership and the decision-making bodies of the environmental labelling scheme.

The documents referred to in the first subparagraph shall be submitted to the Commission in case of schemes referred to in paragraph 4 or to the Member States' authorities in case of schemes referred to in paragraph 5, together with the certificate of conformity for environmental labelling schemes drawn up in accordance with Article 10.

7. The Commission shall publish and keep-up-to date a list of officially recognised environmental labels that are allowed to be used on the Union market after [OP: Please insert the date = *the date of transposition of this Directive*] pursuant to paragraphs 3, 4 and 5.
8. In order to ensure a uniform application across the Union, the Commission shall adopt implementing acts to:
 - (a) provide detailed requirements for approval of environmental labelling schemes pursuant to the criteria referred to in paragraphs 4 and 5;
 - (b) specify further the format and content of supporting documents referred to in paragraph 6;
 - (c) provide detailed rules on the procedure for the approval referred to in paragraph 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

Article 9

Review of the substantiation of explicit environmental claims

Member States shall ensure that the information used for substantiation of explicit environmental claims is reviewed and updated by traders when there are circumstances that may affect the accuracy of a claim, and no later than 5 years from the date when the information referred to in Article 5(6) is provided. In the review, the trader shall revise the used underlying information to ensure that the requirements of Articles 3 and 4 are fully complied with.

The updated explicit environmental claim shall be subject to verification in accordance with Article 10.

Article 10

Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes

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 11

Verifier

1. The verifier shall be a third-party conformity assessment body accredited in accordance with Regulation (EC) No 765/2008⁴⁷.
2. The accreditation shall, in particular, include the evaluation of compliance with the requirements in paragraph 3.
3. The verifier shall comply with the following requirements:

⁴⁷ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (a) the verifier shall be independent of the product bearing, or the trader associated to, the environmental claim;
- (b) the verifier, its top-level management and the personnel responsible for carrying out the verification tasks shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to the verification activities;
- (c) the verifier and its personnel shall carry out the verification activities with the highest degree of professional integrity and the requisite technical competence and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their verification activities,
- (d) the verifier shall have the expertise, equipment and infrastructure required to perform the verification activities in relation to which it has been accredited;
- (e) the verifier shall have a sufficient number of suitably qualified and experienced personnel responsible for carrying out the verification tasks;
- (f) the personnel of a verifier shall observe professional secrecy with regard to all information obtained in carrying out the verification tasks;
- (g) where a verifier subcontracts specific tasks connected with verification or has recourse to a subsidiary, it shall take full responsibility for the tasks performed by subcontractors or subsidiaries and shall assess and monitor the qualifications of the subcontractor or the subsidiary and the work carried out by them.

Article 12

Small and medium sized enterprises

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.

Article 13

Designation of competent authorities and coordination mechanism

1. Member States shall designate one or more competent authorities as responsible for the application and enforcement of this Directive.
2. For the purpose of the enforcement of Articles 5 and 6, Member States may designate the national authorities or courts responsible for the enforcement of Directive 2005/29/EC. In that case, Member States may derogate from Articles 14 to

17 of this Directive and apply the enforcement rules adopted in accordance with Articles 11 to 13 of Directive 2005/29/EC.

3. Where there is more than one competent authority in their territory, Member States shall ensure that the respective duties of those authorities are clearly defined and that appropriate communication and coordination mechanisms are established.
4. Member States shall notify the Commission and other Member States without delay of the identity of the competent authorities in their Member State and the areas of competence of those authorities.

Article 14

Powers of the competent authorities

1. Member States shall confer on their competent authorities the powers of inspection and enforcement necessary to ensure compliance with this Directive.
2. The powers conferred on competent authorities under paragraph 1 shall include at least the following:
 - (a) the power of access to any relevant documents, data or information related to an infringement of this Directive, in any form or format and irrespective of their storage medium, or the place where they are stored, and the power to take or obtain copies thereof;
 - (b) the power to require any natural or legal person to provide any relevant information, data or documents, in any form or format and irrespective of their storage medium or the place where they are stored, for the purposes of establishing whether an infringement of this Directive has occurred or is occurring and the details of such infringement;
 - (c) the power to start investigations or proceedings on their own initiative to bring about the cessation or prohibition of infringements of this Directive;
 - (d) the power to require traders to adopt adequate and effective remedies and take appropriate action to bring an infringement of this Directive to an end;
 - (e) the power to adopt, where appropriate, injunctive relief with regard to infringements of this Directive;
 - (f) the power to impose penalties for infringements of this Directive in accordance with Article 17.
3. Competent authorities may use any information, document, finding, statement or intelligence as evidence for the purpose of their investigations, irrespective of the format in which or medium on which they are stored.

Article 15

Compliance monitoring measures

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.

Article 16

Complaint-handling and access to justice

1. Natural or legal persons or organisations regarded under Union or national law as having a legitimate interest shall be entitled to submit substantiated complaints to competent authorities when they deem, on the basis of objective circumstances, that a trader is failing to comply with the provisions of this Directive.
2. For the purposes of the first subparagraph, non-governmental entities or organisations promoting human health, environmental or consumer protection and meeting any requirements under national law shall be deemed to have sufficient interest.
3. Competent authorities shall assess the substantiated complaint referred to in paragraph 1 and, where necessary, take the necessary steps, including inspections and hearings of the person or organisation, with a view to verify those complaints. If confirmed, the competent authorities shall take the necessary actions in accordance with Article 15.
4. Competent authorities shall, as soon as possible and in any case in accordance with the relevant provisions of national law, inform the person or organisation referred to in paragraph 1 that submitted the complaint of its decision to accede to or refuse the request for action put forward in the complaint and shall provide the reasons for it.
5. Member States shall ensure that a person or organisation referred to in paragraph 1 submitting a substantiated complaint shall have access to a court or other independent and impartial public body competent to review the procedural and substantive legality of the decisions, acts or failure to act of the competent authority under this Directive, without prejudice to any provisions of national law which require that administrative review procedures be exhausted prior to recourse to judicial proceedings. Those judicial review procedures shall be fair, equitable, timely and free of charge or not prohibitively expensive, and shall provide adequate and effective remedies, including injunctive relief where necessary.
6. Member States shall ensure that practical information is made available to the public on access to the administrative and judicial review procedures referred to in this Article.

Article 17

Penalties

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC⁴⁸, 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) 2017/2394⁴⁹, 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.

⁴⁸ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

⁴⁹ OJ L 345, 27.12.2017, p. 1.

Article 18

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts as referred to in Article 3(4) and Article 5(8) shall be conferred on the Commission for a period of five years from [*OP please insert the date = the date of transposition of this Directive*]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 3(4) and Article 5(8) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. A delegated act adopted pursuant to Article 3(4) and Article 5(8) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 19

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

Article 20

Monitoring

1. Member States shall regularly monitor the application of this Directive based on:

- (a) an overview of the types of explicit environmental claims and of environmental labelling schemes which have been subject to substantiated complaints in accordance with Article 16;
 - (b) an overview of explicit environmental claims and of environmental labelling schemes with regard to which competent authorities have required the trader to take corrective action, in accordance with Article 15, or have imposed penalties in accordance with Article 17.
2. The information referred to in paragraph 1 shall specify the explicit environmental claim or environmental labelling scheme, the nature of the alleged infringement, the nature and duration of the corrective action and, if applicable, the penalty imposed.
3. Member States shall provide the information referred to in paragraph 1 to the Commission on an annual basis.
4. Based on the information collected pursuant to paragraph 3 and the information made available by the Member States pursuant to Article 15(1), and, if necessary, additional consultations with competent authorities, the European Environmental Agency shall publish, every two years, a report containing an assessment of the evolution of explicit environmental claims and environmental labelling schemes in each Member State and for the Union as a whole. The report shall enable a differentiation according to the size of the trader making the claim and according to the quality of the substantiation.

Article 21

Evaluation and review

1. By [*OP please insert the date = 5 years after the date of transposition of this Directive*], the Commission shall carry out an evaluation of this Directive in light of the objectives that it pursues and present a report on the main findings to the European Parliament and the Council.
2. The report referred to in paragraph 1 shall assess whether this Directive has achieved its objective, in particular with regard to:
 - (a) ensuring that explicit environmental claims made about the environmental performance of a product or trader are based on reliable, comparable and verifiable information;
 - (b) ensuring that environment labelling schemes are based on certification schemes and meet the relevant requirements set out in Article 8;
 - (c) ensuring that new private environmental labelling schemes concerning products or traders already covered by existing schemes are approved by the Member States only if they provide added value as compared to the existing schemes;
 - (d) setting out the rules for communicating explicit environmental claims on the Union market, and avoiding duplication of costs when communicating such claims;
 - (e) strengthening the functioning of the internal market.

3. Where the Commission finds it appropriate, the report referred to in paragraph 1 shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Directive, including considering further provisions on:
- (a) unlocking opportunities for the circular, bio and green economy by assessing the appropriateness and feasibility of mandating the use of common, and where relevant life-cycle based, method for substantiation of environmental claims;
 - (b) facilitating transition towards toxic free environment by considering introducing a prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society in line with the criteria to be developed by the Commission;
 - (c) further harmonisation as regards requirements on the substantiation of specific environmental claims on environmental aspects or impacts such as durability, reusability, reparability, recyclability, recycled content, use of natural content, including fibers, environmental performance or sustainability, bio-based elements, biodegradability, biodiversity, waste prevention and reduction.

Article 22

Amendment to Regulation (EU) 1024/2012

In the Annex to Regulation (EU) 1024/2012, the following point is added:

‘X. [OP: Please insert the next consecutive number] Directive (EU) ... of the European Parliament and of the Council of ... on substantiation and communication of explicit environmental claims (OJ L ..., date, page: Articles 13(3) and 15)’.

Article 23

Amendments to Regulation (EU) 2017/2394

In the Annex to Regulation (EU) 2017/2394, the following point is added:

‘X. [OP: Please insert the next consecutive number] Directive (EU) ... of the European Parliament and of the Council of ... on substantiation and communication of explicit environmental claims ([OJ L ..., date, page](#)).’

Article 24

Amendment to Directive (EU) 2020/1828

In Annex I to Directive (EU) 2020/1828, the following point is added:

‘(X) [OP: Please insert the next consecutive number] Directive (EU) ... of the European Parliament and of the Council of ... on substantiation and communication of explicit environmental claims ([OJ L ..., date, page](#)).’

Article 25

Transposition

1. Member States shall adopt and publish by [OP please insert the date = *18 months after the date of entry into force of this Directive*] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from [OP please insert the date = *24 months after the date of entry into force of this Directive*].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

Article 26

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President