

Our position

Landing zones for the Green Claims Directive



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The upcoming stages of the EU institutions' trilogue on the Green Claims Directive are crucial to creating a workable framework that gives companies a level playing field on environmental claims and avoids greenwashing. Key recommendations for the final legislation include:

- Substantiate claims in a reasonable and science-based manner, accounting for their weight, and react based on equivalency;
- Accept product labels that are well known internationally and present a product's rating based on aggregated indicators of environmental impacts;
- Allow carbon offsetting claims to counterbalance corporate emissions in the interim to net zero and to address residual emissions;
- Remove the revision clause that opens the possibility of a ban for hazardous substances in category 2 and 3, which would be better addressed in a more pertinent legislation such as the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH); and
- Include a presumption of conformity for methodologies that are widely accepted.

Introduction

The Green Claims Directive takes important steps to ensure consumers have full information about companies' and products' sustainability performance. Business remains fully committed to delivering reliable and relevant sustainability information to consumers. However, the Directive should not mandate onerous and costly processes to achieve this goal.

The Parliament and the Council have the opportunity to either solidify the legislative framework or fail to deliver the necessary additions and thus weaken the directive's objectives. To ensure the Green Claims Directive's viability and efficiency, the Parliament and the Council should consider: substantiation of claims, requirements for labelling schemes, claims on carbon offsets, hazardous substances ban and verification.

Substantiation of claims

The directive's legal text must incorporate a reasonable basis and a science-based approach into how claims are substantiated. The EU should leverage international standards to facilitate global compliance and avoid additional administrative burdens for actors that operate in different markets.

Decision-makers also need to consider proportionality for different types of claims. A balanced approach requires the directive to take into account the weight of the claim and react based on equivalency. Such guardrails would increase legal certainty and boost market actors' confidence, ensuring that the directive does not hinder the development of innovative products or create unintended ramifications.

Requirements for labelling schemes

The directive should avoid restricting market actors to EU-based labels, which would limit consumers' choices while undermining robust existing systems. There are many well accepted and respected international environmental labels (eg EN ISO 14024 type I ecolabels, EPEAT, TCO, etc) that present a product's rating or score based on an aggregated indicator of environmental impacts. The EU should accept these and allow them to continue guiding consumers. Otherwise, it would unnecessarily restrict the many products not currently certified by EU ecolabels.

The Green Claims Directive must allow for well-recognised environmental labels from both EU and non-EU sources, as is included in both the European Parliament and Council positions on environmental labelling schemes. As many international actors have invested in and rely on non-EU labels to access specific markets, any discrimination based solely on where a label is issued would hamper the competitiveness of the EU market, create additional unnecessary waste and increase the administrative burden for a wide range of products essential to millions of consumers across the EU. Each of these impacts is detrimental to the directive's objectives.

Claims on carbon offset

Establishing a framework for regulating green claims related to carbon offsets is a welcome step towards addressing greenwashing and promoting genuine climate action. To maximise the effectiveness of this framework, policymakers must acknowledge other regulators dealing with offset integrity. The EU framework should accommodate diverse carbon offset techniques and methodologies beyond the EU's and 'Union-issued credits' compliant with the Carbon Removal and Carbon Farming Regulation. This inclusivity, coupled with clear, transparent, verifiable and high-integrity certification processes, would encourage adoption, minimise inconsistencies, enhance the framework's legitimacy and promote a level playing field for all actors engaged in carbon offset efforts.

The proposed provisions on using carbon credits to substantiate green claims in the European Parliament text raise concerns about hindering corporate climate action. In particular, immediately adopting the approach of 'permanent removal' solutions for fossil fuel emissions would prevent the use of nature-based solutions, which are essential in the short and medium term. Instead, policymakers should focus the text on using high-quality removal solutions rather than restricting methodology.

While the Commission aims to define 'residual emissions' and establish a method for their calculation, prohibiting or limiting the use of carbon credits could disincentivise economic actors from further sustainability efforts and undermine the directive's objectives. Instead, the legislation should allow carbon offsetting claims to counterbalance corporate emissions in the interim to net-zero and to address residual emissions. Such an approach would help drive the necessary investment to scale carbon removals.

The directive should allow climate-related 'offset' or 'compensation' claims, provided companies can:

- Demonstrate significant and rapid reductions in emissions in line with pathways informed by the latest climate science, measured against a transparently disclosed

baseline scenario and independently verified by third-party standards and institutions. The directive should apply carbon removal strategies only against residual emissions once they are properly defined.

- Ensure carbon credits are real, additional, measurable and quantified and have systems in place to avoid double counting.
- Address reversals in full and avoid leakage to claim compensation on credits based on high- quality removals, both nature-based and geological.
- Ensure credits have been verified according to internationally accepted standards, such as – but not limited to – Verified Carbon Standard, Climate Community and Biodiversity Standard, Gold Standard, Climate Action Reserve and American Carbon Registry.

Hazardous substance ban

Policymakers must not ban environmental claims for products containing any hazardous substances in future revisions of the Green Claims Directive. Such a restriction, as worded in the Commission proposal, de facto broadly bans products that have no demonstrable negative impact for either the environment or human health. This contradicts the directive's goal of enabling informed sustainable choices. Instead, this issue could be better addressed in more relevant legislation such as REACH. Hazardous substances can be safely used and managed in products without harming human health or the environment. The ban disregards this and prevents claims even when environmental benefits are demonstrable.

While this directive is not the framework for addressing hazardous substances in products, the five- year revision period and the opportunity to reassess the directive's scope and exemptions represent a more pragmatic and balanced approach compared to an immediate and potentially disruptive ban.

Verification

The inclusion of a presumption of conformity for specific claims whose methodologies are widely accepted and recognised is positive. While the simplified procedure is welcomed, its implementation, particularly regarding technical documentation and defining eligible claims, could introduce unintended administrative burdens and complexity. Traders need clarity on the information and data they are required to submit. The simplified verification procedure and corresponding 'specific technical documentation' should help traders more easily and quickly demonstrate compliance with requirements and avoid additional verification by third parties. Concerningly, the cumulative nature of criteria a claim should fulfil to benefit from a simplified procedure, as defined in the Council text, would limit traders' ability to make genuine claims by rendering the process too burdensome and challenging.

The directive should plan for the adoption of an implementing act within 18 months of its entry into force to specify further the format and content of the applicable technical documentation. In addition, future implementing acts should define the types of explicit environmental claims that do not require a complete assessment and can thus also be subject to a simplified procedure.

The absence of deadlines for verifiers creates uncertainty for businesses and could hinder investment in sustainability. A set deadline for verifiers of 30 days would ensure timely completion. For greater legal certainty, the Green Claims Directive should align with the Corporate Sustainability Directive.

Conclusion:

The Green Claims Directive presents an excellent opportunity to level out the playing field and build further trust with consumers in the field of environmental claims. For it to succeed and be workable for the public and private sectors, the negotiating parties must address the remaining elements that increase costs, administrative burdens and limit the use of internationally recognised schemes.