

Position on Substantiating Green Claims

Brussels, 20 July 2023

EXECUTIVE SUMMARY

The European Ventilation Industry Association (EVIA) welcomes the Commission proposal for Substantiating Green Claims and appreciates the opportunity to provide feedback. We support the Commission proposal, as it is an important initial step towards addressing greenwashing as well as for addressing the fragmentation of the Internal Market that is the result of the proliferation of environmental/sustainability initiatives across the Member States.

This paper explains our views providing the basis for our support and adds recommendations on how to further improve the text. It covers the following main items:

1. Support for the legislative approach: it keeps a minimum safety net
2. Safeguarding Internal Market economies of scale for the green transition
3. Importance of verification

EVIA supports the Commission's proposal for a Directive on Substantiating Green Claims. It is an important initial step towards addressing greenwashing as well as for addressing the fragmentation of the Internal Market that is the result of the proliferation of environmental/sustainability initiatives across the Member States. Such well-intentioned environmental initiatives, in going beyond the harmonised requirements for products under the EU's Ecodesign framework, introduce barriers to the free movement of goods that undermine the Internal Market's economies of scale that are vital for ensuring that the green transition is delivered expediently and cost-effectively. Commercially, this fragmentation also undermines fair competition and the level playing field, as diverging Member State initiatives are fundamentally incomparable methodologically but are nevertheless increasingly treated as comparable by the market.

This paper explains our recommendations on how to further improve the Green Claims initiative.

Support for the legislative approach: it keeps a minimum safety net

EVIA's understanding of the proposal is that it is intended to set a minimum harmonisation 'safety net' for environmental claims by establishing minimum procedural requirements for all voluntary 'explicit' environmental claims and environmental labelling in B2C commercial practices. In order to be considered compliant, environmental claims and environmental labelling schemes must fulfil these minimum procedural requirements, which are listed in Article 3(1)(a-j). These minimum procedural requirements will apply in lieu of *lex specialis* requirements under "*existing or future Union rules*."

EVIA fully supports *lex specialis* in the context of environmental claims and environmental labelling in deference to the product-specific approach setting sustainability requirements. Relevant for EVIA are GROW Lot 6 (ventilation) and ENER Lot 11 (fans). Indeed, this is reflected in Article 5(1)(m) of the draft Ecodesign for Sustainable Products Regulation (ESPR). EVIA's understanding is that the minimum procedural requirements in the Substantiating Green Claims Directive will, as the 'safety net,' determine

the fundamentals of the approach that the Commission will take to delivering on the substantiation of environmental claims in the product-specific, *lex specialis* Ecodesign regulations, as they illustrate the Commission's minimum expectations.

A typical *lex specialis* approach is the empowerment under Article 3(4) for the Commission to adopt Delegated Acts to establish harmonised product-specific 'lifecycle' rules. Whilst EVIA firmly believes that this empowerment should not be used as the primary legal basis for the introduction of such rules for products in deference to the ESPR, particularly for product groups with existing Ecodesign regulations, Article 3(4) is instructive when read in conjunction with Recital (32). Recital (32) points to the Commission's 2021 Product Environmental Footprint (PEF) Recommendation, which encourages the development of PEF Category Rules (PEFCR). It can be inferred that the Commission's preference is to use the empowerment to adopt PEFCR. Given the influence of the Substantiating Green Claims Directive on the ESPR, that PEF is set to be the preferred approach, including under Ecodesign.

As such, **EVIA believes that the regulatory approach proposed by the Commission is appropriate as it safeguards *lex specialis* determination of requirements under the ESPR.**

Safeguarding Internal Market economies of scale for the green transition

Establishing harmonised requirements at the level of the product-specific Ecodesign implementing regulations will not happen overnight. Whilst this harmonisation is the ultimate objective, it is positive that in the meantime national measures at the Member State level are not excluded. This implies that they will need to be adapted to ensure compliance with the minimum procedural requirements in the Substantiating Green Claims Directive, thus helping to induce a degree of harmonisation in advance of the introduction of requirements in product-specific Ecodesign implementing regulations.

In this respect, Article 8 introduces an important Internal Market safeguard that is welcomed by EVIA. From the date of transposition of the Directive, Article 8(3) stipulates that no new public, i.e., Member State national or regional schemes, can be established. Those in existence prior to the transposition deadline remain valid provided that they meet the requirements of the Directive. From the date of transposition, only Union law can establish environmental labelling schemes.

Elsewhere, the proposal establishes Internal Market safeguards. Article 5(5) stipulates that "explicit" environmental claims expressed as an aggregated indicator denoting cumulative performance across multiple environmental impact indicators can only be made on the basis of rules to calculate an aggregated indicator established under Union law. This is complemented by Article 7(2) to the effect that environmental labelling prescribing a rating or score of a product based on an aggregated indicator of environmental impacts can only be established under Union law. EVIA's assessment of these Internal Market safeguards is that only Union legislation, i.e., Ecodesign *lex specialis*, would be able to establish a lifecycle/PEF aggregated score across multiple environmental impacts, thus preventing Internal Market fragmentation.

However environmentally well-intentioned, such initiatives unintentionally introduce barriers to the free movement of goods that deprive the Internal Market of the economies of scale that the EU needs to expediently and cost effectively deliver the green transition.

Therefore, **EVIA strongly supports Articles 5(5), 7(2), and 8(3).**

Importance of verification

EVIA is concerned by the overly prescriptive nature of the requirements for verification under Article 10 and Article 11. Article 10 requires the Member States to establish verification procedures to award a Certificate of Conformity (CoC), which shall be mutually recognised across the Member States. Verification would be required for both “explicit” environmental claims made by an economic operator and of the environmental labelling schemes themselves.

EVIA believes that it is essential that environmental claims are verified by economic operators to ensure fair competition, a level playing field, and to eradicate greenwashing. However, EVIA does not believe that the approach to verification in the proposal is proportionate. Article 11(1) stipulates that the “verifier” must be a Third-Party Conformity Assessment (TPCA) notified body accredited by a National Competent Authority, with the rest of the Article detailing the requirements that “verifiers” must comply with. In essence, this makes TPCA mandatory for all “explicit” environmental claims and environmental labelling schemes. As the Substantiating Green Claims Directive is the ‘safety net’ of minimum expectations that is informing *lex specialis* requirements in product-specific Union legislation, Article 11 establishes a precedent for mandating TPCA in the *lex specialis* Union legislation.

EVIA does not believe that TPCA is a water-tight guarantee of compliance and that it cannot be considered a replacement enforcement activity conducted by Market Surveillance Authorities (MSA). TPCA requires economic operators to engage the services of notified body for a fee to conduct compliance testing to publicly available standards, thereby increasing their administrative costs, an increase that can be particularly burdensome for SMEs. EVIA notes that under the New Legislative Framework, provision is made for economic operators to select from multiple conformity assessment modules, including Module A ‘Presumption of Conformity.’ This module allows economic operators to self-declare compliance on the basis of conformity with harmonised standards (hENs). EVIA’s position is that when product-specific hEN covering environmental claims are available in future in answer to standardisation requests (sReq) adopted by the Commission to implementing requirements in the product-specific, *lex specialis* Ecodesign implementing regulations, then the Presumption of Conformity should be available to economic operators. In this respect, EVIA notes the new Work Item in CEN TC/156 ‘Ventilation in buildings’ to develop standards on Environmental Product Declarations (EPB), which will likely provide the basis for future hENs for GROW Lot 6 and ENER Lot 11.

About EVIA

The European Ventilation Industry Association’s (EVIA) mission is to represent the views and interests of the ventilation industry and serve as a platform between all the relevant European stakeholders involved in the ventilation sector, such as decision-makers at the EU level as well as our partners in EU Member States. Our membership is composed of more than 40 member companies and 6 national associations across Europe, realising an annual turnover of over 7 billion euros and employing more than 45,000 people in Europe.

EVIA aims to promote highly energy efficient ventilation applications across Europe, with high consideration for health and comfort aspects. Fresh and good indoor air quality is a critical element of comfort and contributes to keeping people healthy in buildings.