

AIM SUGGESTION ON SIMPLIFIED PROCEDURE

European Commission's Proposal for a Green Claims Directive

Proposed amendment to Council's "simplified procedure"

JUSTIFICATION:

The Directive should establish an immediate application of the "simplified procedure" for claims related to environmental aspects, which are defined in Article 2(1)(18). This is aligned with the reference by both the European Parliament and the Council's positions to claims that "do not require a full LCA" – which are exactly environmental claims related to aspects. This approach would address the challenges associated with the uncertainty and delays in the adoption of the secondary legislation by the Commission and the creation of a positive list of claims, prevent uneven regulatory challenges across businesses and minimise the resources burden on authorities.

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- The Council's "simplified procedure", providing for a derogation for eligible claims from the substantiation and ex-ante verification and certification requirements, is a positive step to address the burden and challenges identified in the Directive. However, it needs to be **improved to increase legal certainty for businesses, simplify the application and interpretation** of the framework, and **avoid imposing unintentional burdens on businesses and authorities**.
- **Delegating the European Commission the identification of the eligible claims is not a suitable solution:**
 - The **criteria set out by the Council are unclear and difficult to define**, making it **challenging to identify eligible claims**. They will require the European Commission to carry out lifecycle assessments (LCAs) for the identification of claims which, as referred to in Article 3a(3) point 1, do not require a full LCA. This could lead to **delays in the adoption of the secondary legislation**: Since LCAs would need to be conducted for the identification of eligible claims, implementing measures will unlikely be adopted in time for the rules' application (even if a strict deadline is set for the European Commission).

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- The **mandate for the European Commission to adopt implementing acts for each type of environmental claim is unfeasible**. This, together with the requirement to prioritise claims based on “frequency of use”, “simplicity” and “relevance” will further complicate the implementation of the “simplified procedure”, increasing challenges for a clear and even interpretation: The concepts of “simplicity”, “frequency of use” and “relevance” are undefined and claims reflecting such characteristics will vary across sectors, as some are more common in certain industries than others, creating an uneven playing field. Given the broad scope of the Directive, this could lead to unjustified regulatory discrepancies between sectors. Moreover, this means that to meet time constraints, the **European Commission will not assess all claims on the market but will establish a preliminary positive list of claims to benefit from the “simplified procedure”**, excluding other potentially eligible claims. This selective approach will result in **regulatory inconsistencies between claims and will fail to keep pace with innovation**, given the lengthy procedures for the adoption of secondary legislation. 3
- Ultimately this will **create uncertainty and unpredictability for businesses** preparing for the implementation of the Directive and will **increase the burden on competent authorities, who will have to verify repeatedly whether a claim is included via an implementing act in the “simplified procedure”**. 4

European Commission proposal	EP text	Council text	Recommendation
/	/	<p>Article 3a(3)</p> <p>3. In derogation from Articles 3 and 10, a trader generating an explicit environmental claim that falls within the scope of claims defined by implementing acts adopted pursuant to the second subparagraph shall comply with the substantiation requirements laid down in these implementing acts and demonstrate compliance via the Specific Technical Documentation pursuant to paragraph 4. This derogation shall not apply to comparative explicit environmental claims, explicit environmental claims related to climate or explicit environmental claims about future environmental performance.</p>	<p>Article 3a(3) [modified COUNCIL position]</p> <p>3. In derogation from Articles 3 and 10, a trader generating an explicit environmental claim indicated in the second subparagraph that falls within the scope of claims defined by implementing acts adopted pursuant to the second subparagraph shall comply with the substantiation requirements laid down in these implementing acts and demonstrate compliance via the Specific Technical Documentation pursuant to paragraph 4. This derogation shall not apply to comparative explicit environmental claims, explicit environmental claims related to climate or explicit environmental claims about future environmental performance.</p>

		<p>The Commission shall adopt implementing acts defining the types of explicit environmental claims that given their nature typically do not require a complete assessment pursuant to Article 3 and a verification pursuant to Article 10 to achieve the objectives of this Directive and where such claims fulfil all of the following criteria:</p> <ol style="list-style-type: none"> 1. No full life-cycle assessment is deemed necessary to substantiate the claim; 2. The claim is related to a single environmental characteristic; 3. The claim does not concern an environmental characteristic that leads to significant trade-offs between different environmental impact categories. 	<p>The Commission shall adopt implementing acts defining †The types of explicit environmental claims that given their nature typically do not require a complete assessment pursuant to Article 3 and a verification pursuant to Article 10 to achieve the objectives of this Directive are and where such claims fulfil all of the following criteria:-</p> <ol style="list-style-type: none"> 1. No full life-cycle assessment is deemed necessary to substantiate the claim;- 2. The claim is related to a single environmental characteristic;- 3. The claim does not concern an environmental characteristic that leads to significant trade-offs between different environmental impact categories.- <p>Explicit environmental claims related to an environmental aspect, as defined in Article 2(1)(18) of this Directive;</p> <p>The implementing acts referred to in the second subparagraph shall for each type of explicit environmental claim lay down the required substantiation assessment that should be complied with by the trader generating the explicit environmental claim when applying the derogation referred to in the first subparagraph. Such substantiation requirements shall be less burdensome for the trader than those under Article 3.-</p>
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