



**FESI position on the Green Claims  
Directive proposal  
20<sup>th</sup> of July 2023**

The Federation of the European Sporting Goods Industry (FESI) and its members welcome the publication of the European Commission proposal for a Directive on Substantiation of Green Claims. Overall, we believe that the proposal represents a good attempt at balancing the objective of harmonisation and the challenge of lacking a "one size fits all" methodology to assess products' environmental aspects, performance or impacts.

However, we call on the relevant political actors involved to ensure that companies can continue to communicate information about their environmental efforts and achievements in a reliable and fact-based manner, without adding excessive administrative burden to the process. Above all, the Directive should aim at, preventing unsubstantiated communication and not discourage economic operators from investing in innovative sustainable practices. Therefore, FESI wishes to address the following points that requires further clarification:

- 1. Administrative burden and verification process**
- 2. Definitions and legal uncertainty**
- 3. Market fragmentation**
- 4. Transposition timelines**
- 5. Policy coherence between EU legislations**
- 6. Digital labelling**

**1. Administrative burden and verification processes**

We welcome the Commission's proposal to provide flexibility in choosing adequate methodologies for substantiation in the absence of "one size fits all" methodology to assess all consumer products' environmental impacts, aspects or performance.

Furthermore, verification of complex claims can address uncertainties around supporting information needed for substantiation as well as concerns around greenwashing. However, the industry raises concerns about the proposed verification process and the requirement to pre-verify all claims, which represents a high administrative additional burden for companies and authorities, significantly delaying product development processes and market introduction. In the current text of the proposal, it remains unclear what procedure economic operators should follow if a single component of the product line is changed or if a claim can be verified on a specific product or material separately. Moreover, the differentiation between primary and secondary data and their usage requires further clarification.

To lower administrative burden for clear and non-complex claims, while ensuring the Commission's oversight on which claims do not require an extensive third-party verification, FESI supports considering different options, such as the idea of adopting a similar approach as within the General Product Safety Regulation, where a specific standard or methodology is well accepted for substantiation for a specific environmental claim, the Commission could be empowered to include a reference to the methodology in an Annex. For claims that could be substantiated by this methodology, companies remain free to use other methodologies but could self-certify and rely on presumed conformity in case the specific methodology is used. Additional option for consideration, in order to decrease administrative burden and increase transparency would be use of verification process only for specific types of claims, requiring specific oversight.

In addition, the federation wishes to provide feedback concerning the suggested timelines. The proposed verification process decreases legal certainty for economic operators who, while awaiting approval of substantiation, are required to simultaneously collaborate with potential partners to meet market timelines. Furthermore, the suggested timeline of 30 days to undertake corrective actions is considered insufficient, given the complexity of the value chain, especially when changes to product labelling need to be implemented, requiring economic operators to undertake recall procedures for products placed across Member States.

## **2. Definitions and legal uncertainty**

While the sporting goods industry welcomes the European Commission's intention to regulate the substantiation and communication of environmental claims, we wish to raise concerns regarding ambiguous concepts and definitions. Terms such as "better than common practice," "significantly worsen the performance as regards other environmental impacts," "significant from a life-cycle perspective," "future performance," "recycled content," "environmental performance claims," and the use of secondary data lack clarity. Furthermore, FESI calls for clarification on the substantiation and communication criteria, particularly regarding trade-offs and comparative claims. The requirement to include all trade-offs can lead to information overload and increase consumer confusion during product purchases.

The federation warns that the lack of recognition of ambiguity in definitions and inadequate response to consumers' needs may constrain innovations in sustainability. Economic operators may find it challenging to justify financial investments if claims cannot be made or do not meet consumers' needs. Consequently, the industry urges the European Commission to establish indicators and clear guidelines through delegated acts. Guidelines should address potential alignment with other legislative developments and provide legal certainty for companies.

## **3. Market fragmentation**

While the sporting goods industry appreciates the Commission's goal of limiting the proliferation of voluntary labels via restricting the establishment of new national environmental labels, we raise concerns regarding the application of the Directive by Member States and the potential increase in proliferation of national mandatory labels, which will result in internal market fragmentation.

Indeed, the proposal leaves significant room for different interpretations, enforcement, and verification of explicit environmental claims. This could lead to diverging standards and situations where certain Member

States do not accept mandatory claims substantiated and verified by other Member States. Another unintended consequence may be a phenomenon referred to as "claim hopping," in which economic operators could selectively choose competent authorities in specific Member States with easier verification processes, potentially distorting the level playing field. To improve legal certainty, safeguard the EU internal market's free movement of goods and facilitate uniform application across the EU-27, as well as alleviate administrative burden for competent authorities and economic operators, FESI supports the development of guidelines by the European Commission. These guidelines should provide clarifications on the requirements and recommendations for methodologies to be included in the Annexes. However, these clarifications should be made available at least one year before the application date, considering the complexity of R&D and lead times for production processes within the sporting goods industry.

Additionally, FESI supports the prohibition of proliferation of mandatory national scoring labels. Same to voluntary scoring labels, the development of mandatory labels should be prohibited at the national level in parallel with EU efforts to move to harmonised sustainability labelling via the Ecodesign for Sustainable Product Regulation and the Substantiating Green Claims proposal. This will ensure further steps towards harmonisation and avoidance of market fragmentation, clear consumer communication and scalability of more sustainable products across the EU.

#### **4. Transposition timelines**

FESI raises concerns about the transposition time of the directive, which is considered inadequate for the realities of value chains. Legal certainty and work towards third-party verification can only start, once Member States have fully transposed the EU requirements into national law. The current timeframe leaves economic operators with approximately six months to comply with new rules. This situation creates uncertainties and administrative burdens, leading to an overflow of requests for competent authorities and verifiers.

Consequently, the federation calls for an extension of the transposition time, granting economic operators an 18-month transition period following the national transposition by Member States. Alternatively, a phased-in transition period could be implemented, requiring compliance with new claims within the original six-month transposition time, while allowing existing claims an additional 12 months to be brought into compliance with new verification rules. Products already placed on the market should be exempt from the rules at the applicability date. Otherwise, the above-mentioned inability to process new verification requests in such a short period could lead to extensive call backs of products with potential need to destroy packaging bearing non-substantiated claims and general business uncertainty.

#### **5. Policy coherence between EU legislations**

FESI and its members call for policy coherence between the Green Claims Directive proposal requirements and national initiatives but also with other EU legislations currently in development which address product-related information requirements. Specifically, we urge for alignment with the proposals on the Empowering Consumers for the Green Transition Directive, the Ecodesign for Sustainable Product Regulation and its Digital Product Passport, the Packaging and Packaging Waste Regulation, as well as the upcoming revision of the Textile Labelling Regulation and the EU Ecolabel.

## 6. Digital labelling

FESI welcomes the European Commission's proposal to incorporate digital means as a medium of informing consumers about the substantiation. We call for alignment with the developments under the Ecodesign for Sustainable Product Regulation, particularly the Digital Product Passport.

Recently FESI together with 130 organizations have signed a statement on the importance of digital labelling which can be downloaded [here](#).

In conclusion FESI would like to stress once more that without the recommended improvements the proposal risks missing its target. Legal uncertainty and misaligned national initiatives could ultimately have the unforeseen consequence of incentivising the phenomenon of “greenhushing” which could have repercussions on the attractiveness and scalability of more sustainable and more costly processes and materials. FESI wishes to invite co-legislators to consider these improvements and remains available to further discuss these points.

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### About FESI

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Founded in 1960 FESI - the Federation of the European Sporting Goods Industry represents the interests of approximately 1.800 sporting goods manufacturers (85% of the European market) through its National Sporting Goods Industry Federations and its directly affiliated member companies. 70-75% of FESI's membership is made up of Small and Medium Sized Enterprises. In total, the European Sporting Goods Industry employs over 700.000 EU citizens and has an annual turnover of some 81 billion euro.

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