



EU Green Claims Directive: finding a balanced framework for European Hospitality

Position paper | July 2023

Executive summary

- HOTREC supports a general EU framework that protects consumers and companies from greenwashing, improves legal certainty and levels the playing field within the Single Market. Such a framework must be proportionate, and balanced. It should be easy for companies to apply and inform consumers about their choices.
- The current Commission proposal brings extra costs and administrative burdens to companies, especially SMEs. The impact of the current proposal on companies should be carefully evaluated.
- To decrease these burdens, HOTREC proposes as **its preferred option**, that the **third-party verification requirement is removed for all companies**. Instead, companies would follow the legislation requirements on their own and **sign a declaration of compliance**. **Member States would perform random checks**. In case there would be infringements, companies would be liable and pay a penalty. As a **secondary solution**, and in case the first option is not feasible, HOTREC proposes that the **alternative scheme is applicable to, at least, all SMEs**.
- Innovation and quality for private operators to publish new labels should not be hindered.
- New public labels should be allowed.
- SMEs should benefit from mandatory financial support, access to finance, financial support for staff training; organisational and technical assistance.
- Member States should be able to set up their own penalty systems for the implementation of the proposed legislation.

Introduction

HOTREC, the European Association of Hotels, Restaurants and Cafés in Europe¹, takes note of the European Commission proposal for a Directive on “Substantiation and communication of explicit environmental claims” (Green Claims Directive) (**COM(2023)166 final**).

We support the Commission's intention to strengthen consumer protection against untrustworthy or false environmental claims. The **integrity of the EU single market and genuine business** activity are both harmed by **unsubstantiated claims due to the unfair advantage** they give certain companies over competitors. Such unfair practices impact in particular those companies which have **invested significantly** to assess the lifecycle impact of their products or services and introduce real changes. Greenwashing is also directly opposed to the EU Green Deal objectives of reducing the environmental impact of human activity and increasing circularity – as it introduces the real risk of encouraging the use of products and services which are in fact unsustainable.

Consumers should be reassured about the products and services they purchase. On the other side, businesses should be recognised and rewarded by consumers if they showcase their sustainability efforts. Marketing, information and promotion of products are key to the hospitality sector to reach potential customers.

A **proportionate and balanced system** should be found: one that allows **companies to easily apply the legislation and proportionate consumers with informed choices**.

We understand that the Green Claims proposal needs to be read in parallel with the upcoming Directive on “Empowering Consumers to the Green Transitions” (**COM(2022)143 final**), currently in final negotiations between the European Parliament and the Council.

We consider that the EU should **not overburden businesses with different pieces of legislation that cover the same topics**. The Unfair Commercial Practices Directive, the proposal on Empowering Consumers to the Green Transition or the Eco-design and sustainable product legislation already contain several of the objectives covered by the Green Claims proposal. **Better and simple regulation is crucial for companies to be able to comply with**.

¹ **HOTREC** is the umbrella association of Hotels, Restaurants, Bars and Cafés and similar establishments in Europe. It brings together 47 national associations in 36 European countries and serves as the voice of the European hospitality industry. HOTREC's mission is to represent and champion the industry's interests towards the EU and international institutions, foster knowledge sharing and best practices among its members to promote innovation and serve as an expert platform for the hospitality sector.

The **European hospitality industry** is a vital economic contributor, comprising over 1.8 million businesses and employing more than 9 million people. It plays a vital role in driving economic growth and job creation, contributing approximately 2-3% to the total EU GDP. The industry is characterized by a high level of entrepreneurship, with 99% of businesses classified as small and medium-sized enterprises (SMEs). These companies bring innovation, creativity, and a personal touch to the industry.



Regarding labels, HOTREC is favourable to the use of **environmental labels** for tourist accommodation services and restaurants, if they are **always voluntary, and industry-driven**. HOTREC also considers that when existing labels function well and are recognised by consumers, public authorities should avoid creating new labels, as proliferation leads to confusion. However, in our view, **new labels (public or private) should not be prohibited, as innovation should not be hindered**.

We consider that companies in general – and SMEs in particular – will be faced with several difficulties when implementing the proposal, especially in **terms of cost, bureaucracy and legal uncertainty**. In addition, companies might find it challenging to understand if every single environmental claim needs to be third-party verified or not².

99% of the companies in the hospitality sector are SMEs with low-profit margins. The sector is still in recovering phase after the COVID-19 pandemic, while at the same time struggling with increased **inflation, energy and food prices, and high interest rates** – on top of the difficult geopolitical situation. In addition, the sector is trying to adapt to the needed requirements brought by the EU Green Deal. While fully supporting the EU targets to become carbon neutral by 2050, the sector also needs to implement a vast number of infrastructural changes to comply with different upcoming legislation (e.g., energy performance of buildings, packaging, food waste, due diligence, corporate sustainability reporting). Therefore, companies in general, and SMEs in particular, need special attention to be able to survive.

According to recent Eurostat data³, there was a 97.7% increase in bankruptcies in accommodation-food services in Q4 2022 when compared to Q4 2019. Considering this data, we believe adequate incentives should be provided, to help the sector reach a more sustainable model. Extra bureaucracy and costs should be avoided.

The success of this proposal will depend on **adequate enforcement and monitoring by competent national authorities to identify malpractice and ensure a level playing field** across the sector.

Member States should already **invest in enhancing the technical, human and financial resources** of competent authorities before this proposal is enforced.

Overall, we ask for **more freedom** for companies to substantiate their green claims. **Proportionality and guidance** should be part of the solution. Moreover, **Member States should enjoy flexibility** to comply with the monitoring measures.

I – Impact assessment on the substantiation of the green claims

The European Commission states in its proposal that credible estimations of the overall costs for the Union market are difficult⁴. The Commission recognises that the proposal will put an additional cost on traders wishing to make such claims. The impact on smaller enterprises is expected to be proportionately higher than on larger companies. The Commission estimates that depending on the nature and complexity of the claim, the related substantiation cost can vary significantly. For example, substantiation costs for a simple claim, e.g., on materials used in production, are estimated at EUR 500. But if a company decides, for instance, to make a claim on the environmental footprint of one of its products and chooses to conduct a study using the product environmental footprint method, the Commission estimates this would cost **around EUR 8000**.

Moreover, costs should take into account the **time spent** by the companies to gather data for the substantiation of the claims and to provide it to the verifiers, the **uncertainty** companies will need to overcome (e.g., to understand if a statement is a green claim or not), and the **missed opportunities for businesses** to communicate their environmental work (in case they prefer not to communicate their environmental performance).

² We understand this is part of the interpretation of the proposal for a Directive on “Empowering Consumers to the Green Transitions” (**COM(2022)143 final**).

³ Eurostat data.

⁴ Substantiation and communication of explicit environmental claims” (Green Claims Directive) – **COM (2022) 143 final** – Impact assessment.



HOTREC's proposals:

- The impact of new legislation should be carefully evaluated before it is proposed by the European Commission.
- A revision of the impact assessment would be helpful for our sector.
- Overall, we consider that the costs can be quite substantial, especially for SMEs.

II - Substantiation of explicit environmental claims (Art.3), review of the substantiation of explicit environmental claims (Art. 9), verification and certification of the substantiation (Art. 10) and verifier (Art.11)

According to Article 3 (substantiation of explicit environmental claim), Article 10 (verification of the substantiation), and Article 11 (verifier) of the proposal, the substantiation of every single environmental claim **will need to be verified** by a third party, in view of certification. According to Art. 9, the information used for the substantiation of explicit environmental claims **needs to be reviewed and updated by traders and verified by a third party**.

We welcome that micro-enterprises are not included in the scope of the proposal for a Directive (Art. 3/3; Art. 4/3; Art. 5/7). Nevertheless, HOTREC considers that the verification procedure by a third party and frequent revision of the substantiation of the green claims are **unproportionate, unreasonable and unclear**, especially to SMEs, **as such procedures are burdensome and costly**.

In addition, it might be challenging for SMEs to **provide the required data to third-party verifiers**, except if it is data that is easy to collect (e.g., present receipts of electricity/gas). We strongly recommend Member States to **limit these requirements to the minimum** when implementing the proposal for the Directive.

Companies would also need to have **high legal and environmental knowledge** to be able to comply with the legislation. Companies might need the knowledge of an expert to know that the substantiation of the green claims would need to be verified and frequently reviewed (in case they are not connected to a certified label).

In addition, we have concerns that **companies will not have legal certainty on whether a certain statement is or not a Green Claim**⁵. The statements below show examples where it is not clear if the statement is green claims that need to be third-party verified or not (please note that the list below is far from being exhaustive. It only aims at representing the sector's concerns):

- *"If you use the towels several times, it is better for the environment. If you want new towels, please place them on the floor."* – should this statement be interpreted as an implicit green claim? It can be argued that the information is not product or service specific, as it does not differentiate one hotel over the other, and it does not claim that an extra effort was made by the hotel to improve its environmental performance. Therefore, the sentence is not a green claim. But a hotel could eventually have doubts about the interpretation.
- *"This restaurant is plastic-free"* – It can be argued that the statement is restaurant-specific, and it does not qualify as an environmental claim. But this interpretation might be questionable. And in case it is considered a green claim, how can the restaurant provide data to the verifier?
- *"This hotel is free from disposable packaging"* – this statement seems straightforward. But is it a green claim? It might be argued that the hotel is acting to be more environmentally-friendly. But, in case this was a green claim, how could the hotel provide the data to the verifier?
- *"The meat served in the restaurant comes from the farmer next door"* – in case this is a green claim, how can the restaurant provide the data to the verifier?

The fact that companies in general, and SMEs in particular, might be **refrained from making a green claim is negative** for various reasons:

- Companies **might avoid putting forward green claims to circumvent costs and burdens**, despite the fact of developing green strategies (which would deeply affect their marketing strategies).
- Companies **might not be motivated to act in a green way**, which goes against the Commission's intention regarding this proposal and with the aim of the sector to become more sustainable.
- The situation described above might lead to **unfair competition between companies and the creation of an uneven playing field**, as it might limit environmental claims to businesses which can financially afford verification. In any case, SMEs will always be at a disadvantage, as they don't have the same human, legal and financial resources when compared to big companies.
- Consumers could eventually **receive less information** if companies decide not to communicate all their claims.

HOTREC's proposals:

- Companies in the sector are willing to develop a sustainable marketing strategy that is compliant with EU legislation, avoids greenwashing or misleads consumers when accessing information.
- HOTREC calls on the EU to propose a mechanism that is **simple, workable, proportionate, with a low cost**.
- **Guidelines and awareness-raising** should be developed, in the first stage by the Commission before the Directive enters into force. After that, **governments** will also need to play a crucial role in correctly applying the Directive.

⁵ Art 1/1 of the Commission proposal for a Directive on "Empowering Consumers to the Green Transition" **COM (2022) 143 final**, states the following: "Environmental claim" means any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time".

Solution 1 – Preferred Option – Elimination of third-party verification system for all companies

As our preferred option, we would call on the EU institutions to eliminate the **third-party verification system** for all companies.

As a methodology, we would propose the following steps:

- Companies to comply with proportionate, clear and precise demands on how to substantiate a claim.
- Companies to sign a declaration of compliance to substantiate the claim.
- Governments to verify the claims via random checks.
- Companies would be liable with a legal penalty in case the declaration is not proven to be true.
- The system would simplify the enforcement, while it does not circumvent obligations.
- Companies could use third-party verification on a voluntary basis.

It is to note that the European Commission has proposed a similar procedure regarding the implementing decision under the Single Use Plastic Directive [2021/1752](#)⁶.

Solution 2 – In case option 1 is unfeasible – An alternative system for SMEs

- If option 1 is not viable, we call on the **exemption of third-party verification at least for SMEs**.
- 99% of the companies in the sector are SMEs. SMEs do not have the same legal, financial or human resources as big companies.
- If this option is considered, SMEs would also comply with the legislation but would avoid the **burden and cost** of needing to have their green statements verified by a third party.
- SMEs would also be **liable** in case they would not comply.
- SMEs could comply with the **third-party verification criteria** on a voluntary basis.

III – Art 8 – Requirement for an environmental label scheme

Art. 8/5 mentions that Member States shall ensure that environmental labelling schemes established by private operators are only approved if those schemes provide **added value** in terms of their environmental ambition, amongst other characteristics.

We understand that there is **no prohibition for new private labels to exist**, but we would like to highlight that **innovation and quality should not be hindered**. Private environmental labelling schemes have the potential to play an important role in promoting sustainability and reducing the environmental impact of goods and services. New private labels might be more affordable; display new relevant criteria; or contain new ideas for businesses to become more sustainable. **Competition in this area is relevant to avoid high costs, to help move the industry forward and to support the green transition.**

We understand that these schemes should be rigorously assessed to ensure they deliver real benefits, both in terms of their environmental ambition and their effectiveness at driving change. But to avoid that innovation being damaged, **HOTREC proposes that the expression “added value” is deleted.**

⁶ Under this system, operators are required to report figures based on common methodology and may then be subject to checks by the authorities.

Art. 8/3 states that no new national or regional environmental labelling schemes shall be established by public authorities unless they are established under Union Law. We consider that **Member States should preserve their sovereignty** and be able to issue their labels. Subsidiarity should prevail. **HOTREC proposes to delete this paragraph.**

IV - Art 12 – Small and Medium-sized enterprises

We welcome that Member States shall take appropriate measures, such as guidelines, to help small and medium-sized enterprises apply the requirements set in the Directive. The cost, administrative burden, and lack of legal and technical knowledge should not be a reason for SMEs to feel demotivated to put forward green claims, otherwise, they would be in a less competitive position.

Nevertheless, we consider that measures such as financial support; access to finance; financial support for specialised management and staff training; organisational and technical assistance **need to be made mandatory in all EU Member States.**

We reiterate that the sector is still facing a challenging period and support is needed to move forward in a greener direction (please see justification under the introductory remarks of this paper).

V – Art 15 - Compliance monitoring measures

Art 15 mentions that if the competent authorities find that the claim does not comply, the trader is required to take all appropriate corrective action in 30 days or to cease its use.

However, the competent authorities should leave enough time for companies to address any issues related to the substantiation. Yet, the time that is needed for companies to react is difficult to be predicted at the EU level. We consider that the EU **should not pre-establish a certain timing – this should be left to the Member States to decide.**

Moreover, Art 15/1 refers that the reports detailing the result of those checks shall be made available to the public online. We consider that **all the modifications done by the enterprises should be made public** (and not only the results before the modifications).

The article should as well mention that the **right to appeal** should be developed by the Member States via **enforcement provisions**, administrative decisions and court rulings.



VI – Art 17 - Penalties

We understand that penalties will need to consider the nature, gravity, extent and duration of the infringement.

Art. 17/3 states the penalties that can be infringed on companies, namely confiscation of revenues; temporary exclusion from public procurement processes or exclusion from access to public funding. It also mentions that fines can reach 4% of the trader's national turnover.

We consider that these types of penalties are too strong, especially if applied to SMEs. We propose that **art. 17/3 is deleted, allowing Member States to set up their own penalties system**. Subsidiarity should prevail.

VII – Art 25 – Transposition

Art 25 limits the transposition time to 18 months, followed by 6 months for the implementation. To allow time for companies to adjust in terms of stability and legal certainty, a longer transposition period is required (at least 3 years).

According to art. 10/7, Member States should notify the list of certificates of conformity via the Internal Market Information System established by Regulation (EU) No 1024/2012. We consider that these lists should be published before the entering into force of the Directive. Time is needed for Member States to develop this task.

VIII - Other comments

Definitions

The definitions in arts. 2, 3 and 4 need to be further specified, as they **are vague and not clear**. Examples include:

- Art. 2/2: “contained in an environmental label”.
- Art. 3/1/b: “widely recognised scientific evidence”.
- Art. 3/1/c: “significant impacts from a life cycle perspective”
- Art. 3/1/d: “all environmental impacts that are significant”.
- Art. 3/1/f: “performs significantly better”.
- Art 3/1/g: “significant harm”
- Art. 4/1: “Better environmental performance of products and traders”.
- Art. 4/1/c and 4/1/d: in this case, the information that businesses need to provide does not seem to be proportionate⁷.

The expression “relevant information” also needs to be clarified – it is used several times in the proposal, without a concrete explanation of its meaning.

⁷ Under Green Claims proposal (**COM(2023)166 final**):

- Art 4/1/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;
- Art 4/1/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.

Platforms

In recent years, HOTREC noted the proliferation of different environmental labels on online platforms, especially by online travel agents (OTAs).

HOTREC has serious concerns about the implications of the current proposal of the Directive on the liability of hospitality businesses that opted in to show sustainability labels offered by online platforms on their listings. Due to laws governing intermediary liability, the online platforms would not be obliged to take any responsibility for labels being displayed on the listings. Therefore, HOTREC strongly believes that online platforms **should condition the showing of labels with proof of relevant certificates** and introduce a more transparent and diligent process to obtain such labels.



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