POSITION PAPER

Position Paper

of the German Insurance Association (GDV)
ID-number 6437280268-55
Lobby register No R000774

on the trilogue negotiations to the proposal for a directive on substantiation and communication of explicit environmental claims (Green Claims Directive)

The German insurance industry supports the overarching goal of protecting consumers against misleading green claims and ensuring that they can make well informed choices. Both consumers and businesses have an interest in preventing misleading claims and promoting the exchange of credible information.

The Directive on empowering consumers for the green transition (Green Transition Directive) was published in the Official Journal of the EU only in March 2024. The directive supplements existing European provisions on unfair market practices with specific provisions to prevent greenwashing. In particular, an environmental claim related to future environmental performance may only be made if a realistic implementation plan is drawn up for the relevant obligations. This plan must be regularly verified by an independent third-party expert. Against this background and in consideration of the consensus between EU Commission, European Parliament and Council to reduce bureaucracy wherever possible, the need for an additional set of rules with the same objective should be reassessed.

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Should the proposal on the Green Claims Directive be pursued nevertheless, consistency with existing (parallel) legislation should be established and legal certainty ensured to the highest possible degree. In this context, the following considerations should be taken into account:

Clarification of the scope is required

We support the subsidiarity clause in Article 1 (2). Sectorial legislation which lays down specific rules for goods or services should prevail over the more abstract provisions of the draft directive.

However, to avoid legal uncertainty, the scope of application should be clarified. The Directive on sustainability-related disclosures in the financial services sector (SFDR) requires manufacturers of retail investment products to provide standardised substantiation of any sustainability related claims made regarding their organisation or their products. In our interpretation, the SFDR, therefore, falls within the scope of Article 1 (2) (o) of the draft. However, to avoid interpretation uncertainties, the SFDR should be explicitly named in Article 1 (2) – as already provided for in the European Parliament's final position on the Commission's draft.

Rethink the need for an ex-ante verification procedure

The complex ex-ante verification system for environmental claims provided for by the draft Directive is a cause of major concern. In this regard, it should be noted that the Green Transition Directive already provides for a detailed implementation plan for environmental claims on future environmental performances verified by independent experts (see above). This already ensures that consumers only receive credible and realistic information. On the contrary, the introduction of an additional costly and time-consuming ex-ante verification procedure could induce companies to reduce their efforts to communicate their environmental and climate efforts to consumers. However, if companies find it too difficult or almost impossible to communicate their claims, the incentive for environmentally friendly behaviour could diminish.

The burden is increased by the lack of transitional provisions for existing claims and the need for a review of the conformity assessment after a maximum period of five years. All of this would run counter to the purpose of the Directive, which is to support consumers in making informed green choices. The ex-ante assessment procedure provided for in the Green Claims Directive should therefore be abandoned. This would also be in line with the generally recognized aim of reducing bureaucracy.

The attempts of the European Parliament and the Council to simplify the verification procedures are commendable. However, we are concerned that the proposals on simplification tabled so far do not go far enough. They would not effectively ease the burden since the procedures would only apply in very specific cases. Furthermore, the proposed amendments would merely shift the complexity to Level 2 of

the legislation.

Consistency of the enforcement rules

A separate enforcement regime for the Green Claims Directive is not necessary and would cause unnecessary administration. We therefore support the reference to the existing enforcement provisions of the Unfair Commercial Practices Directive (UCPD) – provided for in the Commission's draft (Article 13 (2)) and supported by the Council – in order to ensure consistency within the legal framework. This reference should be maintained in order to avoid the creation of a second regime for the enforcement of competition law requirements.

Clarification of the obligated party – avoid double requirements

It is also important to clarify who exactly is targeted by the obligations created by the Directive. In many cases, the same claim for the same product or for the same manufacturer is used by different traders at different occasions. For example, for many products the manufacturer and the distributor are not the same person. The manufacturer may introduce a green claim with regard to the product and use it vis-à-vis consumers (e. g. through advertising). The distributor will also use this claim at the point of sale. The current wording of the Directive could be read as requiring both, manufacturers and distributors to go through the procedures required by the Directive. This would not be a sensible outcome. Similarly, subsidiary companies belonging to the same group will use claims made by the parent company at group level. Here too, it would not be appropriate to require each subsidiary company to replicate the procedures already performed by the parent.

It should be clarified that only claims that are in accordance with the requirements of the Directive should be used in a business to consumer context. However, once a claim meets the requirements, distributors and subsidiary companies should be free to use it until it is revoked by the manufacturer. The Council addresses this important practical aspect in recital 15. It is clarified that the requirements applying to the generation of explicit environmental claims do not address traders who merely replicate an explicit environmental claim which has already been communicated to consumers by another trader. For reasons of legal certainty and practicability, this clarification should be included in the legal text of the Directive. The Council's definition of “generating an explicit environmental claim” foreseen in Art. 2 (1) (6a) is still ambiguous.

This would also be in line with the provision in Art. 22 para. 2 CSDDD, which declares the preparation and publication of a transition plan as part of CSRD reporting at parent company level to be sufficient for all subsidiaries included.

Berlin, 13 November 2024

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