

## ICC comments on proposed EU Directive on substantiation and communication of explicit environmental claims (“Green Claims Directive”)

As the major rule-setter for advertising self-regulation since 1937, the International Chamber of Commerce (ICC) has consistently championed the promotion of responsible marketing practices across industry.

Recognising the increasing prevalence of environmental marketing claims, ICC has generally supported the broader aims of the European Commission’s Green Claims Directive and since [its inception](#) in March 2023, has developed [several official position papers](#) that we have shared with the previous EU executive and legislature.

ICC’s position papers, which are attached as annexes to this paper, outline our concerns and proposed recommendations conveyed over the past two years. Those recommendations, aimed at advancing the aims of the Directive while reducing burdens on governments and industry, principally include formal recognition of advertising self-regulation and the withdrawal of the mandatory third-party verification mechanism.

In short, while the overarching goals of the Directive are commendable, we respectfully believe that there are clear grounds to rethink this legislative initiative in its entirety. Instead of introducing an additional layer of new regulations, ICC’s strong view is that existing EU regulations, coupled with self-regulatory frameworks such as the newly revised [ICC Advertising and Marketing Communications Code](#), could provide a more effective and balanced approach – relying on national and EU-wide self-regulatory programs.

In this regard, and building upon our previous submissions, we wish to highlight the following key points for consideration in the context of the trilogues currently underway:

- **Regulatory overload:** businesses are already subject to a broad range of regulatory compliance requirements in several areas of law. By imposing additional regulatory burdens on European businesses, the Green Claims Directive could inadvertently stifle innovation and hinder the green transition it aims to promote by stifling the ability to communicate truthful messages about advancements that reduce the environmental impact of products and operations. It is crucial, particularly at an economically delicate time, to consider the broader global regulatory landscape to ensure that European companies are not disadvantaged in the global market due to overly stringent EU regulations. Furthermore, while the EU aims for regulatory harmonisation, national-level

implementation varies, sometimes leading to market fragmentation. In addition, this Directive contradicts the EU Commission's own recent objective to reduce regulatory burden by at least 25% for firms and by at least 35% for SMEs, as outlined in its [Competitiveness Compass](#). It is therefore imperative that we align with this goal to foster a more competitive and innovative business environment in Europe.

- **Current EU regulations offer comprehensive tools:** businesses are already subject to existing EU regulations (i.e. the recent Directive on Empowering Consumers for the Green Transition, the Unfair Commercial Practices Directive, and the Consumer Rights Directive) which provide comprehensive and effective measures to promote sustainable practices while combating greenwashing. The enforcement, and potentially enhancement, of existing frameworks can leverage the potential and effectiveness of current legislation, eliminating the need for additional regulation through the Green Claims Directive.
- **Burdensome ex-ante verification - a barrier to truthful environmental communication:** one of our key concerns with the Green Claims Directive, as raised previously, is the ex-ante mandatory verification process for environmental claims. This process, while intended to ensure the accuracy of claims, may actually compromise the primary objective of the Directive, as anticipated administrative burdens will increase costs. In addition, an assessment of potential compliance risks and the looming threat of sanctions will simply depress truthful environmental communications. The additional time and expense required for verification are likely to result in companies avoiding environmental communications altogether, which could further lead to a reduction in their efforts to communicate actions designed to enhance environmental sustainability. The costs of compliance with these added burdens on marketing environmental initiatives may outweigh the potential benefits, thereby discouraging companies from pursuing sustainable practices.

The pre-verification requirement also risks creating a false sense of certainty for businesses. While giving the impression that a claim is approved, a certificate of conformity would in fact not be a guarantee that a marketing message is not misleading, since marketing communications are regulated based on the overall impression they create. The assessment of a verifier in the certificate of conformity, will not prejudice the assessment of the environmental claims by national authorities or courts which enforce Directive 2005/29/EC. This creates legal uncertainty for companies, as they may face different interpretations and assessments despite having obtained the certificate. Such ambiguity can lead to inconsistent enforcement and compliance challenges across different jurisdictions, making it difficult for businesses to navigate the regulatory landscape.

- **Overlooking self-regulation - the role of industry standards:** furthermore, we are of the view that the Directive does not adequately consider existing advertising self-regulatory measures by the industry, such as the ICC Advertising and Marketing Communications Code and the ICC Framework for Responsible Environmental Marketing Communications. These self-regulatory frameworks have long-standing recognition in serving as a practical and useful resource to help practitioners craft marketing communications that adhere to the basic global principles of legal, decent, honest and truthful communications and in

seeking to ensure that environmental claims are truthful and not misleading and are appropriately substantiated.

ICC believes that existing EU regulations and national jurisdiction, combined with robust advertising self-regulatory frameworks such as the ICC Advertising and Marketing Communications Code, provide a more balanced and effective approach to ensuring the accuracy of environmental claims. Instead of reinventing the wheel, regulators could align with these frameworks to simplify compliance. Proper substantiation of any claims – including environmental claims – is a bedrock principle of existing law governing advertising. Effective enforcement and oversight by established authorities, including self-regulatory organisations across Europe, can protect consumers against greenwashing without imposing unnecessary burdens on businesses. Regulatory efforts should seek to address clear cases of greenwashing, rather than restricting all businesses. By leveraging existing frameworks and promoting self-regulation, rather than adding new and costly regulations, we can foster a competitive and innovative market that encourages sustainable practices while protecting consumers from exaggerated green claims.

### **New ICC Advertising and Marketing Communications Code (September 2024)**

We also wish to bring to your attention the recent revisions to the [International Chamber of Commerce \(ICC\) Advertising and Marketing Communications Code](#) (ICC Code), which has been the globally recognised standard for responsible marketing since 1937. After two years of dedicated effort, the ICC Code underwent its most comprehensive revision in over a decade in 2024. This eleventh revision continues to provide a robust framework for businesses to navigate the complexities of responsible marketing and advertising, ensuring that their practices remain legal, decent, honest, and truthful.

The ICC Code serves as the benchmark for almost 50 self-regulatory codes worldwide, protecting consumers and supporting advertising and creative freedom. In today's rapidly evolving business landscape, sustainability has become a cornerstone of corporate responsibility. Companies worldwide are increasingly recognising the importance of integrating sustainable practices into their operations and marketing strategies.

Chapter D – Environmental Claims in Marketing Communications – of the ICC Code is dedicated to ensuring that environmental claims in marketing communications are truthful and not misleading, and appropriately substantiated. This newly revised Chapter D of the ICC Code provides detailed guidance on how environmental claims should be communicated in marketing communications. One particular update of relevance is the new Article D1, which sets more precise rules for substantiation, clarifying that all environmental claims, including aspirational claims, must be backed by reliable scientific evidence. Another key addition is Article 2, which expands the scope of the ICC Code to explicitly cover both social and environmental responsibility, reflecting a shift towards a broader, principle-based approach that prioritises truthfulness and transparency in environmental claims. The ICC Code specifies that its principles apply to all environmental claims, whether or not a specific claim is discussed in the Code, but the updated guidance in this chapter now covers a wider range of claims such as sustainability and circularity. Article D6 addresses claims related to components and elements to promote accuracy and transparency. Chapter D

now includes broader definitions, such as "environmental attribute" and "qualification," and offers specific examples to clarify vague or misleading terms.

In order to provide further clarity on responsible environmental marketing practices we also recommend consulting the [ICC Framework for Responsible Environmental Marketing Communications](#), which offers more specific guidance and a detailed roadmap on how to implement these principles effectively. Furthermore, this paper is scheduled for an imminent revision to ensure its alignment with the ICC Code and to incorporate recent developments in the field. Additionally, the ICC itself developed a certification program in 2024, the [ICC Certificate in Responsible Green Marketing Communications](#) (RGMC). This program is not designed to certify specific claims. Rather, it helps businesses develop and improve processes to manage claims, helping them to confidently navigate their sustainability journey in marketing communications to promote truthful and impactful environmental claims.

### **Next steps**

ICC is committed to maintaining the highest standards of responsible environmental marketing practices and will continue to update its guidelines to reflect the latest advancements and best practices. ICC's approach underscores the importance of industry collaboration, ensuring that our guidelines are developed and refined with input from a broad range of stakeholders.

In summary, many market participants today can testify to how advertisers and others are hesitating in their decisions to communicate their environmental initiatives. The reason, as we have emphasized above, is attributed to stringent and unpredictable regulations combined with substantial sanctions. An increasingly cautious and dwindling communication about environmental work risks leading to reduced environmental investments. In this regard, we can therefore discern a significant backlash that paradoxically risks having a negative impact on our environment.

We believe that our insights and recommendations can help shape a more balanced and effective regulatory framework, and we hope that you will find this contribution useful in your deliberations. Should you require any further information or wish to discuss our views in more detail, we stand ready to provide additional information and support as needed.

We look forward to continued collaboration and constructive dialogue on this important matter.

**ANNEX 1: [ICC position paper on the Green Claims Directive – 30 May 2024](#)**

**ANNEX 2: [ICC response to European Commission's Green Claims Directive – 27 July 2023](#)**



## ICC proposed amendments to the Directive on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)

The International Chamber of Commerce (ICC) recognises and applauds the efforts to expedite the green transition, empower consumers in making sustainable choices and foster the competitiveness of businesses that take ambitious actions on environmental sustainability. However, ICC wishes to reiterate its concerns, specifically regarding the proposed ex-ante verification procedure outlined in the Green Claims Directive.

ICC has been the major rule-setter in international advertising self-regulation since 1937, when the ICC Global Marketing and Advertising Commission issued the [first ICC Code of Advertising and Marketing Communications](#) (the ICC Code) – one of the most successful examples of business self-regulation ever developed. Consistent with its established commitment to make sure the ICC Code is up to date, the ICC has recently completed its most comprehensive review and revision to date. The revised Code is now awaiting imminent approval by ICC's Executive Board, which will convene in early June 2024. The new version features enhanced guidance on environmental claims in its chapter D, which also inspired the creation of a detailed [Framework for Responsible Environmental Marketing Communications](#) (the ICC Environmental Framework). This framework offers practical commentary and guidance to help practitioners apply the Code's principles to environmental advertising.

As highlighted in [its response](#) during last year's European Commission's public consultation, ICC is deeply worried that the suggested ex-ante verification process may inadvertently compromise the primary objective of the Directive, which is to assist consumers in making informed green choices. Feedback from our member companies, which actively pursue high climate ambitions, underscores this apprehension due to the anticipated administrative burdens, increased costs, the broad scope, and the risk to conflict with constitutional provisions that explicitly forbid censorship, which we have previously highlighted in detail.

The pre-verification requirement also risks creating a false sense of certainty for businesses. While giving the impression that a claim is approved, a certificate of conformity would in fact not be a guarantee that a marketing message is not misleading, since marketing communications are regulated based on the overall impression they create. The assessment of a verifier in the certificate of conformity, will not prejudice the assessment of the environmental claims by national authorities or courts which enforce Directive 2005/29/EC. This creates legal uncertainty for

companies, as they may face different interpretations and assessments despite having obtained the certificate. Such ambiguity can lead to inconsistent enforcement and compliance challenges across different jurisdictions, making it difficult for businesses to navigate the regulatory landscape. Thus, the claimed benefit for companies, that they will receive approval and legal certainty in advance will not materialise, and only the disadvantage of a significantly increased administrative burden remain.

In light of these expected costs, risks, and uncertainties, our member companies have communicated that they might be forced to discontinue the communication of their environmental and climate efforts to consumers altogether should the proposed ex-ante verification procedure be adopted. This would in turn hinder their ability to guide customers toward the most informed and sustainable decisions and thus undermine the purpose of the proposal.

In addition to the negative impact on businesses, the pre-verification process for all explicit environmental claims also risks overwhelming regulatory bodies, leading to delays and inefficiencies, since the responsibility for ensuring that third-party verifiers comply with established standards typically falls to regulatory bodies. By narrowing the scope and removing these claims from mandatory pre-verification, regulatory authorities can focus their resources on instead monitoring the compliance of traders ex-post, ensuring a more efficient and effective oversight process.

ICC urges decision-makers involved in the legislative process to consider the negative implications the ex-ante verification procedure would have on the private sector and the green transition as well as regulators. Instead of a burdensome ex-ante procedure, we suggest strengthening ex-post enforcement to better support businesses in their sustainability efforts while not undermining the purpose of addressing greenwashing. This would mean removing ‘explicit environmental claims’ from the scope of the pre-verification mechanism, without impacting the strict substantiation requirements for explicit environmental claims or the levels of robustness and transparency expected of environmental labels.

In addition, discussions in the Council have looked into requirements for climate claims. ICC, as the principal business voice to the UN Framework Convention on Climate Change, has a longstanding involvement in climate action and stands squarely behind collective efforts to tackle climate change and limit global temperature increase to 1.5°C. In line with the Paris Agreement, ICC recognises the importance of international cooperation and coordinated solutions at all levels in order to allow for higher climate ambition and action. High integrity carbon credit markets for both emission reduction and emission removals can play an important role in achieving our common climate goals, whilst effective reduction of emissions should remain the prime target, including the prevention of GHG leakage.<sup>1</sup>

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<sup>1</sup> ICC Carbon Pricing Principles [2021-cop26-icc-carbon-pricing-principles.pdf \(iccwbo.org\)](https://www.iccwbo.org/files/other/publications/2021-cop26-icc-carbon-pricing-principles.pdf)

Provisions in the proposed Directive in relation to climate related claims must align with the best available science and the EU climate commitments under the Paris Agreement and should take into account applicable international standards, while also avoiding duplication and overlaps with prevailing norms.

Environmental labels other than EU ecolabel: limiting environmental labels to those awarded under environmental labelling schemes established under Union law will limit the products awarded environmental labels due to the limited scope of products currently covered. There are many well accepted and respected international environmental labels (e.g., EN ISO 14024 type I ecolabels, EPEAT, TCO, etc.) that present a rating or score of a product based on an aggregated indicator of environmental impacts that should be accepted and allowed to continue guiding consumers.

Ensure alignment with the Corporate Sustainability Reporting Directive (CSRD): CSRD reporting requires an unprecedented level of details subject to third-party assurance by EU recognised auditors, and another review by another third party would be duplicative without adding any additional assurance or information. This effort should be recognised to streamline additional administrative burden and facilitate the use of information published in the CSRD reporting as substantiated and verified claims.

Harmonisation of methodologies: ICC encourages the Council to follow a similar approach to the Commission’s proposal and European Parliament’s position and consider methodologies beyond the product environmental footprint methodology (PEF) which is not equally suitable for all product groups.

Longer transition period: certifying claims and phasing out products that have non-compliant claims will require adequate transition time. We support an extended transition time for application of the new rules, granting companies at least an 18-month transition period following Member States’ national transposition during which existing claims could still be used, in line with the European Parliament’s adopted position.

**ICC’s proposed amendments to the Directive are detailed below:**

**Article 2(2)**

Commission text

‘explicit environmental claim’ means an environmental claim that is in textual form or contained in an environmental label;

ICC proposed amendment

‘explicit environmental claim’ means an environmental claim made in written form or orally, including through audiovisual media [...] excluding environmental labels;

**Justification:**



To ensure clarity and alignment with Council discussions, we suggest revising the definition as above.

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Article 2(11)	
Commission text	ICC proposed amendment
<p>‘verification’ means the conformity assessment process carried out by a verifier to verify whether the substantiation and communication of the explicit environmental claims are in compliance with the requirements set out in this Directive or whether environmental labelling schemes comply with this Directive;</p>	<p>‘verification’ means the conformity assessment process carried out by a verifier to verify <del>whether the substantiation and communication of the explicit environmental claims are in compliance with the requirements set out in this Directive or</del> whether environmental labelling schemes comply with this Directive;</p>

**Justification:**

In order that explicit environmental claims should not be in scope for the pre-verificaiton requirements, the definition of ‘verification’ would need to be amended accordingly.

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Article 5(6)	
Commission text	ICC proposed amendment
<p>Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent.</p>	<p>Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent.</p>
<p>That information shall include at least the following:</p>	<p>That information shall include at least the following:</p> <p>(a) environmental aspects, environmental impacts or environmental performance covered by the claim;</p>



(a) environmental aspects, environmental impacts or environmental performance covered by the claim;	(b) the relevant Union or the relevant international standards, where appropriate;
(b) the relevant Union or the relevant international standards, where appropriate;	(c) the underlying studies or calculations used to assess, measure and monitor the environmental impacts, environmental aspects or environmental performance covered by the claim, without omitting the results of such studies or calculations and, explanations of their scope, assumptions and limitations, unless the information is a trade secret in line with Article 2 paragraph 1 of Directive (EU) 2016/943 ;
(c) the underlying studies or calculations used to assess, measure and monitor the environmental impacts, environmental aspects or environmental performance covered by the claim, without omitting the results of such studies or calculations and, explanations of their scope, assumptions and limitations, unless the information is a trade secret in line with Article 2 paragraph 1 of Directive (EU) 2016/943 ;	(d) a brief explanation how the improvements that are subject to the claim are achieved;
(d) a brief explanation how the improvements that are subject to the claim are achieved;	<del>(e) the certificate of conformity referred to in Article 10 regarding the substantiation of the claim and the contact information of the verifier that drew up the certificate of conformity;</del>
(e) the certificate of conformity referred to in Article 10 regarding the substantiation of the claim and the contact information of the verifier that drew up the certificate of conformity;	(e) <del>(f)</del> for climate-related explicit environmental claims that rely on greenhouse gas emission offsets, information to which extent they rely on offsets and whether these relate to emissions reductions or removals;
(f) for climate-related explicit environmental claims that rely on greenhouse gas emission offsets, information to which extent they rely on offsets and whether these relate to emissions reductions or removals;	(f) <del>(g)</del> a summary of the assessment including the elements listed in this paragraph that is clear and understandable to the consumers targeted by the claim and that is provided in at least one of the official languages of the Member State where the claim is made.
(g) a summary of the assessment including the elements listed in this paragraph that is clear and understandable to the consumers targeted by the claim and that is provided in at least one of the official languages of the Member State where the claim is made.	

### **Justification:**

In order to align the information requirements on the product or trader that is subject of the explicit environmental claim with the removal of the pre-verification requirement, 5(6e) should be deleted.

Take note that this would not impact the substantiation requirements for such claims and for traders to have the information to support those claims. With the removal of the pre-verification requirement for individual explicit environmental claims, there is also no longer a need to make exemptions for traders that are microenterprise, see Article 3(3), 4(3), and 5(7). In fact, it is important that the substantiation requirements apply to all traders and that they have the information to support the environmental claims that they make.

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Article 9

Commission text

ICC proposed amendment

Member States shall ensure that the information used for substantiation of explicit environmental claims is reviewed and updated by traders when there are circumstances that may affect the accuracy of a claim, and no later than 5 years from the date when the information referred to in Article 5(6) is provided. In the review, the trader shall revise the used underlying information to ensure that the requirements of Articles 3 and 4 are fully complied with.

Member States shall ensure that the information used for substantiation of explicit environmental claims is reviewed and updated by traders when there are circumstances that may affect the accuracy of a claim, and no later than 5 years from the date when the information referred to in Article 5(6) is provided. In the review, the trader shall revise the used underlying information to ensure that the requirements of Articles 3 and 4 are fully complied with.

The updated explicit environmental claim shall be subject to verification in accordance with Article 10.

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**Justification:**

In its current form, the definition of “explicit environmental claims” in the proposal encompasses all textual or label-based representations related to the environment, resulting in unjustified burdens and costs for businesses. They should be removed from the scope of communications that will need to be pre-verified.

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Article 10

Commission text

ICC proposed amendment

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## TITLE

Verification and certification of the substantiation and communication of environmental claims and environmental labelling schemes.

Verification and certification of the substantiation and communication of ~~environmental claims and~~ environmental labelling schemes.

### **Justification:**

In its current form, the definition of “explicit environmental claims” in the proposal encompasses all textual or label-based representations related to the environment and a very broad scope, resulting in unjustified burdens and costs for businesses. This should be removed from the scope of communications that will need to be pre-verified. As the certificate of conformity does not prejudice the assessment of the environmental claim by national authorities or courts in accordance with Directive 2005/29/EC, this procedure would otherwise also entail significant legal uncertainty for businesses. They may face differing interpretations and assessments from various national bodies despite having obtained the certificate. This legal ambiguity poses additional risks and potential compliance challenges for businesses operating under this directive.

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## Commission text

## ICC proposed amendment

### Article 10(4)

The verification shall be undertaken by a verifier fulfilling the requirements set out in Article 11, in accordance with the procedures referred to in paragraphs 1 and 2, before the environmental claim is made public or the environmental label is displayed by a trader.

The verification shall be undertaken by a verifier fulfilling the requirements set out in Article 11, in accordance with the procedures referred to in paragraphs 1 and 2, before ~~the~~ ~~environmental claim is made public or the~~ environmental label is displayed by a trader.

### **Justification:**

See above.

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## Commission text

## ICC proposed amendment

### Article 10(5)

For the purposes of the verification the verifier shall take into account the nature and content

For the purposes of the verification the verifier shall take into account the nature and content

of the explicit environmental claim or the environmental label.	of <del>the explicit environmental claim or the</del> environmental label.
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**Justification:**

See above.

Commission text	ICC proposed amendment
<a href="#">Article 10(6)</a>	
Upon completion of the verification, the verifier shall draw up, where appropriate, a certificate of conformity certifying that the explicit environmental claim or the environmental label complies with the requirements set out in this Directive.	Upon completion of the verification, the verifier shall draw up, where appropriate, a certificate of conformity certifying that <del>the explicit environmental claim or</del> the environmental label complies with the requirements set out in this Directive.

**Justification:**

See above.

Commission text	ICC proposed amendment
<a href="#">Article 10(8)</a>	
The certificate of conformity shall not prejudice the assessment of the environmental claim by national authorities or courts in accordance with Directive 2005/29/EC.	The certificate of conformity shall <del>not</del> <b>neither</b> prejudice the assessment of <del>the environmental claim</del> by national authorities or courts in accordance with Directive 2005/29/EC, <b>nor by self-regulatory organisations in accordance with Codes of Conducts, as referred to in Article 10 of Directive 2005/29/EC.</b>

**Justification:**

Member States should ensure that all effective ex-post enforcement measures are put in place. In addition to national regulatory bodies, self-regulatory organisations fulfil an important role today in evaluating and assessing marketing communication including green claims. For the aim of this directive its vital that they may continue doing this.

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## Article 13

Commission text

ICC proposed mendment

TITLE

Designation of competent authorities and  
coordination mechanism

**Enforcement**, designation of competent  
authorities and coordination mechanism

### **Justification:**

Member States should ensure that effective ex-post enforcement measures are put in place and competent authorities charged with ensuring compliance with this Directive.

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Commission text

ICC proposed amendment

Article 13(2) **NEW**

**The enforcement shall be undertaken by the competent authorities to take appropriate actions against parties that fail to comply with the requirements set out in this Directive, including effective compliance monitoring measures as set out in Article 15.**

### **Justification:**

See above.



# ICC comments in response to European Commission's Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)

The International Chamber of Commerce (ICC) is grateful for the opportunity to provide feedback on European Commission's [Directive on substantiation and communication of explicit environmental claims](#) (Green Claims Directive) and extends its appreciation for allowing this key process to be held in an open, transparent and inclusive manner.

ICC reiterates the importance of a harmonised view on how to substantiate environmental claims and has long standing expertise in helping marketers craft environmental messages that adhere to the basic global principles of truthful, honest and socially responsible communications. To that end, environmental claims must be clear and substantiated by sound scientific evidence.

ICC has been the major rule-setter in international advertising self-regulation since 1937, when the ICC Global Marketing and Advertising Commission issued the [first ICC Code of Advertising and Marketing Communications](#) (ICC Marketing Code) – one of the most successful examples of business self-regulation ever developed. Consistent with its established commitment to make sure the ICC Marketing Code is up to date, it is now undergoing another comprehensive review and revision. ICC encourages the European Commission to take note of the ICC Marketing Code and also encourages consideration of its [Framework for Responsible Environmental Marketing Communications](#) (the ICC Environmental Framework). Updated in November 2021 the framework provides practical commentary and guidance to help practitioners apply the principles of the Code to environmental advertising. Moreover, [ICC's re-branded Environmental Claims Checklist](#) of the Environmental Framework is an additional resource to help marketers identify when they are making an environmental claim, offering guidance on questions about such claims in an easy-to-follow format.

As a leader in responsible marketing worldwide, ICC intends for the ICC Marketing Code and the Environmental Framework to serve as a practical resource for practitioners developing environmental claims and campaigns. ICC continues its commitment to working with the European Commission and global policymakers to ensure that the basic global principles of truthful, honest and socially responsible communications are recognised and implemented.

ICC's feedback was prepared through an open consultative process with members from its global network and respectfully submits the following comments in response to European Commission's Green Claims Directive:

## General Comments

- ICC agrees with the overarching aims of the directive, i.e., the importance of accelerating the green transition and the need to ensure that environmental claims are well-substantiated to avoid greenwashing and empower consumers to make environmentally sound choices.
- Ensuring that marketing communications are legal, decent, honest, and truthful is of central importance to the global business community to build consumer trust and uphold the principles of fair competition between businesses. This holds especially true when it comes to environmental marketing, seeing the proliferation of such claims and how consumers increasingly wish to actively contribute to the green transition by making informed choices. This is why the business community has developed self-regulatory rules and measures to address this issue and ensure a high ethical standard in all marketing and advertising.
- However, ICC believes that the proposed Directive is likely to add costs and complexity, rather than taking into account the important role served by self-regulation. The additional time and expense is likely to result in companies avoiding environmental messaging, which could further lead companies to reduce their environmental efforts, as the costs of marketing environmental initiatives may outweigh the potential benefits.

## Key areas for further consideration

- In general, ICC supports the strict requirements regarding **substantiation** of environmental claims and the aim of greater robustness and transparency of environmental claims and labels, which reflect longstanding principles which are core to the ICC Marketing Code and Environmental Framework. ICC finds the **verification procedure** envisioned to be administratively burdensome, costly, and time-consuming, and may ultimately result in businesses refraining from making environmental claims altogether.
- **It is concerning that the proposal does not at all consider existing self-regulatory measures by industry**, such as the [ICC Advertising and Marketing Communications Code](#), which serves as the global gold standard for responsible marketing self-regulation, and the specific rules and guidelines set out in the [ICC Framework for Responsible Environmental Marketing Communications](#). Not only are the ICC Marketing Code provisions and interpretations applied by self-regulatory organisations, they are also recognised by and have inspired national marketing legislation and self-regulatory initiatives across the globe. Aligning the proposal with the rules of the ICC Code not only secures a high ethical standard, but also counteracts regulatory fragmentation at an international level.
- **Derogations to responsible marketing and advertising standards risk creating perverse market incentives and ultimately undermine consumer trust.** For this reason, ICC does not agree that micro-enterprises should be exempt from the directive. Not only should unsubstantiated claims be avoided by all enterprises, but having such an exemption would in theory make it possible to circumvent the directive by setting up small subsidiaries that could then make the claims instead. It is essential that any future EU Directive is framed and calibrated in such a way as to be capable of being implemented across the economy



as a whole – without unduly compromising the competitiveness of small businesses in Europe, nor their ability to penetrate “green” markets.

### **Substantiation**

- Businesses are investing heavily in reducing their emissions and transitioning to greener and more circular sourcing, production, and operations, recognising that sustainable businesses are also more profitable in the long term. Fair competition and a level playing field that ensure that these investments pay off.
- ICC, therefore, agrees with the proposal about the importance that environmental marketing claims are well-substantiated so that companies that offer truly sustainable products are not disadvantaged compared to those that do not, but that requirement is embedded in existing legal rules, such as the Unfair Commercial Practices Directive, and in advertising laws across the EU. Moreover, it is regrettable that the revision of the Unfair Commercial Practices Directive is not synchronised with the Green Claims Directive. Consequently, these two initiatives may potentially conflict with each other.
- In terms of substantiation, the proposal is well aligned with existing requirements under the ICC Code and Environmental Marketing Framework which requires “reliable scientific evidence” and stresses the importance of avoiding vague and non-specific claims, not presenting requirements imposed by law as a distinctive environmental feature of a product, and ensuring that comparative environmental claims are fair and adequately supported.
- ICC would like to emphasise the importance of harmonised rules throughout the Single Market. ICC encourages the EU institutions to consult widely with industry before electing a particular assessment methodology to ensure their workability and cost-effectiveness. ICC Marketing Code and Framework provide an example of a suitable approach in both principles and language to achieve that end. We are concerned that the format of the proposed directive could result in divergences and fragmentation in how the directive is implemented in the national laws and regulations of the different member states, counter to the goal of harmonisation.

### **Verification**

- As noted above, it should be recognised that the ICC Code and Framework offer a globally-accepted set of principles for environmental claims that are already in place and applicable. The issue is not a lack of explicit and robust rules, but rather insufficient enforcement of existing sound rules. ICC urges the European Commission to devote more resources and attention to ensuring compliance with existing rules, e.g., through supporting the work of self-regulatory organisations across the EU, and through market courts and consumer protection agencies, prior to moving forward with the proposed directive. The approach of the current proposal - to ignore the lack of enforcement measures after non-compliance and substitute a scheme of pre-approval requirements is a step in the wrong direction.
- ICC is deeply concerned with the proposed requirements for pre-approval on a claim-to-claim basis by a third-party verifier approved at EU level. The system envisioned will be administratively burdensome, and costly, and will risk that companies opt not to communicate about sustainable aspects of their goods and services because it is

prohibitively expensive, so-called greenhushing. Furthermore, it is crucial to ensure that the system does not hinder innovation or result in a decrease in innovative efforts.

- A claim-by-claim verification will be costly and time-consuming. There is no upper limit to the cost of verifying a claim, which means that the cost of making an environmental claim risks becoming larger than the benefit. That would undermine the purpose of the directive to accelerate the green transition by giving consumers access to the information needed to make environmentally sound purchasing choices that reflect their values and choices.
- The scope of the directive is insufficiently defined. Where will the line be drawn between commercial marketing communications and corporate communications? It is important for companies to inform shareholders and other stakeholders about news, goals, etc. related to climate action and sustainability, and new requirements, like the Corporate Sustainability Reporting Directive (CSRD), require that. Will statements in response to CSRD and other mandates have to be third-party verified under two regimes? Will aspirational climate goals need to be verified before being communicated? It is also unclear if the analysis and the proposal have taken into account the broad nature of communications that will fall under the scope. If a company, as is often the case, has a web page that informs consumers, clients and stakeholders on how they work to become more sustainable and to take action to reduce climate impacts, it would have to be verified. It makes it increasingly more difficult and costly for companies to communicate their efforts to support the green and circular transition, while making the volume of communications that need pre-approval by verifiers enormous.
- There is no upper limit to the time it will take to get a claim verified. For seasonal goods especially this becomes an issue, as the time to verify a claim can potentially be longer than the time during which product will be sold. Moreover, the time issue risks adding a large dose of uncertainty to a company's operations, as a marketing strategy is often an interrelated part of an investment decision. ICC believes it would be appropriate for the European Commission to conduct a regulatory impact assessment on the likely costs to the real economy of such ex-ante verification requirements.
- The time variable also becomes an issue when one considers the fact that a whole new ecosystem of verifiers would have to be created to meet the requirements of the proposal. This means that as the directive is implemented there will most probably be a long backlog of environmental claims awaiting verification. Again, this might lead to businesses opting not to make an environmental claim in the first place and to consumers thus being less well-informed about the environmental properties of the products that they consume.
- Furthermore, the strict measures for non-compliance, including a maximum penalty amounting to at least 4 % of the trader's annual turnover in the member state(s) concerned and a temporary exclusion from public procurement processes and access to public funding, is another factor that risks seeing businesses avoiding making environmental claims at all.
- ICC is also concerned about the fact that the proposal of pre-approval of marketing communications would most likely be in conflict with national constitutions, such as in Sweden, whose Constitution, and more specifically the Fundamental Law on the Freedom of Expression, prohibits censorship. Similarly, mandatory pre-verification by third bodies is

counterproductive and represents an instrument that has hitherto been foreign to German and European competition law and would constitute a disproportionate encroachment on the protected legal positions of the companies concerned. There is no consideration of legal barriers to implementation at national level of this sort in the proposal.

- Implementation deadlines should be assessed at the end of the legislative process contingent on the ultimate shape and complexity of any verification requirements. This should take into full account the compliance challenges that may be faced by smaller companies and the need to ensure adequate supply of, for instance, verification services.

### **Environmental Labels**

- Regarding environmental labels, ICC agrees with the importance of addressing unreliable environmental labels and ensuring a level playing field to not disadvantage labels with robust and reliable governance models. However, ICC believes that clarifications are needed regarding the requirements that will apply to the continued use of existing private labels. The need for further clarification also applies to how existing brands that for example use the word “eco” in the brand name. There are many well-established such brands that provide value to consumers and have taken great care to build consumer trust. Will the use of such brands be affected by the proposal, and if so, how can it be ensured that companies can retain them e.g., in combination with an approved environmental label? Similar questions arise regarding registered company names that include for example the word “green”. Here it would also be useful to receive further guidance on how the proposal aligns with Regulation (EU) 2018/848 on organic production and labelling of organic products. In this sense, ICC believes that organic products should not be exempted from the scope of the Green Claims Directive.

Ensuring responsible marketing practices has been a long-standing priority for the International Chamber of Commerce across the globe and ICC will continue to work with self-regulatory agencies and businesses to enforce advertising standards through adherence to both its [ICC Advertising and Marketing Communications Code](#) and the specific rules and guidelines set out in the [ICC Framework for Responsible Environmental Marketing Communications](#). In essence, ICC [supports](#) the aims of the proposed Green Claims Directive but considers the proposed approach to be misguided. ICC advocates for a constructive dialogue between our organisations to ensure the practicality and effectiveness of the directive, drawing upon ICC's extensive experience in promoting sound marketing and advertising practices.

ICC hopes the European Commission will find this contribution useful and, of course, will gladly provide further elaboration of its views if requested.