

Vattenfall EU policy position on the Green Claims Directive proposal

Policy Paper

June 2023

Vattenfall welcomes the European Commission's efforts to establish a regulatory framework on green claims¹. We fully share the Commission's view that consumers should be enabled to make well-informed and sustainable choices, and we welcome clear, transparent and harmonised EU rules on how to substantiate environmental claims. With more than 25 years of experience of conducting lifecycle analyses, we believe that the Green Claims Directive provides an excellent opportunity to provide this reassurance and transparency to consumers while allowing businesses to set bold ambitions that help further drive the transition to a sustainable and fossil-free society.

In this paper, we outline our recommendations on the European Commission's proposal. We look forward to playing an active and constructive role in the policy debate with Member States, European Parliament, the Commission and stakeholders.

Key messages

- 1. Define a scope that enables well-informed consumer decisions and drives the transition to sustainable and fossil-free societies**
 - **The Green Claims Directive must distinguish between aspirational environmental claims on the one hand, and product or service-related environmental claims on the other hand.** In the draft Directive, such claims are subject to the same requirements which carries the risk of slowing down the transition to sustainable and fossil-free societies when all efforts need to focus on accelerating this transition.
 - **The scope (Article 2) should be broadened to cover not only business-to-consumer (B2C) but also business-to-business (B2B) communication.** This approach would ensure a level playing field for all businesses operating in the EU market.
- 2. Set out clear substantiation and communication requirements for product and service related environmental claims**
 - **The substantiation (Article 3) and communication (Article 5) requirements need to be unambiguous and allow for information to be shared in a manner that provides an added value for consumers.** Extensive requirements, as proposed in the draft Directive, risk adding unclarity for consumers.
- 3. Introduce verification rules for products and services with realistic administrative burden on Member States and companies**
 - **Set clear requirements for third-party verifiers and make the verification process feasible at the level of implementation.** Verification measures must reflect the requirements imposed on companies and products.

¹ Proposal for a Directive of the European Parliament and of the Council substantiation and communication of explicit environmental claims (2023/0085)

Define a scope that enables well-informed consumer decisions and drives the transition to sustainable and fossil-free societies

In order to accelerate the transition to sustainable and fossil-free societies, it is essential that the Green Claims Directive distinguishes between aspirational and product or service-related environmental claims and that the scope is broadened to cover not only business-to-consumer (B2C) but also business-to-business (B2B) communication, thereby making the rules applicable to all businesses operating in the EU market.

Aspirational statements – which set a company's future vision and ambition and give direction to its business strategy – play an important role in defining a company's purpose. They set a clear common direction for the current workforce of any organisation and are key to attracting the right competences, skills and partners.

Against that background, companies need to be able to set the bar high with their ambitions without always knowing in advance how exactly such ambitions will be reached. We fear that the Green Claims Directive in its current draft form (particularly Articles 3-5 and 10-11) would limit companies' ability to do this and instead result in the unintended consequence that companies will not dare to set bold ambitions anymore. This in turn would mean business strategies are no longer guided by strong ambitions and ultimately this could slow down efforts to realise the transition to sustainable and fossil-free societies, at a time when all efforts need to focus on accelerating the transition. It would also diminish the push factor that incentivises peers to set equal or even higher ambitions.

A more sensible approach to regulate aspirational claims, in our opinion, is to regulate these through a separate Article that requires companies to report annually on their plans, progress and concrete actions taken to help reach their long-term ambitions and objectives. Compliance could then be monitored as part of the annual report assurance. We believe that the Dutch Authority for Consumers and Markets (ACM) guidelines on Sustainability Claims outlines sensible criteria to prevent greenwashing while still allowing bold ambitions, and these guidelines could serve as inspiration for EU-wide rules on aspirational claims.

Equally important to ensure a level playing field within the EU, the Green Claims Directive must be applicable to all businesses operating in the EU market. The currently proposed scope excludes companies that only engage in B2B relations, thereby giving such companies a competitive advantage over companies that only have B2C or, as is often the case in large energy utilities, both B2C and B2B. The approach from the Commission stands in contradiction to the desired ambition of the Directive, i.e. creating a Union-wide approach to green claims. Moreover, the line between what constitutes B2C and B2B communication is not always straightforward, which raises challenging practical questions. For example, it would be difficult from a regulatory point of view to determine if a company campaign regarding a new product or service is targeting consumers or businesses.

Set out clear substantiation and communication requirements for product and service related environmental claims

Vattenfall supports the notion that claims must be adequately substantiated and that clear information needs to be provided alongside claims to ensure consumers are able to make well-informed choices about products and services. Any requirements in this regard need to be clear and feasible with the aim of serving the purpose of the Directive and not overburden consumers with information.

In this respect, we are concerned about the lack of clarity surrounding a number of the requirements for substantiating and communicating environmental claims. To mention but a few examples, important clarifications are needed when it comes to proving what constitutes “significant” environmental impacts, aspects and performance (Article 3.1) and what Member States must do to determine this significance. Interpretations will most likely differ across the EU – but also within large organisations with several business areas – on how to define whether a product or trader performs “significantly” better than what is common practice for products in the relevant product group or traders in the relevant sector.

As to the information required alongside claims (Article 5), Vattenfall's position is that such requirements should be developed with the added value for consumers at the core, by focusing on providing information in a simple, comprehensible and clear manner allowing consumers to understand the information and make informed choices. In its draft form, we see a risk that the detailed requirements proposed by the Commission go against the stated purpose of the Directive (i.e. helping consumers) by adding further unclarity for consumers.

Verification rules for products and services with realistic administrative burden on Member States and companies

In order for the Green Claims Directive to be efficient, compliance measures will be essential and thus we welcome the intention of the proposed verification measures, with the clarification that they must only apply to product-related claims, not ambition statements. We also believe that the draft Directive must be further strengthened by introducing clearer requirements for third-party verifiers and adapting the verification process in a way that makes implementation feasible.

More specifically, we believe that the verification measures would benefit from reflecting the detailed requirements that traders and products are subject to under Art. 3-5. For example, the proposal lacks clear obligations on third-party verifiers for when a verification process must be completed after having received the necessary information from companies. This comes in addition to other challenges with the proposed verification system, such as identifying the necessary expertise to assess claims, setting up contractual arrangements ensuring that commercially sensitive information provided by traders are treated confidentially, and ensuring a harmonised methodology for assessing claims across the EU. In addition, requiring verification before launching a product could potentially delay the go-to-market time, and therefore also the energy transition.

Against that background, and also with a view to avoid over-burdening Member States and companies administratively, Vattenfall calls for an alternative verification model whereby companies are audited preferably through existing mandatory audit procedures on their compliance with the Green Claims Directive for product-related claims every year. If found to be compliant with the Directive, companies could then be labelled that they are 'certified as a responsible in commercial practices' (or similar wording) in the claims they make related to products either through a badge or other visual cue. Such a verification model focusing on product-related claims would not only help consumers separate responsible companies from irresponsible ones, but also maintain the administrative burden at a realistic level for industry players and Member States while still allowing companies to set and communicate bold ambitions for their overall objective and purpose going forward.

Vattenfall is a European energy company with approximately 19,000 employees. For more than 100 years we have electrified industries, supplied energy to people's homes and modernised our way of living through innovation and cooperation. Our goal is to make fossil-free living possible within one generation. Everything we do and the decisions we take shall lead to this goal. This is the basis of Vattenfall's strategy, and we advocate for a regulatory environment that makes this transition possible - in the energy sector and beyond in transport, industry etc