

Key messages on the proposal for a Green Claims Directive



Insurance Europe supports the European Commission's objective of addressing greenwashing and misleading claims about the environmental merits of products and services. It is, however, crucial that the final text of the Green Claims Directive is sufficiently clear and granular, notably to prevent inconsistent implementation by member states. Moreover, it should be consistent with and complementary to other EU legislation and avoid placing unnecessary administrative burdens on the private sector.

The insurance industry's main concerns are related to:

- potential inconsistencies in implementation;
- the need for further legal clarity/precision; and,
- the need for further consistency with other pieces of legislation.

This paper pinpoints the specific sections of the proposal that should be reconsidered in order to attain the right balance and preserve legal certainty, ultimately leading to advantages for European consumers.

1 Potential inconsistencies in implementation

Insurance Europe supports the obligation to substantiate green claims with relevant scientific evidence. However, as it is currently drafted, the proposal leaves far too much to be implemented by member states. This would inevitably lead to significant implementation differences among member states, creating inconsistencies, a significant risk of distortion of competition and uncertainty for consumers and businesses alike.

For instance, some terms that can be found in Article 3(1), such as "significantly", "substantially", "performs better" or "significant harm" are not clearly defined in the text, while there is a lack of specific requirements for the presentation of the communication of explicit environmental claims. Moreover, clarification is needed over which member-state legislation is to be followed when a product or service is produced, marketed and sold in different countries. Indeed, the requirements for documentation and communication of documentation are likely to differ between member states with the current drafting of the proposal. This is particularly relevant for insurance products that can be distributed via the internet.

While delegated acts could help mitigate inconsistencies, their implementation requires considerable industry resources. Therefore, to avoid over-burdening companies, the requirements in the proposal should be made more specific to begin with, so that delegated acts only need to be used sparingly.

Recommendations

- Drawing inspiration from the Taxonomy Regulation, the Corporate Sustainability Reporting Directive and the Sustainable Finance Disclosures Regulation (SFDR), increase the overall level of granularity/precision of the Green Claims Directive to make it more concrete and therefore easier to comply with, as well as to ensure a more uniform implementation by member states.
- Ensure that the Directive sets up uniform, clearly defined criteria of terms such as “significantly”, “substantially”, “performs better” or “significant harm”, which can be found in Article 3(1). For instance, the latter can be made clearer by referring to the idea of “do no significant harm” in the Taxonomy Regulation, which has been defined in more concrete terms.
- Set up precise requirements for the presentation of the communication of explicit environmental claims, similar to the rules established by the SFDR on how financial operators must present their documentation relating to the sustainability of their insurance products. This will also ensure that producers do not overload consumers with information, thus supporting the Directive’s objective of providing more clarity and transparency to consumers.

2 Need for further legal clarity/precision

It is essential that the final text of the Green Claims Directive is clear, unambiguous and does not leave room for uncertainty. The lack of legal clarity could lead to confusion and misunderstandings, impeding the effective and consistent implementation of the law.

In connection with this, Insurance Europe has identified several points in the text that require further clarification or precision. These points concern the exclusion of the financial sector from the scope of the legal act (Article 1), the selection of third-party institutions responsible for carrying out verifications (Article 11), and the complaining groups (Article 16(2)) and the exemption of green loans (recital 12). Furthermore, it remains unclear how measures taken by member states on infringements, such as temporary exclusions or prohibitions from placing products or making services available in the EU market (recital 64), could trigger mandatory recalls that could significantly impact the insurance industry.

Recommendations

- Include the SFDR in the list of regulations excluded from the scope of the proposed Directive mentioned in Article 1(2).
- Given the broad spectrum of auditing responsibilities concerning sustainability information, allow auditors to apply for the role of “verifier” (Article 11).
- Further clarify the complaining groups mentioned in Article 16(2).
- Revise recital 64 to explicitly outline how infringement measures, such as temporary exclusions or prohibitions, can trigger mandatory recalls of products or services in the EU market.
- Ensure that the Articles of the proposal reflect the exemption of green loans as mentioned in recital 12 of the proposal.

3 Need for greater consistency with other pieces of legislation

Consistency with other upcoming EU legislation is key to ensuring that the legislative framework adequately addresses greenwashing. However, the insurance industry is concerned that the parallel development of different legal acts with a very similar aim will lead to uncertainties and possibly contradictions in their future application. This concern is particularly pertinent in relation to the proposed Directives on Green Claims and Green Transition, as well as to the current evaluation by DG FISMA of whether further sectoral regulation is required for financial undertakings.

In addition, consistency with existing EU legislation is also essential, to avoid confusion, which would defeat the purpose of the proposed legislative act. Specifically, it is important that common concepts are understood and interpreted in the same way, which necessitates the

Green Claims Directive including existing definitions established in current EU legislation on sustainability. Moreover, it is essential that the Green Claims Directive and the Unfair Commercial Practices Directive (UCPD) use the same criteria to define greenwashing. This is particularly important when it comes to the protection that the certificate may bring against allegations that the relevant green claims are in breach of the provisions of the UCPD.

The Directive should also follow a logic that is consistent with existing legislation and be based on relevant and reliable information without imposing an additional and unreasonable burden on businesses. However, this is not the case when it comes to Article 3(1)(j), which requires that the sustainability assessment must include “relevant secondary information”, going considerably further than other existing legislation that imposes obligations on companies in relation to their value chain.

Recommendations

- Incorporate existing definitions included in current EU legislation on sustainability in the Green Claims Directive.
- Remove point (j) from Article 3(1), which provides that the sustainability assessment must include “relevant secondary information”.
- The Green Claims Directive should clearly establish that verified green claims cannot at the same time constitute greenwashing under the UCPD.

4 Other

When it comes to complaint-handling and access to justice (Article 16), the proposed Directive would enable persons or organisations to file complaints and eventually take legal action against supervisory authorities over their supervisory activities.

Insurance Europe is of the view that this provision would render the work of supervisory authorities subject to direct influence by interest groups, which would undermine their independence and neutrality in exercising their functions. It also views this provision as redundant, since the relevant groups and organisations are already equipped with the necessary means to act against misleading or false claims under the UCPD.

Recommendation

- Modify Article 16 to prevent individuals or organisations from lodging complaints and initiating legal proceedings against supervisory authorities over their supervisory activities.