

## NO CLAIMS WITHOUT PROOF

Opinion of the Federation of German Consumer Organisations on the proposal for a directive of the European Parliament and the Council on substantiation and communication of explicit environmental claims (Green Claims Directive)

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### Legal information

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# I. SUMMARY

The unregulated use of environmental advertising claims, so-called green claims, poses problems for consumers: they cannot rely on environmental claims and labels to reliably certify environmentally friendly production. Green claims without substantiation - meaning claims without scientific foundation of the accuracy of the claims - thus prevent a change to sustainable consumption patterns. The Federation of German Consumer Organizations (Verbraucherzentrale Bundesverband - vzbv) therefore welcomes the fact that the European Commission has now submitted a proposal for a Green Claims Directive (GCD) to better regulate environmental claims and ensure their substantiation.

## **vzbv welcomes that**

- traders will have to substantiate explicit environmental claims based on minimum criteria.
- the directive includes criteria on the communication of green claims.
- the verification of the substantiation through independent third parties will be mandatory.
- verifiers need to be accredited.
- remedy through class actions (Directive (EU) 2020/1828) will be possible.

Nevertheless, vzbv sees a need for improvement at key points in the proposed directive. **vzbv recommends that**

- the directive applies to all sectors not covered by stricter rules for green advertisement at EU-level and especially covers the financial sector.
- the directive applies to all company sizes.
- the substantiation of green claims must necessarily rely on product-specific primary information.
- all relevant environmental impacts of the advertised product or retailer must be included in the substantiation.
- existing environmental labels also fall under the scope of the directive.
- advertising with “climate neutrality” or the use of claims with a similar meaning or scope is prohibited.
- claims related to future environmental performance of a product or trader are forbidden.
- individual legal remedy is also available to consumers.

## II. SETTING THE SCENE: GREENWASHING AND SUSTAINABILITY

“Recyclable packaging”, “bee-friendly production”, “climate-neutral production” or “from responsible sources” - there is an enormous number of environmental claims on consumer products. These “green claims” are applied both in the form of clearly recognisable advertising claims and, increasingly, in the form of labels that give the impression of an objective certification of the advertised environmental performance. Consumers cannot assess the trustworthiness of these claims: Is a company communicating its actual commitment to a more sustainable and environmentally friendly production method? Or does it only take advantage of the fact that advertising claims relating to sustainability have so far hardly been regulated and - unlike, for example, health-related advertising claims - can be used without proof of the truthfulness of the claim?

This situation poses a problem for consumers: If they want to consume sustainably, they depend on the information provided by manufacturers. However, this information cannot serve as a guideline if it is unclear how reliable it is. A current study commissioned by the Federation of German Consumer Organizations (vzbv) has shown that consumers often misjudge the reliability of advertising claims and labels on food. They rate products with unsubstantiated claims or claims that only relate to the packaging as just as environmentally friendly or even more environmentally friendly than, for example, products with the state certified German eco label. In the study, even completely unregulated claims such as “fair to nature”, “from sustainable cultivation”, “promotes biodiversity” or “bee-friendly”, which can currently be used without proof of the advertised excellent environmental performance, led consumers to perceive products as significantly more environmentally friendly than those without claims. The results of the study can also be transferred to other product groups.<sup>1</sup>

vzbv therefore very much welcomes the fact that the European Commission presented a framework that aims at the prevention of greenwashing through advertisement with environmental claims. The Green Claims Directive (GCD) complements the revision of the Unfair Commercial Practices Directive (UCPD) through the initiative on Empowering Consumers for the Green Transition (EmpCo) that will ban unsubstantiated generic environmental claims and only allows the use of substantiated explicit environmental claims. GCD sets rules for the substantiation and communication of these explicit claims. vzbv also welcomes that the directive sets specifications as to how the substantiation of such claims must be verified. Such regulation can not only prevent consumers from being misled, but also help to strengthen sustainable consumption patterns by enabling consumers to make informed purchasing decisions. It thus makes an important contribution to the sustainable transition of consumption and production patterns.

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<sup>1</sup> cf. Zühlsdorf, Anke; Kühl, Sarah; Rada, Denise; Spiller, Achim: Grüne Marketingclaims auf Lebensmitteln – Verbraucherstudie zum Verständnis von umwelt- und klimabezogenen Werbeaussagen, 2023: [https://www.vzbv.de/sites/default/files/2023-02/23-02\\_24\\_Gruene-Marketingclaims-auf-Lebensmitteln.pdf](https://www.vzbv.de/sites/default/files/2023-02/23-02_24_Gruene-Marketingclaims-auf-Lebensmitteln.pdf) (retrieved on 01.03.2023).

## III. IN DETAIL

### 1. BROAD SCOPE AND APPLICATION

vzbv welcomes the fact that the European Commission has presented a proposal for a framework for substantiating environmental advertising on the European internal market. The aim of the directive should be to create a reliable and future-proof framework for the use of environmental claims. Such regulation prevents fragmentation of the market and thus protects consumers more effectively from greenwashing.

In order to effectively protect consumers against greenwashing, the requirements of the directive should apply to all product groups and sectors not covered by stricter regulation for the substantiation, verification and communication of green claims. The current proposal explicitly excludes certain sectors and product groups. While this is understandable for claims based on certifications schemes with high integrity such as the EU-Eco-Label, it remains unclear whether the directive will cover sustainability information on financial services. Recital 10 seems to explicitly exclude all “sustainability information involving messages or representations that may be either mandatory or voluntary pursuant to the Union or national rules for financial services”, while Article 1 does not repeat this general exclusion of the financial sector as it only mentions Regulation (EU) 2020/852 but not Regulation (EU) 2019/2088. The existing rules for advertisement and pre-contractual information on the sustainability of financial services do not prevent Greenwashing to the same extent as the GCD as they neither foresee a pre-approval of green claims, nor a comparable set of sanctions in case of inaccurate claims. The requirements set out in the GCD should be apply to financial services in addition to the sustainable finance framework.

vzbv therefore opposes a general exclusion of sustainability information for financial services and other sectors from the scope of the directive. In order to effectively function as a “safety net for all sectors where environmental claims or labels are unregulated at EU level”, as intended by the Commission in the explanatory memorandum for the GCD, the directive should not explicitly exclude certain sectors and product groups. It should rather apply for every green claim on the market not covered by other existing or future Union rules for substantiation, verification and communication. Additionally, the sanctions for non-compliance with the rules for substantiation, verification and communication set out in the GCD should also apply whenever other rules do not foresee corresponding sanctions. Other rules for the substantiation, verification and communication as well as sanctions should only apply in case of conflict between these rules and the GCD.

If certain sectors are excluded from the obligation to substantiate green claims, this not only leads to a disadvantage for those sectors covered by the directive, but can also unsettle consumers: They still cannot be sure that claims can actually be substantiated and are not used in a misleading fashion. Only sectors and product groups covered by stricter rules for the substantiation and communication of environmental claims and EU level should be exempt from applying the rules set out by the GCD. vzbv therefore opposes a general exclusion of the financial sector from the scope of the directive.

Since consumers cannot tell from the product how big the company is that makes an environmental advertising claim, the directive should apply to all advertisers, regardless of the size of their company. vzbv is therefore critical of the exceptions created micro-

enterprises (fewer than ten employees and less than two million euros in sales) in Articles 3, 4 and 5. In principle, consumers should be able to rely on the fact that all environmental claims must meet the same high level of credibility. Since the directive only covers voluntary claims, companies that cannot or do not want to substantiate their claims, can simply abstain from using them. Additionally, Article 8 already foresees proportionate conditions for joining environmental labelling schemes in order not to exclude small and medium enterprises. The directive should foresee a similar proportionality for the verification of substantiation in order not to exclude microenterprises. This proportionality can for example be achieved by tying the prices for verification to the size and turnover of the companies.

### **VZBV RECOMMENDS**

The directive should form a general framework for environmental advertising claims on the EU internal market and all company sizes and all sectors and product groups not covered by stricter regulation in regard to substantiation, verification and communication of environmental claims. The sanctions foreseen by the GCD should also apply for all green claims.

## **2. CLEAR AND DEMANDING CRITERIA FOR SUBSTANTIATION**

vzbv welcomes the fact that the directive establishes an obligation for traders to carry out an assessment to substantiate ('substantiation') voluntary environmental claims. This establishes a mechanism for the ex-ante control of environmental claims that vzbv has been demanding for a long time. The fact that the Commission does not prescribe one specific method for substantiation as a standalone instrument ensures, that verifiers consider sector-specific particularities when substantiating green claims. This allows the directive to serve as a general framework for green claims across all sectors. However, in the current draft, it lies completely within the discretion of the trader to choose a method for substantiation which might lead to traders always choosing the method with the lowest level of ambition. Therefore, vzbv strongly advises to establish an independent oversight of the methods accredited for the substantiation of green claims. Additionally, the Commission should keep a public register of accredited methods to substantiate green claims.

Clear and demanding criteria for substantiation are all the more relevant as the directive does not prescribe specific methods. In the current draft, it remains unclear to what extent traders should include primary information in their substantiation and when recourse to secondary information is sufficient. Primary information is especially important for comparative claims that imply that a product or trader performs better than comparable products or other traders. For example, if a trader advertises a chocolate bar as having a "minimum carbon footprint" as compared to the chocolate produced by other traders, secondary lifecycle data on chocolate in general is not enough to substantiate the claim. Only primary information collected by the trader can prove that a certain chocolate bar has a smaller footprint than another chocolate bar. Therefore, in certain cases, the use of primary information should be mandatory for the substantiation of claims. This should especially be the case, when traders advertise product specific impacts, aspects or performances that distinguish a product from competing products in the same product group. The use of product specific primary information should be mandatory, when secondary information derived from studies is not sufficient to substantiate an excellent environmental performance.

Additionally, the definition of “primary information” should be revised: information, that is “measured or collected (...) from one or more facilities that are representative for the activities of the trader” (cf. Article 2 (14)) are not sufficient for the substantiation of product specific claims, if a trader has different product lines with different environmental impacts, aspects or performances. Individual products from the same manufacturer can have very different environmental impacts: Food producers who offer meat products as well as vegetarian or vegan meat substitutes, for example, have a wide range of environmental impacts in their product selection. If primary information only has to be “representative for the activities of the trader”, the substantiation cannot take into account the differences in the environmental impacts, aspects or performances of individual products of the same trader.

Therefore, the directive should make sure, that the use of primary information is mandatory for the substantiation of certain claims. Additionally, the supplement, that only primary information “available to the trader” (cf. Article 3(1) i) should be included, might make it easy for traders to claim that primary information was simply not available and could therefore not be used. Instead of creating loopholes, the directive should prohibit the use of a claim if primary information that is necessary to substantiate a claim is not available.

In addition, the directive should define how to assess the significance of environmental impacts, aspects or performances. Articles 3(1) c and d as well as 4(1) c and d refer to the significant environmental impacts, aspects or performances: Only impacts, aspects or performances that are “significant” from a life cycle perspective or to assessing the environmental performance need to be included in the substantiation or are allowed to be subject to claims. However, the directive does not specify how this significance is to be determined.

The directive should not allow a claim whenever its substantiation according to the requirements set out in Article 3(1) is not possible due to a lack of data, a lack of a method or any other reason. This especially concerns limitations of the duty to assess environmental claims as formulated in Article 3(2).

### **VZBV RECOMMENDS**

The directive should foresee an independent oversight of the methods accredited for the substantiation of green claims and a public register of accredited methods. The substantiation of environmental claims at product level should necessarily include product-specific primary information. In addition, clear regulations are necessary for determining significant environmental impacts.

### **3. PREVENT MISLEADING COMMUNICATION OF GREEN CLAIMS**

The misleading use of factually correct claims is, in addition to the use of false or unsubstantiated claims, a second major problem in the area of greenwashing. The directive must therefore also ensure that the communication of substantiated claims is not misleading consumers. For example, in the study commissioned by vzbv, consumers rated a yoghurt glass with the claim “glass instead of plastic” as more environmentally friendly than the same yoghurt glass without this claim, but with an eco-label. As the yoghurt was in a glass, “glass instead of plastic” is a factually correct claim, but only describes what is obvious. The eco label on the other hand actually provides relevant additional information on the environmental impact of the yoghurt - nevertheless, consumers perceive the product with the claim more positively. This example shows that it

is not only necessary to make sure, that claims are factually correct, but also to ensure that they are used and communicated in a non-misleading fashion.

Article 3(1)g states, that trade-offs need to be part of the substantiation, but the directive does not draw any conclusion for the handling of trade-offs. It is not enough to inform consumers of a possible trade-off: as the study commissioned by vzbv showed, additional information about the environmental impacts, aspects or performances of a product or trader does not increase consumers understanding of claims. They rather tend to give the impression of a particularly trustworthy claim – even if the additional information would relativize the environmental impact or performance if understood correctly.<sup>2</sup> In the study, consumers perceived a chocolate bar that was advertised as “climate friendly” together with a carbon footprint that proved the opposite as more climate friendly than the same chocolate bar without claim. Additionally, the assessment whether an improvement in an environmental impact, aspect or performance leads to significant harm in other areas should not be limited to the areas listed in Article 3(1) g, but refer to all areas including the same aspect or impact in another stage of the life-cycle of the product.

Article 5 should specify that positive environmental impacts, aspects or performances may not be advertised if they lead to an increase in negative effects in other areas (trade-offs). For example, when fish from aquaculture is labelled as environmentally friendly because it prevents overfishing of the seas and it is ignored that mangrove forests are often destroyed for aquaculture and the fish is therefore environmentally harmful in a different way. In order to ensure that consumers are not misled by the communication of substantiated claims, improvements should be made to the directive.

Additionally, the directive should only permit such environmental claims that clearly refer to the entire product and its entire life cycle and not just to a partial aspect, such as the packaging. Otherwise, a single highlighted aspect - for example recyclable packaging - radiates like a halo over the entire product and makes it appear more environmentally friendly to consumers – the so-called halo-effect. As the study commissioned by vzbv has shown, advertising positive environmental aspects generally leads to a more positive consumer perception of the entire product.<sup>3</sup>

The directive should generally exclude products that contain hazardous substances from advertisement with environmental claims. If a product or its packaging contains a substance identified as a “Substance of Very High Concern” (SVHC) under the REACH Regulation (EC) No 1907/2006, the use of environmental claims in relation to the product should generally be prohibited. A substance identified as an SVHC can have very serious and often irreversible effects on human health, embryonic development and the environment. For example, recycled plastic can contain higher levels of hazardous substances than virgin plastic. While it might be desirable to include more recycled plastic in packing, using recycled plastic in food contact materials (FCMs) might harm human health if it contains an SVHC that might migrate from the FCMs to the food. Advertising

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<sup>2</sup> Zühlsdorf, Anke; Kühl, Sarah; Rada, Denise; Spiller, Achim: Grüne Marketingclaims auf Lebensmitteln – Verbraucherstudie zum Verständnis von umwelt- und klimabezogenen Werbeaussagen, 2023: <https://www.vzbv.de/pressemitteilungen/greenwashing-nachhaltigkeitswerbung-schadet-mehr-als-sie-nutzt> (retrieved on 15.03.2023).

<sup>3</sup> Zühlsdorf, Anke; Kühl, Sarah; Rada, Denise; Spiller, Achim: Grüne Marketingclaims auf Lebensmitteln – Verbraucherstudie zum Verständnis von umwelt- und klimabezogenen Werbeaussagen, 2023: <https://www.vzbv.de/pressemitteilungen/greenwashing-nachhaltigkeitswerbung-schadet-mehr-als-sie-nutzt> (retrieved on 15.03.2023).



a positive environmental impact, aspect or performance of a product containing hazardous substances identified under the REACH Regulation must therefore always be viewed as consumer deception. This should be included in Article 5 of the directive.

#### **VZBV RECOMMENDS**

Positive environmental impacts, aspects or performances that result in negative impacts elsewhere (trade-offs) should not be allowed to be communicated. The directive should only allow environmental claims on product-level if they refer to the entire product. It should exclude products that contain dangerous or harmful substances from advertising with positive environmental impacts, aspects or performances.

#### **4. TRANSPARENT SUBSTANTIATION OF ENVIRONMENTAL CLAIMS**

The aim of providing further information on the substantiation of claims (for example online) should not be to increase consumers understanding of a claim, but only to facilitate legal enforcement. In order to enable effective law enforcement, traders should make all studies and calculations that are necessary to support a claim publicly available. Article 5(6) c should therefore not provide for exceptions for information classified as trade secrets. Rather, the directive should prohibit a claim if a trader cannot make publicly available all the information necessary for the substantiation.

The directive requires traders that advertise with environmental claims to provide consumers with information on the use of a product when the use phase is among the most relevant life-cycle stages of that product (cf. Article 5(3)). This requirement creates the absurd situation that consumers are responsible for making true a claim made by a trader. Instead of requiring traders to provide information on the correct use, the directive should determine that products, for which the use phase is among the most relevant life-cycle stages, can only be advertised with environmental claims, if the advertised environmental performance can be reached through normal use of the product.

#### **VZBV RECOMMENDS**

All information necessary to substantiate a claim must be made publicly available and should not be kept under lock and key with reference to business secrets. Consumers should not be made responsible for the environmental performance of a product.

#### **5. TRUE ORIENTATION THROUGH ENVIRONMENTAL LABELS**

vzbv welcomes the fact that the directive contains additional requirements for eco-labels and their respective labelling schemes regarding governance, scientific robustness and transparency. Labels provide environmental claims with additional credibility, as they give consumers the impression of an independent examination of the advertised aspects. For this reason, traders often present advertising claims in the form of labels based on certification by the traders themselves. This self-certification is in fact nothing more than advertising. Stricter regulation is justified due to the high level of trust consumers place in labels.

However, the directive should not only apply to newly created labels. Rather, all labelling schemes available on the European internal market should be obliged to prove compliance with the requirements of the directive until the end of a transitional phase. Further use of the label should be prohibited if compliance cannot be proven. The requirements for environmental labelling schemes established by private operators (Article 8(5)) should be clarified in this regard.

It is positive that the directive prohibits the establishment of any new national or regional labelling schemes by public authorities of the Member States, while existing schemes like the German Blue Angel or the Scandinavian Nordic Swan may continue to award labels. Additionally, it is positive that new private labels should only be approved if the providers can demonstrate an additional benefit compared to existing labels. This specification helps clearing of the label jungle which makes the search for sustainable products all the more difficult for consumers.

### VZBV RECOMMENDS

In order to ensure that environmental labels offer true orientation for sustainable consumption in the future, the directive should cover all labels available on the market.

## 6. PREVENT ADVERTISEMENT WITH “CLIMATE NEUTRALITY”

The proposal for a directive foresees the possibility to regulate the advertisement with climate neutrality or climate positivity in a delegated legal act (Article 3(4); Recital 31). Due to the particularly high misleading potential of these claims, the directive urgently needs improvement in this regard. Advertising with climate neutrality plays with consumers' ignorance about the connection between “climate neutrality” and offsetting and its dubious effectiveness. Climate neutrality claims create the impression of having reached a state that individual products or companies cannot at all achieve: production without climate-damaging emissions. Studies show repeatedly that consumers are not aware of the actual meaning of such claims and they rate products advertised in this way as fundamentally more climate-friendly.<sup>4 5 6</sup>

The directive takes a step in the right direction by considering the emission of greenhouse gases and the use of offsetting as separate information in the substantiation of climate related claims (Article 3(1) h). However, the directive should not allow substantiating claims of “climate neutrality” based on carbon offsetting. As the study commissioned by vzbv showed, consumers perceive products advertised as climate neutral as fundamentally more climate friendly. Additionally, they do not understand the concept of offsetting but perceive the claim “climate neutral” as equivalent to “emission free”. In order to protect consumers against misleading green claims, it should not be possible to substantiate climate neutrality claims based on offsetting schemes within the framework of the Green Claims Directive.

### VZBV RECOMMENDS

The directive should explicitly address and prohibit advertising with climate neutrality. It should not allow offsetting schemes as part of any substantiation of environmental claims.

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<sup>4</sup> Verbraucherzentrale Nordrhein-Westfalen, Klimaneutrale Produkte: 89 Prozent für klare Regeln und geprüftes Siegel, 2022: <https://www.verbraucherzentrale.nrw/pressemeldungen/presse-nrw/klimaneutrale-produkte-89-prozent-fuer-klare-regeln-und-geprueftes-siegel-77472> (retrieved on 17.03.2023).

<sup>5</sup> Zühlsdorf, Anke; Kühl, Sarah; Rada, Denise; Spiller, Achim: Grüne Marketingclaims auf Lebensmitteln – Verbraucherstudie zum Verständnis von umwelt- und klimabezogenen Werbeaussagen, 2023: <https://www.vzbv.de/pressemitteilungen/greenwashing-nachhaltigkeitswerbung-schadet-mehr-als-sie-nutzt> (retrieved on 15.03.2023).

<sup>6</sup> Morning Consult, Most U.S. Consumers Don't Know What 'Carbon Neutral' Means, 2022: <https://morningconsult.com/2022/08/02/carbon-neutral-consumer-awareness/> (retrieved on 17.03.2023).

## 7. COMPARATIVE CLAIMS

Environmental claims often compare the environmental impacts, aspects or performances of products or traders to competing products or traders. vzbv welcomes, that Article 4 of the directive foresees special rules for this type of claims.

However, the definition of “comparative environmental claims” should cover all claims that relate the environmental impacts, aspects or performances of a product or trader to those of different products or traders. In the current draft, the directive covers only claims that refer to “less environmental impacts” and a “better environmental performance”. As “environmental impact” is defined as “any change to the environment, whether positive or negative”, a claim stating that a product has more (positive) impact, would not be covered by Article 4. This is for example the case if a product is advertised as “promoting biodiversity”.

Additionally, the requirements set in Article 4 should also cover the comparison with the advertised products or traders past performance. Currently, the directive only covers comparisons to products by different manufactures or other products from the same trader. The same rules should apply for a claim on the improvement of the environmental impacts, aspects or performances of a product or a trader as for other comparative claims. Otherwise, the directive leaves a loophole that might enable greenwashing.

In addition, comparative claims should only be allowed in relation to environmental impacts, aspects or performances that do not lead to an increase in negative effects in other areas that are not subject of the claim.

### VZBV RECOMMENDS

Claims on the improvement of the environmental impacts, aspects or performances should fulfil the same standards as other comparative claims.

## 8. CLAIMS RELATED TO FUTURE ENVIRONMENTAL PERFORMANCE

The increasing criticism of the use of environmental claims, especially with regard to climate neutrality, has already led to a change in advertising with environmental performance of products and traders. Instead of advertising current environmental performance, a growing number of enterprises have shifted to advertising voluntary commitments, for example to reduce greenhouse gases or achieve climate neutrality in the future. While these commitments themselves are positive if they are backed by actual improvements of the environmental impacts, aspects or performances, they should not be used for promotional purposes.

Since the advertised future environmental impact, aspect or performance has not yet been achieved, it is also impossible to substantiate it in the moment when the claim is made. Whether the goal was actually achieved can only be checked afterwards. Depending on the timeframe, several decades can pass between advertising and target date. The requirements of the directive do not reflect this enormous potential for greenwashing: the directive only mentions claims relating to future environmental performance in Article 5(4) and should be amended accordingly. The advertising with future environmental impacts, aspects or performances whose achievement cannot be verified at the time of advertising should be prohibited.

### VZBV RECOMMENDS

The directive should prohibit advertising future environmental impacts, aspects or performances.

## 9. VERIFICATION AND VERIFIERS

vzbv welcomes the fact that the substantiation of environmental advertising claims and labels must be verified by accredited third party verifiers that fulfil legally defined requirements. Verification through third-party verifiers ensures an efficient and independent substantiation of environmental claims that is largely in line with vzbv's demands for a reliable certification of sustainability labels.<sup>7</sup> Additionally, the accreditation of verifiers in accordance with Regulation (EC) No 765/2008 ensures state oversight over the verification of environment related claims.

Two legal opinions commissioned by vzbv in 2021 underlined the potential for improving the certification of sustainability through accredited verifiers that meet certain legal minimum requirements.<sup>8</sup> The requirements listed in Article 11(3) are largely in line with the minimum requirements proposed by vzbv. In addition to the existing requirements, the directive should foresee an internal quality assurance within the certification company and funding requirements to ensure the independence of the verifier.

Additionally, the directive should foresee a possibility to penalise verifiers if the compliance monitoring as foreseen by Article 15 detects that a claim used on the market was incorrectly verified.

### VZBV RECOMMENDS

The directive should also foresee penalties for verifiers that incorrectly verified a claim.

## 10. ENSURE EFFECTIVE ENFORCEMENT

vzbv welcomes that the entire Green Claims Directive is to be incorporated into Annex I to Directive 2020/1828 in accordance with Article 24. This rule is important in order to give independent consumer bodies the possibility to enforce consumer interests regarding infringements of the GCD.

However, the enforcement regime is unclear with regard to the reference to the Unfair Commercial Practice Directive (UCPD) in Article 13(2) GCD. According to this, Member States have the possibility to derogate the detailed enforcement regime in Articles 14 to 17 by applying the enforcement rules of the UCPD. This approach could severely weaken the enforcement. Articles 14 to 17 GCD contain detailed powers that general rules in the UCPD should not replace. At the same time, the UCPD contains an individual consumer remedy in Article 11a which must be available in any event and in any case additionally to Articles 14 to 17 GCD. The individual remedy for consumers is important, so that consumers, who suffer disadvantages because of breaches of the GCD, can also receive appropriate compensation.

It is therefore rather the case that the provisions in Articles 14 to 17 of the Green Claims Directive and Articles 11 to 13 UCPD can usefully complement each other. Both regulatory regimes should function in a complementary manner. This applies in particular to the individual remedy for consumers under Article 11a UCPD which must also ap-

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<sup>7</sup> cf.: Verbraucherzentrale Bundesverband, Freiwillige Standards und Zertifizierungen brauchen einen Rechtsrahmen, 2022: [https://www.vzbv.de/sites/default/files/2022-08/2022-05-24\\_Positionspapier\\_Standardssysteme%20und%20Zertifizierung%20brauchen%20Rechtsrahmen\\_final.pdf](https://www.vzbv.de/sites/default/files/2022-08/2022-05-24_Positionspapier_Standardssysteme%20und%20Zertifizierung%20brauchen%20Rechtsrahmen_final.pdf) (retrieved on 04.05.2023).

<sup>8</sup> Verbraucherzentrale Bundesverband, Nachhaltigkeit verlässlich zertifizieren, 2021: <https://www.vzbv.de/publikationen/nachhaltigkeit-verlaesslich-zertifizieren> (retrieved on 04.05.2023).

ply to the GCD under all circumstances - not least, because a remedial action under Article 9 of the Representative Action Directive 2020/1828 always requires a substantive legal basis for a claim.

To make this individual consumer remedy effective, additionally it should be clear that violations of the GDC are considered unfair under the UCPD. In the interest of a simple, effective and legally secure enforcement of legal remedies, it should be added in Annex I of the UCPD that a violation of the Green Claims Regulation is considered unfair under all circumstances.

### **VZBV RECOMMENDS**

vzbv welcomes the inclusion of the Green Claims Directive within the scope of the Representative Actions Directive. In addition, however, the directive should ensure that consumers have individual legal remedies available by adding in Annex I of the Unfair Commercial Practice Directive (UCPD) that violating the GCD is considered unfair under all circumstances. Without prejudice to the UCPD and necessary individual remedies for consumers, the more specific enforcement powers of Article 14 to 17 should be applicable in any event.