

Stanowisko Konfederacji Lewiatan do trilogów Green Claims Directive

I. “Simplified procedure” for eligible claims

We suggested amending Article 3a(3) and Article 3a(4) of the trialogue proposal as well as Article 5(5b) second subparagraph, point (a) and point (b).

Commission Proposal	EP Mandate	Council Mandate	Triilogue proposal	Polish Confederation Lewiatan recommendation
Article 3a(3)	Article 3a(3)	Article 3a(3) 3. In derogation from Articles 3 and 10, a trader generating an explicit environmental claim that falls within the scope of claims defined by [...] implementing acts adopted pursuant to the second subparagraph shall comply with the substantiation requirements laid down in these implementing acts [...] and [...] demonstrate compliance via the Specific Technical Documentation pursuant to paragraph 4. This derogation shall not apply to comparative explicit environmental claims, explicit environmental claims related to climate [...] or explicit environmental claims about future environmental performance. The Commission shall adopt implementing acts defining the types of explicit environmental claims that given their nature typically do not	Article 3a(3) 3. Traders generating an explicit environmental claim that • is related to a single environmental characteristic, • does not require substantiation by means of a full life-cycle assessment, and • does not concern an environmental characteristic that leads to significant trade-offs between different environmental impact categories or animal welfare, shall comply with the substantiation requirements laid down in Article 3, except for Article 3.1 (c), (d) and (g), unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10. The trader shall demonstrate compliance with the applicable	Article 3a(3) 3. Traders generating an explicit environmental claim that: • is related to a single environmental characteristic aspect, as defined in Article 2(1)(18), or • does not require substantiation by means of a full life-cycle assessment and, • does not concern an environmental characteristic that leads to significant trade-offs between different environmental impact categories or animal welfare • whose substantiation is based on and conform to methodologies set in ISO or OECD standards, or

		require a complete assessment pursuant to Article 3 and a verification pursuant to Article 10 to achieve the objectives of this Directive and where such claims fulfil all of the following criteria: 1. No full life-cycle [...] assessment [...] is deemed necessary to substantiate the claim; 2. The claim is related to a single environmental characteristic; 3. The claim does not concern an environmental characteristic that leads to significant trade-offs between different environmental impact categories. The implementing acts referred to in the second subparagraph shall for each type of explicit environmental claim	substantiation requirements of Article 3 via a self-declaration pursuant to paragraph 4. This derogation shall not apply to comparative explicit environmental claims, explicit environmental claims related to climate or explicit environmental claims about future environmental performance. [Option 1: Listing the types of claims in the main Directive Explicit environmental claims for which traders can make use of the derogation described in the first subparagraph are claims related to reusability, reduced energy consumption, reduced water consumption, reduced use of other resources, waste prevention, or circular business models. Additionally, to option 1, should the co-legislators want to include more types of claims that could make use of this derogation, this additional paragraph can be considered. Additional paragraph: Where appropriate, the Commission is empowered to adopt [delegated] acts to designate other types of claims for which traders can make use of the derogation described in the first subparagraph, including claims related to product's compostability, biodegradability, use of recycled content, use of bio-based materials. The [delegated] acts shall, if necessary, set specific substantiation requirements for traders to allow the use of the derogation described in the	methodologies that have been officially recognised by the European Commission, and which are included in a public database. shall comply with the substantiation requirements laid down in Article 3, except for Article 3.1 (c) and (d) and (g), unless they request the verification with the aim of receiving the certificate of conformity in accordance with Article 10. The trader shall demonstrate compliance with the applicable substantiation requirements of Article 3 via a self-declaration pursuant to paragraph 4. This derogation shall not apply to comparative explicit environmental claims, explicit environmental claims related to climate or explicit environmental claims about future environmental performance. By ... [12 months after the date of entry into force of this Directive], the European Commission shall develop, in consultation with stakeholders, a public database of the recognized standards and methodologies. This database shall regularly be reviewed and updated taking into account technological progress and market trends. {Option 1: Listing the types of claims in the main Directive Explicit environmental claims for which traders can make use of the derogation
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		[...] lay down the required substantiation assessment that should be complied with by the trader generating the explicit environmental claim when applying the derogation referred to in the first subparagraph [...]. Such substantiation requirements shall be less burdensome for the trader than those under Article 3. By ... <i>[18 months after the date of entry into force of this Directive]</i>, the Commission shall adopt an implementing act as set out in the second and third subparagraph specifying certain type(s) of explicit environmental claim(s) that can make use of the derogation described in the first subparagraph, prioritising [...] the explicit environmental claims based on relevance, simplicity, and frequency of use [...]. [...]	first subparagraph with the aim of reducing the risk of misleading consumers. These specific substantiation requirements may include, where relevant, the use of methods, harmonised standards or parts thereof or other common specifications;] [Option 2: Types of claims not listed in the main Directive. Empowerment for COM to define types of claims in a secondary act. These claims would also benefit from the exemption of Article 3. 1 (c), (d), (g). The Commission is empowered to adopt [delegated] acts defining the types of explicit environmental claims that can make use of the derogation described in the first subparagraph. The [delegated] acts shall, if necessary, set specific substantiation requirements for traders to allow the use of the derogation described in the first subparagraph with the aim of reducing the risk of misleading consumers. These specific substantiation requirements may include, where relevant, the use of methods, harmonised standards or parts thereof or other common specifications;] When fulfilling these tasks, the Commission shall designate a dedicated expert group with a balanced participation of experts designated by Member States and the relevant interested parties.	described in the first subparagraph are claims related to reusability, reduced energy consumption, reduced water consumption, reduced use of other resources, waste prevention, or circular business models. Additionally, to option 1, should the co-legislators want to include more types of claims that could make use of this derogation, this additional paragraph can be considered. Additional paragraph: Where appropriate, the Commission is empowered to adopt [delegated] acts to designate other types of claims for which traders can make use of the derogation described in the first subparagraph, including claims related to product's compostability, biodegradability, use of recycled content, use of bio-based materials. The [delegated] acts shall, if necessary, set specific substantiation requirements for traders to allow the use of the derogation described in the first subparagraph with the aim of reducing the risk of misleading consumers. These specific substantiation requirements may include, where relevant, the use of methods, harmonised standards or parts thereof or other common specifications;] [Option 2: Types of claims not listed in the main Directive. Empowerment for COM to define types of claims in a secondary act. These claims would also
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				benefit from the exemption of Article 3.1 (c), (d), (g). The Commission is empowered to adopt [delegated] acts defining the types of explicit environmental claims that can make use of the derogation described in the first subparagraph. The [delegated] acts shall, if necessary, set specific substantiation requirements for traders to allow the use of the derogation described in the first subparagraph with the aim of reducing the risk of misleading consumers. These specific substantiation requirements may include, where relevant, the use of methods, harmonised standards or parts thereof or other common specifications;] When fulfilling these tasks, the Commission shall designate a dedicated expert group with a balanced participation of experts designated by Member States and the relevant interested parties.
Justification: The current compromise discussed in trialogues tends to lean toward the Council position, with a category of claims that would by default be covered by the simplified procedure. This category of claims would have to fulfil three conditions and is accompanied by two positive lists of claims. The three conditions proposed are: - claims based on a single characteristic, - claims that do not require a full life cycle analysis (for which there is no clear definition in the text of the Directive and creates legal uncertainty). - and claims that do not lead to significant trade offs (for which there is no indication how the "trade-offs" would be assessed nor justified). The first positive list would be directly written in the text of the directive, which would unjustifiably leave out some types of claims that would be eligible for the “simplified procedure”. The second positive list would be established through a delegated act which would keep the legal uncertainty for businesses. A delegated act will also be very difficult to amend, as it will require lengthy processes, and it will thus fail to be able to keep pace with the innovation (and any claims related to aspects reflecting this innovation). Moreover, given the absence of any reflection on the link between the application of the Directive with the adoption of the secondary legislation, businesses may even have to apply the full ex-ante verification in case of delays with the adoption of the secondary legislation.				

The objective of the “simplified procedure” is to effectively simplify and streamline the requirements to reduce burden and red tape for simple claims, ensuring rules are easily applicable by businesses and providing full clarity. **We believe that unfortunately the proposed amendment goes in the opposite direction as in our view, this very complex structure brings legal uncertainty, disproportionate burden and will lead to fragmented interpretations of its application.**

Therefore, we ask to:

1. Add directly in the text of Article 3a(3), the claims related to “**environmental aspects**” as defined in Article 2(1)(18) which ARE by default the claims that do not need a full life cycle analysis. Including claims based on environmental aspects by default provides legal certainty on the category of claims benefiting from the simplified procedure and for which there would not be the need to draft any list of claims.
2. include the **claims based on recognized methodologies or standards. These types of claims, already assessed /certified, should be covered by the EU simplified scheme.**

Commission Proposal	EP Mandate	Council Mandate	Triologue proposal	Polish Confederation Lewiatan recommendation
Article 3a(4)	Article 3a(4)	Article 3a(4)	Article 3a(4) By ... [XX months from the date of entry into force of this Directive], the Commission shall adopt implementing acts to set out a harmonized format of the self-declaration referred to in paragraph 1 and 3, including an indication that the substantiation did not require verification, the trader’s name, the type of claim, the assessment method and the sector. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.	Article 3a(4) By ... [12 months from the date of entry into force of this Directive], the Commission shall adopt implementing acts to set out a harmonized format of the self-declaration referred to in paragraph 1 and 3, including an indication that the substantiation did not require verification , the trader’s name, the type of claim, the assessment method and the sector. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19.

Justification: While we can support the reference to a **self-declaration** to be prepared by the trader for the claims subject to the simplified procedure, **Article 3a(4) should require the European Commission to adopt the implementing act defining the self-declaration within 12 months.** This will allow traders enough time to prepare the documents for compliance. To avoid the considerable negative impacts due to the delays in the adoption of the secondary legislation, it is necessary to ensure that **the application of both the simplified procedure and the ex-ante verification is linked to the adoption of the relevant implementing legislation** (as already done in other EU acts, such as the Packaging and Packaging Waste Regulation). Otherwise, any delay will force companies to face increased costs, disruptions and risks of non-compliance (with reputational damage and penalties). Such situations must be avoided by the EU legislators.

However, **the self-declaration should not include an indication that the substantiation of the claim did not require verification.**

Commission Proposal	EP Mandate	Council Mandate	Triologue proposal	Polish Confederation Lewiatan
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				recommendation
Article 5(5b), second subparagraph, point (a) (a) environmental aspects, environmental impacts or environmental performance covered by the claim;	Article 5(5b), second subparagraph, point (a) (a) environmental aspects, environmental impacts or environmental performance covered by the claim;	Article 5(5b), second subparagraph, point (a) (a) environmental aspects, environmental impacts or environmental performance covered by the claim;	Article 5(5b), second subparagraph, point (a) (a) a summary of the assessment of the claim carried out in accordance with Article 3 or, if applicable, Article 3a paragraphs 1 or 3, including the environmental characteristics covered by the claim; and a brief explanation how the improvements that are subject to the claim are achieved. The summary shall be presented in a clear and understandable way to the consumers targeted by the claim in a language determined by the Member State in which the claim is made.	Article 5(5b), second subparagraph, point (a) (a) a summary of the assessment of the claim carried out in accordance with Article 3 or, if applicable, Article 3a paragraphs 1 or 3, including the environmental characteristics covered by the claim; and a brief explanation how the improvements that are subject to the claim are achieved. The summary shall be presented in a clear and understandable way to the consumers targeted by the claim in a language determined by the Member State in which the claim is made.
Article 5(5b), second subparagraph, point (b) (b) the relevant Union or the relevant international standards, where appropriate;	Article 5(5b), second subparagraph, point (b) (b) the relevant Union or the relevant international standards, where appropriate;	Article 5(5b), second subparagraph, point (b) (b) the relevant Union or the relevant international standards, where appropriate;	Article 5(5b), second subparagraph, point (b) where applicable, the certificate of conformity of the claim referred to in Article 10, and the contact information of the verifier, excluding personal data, that drew up the certificate of conformity, or where relevant, for claims referred to in Article 3a paragraphs (1) or (3), the self-declaration of compliance of substantiation. The self-declaration shall be displayed prominently, in a clear and understandable way to the consumers targeted by the claim in a language determined by the Member States in which the claim is made;	Article 5(5b), second subparagraph, point (b) where applicable, the certificate of conformity of the claim referred to in Article 10, and the contact information of the verifier, excluding personal data, that drew up the certificate of conformity, or where relevant, for claims referred to in Article 3a paragraphs (1) or (3), the self-declaration of compliance of substantiation. The self-declaration shall be displayed prominently, in a clear and understandable way to the consumers targeted by the claim in a language determined by the Member States in which the claim is made; made available to competent authorities upon request.
Justification: While we support transparency communication requirements and providing the information justifying environmental claims to the authorities, we do not see the added value of a mention that the claim benefitting from the simplified substantiation requirements <u>was not verified by a verifier</u> . Indeed, the current proposal: - Implies that there is a "second class" category of claims that would not be controlled,				

- Triggers some suspicion with regards to the claims justification,
- Adds uncertainty to consumers on claims that instead would be fully compliant with the framework.
- Will act de facto as a deterrent and restriction for these claims, as companies will not be willing to display such a message that could only scare consumers or instill doubt.

Therefore, we call for the deletion of article 5(5b), second subparagraph, point (a) and asks for the self-declaration as defined in Article 3a(4) to only be available to competent authorities “upon request”.

II. Ex-Ante verification – validity of the certificate of conformity and penalties in case of delays

We suggested amending Article 10(6) and Article 11(3), point (e).

Commission Proposal	EP Mandate	Council Mandate	Dialogue position	Polish Confederation Lewiatan recommendation
Article 10(6) 6. 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.	Article 10(6) 6. 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.	Article 10(6) 6. Upon completion of the verification and where compliance of an explicit environmental claim or an environmental labelling scheme and the corresponding environmental label with the requirements of this Directive has been demonstrated , the verifier shall draw up, where appropriate, a certificate of conformity certifying declaring that the explicit environmental claim or the environmental labelling scheme and the corresponding environmental label complies comply with the requirements set out in this Directive. Without prejudice to article 9, the certificate of conformity shall be valid for a maximum period of 5 years.	Article 10(6) 6. Upon completion of the verification and where compliance of an explicit environmental claim or an environmental labelling scheme and the corresponding environmental label with the requirements of this Directive has been demonstrated , the verifier shall draw up, where appropriate, a certificate of conformity certifying declaring that the explicit environmental claim or the environmental labelling scheme and the corresponding environmental label complies comply with the requirements set out in this Directive. Without prejudice to article 9, the certificate of conformity shall be valid for a maximum period of 5 years.	Article 10(6) 6. Upon completion of the verification and where compliance of an explicit environmental claim or an environmental labelling scheme and the corresponding environmental label with the requirements of this Directive has been demonstrated , the verifier shall draw up, where appropriate, a certificate of conformity certifying declaring that the explicit environmental claim or the environmental labelling scheme and the corresponding environmental label complies comply with the requirements set out in this Directive. Without prejudice to article 9, the certificate of conformity shall be valid for a maximum period of 5 years.
Justification: we ask to delete the reference to the 5 years validity period for the certificate of conformity. As substantiation assessments of claims might remain valid for a longer period , having to reassess the verification of an unchanged claim would add unnecessary burden to all interested parties (i.e., traders, national authorities and traders). We therefore ask for claims and their substantiation to be reassessed only if substantial changes occur which may affect the accuracy of the environmental claim or environmental label.				

Commission Proposal	EP Mandate	Council Mandate	Dialogue position	Polish Confederation Lewiatan recommendation
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Article 11(3), point (e) (e) the verifier shall have a sufficient number of suitably qualified and experienced personnel responsible for carrying out the verification tasks;	Article 11(3), point (e) (e) the verifier shall have adequate resources, in particular technical capabilities and a sufficient number of suitably qualified and experienced personnel, with experience in life-cycle assessments, where necessary , responsible for carrying out the verification tasks;	Article 11(3), point (e) (e)the verifier shall have adequate resources, the technical capabilities and a sufficient number of suitably qualified and experienced personnel with sufficient experience with working with environmental assessment methods, such as life-cycle assessment , responsible for carrying out the verification tasks;	Article 11(3), point (e) (e) The verifier shall have adequate resources, the technical capabilities and a sufficient number of suitably qualified and experienced personnel with sufficient experience with working with environmental assessment methods, such as life-cycle assessment , responsible for carrying out the verification tasks;. The verifier shall provide an estimate of the time needed for completion of the verification to the trader. The verifier shall complete the verification of explicit environmental claims and environmental labelling schemes tasks within a deadline of 30 days except for in duly justified cases. Where an extended deadline is justified, the verifier shall inform the trader of the extended timeline and the reasons therefor. Such an extension shall in principle not be longer than 30 days.	Article 11(3), point (e) (e) The verifier shall have adequate resources, the technical capabilities and a sufficient number of suitably qualified and experienced personnel with sufficient experience with working with environmental assessment methods, such as life-cycle assessment , responsible for carrying out the verification tasks;. The verifier shall provide an estimate of the time needed for completion of the verification to the trader. The verifier shall complete the verification of explicit environmental claims and environmental labelling schemes tasks within a deadline of 30 days except for in duly justified cases. Where an extended deadline is justified, the verifier shall inform the trader of the extended timeline and the reasons therefor. Such an extension shall in principle not be longer than 30 days. the verifier shall respect the 30 days deadline to verify explicit environmental claims and environmental labelling schemes. Except in duly justified cases, in case of repeated delays in the completion of the verification or in the estimation of the period of verification, the verifier may face the withdrawal of the accreditation or licensing.
Justification: We have some concerns regarding the fact that there are no detailed provisions indicating whether a trader can put the claim on the market after the 60-day period. It is our understanding that if the trader has not received the certificate of conformity after the 60 days period, the trader won't be able to put the claim on the market as it has not been verified. However, the claim should not be considered as rejected as it could be verified later on by the verifiers. Additionally, it is concerning that there are no penalties for verifiers who do not comply with the set timeline, nor any guarantees for the trader regarding the timeline for the verification of their claims. Therefore, we ask to include a provision such as the following "in case of repeated delays in the completion of the verification or in the estimation of the period of verification, the verifier may face the withdrawal of the accreditation or licensing".				

III. Potential ban for environmental claims for products containing hazardous substances

We suggested amending Article 21(4), previously Article 21(3b).

Commission Proposal	EP Mandate	Council Mandate	Dialogue proposal	Polish Confederation Lewiatan recommendation
Article 21(3b) 3. (b) facilitating transition towards toxic free environment by considering introducing a prohibition of environmental claims for products containing hazardous substances except where their use is considered essential for the society in line with the criteria to be developed by the Commission;	Article 21(3b) <i>Deleted</i> <i>Article 3(3d)</i> <i>3d. By ..[18 months after the entry into force of this Directive], the Commission shall provide a report on the use of explicit environmental claims on products or product groups containing substances or preparations/mixtures meeting the criteria for classification as toxic, hazardous to the environment, carcinogenic, mutagenic or toxic for reproduction (CMR), causing endocrine disruption to human health or the environment, persistent, bioaccumulative and toxic (PBT), very persistent, very bioaccumulative (vPvB), persistent, mobile and toxic (PMT), or very persistent, very mobile (vPvM) properties as defined in Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, and substances referred to in Article 57 of Regulation (EC) No 1907/2006 of the</i>	Article 21(3b) 3. (b) facilitating the transition towards a toxic free environment by considering introducing a prohibition of explicit environmental claims or environmental labels for products [...] containing substances [...] classified in Part 3 of Annex VI to [...] Regulation (EC) No 1272/2008 [...] in [...] any of the following hazard classes or hazard categories: - Carcinogenicity categories 1 and 2, - Germ cell mutagenicity categories 1 and 2, - Reproductive toxicity categories 1 and 2, - Endocrine disruption for human health categories 1 and 2, - Endocrine disruption for the environment categories 1 and 2, - Hazardous to the aquatic environment, acute category 1 or chronic category 1, - Persistent, Mobile and Toxic or Very Persistent, Very Mobile properties, - Persistent, Bioaccumulative and Toxic or Very Persistent, Very Bioaccumulative properties, except where their use is considered essential for the society in line with the criteria under specified conditions to be developed by the Commission;	Article 21(4) New row 306: (new) Article 21.4 By [OP please insert date = x years after the date of transposition of this Directive], the Commission shall carry out an evaluation of explicit environmental claims and environmental labels on products containing certain hazardous substances and present a report on the main findings to the European Parliament and the Council. The evaluation shall concern claims or labels for products containing substances of very high concern that meet the criteria laid down in Article 57 of Regulation (EC) No 1907/2006 and are identified in accordance with Article 59 (1) of that Regulation, as well as substances classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories: i) carcinogenicity categories 1 and 2; ii) germ cell mutagenicity categories 1 and 2; iii) reproductive toxicity categories 1 and 2; iv) endocrine disruption for human health categories 1 and 2; v) endocrine disruption for the environment categories 1 and 2; vi) persistent, mobile and toxic or very persistent, very mobile properties;	Article 21(4) By [OP please insert date = 4 years after the date of transposition of this Directive], the Commission shall carry out an evaluation of explicit environmental claims and environmental labels on products containing certain hazardous substances and present a report on the main findings to the European Parliament and the Council. The evaluation shall concern claims or labels for products containing substances of very high concern that meet the criteria laid down in Article 57 of Regulation (EC) No 1907/2006 and are identified in accordance with Article 59 (1) of that Regulation, as well as substances classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories: substances intentionally added [...] and classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 [...] in [...] any of the following hazard classes or hazard categories, unless regulated by existing sectorial legislation: - Carcinogenicity categories 1 and 2, - Germ cell mutagenicity categories 1 and 2, - Reproductive toxicity categories 1 and 2, - Endocrine disruption for human health categories 1 and 2, - Endocrine disruption for the environment categories 1 and 2, - Hazardous to the aquatic environment, acute category 1 or chronic category 1, - Persistent, Mobile and Toxic or Very Persistent, Very Mobile properties,

	European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency. That report shall evaluate for which products or product groups the use of explicit environmental claims is misleading and assess the need for restrictions or prohibitions on the use of explicit environmental claims for these products or product groups in view of preventing misleading claims and contributing to the protection of human health and the environment. Where the report concludes that the use of explicit environmental claims in a product or product group containing substances or preparations/mixtures referred to in sub-paragraph 1 is misleading, the Commission is empowered to adopt delegated acts in accordance with Article 18 to supplement the requirements for substantiation of explicit environmental claims by introducing restrictions or		(vii) persistent, bioaccumulative and toxic or very persistent, very bioaccumulative properties; (viii) hazardous to the aquatic environment - categories chronic 1 to 4. Where the Commission finds it appropriate, on the basis of the report referred to in the first subparagraph, the Commission shall put forward a legislative proposal including considering introducing a [restriction or prohibition] of explicit environmental claims or environmental labels on products containing these substances. These [restrictions or prohibitions] shall be considered if the absence of such [restrictions or prohibitions] leads to widespread misleading of consumers, when the presence of the substance is linked to the claimed impact.	- Persistent, Bioaccumulative and Toxic or Very Persistent, Very Bioaccumulative properties, i) carcinogenicity categories 1 and 2; (ii) germ-cell mutagenicity categories 1 and 2; (iii) reproductive toxicity categories 1 and 2; (iv) endocrine disruption for human health categories 1 and 2; (v) endocrine disruption for the environment categories 1 and 2; (vi) persistent, mobile and toxic or very persistent, very mobile properties; (vii) persistent, bioaccumulative and toxic or very persistent, very bioaccumulative properties; (viii) hazardous to the aquatic environment - categories chronic 1 to 4. Where the Commission finds it appropriate, on the basis of the report referred to in the first subparagraph, the Commission shall put forward a legislative proposal including considering introducing a [restriction or prohibition] of explicit environmental claims or environmental labels on products containing these substances. These [restrictions or prohibitions] shall be considered if the absence of such [restrictions or prohibitions] leads to widespread misleading of consumers, when the presence of the substance is linked to the claimed impact.
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	<i>prohibitions on the use of explicit environmental claims for this product or product group.</i>			
Justification: We support the two-steps approach with 1) a report, and 2) the revision of the Directive. However, the text should clearly specify a defined and reasonable timeframe for the Commission to deliver its report (e.g., 4 years after the date of transposition) to allow enough time for a proper assessment of the impact of the Directive after its entry into force. Regarding the scope of the hazardous substances, we have strong concerns with the two options as put forward in the last trilogue compromise. Instead, we support the list of hazard classes as proposed by the Council General Approach including substances classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008). For the sake of legal clarity, we strongly call for the introduction of the notion of “intentionally added” substances to prevent environmental claims from being banned due to the unavoidable presence of negligible traces of hazardous substances and we propose including the wording “unless regulated by existing sectorial legislation” because if a product complies with applicable legislation, it can also bear a green claim.				

IV. Transposition period and application of the Directive

We suggested amending Article 25(1).

Commission Proposal	EP Mandate	Council Mandate	Polish Confederation Lewiatan recommendation
Article 25(1) 1. Member States shall adopt and publish by [OP please insert the date = 18 months after the date of entry into force of this Directive] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.	Article 25(1) 1. Member States shall adopt and publish by [OP please insert the date = 18 months after the date of entry into force of this Directive] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.	Article 25(1) 1. Member States shall adopt and publish by [OP please insert the date = 1824 months after the date of entry into force of this Directive months after the date of entry into force of this Directive] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission. Subject to paragraph 1a, they shall apply those measures from [OP please insert the date = 36 months after the date of entry into force of this Directive].	Article 25(1) [COM proposal] 1. Member States shall adopt and publish by [OP please insert the date = 18 months after the date of entry into force of this Directive] the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

Article 25(1)(2) They shall apply those measures from [OP please insert the date = 24 months after the date of entry into force of this Directive].	Article 25(1)(2) They shall apply those measures from [OP please insert the date = 30 months after the date of entry into force of this Directive].	Article 25(1)(2) They shall apply those measures from [OP please insert the date = 24 months after the date of entry into force of, When Member States adopt those measures from [OP please insert the date = 24 months after the date of entry into force of, they shall contain a reference to this Directive] or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.	Article 25(1)(2) [modified EP position] They shall apply those measures from [OP please insert the date = 30 36 months after the date of entry into force of this Directive]. The Member States shall apply Articles 3a and 10 from the date of application of the Directive, as mentioned in the first paragraph, or 24 months after the date of the entry into force of the implementing acts referred to in Article 10, paragraph 9, and Article 3a, whichever is the latest.
Justification: The Directive must provide for an adequate period for all interested parties (traders, enforcement authorities and verifiers) to make the required changes and apply the requirements. When considering the period for the application of the requirements, the following elements must be in place by the time the new rules become applicable: • All Member States must have transposed in a clear and harmonized manner the Directive the earliest possible (i.e. 18 months after the entry into force of the Directive). This is necessary to ensure traders have full clarity on the steps to undertake to comply with the new rules. Any divergent interpretation and transposition of the Directive will require traders who make claims or use sustainability labels on several EU markets to apply different rules, leading to additional administrative burden and costs. • The secondary legislation defining key elements of the Directive, such as the Specific Technical Documentation and the technical means for issuing the certificates of conformity, must be adopted within the set deadline, allowing for the necessary transition period for interested parties to integrate those additional rules. Otherwise, traders, verifiers and national authorities will not have the necessary information (or will not have enough time) to be able to implement the procedures. This would consequently disincentivize traders from making environmental claims, preventing consumers from being informed about the sustainability features of products or traders, which is contrary to the objective of the Directive. If the “simplified procedure” proposed by the Council is not up and running by the date of application of the rules, traders will be forced to be subject to the disproportionate burdensome requirements set out in the Directive for environmental claims related to aspects. • Member States and their national accreditation bodies must have established the accreditation scheme and, based on that accreditation scheme, verifiers must be accredited. Our understanding is that it typically takes at least 6 months for Member States to only establish the accreditation scheme. Additional time is then required for verifiers to apply for the accreditation. It is also paramount to link the application of the rules to the adoption of the necessary implementing acts that will provide for the details for Articles 10 and 3a (ex-ante verification and certification process as well as the “simplified procedure”), to provide full legal certainty to traders. Otherwise, it will be impossible for traders to comply with the rules by the set deadlines.			
Article 25(1a)	Article 25(1a) Member States may introduce a transitional period, between the date of the entry into force and the date of application of this Directive, during which existing environmental claims submitted for verification can be used.	Article 25(1a)	Article 25(1a) [modified EP position] Products bearing on-pack environmental claims or environmental labels that were made or displayed before the deadline referred to in Article 25 may be marketed until stock depletion.
Justification: The Directive should provide for a transition period to allow traders to keep environmental claims and environmental labels made before the date of application of the new rules. As the Directive enshrines the requirement of performing an ex-ante claim-by-claim approval, with the risk that there will not be enough verifiers to address the high amount of environmental claims and labels that will have to be pre-verified, traders risk facing considerable delays in the approval of the claims and labels that are already on the market. For those environmental claims and labels that are displayed on products and/or packaging on the EU market, the impossibility of having them verified and certified on time will force traders to destroy the product and/or its packaging, leading to waste generation, which is contrary to the objectives of the EU legislation. Therefore, while we support the EP’s intention behind the decision to provide for such a transitional period, the amendment should be amended to ensure harmonization of the requirements (not leaving it to national decisions, which would only create fragmentation) and rather allow for products with claims or labels already on-pack before the application of the Directive to be marketed until stock depletion.			