



## Banning green claims on products containing certain substances can hinder innovation and progress in sustainability

Our Associations fully support the principle that consumers should not be misled by false or unsubstantiated sustainability claims on products and share the Commission's objective that a harmonized set of criteria should be established at EU level so that only credible and proven green claims are allowed.

However, we are very concerned about provisions, such as Amendment 23 of the draft report or Amendments 455 and 456 that will restrict the ability to make green claims for products that contain hazardous substances, which we believe will run contrary to the objective of the directive to enable consumers to make sustainable purchase decisions.

According to these provisions, making an explicit environmental claim is prohibited for products containing certain CLP hazard class substances or substances referred to in Article 57 of REACH 'except when their use is considered essential for society'. The wording does not contain any concentration threshold for the listed substances and the draft text contains no further indications about how to demonstrate that the use of the substance in the product is "proven essential for the society."

Here below the reasons of our concerns.

### The exclusion of a wide range of products

The strict limitation would affect a wide range of sectors (automotive, electronics, cosmetics, detergents, textiles, furniture, etc.). While misleading claims should not be allowed, we question whether it really is the intention of the European Parliament **to prohibit any green claim, including those that contribute to more sustainable consumption**, through longer product lifetime, product effectiveness, or resource and energy efficiency.

For any electrical or electronic equipment, no green claim could be made for consumer electronics as all electronics contain at least one or more of the following impacted substances: lead, copper, silver, traces of SVHC in recycled plastics.

Furthermore, various cross-industry consumer products with sustainable features will see similar negative limitations, such as hard plastic consumer products and vegan leather alternatives used in textiles.

Similarly, for all cosmetic and detergent products the reference to “products containing” will capture traces and contaminants, meaning that the mere presence of traces of impurities with certain hazard properties would already ban the use of any environmental claim, even if such traces are widespread in for instance water/raw material sources and unavoidably present in these products.

Such a broad-brush restrictive approach will lead to unintended consequences and prevent consumers from being able to choose the most sustainable products, running contrary to the objective to enable them to make educated choices about the sustainability of products.

Additionally, such provisions prohibiting the use of any green claim risk putting a stop to innovation in many sectors. If no green claims can be made, there is little incentive to innovate to improve the sustainability profile of a product. If a manufacturer is ultimately unable to communicate such an improvement, how can it differentiate its product to the consumer?

### **Policy coherence and existing EU Chemical legislation**

Within the framework of EU chemical regulations, such as the Restriction of Hazardous Substances (RoHS) directive, there exists a deliberate inclusion of a limited number of exemptions, particularly tailored to specific applications. These exemptions serve a crucial purpose, as they are established based on a careful assessment of the associated risks tied to substances utilized in these specific contexts. The rationale behind these exemptions is grounded in the understanding that the risks are manageable or that viable alternative solutions might not be readily available at that time.

Over time, as technological advancements and alternative approaches evolve, these exemptions undergo a systematic phase-out process across various chemical regulations like the Registration, Evaluation, Authorization, and Restriction of Chemicals (REACH) and RoHS. This transition reflects the ongoing commitment to enhancing environmental and safety standards.

In addition, the mere presence of hazardous substances does not automatically imply a negative impact of the substance on the environment or the consumers. Therefore, this presence is not necessarily leading to negative environmental impacts, and it should not impede manufacturers from making a specific green claim where justified and substantiated according to the provisions in the Green Claims Directive.

More importantly, some substances may be classified as hazardous but are in effect key enablers of a product’s sustainability improvements. For example, the safe use of enzymes, which are respiratory sensitizers, in the detergents sector has facilitated the compaction of products and their efficacy at low temperatures, thereby reducing the carbon footprint of laundry products (see more information [here](#)).

Now, envision a scenario where manufacturers are rendered incapable of making environmental claims about their products merely because certain components contain substances that fall under these criteria. The consequence is a loss of consumers' ability to distinguish between products within the same category that genuinely have a reduced environmental impact. As a result, the legislation governing green claims would inadvertently impose significant and unwarranted limitations, potentially hindering the progress toward a more sustainable future.

### **Unclear concepts cannot be enforced and lead to fragmentation of the EU internal market**

We also question the introduction of the '**essential use**' concept in this legislative text when this concept is still very much under discussion as part of the delayed REACH revision. Without a clear definition, there is a lack of legal certainty which will inevitably lead to a patchwork of approaches, where every Member State will enforce this requirement differently, giving no legal certainty to traders. It remains also unclear who will be responsible for making an assessment on this 'essentiality' criteria, creating further uncertainty and administrative burden. The risk of fragmentation is particularly high as the proposed text is a Directive that needs national transposition.

### **Our Recommendations**

We recommend the full rejection of all provisions that presume a direct incompatibility between the presence of hazardous substances and environmental claims.

The exclusion of a wide range of products and the legal uncertainty created by these proposed provisions may both lead to unintended consequences that conflict with the objectives of the EU Green Deal and may stall the sustainable transition of industries in Europe.

The European Commission itself has recently voiced concerns on the co-rapporteur's proposed ban, as it could on the one hand discourage innovation and on the other hand risk to multiply the requirements and result in divergences, while this issue should solely be covered by chemical regulations, such as REACH.

## Annex I – Amendments to be rejected

### Amendment 23

#### Article 5 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Explicit environmental claims shall be prohibited for products 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 in accordance with 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, nor to goods containing substances referred to in Article 57 of Regulation (EC) No 1907/2006 of the 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, except when their use is considered essential for society.***