

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	<i>Legislative proposal on substantiating green claims</i>
LEAD DG (RESPONSIBLE UNIT)	<i>DG Environment, Unit B1 – Sustainable Production, Products and Consumption</i>
LIKELY TYPE OF INITIATIVE	<i>Legislative</i>
INDICATIVE PLANNING	<i>Q2 2021</i>
ADDITIONAL INFORMATION	https://ec.europa.eu/environment/eussd/smgp/

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

The European Green Deal¹ sets out Europe's intention to become a world leader in the circular economy and make Europe a climate neutral continent by 2050. As part of this, it identifies the need that companies making green claims² assess their impacts on the environment using a standard methodology. The new Circular Economy Action Plan³ announces several actions to establish a strong and coherent product policy framework and empower consumers, including an initiative on green claims. The Farm to Fork Strategy, announces actions to empower consumers to make informed, healthy and sustainable food choices, including an action to examine ways to harmonise voluntary green claims for food⁴.

Competition for green markets is growing. Provision of reliable, comparable and verifiable information on environmental impacts of different products, services and organisations is essential for making informed purchases and investments. Currently, there are no detailed positive rules on the substantiation of environmental claims. National competent authorities can only prohibit environmental claims that they find to be misleading towards consumers on the basis of a case-by-case application of the existing EU consumer law, i.e Directive 2005/29/EC on Unfair Commercial Practices (UCPD)⁵. In order not to mislead, environmental claims should be presented in a clear, specific, unambiguous and accurate manner.

The Commission announced in the Circular Economy Action Plan that it would propose that companies substantiate their environmental claims using EU Product and Organisation Environmental Footprint methods. These methods⁶ measure the environmental performance of a product or organisation throughout the value chain, from the extraction of raw materials to the end of life, using 16 environmental impact categories. This initiative will be developed in close coordination with other initiatives (also announced in the CEAP): i/ the revision of EU consumer law to empower consumers for active participation in the green transition⁷; and ii/ a sustainable product policy initiative, which will focus on making products fit for a climate-neutral, resource-efficient and circular economy. All these initiatives will seek to establish jointly a coherent policy framework to help the Union to make sustainable goods, services and business models the norm and to transform consumption patterns in a more

¹ [COM \(2019\) 640](#).

² Green or environmental claims falling in the scope of the initiative are claims made in relation with the environmental impacts covered by the Environmental Footprint methods.

³ [COM\(2020\)98](#).

⁴ https://ec.europa.eu/food/farm2fork_en

⁵ [See consolidated version](#). Environmental claims on food and feed that are misleading can also be prohibited respectively by Regulation (EU) No 1169/2011 on the provision of food information to consumers and Regulation (EU) No 767/2009 on the placing on the market of feed.

⁶ More information on the methods and on the pilot phase during which they were tested can be found here: <https://ec.europa.eu/environment/eussd/smgp/>

⁷ [Link to DG JUST IIA](#). As a *lex generalis*, JUST initiative will apply without prejudice to any pre-existing or future *lex specialis* for specific issues or products/services within its scope, such as the initiative covered by this Inception Impact Assessment.

sustainable direction. They aim to reduce significantly the environmental footprint of products consumed in the Union and contribute to the overall policy objective of EU climate neutrality by 2050.

Problem the initiative aims to tackle

Consumers and businesses need reliable, comparable and verifiable information to make sustainable decisions. There is a **proliferation of methods to measure and assess environmental impacts and a proliferation of labels and claims related to environmental information, which goes hand in hand with a proliferation of misleading environmental, including climate-related, claims**. There are currently 457 voluntary environmental labels worldwide⁸ and even more environmental claims, which are often poorly defined, explained and understood, and underpinned by non-comparable methods to measure and assess environmental impacts. In the EU, over 100 labels are active⁹. This multiplication of methods and labels/claims makes it difficult for market actors (consumers, businesses, investors, public administrations) to identify and trust environmental claims.

The number of misleading claims remains also significant¹⁰. Three in ten citizens have come across exaggerated or misleading statements on the effect of products on the environment¹¹. This limits the uptake of truly green products and, hence, leads to missed opportunities for developing a circular and green economy.

The main drivers behind this problem are the following:

- **Market failures:** The market has failed to agree on a single, reliable method/ approach to quantify environmental impacts, including climate-related claims, that would guarantee the comparability of results, leading to unfair competition on environmental performance and costs to companies.

- **Regulatory failure:** The Commission adopted a Recommendation 2013/179/EU establishing the Product and Organisation Environmental Footprint (PEF and OEF) methods¹². These methods are voluntary and companies can use other methods. There is also not a full alignment with other initiatives relying on the assessment of environmental performance, e.g. EU Ecolabel and national labels, EU Eco-Management and Audit Scheme (EMAS), Non-financial reporting directive requirements, the Taxonomy and the Emissions Trading Scheme (ETS) benchmarking and international standards as the Global Reporting Initiative.

- **Imperfect information:** market actors do not have access to simplified, immediate and trustworthy information on environmental performance of products. Such information exists for specific products that choose to apply for example through the EU Ecolabel and equivalent national/regional schemes (e.g. Nordic Swan, Blue Angel, etc.), for product categories covered by these “best-in-class” schemes. However, information for the majority of the products on the market is not available.

This initiative aims to address the above mentioned problems from the perspective of environmental claims, and it will take into account solutions provided by other CEAP initiatives with which it will be fully coordinated and articulated.

Basis for EU intervention (legal basis and subsidiarity check)

EU action in the area is based on Articles 192 (Environment) or 114 (internal market) of the Treaty on the Functioning of the European Union.

Supply chains are cross-border in nature, both in the EU and internationally. The EU is well placed to promote further harmonisation of methods to assess the environmental impacts of products, services and organisations across the Single Market, relying on experiences of Member States and private initiatives in this area. The EU can bring an important value added, and further co-ordination would bring cost savings for governments and the private sector.

If Member States were to act individually, there is a high risk to end up with many competing different systems, based on different methods and approaches, leading to a fragmented internal market, especially for cross-border services (for instance, digital services), increasing the risk of having uneven awareness and information levels on the environmental performance of products and organisations across EU, and additional costs for companies trading cross-border. There are many private schemes which would continue to exist while new ones would also be created.

⁸ Ecolabel index 2020, <http://www.ecolabelindex.com/>

⁹ Analysis performed in 2019 based on information available at the Ecolabel Index

¹⁰ [Consumer market study on environmental claims for non-food products](#), DG JUST, 2014.

¹¹ [Flash Eurobarometer 367, 2013; to be updated at beginning of 2020](#)

¹² For instance, the Recommendation was referenced in the law 221/2015 in Italy, [establishing the “Made Green in Italy” scheme](#). The methods were also taken up by companies. A [survey is running](#) until the 22 of June on the use of the PEF/ OEF methods and related PEFCRs and OEFSRs.

B. Objectives and Policy options

The objective of the initiative is to unlock opportunities for the circular and green economy (growth of green markets, opportunities through value chain thinking, environmental benefits in particular on a more efficient use of resources). Specific objectives include moving to a more harmonised approach for providing reliable environmental information, increasing simplification and reduction of administrative burdens, especially for SMEs.

The options will be further identified during the impact assessment and the consultation process, but could include:

- **Baseline:** No modification to the 2013 Recommendation and no further action.
- **Option 1:** Updating the 2013 Recommendation based on the outcome of the 2013-2018 pilot phase.
- **Option 2:** Establish a voluntary EU legal framework enabling companies to make green claims in accordance with the Environmental Footprint methods, as a complement to existing methods (developed by private or public entities, at national or international level).
- **Option 3:** Establish an EU legal framework requiring companies making claims related to the impacts covered by the Environmental Footprint methods¹³ to substantiate them via the Environmental Footprint methods. When Product Environmental Footprint Category Rules (PEFCRs) or Organisation Environmental Footprint Sector Rules (OEFSRs)¹⁴ have been adopted, green claims should be substantiated on that basis, as they are establishing a more detailed calculation of the environmental footprint. When no such rules exist, claims could be substantiated via a study compliant with the PEF/OEF method.

Options will be considered in synergy with the options under the other initiatives announced in the CEAP (in particular the initiative on EU consumer law and the sustainable product policy initiative).

All options will cover claims made for any of the environmental impacts covered by the Environmental Footprint methods (initially 16; requirements for claims outside of the scope of the methods would be tackled under the initiative on consumer law). All options will include an appropriate framework for certification/ verification of Environmental Footprint profiles and monitoring and enforcement tools.

Sub-options will consider potential communication requirements in business-to-consumer and business-to-business settings, including a minimum information content, or a common EU format (e.g. an EU label/ logo). The impact assessment will also assess the ability of the proposed system to deliver reliable and accurate information.

The impact assessment will consider the need to introduce a way to prioritise the development of product- and sector-specific approaches (PEFCRs and OEFSRs).

It will also analyse the interactions with existing labels regulated at EU level (e.g. EU Ecolabel, organic label, etc) and other environmental labels, including officially recognised ISO 14024 type 1 ecolabels at Member State level (e.g. Blue Angel).

The impact assessment will take into account as well the effects of the COVID-19 crisis.

C. Preliminary Assessment of Expected Impacts

Likely economic impacts

The initiative could have positive economic impacts through supporting growth and fair competition in green markets. For companies that are already making green claims, it should reduce the overall costs, by reducing the need to apply multiple methods¹⁵, even if applying this new method will entail initial costs. This is particularly true for companies trading cross-border: it will provide a level playing field for competing based on environmental performance for all products sold on the EU markets. The impact assessment will look into impacts on competitiveness outside the EU.

The increased harmonisation may be beneficial for SMEs as they would need to comply anymore with a multitude of methods. The impact assessment will consider if any support actions or specific provisions are necessary.

The initiative should improve the availability and reliability of green claims, with no major direct impacts on prices or availability of products in general.

¹³ Climate change, ozone depletion, human toxicity – cancer, human toxicity – non-cancer, particulate matter, ionizing radiation – human health, photochemical ozone formation – human health, acidification, eutrophication – terrestrial, eutrophication – freshwater, eutrophication – marine, ecotoxicity – fresh water, land use, water use, resource use – minerals and metals, resource use – fossils.

¹⁴ Product Environmental Footprint Category Rules (PEFCRs) are Product category specific, life cycle based rules that complement general methodological guidance for PEF studies by providing further specification at the level of a specific product category. Organisation Environmental Footprint Sector Rules (OEFSRs): Sector-specific, lifecycle-based rules that complement general methodological guidance for OEF studies by providing further specification at the level of a specific sector.

¹⁵ 74% of business respondents to the [stakeholder consultations of 2018-19](#) were using two or more methods and 51% participates in two or more initiatives. The costs reported ranged between €5 000 and €2 million.

The impact assessment will carefully consider the WTO compliance of the different options. For example, any labelling/information tool option put forward under this initiative should result in no less favourable treatment of imported products compared with EU produced goods. Likewise, the options will be vetted beforehand to ensure that they are no more trade-restrictive than necessary to fulfil a legitimate environmental objective (climate change, biodiversity and other relevant environmental impacts).

Likely social impacts

In terms of employment, the impact assessment will consider potential effects on jobs across sectors. More reliable green claims are expected to facilitate the deployment of green products, which could in turn contribute to a growth in green jobs. Citizens will benefit from having clearer information presented to them. There could be some social impacts as environmental impacts often translate into health impacts.

Likely environmental impacts

The initiative should lead to a better overall environmental performance of businesses and consumption and to circular economy benefits. It will contribute to reaching EU 2030 and 2050 targets on climate change. These impacts are expected due to the positive effects of a level playing field for competing on environmental performance, including clear rules on the role of carbon offsets. We expect that this will trigger improvements in the 16 environmental impacts covered (“race to the top”), that the requirements would lead to environmental improvements in the design of products and supply chain collaboration. We expect that due to an easier identification of more environmentally friendly options, some of the consumption, procurement (public and business) and investment in the EU will further shift towards greener products and companies.

Likely impacts on fundamental rights

Not applicable

Likely impacts on simplification and/or administrative burden

Costs for public administrations at EU level and national level will decrease if a single method is used across several instruments, both for product-related and reporting measures. However, if an obligation would be imposed on officially recognised ISO 14024 type 1 ecolabels, additional costs might be expected for them to adapt. The impact assessment will analyse different options regarding these labels and identify opportunities for mitigating costs.

For those public administrations at Member State level that are currently not managing such schemes, there would be an additional cost. For those that are managing schemes, the cost would be reduced by tasks performed at EU level (e.g. preparatory work, maintenance of databases, criteria setting).

If they make a choice to use a green claim, additional costs and fees can be expected for businesses that apply the scheme. The Impact Assessment will assess these costs and fees for both situations when a PEFCR/OEFSR is available or when studies are carried out based on the PEF/ OEF methods. The administrative burdens related to the proposals would be minimised by focussing reporting on issues that are relevant for the given product or sector and necessary and proportionate for the tool used; by introducing a single reference instead of allowing a proliferation of policy or de facto requirements on Member States markets; by providing access to free data; by providing a basis for developing easy-to-use calculation tools.

D. Evidence Base, Data collection and Better Regulation Instruments

Impact assessment

An Impact Assessment will be developed to underpin the Commission's proposal. It will analyse possible options to determine the best design for the proposal. In particular, the analysis will examine the administrative costs (from additional analysis and verification) or savings (from reducing duplication) and the coherence across different approaches.

Evidence base and data collection

There are a wide range of studies and reports relevant to the impact assessment.

- Studies on the trends in green markets: [Boston Consulting Group 2014](#), [Nielsen 2015](#), [Euromonitor for the European Commission 2016](#), [French Ministry for the Ecologic Transition 2017](#), [CSB sustainable market share index report 2019](#)
- Consumer attitudes: [Consumer attitudes in France \(2017\)](#), relevant Euromonitors; [The honest product \(Consumer Goods Forum and Futerra, 2018\)](#), [Assessment of different communication vehicles for providing Environmental Footprint information’ \(2018\)](#), [Consumer testing of alternatives for communicating the Environmental Footprint profile of products \(EC 2019\)](#)
- Company attitudes: [UN Global Compact 2016 CEO study](#), [2019 edition of the same](#)
- Situation of SMEs: [Eurobarometers](#) on SMEs and green markets, results of the SME survey as part of the contract on [‘Assessment of different communication vehicles for providing Environmental Footprint information’ \(2018\)](#)

- Studies on green claims & green labels: [DG Just 2014](#); [OECD 2006](#), [UNEP study on reporting](#) (2015), [UNEP study on product sustainability information](#) (2015); we are kicking off a study on 'Environmental claims in the EU: inventory and reliability assessment' (results expected to be available mid-2020);
- Investors and sustainable investment: evolution of investor backing to leading schemes (e.g. SRI, CDP), [University of Oxford & Arabesque, 2015](#); [Project ROI, 2015](#), Climate value at risk ([LSE 2016](#)), [final report](#) of the high level expert group on sustainable finance 2018.

Information from the different evaluation strands related to the Environmental Footprint pilot phase will be used ([reports](#) on verification, communication, peer review, helpdesk report on technical evaluation). The [Fitness Check](#) of EU Ecolabel and EMAS is also relevant. Further evidence will be gathered, particularly for quantifying economic, social and environmental impacts of the different policy options.

Consultation of citizens and stakeholders

The public consultation will focus on gathering the opinion of stakeholders regarding future policy applications of the Environmental Footprint methods. The launch of public consultation related to this initiative will be announced on '[Have your say](#)'. Other consultation activities a stakeholder workshop, feedback from Member State representatives through the Commission expert group on Sustainable Production and Consumption, and its subgroup on the Environmental Footprint transition phase, a specific consultation with ecolabel owners as covered by Article 11 of the EU Ecolabel Regulation¹⁶, will also be carried out and will build on previous consultations¹⁷ including:

- The 2019 public consultation on a product policy framework for the circular economy included a specific section on the potential future use of the EF methods in policies.
- A series of targeted consultations with businesses & business associations, investors & financial institutions, public administrations, NGOs and method/ initiative owners (these stakeholder groups reflect groups that are relevant for future EF policies). The questionnaires focused on the potential future use of the EF methods in EU policy (ended in December 2018).
- A stakeholder workshop in April 2018, back-to-back with the final conference of the Environmental Footprint pilot phase.

Will an Implementation plan be established?

This will depend on the choice of the instrument.

¹⁶ Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel.

¹⁷ [See the report](#) on the consultation activities carried out in 2018-19.