

Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, 2022/0092 (COD)

Statement on the proposal for a pre-approval requirement and the need for amendments to align the Proposed Directive with other provisions of Union law

RAL, the German Institute for Quality Assurance and Certification (RAL Deutsches Institut für Gütesicherung und Kennzeichnung e.V. – RAL), disagrees with the unjustified requirements for private sustainability labels that were proposed by the European Commission. These requirements could even be aggravated if private labels need pre-approval of a national authority, as suggested by the Rapporteur.

Context

The European Commission presented on 30 March 2022 the “Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information” (“Proposed Directive”). The proposal aims at ensuring that consumers receive reliable information and greater protection against unfair business practices. To this end, the European Commission, among other things, proposed that **sustainability labels** in the form of private quality marks are only permissible when **based on a “certification scheme”**. This would entail monitoring that is (i.) based on international, EU or national standards and (ii.) not carried out by the scheme owners themselves.

As we have set out in a previous statement in more detail (here), the Directive would exclude the use of private quality marks issued according to established systems, which are not based on such standards, but which also use objective, non-discriminatory procedures. Also, any schemes whose owners are engaged in such monitoring would be rendered impermissible, even though impartial monitoring is ensured. Moreover, the requirements **contradict with provisions of EU law** establishing prerequisites **for quality or certification marks**.¹ If the Proposed Directive is not aligned with these provisions the outcome would be contradictory: The use of quality or certification marks would be an unfair commercial practice, even though they satisfy the requirements imposed by the EU provisions governing quality and certification marks. The proposal endangers the fulfilment of tasks by RAL and other private quality scheme owners, which for many years have successfully provided reliable means of confirming environmentally relevant aspects of products.

¹ See requirements with regard to labels pursuant to Directive 2014/24/EU on Public Procurement and requirements with regard to the EU certification mark pursuant to Regulation (EU)2017/1001.

Pre-approval requirement according to the Rapporteur's draft report

The draft report of the European Parliament's Committee on the Internal Market and Consumer Protection² (Amendment 46) and the opinion of the Committee on the Environment, Public Health and Food Safety³ (Amendment 74) propose that sustainability labels should be pre-approved by a competent national or Union authority in accordance with certain minimum requirements. Sustainability labels of public bodies are to be exempt from the pre-approval requirement. So far, it is unclear what the specific minimum criteria will be, as they are to be laid down by the European Commission in a Delegated Act.

Generally, RAL is critical of the proposal for a pre-approval requirement. Most importantly, pre-approval by national authorities will create considerable **red tape for companies and Member States**, as well as **additional costs**. Those problems were already identified by the European Commission in its impact assessment, which is why it decided against a pre-approval by an EU body. The costs of setting up and running the EU body were estimated to be around EUR 4.02 million per year. National enforcement costs were estimated to amount to EUR 0.9 – 1 million per year.⁴ Moreover, substantive compliance costs for businesses were identified.⁵ Bearing these estimations in mind, the European Commission preferred the option to prohibit sustainability labels not meeting certain minimum requirements over the option of pre-approval by an EU body.⁶ The same considerations apply to pre-approval by national authorities.

The exact scope and burden as well as the full extent of the consequences of a pre-approval procedure are, however, unclear since the minimum requirements would only be specified by a Delegated Act. Should the minimum requirements set out in the Delegated Act **leave discretion to the national authorities**, pre-approval

² European Parliament – Committee on the Internal Market and Consumer Protection, 29.09.2022, (COM(2022)0143 – C9-0128/2022 – 2022/0092(COD)), https://www.europarl.europa.eu/doceo/document/IMCO-PR-736537_EN.pdf.

³ European Parliament – Committee on the Environment, Public Health and Food Safety, (COM(2022)143 – C9-0128/2022 – 2022/0092(COD)), https://www.europarl.europa.eu/doceo/document/ENVI-AD-736396_EN.pdf.

⁴ European Commission, Commission Staff Working Document – Impact Assessment Report accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information ("Impact Assessment Report"), SWD (2022) 85 final, p. 49.

⁵ Impact Assessment Report, p. 203.

⁶ Impact Assessment Report, p. 242.

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could nevertheless be positive as it would leave room to approve labels that are well-established in certain Member States and do not give rise to concerns.

However, the European Commission could introduce its excessive requirements for a certification scheme from the Proposed Directive in its Delegated Act, which go beyond what is required by existing EU legislation. If national authorities are required to assess labels based on such requirements, the same problems as under the Proposed Directive would arise for many well-established schemes relating to sustainability aspects. But in addition, they would have to incur the extra effort and costs of an approval procedure. The latter cannot be in the interest of the Member States either.

To **align the requirements of sustainability labels** with existing provisions of Union law on quality marks, in accordance with Article 43(1) Directive 2014/24/EU, and on EU certification marks, pursuant to Article 83 Regulation (EU) 2017/1001, private labels meeting the requirements of either of such marks should be excluded from point 2a of Annex I of the Proposed Directive. As a result, the restrictive requirements for certification schemes would only apply to private labels that are neither established by a public authority nor in line with the aforementioned provisions.

Conclusions

RAL is therefore advocating for amendments to the Proposed Directive permitting the continued use of established and reliable private quality marks in line with existing EU law, while limiting effort and costs to a realistic level. The legitimate objective of the Proposed Directive can be better attained when well-established sustainability labels are still allowed to be used. As there is no reason to put those schemes under the general suspicion of greenwashing, it is not justified to set up rigid constraints implementing pre-approval procedures and substantial changes to existing schemes, which will increase costs for Member States, scheme owners, companies and, finally, consumers and taxpayers, although the labels are in line with other provisions of Union law.

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