

Inception Impact Assessment for a Legislative proposal on substantiating green claims

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As the recognized representative of the European mineral raw materials industry covering more than 42 different metals and minerals and employing 350.000 directly and about four times as many indirectly, Euromines welcomes a European Green Deal to put Europe on the right track to a sustainable future and is prepared to take the necessary measures to make it the world's first climate neutral continent.

Euromines members are committed to facilitating and encouraging the promotion of safe use, recycling and disposal of products through an understanding of their life cycles. Primary production of metals and minerals, which remain abundant, will play an important role in delivering the European Green Deal¹ and increased sustainable supply from European sources will be needed in order to make the sustainable transition:

- products will become more durable, shared more and re-used more, materials will remain in use even longer than today;
- even so, the proposed deep transformation of the economy will require significantly more metals and minerals, as more sustainable standards of living are established;
- meaning that even with increased recycling, its contribution to raw material supply will continue to vary and there will remain a significant need for primary production.

EU Product and Organisation Environmental Footprint methods

Euromines has made significant contributions to the science of Life Cycle Assessment, on which the Environmental Footprint methods are based². Since 2013, Euromines has been actively engaged in the European Commission's Environmental Footprint (EF) and has helped develop, during the EF Pilot Phase, the 'Product Environmental Footprint Category Rules (PEFCR) for Metal Sheets in Various Applications'. Through our involvement in the EF Pilot Phase, the PEF Guidelines have been improved, but not all the defined shortcomings have been resolved to ensure that the methodology is sufficiently robust for use in EU policy, and does not lead to inappropriate results. In particular, the need to develop a better method of assessing the impacts of Resource Use in the years to come has been formally expressed and the European Commission has committed to invest

¹ SWD(2020) 100 final; European Commission (2020), Critical materials for strategic technologies and sectors in the EU – A foresight study (in press); JRC (2017), Critical raw materials and circular economy – background report. doi: 10.2760/378123

² Visit <http://www.euromines.org/publications/pef-pilot> for a full list of peer-reviewed publications

jointly with the industry in the development of an alternative approach to better quantify the potential for conservation of resources.

Analysis of the potential options presented in the Inception Impact Assessment

Baseline: No modification to the 2013/179/EU Recommendation establishing PEF/OEF methods and no further action:

A baseline option not to take any further action would be unacceptable to the mining industry, because it wouldn't solve the existing problem of EF methodology shortcomings identified during the PEF Pilot Phase that needs to be solved (e.g. eco-toxicity, human toxicity and resource use).

Option 1: Updating the 2013/179/EU Recommendation establishing PEF/OEF methods based on the outcome of the 2013-2018 Environmental Footprint Pilot Phase

Updating the 2013/179/EU Recommendation based on the outcome of the 2013-2018 pilot phase is **highly recommended**. However, it should also incorporate ready-made fixes arising from the EF Pilot Phase. Moreover, the European Commission should ensure that sound and robust data is available for EF users, by improving the EU datasets. These should comply with high quality data requirements and represent the state-of-the-art knowledge of industrial processes.

The vast experience gained during the EF Pilot Phase has led in many cases to sector-specific conclusions. For the Metals Sheets Pilot the following main outcomes were noted that have a direct impact on the EF Transition Phase discussions:

1. The Human Health Toxicity and Ecotoxicity have been removed temporarily from the EF impact categories considered in the analysis of the most relevant processes (previously called hot spot analysis), in comparison of products and in communication. The main reasons behind this decision were their underlying model shortcomings and significant uncertainty of results. In 2019, the JRC published a technical report with the new characterisation factors for the freshwater ecotoxicity and human health toxicity for organic chemicals, including a disclaimer about the non-appropriateness of the factor for metals and proposed to use a specific robustness factors for metals to mitigate their contribution compared to organics. However, this solution limits the impact of the categories in question and does not solve the problem as the impact of metals products remains not correctly assessed. We are looking forward to the future discussions during the EF Transition Phase to find an effective solution.

2. The Abiotic Depletion Potential ($ADP_{[Reserve\ Base]}$) has been temporarily replaced by the $ADP_{[Crustal\ Content]}$ and PEF Guidelines were changed in that sense. Two subsequent method development projects are now running in parallel: one by the European Commission Joint Research Centre³ and the second by the metals and mining industries⁴. We strongly suggest that both approaches be explored in depth, considering also recent contributions of the EIT Raw Materials SUPRIM project⁵ and the United Nations Life Cycle Initiative. In the meantime, the 2013/179/EU Recommendation must be updated as even the interim solution ($ADP_{[Crustal\ Content]}$) gives misleading results unless and until its most recent update is adopted for PEF⁶.

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).

Establishing a voluntary approach to make green claims in accordance with the Environmental Footprint methodology, as a complement to the existing other methods is the preferred way forward in the mid-term and only once the serious flaws revealed by the PEF Pilots are corrected. Benchmarking and comparison of products should be voluntary, and industry led. EF should be used to ensure a level playing field, by harmonising methodologies for substantiating environmental claims, and thus avoiding the proliferation of different methods and improving comparability. The methodology should complement existing life cycle assessment tools after essential developments are included and corrections are made (e.g. toxicity, ecotoxicity and resource use). Any legislative proposal on substantiating legal claims should be exclusively focussed on enforcing veracity of publicly communicated information.

Option 3: Establish an EU legal framework requiring companies making claims related to the impacts covered by the Environmental Footprint methods to substantiate them via the Environmental Footprint methods

Establishing a mandatory requirement for substantiating green claims based on the officially adopted PEFCRs and OEFCRs is not a preferred option as benchmarking and comparison of products should be voluntary

³ JRC Technical Report 'Environmental Footprint: Update of Life Cycle Impact Assessment Methods—Ecotoxicity freshwater, human toxicity cancer, and non-cancer', Saouter E., Biganzoli F., Ceriani L., Versteeg D., Crenna E., Zampori L., Sala S., Pant R.; https://publications.jrc.ec.europa.eu/repository/bitstream/JRC114227/jrc114227_final_online_2020.pdf;

⁴ See https://www.linkedin.com/posts/euromines_circulareconomy-lca-resources-activity-6681935207605571584-ggrK for a brief description

⁵ <http://suprim.eitrawmaterials.eu/project-results>

⁶ van Oers, L, Guinée, J B & Heijungs, R (2020) "Abiotic resource depletion potentials (ADPs) for elements revisited—updating ultimate reserve estimates and introducing time series for production data", The International Journal of Life Cycle Assessment, 25, 294-308 (<https://link.springer.com/article/10.1007/s11367-019-01683-x#citeas>)

and industry led. Moreover, not all the current 15 impact categories under EF methodology are robust enough for a legal framework and should be further refined during the EF Transition Phase. Any legislative proposal on substantiating legal claims should be exclusively focussed on enforcing veracity of publicly communicated information.

In Conclusion

Because PEF is based on Life Cycle Assessment, it describes potential environmental impacts (not actual impacts) and, in the case of the Resource Use (minerals & metals) impact category, on the basis of poor data and models. To base the substantiation of green claims mainly on impact categories that may be driving the overall results after normalisation and weighting but have a low overall robustness would not be consistent with the Commission's stated objectives. In aiming to prevent misleading claims to consumers, the EU must guard against requiring the use of harmonised methods that are themselves poorly defined, explained and understood, or underpinned by non-comparable methods to measure and assess environmental impacts. This would cause the requirements themselves to mislead consumers resulting in higher environmental impacts than would otherwise occur.

Therefore, it is essential that Option 1 be pursued in the short term and Option 2 be preferred in the longer term. Whichever option is pursued, the Human Toxicity, Ecotoxicity and Resource Use (minerals & metals) impact categories must not be presented in product benchmark values and their results must not be used for other communication purposes such as attempting to substantiate green claims, until their serious flaws revealed by the PEF Pilots are corrected.

Yours sincerely,

(signed electronically)

Mr Johannes Drielsma
Deputy Director

cc Head of Unit
DG GROW C.2