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So You Think You Want To...

stay on top of greenwashing legislation in the EU

GLOBAL CONSUMER GOODS & RETAIL INDUSTRY GROUP

The European Commission launched the European (EU) Green Deal in 2019, which championed a vision of making Europe the world's first climate-neutral continent by 2050. The EU Green Deal sets out a commitment to tackle false environmental claims by requiring that consumers receive reliable, comparable, and verifiable information to enable them to make more sustainable decisions and to reduce the risk of greenwashing. This has led to (i) the Empowering Consumers for the Green Transition Directive ("**EmpCo Directive**") approved in March 2024 –that amends the Unfair Commercial Practices Directive; and (ii) the proposed EU Green Claims Directive ("**Green Claims Directive**") which was tabled by the European Commission in March 2023.

The drivers in the sustainability landscape



Greenwashing is defined as the practice of making unclear or poorly-substantiated environmental claims that potentially mislead consumers into believing that companies, products, or services are more environmentally friendly than they actually are. It is a hot topic that impacts companies across all sectors.

Greenwashing is increasingly becoming a key area of focus in the EU (and beyond) with businesses grappling with the risks of allegations of greenwashing arising from regulatory authorities, non-governmental organizations, consumers, and competitors.

The impact of regulations on greenwashing is far reaching as they generally affect all businesses, regardless of location, that target consumers in the affected region or country.

In a European Commission study, the European Commission found that consumers do not trust the environmental statements found on products:



53% of green claims have vague, misleading, or unfounded information

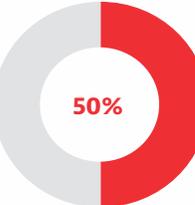


40% of green claims have no supporting evidence



Consumer trust in green claims is **extremely low**

The European Commission also found that:



Half of all green labels used in the EU lack verification



Some **230** sustainability labels are in use in the EU with vastly different levels of transparency

As the numbers reveal, consumers are confronted with unfair commercial practices, which lead to confusion and actively prevent them from making sustainable choices. As a result, the reliability of environmental claims is seen as the biggest obstacle to consumers engaging in the green transition since a vast majority of consumers do not trust environmental standards or claims on products.



Approved EmpCo Directive

- Entered into force on 26 March 2024 and the Member States must apply the new rules by **27 September 2026**
- Amends the Unfair Commercial Practices Directive (UCPD) (already implemented into national law in the EU Member States)
- Limits misleading environmental claims and early obsolescence practice
- Sets a harmonized EU sustainability label and information tools
- The **EmpCo Directive** will be supplemented by the **EU Green Claims Directive**

The EmpCo Directive's main features are:

- ✓ The inclusion of an environmental claim definition: "Any message or representation which is not mandatory under Union or national law, in any form, including text, pictorial, graphic or symbolic representation, such as labels, brand names, company names or product names, in the context of a commercial communication, and which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time". The Directive, however, does not apply to messages that are mandatory under EU or national law.
- ✓ Generic Environmental Claims are prohibited unless the professional is able to demonstrate the "excellent recognised environmental performance" relevant to the claim. Examples of generic claims: 'environmentally friendly', 'eco-friendly', 'green', 'nature's friend', 'ecological', 'environmentally correct', 'climate friendly', 'gentle on the environment', 'carbon friendly', 'energy efficient', 'biodegradable', 'biobased.'
- ✓ It is prohibited to make an environmental claim about the entire product or the trader's entire business when it concerns only a certain aspect of the product or a specific activity of the trader's business, as well as claiming, based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions.
- ✓ Sustainability labels must be based on a certification scheme, or established by public authorities.



Proposed EU Green Claims Directive

- On 22 March 2023, the European Commission tabled the Proposed Green Claims Directive which aims to harmonize the evaluation and monitoring of green claims towards EU consumers and control the proliferation of public and private environmental labels.
- It complements the EmpCo Directive that entered into force on 26 March 2024.
- Crucially, like the EmpCo Directive, the proposed Green Claims Directive extends beyond the EU in the sense that any company that makes a voluntary environmental claim directed at EU consumers will need to comply with the requirements.

The proposed Green Claims Directive applies to all voluntary claims made by companies:

- ✓ In textual form or contained in an environmental label
- ✓ That are directed at EU consumers
- ✓ That relate to the environmental impact, aspect, or performance of the company's products, services, or organization

This includes explicit and implicit claims such as "eco-friendly," "environmental footprint reduced by 20% since 2018," "carbon neutral," or "made of 30% recycled plastic."



Proposed EU Green Claims Directive

Key requirements under the proposed Green Claims Directive



The substantiation and communication of green claims should be subject to third party verification prior to the green claim being made public or the label being displayed.



Green claims must be substantiated using widely recognized scientific evidence, taking into account relevant international standards.



Comparative claims comparing a product's sustainability performance against a competitor's are only permissible under certain conditions.



Green claims highlighting a company's efforts to improve future environmental performance should include commitments and a clearly specified time frame for achieving such milestones and are subject to transparency requirements.



There should be transparency in claims relying on CO₂ offsetting and for certain claims CO₂ offsetting will not be allowed as the basis for such claims.



Information about ownership, decision-making bodies, objectives, and monitoring procedures of environmental labeling schemes should be transparent, accessible, free of charge, easy to understand, and sufficiently detailed.



Claims that use aggregate scoring of a company's or a product's overall environmental impact are prohibited, unless based on EU rules or EU labeling schemes established to calculate such aggregated score.



Information on which the environmental claim is based must be made available to the public in physical form, via a weblink, via a QR code, or equivalent.

Monitoring and Enforcement

The requirements under the proposed Green Claims Directive, once adopted, will be monitored on a regular basis and enforced by appointed authorities in each Member State. The implementation and enforcement of the Green Claims Directive in the Member States may not be consistent, with some states having more stringent requirements than others. In the current status of the proposal, Member States will be required to transpose the Green Claims Directive into national legislation within 18 months of the Green Claims Directive coming into force and apply those laws within 30 months of the Green Claims Directive coming into force (42 months for SMEs).

The enforcement authorities will have inspection and enforcement powers, which may include the power to access any relevant information, data, or documents or to require any natural or legal person to provide such information, the power to impose adequate and effective remedies or adopt injunctive relief, and the power to impose penalties in case of infringements.

What's Next?



Parliament adopted its first reading position with 467 votes to 65 and 74 abstentions. The file will now have to be followed up by the new Parliament after the European elections that will take place in early June 2024. Also, the Council will have to adopt its position after which trilogue negotiations will start. The draft text may therefore be subject to further amendments.

Benefits of the Directives and Next Steps

How will the EmpCo Directive and the proposed Green Claims Directive benefit your business?

The current varying standards of substantiating environmental claims and the unclear requirements to address the proliferation and credibility challenges of environmental labels have created an uneven playing field for companies. By establishing a consistent system of independent verification, it is the intention that companies will benefit from:



A common approach for substantiating green claims across the EU that will allow companies to compete on a level playing field.



Increasing credibility for businesses trading in the EU and beyond.



Increased confidence coupled with more demand for greener products and solutions from consumers.



A boost in the competitiveness of economic operators who increase the environmental sustainability of their products and activities.

How does this impact your business?

With an expected rise in greenwashing lawsuits, businesses need to be aware of:

- How to speak about issues in product claims and other public documents
- How to continue being rigorous in the review of company communications
- What disclosures to make to ensure consistency and accuracy
- How to identify a legal partner who can help to look out for new regulatory developments in this area

Crucial next steps for your business



- Ensure that you keep up to date with the latest measures approved by EU Member States and assess as soon as possible to prepare a strategy for implementing the requirements.
- Work with industry associations to help influence the outcome of the proposed Green Claims Directive.
- Analyze your marketing strategy in relation to claims that may be subject to the EmpCo Directive and the future Green Claims Directive.
- Collect product lifecycle data of your products to help speed up verifications and aid in any further assessments of green claims.
- Prepare to set up a website that will contain relevant information relating to the substantiation of green claims including a summary in easily understandable language.

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