


DEVELOPMENTS IN THE FIELD

The Revision of EU Greenwashing Laws: A New Framework of Analysis

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Abstract

Greenwashing cases holding businesses to account for false or misleading eco-claims are an increasingly visible component of the business and human rights landscape globally. In the European Union (EU), the Unfair Commercial Practices Directive is the centrepiece of regulation for business-to-consumer claims. Within the European Green Deal initiative, the EU is revising this framework, first with the Directive to ‘Empower Consumers for the Green Transition,’ and second the pending proposal for a ‘Green Claims Directive,’ introducing detailed requirements on the substantiation and communication of ‘green claims’ to consumers. If fully adopted, this fundamental reform will impose greater restraints on the discretion of any authority charged with the assessment of green claims and provide more uniform criteria across the EU, resulting in more accurate environmental claims and greater clarity for consumers and businesses alike.

Keywords: consumer protection; green claims; greenwashing; EU unfair commercial practices

1. Introduction

Greenwashing needs no introduction these days: Companies that make unsubstantiated or misleading claims about the environmental advantages of their products, services or practices risk being named and shamed by the media and also face the prospect of legal proceedings. Greenwashing cases are rapidly evolving in Europe, as well as globally.¹ European Union (EU) law tackling greenwashing has mainly been the Unfair Commercial Practices Directive (UCPD), which has provided a relatively light-touch regulatory framework for consumer law over the last two decades throughout the European Economic Area (EEA).² Advertising or marketing claims including greenwashing could be

¹ Significant recent developments include the case against KLM before the District Court of Amsterdam, *FossielVrij NL et al v KLM*, C/13/719848/HA ZA 22-524 (2024). Environmental organizations such as ClientEarth are closely monitoring corporate statements in order to bring actions, <https://www.clientearth.org/what-we-do/greenwashing/>, and different agencies are stepping up their enforcement efforts.

² Council Directive 2005/29, 2005 O.J. (L 149) 22. The UCPD, in addition to its application to greenwashing, also applies to the practice often known as ‘bluwashing,’ which covers the making of claims relating to social justice or human rights, such as a company’s approach to diversity, equality and inclusivity or other workplace practices such as fair pay or health and safety, or claims relating to slavery or trafficked labour or the employment of children in the supply chain. The new amendments to the UCPD will also tighten up the law relating to such claims. This piece

brought before national courts for highly fact-specific rulings or could be the subject of regulatory investigations, based on rather vague, open-ended criteria.

As part of its Green Deal,³ the EU embarked on a fundamental reform of the law on greenwashing, and the UCPD has now been revised by the ‘Directive to Empower Consumers for the Green Transition’ (Directive).⁴ This is only the first of a far-reaching two-step reform process, the second element being the arguably more significant pending separate proposal for a ‘Green Claims Directive’ issued in March 2023, which remains in the EU’s complex legislative adoption process. The proposed Green Claims Directive introduces very specific requirements on the substantiation and communication of ‘green claims’ to consumers. This reform, once fully in force, will result in a major departure from the current situation which accords a broad margin of discretion to national courts (and authorities) in determining what is misleading or unfair in an environmental claim. The aim is to provide consumers in Europe with the ability to drive the green transition by making environmentally conscious choices in their purchasing decisions, based on uniform criteria.

The proposed Green Claims Directive and UCPD sit within a broader set of initiatives that form part of the European Green Deal and that are intended to improve how businesses interact with the environment and human rights. Various aspects of the Green Deal have recently come under scrutiny as being potentially too burdensome for businesses, particularly with respect to reporting obligations and supply chain due diligence relating to the environment and human rights, but so far, the proposal for a Green Claims Directive has been maintained by the European Commission and is proceeding through the legislative process.

II. Snapshot of the Current EU Framework on Greenwashing Claims

The EU’s current rules on misleading consumer claims are based on a blacklist of practices that are misleading under any circumstances,⁵ and a general prohibition of claims which are ‘likely to deceive the average consumer (...) likely to cause him to take a transactional decision that he would not have taken otherwise’ or ‘omits material information that the average consumer needs, according to the context, to take an informed transactional decision.’ The way these latter provisions have been applied by national courts is highly fact-specific, depending on a court’s view on what would have an impact on an average consumer’s decision, and as a result, very variable.⁶

will focus on greenwashing, however. The EEA covers the 27 countries of the EU plus Norway, Iceland and Liechtenstein.

³ European Commission, Communication on the European Green Deal, COM (2019) 640 final, 12 November 2019.

⁴ Directive (EU) 2024/825 of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, 2024 O.J. (L).

⁵ In its guidance paper on the UCPD, Commission Notice on Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, 2021 O.J. (C 526), the European Commission explains that ‘if it can be proved that the trader has carried out a blacklisted commercial practice, national enforcers can take action to sanction the trader without having to apply a case-by-case test (i.e. assessing the likely impact of the practice on the average consumer’s economic behaviour).’

⁶ See Willem H. van. Boom, ‘Unfair Commercial Practices’ in Christian Twigg-Flesner (ed.), *Research Handbook on EU Consumer and Contract Law* (Cheltenham: Edward Elgar 2016) 388–405, for a more comprehensive discussion. Article 5 contains a general contingency clause prohibiting commercial practices that are contrary to the requirements of professional diligence, and materially distort or are likely to materially distort economic behaviour with regard to the product by the average consumer. Articles 6–7 are the key provisions relating to misleading claims, regulating misleading actions and omissions respectively.

For example, in the ‘Froggy’ case, the Brussels Court of Appeal considered whether statements on plastic used in soap bottles, which were presented as containing recycled material recovered from the oceans, were misleading to the average consumer. While certain representations relating to recycled content were factually incorrect, the Court concluded (among other points) that there was insufficient evidence to support the conclusion that this would have altered a consumer’s transactional decision.⁷ In addition to the courts in EU Member States, the Court of Justice of the European Union has also developed a body of case law based on preliminary references from national judges, with the aim of further clarifying certain concepts such as that of an ‘average consumer.’⁸

Although the UCPD is key, greenwashing claims in the EU may be subject to other regulatory frameworks and non-judicial bodies, e.g. self-regulatory bodies in the advertisement industry have codes of conduct regarding misleading content, and decisions by the Dutch Advertising Code Commission (ACC)⁹ and the UK Advertising Standards Authority (ASA) offer an interesting non-judicial perspective. National consumer protection authorities and competition authorities are competent to deal with greenwashing, and OECD National Contact Points (NCP) can receive complaints and issue decisions on environmental and climate change claims.¹⁰ Other elements of the European Green Deal are also intended to combat greenwashing, e.g. the EU Green Bond Regulation,¹¹ Taxonomy¹² and the Corporate Sustainability Reporting Directive.¹³ These laws are aimed at increasing transparency by enabling access to reliable sustainability information regarding the financial services industry (the EU Green Bond Regulation and the Taxonomy) and a company’s overall performance relating to the environment and human rights (the EU Corporate Sustainability Reporting Directive).

III. The Upcoming Reform of EU Greenwashing Laws

The EU is in the process of dramatically reforming its regulatory framework relevant to consumer protection in relation to greenwashing. The aim is to achieve more clearly spelled-out rules, leaving less freedom for regulators and judges and resulting in less divergence in decision-making, greater predictability for business and better protection for consumers who should be able to make more sustainable purchasing choices Europe-wide.

A. Directive Empowering Consumers for the Green Transition

The newly adopted directive amends the UCPD and the EU Consumer Rights Directive (Directive 2011/83). Formal implementation is still some time away, and it will now need to

⁷ *Werner & Merz ‘Froggy’ v Ecover*, 28 June 2019, *Annuaire Pratiques du marché* 2019, liv. 1, 432.

⁸ See, for example, Judgment of 14 November 2024 in Case C-646/22, *Compass Banca SpA v Autorità Garante della Concorrenza e del Mercato Case C-646/22*, ECLI:EU:C:2024:957, para 43.

⁹ See Maria Antonio Tigre, ‘A new frontier in (Dutch) climate litigation: Greenwashing advertisements on CO₂ compensation,’ *Columbia Law School Sabin Center for Climate Change Law* (12 July 2022), <https://blogs.law.columbia.edu/climatechange/2022/07/12/guest-commentary-a-new-frontier-in-dutch-climate-litigation-greenwashing-advertisements-on-co2-compensation/> (accessed 7 May 2024).

¹⁰ Although not legally binding, decisions may form the basis for further legal proceedings.

¹¹ Regulation (EU) 2023/2631 of the European Parliament and of the Council of 22 November 2023 on European Green Bonds and optional disclosures for bonds marketed as environmentally sustainable and for sustainability-linked bonds, 2023 O.J. (L).

¹² Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, 2020 O.J. (L 198).

¹³ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, O.J. (L 322) 15.

be transposed in the national laws of each EEA country. The Directive sets a final applicability date for September 27, 2026.¹⁴ However, companies would be well advised to get ready now to make the changes which will be required.

The effect will be that EU authorities can crack down much more heavily on greenwashing. In fact, the UCPD already permits many greenwashing claims to be deemed misleading on a case-by-case basis; the new changes add to the list of clearly blacklisted practices and focus on increasing legal certainty and significantly raising the bar on what is acceptable in terms of green claims.¹⁵ The Directive also adds valuable provisions relating to sustainability labels, rights of repair and durability.

The Directive applies to written and oral environmental claims and pictorial, graphic and symbolic representations. Three new greenwashing-related claims are banned outright:¹⁶

- ‘Making a generic environmental claim for which the trader is not able to demonstrate recognized excellent environmental performance relevant to the claim.’

This includes claims which are not specified in clear and prominent terms in the same media¹⁷ such as ‘environmentally friendly,’ ‘eco-friendly,’ ‘green,’ ‘nature’s friend,’ ‘ecological,’ ‘environmentally correct,’ ‘climate friendly,’ ‘gentle on the environment,’ ‘carbon friendly,’ ‘energy efficient,’ ‘biodegradable’ and ‘biobased.’¹⁸ ‘Excellent environmental performance’ may be demonstrated for example by compliance with EU Ecolabel Regulation 66/2010, or national or regional ISO 14024 Type I ecolabelling schemes.¹⁹

- ‘Making 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.’

This prevents companies from relying on the presentation of a small, though undeniably environmentally friendly, part of their activities in order to characterize themselves as overall ‘green.’ Such claims by banks and oil companies have been considered unacceptable in the UK.²⁰

¹⁴ Ibid at art 4(1).

¹⁵ The Commission had already determined that many environmental claims in the EU should be considered misleading, which partly prompted the reform. See: European Commission, ‘Environmental claims in the EU: Inventory and reliability assessment,’ Final report, 2020, <https://circabc.europa.eu/ui/group/44278090-3fae-4515-bcc2-44fd57c1d0d1/library/b11ba10b-5049-4564-b47a-51a9bc9003c8/details?download=true> (accessed 7 May 2024).

¹⁶ Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information, Annex, 2024 O.J. (L) 1, 16.

¹⁷ Ibid at 10. This follows a series of decisions by the Dutch Advertising Code Committee ruling against Shell in claims relating to CO₂ compensation. Maria Antonio Tigre, above note 9.

¹⁸ Ibid at 3.

¹⁹ In essence, in order to make a generic environmental claim, environmental performance must be demonstrated by reference to *another* type of classification outside the UCPD framework itself. See, e.g. *ibid* at 11 (“[R]ecognised excellent environmental performance” means environmental performance compliant with Regulation (EC) No 66/2010 of the European Parliament and of the Council or with national or regional EN ISO 14024 Type I ecolabelling schemes officially recognized in the Member States, or top environmental performance in accordance with other applicable Union law’).

²⁰ Although not interpreting the UCPD, practice of the UK ASA provides some useful context here. In a ruling of 19 October 2022 regarding the bank HSBC UK, the ASA noted that while HSBC’s green claims in that particular instance, e.g. relating to the planting of trees, were fully accurate, the general claim was still misleading given that HSBC’s overall business remains for a large part focused on fossil fuel investment. *HSBC UK BANK Plc*, Advertising Standards Authority (19 October 2022), <https://www.asa.org.uk/rulings/hsbc-uk-bank-plc-g21-1127656-hsbc-uk->

- ‘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.’

This prohibition is likely to have a profound impact and has given rise to much attention. Offsetting refers to investments in projects that compensate, or ‘offset,’ greenhouse gas emissions, such as the planting of forests. The controversial aspects of offsetting practices have been highlighted in several recent greenwashing cases, the best known being perhaps the case against the airline KLM in The Netherlands.²¹ This amendment will ban ‘climate neutral’²² claims in relation to a product made to consumers if based on offsetting. One important nuance is noted in the (non-binding) recitals to the Directive, suggesting that there should still be some leeway to inform consumers about offsetting projects, although no longer in an unqualified manner suggesting that a product or service is carbon neutral.²³

In addition to these new bans, other significant amendments are made to UCPD Article 6. Notably, a misleading claim will include ‘making an environmental claim related to future environmental performance without clear, objective, publicly available and verifiable commitments set out in a detailed and realistic implementation plan that includes measurable and time-bound targets and other relevant elements necessary to support its implementation, such as allocation of resources, and that is regularly verified by an independent third party expert, whose findings are made available to consumers.’ This targets, for example, vague slogans by companies relating to their net zero trajectories. The UCPD will now require more substantiation and objective third-party verification. In that sense, the reform is a clear precursor to the changes anticipated in the proposed Green Claims Directive.

B. Proposal for a Green Claims Directive

In March 2023, the European Commission proposed a Directive on the substantiation and communication of explicit environmental claims (Green Claims Directive),²⁴ which is easily the most ambitious greenwashing law reform to date in Europe (and probably globally).²⁵ It is still in the process of adoption and amendments are likely. This measure is targeted

[bank-plc.html](#) (accessed 7 May 2024). Similar reasoning was applied to Equinor in a ruling of 20 December 2023, where advertisements relating to achieving ‘a smooth energy transition’ were deemed misleading because Equinor’s overall business activities remain largely based on fossil fuels. *Equinor*, Advertising Standards Authority (20 December 2023), <https://www.asa.org.uk/rulings/equinor-asa-a23-1204534-equinor-asa.html> (accessed 21 June 2024).

²¹ In that case, KLM was accused of misleading conduct by using the slogan ‘fly responsibly,’ and ‘CO₂ZERO,’ linked to its offsetting of greenhouse gas emissions. See KLM, above note 1.

²² Recital 12 mentions other examples such as ‘CO₂ neutral certified,’ ‘carbon positive,’ ‘climate net zero,’ ‘climate compensated,’ ‘reduced climate impact’ and ‘limited CO₂ footprint.’ Council Directive (EU) 2024/825, 2024 O.J. (L) 1, 4.

²³ Ibid: ‘such a prohibition should not prevent companies from advertising their investments in environmental initiatives, including carbon credit projects, as long as they provide such information in a way that is not misleading.’

²⁴ Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive), COM (2023) 166 final, 22 March 2023. For a more detailed discussion, see Genevra Forwood et al, ‘EU proposes Green Claims Directive to combat greenwashing,’ White & Case (14 April 2023), <https://www.whitecase.com/insight-alert/eu-proposes-green-claims-directive-combat-greenwashing> (accessed 7 May 2024).

²⁵ See also Joanne Affre & Emilie Nitschke, ‘Les pratiques de greenwashing dans le secteur de la publicité’ (2023) 3 *Concurrences*, at para 145, for a broader discussion on European greenwashing developments.

exclusively at ‘green claims,’ defined by reference to the reformed UCPD as explicit²⁶ environmental²⁷ claims made by traders about products or traders in business-to-consumer commercial practices. Any voluntary, explicit environmental claim would be subject to detailed new requirements affecting how claims are substantiated and communicated. A certificate of conformity for green claims, drawn up by an independent verifier, would be required.²⁸ Consumers would be able to access this certificate of conformity, for example by a website link or QR code,²⁹ to quickly verify the veracity of the claim made. Companies will also have to track new scientific developments and take account of these. The role of independent verifiers as a sort of first line of assessment and quality assurance is particularly striking.³⁰

The proposed Green Claims Directive opens up new routes for complaints against traders and for representative actions to be brought in court and provides for substantial penalties to be imposed, including maximum fines of not less than 4 per cent of turnover in a Member State or the Member States concerned. The proposal also has far-reaching provisions aimed at preventing the proliferation of new labelling systems throughout the EU.

Under the European Commission’s 2024–2029 priorities, there is an increased focus on the competitiveness of businesses within the EU.³¹ As part of this focus, the European Commission is exploring the simplification of various rules adopted under the European Green Deal through so-called ‘Omnibus’ packages. However, at this stage, the proposal for a Green Claims Directive is maintained in the Commission’s Work Programme, and the adoption process by the Council and Parliament has begun.³² The shape of its final adoption, however, remains uncertain.

IV. Conclusion: A More Structured Analysis, but No One Size Fits All

The result of these reforms will be substantially greater restraints on the discretion of any authority charged with the assessment of green claims, be that a national consumer authority or a judge, in contrast with the current freedom to determine appropriate standards based on the view of the ‘average consumer.’ The basic principles of the EU framework will not change, but an extra layer of clarity of specification and unambiguous requirements will be added to the open-ended framework of unacceptable green claims. While there is greater clarity in terms of the ‘blacklisted’ practices which will definitely be considered misleading and how other claims should be considered, the proposed Green Claims Directive explicitly confirms that the required certificate of conformity from an

²⁶ Defined as ‘an environmental claim that is in textual form or contained in an environmental label.’ Green Claims Directive, at art 2(2).

²⁷ Defined as ‘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.’ Council Directive (EU) 2024/825, at art 1(1), 2024 O.J. (L) 1, 4 (EU).

²⁸ Article 10(6) of the Green Claims Directive provides ‘Upon completion of the verification, the verifier shall draw up, where appropriate, a certificate of conformity certifying that the explicit environmental claim or the environmental label complies with the requirements set out in this Directive.’

²⁹ *Ibid* at art 5(6).

³⁰ Green Claims Directive, at art 11, on the notion of verifiers.

³¹ European Commission, Communication on implementation and simplification, COM (2025) 47 final, 11 February 2025.

³² European Commission, Commission Work Programme 2025, COM (2025) 45 final, 11 February 2025. The first trilogue took place on 28 January 2025.

independent verifier would not prejudge the assessment of a national court as to whether a claim is misleading.³³

The provisions on independent verification in these reforms reflect a general trend seen in other parts of the ‘Green Deal’ package and EU legislation adopted under the first Von der Leyen Commission. Provisions relating to third-party verification are included in the recently adopted EU Deforestation Regulation,³⁴ the Carbon Border Adjustment Mechanism Regulation³⁵ and the Corporate Sustainability Reporting Directive³⁶ as well as the recently adopted Corporate Sustainability Due Diligence Directive.³⁷ The EU approach to corporate sustainability and the Green Deal is however under review, on the basis that EU business needs greater simplification to foster competitiveness. The scope of review and the measures covered are currently unclear, but verification procedures generally, as well as those included in the Green Claims Directive, may well be subject to simplification. The value of independent verification depends on the rigour and reliability of third-party audits, and there is increasing recognition of the challenge that the nascent environmental audit industry is properly regulated to ensure good practices are developed and maintained.

To conclude, the newly reformed UCPD aims to better protect consumers by explicitly spelling out greenwashing claims that will be prohibited EU-wide, and tightening up the criteria for making green claims generally. However, it does not fundamentally change the framework of assessment. Even with the additional impact of the potential adoption of the proposed Green Claims Directive, the individual assessments of national courts and regulators will continue to play a crucial role in determining what types of green claims are misleading or unfair; but crucially, these assessments should become more structured and focused on verifying if the new requirements set out in the reformed EU framework have been followed. More justifiable green claims and greater clarity for consumers and businesses should result.

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³³ Green Claims Directive, at rec. 52: ‘In order to provide traders with legal certainty across the internal market as regards compliance of the explicit environmental claims with the requirements of this Directive, the certificate of conformity should be recognized by the competent authorities across the Union. Microenterprises should be allowed to request such certificate if they wish to certify their claims in line with the requirements of this Directive and benefit from the certificate’s recognition across the Union. **The certificate of conformity should however not prejudge the assessment of the environmental claim by the public authorities or courts which enforce Directive 2005/29/EC**’ (emphasis added).

³⁴ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, O.J. (L 150) 206.

³⁵ Regulation (EU) 2023/956 of 10 May 2023 establishing a carbon border adjustment mechanism, O.J. (L 130) 52.

³⁶ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, O.J. (L 322) 15.

³⁷ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, O.J. (L) 1.

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