

# Tackling Greenwashing in Environmental Claims: Regulatory Developments in the EU and Beyond

Author: Hannah Janknecht, Emilia Assenza

Regulatory Analyst, Compliance & Risks,  
Senior Regulatory Compliance Specialist, Compliance & Risks

---

30 March, 2023

*Further regulatory developments may have occurred after publication. To keep up-to-date with the latest compliance news, [sign up to our newsletter](#)*



<b>1. Introduction.....</b>	<b>3</b>
<b>2. European Union.....</b>	<b>5</b>
Background.....	5
Draft Directive on Green Claims.....	7
Scope & Definitions.....	7
Substantiation of environmental claims.....	8
Additional requirements.....	9
Communication of environmental claims.....	10
Environmental Labels.....	11
Verification.....	12
Enforcement.....	12
What to expect next.....	13
<b>3. Environmental Claims Worldwide.....</b>	<b>13</b>
a) USA.....	13
b) US States.....	14
c) United Kingdom.....	15
d) Australia.....	16
e) France.....	16
f) Self-Regulating Codes.....	18
g) ISO Standards.....	18
<b>4. Conclusion.....</b>	<b>19</b>

# 1. Introduction

Consumer interest in purchasing products that have a lower impact on the environment has grown significantly in recent years. Although the trend for “[green consumerism](#)” has been around since the early 1970s, increased awareness of climate change, loss of biodiversity and scarcity of resources in recent years has led to a quickly growing market for green products, accompanied by advertising and marketing strategies highlighting their reduced impact on the environment.

While underlining the advantages of a product is an inherent feature of any marketing campaign, consumers struggle to assess the reliability of environmental claims. This struggle is enhanced by scientific uncertainty around the effects that products might have on the environment and the fact that information around the environmental impact of a product is often not easily comparable at first sight.

Environmental or green marketing claims are not limited to direct, written information, but include pictures, labels, logos and certificates. Green claims can either be made with regard to a [specific product or as a company-wide claim](#), using information on the product itself, its packaging, a company's websites or in advertisements.

In order to be transparent and verifiable for the consumer, green claims must be presented in a clear, proportionate and unambiguous manner, backed up by precise and measurable information. The information must be based on scientific evidence and must relate to a significant environmental impact, factoring in potential side effects and trade-offs.

Environmental claims that fail to meet these transparency criteria are generally considered “greenwashing”.

To date, there are many definitions of greenwashing used in literature and practice. Though generally [defined as](#) “the intersection of two firm behaviors: poor environmental performance and positive communication about environmental performance”, it must be acknowledged that the use of false or misleading green claims is not always obvious and might in some cases be the result of a [disagreement and miscommunication on goals between marketing and production](#). One element that is however common to most definitions and examples of greenwashing is the [selective disclosure of information](#) on environmental performance.

In most jurisdictions, false or misleading green claims are regulated as part of the general law on consumer protection and unfair competition practices, aiming to protect not only consumers but also fellow competitors from unsubstantiated green claims. The [UK Consumer Protection from Unfair Trading Regulations 2008](#), for example, considers a commercial practice to be unfair if it is a misleading action or a misleading omission. The general legislation on consumer protection and unfair

competition practices is however very broad, making its application to specific situations of false or misleading green claims difficult for companies as well as for authorities. To facilitate the application of those laws, many countries issue guidance materials on green claims. These guides often include definitions for vague terms such as 'sustainable' or 'natural', but they are nevertheless not binding.

At present however a trend towards binding regulation specific to green claims can be witnessed in the European Union, United States, United Kingdom and France. While the United States and the United Kingdom are currently looking into the possibility of drafting new legislation, the EU is moving fast to implement a new legal framework on the matter.

## 2. European Union

### Background

The EU efforts to create a uniform regulation on environmental claims dates back to 2020, when the European Commission published an [initiative](#) on substantiating green claims. The primary intent of the initiative is to create unified legislation across Europe in order to make claims reliable and verifiable, thus reducing the practice of greenwashing and increasing confidence of consumers on the information provided on the environmental impact of products.

According to the initiative, the main instrument to achieve these objectives would be the creation of standard methods to substantiate claims. A [study](#) conducted in 2020 assessed over 150 selected environmental claims and found in fact that 40% of claims were unsubstantiated. A claim was considered substantiated if the producer/trader provided sufficient information on the packaging, the product website or through direct contact with the consumer to explain the claim. In most cases, substantiation was partial, and the information provided was considered incomplete or not persuasive. Another important issue was that the information to substantiate the claim was not always provided in the language of the country in which the product was sold, which undermines the ability of the consumer to understand it.

Also, the study found that 53.3% of the environmental claims assessed across the EU and across a wide range of product categories included vague, misleading or unfounded information about a products' environmental characteristics (80 out of 150, both in advertisement as well as on the product). Additionally, this lack of clarity leads to low consumer trust in green claims.

Later in January 2021, the EU Commission published the results of its first [screening](#) on greenwashing conducted on 344 online green claims. The results showed that in 42% of cases the claims were exaggerated, false or deceptive and could potentially qualify as unfair commercial practices under EU rules. Also, in over half of the cases (57.5%), the trader did not provide sufficient elements allowing for judgment of the claim's accuracy.

The [Unfair Commercial Practices Directive](#) has proven not to provide sufficient safeguards to prevent misleading claims. The Directive in fact contains provisions on misleading practices that could apply to environmental claims, mostly in its Articles 6 and 7, which detail the misleading actions and omissions. By way of example, an environmental claim can be considered misleading if it negatively affects a consumer's transactional decisions or when it falls under the blacklist of commercial practices of Annex 1. However, the Directive does not contain specific rules applicable to environmental claims.

Therefore, the EU has committed to change the current regulatory framework to effectively tackle greenwashing. The first step was the publication of the [Proposal for a Directive on empowering consumers for the green transition](#) in March 2022.

This Draft Directive is part of the actions proposed by the EU Commission to implement the [European Green Deal](#) according to which “Reliable, comparable and verifiable information also plays an important part in enabling buyers to make more sustainable decisions and reduces the risk of ‘green washing’. Companies making ‘green claims’ should substantiate these against a standard methodology to assess their impact on the environment. The Commission will step up its regulatory and non-regulatory efforts to tackle false green claims.”

The Draft proposes to amend two Directives, the Unfair Commercial Practices Directive 2005/29/EC and the Consumer Rights Directive 2011/83/EU, to contribute to a circular, clean and green EU economy by enabling consumers to take informed purchasing decisions.

With regard to environmental claims, the draft would establish additional unfair practices to address greenwashing, aiming at:

- ensuring that traders do not mislead consumers about environmental and social impacts, durability and reparability of products;
- ensuring that a trader can make an environmental claim related to future environmental performance only when this involves clear commitments;
- ensuring that a trader can only compare products, including through a sustainability information tool, if they provide information about the method of comparison, the products and suppliers covered, and the measures to keep information up to date;
- a ban on displaying a sustainability label which is not based on a certification scheme or not established by public authorities;
- a ban of generic environmental claims used in marketing towards consumers, where the excellent environmental performance of the product or trader cannot be demonstrated in accordance with Regulation (EC) 66/2010 (EU Ecolabel), officially recognised eco-labelling schemes in the Member States, or other applicable Union laws, as relevant to the claim;
- a ban on making an environmental claim about the entire product, when it only concerns a certain aspect of the product.

In addition to the above proposal, the second step of the EU would be the introduction of rules specifically dedicated to the substantiation of green claims. To that end, a new draft Directive, the so-called Green Claims Directive, has been officially presented by the EU Commission on 22 March 2023.

## Draft Directive on Green Claims

The long-awaited proposed Directive on Green Claims aims to establish the first set of detailed EU rules, applicable to companies operating in the European Union, on the substantiation of voluntary green claims. The draft will therefore fill the legal vacuum in the EU on the matter and will contribute to fighting greenwashing, in conjunction with the above-mentioned proposal for a Directive on empowering consumers for the green transition, by introducing criteria that environmental claims and labels on the EU market have to meet.

The draft introduces minimum requirements on substantiation, communication and verification of explicit environmental claims in order to ensure the reliability of claims and protect consumers from greenwashing practices.

The proposed measures aim to ensure that:

- the information used to explicit substantiate environmental claims is science based;
- claims about future performance are substantiated in line with the rules applicable to all explicit environmental claims.
- if products or traders are compared with other products and traders, these comparisons must be fair and adequate;
- the rules on communication of claims will allow for transparency towards consumers;
- environmental labels are reliable and transparent, enhancing the quality of consumer decision-making.

## Scope & Definitions

According to Article 1, this Directive applies to explicit environmental claims made by traders about products or traders in business-to-consumer commercial practices.

Paragraph 2 specifies that the Directive does not apply to environmental labeling schemes or to explicit environmental claims regulated by or substantiated by the listed EU rules (such as the EU Ecolabel Regulation; Regulation (EU) 2017/1369 setting a framework for energy labeling, etc.). Therefore, this Directive would apply to claims which are not covered by other EU legislation setting out specific rules on the matter.

The applicable definitions of “environmental claim” and “business-to-consumer commercial practice” are those set out in Article 2(o) of Directive 2005/29/EC as amended by [COM(2022) 143final].

The definitions are as follows:

- "environmental claim" means any message or representation, which is not mandatory under Union law or national law, including text, pictorial, graphic or symbolic representation, in any form, including labels, brand names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a positive or no impact on the environment or is less damaging to the environment than other products or traders, respectively, or has improved their impact over time.
- "business-to-consumer commercial practices" means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers.

Further definitions are provided in Article 2 of the draft, and are aligned, as far as relevant, with the definitions included in other EU legislation (e.g. Unfair Commercial Practices Directive).

As stated in the Explanatory Memorandum, this proposal, being *lex specialis*, "is meant to act as a safety net for all sectors where environmental claims or labels are unregulated at EU level. It does not aim to change existing or future sectoral rules. To the contrary, the assessment and communication requirements set out in other Union legislation will take precedence over the requirements set out in the proposal, and thus should be used to substantiate and communicate environmental claims in these specific areas."

In light of the above, the draft would apply to explicit environmental claims made voluntarily by businesses which are not covered by other existing EU rules.

Additionally, it is worth noting that the draft excludes microenterprises (fewer than 10 employees and annual turnover does not exceed EUR 2 million) from the application of the requirements on substantiation and communication of claims in order to avoid disproportionate burden on smaller traders, unless they wish to obtain a certificate of conformity of the environmental claim.

## Substantiation of environmental claims

Member States must ensure that traders carry out an assessment to substantiate explicit environmental claims.

Substantiation must be based on the minimum criteria listed in Article 3, which include *inter alia*:

- claims must rely on widely recognised scientific evidence, use accurate information and take into account relevant international standards.
- it must be demonstrated that environmental impacts, environmental aspects or environmental performance that are subject to the claim are significant from a life-cycle perspective.



- it must be demonstrated whether the claim is accurate for the whole product or only for parts of it;
- where a claim is made on environmental performance, all environmental aspects or environmental impacts which are significant to assessing the environmental performance must be taken into account;
- information must be provided on whether the product performs environmentally significantly better than what is common practice;
- it must be identified whether a positive achievement leads to significant worsening of another impact;
- accurate primary information (i.e. information that is directly measured or collected by the trader from one or more facilities that are representative for the activities of the trader) and secondary information (i.e. information that is based on other sources than primary information including literature studies, engineering studies and patents) must be included.

The Commission is empowered to adopt delegated acts to complement the requirements on substantiation. These delegated acts should be based on the results of monitoring of evolution of environmental claims on the market and/or the absence of requirements to specific claims which could lead to misleading information towards consumers. The delegated acts may:

- specify rules for assessing the environmental aspects, environmental impacts and environmental performance, including by determining the activities, processes, materials, emissions or use of a product, which contribute significantly or cannot contribute to the relevant environmental impacts, environmental aspects or environmental performance;
- determine for which environmental aspects or environmental impacts primary information shall be provided and determine criteria based on which the accuracy of the primary information and secondary information can be assessed;
- establish specific life-cycle-based rules on substantiation of explicit environmental claims for certain product groups and sectors.

In light of the above, it emerges that the draft does not establish a single method of substantiation. During the preparatory work of this draft, the Commission had in fact launched [consultations](#) to evaluate the possibility of using [EU product and organization environmental footprint methods](#) to substantiate environmental claims.

However, it was found that “the methods do not yet cover all relevant impact categories for all product types and may therefore give an incomplete picture of the environmental credentials of a product in the green claims context. In addition, many environmental claims are also made on environmental aspects (e.g. durability, reusability, reparability, recyclability, recycled content, use of natural content) for which the environmental footprint methods are not suited to serve as the only method for substantiation.”

The consultations showed that the option of using one standard methodology to substantiate environmental claims has its limitations and therefore a more flexible approach was preferred when drafting this Directive.

### Additional requirements

Specific requirements are set out for comparative explicit environmental claims, in addition to those laid down in Articles 3 (see Article 4).

These requirements are:

- the use of information for the assessment of environmental impacts, aspects or performance must be equivalent to the information used for the assessment of the product against which the comparison is made;
- the data used for the comparison must be generated or sourced in an equivalent manner for the compared products;
- the coverage of stages along the value chain must be equivalent for the products and traders compared while ensuring that the most significant stages are taken into account for products and traders compared;
- the coverage of environmental impacts, aspects or performances must be equivalent for the products and traders compared and ensures that those most significant are taken into account for all products and traders compared;
- the assumptions used for the comparison are set consistent for the products and traders compared.
- comparative claims on improvement of impacts (compared to earlier version of product from the same trader) must explain the impact of improvement on other aspects and impacts and state the baseline year for the comparison.

Furthermore, it must be noted that Article 9 of the Draft requires a periodic review of the substantiation of the environmental claim by traders in order to ensure its accuracy. The review is carried out when there are circumstances that may affect the accuracy of a claim, and in any case no later than 5 years from the date when the information referred to in Article 5(6) is provided.

## Communication of environmental claims

The draft also proposes to establish clear rules on how environmental claims are communicated to consumers.

Commercial communication of explicit environmental claims must meet the requirements detailed in Article 5, which include:

- Environmental aspects, impacts or performance must be substantiated in accordance with the requirements laid down in Article 3, 4 and 5.
- Where the claim is related to a final product, and the use phase is among the most relevant life-cycle stages of that product, the claim shall include information on how the consumer should use the product in order to achieve the expected environmental performance of that product.
- Where the explicit environmental claim is related to future environmental performance of a product or trader it shall include a time-bound commitment for improvements inside own operations and value chains.
- Claims on the cumulative environmental impacts of a product or trader based on an aggregated indicator of environmental impacts (such as biodiversity, climate, etc.) are not permitted unless they are made on the basis of rules to calculate such aggregated indicator as established by EU rules.
- Information on the product or the trader and on the substantiation shall be made available together with the claim in a physical form or in the form of a weblink, QR code or equivalent, containing the information listed in paragraph 6. Additionally, a summary of the listed information must be provided in a clear and understandable manner to consumers and must be provided in at least one of the official languages of the Member States where the claim is made.

Comparative claims on the improvement of an environmental impact of a product as compared to another product of the same trader, or that the trader no longer sells to consumers, shall be based on evidence that improvement is significant and achieved in the last five years.

## Environmental Labels

The draft contains specific requirements on environmental labeling, with the primary objective of reducing the proliferation of environmental labeling with insufficient verification and/or certification procedures.

These requirements are complementary to those established by the proposal for a Directive on empowering consumers for the green transition with regard to sustainability labels.

Environmental label is in fact defined as a sustainability label covering only or predominantly environmental aspects of a product, a process or a trader. The definition of sustainability label is then taken from Article 2, point r) of Directive 2005/29/EC, which includes “any voluntary trust mark, quality mark or equivalent, either public or private, that aims to set apart and promote a product, a process or a business with reference to its environmental or social aspects or both. This does not cover any mandatory label required in accordance with Union or national law”.

Environmental labels must fulfill the requirements set out in Articles 3 to 6 on substantiation and communication of claims.

The draft also aims to cover environmental labeling schemes by setting out requirements to ensure they are reliable. As per Article 8, “environmental labeling scheme means a certification scheme which certifies that a product, a process or a trader complies with the requirements for an environmental label.”

The requirements include the following:

- Transparency and accessibility of information on ownership, decision-making and objectives;
- the criteria underlying the award of labels are developed by experts and reviewed by stakeholders;
- the environmental labeling scheme must have a complaint and dispute resolution mechanism in place;
- procedures for dealing with non-compliance and possibility of withdrawal or suspension of the environmental label in case of persistent and flagrant non-compliance with the requirements of the scheme.

Also, as per Article 7(2), only environmental labels awarded under environmental labeling schemes may present a rating or score of a product or trader based on an aggregated indicator of environmental impacts of a product or trader.

Based on the above, the display of a label which is not based on a certification scheme or not established by public authorities and which is based on self-certification only is likely to constitute an unfair commercial practice.

In addition, to stop the proliferation of labels, the draft prohibits the creation of new national or regional publicly owned schemes, unless established under EU law. For new schemes established by private operators from the EU and third countries, a procedure is put in place for their validation and approval by the Commission.

## Verification

Member States are required to set up procedures to verify compliance of claims with the EU Directive.

The verification shall be undertaken by a verifier before the environmental claim is made public or the environmental label is displayed by a trader. As per Article 11, the verifier shall be a third-party conformity assessment body accredited in accordance with Regulation (EC) No 765/2008. Further requirements of the verifiers are listed in paragraph 3 with regard to independence, professional integrity, technical competence etc. 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.

The Commission is empowered to adopt implementing acts to specify the format of the certificate of conformity and the technical means for issuing such certificate.

## Enforcement

Finally, the draft outlines the enforcement procedures, including the designation of competent authorities by Member States for inspection, investigation and monitoring. Member States are also called upon to lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to the Directive.

National authorities shall carry out regular checks on claims and labeling schemes. When an infringement is detected, they must notify the trader who has 30 days to take the appropriate actions to cease non-compliance.

## What to expect next

It is likely that the adoption of the final text will require at least another 18 months through the ordinary legislative procedure for approval by the European Parliament and the Council. Currently the draft is [open for comments](#) until 24 May 2023 (please note that the eight-week feedback period is being extended every day until the proposal is available in all EU languages.) Member States will then have to transpose the Directive into national law, which will probably become applicable in two years' time. In the meantime, businesses must be prepared to redefine their practices and put in place internal processes to review their claims and environmental information, in line with the new set of EU rules.

### 3. Environmental Claims Worldwide

#### a) USA

The US "[Green Guides](#) for the use of Environmental Marketing Claims" have first been published in 1992. The guides address the application of section 5 of the Federal Trade Commission Act - FTC Act - to environmental advertising and claims and intend to support companies in avoiding unfair or deceptive environmental marketing claims. The Green Guides contain the following main concepts:

- Avoiding the use of broad claims that are difficult to substantiate.
- Qualifying claims with clear, prominent, specific and significant environmental benefits.
- Analyzing and taking into account the trade-off also of products that seem to have an overall positive environmental impact.

The guides have last been reviewed in 2012. According to the FTC, public awareness of environmental and climate change matters has increased significantly since 2012, leading to a wider use of environmental benefit claims, some of which are not reflected comprehensively in the Green Guides. Therefore, the Guides are currently under review and [open for comments](#) until 24 April 2023.

The FTC specifically seeks comments on the use and definition of a number of terms, i.e.

- Compostable,
- Degradable,
- Ozone-Safe/Ozone-Friendly,
- Recyclable
- Recycled Content,
- Energy use/ energy efficiency,
- Organic and
- Sustainable.

Apart from reviewing current scientific and marketing developments, the FTC also seeks comments on the efficiency of the guide. This includes "the Guides' interaction with other environmental marketing regulations, and whether the Commission should consider rulemaking to establish independently enforceable requirements related to unfair and deceptive environmental claims".

While concrete results from the consultation remain to be seen, the review could lead to strengthened binding legislation tailored to environmental claims.

## b) US States

At the US state level, several Bills have been proposed or enacted aiming to make substantiation of green claims mandatory, some of which have been around as early as 2012 ([California Assembly Bill 837 on plastic containers](#)).

[House Bill 5486 from Michigan](#), enacted in 2022, prohibits the use of the terms “degradable, biodegradable, or photodegradable unless it can be substantiated by evidence that the product or package will completely decompose into elements found in nature within a reasonably short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility”. For the verification of those claims, the law refers to the Green Guides for the use of Environmental Marketing Claims.

Another example following a similar approach is the recently proposed [Senate Bill 66 from Illinois](#). The proposal lists what evidence and information must be recorded by anyone making environmental claims in relation to a product. This includes information as to why the claims are believed to be correct, evidence on significant adverse effects related to the product and a statement on whether or not the claims that have been made comply with the "Guides for the Use of Environmental Marketing Claims" (if applicable to the product and type of claim). The information and evidence must be made available to any member of the public upon request.

## c) United Kingdom

[A sweep conducted by the Competition and Markets Authority in 2021](#) found that up to 40 percent of green claims made online are potentially misleading.

Following this, the CMA is currently undertaking work to tackle false green marketing claims in a more effective manner. To this end, the CMA published a [collection of sources](#) related to Green Marketing Claims, including its 2021 [Green Claims Code](#) for Businesses and a Green Claims Checklist. The Green Claims Code intends to help businesses better understand their obligations under Consumer Protection Law (Consumer Protection Act 1987 and Consumer Protection from Unfair Trading Regulations 2008) in relation to environmental claims. The Code applies to claims made about specific goods or services but also to claims made in relation to a business as a whole. In order to avoid “greenwashing”, businesses should comply with the following principles:

1. Claims must be truthful and accurate;
2. Claims must be clear and unambiguous;
3. Claims must not omit or hide important relevant information;
4. Claims must compare goods in a fair and meaningful way;

5. Claims must consider the full life cycle of the product or service;
6. Claims must be substantiated.

With regard to the Green Claims Code, the CMA conducts reviews of compliance with consumer protection law and takes enforcement action where necessary. [Reviews](#) have been held in the textile sector in 2022 and further investigations into the household consumer goods sector are scheduled for 2023. A review of claims made on a wide range of fast-moving consumer goods (FMCG) including toiletries and personal care items has furthermore been announced in January 2023.

In March 2022, the CMA set out its [recommendations for further action for government](#). Although the CMA believes that much can be done about false green claims within the current consumer protection system, the [CMA proposed several changes](#) including potential tailored legislation related to green claims:

- Clarifying the law to make environmental information more clear for consumers, including standardized legal definitions of commonly used terms such as “carbon neutral” and “recyclable”.
- Requiring businesses to provide more accurate environmental information and disclose on i.e. a product’s environmental impact, recyclability, repairability and durability.
- Adding misleading and/or unsubstantiated environmental claims to the list of banned practices under consumer law.
- Extending consumer protection remedies to address the harm to the environment caused by commercial practices directed at consumers.

#### d) Australia

Similar developments are currently in progress in Australia. In March 2023, the Australian Competition and Consumer Commission (ACCC) published the [results of a sweep](#) that looked at 247 businesses across 8 different sectors (Energy, Motor vehicles, Electronics and home appliances, Textiles, Garments and Shoes, Household and Cleaning products, Food and Beverages, Cosmetics and Personal care, Takeaway packaging). The sweep found that more than half of the businesses reviewed made potentially misleading claims about their environmental or sustainability practices, such as using vague language, making absolute claims, use of aspirational claims, lack of substantiating information and use of images that appear to be trustmarks. The highest proportion of concerning claims was found in the cosmetics, clothing and footwear and food and drink sector.

The planned measures that are outlined in the report include further compliance investigations especially into the packaging, consumer goods, food manufacturing and medical devices sector. Where necessary, ACCC will determine whether the environmental claims constitute an infringement of the ACL (Australian Consumer Law,



set out in the [Competition and Consumer Act 2010](#) and [Competition and Consumer Regulations 2010](#)). Infringements may lead to an administrative resolution, infringement notice, or further legal proceedings.

The investigations will be accompanied by education activities with businesses and further analysis which will produce guidance material, both economy-wide and targeted for specific sectors. More tailored legislation regarding green marketing claims is not listed as a potential solution at the moment. However, on 7 March 2023, ACCC published its [2023-2024 compliance and enforcement policy and priorities](#), which outlines the principles adopted in order to achieve compliance with the Competition and Consumer Act 2010 together with ACCC's enforcement powers and strategies. It is worth noting that one of the priorities of ACCC is "Consumer, product safety, fair trading and competition concerns in relation to environmental claims and sustainability".

#### e) France

In Europe, France has taken over a pioneering role regarding environmental legislation, now also including legislation related to the protection of consumers from false and misleading green claims.

In recent years, France has introduced a number of laws that make the disclosure of environmental information to consumers through labeling and product information mandatory. Noticeable here is the introduction of [Law Number 2020-105 in 2020](#) (Anti-waste and Promotion of Circular Economy). The law implements the objectives of the expected EU Strategy for Plastic in the Circular Economy and builds the base for further laws on the reduction, reuse and recycling of plastic waste as well as measures for single-use plastic products.

[Article 13 of the Law](#) requires manufacturers and importers of waste-generating products to provide information on the environmental performance of their products. This can be done by means of labeling, marking or other appropriate procedures and must include, where applicable, information on

- the incorporation of recycled material,
- the use of renewable resources,
- sustainability,
- compostability,
- repairability,
- possibilities of re-use,
- recyclability and
- the presence of dangerous substances, precious metals or rare earths.

As of 1 January 2021, similar requirements apply to manufacturers, distributors, importers and marketers of electrical and electronic equipment.

The environmental information that must be disclosed to consumers is detailed in [Decree No. 2022-748](#) which entered into force in May 2022. The Decree regulates the form in which environmental information must be provided and sets further requirements for the language that shall be used regarding environmental claims. Products affected include textiles, clothing, footwear, electronic equipment, furnishings and passenger vehicles.

In order to make the commonly used language around environmental claims more transparent, the Decree defines what terms shall be used to express certain environmental information, i.e. by using the phrase “product comprising at least [%] of recycled material” and “releases plastic microfibers into the environment during washing” (for textiles with a proportion of synthetic fibers greater than 50 %). The Decree also sets criteria for the use of certain terms such as “recyclable”, factoring in the capacity of the product to be efficiently collected, sorted and reused.

Apart from defining the use of these terms, the Decree lists a number of terms that shall not be used on any new products since they are considered to be potentially misleading. This includes the words “biodegradable”, “environmentally friendly” and any equivalent environmental term. According to a [Frequently Asked Questions’ Document](#) published in January 2023, the new version of the Practical Guide to Environmental Claims (Guide des allégations environnementales) that is currently developed by the National Consumer Council will provide further information on the use of alternative terms and the verification of environmental claims.

In addition to direct labeling of products, the Decree also requires manufacturers, importers and distributors to disclose further environmental information online in the form of an environmental product sheet, enabling research and further queries from consumers.

#### f) Self-Regulating Codes

Not only legislators, but also non-governmental initiatives around the world deal with the issue of green marketing by means of self-regulating codes.

To name but a few, the BCAP Code and the CAP Code ([Broadcasting](#) and [Non-Broadcasting](#) Advertisement), published by the Advertising Standards Authority (ASA) in the UK, contain rules on environmental claims in their chapters 9 and 11. Similarly, [Section 15 of the ASAI Code](#) (Advertising Standards Authority for Ireland; an independent, self-regulatory body) addresses environmental claims. This concerns inter alia the issue of qualified environmental claims, absolute claims, scientific uncertainty and the omission of information.

On the international level, the representative business organization [ICC](#) (International Chamber of Commerce) addresses environmental claims in Chapter D of their general [ICC Advertising and Marketing Communications Code](#). In 2021, in response to growing interest in environmental marketing, ICC also published a new version of its [Framework for Responsible Environmental Marketing Communications](#). The tailored framework now includes guidelines for climate-related claims (i.e. claims on a company's carbon footprint, net zero etc.), circularity claims and further information on "free-of", "recyclability" and "degradable" (i.e. biodegradable and oxo-biodegradable) claims.

#### g) ISO Standards

The International Standards Organization (ISO) developed a number of standards that companies can use as a basis to substantiate environmental claims, i.e. [ISO 14040:2006](#) and [ISO 14044:2006](#) on life-cycle assessment and [ISO 14025:2006](#) on environmental labels and declarations. These and other standards were assessed as a basis for the [European Draft Directive on Green Claims](#).

In addition, [ISO Standard 14021](#), developed in 2016 and last updated in 2021, directly addresses the terminology, symbols, testing and verification methodologies for self-declaration of environmental claims.

## 4. Conclusion

In view of the current developments, particularly in the EU, but also in the USA and UK, it is apparent that the direct regulation of green claims will gain more and more momentum in the coming years.

Potential consequences of infringements include civil liability and criminal sanctions prescribed under consumer protection and competition law as well as significant harm to a company's reputation, especially in consideration of the increasing consumer awareness as legislation develops. Furthermore, inaccuracies and omissions of information in advertisement can potentially lead to recalls and reimbursements.

Crucial to observe in this context are current developments regarding class actions, which facilitate the large-scale enforcement of consumer rights (i.e. implementation of [Directive \(EU\) 2020/1828](#) on representative actions for the protection of the collective interests of consumers).

Therefore, it is essential for businesses to prepare for the upcoming changes and be ready to face new challenges when providing environmental information to consumers. Economic operators should assess and review any claims which might have an environmental aspect, and implement internal processes to ensure compliance.