

Tackling Greenwashing in Environmental Claims: Developments in the EU and Beyond - A 2024 Regulatory Update

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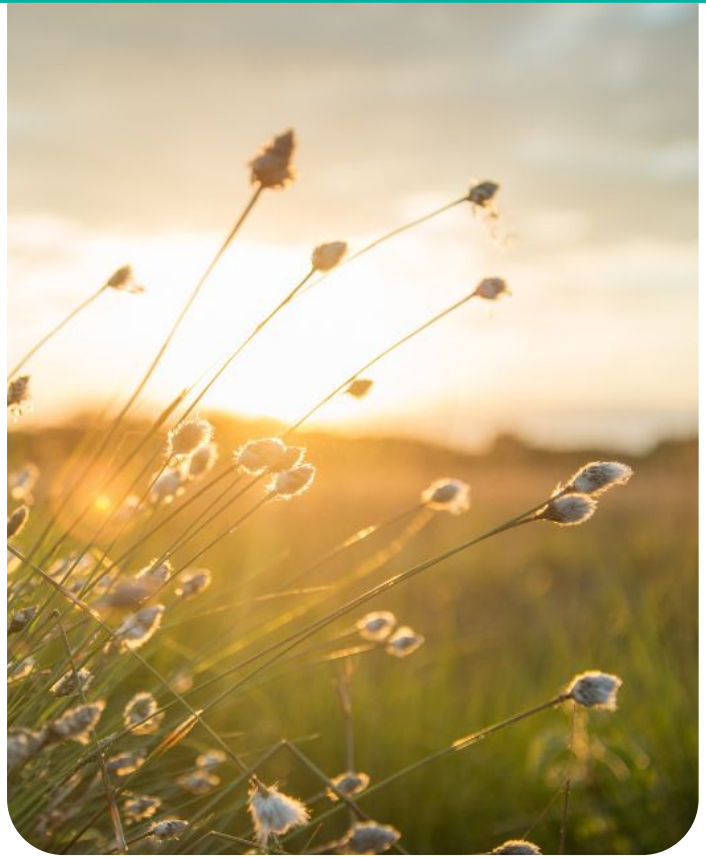


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01. About The Authors



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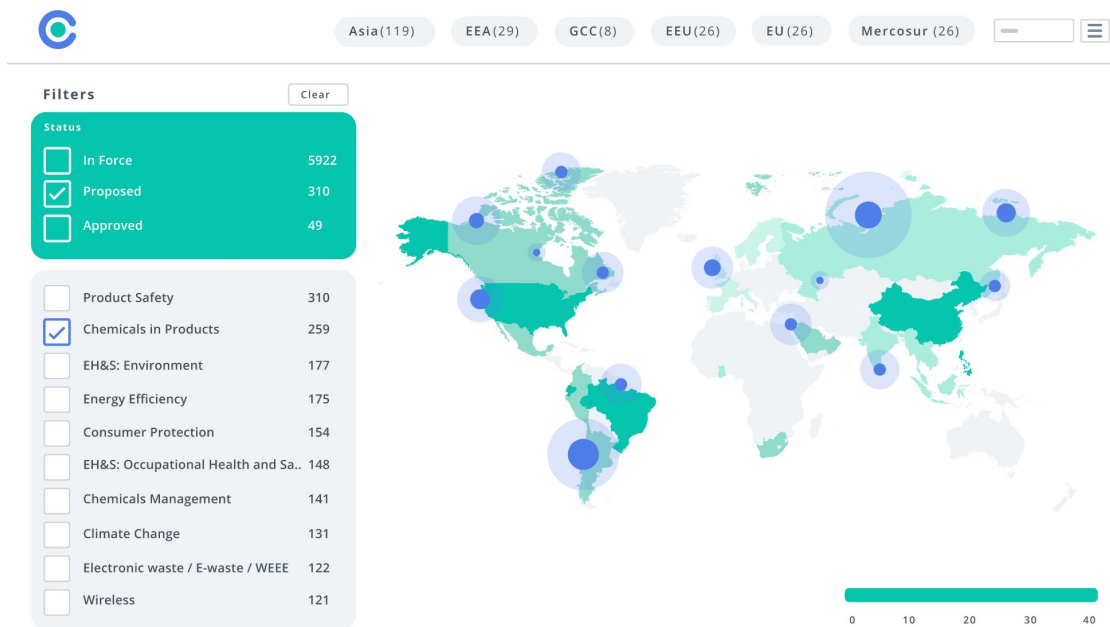
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03. Introduction

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.

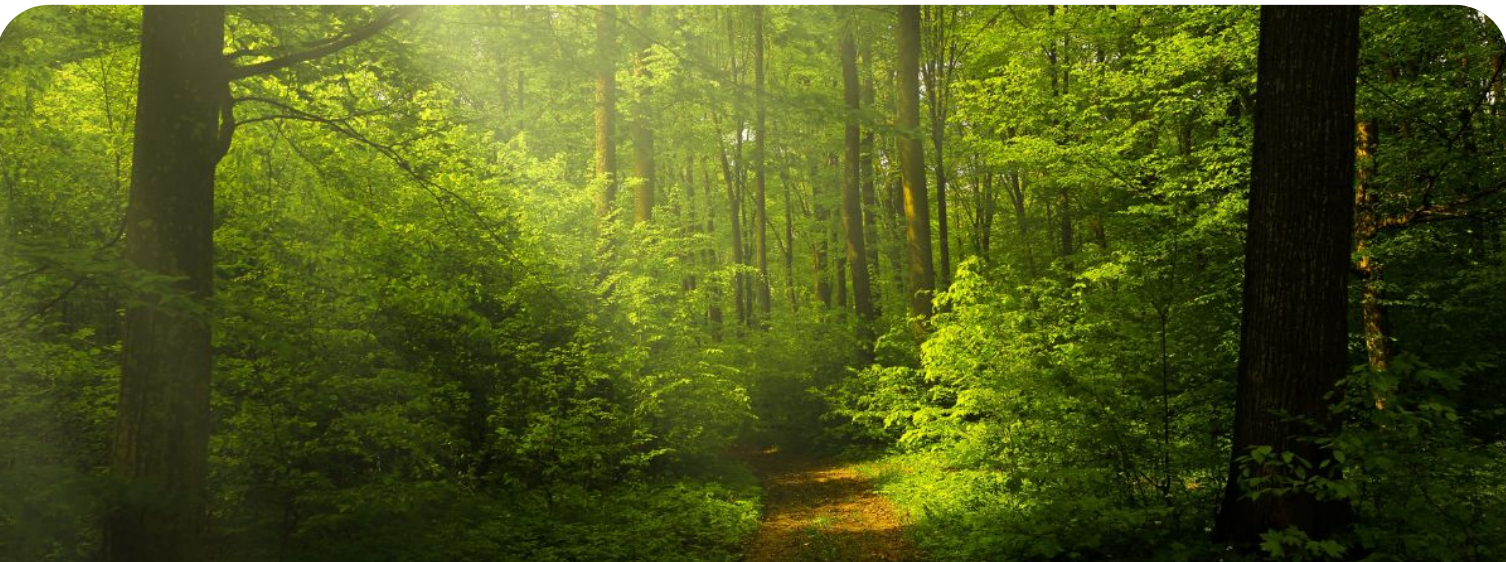


In most jurisdictions, false or misleading green claims are regulated as part of the general law on consumer protection and unfair competition practices, aiming to protect not only consumers but also fellow competitors from unsubstantiated green claims.

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, Canada, 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.



04. European Union

4.1. 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 contained 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 could 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 did 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 has been the adoption of a Directive on empowering consumers for the green transition, first proposed in March 2022 and now finalized and in force since 26 March 2024.

This Directive - [Directive \(EU\) 2024/825](#) - 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 'greenwashing'. 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 Directive amends 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. The focus is on preventing unfair commercial practices which can mislead consumers with regard to the environmental, social and sustainability/circularity aspects of the product.

Article 6(1) of Directive 2005/29/EC is amended to include to the list of misleading actions the commercial practices which contain false information in relation to environmental or social characteristics of the product and its circularity aspects, such as durability, reparability or recyclability.

Paragraph (2) is also amended so that it is considered a misleading practice any environmental claim related to future environmental performance which is not supported by 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, and that is regularly verified by an independent third party expert.

It is also considered misleading the advertising of benefits to consumers that are irrelevant and do not result from any feature of the product or business.

Article 7 of Directive 2005/29/EC is also amended to ensure that traders can only compare products if they provide information about the method of comparison, the products and suppliers covered, and the measures to keep information up to date.

The definition of "environmental claim" is very broad as it contains 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.

Information on the sustainability of the product is also regulated by setting out the conditions for the use of sustainability labels. The display of a sustainability label that is not based on a certification scheme or not established by public authorities is considered an unfair commercial practice. This means that self-certification is prohibited and that the display of a sustainability label will only be possible when it is based on a third-party verification scheme.

Again, the definition of "sustainability label" is very broad as it means 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 by reference to its environmental or social characteristics, or both, and excludes any mandatory label required under Union or national law.

With regard to environmental claims, the list of unfair practices in Annex I of Directive 2005/29/EC is extended to include the following practices:

- Making a generic environmental claim for which the trader is not able to demonstrate recognized excellent environmental performance relevant to the claim (examples of "generic environmental claims are provided in Recital (9) and include "environmentally friendly", "eco-friendly", "green", "nature's friend", "ecological" etc.), where the excellent environmental performance of the product or trader cannot be demonstrated in accordance with Regulation (EC) 66/2010 (EU Ecolabel), officially recognized eco-labeling schemes in the Member States, or other applicable Union laws, as relevant to the claim;

- 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;
- 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;
- Presenting requirements imposed by law on all products within the relevant product category on the Union market as a distinctive feature of the trader's offer.

By 27 March 2026, Member States must adopt and publish the necessary measures to comply with this Directive. The national implementations will then apply from 27 September 2026.

In addition to the above Directive, 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. Since then, the initial draft has been revised, by the EU Parliament in March 2024 and lastly by the position adopted by EU Council on 17 June 2024.

At the moment, the draft is under negotiations among the EU institutions and new discussions on the final shape of the Directive will likely take place in the new legislative cycle.

This whitepaper analyzes the text of the draft taking into consideration the revisions currently proposed by the EU Council in June 2024.



4.2. 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 Directive (EU) 2024/825, 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 voluntarily by traders about products or traders in business-to-consumer commercial practices. The latest revision of the EU Council explicitly adds to the scope of the Directive “environmental labeling schemes that allow for the use of the corresponding environmental labels”. The EU Council has in fact made a distinction, throughout the text, between explicit environmental claims and environmental labels, in order to better clarify the obligations applicable to each.

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.

It is worth noting that the draft issued by EU Council proposes to amend the original definition of “explicit environmental claim” given by the EU Commission to specify that it is an environmental claim *made in written form or orally, including through audiovisual media, excluding environmental labels*.

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.

Substantiation of Environmental Claims

The EU Council's general approach confirms the basic rule of *ex-ante* verification of explicit environmental declarations and environmental labels.

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 recognized scientific evidence, use accurate information and take into account relevant methods and international standards;
- It must be demonstrated that environmental characteristics 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;
- It must be demonstrated that the claim is not equivalent to requirements imposed by law;

- 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;
- 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 revised draft of the EU Council also adds a paragraph 1a to Article 3 which expands the requirements when an explicit environmental claim regarding the trader is related to climate, including those based on the use of carbon credits.

In this instance, it must be ensured that consumers are well informed about the use of carbon credits and their effects. In particular, it is required:

- The identification of the trader's total greenhouse gas emissions, as well as their reductions, future performance regarding the emissions, and any carbon credits used, including the quantity of credits acquired in tCO₂eq, each presented separately, indicating the relevant time period;
- The specification of whether carbon credits used relate to emission reductions or carbon removals, whether or not the associated emission reductions or carbon removals represent a contribution to the reduction of greenhouse gas emissions in the host country, whether removals are permanent or temporary, under which scheme the credits were verified and certified, and by which registry they were issued;

Additionally, if the claim is an offset claim, it must be demonstrated that the trader has set a net zero target as per Directive 2013/34/EU and there is progress towards meeting the target. It must also be disclosed the percentage of total greenhouse gas emissions balanced out using carbon credits, for a specific time period.

In this regard, the EU Commission is called upon to issue implementing acts by 31 December 2027 to specify further rules applicable to claims related to climate.

More generally, the Commission is empowered to adopt delegated acts to complement all 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 characteristics, including by determining methods for substantiating explicit environmental claims and environmental labels, and the activities, processes, materials, emissions or use of a product, which contribute significantly or cannot contribute to the relevant environmental characteristics;
- 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.

Compared to the initial draft, the EU Council is proposing to amend paragraph 4 of Article 3 to explicitly mention that the delegated acts of the EU Commission may incorporate the EU Environmental Footprint methods, including PEFCRs and OEFSRs. Their use shall be presumed to meet the requirements for substantiation, when the method is suitable for the explicit environmental claim or the environmental label.

Also, a new Article 3a is added to establish a simplified procedure for substantiation to exempt certain claims from third-party verification. This procedure would apply to claims which have already been certified under an eco-label or which comply with the substantiation methodology of another EU Act. The Commission is also entitled to adopt implementing acts to specify the types of claims to which the simplified procedure may apply, provided that:

1. No full life-cycle assessment is required to substantiate the claim;
2. The claim is related to a single environmental characteristic;
3. The claim does not concern an environmental characteristic that leads to significant trade-offs between different environmental impact categories.

If the simplified procedure is applicable, the trader can demonstrate compliance by completing a Specific Technical Documentation. The format and contents of such documentation is to be defined by an implementing act of the EU Commission within 18 months from the date of entry into force of the Directive.

Additional Requirements

In addition to the requirements laid down in Article 3, specific requirements are set out for comparative explicit environmental claims and comparative environmental labels (see Article 4).

These requirements are:

- The product or trader subject to the comparative claim or label must belong to the same product group or sector as the product or trader against which the comparison is made, and they must relate to products that serve a similar purpose, have similar use or functional properties;
- The use of information and data for the assessment of environmental characteristics must be equivalent to the information and data used for the assessment of the product against which the comparison is made and must be generated or sourced in an equivalent manner. The method used for assessing the environmental characteristics must be the same;

- 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 environmental characteristics of the products are not allowed, unless they are based on evidence proving that the improvement is significant and achieved in the last five years. In this case, the substantiation must explain the impact of the improvement on other relevant environmental characteristics 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 certificate of conformity referred to in Article 10(6) is issued, or where applicable, the date when the Specific Technical Documentation referred to in Article 3a is made available to competent authorities.

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:

- Traders and environmental labeling scheme owners are required to communicate to consumers any explicit environmental claim or environmental label in a clear and comprehensible manner and in accordance with the requirements set out in Articles 5 and 6.
- Explicit environmental claims and environmental labels must only cover environmental characteristics identified as significant in accordance with Article 3 paragraph (1) point (c) or (d).
- Environmental characteristics must be substantiated in accordance with the requirements laid down in Article 3 and 4.
- 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 or environmental label is related to future environmental performance of a product or trader, the details of the implementation plan as per Article 6(2)(d) of Directive 2005/29/EC must be included in the substantiation assessment. This requirement has been added by the position of EU Council, in light of the recent changes made to Directive 2005/29/EC, as mentioned in the paragraph above on Directive (EU) 2024/825, which lists as a misleading practice future-looking environmental claims with no detailed and third-party verified implementation plan.

- Claims based on an aggregated indicator or score of environmental impacts (such as biodiversity, climate, etc.) must be communicated in a transparent and comprehensible way to consumers.
- The EU Council's position adds new details on the obligation to provide information regarding the substantiation assessment carried out in accordance with Article 3 or Article 3a. A summary of the assessment must be provided free of charge together with the claim in a physical form or in a digital format via a data carrier or link. This summary must be presented in a clear and easy to understand manner to consumers, in a language determined by the Member State in which the claim is made, and must indicate the environmental characteristics covered by the claim. If applicable, it must also include the certificate of conformity as per Article 10 and contact information of the verifier who drew up the certificate of conformity. Similar provisions are outlined for environmental labels. Furthermore, for environmental claims/labels based on the use of carbon credits, the summary of the substantiation assessment must also indicate that the claim is based on the use of carbon credits and explain whether the explicit environmental claim concerns emission reductions and/or carbon removals, as well as whether it concerns a contribution or an offset claim.
- Additional information related to the substantiation and to the compliance with the obligations of the trader or the environmental labeling scheme owner must be provided in a digital format at the request of consumers, public authorities or other parties having a legitimate interest in protecting consumers' interests as provided for in EU law. This information includes the following:
 - the relevant EU or international standards, where appropriate;
 - the underlying studies or calculations used to assess, measure and monitor the environmental characteristics, together with the results of such studies or calculations and explanations of their scope, assumptions and limitations.
- For products covered by the Ecodesign for Sustainable Products Regulation or other EU legislation requiring a digital product passport, the information set out in Article 5 must be included in that product passport. In any case, the data carrier or link shall be clearly visible next to the claim. Furthermore, the data carriers and links between physical product and digital representation shall be made using harmonized standards on the Digital Product Passport.

The EU Council has also proposed a revision of Article 6 on communication of comparative claims/labels to specify the information to be included in the summary of the substantiation assessment:

In addition to the above list, further provisions have been proposed by the EU Council to be included in Article 5 as follows:

- When traders display an environmental label, the website of the environmental labeling scheme shall be made accessible via a data carrier or link together with the environmental label.
- The information and data used for assessing the environmental characteristics of the products or traders subject to comparison, including how they have been generated or sourced.

- The methodology used for assessing and comparing the products or traders, including a reasoned justification of their comparability.
- The baseline year for the comparison.

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 Directive (EU) 2024/825 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 q) of Directive 2005/29/EC - as introduced by Directive (EU) 2024/825 - 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 Article 8 on substantiation and communication of claims. Article 8 also covers environmental labeling schemes by setting out requirements to ensure they are reliable.

An environmental label shall be based on an environmental labeling scheme. Environmental labeling scheme means a certification scheme that certifies that a product, a process or a trader complies with certain requirements and that allows for the use of a corresponding environmental label.

The requirements of environmental labeling schemes include the following:

- Transparency and accessibility of information on ownership, decision-making and objectives;
- The criteria underlying the award of labels are developed by the environmental labeling scheme owner in consultation with experts and stakeholders;
- The environmental labeling scheme must have a complaint and dispute resolution mechanism in place.

The revision proposed by the EU Council supplements this Article with the verification conditions for environmental labeling schemes. In fact, an environmental labeling scheme and the corresponding environmental label must be verified by environmental labeling scheme owners in accordance with the provisions of Article 10. Once verified, traders awarded with that label are allowed to display it without having to go through the verification process again.

Exemptions from such verification process may be established by Member States provided that the national or regional schemes undergo equivalent verification procedures. Public authorities must inform the Commission of such environmental labeling schemes.

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 they provide added value as compared to the existing schemes and they meet the requirements of this Directive.

For new schemes established by private operators from the EU and third countries, a procedure is put in place for their approval by the Commission.

The EU Council has also proposed an exemption for national or regional EN ISO 14024 type I ecolabeling schemes officially recognized in the Member States. Those schemes would be exempted from verification in accordance with Article 10 provided that they comply with the requirements of the Directive. Furthermore, Member States are called upon to set up procedures for the official recognition of such schemes.

Once officially recognized, the EN ISO 14024 type I ecolabel can be used by awarded traders without going through the assessment as per Article 3(a)(2).

Verification

Member States are required to set up procedures to verify compliance of environmental claims, labeling schemes and the corresponding label with the provisions of 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 a certificate of conformity certifying that the explicit environmental claim or the environmental labeling scheme and corresponding label complies with the requirements set out in this Directive.

The proposal of the EU Council also imposes notification obligations on verifiers for submitting and communicating the certificate to the national competent authorities.

The Commission is empowered to adopt

implementing acts to specify the format of the certificate of conformity and the technical means for issuing and notifying such certificate.

Enforcement

Finally, the draft outlines the enforcement procedures, including the designation of competent authorities by Member States for inspection, investigation and monitoring.

National authorities shall carry out regular checks on claims and labeling schemes. When an infringement is detected, they must notify the trader who must take without delay the appropriate actions to cease non-compliance.

Member States are also called upon to lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to the Directive.

The penalties included in the proposals of both the EU Commission and the EU Parliament are as follows:

- Fines at least 4% of a company's annual turnover in the relevant Member State;
- Confiscation of revenues gained from a transaction with the relevant products concerned;
- Temporary exclusion from public procurement processes and access to public funding for a maximum period of 12 months.

However, it is worth noting that the EU Council has removed the above details on the types of penalties, thus leaving it to the discretion of each Member State.

What to Expect Next

The text of the Directive is still under discussion among the EU institutions.

The latest position by the EU Council in June 2024 will open new negotiations with the EU Parliament, which are likely to begin in the new legislative cycle.

The exact transposition timeline for Member States is not certain yet.

In fact, the EU Council has revised this deadline by extending the application date for Member States to 3 years from the entry into force of the Directive (so likely not earlier than late 2027).

In the meantime, what is certain is that businesses must be ready 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.





05. Environmental Claims Worldwide

The following regulatory developments are recent additions to global greenwashing regulations since our last whitepaper update in March 2023.

5.1 Canada

On 20 June 2024, Bill C-59 amending the Canadian Competition Act and a number of other legislation, including the Canadian Labour Code, received Royal Assent. Bill C-59, also referred to as *An Act to implement certain provisions of the fall economic statement*, introduces major greenwashing provisions to tackle misleading environmental claims.

Division 6 amending the Competition Act strictly prohibits unsubstantiated environmental claims (including in the form of a statement, warranty or guarantee) concerning a product's benefits for protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change. The prohibition also extends to any representations to the public about the environmental benefits of a business that are not based on adequate and proper substantiation in accordance with internationally recognized methodology.

As such, any person who makes a claim

relating to the environmental, ecological or climate benefits of a product, a business or business' activities must ensure (and prove) that the claim is supported by "an adequate and proper test" or "adequate and proper substantiation in accordance with internationally recognized methodology". The onus is therefore on the advertiser of environmental claims to prove that such claims are based on proper testing of substantiation.

Furthermore, the Bill allows the Competition Tribunal to oblige, by means of an Order, suppliers "to accept a person as a customer" or "to make the means of diagnosis or repair available to a person" within a specified period and under the terms the Tribunal considers necessary. Note that the bill is not limited to greenwashing and tackles other competition-related matters related to anti-competitive agreements, drip pricing, criminal cartels and introduction of a new certificate regime for environmental agreements.



Following the passage of Bill C-59, Competition Bureau Canada launched a public consultation to inform the development of enforcement guidance about environmental claims, including on the new greenwashing provisions of the Competition Act. Interested parties are invited to submit their comments on a [series of questions](#) by September 27, 2024. A [short guideline](#) was released on the Competition Bureau's website on 25 June 2024 to help businesses navigate the new provisions of the Competition Act.

Last but not least, on 22 July 2024, the Competition Bureau Canada published a bulletin on deceptive marketing practices. The bulletin lays down the Bureau's perspectives on environmental claims and their validity as well as the practice of greenwashing. It aims to prevent greenwashing by ensuring that environmental claims made by businesses are truthful and not misleading. In short, it encourages businesses to have a concrete, realistic, and verifiable plan in place to accomplish their environmental objectives, with interim targets. It also suggests that claims about certain kinds of environmental benefits of a business or business activities be supported by adequate and proper substantiation in accordance with internationally recognized methodology. The digest should serve as an interim guidance pending the publication of Competition Bureau's official guidance on environmental claims. The Bureau expects to provide guidance that will offer transparency and predictability for the business and the legal communities in the enforcement of the law.

Other pieces of legislation such as the Textile Labeling Act and Consumer Packaging and Labeling Act also explicitly prohibit false and misleading representations relating to textile fibre products or pre-packaged products.

5.2. United States

Federal State

The US "Green Guides for the use of Environmental Marketing Claims" has 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, in December 2022, the FTC launched a period of consultation to revamp the Green Guides. Comments were due until 24 April 2023. The FTC sought comments on a series of questions relating to the use of certain environmental marketing claims such as "compostable", "degradable", "ozone-safe/ozone-friendly", "recyclable", "organic" etc. The FTC also sought comments on the efficiency of the guides and their interactions with other US federal, state, or local regulations.

The outcomes of the consultation should help determine whether the Commission should consider rulemaking to establish independently enforceable requirements related to unfair and deceptive environmental claims. Whilst advisory by nature, failure to comply with the guides currently provides evidence for "unfair and deceptive acts or practices" under section 5 of the FTC Act.

The revised Green Guides are due to be released in the course of 2024. Among other things, the updated guides are expected to bring clarity on the use of marking claims pertaining to "recyclability," "environmentally friendly", "organic" or "sustainability" as well as on other specific climate-related claims currently unaddressed by the 2012 Green Guides, including terms such as "net zero", "carbon neutral" and "low carbon". Stricter civil penalties for non-compliance can also be expected if the FTC converts the guides into formal binding rules).

States

On 29 July 2024, the Massachusetts House of Representatives re-tabled a new bill on ([House Bill 4926](#) related to environmental marketing claims) to regulate the use of deceptive or misleading claims about the recyclability of consumer products and packaging.

The proposal is similar to the California [law](#) which prohibits, with effect from January 1st, 2024, the use of the chasing arrows symbol or any other indicator of recyclability unless the product or packaging meets certain recyclability criteria.

In particular, the California law requires that all products or packaging that display a chasing arrows symbol or other symbols or recyclability statements be made of a "material type and form collected for recycling by recycling programs for jurisdictions that collectively encompass at least 60% of the population". Moreover the material type and form must be handled into defined recycling streams by large volume transfer or processing facilities that process materials and collectively serve at least 60 percent of recycling programs statewide. Other criteria may apply. The law further regulates the use of the chasing arrows symbols or other terms such as "ecologically friendly", "environmental choice", "earth friendly" etc, requiring that these symbols/terms be backed up by information supporting the validity of the representation.

Following the Californian approach, the Massachusetts draft legislation would prohibit any person from using, in advertising or on the packaging of consumer products, terms such as "biodegradable", "compostable", "earth-friendly", "eco", "ecologically friendly", "environmentally safe", "green product", "recyclable" or similar terms, or from displaying the chasing arrows symbol or directing a consumer to recycle the consumer good, without maintaining in writing the following information:

- An attestation that the product is recyclable in the commonwealth;
- Any significant adverse environmental impacts directly associated with the production, distribution, use and disposal of the consumer good and any measures taken by the company to reduce these impacts; and
- Whether, if applicable, the consumer goods conform with the uniform standards contained in the Federal Trade Commission Guides for the Use of Environmental Marketing Claims;

- The company shall furnish the information and documentation to the department of environmental protection or the office of the attorney general upon request;
- If a product or packaging contains multiple material types, a chasing arrows symbol or statement indicating recyclability may be displayed on the components that are recyclable in the commonwealth; provided, that the packaging makes it clear which other components of the product or packaging are not recyclable.

Similar attempts to regulate false recyclability claims were made by other states. Another example is the New Hampshire [House Bill 1376](#).

This bill originally proposed to prohibit the use of the chasing arrows symbol or other logo denoting the recyclability of a plastic product unless the actual recycling rate for that product is at least 75%, as determined by the Department of Environmental Services. The bill was canceled by the legislature in June 2024.

Likewise, New York Assembly [Bill 7234A](#) was introduced earlier this year but failed to pass the 2024 legislative session. The bill would have required the state Department of Environmental Conservation to develop regulations around what types and forms of plastic products and packaging can be labeled as recyclable. The bill further prohibited deceptive representations, including a chasing arrows symbol or any other statement, whereby a product or package is recyclable unless it can be collected, separated or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item. The next chance for the bill to be considered will likely be in the next legislative session in January 2025.

5.3. India

Earlier this year, the Indian Central Consumer Protection Authority took a decisive step to tackle greenwashing.

In February 2024, the Authority released Draft Guidelines for Prevention and Regulation of Greenwashing for public comments. The draft guidelines aim to counter the use of unsupported environmental claims by businesses and advertisers of goods and services.

The draft defines greenwashing as “any deceptive or misleading practice, which includes concealing, omitting, or hiding relevant information, by exaggerating, making vague, false, or unsubstantiated environmental claims and use of misleading words, symbols, or imagery, placing emphasis on positive environmental aspects while downplaying or concealing harmful attributes”.

In essence, the draft guidelines strictly prohibit the use of certain generic terms such as “clean”, “green”, “eco-friendly”, “good for the planet”, ‘cruelty-free’, and similar assertions without adequate qualifiers, substantiation and disclosures backed by verifiable evidence.

For example, the draft guidelines mandate companies to substantiate their claims by disclosing material information either directly or indirectly through QR codes or web links. The disclosures shall be easily accessible to consumers and not contradict the environmental claim.

Likewise, companies shall not selectively disclose data that only highlight favorable observations while hiding unfavorable effects.

Furthermore, companies shall clearly define the scope of environmental claims, specifying whether they relate to products, manufacturing processes, packaging, product usage, disposal, services, or service provision processes.

Specific claims such as carbon offsets, carbon neutral, compostable, degradable, free-of, sustainability claims, non-toxic, 100% natural, Ozone-safe and Ozone-friendly, recyclable, refillable, renewable, and similar assertions must be supported by reliable scientific evidence and verified by an independent third-party.

5.4. Australia

In December 2023, the Australian Competition and Consumer Commission (ACCC) published its much anticipated [guidance on environmental claims](#), identifying eight key principles to help businesses ensure that any environmental marketing and advertising claims they make about their products or services are “clear and accurate, and do not mislead consumers”. The guidance finds its basis under the Australia Competition and Consumer Act 2010 which prohibits businesses from making false or misleading representations or engaging in misleading or deceptive conduct.

Central to the ACCC Guidance is the notion of environmental claims which is defined as “any representation made by a business in relation to its environmental impact, including claims that give the impression that your business, products or services:

1. Have a neutral or positive impact on the environment;
2. Are less harmful for the environment than alternatives;
3. Have specific environmental benefits”.

The eight principles are structured as follows:

Principle 1: Make accurate and truthful claims;

Principle 2: Have evidence to back up your claims;

Principle 3: Do not hide or omit important information;

Principle 4: Explain any conditions or qualifications on your claims;

Principle 5: Avoid broad and unqualified claims;

Principle 6: Use clear and easy-to-understand language;

Principle 7: Visual elements should not give the wrong impression;

Principle 8: Be direct and open about your sustainability transition.

In March 2023, the 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”.

5.5. United Kingdom

Looking at the UK, on 23 April 2024, the Financial Conduct Authority (FCA) adopted an anti-greenwashing rule to protect consumers against misleading advertising.

The rule applies to all FCA regulated companies with effect from 31 May 2024. It is part of a broader package of measures that FCA finalized through its Policy Statement on Sustainability Disclosure Requirements (SDR) (PS23/16) and the guidance consultation on anti-greenwashing (GC23/3).

The rule essentially requires FCA authorized firms to ensure that any communication they make in relation to a product or service is "*consistent with the sustainability characteristics of the product or service, fair, clear and not misleading*". Claims should be:

- Correct and capable of being substantiated by robust and credible evidence;
- Clear and presented in a way that can be understood;
- Comparable - when comparison is made with another product or service, such a comparison should be fair and meaningful;
- Complete – they should not omit or hide important information.

It is worth noting that the rule only applies to sustainability-related claims (including environmental and/or social characteristics) relative to products or services made or offered to UK customers. While the scope of the Rule relates to products and services, the FCA also stressed that the CMA's and ASA's guidance and FCA Principles 6 and 7 or, as relevant, the Consumer Duty (Principle 12 and the rules in PRIN 2A), also apply to sustainability-related claims that a firm makes about itself as a firm.

[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.

5.6. 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 communicated 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.

More recently, the French National Assembly pointed out the urgency of mitigating the environmental impact of fast fashion products, also referred to as “ephemeral fashion” by the French legislator.

In January 2024, the Parliament introduced a groundbreaking [legislation](#) (Draft law No. 2129) to oblige producers, distributors and importers of fast fashion garments and accessories to inform consumers about the environmental impacts of their products and measures to promote their reuse, re-employment and repair. The information shall be displayed on all webpages of the online selling platforms where these products can be purchased. The nature of information will be determined at a later stage by Decree. Failure to comply with this new obligation may result in an administrative fine of up to 15,000 Euros for legal entities and 3,000 Euros for individual entrepreneurs, as per Article L. 541-9-4-1 of the Environmental Code. Besides the need to reduce the environmental effects of the industry, the bill aims to protect traditional french brands by targeting large Asian retailers with questionable social practices in terms of remuneration, human rights, forced labor and gender-based violence.

On 21 November 2023, a draft Law was proposed in the French National Assembly to prohibit the advertisement of industries with a high impact on climate change ([draft Law No. 1893](#)). The draft Law references the efforts that are currently being made at the European level to ban unsubstantiated green claims and to introduce a mandatory certification system for such claims (Draft Green Claims Directive). The draft Law considers these efforts to be insufficient and therefore proposes to ban advertisements in certain industries and for certain products with a high impact on climate change, similarly to advertisement bans implemented in the tobacco industry.

Whilst stressing that the list of products affected by these restrictions is not exhaustive, the draft law currently proposes to prohibit all forms of advertising for:

- Motorized land vehicles weighing more than 500 kg;
- Tourism and travel services (transport, accommodation and hiring of vehicles);
- Fast fashion (companies offering three or more collections per year and companies that produce more than 75% of their items outside of Europe);
- New digital terminals;
- All forms of online sale, except for business models based on recycling, reuse and refurbishment.

Another innovation introduced by this draft law is the obligation to communicate to the consumer an estimate of the quantity of greenhouse gas emissions emitted during the manufacture, delivery, use and end of life of the product(s) concerned alongside with the message "*seriously harms the climate.*"

5.7 Colombia

In South America, the regulatory landscape appears more fragmented.

A bill to prevent and punish those falsely advertising their environmental conduct was presented by the Colombian Congress ([Bill 101/23](#)) in August 2023.

Unfortunately, the bill failed to pass the legislature. The proposal would have essentially required natural or legal persons who carry out sustainability advertising to provide complete truthful, accurate and verifiable information about their environmental practices.

The bill also sought to amend the Consumer Protection Statute to prohibit the dissemination of misleading or fraudulent advertising related to environmental preservation.

5.8. South Korea

Asian countries are quickly catching up. South Korea is among the first Asian countries to ramp up measures against corporate greenwashing.

On 14 August 2023, the South Korean National Assembly introduced a [draft law](#) to simplify the existing process to penalize greenwashing companies.

Under the draft law, a financial penalty of up to three million won would be imposed on companies that are deemed to have misled the public about their environmental impacts and green credentials. Companies that have been fined for misleading environmental marketing practices will see their designation as "green companies" revoked.

On 8 July 2024, a revised proposal identical to the initial draft was introduced in the Assembly as Bill No. 2201462. This draft law is part of a series of similar environmental reforms introduced last year.

5.9. 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.

5.10. 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.



06. Conclusion

In view of the current developments, particularly in the EU, including certain proactive EU Member States such as France, as well as Canada, USA and the 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. [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.

OUR NUMBERS

300+

CUSTOMERS WORLDWIDE

195

COUNTRIES COVERED

95,000+

REGULATIONS