



Heightened Scrutiny of Green Claims in the European Union and Switzerland

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In 2014 and 2020, the European Commission (Commission) conducted a review of 150 sample claims for a wide range of products. It found that 53.3% of environmental (or “green”) claims provide vague, misleading, or unfounded information about the product’s environmental characteristics, and 40% were unsubstantiated. The Commission found that such “greenwashing”—the practice of making unclear or not well-substantiated green claims—resulted in a hampering of consumers’ ability to make informed purchasing choices and contribute to a greener and more circular economy in their everyday lives. The Commission subsequently [proposed the Green Claims Directive \(GCD\)](#) to tackle greenwashing across all different media in which traders can make green claims: advertising, packaging, sales materials, and sustainability reports. The GCD is expected to be adopted by the middle of this year and applicable upon transposition by the EU Member States in 2027. It is not subject to the EU ESG Omnibus Package aimed at simplifying the ESG regulatory framework.

The GCD will provide a specialized regime to govern environmental claims, addressing the substantiation, verification, and communication of these claims. It will require traders to conduct a thorough assessment to substantiate their claims, on the basis of scientific findings and with the product’s lifecycle in mind. Traders must make information relevant to the substantiation, including relevant scientific data, publicly available, either physically or digitally, and obtain third-party verification of their substantiation and communication prior to using the environmental claim publicly. For a more detailed overview of the GCD, see our Sidley update [here](#).

The GCD will supplement the [Empowering Consumers Directive \(ECD\)](#), which EU Member States must transpose into national law by March 27, 2026, and which also aims to strengthen consumer protection laws on greenwashing and circularity in the EU. For a more detailed overview of the ECD, see our Sidley Update [here](#).

In parallel to these regulatory developments, greenwashing has been targeted by myriad court cases. Our tracking of environmental, social, and governance (ESG) litigation shows that a notable increase in such litigation in Europe over the last few years and that most of these cases (81% in the EU) see the plaintiff succeed. Both the total number of cases and the plaintiff success rate is higher in the EU than in the U.S. and Asia-Pacific regions. The plaintiffs are regulators, competitors, individual consumers, and, most frequently, civil

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society organizations. These cases show clearly that the EU courts are already willing to accept arguments on more demanding standards for green claims, which are, in turn, being strengthened via the ECD and GCD.

Just one example is the German Federal Court of Justice (BGH) ruling of [June 27, 2024](#), whereby “special legal standards, similar to the strict standards which apply to health-related advertising,” must apply to environmental claims due to the high value society places on environmental protection and the “emotional relevance the environment has to the target audience, ranging from concern for their own health to a sense of responsibility for future generations.” Accordingly, the BGH sees an “increased need for clarification among the addressed target groups about the meaning and content of the terms and symbols used” to avoid misleading the consumer. Following this BGH ruling, associations tackling unfair competition won a flurry of greenwashing cases in Germany with the argument that green claims were unclear, unsubstantiated, or vague, and thus misleading.

Similar patterns can be observed in other EU Member States, for instance in France, where the claim “contributing to [the world’s] preservation” was found to be too vague and thus misleading given the overall environmental consequences of the company’s industrial activity; in the Netherlands, claims that a pack was “100% linked to plant-based materials” was found to be misleading as the packaging also contained an unknown portion of fossil raw materials, which are emissions-intensive; in Norway, the claim that the environmental impact of an organic cotton T-shirt was reduced in comparison to a conventional cotton T-shirt was found to be misleading on the basis that the data used to substantiate such claim was outdated and insufficient.

Notably, our litigation tracker shows that cases are brought across all sectors of the economy, with traders from the energy, food and beverage, consumer goods, and aviation sectors finding themselves most often confronted with greenwashing claims, followed by the financial, automotive, and textiles sectors. Most recent cases focus on business-to-consumer (B2C) communications, but the same standards will likely extend to the business-to-business (B2B) context.

Like many other countries around the world, Switzerland is also tackling greenwashing. Although Switzerland is not part of the EU, the GCD will affect Swiss companies exporting to the EU, as claims made regarding their products must comply with the new requirements to be marketed within the bloc. Further, in Switzerland, the *Schweizerische Lauterkeitskommission* (SLK) has strengthened the approach to misleading environmental advertising with its [Directive – Commercial communication relating to the environment / using environmental claims](#). The SLK requires that sustainability-related claims be clear, verifiable, and based on accepted scientific standards, reinforcing similar principles as those emerging under the EU framework. Recent SLK decisions, including rulings against unsubstantiated claims of

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“climate-neutral” and “climate-positive” products (see [SLK, Decision of 6 September 2023, No. 169/23](#)), illustrate the broader regulatory shift toward stricter oversight of greenwashing.

The GCD and the ECD are expected to further fuel ESG litigation efforts focused on “greenwashing.” This reinforces the need for businesses to be meticulous in preparing and reviewing their diverse environmental communications. With many different parts of a company making statements about a company’s environmental performance (e.g., marketing, sales, and sustainability), it makes good sense to develop guidelines for these statements and ensure that they are properly approved in advance.

Importantly, the outcome of both regulation and litigation points toward a common set of principles for mitigating and avoiding risk, including these:

- Clearly articulating each green claim, that is, using specific language that leaves no room for ambiguity;
- Substantiating each green claim with high-quality, verifiable information to build trust with all relevant stakeholders;
- Basing assessments and substantiation on the full lifecycle of products or services, that is, all stages from production to disposal; companies must also acknowledge any negative effects associated with their operations, demonstrating a balanced and honest approach; and
- Establishing time-bound pathways for future claims to set clear and measurable goals and allow for tracking of progress to maintain accountability.

In conclusion, with the GCD nearing adoption, traders should stay informed about litigation risks and regulatory changes to avoid greenwashing. The GCD and ECD are expected to further increase ESG litigation. Appropriate internal procedures and the adherence to common principles will be key in avoiding greenwashing in both B2C and B2B communications.