

Greenwashing: Corporate Practices Under Scrutiny – Part 2

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Our first [article](#) in this series discussed recent caselaw which considered greenwashing practices in the context of consumer legalisation and also, looked at recent regulatory intervention in this area against companies in a range of sectors across Europe.

This second article will look at directives being progressed by the EU with the aim of protecting consumers from misleading, unsubstantiated or ambiguous claims around sustainability and other ESG related matters.

What is Greenwashing

As discussed in our first article, greenwashing is a practice

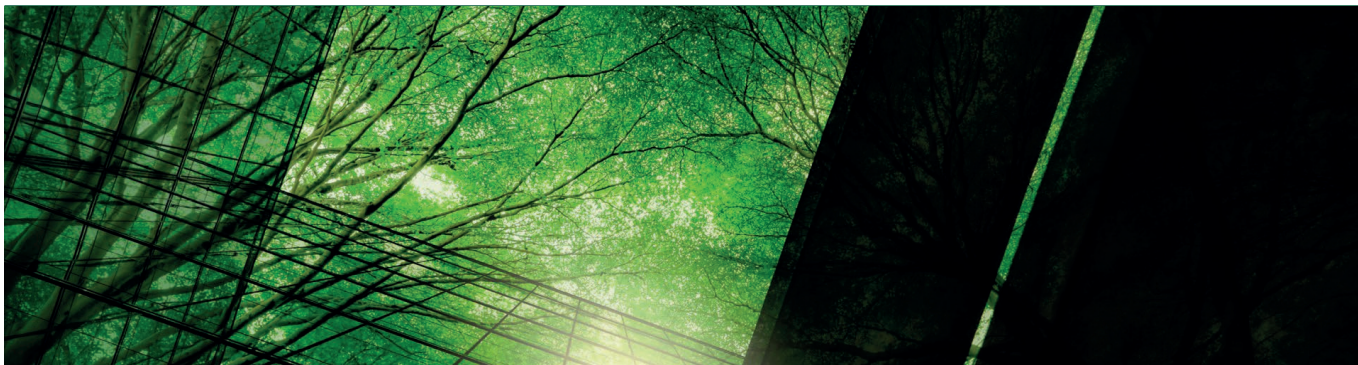
that can include overstating a company's environmental record, misrepresenting the sustainability of its corporate practices or claiming a product as environmentally friendly without any verifiable evidence.

This lack of transparency has been targeted by the EU in its attempts to ensure corporate practices do not mislead consumers.

The Green Transition Directive / Green Washing Directive

The Green Transition Directive, which must be transposed by Member States by March 2026, creates a harmonised set of rules on non-mandatory environmental claims made by companies operating in the EU to consumers. It amends





certain key provisions of the Unfair Commercial Practices Directive and Consumer Rights Directive. What constitutes an environmental claim is broadly defined and includes pictorial, graphic or symbolic representation in any form including labels, brand names, company names or product names.

A claim will be considered misleading if it contains false information or is likely to deceive a consumer on the environmental or social characteristics of a product. A comparative claim will be misleading if not accompanied by appropriate information including the method of comparison and the products compared. Claims regarding future environmental performance will be misleading if they do not contain clear, objective and verifiable commitments, with measurable and time frame targets.

The proposed directive will also prohibit certain practices, such as the display of sustainable labels not based on independent third-party certifications or established by public authorities and environmental claims that relate to an entire product or business when it actually concerns only a specific aspect of the product or specific activity of the company's business.

Green Claims Directive

In March 2023, the European Commission adopted a proposal for a directive on green claims (the **Green Claims Directive**) which intends to impose minimum requirements on companies who voluntarily make environmental claims about products or services. The proposed directive focuses on the principles of:

- **Substantiation** - claims will need to be based on scientific evidence, demonstrate whether the claim is accurate for the whole product or only part of it and report on any offsets in a transparent manner.
- **Communication** - claims must be accompanied by information relating to the substantiation of the claim.

The proposed directive sets out obligations in relation to environmental labels and environmental labelling schemes.

- **Verification** - Member States will be responsible for setting up verification and enforcement processes to be performed by independent and accredited verifiers. Once a business obtains a certificate of conformity, it will be able to use it throughout the EU. There will be an obligation to ensure information is reviewed and updated every 5 years.

Member States will determine the penalties for non-compliance, but they must be effective, proportionate and dissuasive. The text is expected to be finalised before the end of 2024, with transposition into national law within 24 months of publication. It will be applicable to all businesses, including non-EU companies, making voluntary environmental based claims to EU customers, with the exception of micro business (companies with fewer than 10 employees and annual turnover not exceeding €2 million).

Conclusion

Given the impending increase in regulatory oversight, companies should begin taking steps in the short term to consider future compliance with substantiation and communication requirements, given the detailed and likely specialised nature of the obligations.

While the Green Claims Directive relates to voluntarily made claims and will not be legally binding on Irish business for some time, in an increasingly ESG focused consumer market, when they do become binding the obligations are likely to be relevant to a wide range of sectors and businesses.

If you would like more information on these topics please do not hesitate to reach out to John, Anthony or your usual Dillon Eustace contact.

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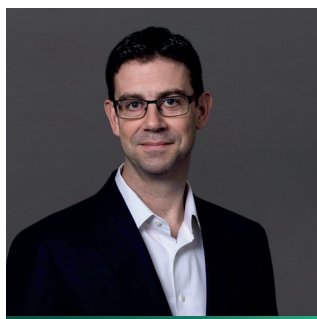
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