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EU Institutions to Vote on Greenwashing Ban

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On September 19, 2023, [the European Parliament and European Council agreed on a proposed set of rules](#) to ban misleading advertisements and enhance product information provided to consumers. “Empowering Consumers for the Green Transition Directive” (the Proposed Directive) will prohibit companies from making statements such as “carbon neutral” or “environmentally friendly” unless they can substantiate those claims. In addition, unless a sustainability label used is based on an approved certification scheme, or established by public authorities, it will also be contrary to the new set of rules.

The rules set out in the Proposed Directive are set to amend two existing EC Directives - 2005/29/EC, [the Unfair Commercial Practices Directive](#), and 2011/83/EU, [the Consumer Rights Directive](#).

Specifically, the Proposed Directive will prohibit:

- generic environmental claims, e.g., “environmentally friendly,” “natural,” “biodegradable,” “climate neutral” or “eco,” without proof of recognized environmental performance relevant to the claim;
- claims based on emissions offsetting schemes that a product has neutral, reduced or positive impact on the environment;
- sustainability labels not based on approved certification schemes or established by public authorities;
- durability claims in terms of usage time or intensity under normal conditions, if not proven;

- prompting the consumer to replace consumables, such as printer ink cartridges, earlier than necessary;
- presenting software updates as necessary even if they only enhance functionality features; and
- presenting goods as repairable when they are not.

The Proposed Directive is set to be voted into law in November 2023 and member states will have two years to implement the rules. Given that the rules amend existing legislation, the national bodies that currently monitor and enforce that legislation will likely continue to do so after the amendments are implemented. Such national bodies include competition, marketing, and advertising authorities.

Taking the Temperature: [We initially reported](#) on the EU's intention to enhance consumer protection laws, particularly in relation to misleading advertising, as outlined in the Proposed Directive in May this year. Although Parliament and member states have not yet voted the Proposed Directive into law, this step is often a formality. Aside from the ban on generic environmental claims, one of its key features is the regulation of claims based on carbon offsets. Carbon offsetting schemes have been criticized due to concerns around the credibility and effectiveness of the offsets. In some instances companies have been accused of funding projects that either fail or were due to be undertaken anyway.

The new rules are part of the EU's wider goal to reach net zero by 2050 and represent another step towards the bloc's tightening of existing, or introduction of new, greenwashing rules and regulations creating a comprehensive anti-greenwashing regime. The EC recently proposed the Green Claims Directive, which attempts to implement measures designed to provide "reliable, comparable and verifiable information" to consumers, with the overall high-level goal to create a level playing field in the EU. In June this year, [three EU financial regulators published an agreed definition of greenwashing](#).

Greenwashing encompasses a broad range of activities. Misleading advertising is only one aspect of greenwashing and it is largely consumer-focused. The EU's greenwashing regulation, although broad, addresses just this type of greenwashing. This is partly due to the perceived vulnerability of many consumers as opposed to recipients of information in other contexts such as institutional and/or sophisticated organizations, but also because encouraging consumers to make sustainable choices is viewed as important to the net zero transition. Outside the EU, the UK's Advertising Standards Authority (ASA) earlier this year [released updated guidance](#) for advertisers making environmental sustainability-related claims to consumers, including use of the terms "carbon neutral" and "net zero." The advertising regulator has also publicly censured several companies and required the discontinuation of certain advertising campaigns, as we discussed [here](#) and [here](#) earlier this year. In the U.S., the Federal Trade Commission announced that it is [seeking public comment](#) on potential revisions to its Green Guides for the Use of Environmental Marketing Claims, in particular to address carbon offsets and climate change-related marketing claims. Likewise, in July 2023, [the Australian Competition and Consumer Commission](#) released [draft guidance](#) for

businesses making environmental and sustainability claims. The Draft Greenwashing Guidance establishes best practices under the Australian Consumer Law setting out how businesses operating in Australian jurisdictions can avoid greenwashing.