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Consumers Accuse European Airlines of Greenwashing, Claiming “Green” Air Travel Does Not Exist

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On June 6, 2023, the BEUC and 23 of its member organizations from 19 countries [filed a complaint](#) with the European Commission and relevant consumer protection agencies pursuant to Directive 2005/29/EC, accusing 17 European airlines of greenwashing in connection with their marketing practices, in breach of the EU regulations governing unfair commercial practices. The complaint requests an investigation into the marketing practices used by these airlines, and the airline industry as a whole, in connection with their use of climate-related claims. Founded in 1962, the BEUC (“Bureau Européen des Unions de Consommateurs”) is comprised of 45 independent consumer organizations from 31 countries. The BEUC represents the interests of European Consumers to European Union institutions.

Some examples of the [alleged misleading practices](#) include:

- Claims that paying extra carbon credits can offset, neutralize, or compensate the CO2 emissions of a flight, such as “Compensate your CO2 emissions;” “You can offset your carbon emissions;” and “Carbon offset compensation” — according to claimants, “the climate benefits of offsetting activities are highly uncertain, while the harm caused by the CO2 emissions from air travel is certain;”
- Charging consumers more to contribute to the development of Sustainable Aviation Fuels [SAFs], including statements such as “For the planet for the people – did you know that your donation helps to reduce CO2 emissions” — claimants assert that “such fuels are not market-ready” and “until SAFs will be massively available - beyond the end of the 2030s - they will at best only represent a minor share in planes’ kerosene tanks;” and
- Implying that air travel can be “sustainable,” “responsible,” and “green,” using statements such as “green by nature;” “Think Green Fly Green,” “Green fares: fly more sustainably;” “fly more responsibly;” or “reduce your footprint” — claimants allege that “none of the strategies deployed by the aviation sector are currently able to prevent Greenhouse Gas emissions.”

[Claimants are calling for](#) (i) a ban on any claim that travel is carbon neutral; and (ii) the establishment of “high integrity offsets with robust quality criteria.” Claimants also urge the investment in, and promotion of, alternative means of transportation such as high speed trains to curb demand for air travel.

Taking the Temperature: As seen with the [recent litigation against Delta](#), scrutiny of the airline industry’s use of climate-related marketing claims is mounting. The airline industry is one of several industries facing criticisms of greenwashing. Of course, much focus has been on oil and gas and finance industries, but we have also seen

accusations against **fashion**, **food**, and **household essentials** companies. We have also written extensively on how regulators overseeing various industries across several jurisdictions are focusing on greenwashing, and we see no signs of this trend subsiding any time soon. For example, late last year, **the Federal Trade Commission announced** that it is seeking public comment “on potential updates and changes to the Green Guides for the use of Environmental Marketing Claims.” The Australian Securities and Investments Commission recently announced that greenwashing remains an ongoing concern, after publishing guidelines for companies to avoid greenwashing under existing securities law. And in May, the European Council issued its support for amended Unfair Commercial Practices Directive and the Consumer Rights Directive to **reinforce consumer rights** against alleged greenwashing. We are watching these developments closely and will continue to report on them as we anticipate continued regulator and consumer activity in this space.

Swiss Regulator Finds Against FIFA on World Cup Carbon Neutrality Claims

July 11, 2023



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On June 7, 2023, the Swiss advertising regulator, Schweizerische Lauterkeitskommission (SLK), upheld complaints that the International Federation of Football Association (FIFA) made false statements about the 2022 FIFA World Cup in Qatar when describing it as climate- or carbon-neutral. The SLK determined that FIFA was unable to provide evidence as to the accuracy of the statements and advised the association to refrain from making such unsubstantiated, absolute claims in the future.

The SLK commenced its investigation after advertising regulators in four European countries – France, Belgium, the UK and the Netherlands – passed on complaints challenging FIFA’s claims to their Swiss counterpart, where FIFA is based. The SLK considered the statements made by FIFA in the context of Swiss standards for advertising carbon neutrality and emphasized that factual claims must be accurate and not misleading. The regulator also highlighted the importance of strict standards in substantiating environmental claims and that advertisers should not claim to have achieved sustainability goals if there are no definitive and generally accepted methods for measuring sustainability.

The SLK follows the provisions outlined in the [Marketing and Advertising Code](#) of the International Chamber of Commerce (ICC Code) regarding environmental claims in marketing communications. Article D of the ICC Code outlines these requirements, including that environmental claims “should be so framed as not to abuse consumers’ concern for the environment, or exploit their possible lack of environmental knowledge,” and “should use technical demonstrations or scientific findings about environmental impact only when they are backed by reliable scientific evidence.”

FIFA had provisionally calculated projected carbon emissions from the event to total 3.63 million tons as a result of, among other things, travel, accommodation, and food and beverage for ticket holders. The SLK found that it was not possible to definitively determine the accuracy of FIFA’s estimate and that it had therefore failed to comply with Article D. Further, FIFA pledged to fully offset the emissions once definitively calculated through various initiatives, including planting gardens around the stadium, but SLK ruled that FIFA “did not prove that the emissions stated in the ex-ante report had been offset and did not set out a plan to define how

it will further offset emissions.” According to a [report in 2022](#) by Carbon Market Watch, the claim that the 2022 Qatar World Cup is carbon neutral was unrealistic and lacked credibility.

Taking the Temperature: SLK’s finding against FIFA is another example of how regulators are utilizing existing non-sustainability specific legislation to combat alleged greenwashing. We [discussed this previously](#) in the context of the UK’s Advertising Standards Agency’s [ban of advertisements](#) by oil and gas majors Shell, Repsol and Petronas and its ban on advertisements by HSBC. The Australian Securities and Investments Commission also has been [active in bringing enforcement actions](#) relating to potentially misleading environmental claims.

We have also [discussed previously](#) that carbon offsetting is a sometimes controversial method employed by organizations (as FIFA did here) to compensate for their carbon emissions, since measuring the offset accurately is complex and difficult to verify and may disincentivize concrete emission-reduction measures.

The SLK’s decision is not legally binding, but it does highlight the seriousness of the concerns raised and has generated adverse publicity for FIFA. Establishing generally accepted methods of calculating carbon emissions and substantiating an organization’s methods of offsetting those emissions is becoming increasingly urgent so that organizations can promote their ESG credentials in a way that is not potentially misleading and does not expose them to, at the very least, reputational damage.

Brazil Launches Preparations for COP30 and Announces Eight Environmental Protection Decrees

July 11, 2023



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On June 5, 2023, Brazil's President, Luiz Inácio "Lula" da Silva, and the Minister of the Environment, Marina Silva, announced a package of eight presidential decrees designed to increase Brazil's leadership in mitigating climate change and slowing deforestation (the Climate Change Decrees). Since his reelection on October 30, 2022, Lula has been consistent in communicating his **administration's intentions** to implement environmental and energy policies which aim to address climate change, promote Brazil as a destination for green investment and balance economic development with biodiversity preservation. He has also been active in promoting Brazil's environmental governance credentials on the international stage. Recent high-profile engagements include **hosting the European Commission President**, Ursula von der Leyen, in Brasília on June 13 and a **speech at the May G7 summit** in Japan.

The Climate Change Decrees were **announced** at a ceremony held at the Presidential Palace in Brasília to celebrate World Environment Day, where Lula convened senior ministers, Amazonian state governors, representatives of indigenous communities and NGOs. In summary, the package covers:

- **COP30** – In May, the UN confirmed that Brazil will host the **30th UN Conference of Parties on Climate Change (COP30)** in November 2025 in the Amazonian city of Belém. Lula announced Brazil's candidacy during his speech at COP27 as President-elect in November 2022. In preparation for the event, the government has established a National Council for COP30, which includes the Chief of Staff of the Presidency, the Minister of the Environment, the Ministry of Foreign Affairs and other key ministries.
- **Environmental Protection and Enforcement** – The Amazon Security and Sovereignty Plan aims to combat land grabbing, illegal mining, and logging, as well as hunting and fishing within indigenous territories in the Amazon. Enforcement will be effected through the creation of a new enforcement body, the National Public Security Force's Environmental Operations Company (Companhia de Operações Ambientais da Força Nacional de Segurança Pública). Bases will be established throughout the Amazon region to strengthen existing capabilities and shorten response times. Marina Silva also announced the Plan for the Prevention and Control of Deforestation in the Amazon, which includes specific deforestation prevention and control plans for each of the Amazonian biomes. She also announced the resumption of the "Bolsa Verde", a social support program targeted at 30,000 vulnerable families living within traditional communities in the Amazon region, which aims to provide disincentives to engage in extractive activities.

- **Climate Change** – The inter-ministerial Committee on Climate Change was reestablished by decree. This body will monitor the Brazilian government’s implementation of Brazil’s National Policy on Climate Change. Additional institutional representatives have been added to the managing committee of the National Fund on Climate Change. A new National Commission for the Reduction of Greenhouse Gas Emissions resulting from Deforestation and Forest Degradation was also created.
- **Conservation** – The event was also used to announce new conservation areas, including a new 61,000 hectare national park in the State of Paraíba, a conservation area in the state of Pará and a 1,800 hectare expansion of a reserve in Mato Grosso. The Administration also revoked measures issued by the prior administration that weakened protections of the Atlantic Rainforest region.

Taking the Temperature: As we reported in January, Lula’s government announced ambitious environmental targets, including a promise to eliminate Amazonian deforestation by 2030. Lula’s vigorous promotion of Brazil’s renewed commitment to environmental protection with international partners has secured some successes, including obtaining a \$500 million pledge from President Biden for the Amazon Fund.

The current administration has recognized the imperative to reduce Amazonian deforestation in order to attract funding from international partners and the private sector. Anti-deforestation raids carried out in January were a signal of intent, and the creation of the new “Environmental Operations Company” is an attempt to bolster Brazil’s somewhat beleaguered environmental enforcement capabilities. Brazil is also seeking to appeal to the international investor community through legislation aiming to stimulate carbon credit markets.

As has now become a familiar pattern with Lula government initiatives, the latest package of environmental measures has been widely publicized but the challenge will be in ensuring effective implementation. Enacting these measures by presidential decree will ensure that they enter into force automatically without the need for further ratification. They could, however, be subject to future challenge by the “chainsaw lobby” in the Brazilian legislature or be challenged as unconstitutional in Brazil’s courts. Lula also recently pushed back against new draft provisions included within the long-delayed EU-Mercosur trade deal that would impose sanctions on countries that do not comply with certain environmental commitments.

U.S. DOJ Forms Task Force to Fight Global Illegal Timber Trade

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To investigate and prosecute the illegal trade of timber around the world and the deforestation that results, the U.S. Department of Justice has formed the Timber Interdiction Membership Board and Enforcement Resource (TIMBER) Working Group. The group **will focus on** prioritizing enforcement in respect of timber trafficking by identifying and prosecuting violators, strengthening the abilities of partner foreign governments and removing obstacles to successful enforcement. The TIMBER Working Group is an interagency initiative comprised of members from the Departments of Justice, Agriculture, Interior and Homeland Security, as well as the U.S. Council on Transnational Organized Crime's Strategic Division.

At the TIMBER Trafficking Enforcement Roundtable on April 19, 2023, Principal Deputy Associate Attorney General Benjamin Mizer observed that the illegal timber trade plays a major role in deforestation and is therefore inextricably linked to climate change. In particular, teak is commonly harvested in Myanmar and an investigation by the International Consortium of Investigative Journalists (ICIJ) published in March 2023 revealed that despite sanctions against it, Myanmar's state-run timber company Myanmar Timber Enterprise (MTE) still manages to export teak to the U.S. in vast quantities. In the coming months, the TIMBER Working Group will be working with government officials in countries adversely affected by deforestation and illegal trade, including Guatemala, Honduras, Cameroon, Indonesia and Vietnam.

The TIMBER Working Group is the latest in a slew of initiatives aimed at combatting deforestation and forest degradation linked to the production of commodities such as soy, beef, palm oil, wood, cocoa and coffee. The **EU Deforestation Regulation (EUDR)** mandates supply chain due diligence for all operators and traders dealing with such products. Operators will need to trace the commodities they are selling back to the plot of land where they were produced. The provisions are similar to the **Biden Administration's FOREST Act**, which also prohibits the importation of designated products containing commodities sourced from illegally deforested land.

Taking the Temperature: Teak is one of Myanmar's largest exports and is used around the world for decking on yachts, flooring and high-end furniture. MTE, which has the exclusive right to harvest and sell timber for export from Myanmar, was sanctioned by several western jurisdictions including the U.S., the EU and the UK in 2021 following a military coup in February 2021. The military dictatorship has controlled the Southeast

Asian country and all exports of teak ever since. [According to a report](#) published by the UK's Environmental Investigation Agency, the considerable proceeds of the continuing teak trade are being used to fund the regime. The report predicts that if deforestation in Myanmar continues at its current rate, the country's forests will disappear by 2035.

Traders in the U.S. are required, pursuant to the Lacey Act 2008, to ensure that the timber they import is harvested in compliance with the laws of the origin country but since the coup, several U.S. companies have been found to have imported the timber anyway. In contrast, the EU Timber Regulation imposes an outright ban on all timber imports from Myanmar and is therefore generally perceived as more effective. This, coupled with the EU Deforestation Regulation and collaboration with the TIMBER Working Group, presents a potentially cohesive approach towards reducing deforestation and biodiversity loss by the jurisdictions that import high proportions of timber.

Deforestation is now squarely among the more significant sustainability areas subject to regulatory and environmental advocacy attention. As reported in another article in this edition, last month Brazil's President, Luiz Inácio "Lula" da Silva, and the Minister of the Environment, Marina Silva, announced a package of eight presidential decrees designed to increase Brazil's leadership in mitigating climate change and slowing deforestation. In May, environmental group ClientEarth [filed a complaint](#) against Cargill, one of the world's largest soy and grain traders, over [alleged deforestation and related human rights issues in Brazil](#). The [complaint](#) was filed with the Organization for Economic Cooperation and Development pursuant to the Guidelines for Multinational Enterprises (OECD Guidelines). Under the OECD Guidelines, "companies are expected to conduct risk-based due diligence to identify, prevent and mitigate the actual and potential adverse environmental and human rights impacts of their operations." In April, the European Commission and the European Investment Bank announced their intention to jointly provide €18 billion in funding to finance projects covering a variety of climate-related issues, including an [initiative to reverse deforestation](#) and enhance climate and biodiversity protection.

Global Banking Regulators Plan to Develop Short-Term Climate Scenarios

July 11, 2023



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The Network of Central Banks and Supervisors for Greening the Financial System (NGFS) is assembling a team of modelling experts to develop short-term climate scenarios that capture the adverse implications in the near term of disorderly climate transition efforts and natural disasters. In a [Call for Expression of Interest](#) published on May 24, 2023, the NGFS observed that short-term climate scenarios are intended to complement the NGFS's existing framework of long-term climate scenarios, and will be based on detailed narratives and recommendations around scenario design, shocks, calibration and model implementation. The NGFS plans to commence developing scenarios in the third quarter of 2023.

Launched in 2017, the NGFS is a group of 125 central banks and supervisors based on five continents that share best practices and contribute to the development of environment and climate risk management in the financial sector, and seek to mobilize mainstream finance to support the transition toward a sustainable economy. NGFS members themselves are responsible for the supervision of all global systemically important banks and 80% of internationally active insurance groups.

Experts will be charged with creating macroeconomic models that can simulate various shocks related to transition and acute physical risks. In addition, these experts will guide the NGFS in understanding the modelling output and making the data available to a wider audience.

Since 2020, the NGFS has used [climate scenarios](#) to help central banks and supervisors explore the possible impacts of climate change on the economy and the financial system. These climate scenarios explore a range of plausible outcomes:

- “Orderly” scenarios assume climate policies are introduced early and become gradually more stringent, with relatively subdued physical and transition risks.
- “Disorderly” scenarios explore higher transition risks due to delayed or divergent policies across countries and sectors.
- “Hot house world” scenarios assume some climate policies are implemented in some jurisdictions, but that global efforts are insufficient to halt significant global warming, leading to severe physical risks and irreversible impacts such as rising sea levels.

- “Too little, too late” scenarios assume that a late transition fails to limit physical risks.

Taking the Temperature: As we have observed, the European financial sector has been using climate scenarios, including those developed by NGFS, to assess the implications of unchecked climate change and “stress test” financial institutions through various time periods. U.S. financial regulators have undertaken similar assessments.

The NGFS joins the UN Environment Programme Finance Initiative (UNEP FI), for example, which has been using short-term scenarios for some time. In May 2022, the UNEP FI released a report exploring three climate-driven macroeconomic shock scenarios for financial institutions—a sudden rise in carbon price, a spike in oil price and a trade war.