

A GUIDE TO GREENWASHING

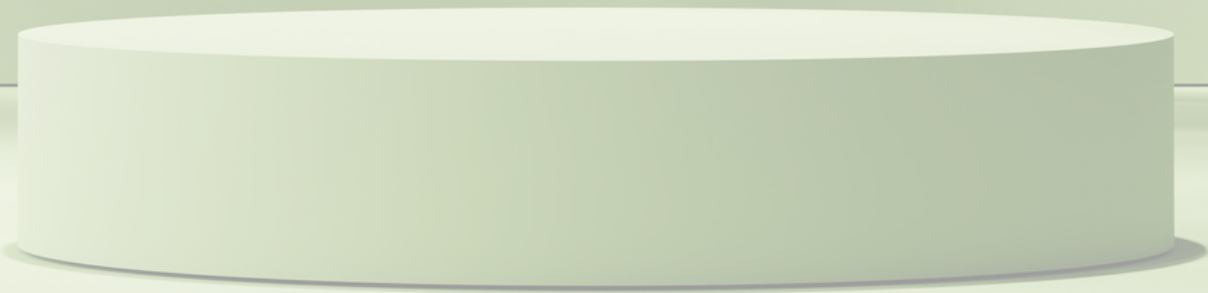


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Introduction

Due to the growing demand for sustainable products combined with rapidly evolving regulatory regimes, it has never been more tempting for companies to resort to greenwashing practices. In this context, and with the multiplication of “environmental” labels, it has become harder for consumers to make informed sustainable decisions that appeal to their personal values while preserving the planet’s natural resources.

But what is greenwashing exactly? And how can it be detected? As it has now penetrated all economic sectors, a better understanding of this concept has become essential. Companies will need to understand the regulatory changes that will require them to make adjustments, and consumers will want to understand how to protect themselves from being misled by green claims.



The Multifaceted Nature of Greenwashing

“Green products”, “eco-friendly”, “natural”, “clean”... the list goes on when it comes to the language used by companies to highlight the sustainability efforts of their products. But in which cases can these words be trusted, and when does their use become greenwashing?

Greenwashing can be defined as a form of advertising or marketing spin in which green press releases and green marketing are deceptively used to persuade the public that an organization's products, aims, and policies are environmentally friendly. Clever marketing is expensive, and companies often face criticism for spending more time, energy and money marketing themselves as environmentally friendly than actually minimizing their environmental impact.

Greenwashing practices are not new. The term was first coined in 1986 in an essay written by the environmentalist Jay Westerveld in which he accused the hotel industry's “save your towel” movement of preying on guests’ environmental sensibilities. This idea emerged in a period when most consumers received their news primarily from television, radio, and print media, so they could not fact-check the information provided by companies.

Since then, greenwashing has evolved at the same pace as new communications and marketing strategies, becoming harder to detect and differentiate from green marketing.

Greenwashing practices rely on several mechanisms:

Selective Disclosure: a company exposes positive information regarding its environmental performance, while intentionally avoiding any mention of the negative;

Symbolic Actions: a company draws attention to a minor positive action that does little to change its overall environmental footprint;

Vague terminology: a company resorts to broad statements filled with buzzwords that do not mean anything in terms of a company's manufacturing processes or adherence to environmental policies;

Imagery: a company is using visually pleasing packaging to make its products appear greener than they really are;

but also **meaningless labels, fabricated data, false associations**, and so on.

Green Marketing and Greenwashing

Green marketing consists of several marketing activities, including changes to products, processes, packaging, or even advertising, aimed at ensuring that the product is perceived as safe for the environment. As such, it focuses on selling products and services based on their environmental benefits.

Examples of green marketing include advertising the reduced emissions associated with a product's manufacturing process or using post-consumer recycled materials for a product's packaging. Some companies may also market themselves as being environmentally conscious by donating a portion of their proceeds to environmental initiatives, such as tree planting.

It is only when a company's green marketing activities are not substantiated by significant investments or operational changes that they may be assessed as false or misleading claims.

With over half of EU consumers shopping with sustainability in mind, green marketing has been proliferating, making it harder to draw the line between misleading claims and claims made by companies that strive to reduce their environmental impacts. This situation called for clear EU rules to wipe out greenwashing practices, allow consumers to make truly sustainable purchases, and ensure that companies making significant investments and operational changes can communicate this to consumers in a trustworthy way.



Greenwashing practices in the EU - State of Play

Since 2019, the EU has been following a new strategic agenda, based on the overall objective of building a climate-neutral, green, fair, and social Europe. As such, the European Green Deal aims to transform the European continent into a climatically neutral space by 2050, by incentivizing an efficient use of resources and ensuring a just and inclusive transition. As European consumers' concern and demand for sustainable products are crucial for the EU to achieve its goal of climate neutrality, the transition to a truly circular economy can only be achieved in a transparent market environment, free of any greenwashing practices. However, misleading green claims have become more common due to the increased desire of consumers to buy environmentally sound products.

For example, on January 28, 2021, the European Commission and the consumer protection authorities of each Member State released the result of a sweep carried out on European websites to identify violations of EU legislation in the markets linked to the issue of greenwashing. The study assessed 344 "seemingly dubious" sustainability claims made online by companies from the clothing, textiles, cosmetics, personal care, and household equipment sectors and found that in 42% of cases, these claims were false and deceptive.

In a report published in July 2021, ECOS examined green claims on 82 plastic products and concluded that

- nearly half of the presented claims were assessed to be potentially unclear to consumers and/or irrelevant to addressing plastic pollution issues;
- a quarter of the claims did not pass the assessment for reliability;
- three-quarters seemed to be self-made claims not evidenced to be independently verified.

More recently, the Corporate Climate Responsibility Monitor stressed the misleading nature of the net-zero and carbon neutrality targets of some of the world's largest companies, concluding that their carbon neutrality claims only covered 3% of their total emissions. They argued that this was leading consumers to perceive these companies as "carbon neutral", even though some were failing to address the vast majority of their emissions in a significant way.

It is these types of perceived or assessed false claims that the EU aims to address in order to enable the transition to a green economy.



The need to better protect European consumers

The EU Ecolabel

In order to ensure that consumers could make better-informed decisions on their sustainable purchases, the European Union launched the EU Ecolabel in 1992. This voluntary label promotes products with a guaranteed, independently-verified low environmental impact, based on reliable and scientific information. By awarding goods and services which comply with high environmental standards throughout their entire life cycle, the EU Ecolabel encourages companies to produce more circular products in line with the EU's transition to a circular economy and toxic-free environment.

The functioning of this label is set out in the official Regulation of the European Parliament and of the Council. Its criteria are developed by the European Commission and the Member States, in cooperation with industry, consumer organizations, and environmental NGOs.

In May 2022, the label included nearly 90,000 products and services. It now covers 24 product groups across the EU, from varnishes to textiles.

Although the EU Ecolabel is the best-known ecolabel in many EU countries, consumers' awareness varies widely among the Member States. While 62% of people in Luxembourg have heard about the EU Ecolabel, only 16% in the Czech Republic have.

Furthermore, European consumers are often faced with an increasing number of environmental labels, based on different measurements and methodologies, leading environmental experts to call for the implementation of an EU-wide standard based on the lifecycle assessment of products.



The New Consumer Agenda and the Circular Economy Action Plan

In 2022, the Commission proposed new initiatives that aligned with the EU Ecolabel standard of environmental excellence. These proposed revisions were already announced in the [New Consumer Agenda](#) and the [Circular Economy Action Plan](#). These initiatives aimed at achieving the climate and environmental objectives of the European Green Deal, by protecting consumers from misleading commercial claims. They concerned:

- the [Consumer Rights Directive](#)
- the [Unfair Commercial Practices Directive \(UCPD\)](#)
- the [Ecodesign for Sustainable Products Regulation \(ESPR\)](#)
- the [Directive on empowering consumers for the green transition](#)
- the upcoming initiatives on [Substantiating Green Claims](#) and on the [Right to Repair](#)
- the [Due Diligence Initiative](#)
- the [Sustainable Consumption Pledge](#)

More information on the ESPR, the Directive on empowering consumers for the green transition, and the initiative on Green Claims can be found on the following pages.



Ecodesign for Sustainable Products Regulation (ESPR)

Presented by the Commission on 30 March 2022, the proposal for a new Ecodesign for Sustainable Products Regulation builds on the existing Ecodesign Directive, which was adopted in 2009 and only covered energy-related products. In order to foster the production and consumption of more environmentally sustainable and circular products, the proposal establishes a framework to set eco-design requirements for specific product groups to significantly improve their circularity, energy performance, and other environmental sustainability aspects.

The implementation of the ESPR will be accompanied by the establishment of a digital product passport (DPP), which will provide information on products' sustainability, in order to help consumers and businesses make informed choices during their purchases. As such, this regulation will boost the supply and demand for sustainable goods on the internal market and contribute to achieving the EU's overall climate, environmental, and energy goals.

It is worth noting that in the future, Ecodesign and EU Ecolabel performance requirements will be developed in synergy to ensure coherence between the two policies.

The Parliament and the Council are currently working on their respective positions. A general approach will be adopted on the file during the next Competitiveness Council on 22 May and a vote in ENVI will take place on 5 June.



Empowering consumers for the green transition

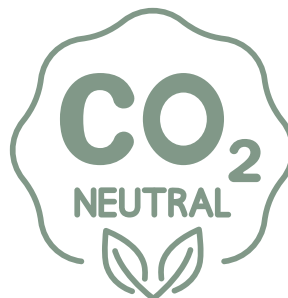
On 30 March 2022, the Commission proposed to update the EU consumer rules to empower consumers for the green transition, by amending the Unfair Commercial Practices Directive and the Consumer Rights Directive. The updated rules aim to ensure that consumers can make informed and environmentally-friendly choices when buying their products, while also setting stricter rules for green claims to address greenwashing and fight early obsolescence practices. As such, it proposes new rules to provide consumers with information on products' sustainability, in particular their durability and reparability, at the point of purchase.

This proposal compels companies to only make general green claims based on demonstrated excellent environmental performance, with the EU Ecolabel being among the options to substantiate such claims.

Most stakeholders, such as the [European Environmental Bureau](#) and [BEUC](#), welcomed the proposal and agreed on the need to:

- ban all carbon-neutral claims that rely on offsetting;
- provide tighter restrictions on claims relating to future environmental performance;
- strengthen the definition of certification schemes, ensuring that they are independent, open, and transparent;
- ban early obsolescence and practices preventing repair;
- introduce reliable and pre-approved sustainability labels and sustainability information tools;
- provide consumers with information about the “guaranteed lifespan” of products;
- for products to provide clear, comparable, and credible information about the periods for which software updates would be available;
- give information on product reparability in a harmonized format.

The Parliament and the Council are currently working on their respective positions. A vote in the IMCO Committee is planned for 27 March.



EU Initiative on Green Claims

As part of its 2020 Circular Economy action plan, the Commission committed to compelling companies to substantiate their environmental claims using Product Environmental Footprint methods. The Commission will present the [Green Claims Regulation](#) on 22 March 2022, after it had been delayed several times because of a lack of consensus on methodologies to verify environmental allegations.

The key objective of the proposal is to accelerate the uptake of truly green products, by providing consumers with reliable information about the sustainability of products and ending misleading commercial practices. The measures proposed will thus increase the level of environmental protection while leading to further harmonization regarding the regulation of environmental claims. As such, it will prevent any further market fragmentation due to diverging national approaches and ensure a level playing field for businesses operating in the EU.

According to a draft version of the proposal, the Commission would proceed with a gradual approach, as the envisaged regulatory framework would be composed of the current proposal and the proposal for a Directive on empowering consumers in the green transition.

The scope of the proposed directive will apply to environmental claims made on products available on the EU market. The proposal will establish harmonized requirements for the substantiation and communication of all types of environmental claims, including labels, and will request the Member States to set up a system of verification for the substantiation of environmental claims that will have to be carried out by independent verifiers. By designating competent authorities, the Member States will have to ensure the enforcement of rules and introduce a system of penalties. These penalties would be established based on common criteria and should include “the nature and gravity of the infringement” as well as “the economic benefits derived” from it and the potential environmental damage caused.

Product Environmental Footprint (PEF)

So far the debate has mainly centred on the Product Environmental Footprint (PEF) methodology, which the European Commission wants to extend gradually across a wider range of products.



Product Environmental Footprint: the EU's harmonized Life Cycle Assessment (LCA) methodology. It aims to calculate the environmental impact of a product over its lifetime. As such, this method measures “the environmental performance of a product or organization throughout the value chain, from the extraction of raw materials to the end of life, using 16 environmental impact categories”, such as climate change, water use, and natural resource depletion.

Within the framework of the Green Claims Initiative, using the PEF method would be beneficial, as it would require all companies to use the **same rules**, making it easier for consumers to compare products from different companies.

Furthermore, the PEF would help avoid trade-offs between impacts, as it would cover the **full life cycle of products**. As such, once developed and approved by EU expert groups, PEF methodologies and corresponding labelling schemes would be set in stone and made legally binding across the EU via delegated acts.



However, PEF methodologies have been subject to criticism too. Although most LCA methodologies are internationally-set standards, using different methodologies for the same products could lead to different results. For example, the same company may have certain requirements for a specific product and less stringent requirements for others.

Moreover, PEF methodologies have also been contested, as they do not always reflect all aspects of sustainability. Indeed, even though the PEF methodology covers 16 categories of impacts, it leaves areas such as reusability and recycled content out. It is therefore possible that the PEF method would only give consumers an incomplete picture of a product's impact on the environment.

This issue was raised by BEUC, which stated that the method still lacked robust indicators for several key environmental issues such as land degradation, biodiversity, pesticide effects, imported deforestation, use of hazardous chemicals, or release of microplastics. Beyond that, communicating the scores of these 16 environmental categories into a single label might also turn out to be a challenge.

Finally, while companies would not be able to make environmental claims about products that were not covered by an authorized methodology, they could still use aggregate PEF scores, which could enable them to hide a bad score in one of the 16 areas with a good score in another.

The Commission is still considering whether PEF will be a mandatory or voluntary requirement for companies and whether businesses will need to add a label on their product to certify that they are PEF-compliant. The most likely option would be to leave more flexibility to businesses regarding the methodology used for the substantiation of environmental claims, while the Commission continues to work on further methodological changes in light of scientific developments. However, most stakeholders opposed this option, as it would decrease legal certainty for companies and be an important burden for SMEs.



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