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# Green claims in focus

## Food and textile sectors

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# Speakers



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# Overview



# Overview of new (upcoming) EU directives

## European Green Deal

DIRECTIVE (EU) 2024/825 ... of 28 February 2024 ... as regards empowering consumers for the green transition through better protection against unfair practices and through better information ("Empowering Consumers Directive"; "ECD")

Must be implemented in national law of the Member States by 27 March 2026 and applied from 27 September 2026.

- Leads to amendments of Directive 2005/29/EC ("Unfair Commercial Practices Directive"), in particular
  - **new per-se bans** of specific commercial practices;
  - **display of sustainability labels** only possible if based on a certification scheme or established by public authorities;
  - specific requirements for claims related to **future environmental performance**.

(Draft) Directive ... on substantiation and communication of explicit environmental claims ("Green Claims Directive"; "GCD")

**Further development unclear**

Still "under construction"; trilogue talks were ongoing. 24/30 month transitional period expected.

- Applies to environmental claims in B2C commercial practices; contains detailed and very strict prerequisites for explicit environmental claims (incl. labels), in particular
  - explicit environmental claims to be made **subject of detailed prior assessment/substantiation** by trader;
  - detailed requirements regarding **communication with explicit environmental**;
  - additional prerequisites for environmental labelling schemes;
  - Expl. environmental claims and environmental labelling schemes require **prior verification and certification** by indep. verifier.

# Important changes – ECD

## 1) Sustainability labels

Only admissible if based on a certification scheme or established by a public authority

→ **End of self-created sustainability labels**



## 2) Generic environmental claims

Only admissible if (1) trader is able to demonstrate recognised excellent environmental performance, (2) included on a sustainability label or (3) specified in clear and prominent terms on the same medium

→ **Increased requirements for substantiation and verification**



# Important changes – ECD

## 3) Offsetting / CO<sub>2</sub>-neutral claim

Claims, based on the offsetting of greenhouse gases, that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions prohibited

→ **End of product-related climate neutral claims based on offsetting**



## 4) Claims with future environmental performance

Misleading unless based on clear, objective, publicly available and verifiable commitments set out in detailed and realistic implementation plan that includes measurable and time-bound targets etc. and that is regularly verified by an independent third party expert, whose findings are made available to consumers

→ **Increased requirements for substantiation and verification**



# Important changes – GCD

**Assessment and substantiation of explicit environmental claims** (= an environmental claim contained in text form or on an environmental label), in particular:

- based on generally recognized scientific findings, taking into account international standards;
- demonstrate that environmental impacts, environmental aspects or environmental performance that are subject to the claim are **significant from a life-cycle perspective**,
- holistic consideration of environmental impacts, environmental aspects and/or environmental performance (“**trade-off effects**”);
- specific requirements for claims re offsetting of greenhouse gas emissions;
- use of primary and, subsidiarily, secondary data required.

## Communication

- Information on the product or the trader that is the subject of the explicit environmental claim and on the substantiation shall be made available together with the claim in a physical form or in the form of a **weblink, QR code or equivalent**;
- Explicit environmental claims on the cumulative environmental impacts of a product or trader based on an **aggregated indicator** of environmental impacts can be made only on the basis of rules to calculate such aggregated indicator that are established in the Union law.

- **New environmental labelling schemes** established by (a) public authorities in third countries awarding environmental labels to be used on the Union market, and (b) by private operators will be subject to **prior approval**
- Any explicit environmental claim must be **verified and certified** by an independent, accredited testing body **prior to use**.
- Verification and certification of claims and labels **will not prejudge** the assessment by national authorities or courts
- Information used for substantiation need to be **regularly reviewed** and, if necessary, **updated**, at least every five years, including repeated verification and certification in case of an update

# Risks / Consequences of violation (1/2)

## Civil law risks

- Warning letter / court proceedings
- **Injunctive relief** (cease and desist from using the claim/label); in compliance with the procedural requirements, also at short notice by way of a **preliminary injunction**
- Need to “recall” products from the market
- Claim for damages / information / reimbursement of costs

## Administrative law risks

- **Art. 13 (3) UCP-Directive:**
  - Fines (maximum amount of at least 4% of the trader's annual turnover) in case of widespread violation pursuant to Regulation (EU) 2017/2394
- **(Art. 14 GCD:**
  - *Fines (maximum amount of at least 4% of the trader's annual turnover);*
  - *confiscation of revenues;*
  - *temporary exclusion from public procurement processes and from access to public funding.)*

## Accompanying consequences

- Reputational risks
  - Negative media coverage;
  - Loss of trust towards customers and consumers;
  - Social media shitstorm;
- Expenses for remedying measures:
  - Adaption of website;
  - Amendment of advertising materials, product packaging, recall of products;

# Risks / Consequences of violation (2/2)

## National specificities - French example

### Criminal law risks

- Fine of up to:
  - 750,000€ / 5 years of jail penalty for natural persons
  - 3.75 M€ for legal entities
  - 80% of the communication expenses
  - 10% of the national average annual turnover of the company
- Possible criminal settlement
- Frequent name and shame

### Administrative fines

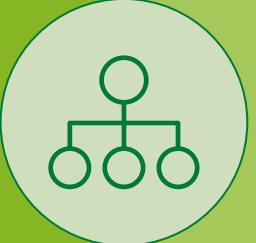
- Only for specific green claims
  - FR example : "eco-friendly", "carbon neutral", etc.
- Fine of up to 15,000€ (but which can be multiplied by the number of products)
- Fine directly imposed by the investigators
- Frequent name and shame

### Other risks

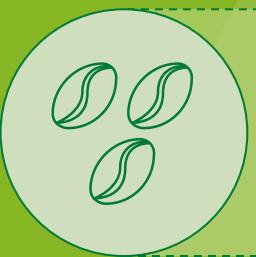
- Competitors' actions (unfair competition) : injunctions, damages
- Consumers actions – development of judicial actions by consumers associations
- Reputational risks, etc.



# Recommendations



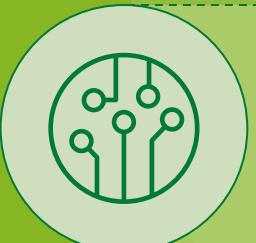
**Review of portfolio** of sustainability / environmental claims and labels currently in use or intended to be used and conduct gap/risk analysis in light of the ECD (and – eventually – the GCD).



Traders that use claims related to **offsetting of greenhouse gas emissions** should monitor future developments. Many aspects are currently under judicial review by national courts (at least in Germany) and the Council proposed substantial amendments to the draft GCD (if adopted).



Providers of **sustainability labels** should conduct **gap analysis asap**, since implementation of measures to achieve compliance may take substantial time (e.g. consultation with experts and implementation of third-party verification within supply chain).



(In case the GCD would not be withdrawn: **Adapt internal processes** for the design of product packaging and advertising materials, since prior verification and certification of environmental claims by independent verifier may take considerable efforts and time.)

# The food sector

Dirk Smielick



## Environmental claim (1/9)

**Environmental claim** = "any message or representation which is not mandatory under Union or national law, **in any form**, including text, pictorial, graphic or symbolic representation, such as **labels**, **brand names**, **company names or product names**, in the context of a commercial communication, and which **states or implies** that a product, product category, brand or trader has a **positive or zero impact on the environment** or is **less damaging to the environment** than other products, product categories, brands or traders, or has **improved its impact over time**"

# Environmental claim (2/9)

Examples of clear environmental claims:

- Nature's friend
- Environmentally friendly
- 80% recyclable
- Biodegradable
- Biobased



# Environmental claim (3/9)

However, scope of definition of term to be clarified. Unclear whether claims are covered in particular relating to:

- Regionality



# Environmental claim (4/9)

## ➤ Animal welfare



# Environmental claim (5/9)

- Bee friendly



# Environmental claim (6/9)

- Bio / eco / organic pursuant to Regulation (EU) No. 2018/848 or similar



# Environmental claim (7/9)

- CO<sub>2</sub> footprint / Environmental product declarations (EPD)



# Environmental claim (8/9)

- Without genetically modified organisms



# Environmental claim (9/9)

- Vague claims:



# Sustainability labels (1/4)

Providers of sustainability labels have to meet the prerequisites of the definition of "certification scheme" pursuant to the ECD!



COCOA



## Sustainability labels (2/4)

German Federal Court of Justice (BGH) dated 27 June 2024 – file ref. I ZR 98/23:

- Statement "climate neutral" misleading since ambiguous. The production/product reference in particular suggested an understanding of "climate neutral" in the sense of a reduction in emissions. In fact, however, the cooperation with ClimatePartner only compensated for the emissions generated during production. Due to the ambiguity of the "climate neutral" claim, this should have been explained on the product packaging or in the advertising.



# Sustainability labels (3/4)

- Are vague sustainability labels, which comply with the ECD, subject to review under the general prohibition of misleading claims?
- Are adjacent explanatory notes, which are not contained on the sustainability label, still protected by the privilege for environmental declarations contained on such label and do less stringent requirements with regard to misleading apply?



# Sustainability labels (4/4)

- Findings summarized in the ruling of the BGH likely generally apply also to advertising with sustainability labels.
  - Strong emotional pull of corresponding advertising
  - Often use of ambiguous, technical terms
  - Complex interrelationships, faced with a low level of consumer knowledge
- Mere fact that sustainability label does not constitute a general environmental claim and complies with the ECD does not preclude that it could be misleading according to Art. 6, 7 UCP-Directive.

→ If the meaning of a sustainability label is unclear or ambiguous, valid **additional explanatory statements** are recommended to avoid misleading of the consumer (directly or due to the omission of material information that the average consumer needs, according to the context, to take an informed transactional decision).

# The textile sector

Amaury Le Bourdon



# What particularities for the textile sector?

- **Specificities of the sector**
  - Strong environmental impact : textile sector identified as the 4th highest impact on the environment and climate change in the EU
  - Complex value chain
- **Examples of application to specific claims**
- **Possible national specificities**
- **Sectorial rules impacting communication**
  - Upcoming Digital Product Passport (DPP)
  - Textile Regulation revision
  - Eco-score
  - Fast-fashion bill

# Examples of application to specific claims

## Generic green claims



**“Committed to responsible fashion”** : general statement that is not qualified or justified and is particularly vague



**“Sustainable”** is an exaggeration when used to describe “organic” (“bio”) materials



**“Eco-friendly washing”** without explaining the process used and without qualifying the statement is excessive

# Examples of application to specific claims

## Generic green claims

- The **Dutch Authority for Consumers and Markets (ACM)** flagged H&M and Decathlon (Sept. 2022)
  - Sustainability-related terms like “*Conscious choice*” and “*Ecodesign*” on products labels
  - Without clear definitions or supporting evidence
  - Both brands required to revise labelling and marketing practices and to make donations of approx. €400,000 and €500,000 to sustainable causes to compensate for their use of unclear and insufficiently substantiated sustainability claims



# Possible national specificities

Be aware of national specificities:

**FR example:**

- **Ban on specific claims** : general prohibition of displaying the generic words 'biodegradable', 'environmentally friendly' or any other equivalent wording ("green", "friend of the nature", etc.) on a product / packaging
  
- **Specific substantiation obligation:**
  - Carbon neutral-type claims: strict conditions (balance sheet of greenhouse gas emissions)
  - When reference is made to the recycled nature of a product, % of recycled materials actually incorporated shall be specified



# Sector-specific rules impacting communication (1/4)



- Upcoming **Digital Product Passport (DPP)**
- For each product: make available essential information, notably environmental (e.g. composition, origin of materials, environmental footprint, recyclability, and end-of-life treatment methods) : burdensome
- Information will have to be accurate, complete and up to date
- Must be easily accessible by scanning a data carrier, such as a QR code, in principle on the product itself, with derogations.
- Necessary impact on green claims
- Delegated acts to set the details (level of information, presentation, etc.)

## Calendar:

**June 2024** : Adoption of the  
ESPR (Ecodesign for  
Sustainable Products  
Regulation)

**Until 1 July 2025** : Current  
public consultation by  
the EU Commission

**4<sup>th</sup> quarter 2025** : planned  
EU Commission  
delegated act for textile

**Between 2027 and 2030** :  
Expected deployment

# Sector-specific rules impacting communication (1/4)



- **FR specificity:** Sheets on Environmental Qualities and Characteristics (**EQC Sheets**)
  - Similarities with the DPP but distinct methodology and information to display
    - Incorporation of recycled material
      - Recyclability
      - Presence of hazardous substances
      - Presence of microplastic fibres
      - Traceability (= geographical origin of each manufacturing stage)
  - Obligations to display the environmental information in a certain way
    - E.g. mandatory statement (in French) '*product mostly recyclable*' when the 5 recyclability criteria are met
  - Necessary impact on green claims



# Sector-specific rules impacting communication (2/4)

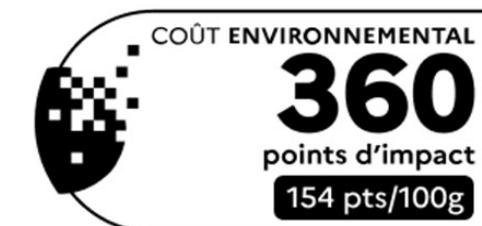
- **Eco-score**

- A voluntary tool for apparel and footwear
- Aimed to be used for the industry internally
- A harmonized PEF (Product Environmental Footprint) methodology based on life cycle assessment (16 impact indicators) – PEF score
- Impacts green claims



- **FR example : Upcoming optional eco-score**

- An Ecobalyse tool to calculate the environmental cost of clothing
- Methodology partially based on the EU Commission PEF
- Towards consumers – with imposed display requirements
- 16 May 2025 : EU Commission approval of this eco-score
- To be deployed from autumn 2025



# Sector-specific rules impacting communication (3/4)

- **Textile Regulation 1007/2011**

- Regulates the name of fibres – labelling of textile
- Planned proposed revision by the 4<sup>th</sup> quarter of 2025
- Study of the possibility of:
  - Including additional information such as sustainability or circularity parameters, the country where the manufacturing process takes place ('made in')
  - Digitalizing information (DPP)



# Sector-specific rules impacting communication (4/4)

- **Fast fashion regulation:** through various instruments
  - No specific EU rule on green claims for fast fashion
- **FR situation: “Ultra-express fashion” bill**
  - Political consensus
  - Difficulties to define fast fashion:

*“The industrial and commercial practices [...] which result in a reduction in the useful life or lifespan of new [textile] products [...] due to the fact that a large number of new product references are placed on the market or that there is little incentive to repair these products are considered ultra express fashion”*
  - Decrees to set the precise thresholds in terms of number of references of new products (to target Temu / Shein?)
  - General ban on all advertising/communication (products/brands/companies)
  - Validity of this general advertising ban?



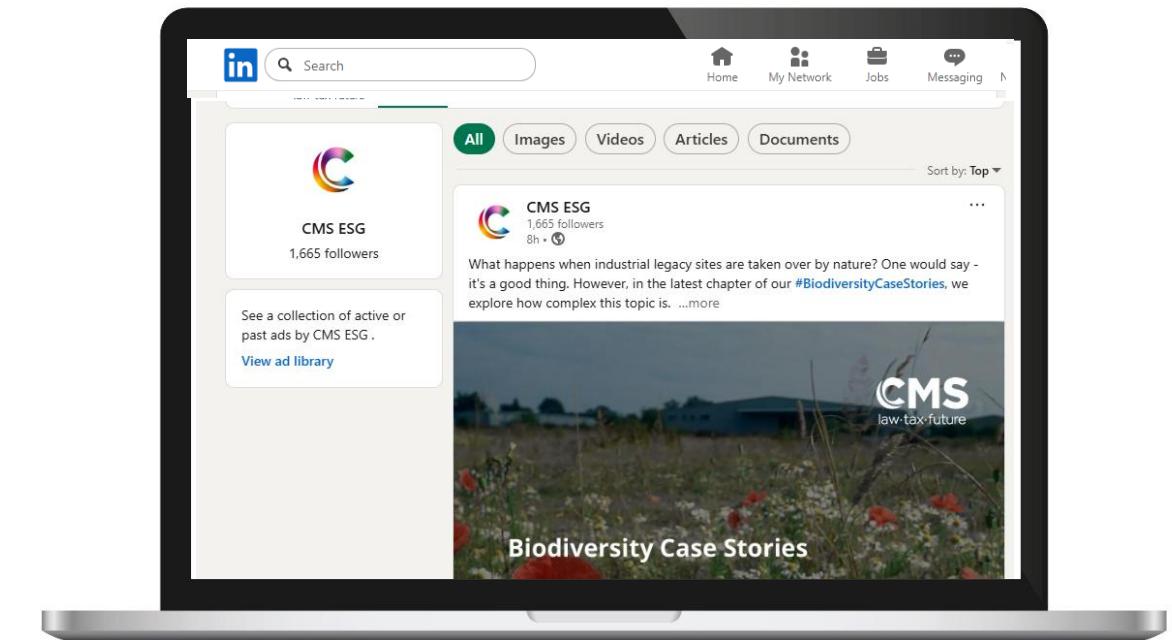
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