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European Commission Aims to Tackle Greenwashing in Latest Proposal

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On March 22, 2023, the European Commission unveiled a proposal, the **Green Claims Directive**, (Proposal) aimed at combating greenwashing and misleading environmental claims. By virtue of the Proposal, the EC is attempting 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, wherein companies that make a genuine effort to improve their environmental sustainability can be easily recognized and rewarded by consumers. The Proposal follows a **2020 sweep** that found nearly half of environmental claims examined in the EU may be false or deceptive. Following the ordinary legislative procedure, the Proposal will now be subject to the approval of the European Parliament and the Council. There is no set date for entry into force at this time.

The Proposal complements a **March 2022 proposal** to amend the Consumer Rights Directive to provide consumers with information on products’ durability and repairability, as well as to amend the Unfair Commercial Practices Directive by, among other things, banning “generic, vague environmental claims” and “displaying a voluntary sustainability label which was not based on a third-party verification scheme or established by public authorities.” The Proposal builds on these measures to provide “more specific requirements on unregulated claims, be it for specific product groups, specific sectors or for specific environmental impacts or aspects.” It would require companies that make “green claims to respect minimum standards on how they substantiate and communicate those claims.” Businesses based outside the EU that make environmental claims directed at EU consumers will also have to respect the requirements set

out in the Proposal. The criteria target explicit claims, such as “T-shirt made of recycled plastic bottles” and “packaging made of 30% recycled plastic.”

Pursuant to Article 3 of the Proposal, “environmental claims shall be based on an assessment that meets the selected minimum criteria to prevent claims from being misleading,” including, among other things, that the claim “relies on recognised scientific evidence and state of the art technical knowledge,” considers “all significant aspects and impacts to assess the performance,” demonstrates whether the claim is accurate for the whole product or only parts of it, provides information on whether the product performs better than “common practice,” identifies any negative impacts resulting from positive product achievements, and reports greenhouse gas offsets.

Article 4 of the Proposal outlines requirements for comparative claims related to environmental impacts, including disclosure of equivalent data for assessments, use of consistent assumptions for comparisons and use of data sourced in an equivalent manner. The level of substantiation needed will vary based on the type of claim, but all assessments should consider the product’s life-cycle to identify relevant impacts.

Pursuant to Article 10, all environmental claims and labels must be verified and certified by a third-party verifier before being used in commercial communications. An officially accredited body will carry out the verification process and issue a certificate of conformity, which will be recognized across the EU and shared among Member States via the Internal Market Information System. The verifier is required to be an officially accredited, independent body with the necessary expertise, equipment, and infrastructure to carry out the verifications and maintain professional secrecy.

Taking the Temperature: The Proposal is part of a broader trend of governmental regulators, self-regulatory organizations, and standard setters across industries adopting a more formalized approach toward greenwashing. For example, as we [recently reported](#), the UK’s Advertising Standards Authority (ASA) published rules on making carbon neutral and net-zero claims. Instances of enforcement actions over greenwashing allegations have also been [on the rise](#). The [Securities and Exchange Board of India](#) recently launched a consultation paper seeking public comment on rules to prevent greenwashing by ESG investment funds, and the [European Council and the European Parliament](#) reached an agreement regarding European Green Bonds Standards aimed at, among other things, avoiding greenwashing.