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European Council Adopts Position on Amendments to EU's Green Transition Consumer Rules

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On May 3, 2023, the European Council **adopted its position** and commented on a March 22, 2023 proposal to amend EU consumer rules targeting greenwashing. The proposal was **submitted by the European Commission** in March 2022 as one of the initiatives in its **New Consumer Agenda** and **Circular Economy Action Plan**.

As we **previously reported**, the proposal would amend the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD) to, among other things, reinforce consumer rights against alleged greenwashing. In commenting on the proposal, the Council supports a total ban on generic and vague environmental claims such as “eco-friendly,” “green” or “climate neutral,” including for the purposes of advertising, unless the claims can be substantiated by a publicly accessible certification scheme. To buttress the ability of consumers to compare products, only sustainability labels that are based on official certification schemes or otherwise registered as certification marks or established by public authorities would be allowed to be used going forward. The Council added to the proposal by suggesting that the “monitoring of compliance for such schemes should be objective, based on international, Union or national standards and procedures and carried out by a party independent from both the scheme owner and the trader. The independent third party should play an important role in ensuring compliance with the certification scheme and is expected to sufficiently fulfill requirements and to have sufficient procedures in place to ensure its own competence and independence.”

The Council’s comments on the proposal also address companies’ statements about future environmental progress such as “in the form of a transition to carbon or climate neutrality, or a

similar objective, by a certain date.” According to the Council, through “such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products.” Accordingly, the Council proposes that, to “ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are not supported by clear, objective, publicly accessible and verifiable commitments and targets given by the trader and are not based on a realistic implementation plan that shows how these commitments and targets will be achieved. Such claims should also be verified by a third party expert, who should be independent from the trader, free from any conflicts of interest, with experience and competence in environmental aspects and who should be enabled supported by an independent monitoring system to monitor the progress of the trader with regard to the commitments and target.” The third-party findings should be made available to consumers.

The European Parliament will now take up the proposal. If the proposal is approved, it will then be transposed into the EU Member States' national legislation and consumers will be entitled to remedies in the event of breaches, including through the collective redress procedure under the Representative Actions Directive. This means there will be a potential for qualified entities to bring representative litigation before the national courts on behalf of consumers.

The Council also adopted a position to extend the transposition period from 18 to 24 months to allow EU Member States sufficient time to adopt the changes into national legislation.

Taking the Temperature: By proposing to amend its consumer protection laws, the Council is targeting as greenwashing the use of unsubstantiated sustainability-related terms, which is a key focus for regulators and standard setters alike. 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; earlier this year the European Securities and Markets Authority announced the launch of a common supervisory action (CSA), to continue throughout 2023, in partnership with EU Member State national competent authorities. The CSA will cover the [application of MiFID II](#) (Markets in Financial Instruments Directive) disclosure rules to marketing communications for financial products across the EU; and the UK Financial Conduct Authority is expected later this year to [introduce a Policy Statement](#) addressing greenwashing in response to the Sustainable Disclosure Requirements and investment labels consultation. Also notable is the Council’s focus on climate-related projections, which, as we have reported, at least with respect to [net-zero plans and targets](#), increasingly have come [under scrutiny](#).

Certain studies suggest that claiming to be “green,” “sustainable” and “climate neutral” (among the range of terms used) can provide a business with a competitive advantage across relevant products. As we [reported](#), a recent study on greenwashing in the food sector shows that 42% of UK consumers are more likely to buy products with “carbon neutral” labels and 29% “willing to pay slightly or much more” for products so labeled. We can expect that enforcement targeting inaccurate “green” claims will increase using existing legal remedies and, potentially, the new avenues for redress introduced by the proposed EU consumer rules. We will continue to closely monitor this as part of a broader trend where [regulatory and enforcement authorities](#), as well as [activist](#)

stakeholders and NGOs, are driving a rise in environmentally-linked investigations and litigation.