New rules to combat greenwashing

IMPLICATIONS OF THE EMPCO DIRECTIVE FOR ENVIRONMENTAL AND SUSTAINABILITY MESSAGING IN ADVERTISING

Executive Summary

- The use of catchy environmental claims such as “green”, “eco-” or “climate neutral”, as well as internally developed sustainability labels, in advertising will soon be prohibited, except in a few specific cases.
- There will be no transition period. Advertising claims, such as those on product packaging or in leaflets, must comply with the new rules by **27 September 2026**.
- Failure to comply may result in warnings, legal proceedings and, in cases involving multiple EU Member States, heavy fines.

Background and objectives

While the Green Claims Directive, which is currently under discussion at EU level, has been put on hold, Directive (EU) 2024/825 (“Empowering Consumers for the Green Transition”, or “EmpCo”) has already been enacted. The directive aims to combat “greenwashing”, i.e. creating a false impression that a product has positive environmental attributes, as comprehensively as possible by introducing new legal definitions, expanded criteria for misleading practices and a clear definition of commercial practices that are prohibited in all cases. The ultimate aim is to empower consumers to make more informed and sustainable purchasing decisions. The new regulations – transposed into German law via the amended Act against Unfair Competition (UWG) – will come into force on 27 September 2026.

Wide scope of application

The new regulations apply to all businesses that make voluntary environmental or sustainability-related claims to consumers within the European Union, regardless of sector, company size, place of business or communication channel. They therefore apply equally to all statements on packaging, company websites, social media, catalogues, advertisements and at the point of sale.

Communication that is purely B2B does not fall within the scope of the EmpCo Directive. The directive also does not cover statutory sustainability reporting, such as that required under the Corporate Sustainability Reporting Directive (CSRD) (Directive [EU] 2022/2464). However, the new requirements do apply to content from such reports that is used for the purposes of voluntary consumer advertising. Therefore, it is not the origin of a statement that determines whether the new rules apply, but its use in relation to consumers.

Key points of the reform

While the law does not generally prohibit environmental and sustainability-related advertising claims, it does make such claims subject to clear obligations regarding evidence and transparency. The reform specifically targets sustainability labels and so-called "environmental claims", which the legislator has intentionally defined quite broadly. This includes any voluntary statements or representations made in a commercial context that suggest, either explicitly or implicitly, that a product, product category, brand or company has a positive or no environmental impact, is less harmful to the environment than comparable products or has improved its environmental impact over time. This covers not only text-based statements, but also images, graphic elements or symbols, such as labels and product names, as well as company names and trademarks protected under trademark law. For example, the European Commission considers terms such as "green" or "eco-" to constitute an environmental claim, irrespective of whether they are protected, if they are likely to evoke the corresponding impression in the mind of the average consumer. This means that they may be subject to review under unfair competition law and, ultimately, lead to claims for a cease-and-desist order.

Changes under the new rules

Expansion of the "blacklist" (Nos. 2a, 4a–c and 10a of the Annex to Section 3 (3) of the Act against Unfair Competition (UWG))

In future, the following commercial practices will be <u>prohibited</u> in consumer-facing communications in all cases:

- Displaying a sustainability label that is not based on a certification scheme or established by Member State public authorities.

  Voluntary marks of trust or quality relating to environmental or social characteristics may only continue to be used in connection with a product, a process or a business activity under the following conditions: They have either been established by a Member State public authority or are based on a certification scheme. In particular, such schemes must (i) be open to all companies under transparent and non-discriminatory conditions; (ii) provide for effective sanction mechanisms; and (iii) ensure that compliance with the requirements – drawn up by the scheme operator in consultation with experts and stakeholders – is monitored by an independent third party.
- General environmental claims without any evidence of "recognised excellent environmental performance".

  Short, catchy claims which (i) do not, in themselves, have any factual content that can be verified against objective criteria (e.g. "environmentally friendly", "energy-efficient" or "biodegradable") and (ii) are not specified on the same medium in clear and prominent terms nor form part of a permissible sustainability label will only be permitted in future if they can be substantiated. Acceptable evidence of "recognised excellent environmental performance" includes, in particular, the EU Ecolabel, national or regional EN ISO 14024 Type I ecolabels (such as the Blue Angel), *and top environmental performance in accordance with other applicable Union law.*

- Environmental claims about the entire product as a whole or the company's entire business, when these actually concern only a certain aspect of the product or a specific, unrepresentative activity of the company's business.

  The EU legislator cites as an example the marketing of a product as "made with recycled material", when only the packaging is actually made from recycled material. The same applies to claims relating to the company itself, such as suggesting that the company exclusively uses renewable energy sources, when in fact several of its key facilities still rely on fossil fuels.

- Claims such as "climate neutral", "climate friendly" or "carbon neutral" that are based on the offsetting of greenhouse gas emissions outside the product's value chain.

- Presenting requirements that are already imposed by law as a distinctive feature of the company's products.

Unfair commercial practices relating to the environment

The reform also fleshes out the definition of misleading commercial practices under Section 5 of the Act against Unfair Competition (UWG), as well as the obligation to provide material information (Section 5b UWG). These definitions are now extended to cover several sustainability-related scenarios:

- **Misleading information regarding sustainability aspects (Section 5 (2) no. 1 UWG, as amended):** Environmental and social characteristics, as well as circularity aspects such as durability, reparability and recyclability, are now explicitly included among the characteristics of a good or service about which information must not be misleading.
- **Advertising using irrelevant, sustainability-related benefits (Section 5 (3) no. 3 UWG, as amended)**: The new rules cover advertising that highlights benefits which provide no added value to consumers because they do not stem from an actual characteristic of the product or business activity. One notable example cited in the explanatory memorandum to the bill is the marketing of drinking water as "gluten-free", despite water being gluten-free by nature.
- **Advertising using unsubstantiated claims about future environmental performance (Section 5 (3) no. 4 UWG, as amended):** Claims about future environmental performance, such as "climate neutral by 2040", are only permissible if they are supported by commitments and targets set out in a detailed, realistic implementation plan that is publicly available and regularly verified by an independent third-party expert.
- **Obligation to provide material information regarding sustainability-related comparison services (Section 5b (3a) UWG, as amended)**: In the case of comparison services that provide consumers with information on the environmental or social characteristics or circularity aspects of products or their suppliers, information about the method of comparison, the products and suppliers being compared, as well as the measures in place to keep that information up to date, must always be provided.

Legal consequences of non-compliance

Failure to comply with the new regulations may result in competitors, trade associations and consumer protection organisations (such as consumer advice centres) issuing warnings and taking legal action to enforce compliance by means of provisional injunctions and cease-and-desist orders. Competitors may also attempt to assert claims for damages.

The Act against Unfair Competition also specifies substantial fines for both widespread infringements, i.e. infringements that harm consumer interests in at least three

Member States or where similar infringements committed by the same trader occur concurrently in at least three Member States, and for widespread infringements with a Union dimension, i.e. infringements affecting consumers in at least two-thirds of the Member States, which together account for at least two-thirds of the EU population. The maximum fine is usually 50,000 euros. However, companies with an annual turnover exceeding 1.25 million euros may have to pay up to 4% of their relevant (estimated) annual turnover, up to a maximum of two million euros.

Do you have any questions? Our lawyers will be happy to assist you.

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