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BUSINESSES & CONSUMERS: YOUR TURN!

New EU rules on greenwashing and green claims are changing the way companies market and promote their products, enhancing consumers' rights.

Demand for, and supply of, more sustainable products can be stimulated by consumers making better-informed purchasing decisions. They can only do so if they have reliable information. Many companies have adopted green marketing strategies to gain a competitive advantage. This trend has led to a concerning rise in greenwashing, i.e. companies exaggerating or fabricating their environmental credentials to appear more sustainable than they actually are.

A 2020 study by the European Commission identified 230 sustainability labels and 100 green energy labels in the EU, with vastly different levels of transparency. It found that 53% of green claims gave vague, misleading, or unfounded information, and 40% offered no supporting evidence. This makes it difficult for consumers to distinguish between truly sustainable products and those that are merely branded as such.

WHAT IS NEW?

To address the issue, the EU adopted a Directive as regards empowering consumers for the green transition through better protection against unfair practices and through better information. This so-called Greenwashing Directive amends the currently valid Directives on unfair commercial practices and on consumer rights. In addition, the EU has proposed a Green Claims Directive.

The Greenwashing Directive has a broad scope, covering a range of consumer rights and protections, and focusing primarily on blacklisting and prohibiting certain forms of greenwashing, unfair commercial practices, and misleading advertising. It will be complemented by the more specific Green Claims Directive, which centers on the accuracy of environmental marketing claims and labels, and on how companies must substantiate and verify green claims.

Together, the two directives will form a single regulatory framework for environmental claims and labels, as well as social claims to some extent. However, both need to be transposed into national legislation, with potential differences between jurisdictions. The Member States can choose between implementing the Greenwashing Directive in conjunction with the Green Claims Directive, or implementing them independently of each other. Multijurisdictional businesses should therefore closely monitor local legal developments when deciding on global advertising strategies.

GREENWASHING

The Greenwashing Directive entered into force on 26 March 2024. It will be transposed into Slovak law by 27 March 2026 and applied by the Slovak authorities from 27 September 2026. It will be relevant for all companies marketing their products

in the EU, irrespective of their size and place of establishment.

This directive requires all environmentally related advertising claims to be scientifically substantiated, meaning that advertisers must provide extensive evidence and prescribed verifications to support such claims. In addition to ecological aspects, claims regarding the social characteristics of a product are now regulated. This includes claims about working conditions, human rights, equal treatment, social security, ethical commitments, and animal welfare. Unless specific conditions are met, the Greenwashing Directive prohibits, with some exceptions, so-called generic environmental claims like "eco-friendly", "green", "environmentally friendly", etc. Specific rules must be followed for claims about future performance or for claims based on offsetting of greenhouse gas emissions. The directive also features a wider list of regulated practices and claims.

GREEN CLAIMS

The Green Claims Directive is still in the legislative process, with adoption expected in late 2024 or early 2025. Its scope will be wide, encompassing all businesses operating in the EU, even if established outside the EU, except for some small businesses. It covers claims related to the environmental impact, aspects, or performance of a product or business, and stipulates requirements for environmental labels and

labeling schemes, whether public or private. Examples of such green claims are "packaging made of 30% recycled plastic", "100% recycled material" or "carbon-neutral production".

This directive introduces minimum requirements for the substantiation and communication of environmental claims, which must be accurate, verifiable, and transparent. Claims will be subject to verification before their use in commercial communications. Such prior verification will be carried out mandatorily by an officially accredited body, the "verifier", to ensure that every claim consumers are exposed to has been verified as reliable. Verifiers will have to meet strict requirements to be accredited by Member States.

SANCTIONS

When implementing the directives, the Member States will decide on specific penalty frameworks. The directives provide for a catalogue of sanctions, such as fines of up to 4% of annual turnover, confiscation of revenue, and exclusion from public procurement tenders or from access to public funding, including grants. Competitors, regulators, and consumer or environmental associations will be able to initiate action against offenders. The reputation risk is increased substantially by the fact that violations will be made public.

WHAT ABOUT SLOVAKIA?

In Slovakia, national legislation currently lacks specific regulation of green claims. However, potentially misleading environmental claims are governed by existing legal provisions, particularly in the Act on Advertising, the Consumer Protection Act, and the Commercial Code. Current laws provide rules which may lead to regulatory investigations, civil or criminal proceedings, and sanctions.

CONCLUSION

Consumers' choices can help facilitate the EU's transition to a resource-efficient, climate-neutral, and pollution-free circular economy. The Greenwashing Directive and the Green Claims Directive will be impactful tools in the process. By setting clear standards, the directives will significantly change the way companies can market their products and themselves, shifting consumers' preferences to more sustainable products.

Slovakia plans to apply the new measures as of 2026. It is already clear that stricter rules will lead to higher costs for businesses. Understanding the upcoming new obligations will allow companies to adjust their marketing campaigns and communications well in advance. Updating product labeling and packaging is essential, and developing new risk assessment systems and verification procedures should be an integral part of product portfolio design.