

Can any product be advertised as environmentally friendly? 1/42/23



PwC Legal attorney at law
Aija Panke



PwC Legal senior manager
Maris Butans

There is much talk of various sustainability aspects within and outside the European Green Deal. Sustainability has become a daily routine in the more conscientious companies, as they devise sustainability strategies and report on sustainability goals they have achieved. There are also some companies that seek to exploit this situation by advertising themselves as well as their products and services as green, environmentally friendly or sustainable, because this may give them advantages on the market. This approach is not always seen as honest, and it can mislead consumers or even affect competition.

The proposal for a directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) was published on 22 March 2023 to govern the use of green claims in more detail and minimise greenwashing. This is not the only piece of EU legislation to regulate product claims, as there are several EU regulations and directives that govern, for example, organic product designations and eco-design requirements for energy-related products. The new directive will not replace these existing requirements but will add to the overall framework of rules.

This article briefly discusses what the proposal is about.

New requirements

The directive will govern consumer relations and apply to environmental claims that a company makes about itself and its goods. Adopting uniform requirements for cases where green claims can be made will create conditions enabling consumers to make informed decisions on environmentally friendly purchases.

The proposal intends to prevent businesses from making general claims that are not based on concrete data. For example, popular claims about environmentally friendly cosmetics or biodegradable bags could no longer be made unless there is concrete evidence supporting the points made in those claims. Companies will also be prevented from claiming that they are sustainable. For example, H&M claimed in 2022 that they are operating sustainably because they are using sustainable materials for their products and that their operations are as environmentally friendly as possible.

In future, green claims will have to be supported by scientific findings and technological achievements, and they will have to answer particular questions, for example:

1. Do the claims relate to the product as a whole or only to some part of it?
2. Are the product's environmentally friendly characteristics actually better than those of typical products in the same category?
3. Have the circumstances in which the product's environmentally friendly characteristics were achieved left an adverse effect on the environment?

Businesses can make the information supporting their environmental claims available to customers, for example, by attaching it to the product in paper form, placing a QR code on the product, or attaching the

address of a website that provides the information.

In future, green claims may be placed on products only if the producer has obtained a statement from an appropriately certified authority confirming that the claim contains true information on the product's environmentally friendly characteristics.

Penalties for non-compliance

The proposal requires the member states to charge a fine in an amount that actually removes the benefits resulting from the breach. The proposal states that the maximum fine could be at least 4% of the company's annual revenue in the relevant member state or in two or more member states if the breach has been committed in two or more countries.

In Latvia, greenwashing practices are monitored by the Consumer Rights Protection Centre, which has been speaking about wrongful product claims since 2021 and finds that half of the green claims it has analysed qualify as misleading.¹ Both on its own initiative and after receiving complaints, the Centre has investigated misleading green claims in several companies and found that this practice still continues. The directive is expected to help Latvia tidy up this environment, but the Centre is likely to continue such checks in order to minimise greenwashing by companies until the directive is passed into Latvian law.

The takeaway

The new requirements for green claims will create additional obligations and costs for businesses, as they will have to prepare data showing that their product is indeed environmentally friendly. Even though the directive has not yet taken effect and its requirements will need to be passed into national law, it's worthwhile for businesses to prepare themselves now to carry out the directive's requirements.

At the same time, the directive will help consumers make informed decisions when buying products or services, and it will create a more honest environment for business competition.

Find out more about various sustainability aspects at [PwC's ESG Academy](#) running from 19 October to 14 December 2023.

¹ [The EU consumer supervisory authorities, including the Latvian Consumer Rights Protection Centre, have found in coordinated investigations that almost half of "green claims" are misleading.](#)