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EUROPEAN ASSOCIATION OF
COMMUNICATIONS AGENCIES

Regulating Green Claims in Advertising

EU Legislative Update

Background

European policy makers consider that the use of unsubstantiated green claims mislead consumers regarding the environmental impact of their purchasing behaviours. The EU Commission wants to ensure that consumers can take informed and environment-friendly choices when buying their products. To this end, it recently published a **Proposal for a Directive aimed at regulating Green Claims and product labelling**.

This paper outlines **how the EU legislator intends to regulate** substantiation of Green Claims in the future (1) and **puts the upcoming regulation into perspective with already existing self-regulatory industry efforts when it their substantiation** (2). Finally, the Paper gives a **short overview on already existing national legislation** regarding Green Claims and their substantiation. (3)

1. What does the European Legislator intend to do and how?

This proposal aims to enhance consumer rights by amending two Directives that protect the interest of consumers at Union level: the [Unfair Commercial Practices Directive](#) (UCPD) 2005/29/EC and the [Consumer Rights Directive](#) 2011/83/EU. The UCPD provides a list of product characteristics about which a brand should not deceive a consumer (e.g., composition or price calculation). The Proposal amends this list to include 'environmental or social impact', 'durability' and 'reparability'.

The Proposal regulates primarily the **two following aspects** relevant to the advertising sector:

a) Creating a Framework on environmental claims

The Proposal adds new unfair commercial practices among which:

- **Making generic, vague environmental claims** where the excellent environmental performance of the product or trader cannot be demonstrated
- Making an **environmental claim about the entire product**, when the claim concerns **only a certain aspect** of that product
- **Making advertising claims** based on **already existing obligations** or **"common practice"** (e.g., absence of chemicals banned by law)

EXAMPLE

- Generic environmental claims include 'environmentally friendly', 'eco' or 'green', which wrongly suggest or create the impression of excellent environmental performance
- The claim 'biodegradable', referring to a product, would be a generic claim, whilst claiming that 'the packaging is biodegradable through home composting in one month' would be a specific claim, which does not fall under this prohibition

b) Substantiation methods for claims

To substantiate green claims, brands can either comply with already existing labelling frameworks (i) or rely on the EU's Environmental Footprint Pilot (ii):

(i) Existing legislation

Excellent environmental performance can be demonstrated through several EU legislations such as:

- Compliance with EU Ecolabel [Regulation \(EC\) No 66/2010](#)
- Officially recognised ecolabelling schemes in the Member States
- Compliance with top environmental performance such as a class A in accordance with [Regulation on energy labelling \(EU\) 2017/1369](#), provided that the excellent environmental performance is relevant to the claim

EXAMPLE

- A generic claim '**energy efficient**' could be made based on excellent environmental performance in accordance with Regulation (EU) 2017/1369.
- By contrast, a generic claim '**biodegradable**' could not be made based on excellent environmental performance in accordance with EU Ecolabel Regulation (EC) No 66/2010, insofar as there are no requirements for biodegradability in the specific EU Ecolabel criteria related to the product in question.

(ii) Environmental Footprint Pilot

The Commission's [Environmental Footprint Pilots](#) helps companies to calculate their environmental performance based on reliable, verifiable and comparable information, and provides other actors (public administrations, NGOs, business partners, for example) with access to such information. It incentivises the industry to manufacture products that have a better environmental performance.

Moreover, the Commission intends to harmonize national and private certification schemes throughout the EU. This will take place along the lines of the Environmental Footprint Pilots and is known as the [Substantiating Green Claims initiative](#).

2. Industry achievements: Building a strong self-regulatory framework

Self-regulatory systems strongly contribute to the policy objective of the Proposal, as they provide a robust, flexible, and consumer-friendly mechanism to ensure responsible advertising in relation to environmental claims and other related issues. You can find hereunder different self-regulatory initiatives which aim to regulate Green Claims in the advertising sector.

a) The International Chamber of Commerce Advertising and Marketing Code

Self-regulatory organisations (SRO) across Europe enforce national advertising codes of conduct that are inspired by the principles of the [International Chamber of Commerce Advertising and Marketing Code](#) which covers the issue of misleading environmental claims in its chapter D.

b) The Global Guidance on Environmental Claims

In April 2022 the WFA commissioned and developed with the International Council for Advertising Self-Regulation (ICAS) and the European Advertising Standards Alliance (EASA), the [“Global Guidance on Environmental Claims”](#) which was reviewed and supported by EACA’s Task Force on Sustainability composed of agency sustainability experts from across Europe, as well as VoxComm, the global voice of agencies. The Guidance sets out six general principles to apply in advertising to drive more sustainable outcome. The principles outlined are as follow:

- Principle 1: Claims must not **mislead**, and the **basis** for them must be clear
- Principle 2: Marketers must hold robust **evidence** for all claims they make
- Principle 3: Marketing communications must **not omit** material information about their products
- Principle 4: Marketers must base general environmental claims on the **full lifecycle** of their product or business, and not only on parts of it
- Principle 5: Products compared in marketing communications must meet the same needs or be intended for the same purpose. The **basis** for comparisons must be **clear** and allow the audience to make an informed decision about the products compared
- Principle 6: Marketers must **include all information** relating to the environmental impact of advertised products that is required by law, regulators, or Codes to which they are signatories

c) National self-regulatory codes

EASA and ICAS have compiled [national self-regulatory codes](#) as well as [copy advice and training resources](#) per country to support advertising industry members in their compliance efforts.

3. National legislation

Some countries in Europe already have rules in place regarding the use of green claims. You can find [here](#) a compilation of national rules across the globe provided by EASA and ICAS.

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