

GREEN CLAIMS AND GREENWASHING

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New Rules and Challenges for
Businesses and Consumers

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PREFACE

GREEN CLAIMS AND GREENWASHING: NEW RULES AND CHALLENGES FOR BUSINESSES AND CONSUMERS

Consumer and Market Law are at a turning point.¹ Improving the legislative framework to support more sustainable production, trade and consumption is needed to help to achieve the UN Sustainable Development Goals² by encouraging companies, especially large companies with a cross-border dimension, to integrate sustainability information into their reporting cycle and to adopt sustainable practices throughout their supply chain.

Back in March 2022 the European Commission proposed a set of provisions aimed at updating Union consumer law to ensure that consumers are protected and to empower them to contribute actively to the green transition.³ In particular, the need to tackle false environmental claims by ensuring that buyers receive reliable, comparable and verifiable information to enable them to make more sustainable decisions and to reduce the risk of ‘greenwashing’ was already a priority in the European Green Deal,⁴ and, later on, in the New Circular Economy Action Plan,⁵ in the New Consumer Agenda,⁶ as well as in the later adopted Green Deal Industrial Plan.⁷

¹ Fabrizio Cafaggi, Paola Iamiceli and Federico Pistelli (eds.), *Sustainability, Due Diligence and Value Chain Governance* (Elgar 2025); Hugo-Maria Schally, *The Impact on Private Law of the Product Policy Initiatives under the European Green Deal*, in Alberto De Franceschi and Reiner Schulze (eds.), *Harmonizing Digital Contract Law* (Beck – Nomos – Hart 2023) 728 ff.; Bert Keirsbilck and Evelyne Terryn (eds.), *Consumer Protection in a Circular Economy* (Intersentia 2019); Hans-W. Micklitz, ‘Squaring the Circle? Reconciling Consumer Law and the Circular Economy’ [2019] *EuCML* 229 ff.

² In particular SGD 12.6: ‘Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.’ See. e.g. Winfried Huck, *Sustainable Development Goals* (Beck – Hart – Nomos 2022) 455, 459, 472 ff.

³ European Commission, 30 March 2022, Proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information, COM(2022) 143 final. See Evelyne Terryn, ‘The New Consumer Agenda: A Further Step Toward Sustainable Consumption’ [2021] *EuCML* 2021 1 ff.

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee of the Regions, The European Green Deal, COM(2019)640.

⁵ COM(2020)98 final, 11 March 2020.

⁶ COM(2020)696 final, 13 November 2020.

⁷ COM(2023)62 final, 1 February 2023.

Originally, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market ('UCPD')⁸ did not specifically address greenwashing practices. However, there are no doubts that misleading (explicit or implicit) environmental claims and labels can fall within the scope of the general prohibitions on misleading actions (Article 6) and omissions (Article 7), subject to the general transactional decision test (see also the 2021 UCPD Guidance). Pursuant to Article 12 UCPD, environmental claims and labels should be based on evidence which can be verified by public authorities; the burden of proof regarding the accuracy rests on the trader.⁹

In 2022, Directive (EU) 2024/825 of 28 February 2024 amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information ('ECGTD') was adopted,¹⁰ making targeted amendments to the UCPD's general prohibitions on misleading actions (Article 6) and omissions (Article 7) and adding a number of specific bans on greenwashing practices to the blacklist of Annex I UCPD. These new UCPD rules have to be implemented by 27 March 2026, and the Member States shall apply the implementing measures from 27 September 2026.

Regarding the legislative file of the *Proposal for a Green Claims Directive* ('GCD Proposal'),¹¹ the European Parliament adopted its first reading position on 12 March 2024¹² and the Council adopted its 'general approach' on 17 June 2024.¹³ Two trilogue meetings were held, yet, following the Commission's announcement of its intention to withdraw the legislative proposal, the Council decided to cancel the third trilogue meeting with Parliament, scheduled for 23 June 2025. Unlike the UCPD, which essentially provides for the *ex-post* removal of any environmental claims and labels found misleading, the GCD Proposal took an *ex-ante* approach and, within its scope, would allow environmental claims and labels only upon compliance with extensive

⁸ Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market [2005] OJ L 149.

⁹ Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market C/2021/9320, [2021] OJ C 526.

¹⁰ Directive (EU) 2024/825 of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information [2024] OJ L 2024 (ECGTD).

¹¹ Commission, 'Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive)' [2023] COM(2023) 156 final (GCD Proposal).

¹² European Parliament, 'Legislative resolution on the proposal for a directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive)', 12 March 2024, P9 TA(2024)0131.

¹³ Council of the EU, 'Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) – General approach', 17 June 2024, 11312/24.

requirements on substantiation, communication, and *ex-ante* verification and third-party certification. This would come, of course, at a cost for traders, yet the bargain would be that the resulting ‘certificate of conformity’ has EU-wide effect. Within its scope, the GCD would complement the UCPD as *lex specialis*, meaning that compliance with the GCD shall not prejudice the assessment under the UCPD, and that the GCD prevails over the UCPD in case of conflict between the two instruments. At the time of writing this preface (March 2026), the faith of the proposed GCD remains uncertain and no further progress towards its adoption could be made under the Danish or Cypriot presidencies.

The book you have in front of you, compiles various papers based on the presentations distinguished scholars, practitioners, stakeholders and enforcers presented during two international conferences jointly organized by KU Leuven CCM and the University of Ferrara, in cooperation with the European Law Institute’s Sustainability and Environment Law Special Interest Group and the Consumer Empowerment Project (CEP). The first conference, on ‘Greenwashing – opportunities and challenges of the new EU rules’, took place in Leuven on 14 June 2024; the second one, on ‘Digital Fairness and Green Fairness – 20 Years Unfair Commercial Practices Directive’, took place in Ferrara on 4 April 2025.

The papers tackle a wide variety of problems related to green claims and greenwashing in the European Union. They range from the theoretical foundations and limits of consumer law as a tool for pursuing sustainability objectives, to the regulation of sustainability labels, green claims and carbon offsetting, sector-specific applications such as aviation, interactions with trademark law, and the evolving landscape of public and private enforcement.

Central questions addressed are: Which are the new pillars of consumer and market law in the sustainable transition? How to communicate sustainability efforts? What is the interaction between mandatory and voluntary communication of sustainability information? What are the opportunities and challenges in terms of compliance and enforcement?

In chapter 1, ‘Green instrumentalism and the law of unfair commercial practices. Empowerment, responsibility, and market rationality’, **Guido Comparato** explores the dual logic underlying the law of sustainable consumption. He then focuses on the ECGTD’s approach, suggesting that although the new regime intends to align consumer choices with sustainability goals, its effectiveness is threatened by its fundamental reliance on the traditional theoretical model of the consumer. Within that framework, he addresses the question of whether such systemic objectives, whether economic or environmental in nature, can be legitimately or effectively pursued through private law.

In chapter 2, ‘Sustainability labels in the wake of the Empowering Consumers and (future?) Green Claims Directive’, **Elisa Paredis** explores the rules for sustainability labels provided by the ECGTD and the proposed GCD. First, she

maps the situation as it stands *before* the implementation of the abovementioned legislative instruments: she provides an overview of the different types of sustainability labels already active in the EU, describes how they are currently regulated, and highlights how the UCPD currently falls short of adequately removing all barriers to be informed, as well as to sustainable consumer choices. Next, the contribution moves on to the solutions brought forward by the ECGTD and the GCD Proposal. The author analyses the new and proposed provisions applicable to sustainability labels and what impact they will have on the labelling landscape.

In chapter 3, ‘New UCPD rules on generic, off-set based and “greenwashing” claims examined in the context of climate change mitigation’, **Elias Van Gool** primarily focuses on three unfair commercial practice rules introduced by the ECGTD that are most pertinent for resolving B2C climate-washing disputes. First, the new blacklist prohibition of generic environmental claims is discussed. Second, the chapter studies the new blacklist prohibition of claims based on carbon offsets. Third, the chapter turns to the new UCPD rule on claims of future environmental performance. Additionally, attention is paid to the general UCPD rules on misleading actions and omissions, which remain highly relevant outside the limited scope of application of these three new rules.

In chapter 4, ‘Using anti-greenwashing measures to stimulate lifespan extension in the EU’, **Christopher Borucki** first explores how extending the lifespan of products is a goal in the transition to a more circular economy in the EU. Second, he discusses how the EU’s anti-greenwashing measures can support this objective of lifespan extension. He comes to the conclusion that the new EU measures hold great potential to aid the efforts to extend the lifespan of products, although the author makes a number of fundamental remarks based on the current wording of the new outright anti-greenwashing bans in the UCPD.

In chapter 5, ‘The challenge to regulate voluntary carbon credit’, **Denis Voinot** starts with explaining the difference between voluntary carbon credits and carbon allowances traded on the regulated EU-ETS market. He explains why voluntary carbon credit markets are controversial, mainly from a greenwashing risk perspective. The author dives into the new EU anti-greenwashing measures that will have a particular impact on voluntary carbon credits. Next, he explains how EU corporate sustainable reporting rules aim to combat greenhushing in relation to voluntary carbon credits and voluntary certification of carbon removals. Finally, Voinot concludes that it is possible to combat both greenwashing and greenhushing.

In chapter 6 ‘Greenwashing the aviation industry? On the legality of “Sustainable Aviation Fuel” claims’, **Paul Verbruggen** and **Amber Schuijers** focus on greenwashing in the aviation sector. They argue that airline operators should be prudent when making commercial claims to consumers about the environmental impact of the use of alternative aviation fuels. The use of the

generic terms ‘sustainable aviation fuels’ or ‘SAF’ involves a significant risk of misleading consumers, leading to greenwashing. Only to the extent that the term ‘SAF’ and the environmental impact of these alternative aviation fuels are clear, specific, accurate, and substantiated in B2C commercial communications, such practices may be considered lawful. In their view, the ReFuelEU Aviation Regulation and the voluntary labelling scheme it sets do not alter this conclusion.

In chapter 7 ‘Can “eco” brands (trademarks) and company or trade names survive?’, **Pieter Callens** shows how green trademarks are really on the rise. We learn that there is already an important filter on greenwashing in existing trademark law, namely the requirement of ‘distinctiveness’. Starting from the observation that the concept of ‘brand’ used in the definition of ‘environmental claim’ encompasses trademarks, trade names and company names, Callens investigates the added value of the UCPD’s new anti-greenwashing measures from the perspective of the prohibition of registration of descriptive or deceptive trademarks (Article 7 of the Regulation on the European Trademark). Finally, Callens argues that, where a company could no longer use valid trademarks because of non-compliance with the new regulatory ‘layer’ of the UCPD’s anti-greenwashing measures, this could lead also to an action for annulment of their trademark, which could in turn be problematic in light of Article 17 of the Charter (right to property).

In chapter 8 ‘Green claims and greenwashing in the enforcement of the AGCM and in the perspective of the new European directives’, **Giovanni Calabrò** and **Paolo Cassinis** analyse the enforcement actions by the Italian Competition and Market Authority with regard to unfair commercial practices involving false green claims. Furthermore, the authors analyse some significant actions taken at European and international level within the framework of the Consumer Protection Cooperation Network and the OECD, as well as by other Authorities, such as the Dutch, the British and the Australian one. The chapter then focuses on the new regulatory initiatives adopted or under discussion at European level.

A central thread throughout this book is the potential of the current legal framework to already address greenwashing effectively, albeit not without significant challenges. These challenges are particularly pronounced in the area of enforcement, where the consistency of enforcement practices and the effectiveness of deterrent effect of sanctions for greenwashing could certainly be further strengthened.

This book offers a broad perspective on the many facets of greenwashing, it provides in depth analyses and concrete suggestions for improving the existing legal framework, alongside a critical assessment of the proposed GCD. In addition, it provides practical insights of great relevance to both businesses and enforcement authorities.

While effective regulation against greenwashing alone will not guarantee sustainable consumption and production, it plays a crucial role in enabling it. Combatting greenwashing is important for several reasons: to empower consumers to make sustainable choices, to create a level playing field for market actors that truly invest in sustainability and, more broadly, to prevent unsustainable practices and choices from becoming further normalized.

We hope that this book will make a meaningful contribution to this ongoing effort.

Alberto De Franceschi, Bert Keirsbilck and Evelyne Terryn
Leuven and Ferrara, March 2026

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