

Newsletter **ESG Update**

Climate-Related Claims under the Unfair Competition Act: New Enforcement Aid from the Federal Office for the Environment

At the beginning of March, the Federal Office for the Environment (FOEN) published the "Enforcement Aid for Assessing Climate-Related Claims in Accordance with the Unfair Competition Act" ([Enforcement Aid](#), cf. [unofficial English translation](#)). It specifies the requirements of Article 3(1)(x) UCA, which has been in force since 1 January 2025 and requires that climate-related claims be substantiated by objective and verifiable criteria – otherwise, they are considered unfair. The new provision therefore complements the existing prohibition of misleading advertising in Article 3(1)(b) UCA. The focus is on the risk of climate-related greenwashing, particularly where climate-related claims are based primarily on offsetting mechanisms.



Sylvia Anthamatten
 MLaw, LL.M., Attorney at Law
 Counsel
 Phone: +41 58 658 55 90
sylvia.anthamatten@walderwyss.com



Isabell Schellhas
 Attorney at Law (Bar Association Kassel)
 Associate
 Phone: +41 58 658 55 51
isabell.schellhas@walderwyss.com

1. Classification and scope

Climate-related claims are often unclear or vague, technically complex, and difficult for recipients to verify. Claims such as "carbon neutral" or "climate friendly" in particular have a considerable potential to mislead – especially where they are based on offsetting projects outside a company's own value chain. The Enforcement Aid therefore specifies the requirements under unfair competition law for climate-related claims in accordance with the UCA, explains the objectivity and verifiability requirements, and provides an overview of the standards and methods referenced in Swiss regulations as well as certain private standards and voluntary principles. The Enforcement Aid is based on Article 39(4^{bis}) CO2 Act, according to which the FOEN can provide principles and standards for determining climate impact.

It is important to note that the Enforcement Aid applies to both explicit and implicit climate-related claims. It does not, however, apply generally to all environmental claims. This follows from the wording of Article 3(1)(x) UCA and Article 39(4^{bis}) CO2 Act, both of which explicitly refer to "climate impact". Nevertheless, it is already clear that the general principles set out in the Enforcement Aid will have a knock-on effect on other environmental claims beyond the climate context, specifically through the prohibition of misleading advertising under Article 3(1)(b) UCA.

The FOEN assumes that Article 3(1)(x) UCA will lead to a reversal of the burden of proof: anyone making a climate-related claim must be able to substantiate its accuracy in the event of a dispute. Whether this actually constitutes a formal reversal of the burden of proof remains a matter of doctrinal debate – in practice, however, the risk lies with the company making the claim.

There is no legal obligation in Switzerland to obtain prior verification or

third-party certification of climate-related claims – as has been discussed, for example, in the context of the EU Green Claims Directive. However, due to the requirement of clarity (prohibition of misleading advertising), it may be necessary to disclose essential information alongside a claim in order for it to be understood. However, it is not required that full verification be available at the time the claim is published, nor that it be published in full alongside the claim.

The Enforcement Aid is addressed to authorities, companies, consulting firms, civil courts, and self-regulatory bodies such as the Swiss Fair Trading Commission (SLK). Its aim is to promote consistent application and greater legal certainty – not least to prevent so-called "greenhushing", i.e. the deliberate withholding of climate-related information out of concern over potential accusations of greenwashing.

2. General principles for climate-related claims

The Enforcement Aid stipulates that climate-related claims must comply with certain general principles (see Section 2.1 and Annex 1 to the Enforcement Aid). These principles form the basis for ensuring that a claim is objectively verifiable and substantiated. The Enforcement Aid distinguishes between two categories of requirements:

Communication quality (formal criteria)

Climate-related claims must meet certain standards of communication quality. They must be clear and understandable (**clarity**), enabling recipients to recognise to what a claim refers (e.g. only to a part of a product or company) and whether it relates to current or future circumstances (**comprehensibility**). Claims must be used consistently and must not contain any ambiguous statements (**consistency**). Where comparisons are made or implied, the underlying basis for comparison must be

clearly communicated, particularly with regard to the reference value, benchmark and the methodology used (**comparability**).

Content integrity (substantive criteria)

In addition to communication quality, the Enforcement Aid also requires sufficient content integrity of claims. Climate-related claims must be factually accurate (**truth**) as well as appropriate and proportionate in terms of content (**adequacy**). They must refer to significant aspects of climate impact and must not focus on marginal improvements where the majority of the climate impact caused remains unaffected (**relevance**). Furthermore, they must not convey exaggerated or misleading impressions of the actual climate impact or omit essential contextual information. Finally, claims must be based on up-to-date data (**up-to-dateness**).

3. Use of offsetting measures

A key focus of the Enforcement Aid is the classification and use of offsetting measures where these are used to substantiate climate-related claims (see Sections 2.2 and 2.3 of the Enforcement Aid).

According to the hierarchy of measures set out in the Climate and Innovation Act, the primary focus is on the reduction of greenhouse gas emissions. Negative emissions, i.e. the permanent removal and storage of greenhouse gases (GHG), are intended for hard-to-avoid emissions only.

Offsetting mechanisms are typically based on the purchase of greenhouse gas certificates (usually carbon certificates) from projects that generate negative emissions or emission reductions outside a company's value chain or outside a product's life cycle. These certificates are used to offset a company's own emissions.

The Enforcement Aid makes it clear that relying on offsetting measures to substantiate *climate*-related claims is permitted only in very limited circumstances. Offsetting measures cannot replace actual emission reductions. In particular, relying on offsetting for **product-related claims** is generally excluded: product claims must not be based on offsetting measures. This approach is also in line with European regulations (EU Directive on Empowering Consumers for the Green Transition – Empowering Consumers Directive). Such claims typically give the impression that emissions have been reduced within a product's own life cycle, which is precisely not the case when emissions are merely offset outside the value chain.

In contrast, the inclusion of offsetting measures is not generally ruled out for **company-related claims**. However, the FOEN takes a cautious approach to *reduction* measures outside the value chain: emission reductions should primarily occur within a company's own value chain. Reductions outside the value chain appear to be considered primarily to substantiate claims that explicitly refer to offsetting (e.g. "CO2 compensated"). By contrast, *negative emissions* may also be taken into account outside the value chain, for example in connection with statements such as "carbon neutral", "GHG neutral", "net zero", or "net negative".

In any event, strict quality requirements for offsetting measures must be met – both for reduction projects and for negative emissions. In the FOEN's view, these requirements are currently met only by national and international attestations under the CO2 Act. Accordingly, offsetting measures must in particular:

- comply with the principle of subsidiarity (priority given to emission reductions within a company's own value chain);
- demonstrate a high level of environmental integrity (in particular with regard to the additionality of offsetting measures, the permanence of storage or avoidance of emissions, monitoring, and independent verification); and
- exclude double counting, in particular through multiple crediting of the same emission reductions.

4. Specific requirements for individual claims

The Enforcement Aid analyses various climate-related claims commonly used in practice and classifies them systematically. It distinguishes between measurable claims and vague or generic claims (see Section 2.4 of the Enforcement Aid).

Measurable claims contain a quantitative element relating to climate-impact factors or imply a specific emissions-related target (e.g. "carbon neutral", "GHG neutral", "net zero" (e.g. "net zero by 2040"), "carbon free", "CO2 compensated"). Such claims generally require that emissions be comprehensively recorded (in particular along the entire value chain) and that remaining emissions be offset in a permissible manner (i.e. in particular not in the context of product-related claims). Particularly noteworthy is the FOEN's assessment of the terms "climate neutral" and "climate positive": according to current scientific knowledge, these are considered factually unverifiable, as they encompass further climate-impacting effects beyond mere greenhouse gas emissions.

Vague or generic claims leave room for broad interpretation and often imply a significant reduction in climate impact (e.g. "climate friendly", "climate conscious", "CO2 reduced"). Such claims must be adequately explained and supported by actual emission reductions within the value chain or product life cycle. It should also be noted that offsetting measures are often not recognised as sufficient justification – not even for company-related claims.

The Enforcement Aid further points out that even broadly worded environmental claims such as "environmentally friendly", "green", "sustainable", or "ESG" may constitute climate-related claims if climate impact is a significant component of the advertised environmental effect. Since the term "ESG" is frequently used in connection with financial products and services, the Enforcement Aid addresses this claim in more detail and refers to the Federal Council's position on preventing greenwashing in the financial sector. According to this position, the use of corresponding sustainability or climate-related claims requires that a financial product be aligned with a recognised reference framework (e.g. international sustainability targets), and that the relevant target contributions be transparent and based on objectively verifiable criteria. By contrast, a mere improvement in the ESG risk profile or financial performance is not sufficient to label a financial product as sustainable.

5. Terms and contextual information

Another section of the Enforcement Aid is devoted to explaining basic climate-related terms (see Section 3 of the Enforcement Aid). These include, among others, climate impact, greenhouse gas emissions, Scope 1, Scope 2 and Scope 3 emissions, product life cycles, negative emissions, net-zero targets, and corresponding reduction pathways. Particular attention is given to offsetting

measures, including the distinction between emission reductions and negative emissions, the role of carbon certificates, and the differentiation between mandatory and voluntary carbon markets.

These partly technical explanations of terms and systems are intended to ensure a common understanding of the concepts used in the Enforcement Aid and to provide a clear framework for understanding the scientific and regulatory foundations of climate-related communication.

6. Verification, standards and further guidance

For verifying climate-related claims a wide range of standards and methods is available. The Enforcement Aid therefore sets out the general requirements applicable to the verification of such climate-related claims (see Section 4 of the Enforcement Aid): the data underlying climate-related claims must be based on objective and verifiable criteria and rely on an appropriate methodology. Assumptions, reference periods, standards and methods must be selected in a manner appropriate to the product or company concerned and must not give rise to misleading claims.

In the case of forward-looking claims – such as those relating to net-zero targets or planned emission reductions – the relevant fundamentals underpinning such claims must also set out how the announced measures are to be realistically implemented.

Finally, the basis on which a climate-related claim is made must be available and comprehensible. This particularly includes the standards, methods, assumptions and reference periods used. Essential information must be provided in such a way that recipients can understand the meaning of a claim;

further information may also be made available, for example, via web links or QR codes. However, full disclosure of the underlying verification of a claim is not required – and would not be compatible with unfair competition law.

The Enforcement Aid cites various legally established and internationally recognised standards and methods as **references**, such as those relating to greenhouse gas accounting, national and international attestations under the CO2 Act, or net-zero transition plans. It also refers to private standards and voluntary initiatives, such as those relating to carbon certificates on the voluntary carbon market or the setting of reduction targets. These may serve as guidance but do not replace an independent assessment of compliance with UCA requirements.

It is particularly important to note that unfair competition law requirements also apply where climate-related claims are made in the context of legally required reporting, such as in sustainability reports or transition plans.

7. Enforcement

Finally, the Enforcement Aid provides an overview of the system in place in Switzerland for enforcing unfair competition law (see Section 5 of the Enforcement Aid). It refers to the multi-layered framework of civil, criminal and administrative law measures, as well as self-regulatory mechanisms designed to combat greenwashing.

8. Conclusion

The Enforcement Aid specifies the new legal requirements for climate-related claims for the first time, thereby providing important guidance for companies, authorities and courts. It explains key terms and standards, offers practical advice on substantiating climate-related claims, and is intended to contribute to consistent application in

Switzerland.

The FOEN's position on the use of offsetting mechanisms to underpin climate-related claims is particularly clear: the primary focus must be on reducing a company's own emissions, while offsetting measures may only be taken into account in the context of company-related claims and under clearly defined conditions. This approach is intended to make a company's communication about its offsetting activities more credible. At the same time, a clearer framework may help strengthen confidence in high-quality climate protection projects and reduce misunderstandings or misleading communication towards consumers.

The Enforcement Aid does not establish new law – nor would the FOEN be authorised to do so. Rather, it seeks to provide guidance in the increasingly complex landscape of climate-related claims and to offer a practical basis for clear and fair communication about the climate impact of products and companies. For market participants, it primarily provides greater clarity on how climate-related initiatives can be communicated in a legally compliant manner.

This is particularly important in order to prevent so-called greenhushing. If companies refrain from communicating about climate issues altogether due to uncertainty, this may impair transparency and progress in climate protection just as much as misleading claims. The objective must therefore be precise, factual and comprehensible communication: fewer exaggerated claims, but clear statements about actual progress, existing challenges and concrete planned measures.

For companies, this means carefully scrutinising climate-related claims and ensuring that they are based on sound evidence. Transparency regarding

targets, methods and remaining uncertainties – including targets that have not yet been achieved or necessary adjustments – can help build credibility in the long term. However, it remains essential that such claims are based on verifiable criteria and realistic climate targets.

Against this background, the Enforcement Aid is generally to be welcomed. At the same time, it should be borne in mind that the field of climate methodology and regulation is evolving dynamically. Standards and methods can change quickly in light of new scientific findings or regulatory developments, meaning that a certain degree of flexibility will remain necessary in the future.

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