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## Green Claims Directive: A New Proposal from the EU to Fight Against Greenwashing – Understanding the Implications for Switzerland

The European Union's recent proposal for a Green Claims Directive has generated significant interest in the business and legal communities, as it seeks to establish a more stringent framework for environmental claims in marketing and advertising. By staying informed on these developments, businesses can better prepare for any upcoming changes and maintain a competitive edge in the increasingly environmentally conscious marketplace.



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### Background

The European Union (EU) has recently proposed a new [Green Claims Directive](#), aiming to address the growing concern of greenwashing in advertising and marketing practices. This proposal comes as an addition to the existing EU regulations on environmental claims and intends to provide a more stringent framework to ensure accuracy, transparency, and reliability of environmental information.

**Greenwashing**, the act of conveying misleading information about the environmental benefits of a product, service, or company, has become an increasingly prevalent issue in recent years. Companies may use vague or exaggerated claims, leading consumers to believe they are making environmentally friendly choices, when, in fact, the impact may be negligible or even negative. The Green Claims Directive is a response to this challenge, intending to provide a more robust regulatory framework to **protect consumers** and **promote fair competition**.

The Directive on Green Claims aims at tackling false environmental claims, and stop the propagation of public and private environmental labels. In addition to empowering consumers to make better-informed choices and play an active role in the environmental transition, this Directive addresses the difficulties consumers face in making environmentally sustainable consumption choices at the point of sale.

### Scope and Key Aspects

The Green Claims Directive defines an **environmental claim** as any voluntary message or representation such as text, pictorial, graphic or symbolic representation, including labels, brand

names, company names or product names, in the context of a commercial communication, which states or implies that a product or trader has a **positive or no impact on the environment or is less harmful to the environment** than other products or traders, respectively, or has improved its impact over time.

The Green Claims Directive aims to cover a wide range of environmental claims, including those related to energy efficiency, resource use, greenhouse gas emissions, carbon offsets, recycling, and waste management, among others. It applies to all products and services available in the EU market, regardless of the size or sector of the business making the claims. It applies to all traders, in a business-to-consumer context (B2C) in the form of point-of-sale requirements.

However, the Green Claims Directive is **not applicable to financial services** (*i.e.* to sustainability information already covered by EU or national legislation relating to banking, credit, insurance, pensions, securities, investment funds, investment firms, payment, portfolio management and investment advice). The same goes for claims that fall under **specific EU legislation** (e.g. [Ecodesign regulation](#), the [EU taxonomy](#) regulation or environmental information reported by companies applying European sustainability reporting standards on a mandatory or voluntary basis). Certain exemptions apply to **microenterprises**, while small and medium sized enterprises (SME) are fully in scope of the Green Claims Directive, but are expected to receive assistance for compliance purposes.

The proposal outlines the following key elements:

1. A set of **minimum requirements** for environmental claims, including substantiation, clarity, accuracy, relevance, and comparability.

2. The introduction of an EU-wide harmonized approach to determine the accuracy of green claims based on **scientific evidence**, following a **flexible approach**, rather than imposing the use of one standard methodology according to the Product Environmental Footprint (PEF) method (which was included in the preparatory work of the EU Commission).
3. Environmental claims and labelling schemes are to be verified and certified by a third party (an officially accredited body) before the claim is used in commercial settings (**ex-ante verification approach**).
4. Enhanced **enforcement measures**, including fines and other penalties, for businesses that fail to comply with the new regulations. EU member states shall designate national authorities to oversee and enforce the rules.

### Timeline

The Green Claims Directive proposal is currently in its early stages of the regular legislative procedure, and the timeline for its adoption and implementation is subject to change. The EU aims to finalize the proposal by the end of 2023, after which it will be subject to negotiation and approval by the European Parliament and the Council of the European Union. Once approved, EU member states will have a transitional period to implement the directive into their national laws, with enforcement expected to begin in 2025 at the earliest.

### Implications for Switzerland

Although Switzerland is not an EU member state, it has close ties with the bloc through a series of bilateral agreements. Given the interconnected nature of European markets, the Green Claims Directive will have implications for Swiss companies trading with EU consumers.

Any product sold in the EU with any green claim associated to it would have to comply with the Green Claims Directive even if this product is manufactured or processed in Switzerland. Swiss businesses exporting goods or services to the EU would therefore need to comply with the Green Claims Directive's requirements, including the substantiation and presentation of environmental claims. This may require **additional investments** in research, documentation, and reporting to ensure compliance with the new regulations. In addition, Swiss manufacturers will also be impacted by the Green Claims Directive, since traders in the EU will require more information and **substantiation data** to the manufacturers.

Moreover, the Green Claims Directive could potentially influence Swiss domestic policy, as the country has been known to align certain environmental and consumer protection regulations with the EU's standards. Therefore, it is possible that Switzerland may adopt similar measures in the future, either through voluntary **industry initiatives**, through **legislative action** or through **interpretation of the existing Swiss legal framework** (i.e., the Swiss Unfair Competition Act).

### Conclusion

The proposed Green Claims Directive represents a significant step forward in the EU's efforts to combat greenwashing and promote environmentally responsible marketing practices. Businesses operating in or exporting to the EU should closely monitor the proposal's progress and be prepared to adapt their communications on the environmental characteristics of their products in order to comply with the new requirements.

Swiss companies, in particular, need to be aware of the potential implications of the directive, both in their dealings with EU consumers and in the monitoring possible future Swiss regulations. It is

crucial for businesses to stay informed and engaged with these developments, ensuring they are well-positioned to navigate the changing regulatory landscape and maintain a competitive edge in the increasingly environmentally conscious marketplace.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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