



NEW ZEALAND
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EU tackles products with ‘greenwashing’

A MARKET INTELLIGENCE REPORT

Summary

- The European Commission has proposed that any environmental claims on products sold in the EU must be communicated and substantiated using set criteria. Released on 22 March 2023, the Green Claims Directive is designed to tackle ‘greenwashing’ or unreliable claims regarding the environmental performance of products. The proposal sets out criteria for companies to prove environmental claims, requirements for how these claims will be monitored by an independent verifier, and new rules on the governance of environmental labelling schemes.
- The Green Claims Directive (GCD) will apply to both EU and imported products. From an international perspective, concerns have been raised regarding the practicality, feasibility and compliance costs of methods for calculating environmental performance. However, third countries are relieved that the EU’s complicated ‘Product Environmental Footprint’ (PEF) Method will not be the only way to substantiate green claims and that a range of methodologies will be accepted. Initial conversations with New Zealand industry stakeholders suggest that concerns exist around the risk of member states applying the rules differently and the monitoring and enforcement of green claims. As a Directive, the GCD will be adopted into 27 different national laws and member states will individually be responsible for verifying claims. As the EU exclusively recognises auditing of green claims by public sector bodies, it is unlikely that eco-labelling certified by private sector agencies and trade associations – which is the norm in New Zealand – will be accepted as equivalent in the bloc.

Report

The European Commission proposed a [Green Claims Directive](#) (GCD) on 22 March 2023 as part of its [Circular Economy Action Plan](#) (CEAP). The central objectives of the GCD are to tackle ‘greenwashing’ or unreliable environmental claims, promote sustainability, and improve consumers’ ability to make sustainability-minded purchasing decisions. Through the GCD, the EU seeks to enhance the transparency, reliability, comparability, and verifiability of environmental claims.

The GCD complements and is closely related to a host of other measures to advance sustainability and address climate change, including [existing laws on eco-design](#), the broader backdrop of the [Farm to Fork Strategy](#) and [New Consumer Agenda](#), upcoming instruments such as the [Corporate Sustainability Due Diligence Directive](#), and ongoing efforts to enhance consumer protection in the [Consumer Rights Directive \(CRD\)](#) and [Unfair Commercial Practices Directive \(UCPD\)](#).

This report summarises the rationale and key pillars of the GCD, its legislative timeline, the reactions of key stakeholders, and its potential impacts on New Zealand exporters.

The Challenge: Tackling Greenwashing and Supporting Climate Conscious Consumption

Greenwashing is increasingly identified as a challenge in enabling consumers to make environmentally-oriented purchasing decisions. Deceptive and misleading environmental performance claims make it difficult for consumers to distinguish between sustainable and unsustainable goods, and to hold companies to account for the impacts of their productive activities. For companies, there is little incentive to adopt sustainable production practices if their economic benefits accrue to both reliable and unreliable claimants.

As the terminology around green claims lacks a clear legal meaning, the prevalence of greenwashing is widespread. As a basis for its proposal for a Green Claims Directive (GCD), the European Commission conducted a survey of environmental claims made on a range of products. This found that 40% of green claims currently have no supporting evidence, 53% provide vague, misleading or unfounded information, and roughly half offer weak or non-existent verification.

The Green Claims Directive (GCD) is designed to accelerate the climate transition by enabling sustainable purchasing decisions and promoting the production of sustainable goods, reducing greenwashing, and clarifying claims of environmental

performance. The EU is seeking to enhance the transparency and credibility of environmental claims by grounding them in a set of clear criteria and science-based methodologies. Green claims will be subject to regular third-party auditing by national government agencies, which reflects a desire to improve their verifiability. By establishing a framework for claims on environmental performance, the GCD also seeks to promote their comparability across products and jurisdictions.

The Response: Making Environmental Claims More Transparent, Evidence-Based, and Provable

The transparency and reliability of environmental performance claims underpins consumers' ability to contribute to the green transition by shifting their consumption patterns. In a consumer survey carried out in 2020, fewer than half of participants expressed trust in the environmental claims made on products in the EU single market. The GCD aims to improve consumer confidence and enable them to differentiate between sustainable and unsustainable products. By facilitating consumers' contribution to the climate transition, the European Commission expects the law to save the equivalent of seven million tonnes of CO₂ emissions over a 15-year period. However, the GCD will impose relatively significant compliance costs on businesses, estimated by the Commission at €9-10 billion. The GCD complements parallel environmental consumer protection proposals under the Unfair Commercial Practices Directive (UCPD), which aim to prohibit generic or vague environmental claims (e.g. 'environmentally friendly', 'eco'), the extrapolation of green claims concerning product aspects to whole products, and the display of sustainability labels without third-party verification.

The verifiability of green claims depends on a clear criteria, a robust methodology for assessment, and regular auditing and enforcement. The GCD will establish a set of harmonised methods for calculating green performance, encompassing all environmental impacts throughout the full product lifecycle. In contrast to initial drafts, the range of accepted methodologies will extend beyond the Product Environmental Footprint (PEF) methodology. Although aggregate scoring of a product's overall impact will be prohibited under the GCD, offsetting emissions through CO₂ removal projects will be permitted. However, it is important to note that the GCD does require carbon offsets to be reported separately to other environmental performance claims appearing on product labels. Following a request to justify a green claim made by the third-party verifier, companies will have 10 days to comply or face "effective, proportionate, and dissuasive" penalties. These include the possibility of confiscating revenues gained from non-compliant activity and a maximum fine of at least 4% of total turnover in the enforcing Member State.

The proliferation of environmental performance claims, which vary substantially in their content and credibility, underscores the importance of clarifying and harmonising sustainability labels. There are currently over 230 sustainability labels

and 100 green energy labels in circulation in the EU single market and more than 450 worldwide, with vast differences in their levels of transparency and reliability. Over 80 reporting methods are widely used for determining product emissions in the EU, with the amount of methodologies for overall environmental performance far higher. By setting agreed criteria for substantiating and communicating green claims, the GCD aims to enhance the comparability of these labels within and across product areas, jurisdictions, and methodologies. The scope of the measure is limited to those products not covered by other existing or emerging sustainability labelling regulations in the EU, such as the [Ecodesign Directive 2009/125/EC](#), the EU EcoLabel, and the organic farming label.

Stakeholder reactions to the Green Claims Directive (GCD) are varied, with concerns focussing primarily on the risks of regulatory duplication, insufficient stringency, and the scope for differential interpretation and application across member states. The European Consumer Organisation (BEUC) and International Chamber of Commerce (ICC) have conveyed strong support for the measure, while Business Europe has expressed concern regarding potential regulatory crowding among competing environmental initiatives. Interestingly, this risk has been openly acknowledged by a European Commission official, who attributes the overlap to different proposals being prepared for different commissioners. Environmental NGOs such as Carbon Market Watch and Carbon Gap have raised questions regarding the inclusion of carbon offsets and reluctance to ban vague terms such as ‘carbon neutrality’. The Environmental Coalition on Standards and Sustainable Apparel Coalition have argued that the lack of a harmonised methodology for substantiating green claims at the EU level runs counter to the stated objective of increasing their transparency and credibility for European consumers.

Key Takeaways: Differential Application across Member States and a Long Legislative Timeline

As the GCD is a Directive, the European Commission will establish a minimum standard for environmental performance claims. Member states will then be responsible for transposing, implementing, monitoring and enforcing the GCD, which may result in national variations. EU member states will be required to task public agencies with auditing, verifying, and enforcing green claims. However, a uniform certificate of conformity attesting to environmental performance will be recognised across the EU, providing some degree of consistency. Although the GCD will impact both EU and non-EU producers, its extra-territorial implications are readily acknowledged by the Commission and the ‘Brussels Effect’ forms a central feature of the measure. For instance, the GCD proposal notes that it will “incentivise third country companies to contribute to the green transition”.

The GCD remains in its initial stages of development and may change over time. The Directive will need to be discussed and agreed by the European Parliament and the Council of the European Union (ministers from member states) to become law. This

process typically takes at least a year, and is likely to be further delayed by the upcoming European elections in June 2024. Following the application of amendments and the adoption of the GCD, EU Member States will have a further 18 months to implement the measure into their respective legal regimes and it will be operational in their jurisdictions six months after that.

Comment

As the GCD applies equally across EU and non-EU companies, many of the concerns of New Zealand exporters may be shared by producers within the bloc. To the extent that the interests and concerns of these groups coincide, the GCD will likely be progressively refined to ease the compliance burden on both during the legislative process. Nevertheless, exporters will face additional information costs – in acquiring and holding supporting evidence for green claims – as well as compliance costs – in demonstrating environmental performance claims upon request – as a result of the GCD. Where these costs outweigh the benefits of making green claims, companies may choose to forego making environmental performance claims on the EU market after the GCD enters into force.

We understand that, as in the EU, a range of eco-labelling schemes are operating in the New Zealand market. However, it appears that only a small minority of these are subject to independent, third party verification under the definition applied by the GCD – which extends only to verification conducted by public regulatory authorities. These include the Environmental Choice New Zealand and Equipment Energy Efficiency (E3) labels, for instance. Several New Zealand products also bear the EU Ecolabel, particularly when exported into the EU single market. These are explicitly excluded from the scope of the GCD, and will not face additional information and compliance costs.

Though it is currently unclear precisely which New Zealand eco-labels will be recognised and accepted under the GCD, several pathways for advancing mutual understanding, cooperation and alignment in labelling requirements may be available through the EU-New Zealand FTA. These include dialogues established under the technical barriers to trade (TBT), good regulatory practices and regulatory cooperation (GRP-RC), and sustainable food systems (SFS) chapters of the Agreement.

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