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Green Claims, Real Consequences: What the EU's New Greenwashing Rules Mean for Businesses

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Since 27 September 2026, businesses selling to consumers in the European Union ("**EU**") have been subject to new rules on environmental claims. The rules come from the EU's Empowering Consumers for the Green Transition Directive (EU) 2024/825 (the "**EmpCo Directive**"), which amends the Unfair Commercial Practices Directive (2005/29/EC) ("**UCPD**") and the Consumer Rights Directive (2011/83/EU) ("**CRD**"). These new rules intend to strengthen EU consumer protection against greenwashing and are applicable to all businesses – regardless of size, number of employees, or annual turnover, and including those based outside the EU – selling to EU consumers.

The rules are already in effect, with no transition period. This change matters beyond consumer brands: the rules should now be factored into due diligence on M&A deals involving a business that sells to EU consumers (see Question 2), and they are relevant to asset managers whose fund marketing, or whose portfolio companies' claims, reach EU consumers (see Question 3).

The EmpCo Directive at a glance

- **Who is in scope?** Any business that markets or sells to consumers in the EU, in any sector and wherever it is based. This includes financial services firms and anyone acting on a business's behalf, such as distributors or agencies. Dealings purely between businesses are not in scope.
- **Which products?** Almost anything offered to consumers, including goods, services (including financial products), digital content and property. The rules apply to everything a consumer sees before, during and after a sale – packaging, labels, advertising, websites, social media and brand or product names – including stock already on shelves.
- **When can you call something "green"?** Only when the claim can be backed up. In particular:

- general claims such as “eco-friendly”, “green” or “climate-friendly” are banned outright unless the business can show recognised excellent environmental performance, or the claim is clearly explained on the same label or advert;
- sustainability labels must be based on an independently verified certification scheme or set up by a public authority;
- a claim about a whole product or business must be true of the whole, not just one part of it;
- products cannot be described as “carbon neutral”, or as having a reduced or positive climate impact, on the basis of carbon offsetting; and
- future targets such as net zero must be backed by a detailed, public plan with measurable deadlines, checked regularly by an independent expert.

Below, we answer three key questions clients may need to navigate.

Question 1: We are a US company selling products into the EU. Do we need controls in place?

Yes. What matters is where your customers are, not where your business is based. If a business markets or sells to consumers in the EU, the rules will apply, whether it sells through an EU subsidiary, a distributor, an online marketplace, or its own website.

The main risk for US businesses is using marketing created for the US market in the EU without adapting it. Some claims that may be acceptable in the US may not be permitted in the EU.

We recommend the following practical steps:

- **Know what you are saying**: Build a list of every environmental or social claim used with EU consumers across packaging, websites, social media and advertising. Include brand and product names, and images or colours that suggest green credentials.
- **Check your labels**: Confirm that every sustainability label or logo is backed by a proper certification scheme or a public authority. Do not assume a well-known label is automatically compliant.
- **Remove high-risk claims**: Drop vague green wording such as “eco-friendly” or “green” where you cannot demonstrate “recognised excellent environmental performance”, and any product claims based on carbon offsetting.

- **Take care with net zero and other targets**: If future targets are mentioned in consumer marketing, they need to be backed by a clear, public plan with measurable milestones that is regularly checked by an independent expert.
- **Put sign-off in place**: Require legal and sustainability review before any new EU-facing claim goes live, and keep evidence on file for each claim.
- **Watch what you reuse**: Statements taken from sustainability reports and reused in consumer marketing can be caught by the rules.

Businesses selling to EU consumers should be reviewing their policies and procedures and, where appropriate, implement additional controls over their consumer-facing claims.

Question 2: How will the EmpCo Directive affect mergers & acquisitions?

For any deal involving a business that sells to EU consumers, these rules should now be part of standard due diligence. There are three main issues: getting the scope right, valuing the risk, and protecting the buyer in the deal documents.

Getting the scope right

The EmpCo Directive has not changed the general scope of the UCPD. The UCPD applies to unfair business-to-consumer commercial practices before, during and after a commercial transaction in relation to a 'product'. This is a broad concept covering goods, services, immovable property, rights and obligations. Purely business-to-business practices remain outside scope.

Below are a few common assumptions which businesses will need to watch out for:

- **"The target isn't based in the EU."** That does not matter if it sells to EU consumers.
- **"The target only sells to businesses."** Business-only communications are outside the rules. However, if the target's customers pass its environmental claims on to consumers, the target may still face contractual claims and commercial pressure.
- **"The stock was made before the rules came in."** The new requirements apply to pre-existing materials, including stock and packaging already shipped to retailers and remaining unsold. Any leniency from regulators is discretionary and likely to be narrow.
- **"The relevant country hasn't brought in its law yet."** Member States had to bring the rules into national law by 27 March 2026, but progress has been uneven.

Where a country is late, regulators can still act against misleading green claims under existing national consumer laws, and national courts are expected to interpret those laws in line with the EmpCo Directive. However, the EmpCo Directive cannot itself impose obligations on private businesses where it has not yet been transposed into national law. The position should therefore be checked country by country for each market where the target sells.

- **"The brand name is a registered trademark".** Brand and product names can themselves be environmental claims, and trademark protection is no defence.
- **"The target is a financial business covered by SFDR."** Its wider marketing may still be caught (see Question 3).

It is also worth being clear about what the rules do not cover. They govern how products are described to consumers, not how they are made. Specific, measurable claims that can be substantiated, such as "made with 50% recycled materials", are still allowed. Due diligence should therefore focus on claims, labels and the evidence behind them.

Valuing the risk

The UCPD and CRD require effective penalties for breaches of the requirements introduced by the EmpCo Directive. Where fines are imposed through coordinated cross-border enforcement, maximum fines must be at least 4% of annual turnover in the Member State concerned. This figure is based on national turnover, not global turnover, but action across several Member States can add up. In practice, the commercial costs often matter more, such as:

- relabelling, repackaging and updating websites;
- writing off stock that cannot be sold as labelled;
- legal action by competitors or consumer associations;
- consumer claims for compensation or price reductions; and/or
- reputational damage.

Warranties and other protections

The impact of the EmpCo Directive will likely flow into warranties. A general warranty that the target has complied with the law may not give a buyer enough comfort. Buyers should consider specific warranties to provide comfort that the rules have been fully complied with.

Sellers will try to limit these warranties to matters within their knowledge and to material issues, and will make disclosures against them. For sellers, reviewing and correcting claims before a sale process begins could limit the protections a buyer will ask for.

Question 3: What does this mean for funds already subject to the EU Sustainable Finance Disclosure Regulation (EU) 2019/2088 ("SFDR")?

The new EmpCo Directive rules do not change what funds must disclose under SFDR, but complying with SFDR does not automatically mean complying with the EmpCo Directive. Specific financial services rules will take priority where they conflict, however, any sustainability marketing beyond those required disclosures, such as website content, factsheets, social media and promotional material, may be caught by the EmpCo Directive if it reaches consumers.

<u>At fund and manager level</u>

The key question is whether you are dealing with consumers. Funds marketed only to institutional investors are largely outside the rules. However, individuals investing in a personal capacity or acting outside their trade or profession may remain a consumer under the UCPD even if they have opted to be treated as a professional client under MiFID II (Directive 2014/65/EU, Annex II, Section II).

This consumer question is likely to become more pressing as private markets open up to retail investors. As managers increasingly market and distribute funds to individuals, whether directly or through intermediaries, more of their investor base may fall within the scope of the EmpCo Directive. In September 2026, Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier, reminded firms to take the new rules into account and to make sure consumer-facing sustainability claims are clear, accurate and backed up. Managers should review fund-level and firm-level claims, such as describing themselves as a "sustainable investor" or making firm-wide net zero commitments.

These rules sit alongside the existing sector rules, including ESMA's guidelines on fund names using ESG or sustainability terms, which have applied to existing funds since May 2025. SFDR itself is also being reformed ("**SFDR 2.0**"). The European Commission's proposal expressly refers to the EmpCo Directive in its recitals, indicating that the Commission views the two regimes as interlinked, with SFDR 2.0 as the more specific regime for financial products. Final legislation on SFDR 2.0 is expected to be published in Q2 of 2027, however the new framework is unlikely to apply before early to mid-2029. The EmpCo Directive applies now, where implemented.

For further information on the latest developments on SFDR 2.0, see our article here.

Looking through to portfolio companies

The rules do not formally require funds to look through to their portfolio companies. Responsibility for a consumer-facing claim sits with the business making it, which will usually be the portfolio company itself. Even so, there are good reasons for sponsors to review portfolio companies selling to EU consumers in order to protect value and keep fund messaging consistent.

Institutional investors may also seek confirmation, on a look-through basis, that relevant portfolio companies comply with the EmpCo Directive requirements. This could arise through due diligence, reporting requests or side letters.

Managers may generally need to build EmpCo Directive considerations into their initial due diligence and ongoing monitoring. A practical first step is to identify which portfolio companies sell to EU consumers and carry out a focused review of their claims and labels.

Next steps

The EmpCo Directive has applied since 27 September 2026, with no grace period and little room for leniency. As transposition has been uneven, however, businesses should check the position on a Member State by Member State basis for each market in which they sell. Its reach goes well beyond European consumer brands: US exporters, buyers and sellers in M&A deals, and funds that invest in consumer-facing businesses all need to take it into account. The right response will depend on each business's products, claims, supply chains and markets. A good starting point for businesses is to conduct a review of what is being said to consumers, rather than assuming existing wording is compliant.

For further information, please reach out to ukreg@proskauer.com.

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