

The EU is in the process of significantly strengthening its legal framework to address growing concerns about misleading environmental marketing claims¹, or “greenwashing”. While the proposed Green Claims Directive has stalled due to a lack of political backing, and is indefinitely postponed, there is still a very important separate Directive on Green Claims that will become law in September this year - it is called Directive (EU) 2024/825 on Empowering Consumers for the Green Transition (“**EmpCo Directive**”²).

This new law will substantially reshape the way environmental claims³ can be used in the Business-to-Consumer (B2C) channel. Japanese companies that sell products or provide services, including digital services and digital content on the EU market, or that target EU consumers through advertising, online sales or branding, should be aware of these rules. Environmental claims that have until now been considered acceptable may soon become unacceptable, and thereby expose companies to heightened enforcement risks, penalties and reputational damage.

1. Practical Issues Regarding Compliance with the EmpCo Directive

While the EmpCo Directive has been viewed as a significant issue within the EU, there appears to be a considerable gap in awareness with the level of concern among Japanese companies. We wish to draw attention to this point.

First, **Japanese companies engaging in commercial communications targeting consumers within the EU must comply with the EmpCo Directive**. Caution is needed here, as some Japanese companies mistakenly believe that the EmpCo Directive does not apply to them because they have no branch within the EU.

We have encountered situations where statements commonly used by companies were found to constitute claims prohibited by the EmpCo Directive, surprising our clients. Such seemingly innocuous expressions can harbor pitfalls, demanding meticulous attention. Recently, we frequently observed numerous Japanese companies using expressions like “sustainability” on their websites. Even such commonly used terms require prior analysis.

Furthermore, determining whether a company’s expressions comply with the EmpCo Directive can be challenging. For example, the term “natural” is listed by the European Commission in recent guidance as a potential environmental claim. Determining whether “natural” constitutes a generic environmental claim (See 2.3 below), or a simple environmental claim is extremely difficult, as it requires considering the context in which the term is used. For instance, if the term appears alongside statements regarding the company’s philosophy, it is more likely to be judged as a simple environmental claim. However, even in such cases, factors like the degree of closeness between the “natural” expression and the statements about the company’s philosophy must also be considered.

Beyond the inherent difficulty in assessing compliance with the EmpCo Directive, urgent action is required to comply with it (See 2.5 below). Furthermore, various risks exist surrounding the EmpCo Directive (See 2.6 and 2.7 below). Therefore, particular attention must be paid to ensuring compliance with the EmpCo Directive.

2 Background and Outline of the EmpCo Directive

2.1 A Shift From General Consumer Law To Targeted Greenwashing Rules

The EmpCo Directive amends two cornerstone instruments of EU consumer law: the Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive. The objective is to improve consumer protection by ensuring that marketing claims relating to environmental aspects of products and services are accurate, transparent and verifiable.

¹ “Claims” means message or representation including text, images, symbols, labels, brand names and product names.

² Also called “ECGT Directive”.

³ See 2.2 below for the meaning of “environmental claims.”

Historically, most environmental claims were assessed under the “umbrella” provisions of the UCPD, which prohibit misleading practices likely to distort the decision of the average consumer when buying a product or service. In practice, this required national authorities to carry out audits of suspected infringing behavior, and to demonstrate that a given claim had negatively influenced consumer behavior. While effective in theory, this approach often placed a heavy evidentiary burden on enforcement authorities and resulted in uneven application across EU member states. The EmpCo Directive will attempt to address some of these enforcement shortcomings by introducing more prescriptive rules and making it easier for enforcement authorities to act if they suspect non-compliant behavior.

2.2 The First EU-wide Definition of “Environmental Claim”

One of the most significant contributions of the EmpCo Directive is the introduction of new definitions, and notably the first harmonized EU definition of an “environmental claim.” The concept is defined broadly and can be summarized as:

Any non-mandatory message or representation, in any form used in a commercial context that states or implies a positive, neutral or improved environmental impact of a product, meaning a good or a service, a product category, a brand or a trader.

This definition explicitly includes text, images, symbols, labels, brand names or product names. As a result, environmental claims are no longer limited to explicit sustainability statements made by companies, but may also arise indirectly through packaging design choices, visual prompts or branding strategies.

2.3 New Blacklisted Practices Prohibited in All Cases

There is currently a blacklist of prohibited practices under the UCPD, which account for the most serious offences. The key aspect here is that enforcement authorities do not need to prove that consumer behavior was affected when buying the product or service; they need only prove that the practice existed. The EmpCo Directive will expand this list by adding the following practices, among others:

(a) Uncertified sustainability labels

The use of sustainability labels that are not based on a recognized certification scheme or established by public authorities is prohibited.

(b) Unsubstantiated generic environmental claims

Generic environmental claims, such as “eco-friendly”, “green” or “climate friendly”, are also prohibited unless the trader can demonstrate recognized excellent environmental performance relevant to the claim. In practice, this will make such broad statements extremely difficult, if not impossible, to justify.

(c) Misleading claims

Claims that present an entire product, or an entire business as environmentally beneficial where, in reality, the claim relates only to a specific component or activity. This would be the case, for example, where a product is marketed as being made of “100% recycled plastic,” even though only the bottle’s lid is manufactured from recycled material.

(d) Claims about carbon neutrality based on greenhouse gas offsetting

Claims about a product’s carbon neutrality based on greenhouse gas offsetting are banned. Acceptable climate-related claims on products must instead be grounded in actual lifecycle emissions and reductions achieved within the company’s own value chain or be limited to the company’s ambition.

(e) Others

Additional prohibitions address durability claims, the transparency of software updates affecting product performance and misleading statements regarding the use of non-original consumables or spare parts. While not always framed as environmental issues, these rules support the broader objective of promoting sustainable consumption and product longevity.

2.4 Stricter Scrutiny of Future-Oriented and Comparative Claims

Beyond blacklisted practices, the EmpCo Directive strengthens the rules applicable to other potentially misleading claims. This includes claims about future environmental performance or sustainability commitments, which must be clear, realistic and verifiable. Comparative environmental claims are also subject to stricter conditions, requiring transparency about the basis of comparison and ensuring that like-for-like goods or services are assessed.

2.5 A Tight Timeline and No Grandfathering – but a potential ‘soft law’ solution may come this summer

As with all EU directives, the EmpCo Directive has to be transposed into national law by each member state. The transposition deadline was 27 March 2026, and while many member states are delayed in the transposition, most of them are currently working on adapting their national rules. The new rules will apply from 27 September 2026. Some member states have already begun the transposition process, and careful monitoring of national legislative initiatives is therefore strongly advised.

Importantly, and according to the letter of the law, no ‘grandfathering’ should be allowed. This means that products already sold now in the EU, as well as existing marketing materials, must comply with the new rules as of 27 September 2026. In practical terms, and **for the sake of prudence, companies may need to take urgent action to relabel products already on shelves, apply corrective stickers or adjust point-of-sale communications within a short timeframe.**

However, we are aware of ongoing discussions between the main affected EU trade associations, the Commission and the Consumer Protection Cooperation Network (“**CPC Network**”) about potentially relaxing the immediate enforcement of the EmpCo Directive, and instead allowing the exhaustion of non-compliant products already placed on the market by 27 September 2026. This would avoid the need for product withdrawal, relabelling, or stickering. The content and form of such a potential “common understanding” among the CPC Network is currently unknown and may only become clearer towards this summer.

As this “common understanding” remains opaque and uncertain for now, and as enforcement remains the prerogative of Member State authorities (meaning that they all might not agree to this “common understanding”), we advise caution should companies already wish to rely on it. **A more prudent approach, if practicable, would be to create a compliance plan without relying on this “common understanding”, at least while its form and content remain unclear.**

2.6 National Enforcement and Sanctions: A Fragmented but Increasingly Strict Landscape

Although the legal framework tends toward greater harmonization at EU level, enforcement remains a national responsibility. Competent authorities, enforcement priorities and sanction levels therefore differ significantly across member states.

For example, in Ireland, misleading commercial practices expose the infringing party to a potential prison term of up to 18 months, or a fine of up to 4% of annual turnover (capped at €2 million) depending on the gravity of the offence. The infringing party will also likely have to pay compensation, for an amount appropriate to the loss or damage suffered, to the aggrieved consumer. In the majority of cases, there is an automatic publication of the investigation on the Irish consumer protection agency’s website and hence the infringing company would be publicly identified.

In France, misleading commercial practices may expose the infringing party to criminal sanctions, including a prison sentence of up to two years and a fine of €300,000. The fine may be increased, in proportion to the benefits derived from the infringement, to up to 10% of the average annual turnover, calculated on the basis of the last three known annual turnovers at the date of the offence or to up to 50% of the expenses incurred for the advertising or commercial practice concerned, which may be increased to 80% in certain circumstances.

Italy is another jurisdiction where enforcement activity has been particularly active. Over the past few months, the *Autorità Garante della Concorrenza e del Mercato* (AGCM) has imposed some of the highest publicly reported sanctions for misleading environmental practices. These include, for example, a fine of €1 million imposed on a fast-fashion company for misleading green claims, as well as an enforcement action against a food company requiring it to remove language from its website and advertising statements suggesting that the production of its “Eco-green” bottles had no environmental impact.

As a general principle, enforcement action is expected to be progressive, with authorities typically starting with recommendations, corrective requests or, where appropriate, minor fines. However, it should be borne in mind that, depending on the specific circumstances and the severity of the infringement, a stricter approach may be adopted. In such cases, additional measures may be imposed, including injunctions, corrective measures or product recalls, in particular where noncompliance persists, or where the competent authority takes into account previous infringements by the company.

2.7 Exposure to US-style Class Actions

Another critical risk factor when assessing the potential consequences of making environmental claims in the EU is the growing use of collective redress mechanisms, also known as “class actions”. The UCPD is expressly listed in the Representative Actions Directive (EU) 2020/1828, which enables qualified consumer organizations to bring cross-border collective actions for breaches of EU consumer law, including misleading environmental claims. These actions can seek injunctions, compensation and the cessation of unlawful practices. The first high-profile cases have already emerged, notably in the Netherlands where an airline company was sanctioned in 2024 for a misleading CO₂ neutrality claim⁴, and this trend is expected to intensify as environmental claims come under closer scrutiny.

⁴ District Court of Amsterdam, Foundation for the promotion of the fossil free movement, judgment of 7 June 2023, C/13/719848/HA ZA 22-524.

3. Conclusion: Preparation Should Start Now

For Japanese companies active in the EU, environmental claims are rapidly becoming one of the most sensitive areas of consumer law compliance. Enforcement activity is increasing, sanctions can be severe and collective actions add an additional layer of financial and reputational risk.

Given the relatively short lead time before the rules apply this 27 September 2026, we recommend companies begin reviewing their environmental communications now. Early action is key to navigating the evolving EU framework and mitigating any risks associated with greenwashing allegations.

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