

*Practical Guidance on
how to avoid
greenwashing claims
and on preparation for
ESG investigations*

What is Ethics and Compliance Switzerland?

- // ECS is an independent not for profit organization that promotes ethics and compliance in all organizations, connects the professional community across all sectors and organizations in Switzerland and internationally and exchanges best practices.
- // Founded in 2014
- // 230 Individual members

// WORKING GROUPS

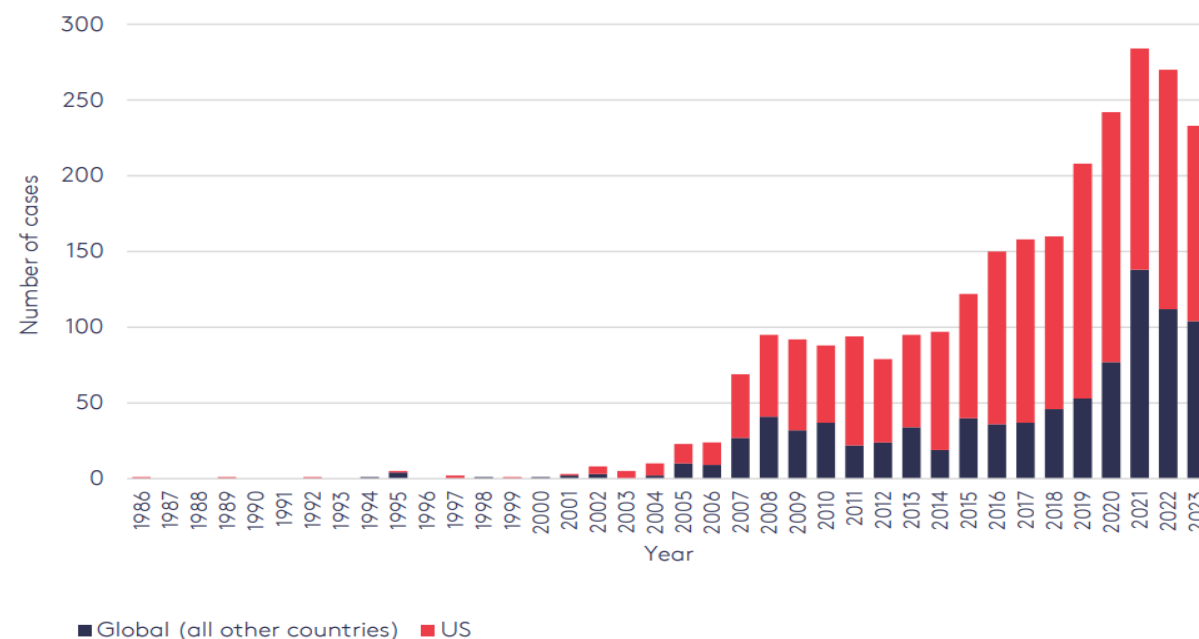
- // Anti-bribery and corruption
- // Artificial intelligence and Compliance
- // Competition law
- // Compliance management system /ISO
- // Investigations
- // Leadership & communication
- // Life Sciences
- // Not for profit & NGO
- // Third Party Risk Management & ESG
- // Whistleblowing

Climate litigation

Greenwashing litigation trends

- // Climate-washing or greenwashing litigation continues to be a focal point in climate litigation. There has been a surge in such cases from a mere handful in 2017 to over 140 globally in 2023.
- // Source: Global trends in climate change litigation- Snapshot 2024

Figure 1.1. Number of climate litigation cases within and outside the US, 1986–2023



What is Greenwashing?

// **Greenwashing** is a deceptive marketing or public relations practice in which a company exaggerates or falsely claims to be (more) environmentally friendly or socially responsible.

// Can concern any statement:

// Sustainability / environment related **statements**, **reporting**, **commitments/targets**



// **Product related** communication, marketing claims and advertisement



// **Reality:**

- // **Perception** is essential
- // Understanding of average **audience** addressed is decisive
- // **No intention** to mislead required

Increased greenwashing risk caused by...

- // Climate change (Paris agreements)
- // Europe Green Deal

- // Companies want to win consumers,
- // make ESG commitments
- // communicate and report publicly;
- // Engage with investors, rating agencies and stakeholders

Greenwashing
risk

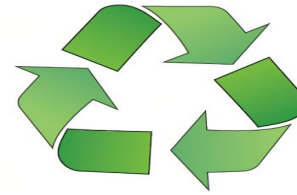
- // Green Claims Directive
- // Corporate Sustainability Reporting Directive
- // Updated guidance from regulators

- // General public sensitized
- // NGO watch
- // Increased lawsuit

Greenwashing

Overview of logos and certifications

// Who knows what these certifications stand for?



[All ecolabels | Ecolabel Index](#) provides an overview of ecolabels

Greenwashing

Problem areas

// 1) Unsubstantiated product claims



53% of green claims give vague, misleading or unfounded information



40% of claims have no supporting evidence



Half of all green labels offer weak or non-existent verification



There are 230 sustainability labels and 100 green energy labels in the EU, with vastly different levels of transparency

// 2) Various degrees of governance

// 3) Certification Process

Accreditation Body-> Certification Body-> appoint certain auditors.

// Quality and independence of auditors, independence

Greenwashing

Problem areas

// 4) Carbon offsetting calculations

Bogus Carbon Credits are a 'Pervasive' Problem, Scientists Warn

- // Some of these carbon offsetting projects [plant trees](#). Others simply [pay](#) those who own trees not to cut them down. Others go further, investing in technologies that decarbonize everyday life, like [renewable energy](#). Some critics claim that the whole thing is a fraud, amounting to a “license to pollute” with no real bearing on the health of the planet.
- // Voluntary carbon market (VCM): a decentralized space where people and businesses can choose to buy credits to offset their emissions is largely unregulated, could hit \$50 billion as soon as 2030 and grow 100-fold by 2050, according to McKinsey.
- // 5) **Lack of end-to-end traceability of supply chains**
 - // Deforestation free products
 - // [Source: 13 Major Companies Responsible for Deforestation | Earth.Org](#)

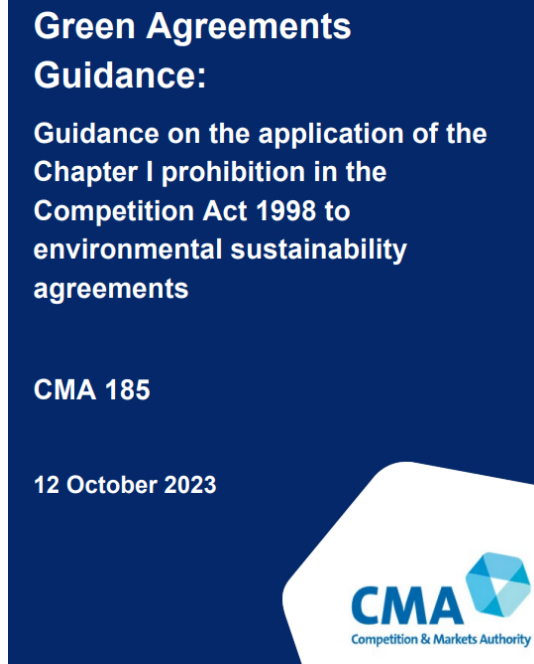
Greenwashing prevention

What are best practices?

- // Conduct a review of regulatory guidelines
- // Provide training to all employees
 - // Focus on brand managers, marketing, public affairs, communication employees
- // Create DO and DO NOTs
- // Use ISO standard definitions rather than using your own
- // Considering creating approved wording regarding the company sustainability targets/aspirations.
- // Define a RACI matrix for product related communication (incl supporting evidence)
- // Understand methodology /governance of certifications & be careful with offsetting carbon claims
- // Have a dedicated group who follow litigation and can include such learnings into updated training materials

Greenwashing prevention

What are best practices?



Brussels, 22.3.2023
COM(2023) 166 final
2023/0085 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on substantiation and communication of explicit environmental claims (Green Claims Directive)

// Familiarize yourself with the regulatory guidance from numerous regulators

Greenwashing prevention

What are best practices?

- // Use widely known terminology
- // Compostable
- // Degradable
- // Free of...
- // Recyclable
- // Sustainable
- // Carbon neutral
- etc.

INTERNATIONAL STANDARD

**ISO
14021**

Second edition
2016-03-15

Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling)

*Marquage et déclarations environnementaux — Autodéclarations
environnementales (Étiquetage de type II)*

INTERNATIONAL STANDARD

**ISO
14021**

Second edition
2016-03-15
AMENDMENT 1
2021-07

Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling)

**AMENDMENT 1: Carbon footprint,
carbon neutral**

*Marquage et déclarations environnementaux — Autodéclarations
environnementales (Étiquetage de type II)*

AMENDEMENT 1: Empreinte carbone, neutre en carbone

Environmental claims

DO and DONTs

DO

DO NOT

1

Conduct a claim assessment

- // Factually accurate (truthful, exact, correct in all details)
- // Not misleading (clear and unambiguous for target audience)
- // Substantiated and based on appropriate evidence

- // Do not omit, withhold or minimize relevant info
- // Based on latest available scientific info, do not make claims that can not be substantiated.

2

Clarity about scope of claim

- // Ensure clarity about scope of claim as audience may otherwise apply it to all parts of the products, its entire value chain and lifecycle

- // Do not make an environmental claim about the entire product when it concerns only a certain aspect of the product

3

No exaggeration

- // Ensure the claim is understood by an objective average member of target audience

- // Do not exaggerate positive environmental effects

4

Use international definitions

- // Check terms used for consistency with international standard terms (ISO)

- // Do not use terms without providing a clear definition

Environmental claims

DOs and DONTs

DO

5

Soft wording /
support claims

- // Rely on widely recognized scientific evidence, use accurate information
- // Be ready to provide documentation or information that supports environmental claims

6

Keep claims up to
date

- // Adapt claims in case there is additional scientific info available

7

Disclaimers

- // Use disclaimers/exemptions only as an exception. If used, ensure that they are clear, prominent, understandable and not downplayed or minimized.

8

Avoid vague
words

- // Use ISO definitions and avoid meaningless statements

DO NOT

- // Avoid binding language like “commit” or “ensure” but use softer wording like “we strive for” to avoid that external stakeholders

- // Never update claims when additional info becomes available

- // Do not use words like “environmental safe”, “environmentally friendly”, “eco-friendly”, “ozon friendly” usw

Environmental & Sustainability Claims RACI Matrix

Task	Material Owner	Marketing	Medical Affairs	Regulatory Affairs	PV	Corporate Comms
Environmental & Sustainability Claims (*Marketing teams to reach out to Design Packaging & Consumer Experience for guidance on substantiation requirements. Marketing to align with Regulatory if claims are allowed per local regulations)						
Ensuring claims connected to lowering of packaging weight meet all applicable requirements (e.g., new tube contains 20% less plastic than the previous one)	Responsible	Accountable*				
Ensuring claims connected to packaging recyclability , biodegradability meet all applicable requirements (e.g., This new tube can be recycled)	Responsible	Accountable*				
Ensuring claims connected to lowering of emissions meet all applicable requirements (e.g., new tube emits 15% less CO2 than the previous format)	Responsible	Accountable*				
Ensuring claims connected to sourcing certification meet all applicable requirements (e.g., The paper is from a FSC certified source)	Responsible	Accountable*				
Ensuring product ingredient green claims are accurate (e.g., natural, organic, paraben free)	Responsible			Accountable		
Checking social sustainability product or corporate claims e.g., supporting minority groups, supporting corporate responsibility initiatives, supporting low-income, enhancing lives of low-income mothers.	Responsible					Consult #
The same principles of responsibility & accountability apply for product labelling documents.						

*Understand the
uniqueness of ESG
investigations to be
better prepared for
them*

ESG Investigation

Differences vs «Traditional» investigations



Topic	Traditional Investigation	ESG investigation	Particular Challenges with ESG investigations
Nature of allegation	Narrow specific focus (e.g. fraud, corruption)	Very broad (human rights, environmental issues, greenwashing, discrimination etc.)	① Transparency vs Legal Privilege
Source of allegation	Internal whistleblowers	Mostly external reporters (NGOs, consumer groups)	② Independence of an investigation
Evidence	Found within organization	With extended business partners (suppliers, subcontractors)	③ Evaluation of evidence
Investigation Report	Internal Distribution List	External Stakeholders	④ Preservation of evidence
Investigation Standard	Well defined	Hard law (climate related financial disclosures CSRD, CSDDD, German Supply Chain Act, Deforestation Law) and soft law (UN Guiding Principles on Human and Human Rights)	⑤ Skilset of investigators

Preparing for ESG investigation

What are best practices?

- // Make sure your investigation team has ESG expertise and/or have sustainability/human right experts in the team
- // Stay updated on ESG regulations
- // Develop legal privilege strategies to protect the results of investigation
- // Define a crisis team with roles /responsibilities and processes in the case of major ESG incidents
- // Make sure you can assemble on short notice forensic accountants, lawyers, auditors to go onsite in a remote part of the world

Questions?