Silence over Substantiation? Can EU Law Stop Greenwashing without Silencing Honest Companies?

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1. Introduction

Greenwashing says too much; greenhushing says too little. EU law is trying to stop the first without causing the second. Companies face growing pressure to communicate their sustainability efforts, but environmental claims can be misleading or insufficiently substantiated, a practice known as *greenwashing*. Stricter regulation may create a further challenge when companies remain silent about their environmental efforts rather than risk legal scrutiny, a phenomenon known as *greenhushing*.

This tension is particularly relevant following the European Commission's announcement (Ashton, 2026) of its intention to withdraw

the proposed Green Claims Directive (GCD), which envisaged substantiation and independent verification of certain environmental claims before their communication. In contrast, Directive (EU) 2024/825, the Empowering Consumers for the Green Transition Directive (ECGT), strengthens the existing consumer protection framework with more specific rules against misleading environmental claims. Although it sets substantive conditions for certain claims, it is enforced ex post, meaning compliance is assessed only after a claim has been communicated. This raises the question of whether relying on the latter framework, without the GCD's general ex-ante verification model, can combat greenwashing without discouraging legitimate environmental communication.

This article argues that the ECGT strengthens the EU's ability to address greenwashing, but that uncertainty surrounding the substantiation of voluntary claims may encourage greenhushing. The extent of this risk depends on the clarity of the applicable rules and the predictability of their enforcement. The issue matters because environmental communication enables consumers to make informed choices, and because it tests how EU consumer law can balance effective protection with proportionate burdens on businesses.

2. The EU legal framework: from ex-ante to ex-post

2.1 The proposed GCD: ex-ante verification

In March 2023, the Commission proposed the GCD (European Commission, 2023) to complement the Unfair Commercial Practices Directive (UCPD) by setting common requirements for substantiating and communicating explicit environmental claims. Covered claims would have to be substantiated before communication and checked by an independent, accredited verifier (European Commission, 2023, Art. 10), preventing misleading claims from reaching consumers in the first place. This model also carries costs, particularly administrative and financial burdens for smaller businesses. In June 2025 the Commission stated its intention to withdraw the proposal, putting the legislative process on hold (Ashton, 2026).

2.2 The ECGT: strengthened consumer law

The ECGT takes a different approach. Instead of creating a separate verification regime, it amends the UCPD and prohibits certain practices in Annex I. These include making generic environmental claims without sufficient evidence and using sustainability labels that are not properly certified or approved by public authorities (Directive (EU) 2024/825, Annex I). Claims about future environmental performance may be misleading under amended Article 6(2)(d) UCPD unless supported by clear, objective, publicly available and verifiable commitments, a detailed and realistic implementa-

tion plan with measurable, time-bound targets, and regular verification by an independent third-party expert.

Enforcement nevertheless remains with national courts and authorities, and no general pre-use verification applies. The ECGT is therefore ex-post in enforcement, though not in substance. It sets conditions that must be met before certain claims are made, but compliance is assessed only afterwards. The difference between the models lies in when uncertainty is resolved. Ex-ante verification provides a route to compliance before publication, but adds expense and cannot ensure ongoing accuracy. Ex-post enforcement relies on deterrence, but leaves businesses uncertain whether a claim will later be challenged.

3. The potential of the ECGT to suppress greenwashing

3.1 More specific prohibitions can deter misleading claims

Before the ECGT, misleading environmental claims were assessed case by case under the UCPD, which required enforcers to establish that a claim was likely to mislead the average consumer (Directive 2005/29/EC, Art. 6). The ECGT lists specific practices in Annex I as prohibited in all circumstances, including generic environmental claims lacking recognised excellence (point 4a), unsupported sustainability labels (point 2a) and offset-based neutrality claims (point 4c). For these, enforcers need not show that the claim is likely to mislead the average consumer, since Annex I practices are unfair in all circumstances (Directive 2005/29/EC, Art.5(5)). Future performance claims, by contrast, remain subject to the general test under Article 6(2) UCPD.

3.2 Enforcement can change corporate behaviour

A recent case suggests that ex-post enforcement can be effective even under the general UCPD. In 2025, the French Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF) fined SHEIN €40 million for misleading practices, mainly fake price reductions but also unsubstantiated environmental claims, notably that it would cut its greenhouse gas emissions by 25% (DGCCRF, 2025). This demonstrated that sanctions can be substantial, which may encourage companies to improve their evidence and communications. Unlike tort or contract claims, UCPD enforcement requires neither intent nor a contractual relationship, and consumers, NGOs, competitors and regulators can all bring challenges.

3.3 Limitations

Nevertheless, ex-post enforcement is only as effective as its consistency, resources and consequences, and because the Directive is enforced through national law, these may differ between Member States (Law et al., 2024). Since the ECGT does not require verification of all claims before publica-

tion, misleading claims may reach consumers before authorities intervene. The central challenge is ensuring that businesses understand their obligations without excessive uncertainty, which raises the question of whether stronger protection may also discourage legitimate communication.

4. The risk of greenhushing

4.1 The value of environmental communication

Stricter regulation may discourage companies from communicating genuine environmental progress. Greenhushing occurs when businesses limit or avoid publicising their sustainability efforts to reduce legal or reputational risk. Voluntary communication matters because it helps consumers compare products, understand corporate progress and reward businesses that invest in sustainability (Takahashi et al., 2025). If credible progress is unreported, consumers lose useful information and firms may lose an incentive to improve.

4.2 Factors discouraging environmental communication

Several factors may lead companies to stop making environmental claims. First, businesses may not know what evidence suffices to substantiate a claim, or whether a statement will be considered "generic" under Annex I, point 4a. Second, data collection, legal review and auditing impose compliance costs, particularly on small and medium-sized enterprises (SMEs), which often lack internal legal and sustainability expertise (European Commission, 2023). Third, even an accurate claim can be costly to defend. This is particularly relevant to future commitments such as emissions-reduction targets, which require a realistic implementation plan and independent verification under Article 6(2)(d) UCPD. Companies may hesitate to commit publicly if they are unsure whether they can meet their targets or the legal requirements (Guercini et al., 2025). These are plausible mechanisms, not proof that the ECGT has caused greenhushing.

4.3 The implications of moving away from ex-ante verification

The GCD would have imposed verification costs, but it would also have given businesses legal clearance, namely a claim checked before publication, with a certificate of conformity as assurance, as per Article 10 of the proposal. The ECGT also requires verification in certain circumstances, but establishes no system of prior clearance. A sustainability label may be displayed only if it is established by public authorities or based on a certification scheme satisfying cumulative transparency and credibility requirements, including monitoring by an independent third party (Directive (EU) 2024/825, Annex I, point 2a, recital 7). Yet the Commission has made clear that a label does not shield misleading claims from challenge (European Commission, Directorate-General for Justice and Consumers,

2026). Verification under the ECGT is thus a condition of lawful use rather than a safe harbour. Businesses may bear its cost and still have to judge whether a claim will withstand later scrutiny.

5. Assessment: does the balance work?

This brief assessment applies three criteria to the ECGT's ex-post model: consumer protection, legal certainty and proportionate compliance. On consumer protection, the ECGT performs reasonably well. It bans certain practices outright, and the French SHEIN case indicates that authorities can sanction inadequately substantiated claims. The limitation is timing, since a misleading claim may reach consumers before anyone challenges it. Consistency matters too: because enforcement and penalties remain national, the same claim could meet different outcomes in different Member States, weakening protection and predictability (Law et al., 2024).

On legal certainty, the position is less straightforward. Although the ECGT clarifies which claims are prohibited, businesses may still struggle to determine what evidence substantiates other voluntary claims. Without a general verification model, they must assess for themselves whether claims will withstand later scrutiny. On proportionate compliance, the position is uncertain. The ECGT avoids a general verification system, but businesses must still collect evidence, review statements and, for labels or future performance claims, meet demanding certification and verification requirements. These costs fall hardest on smaller businesses (European Commission, 2023).

Taken together, the ECGT offers a stronger framework for deterring misleading claims, but the balance is less certain once legal predictability and compliance burdens are considered. Greenhushing should therefore be treated as a potential unintended consequence rather than an established effect of the ECGT, depending on how national authorities implement and enforce the rules and on the clarity of available guidance.

6. Conclusion

The shift from the GCD's ex-ante verification to the ECGT's ex-post enforcement strengthens the EU's ability to tackle greenwashing through more specific prohibitions. However, without a general verification model, some businesses may be uncertain about how to substantiate voluntary claims. This creates a risk of greenhushing that is plausible rather than demonstrated. The objective should be to prevent misleading claims without discouraging businesses from communicating genuine environmental progress. Whether the ECGT achieves this will depend less on the text of the Directive than on whether Member States pair enforcement with clear guidance and support for SMEs, so that silence does not become the safest option.

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