

Green Claims Directive – trilogues

How does the GCD connect with the Voluntary Carbon Markets (VCMs)?

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Andrei Marcu, Ana Ruiz

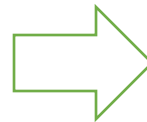
A. RECAP: EU Legislative context

LEX GENERALIS
EU rules on consumer protection

1. Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market (**‘Unfair Commercial Practices Directive’** or **‘UCPD’**)
2. Directive 2011/83/EU on consumer rights

Both recently amended by:

3. Directive 2024/825/EU, empowering consumers for the green transition through better protection against unfair practices and through better information (**‘Empowering Consumers Directive’**)



LEX SPECIALIS

Proposed Directive on substantiation and communication of explicit environmental claims (**‘Green Claims Directive’**) in business-to-consumer commercial practices



Climate-related claims based on carbon credits are explicitly included.

- **Bans claiming that products** have neutral, reduced or positive impacts **if based on GHG emissions offsetting.**
- **Clarifies that such prohibition should not prevent companies from advertising their investments** in environmental initiatives, **including carbon credit projects.**
- Does not specify what companies should do to properly substantiate their environmental claims, and specifically climate-related claims.

A. RECAP: Green Claims Directive proposal

➤ European Commission proposal text (22.3.2023)

Substantiation of corporate **climate-related claims**:

- General requirements (Article 3) +
- ***Separation of any GHG emissions offsets used***
- ***Specification of whether those offsets relate to emission reductions or removals,***
and
- ***Description of how the offsets relied upon are of high integrity and accounted for correctly*** to reflect the claimed impact on climate.

A.2. RECAP: Green Claims Directive proposal (cont.)

➤ European Parliament amendments (12.3.2024)

- Distinction between “*compensation*” & “*contribution*” claim (however without providing specific definitions).
- For *compensation* claims:
 - (i) **only for residual emissions** (tbd by COM in delegated act);
 - (ii) **only** underpinning **credits certified under [Carbon Removals and Carbon Farming (CRCF)]**, or other units/equivalent schemes in duly justified cases to be recognized by COM in DA);
 - (iii) **disclose the share of residual emissions** (biogenic or fossil) & **quantity of credits used and for which activity** (permanent, storage in products, carbon farming, soil emission reductions);
 - (iv) **compensation for fossil emissions only with permanent removals** as per CRCF;
 - (v) **for claims on future environmental performance** based on the use of carbon credits, need to **comply with ESRS**.

A. RECAP: Green Claims Directive proposal (cont.)

➤ Council's General Approach (17.06.2024)

- Distinction between “*offset*” & “*contribution*” claim (provides definitions in article 2).

- For all climate-related claims (including those involving carbon credits):
 - (i) identification of the total GHG emissions, reductions, future performance regarding the emissions, and any carbon credits used, including the quantity of credits acquired in tCO₂eq;
 - (ii) specification of whether carbon credits used relate to emission reductions or carbon removals, **whether or not** the associated emission reductions or removals **represent a contribution to the reduction of GHG emissions in the host country**, whether removals are permanent or temporary, under which scheme the credits were verified and certified and by which registry they were issued.

- For *offset* claims:
 - (i) **set a net zero target as per CSRD**, and is on a decarbonisation pathway to meet the target;
 - (ii) **disclose the percentage of total GHG emissions balanced out using carbon credits**, for a specific time-period.

A. RECAP: Green Claims Directive proposal (cont.)

➤ European Parliament amendments (cont.)

- For contribution claims:

- (i) financial contribution not to be used to claim any improvement of the product/trader (i.e., *compensation* claims);
- (ii) separate any financial contributions from climate or environmental impact.

➤ Council's General Approach (Cont.)

- Definition of contribution claim:

Where the trader claims to have contributed to climate action by purchasing carbon credits, but without using those carbon credits for balancing out a share of its emissions.

C. Takeaways

- ERCST believes that the constraints introduced by the EP delay the use of carbon offsets to the time when companies reduce as much as possible (2050).
- This begs some questions: until then, are voluntary-offset claims prohibited (not in theory but in practice)? Is it a disguised ban? Is in the scope of the GCD to ensure mitigation hierarchy? And to prescribe new substantive rules?
- if the UCPD ban climate-related claims at the product level but not at the corporate level there should be a difference in practice.
- Between claiming that a commercial business is climate neutral – relying only on the use of carbon credits – and using them for residual emissions only, there is a spectrum of possibilities that could play a role in the companies’ decarbonization strategy – as a complementary tool. This use should be allowed when and if clearly substantiated and communicated with transparency, credibility, and integrity.
- Therefore, Offset claims ought to encompass both counterbalancing companies’ emissions on the pathway to achieving net zero (interim targets) and residual emissions.

C. Takeaways (cont.)

- ERCST believes these prescriptive restrictions are unnecessary and arbitrary, with several indirect consequences:
 - **limiting the uptake of solutions such as removal credits.**
 - **undermining the ongoing development of voluntary carbon markets** and the investments in third countries outlined in the Paris Agreement.
 - **precluding spill-over effects by facilitating knowledge generation, technology transfer, and access to finance** in regions that do not normally benefit from private investments.
 - **overlooking the fact that residual emissions not only are sector-specific**, but their targets will evolve with technological advancements and economic conditions;
 - **risking of companies abandoning voluntary climate efforts to evade scrutiny.**
- Which would be counterproductive and contrary to objectives of the Directive, the European Climate Law and the Paris Agreement.

D. The Purpose of the research question

- While trilogue negotiations are underway, it is important to keep the discussion alive and clarify the direct and indirect connection between the GCD and VCMs.
- Recent declarations of one of the leading Parliament Rapporteurs, raise doubts. The MEP stated, according to Carbon Pulse:

“If a company relies on offsets beyond unavoidable emissions to meet its climate targets, it should not claim full climate neutrality. That would be misleading consumers. (...) The Council merely wants to increase transparency in this regard, however, for most consumers, the promise of alleged climate neutrality would remain misleading”.

- As far as ERCST is aware, the co-legislators still didn't reach a political conclusion on the matter.

E. Guiding questions for the discussion:

- How can the EU provide clearer guidelines that foster – and not deter – meaningful private sector investments for essential climate mitigation projects (removals and reductions)?
- Does the GCD can have a role in promoting VCMs or this falls necessarily outside of the scope's directive?
- If a more restrictive approach prevails, what are the potential and tangible consequences for the VCMs?
- How are several pieces of legislation (i.e., CSRD and CRCF) interconnected with the GCD?
- What can be expected from the trilogues?

Thank you!