

CSDDD and Green Claims Directive **Securing Consumer Welfare, Enhancing Corporate Sustainability**

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This briefing is the sixth in a series on the Corporate Sustainability Due Diligence Directive (CSDDD), where BLOMSTEIN addresses the key aspects that (in)directly affect businesses both within and outside the EU, explores its interplay with the existing legislation in Germany (LkSG) and examines interactions with other recently adopted EU legislation (e.g., EUDR, CSRD) which partially set overlapping obligations.

In this briefing, we explore the main goals of the upcoming Green Claims Directive (GCD) and draw a parallel with the CSDDD. On March 12, 2024, the European Parliament adopted its negotiating position on the GCD text. This text will likely be amended based on proposed changes from the EU Council, with further negotiations expected between the two bodies in the new legislative cycle. Together with the CSDDD and other acts, the GCD is part of the European Green Deal efforts to promote corporate sustainability.

Green Claims Directive (GCD)

The GCD's primary objective is to ensure that explicit environmental claims – whether in text or on labels – related to the environmental impacts, aspects or performance of a product or traders are reliable, verifiable, and comparable. By establishing clear criteria for what qualifies as an environmental claim and standardizing substantiation and certification requirements, the GCD sets a framework to prevent green washing. Green-washing misleads consumers and distorts competition, given that consumers are not able to genuinely distinguish good business practices from poor ones.

Vague or unfounded claims will not be allowed, such as those merely reflecting common sector practices. Notably, the GCD sets high standards for climate-related claims that rely on the use of carbon credits generated outside the company's value chain. Claims that a specific product is neutral, or that has reduced, or even positive environmental impact based on carbon credits will be prohibited. Still, claims relying on carbon credits which refer to the trader's footprint (instead of its specific product) will be allowed under stringent conditions.

In fact, at the core, traders will be required to substantiate their claims, including factors such as:

- **Claim Specificity:** Specify if the claim is related to the whole product, part of a product, part of a lifecycle of a product, or certain aspects of a product, or to all activities of a trader or a certain part or aspect of these activities, as relevant to the claim.

- **Scientific Evidence:** Rely on verifiable scientific evidence, use accurate data and, preferably, follow relevant Union and international standards.
- **Lifecycle Impacts:** Include information on the environmental impacts considering the product's lifecycle.
- **Performance:** Show that the claimed environmental performance is genuinely better compared to common practices in the relevant sector.
- **Legal Obligations:** Prove that claims are beyond what is legally required.
- **Use of carbon credits:** Provide very clear information related to the use of carbon credits for claims, complying with the stringent conditions for such use.
- **Comparative Claims:** Use equivalent data and assumptions for comparative claims involving other products or traders.

Under the GCD framework, consumers will be in a position to make more informed purchasing decisions, thereby ensuring a level-playing field among competitors, where companies adhering to higher environmental standards are no longer unfairly disadvantaged by competitors making vague, misleading, or unfounded claims. By raising the bar for companies seeking to profit from marketing environmental claims, the GCD will incentivize truly sustainable practices.

Scope of Application

The GCD applies to all businesses operating in the EU market that make explicit environmental claims related to their products or services. Non-EU businesses selling products and services in the EU also need to comply with these rules.

In contrast, the CSDDD targets larger EU companies and non-EU companies with significant operations in the EU. For EU companies, the Directive applies to those that meet both of the following criteria: **(1)** more than 1000 employees on average, and **(2)** a net worldwide turnover exceeding EUR 450 million in each of the last two financial years. For non-EU Companies, the Directive applies if the net turnover generated within the EU exceeds EUR 450 million in each of the two financial years preceding the last financial year (for more information, see our briefing [here](#)).

In practice, the GCD has a larger scope of application than the CSDDD.

Comparability and Transparency as Drivers

The GCD standardizes requirements to certify substantiated environmental claims. It prohibits self-certification and requires that labelling schemes comply with the Di-

rective's requirements. Also, a claim's conformity must be certified by third-party independent experts, with some exceptions which will benefit from a simplified procedure still to be further negotiated between the EU Council and the Parliament (e.g., national or regional labelling schemes meeting EU standards).

Environmental labelling schemes must comply with strict requirements, including:

- Transparency regarding the ownership structure and the decision-making bodies.
- Decision-making bodies free of conflicts of interest and independent from traders using the label.
- Clear objectives and monitoring procedures.
- Criteria developed by experts and validated through transparent consultation to a heterogeneous group of non-conflicted stakeholders.
- Complaint and dispute resolution mechanisms in place.
- Procedures for non-compliance, including withdrawal or suspension.
- Reasonable and non-discriminatory fees.

Particularly, new schemes established by private operators in or outside the EU will only be allowed if they provide added value in terms of environmental ambitions as compared to existing schemes. The Commission shall publish and keep an up-to-date list of environmental labelling schemes that comply with the Directive. The GCD will also require more transparency regarding the substantiation of such claims. Information regarding the product or the trader that is the subject of the explicit environmental claim and related substantiation shall be made publicly available together with the claim in a physical form or in the form of a weblink, QR code, digital passport, or equivalent.

By standardizing requirements across the EU market, the GCD assures consumers have access to accurate information and are able to compare the certain aspects of the environmental footprint of different traders and products. Similarly, but with a different angle, the CSDDD mandates in-scope companies to disclose their due diligence processes and outcomes in a standardized manner, which makes it easier for interested stakeholders, including investors and consumers, to assess and compare the environmental impact of companies within a specific sector.

Non-Compliance

National authorities will be mandated to assure compliance by carrying out regular checks and assessing substantiated complaints by persons and organizations with a legitimate interest (e.g., non-governmental entities or organisations promoting human

health, environmental or consumer protection). Interested parties will also be entitled to take legal action against decisions and acts (or failure to act) from competent authorities. Penalties include fines based on annual turnover (capped), temporary bans from public procurement processes and access to public funding (max. 12 months), and confiscation of revenues derived from a transaction with the relevant products concerned.

The CSDDD establishes a comprehensive liability framework. In addition to public enforcement through administrative supervision, such as fines and bans from public procurement processes, the CSDDD introduces a robust civil liability framework. This enables claims for reparation when in-scope companies intentionally or negligently fail to comply with provisions designed to protect natural or legal persons, thereby causing them harm.

While compliance with the GCD is not explicitly required by the CSDDD, particularly in-scope companies that resell products and services with environmental claims should verify GCD compliance. This verification helps prevent and mitigate risks associated with underestimating the environmental impacts of suppliers, which is a crucial aspect of the CSDDD's due diligence requirements.

Key takeaways

Convergence between the CSDDD and the GCD lie in their mutual promotion of transparency and comparability when it comes to environmental footprints, which ultimately promotes more informed decisions by the relevant stakeholders (e.g., consumers, investors, buyers), enhancing corporate accountability and consequently incentivizing improvements towards a more sustainable business conduct.

BLOMSTEIN will continue to closely monitor and assess the developments and practical application of the CSDDD. If you have any questions on the topic and the GCD, [Dr. Roland Stein](#), [Bruno Galvão](#) and [Carolina Vidal](#) will be happy to assist you.