



## **The fight against greenwashing in the European Union**

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*ABSTRACT: Greenwashing, a practice through which companies try to create an image of doing more for the environment than they actually are, is a possible threat to the current environmental goals of the European Union. In this article, we intend to analyse the tools and instruments foreseen by the European Union to combat this phenomenon, particularly from the current ideological line of the European Green Deal and the New Consumer Agenda.*

*KEYWORDS: Environment – greenwashing – European Green Deal – New Consumer Agenda.*

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## 1. Introduction

Climate change and environmental degradation have been recognised by the European Union (“EU”) as an existential threat not only to Europe but the whole world, marking the fight for environmental protection as the biggest, and most crucial, challenge of our generation.<sup>1</sup> In the words of Virginijus Sinkevičius, Commissioner of Environment, Oceans and Fisheries, “*we only have one Planet Earth, and yet by 2050 we will be consuming as if we had three*”.<sup>2</sup> Adding to this, year after year earth overshoot day, this is, the day when humanity consumes more ecological resources than Earth can regenerate in that year, arrives sooner,<sup>3</sup> with 2021’s earth overshoot day falling on July 29.

It is in this ideological line that the European Commission, under presidency of Ursula von der Leyen, presented on December 2019, the European Green Deal (“EGD”), following the European Council conclusions of June 20, 2019, which called and encouraged for advancement of work that focused on combating climate change. The belief is that the EU has the collective capacity to transform the shape of its society and economy, putting them on a more sustainable path and thus also taking a leading role in the global fight against climate change. However, there are many challenges in EU’s path, some more evident than others. The threat of greenwashing is one of them. We recognise greenwashing as a tool that organisations often use to sell a fictitious idea of sustainability, shadowing purely economic intentions. Lack of EU action might show itself to be an obstacle to the new European objectives.

In this article, we will analyse the problem of greenwashing in the EU and the ways it might be mitigated. For this, we will start by exploring the definition of greenwashing, including the many ways this phenomenon manifests itself on the market. We will contextualise the current European state of affairs, by doing a brief analysis of the EGD, highlighting two particular initiatives: (i) the Farm to Fork Strategy and (ii) the Circular Economy Action Plan. In the last part of our paper, we will look over the legislative and non-legislative instruments that are being put forth by the EU, in conception or already in action, to fight greenwashing.

## 2. The practice of greenwashing

### 2.1. Definition of greenwashing

The term greenwashing was coined by the American biologist and environmentalist Jay Westerveld in 1986. At the time, it was used to refer to the hotel industry practice of promoting the reuse of bath towels for environmental reasons when, in reality, it was an economic strategy to cut down laundry costs.<sup>4</sup> Since then, the use of this term has steadily spread, and is now commonly used to refer to the

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<sup>1</sup> European Commission, “A European Green Deal – Striving to be the first climate neutral continent”, accessed October 10, 2021, [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en).

<sup>2</sup> European Commission, Press Release, “Changing how we produce and consume: New Circular Economy Action Plan shows the way to a climate-neutral, competitive economy of empowered consumers”, March 2020, accessed October 7, 2021, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_420](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_420).

<sup>3</sup> It’s important to note that 2020, due to the Covid-19 pandemic, was an exception to this rule. Information accessed on October 7, 2021, and more information available at <https://www.overshootday.org/about-earth-overshoot-day/>.

<sup>4</sup> Karen Becker-Olsen and Sean Potucek, “Greenwashing”, *Encyclopedia of Corporate Social Responsibility* (Berlin: Springer, 2013), 1318-1320.

practice of an organisation adopting outwardly green acts but acting out of purely economically motivated intentions.<sup>5</sup>

However, there is still no unanimous definition of what greenwashing is, with some authors arguing that it is impossible to create a rigid definition of this concept, due to its multifaceted aspect.<sup>6</sup> Adding to this, greenwashing is an ever-growing phenomenon, encompassing a whole range of marketing messages and tactics.<sup>7</sup> Two important aspects can be highlighted: (i) there is a repression of information related to negative environmental impacts caused by the organization; and (ii) a push on sharing information regarding a positive environmental impact. Thus, we can see that there is a consensus in seeing greenwashing as a phenomenon of selective information disclosure, with the intention of promoting the idea that a certain organisation has environmental concerns that does not completely, or at all, correspond to reality. Greenwashing is an attempt at convincing a potential consumer that the organisation has environmental concerns regarding, for example, the ecological footprint of the product or service they provide.<sup>8</sup>

Although not a new problem, greenwashing is a phenomenon that has grown in recent years due to the demand and pressure created by consumers for greener products, which leads organisations to increase advertising focusing on green claims.<sup>9</sup> The path to sustainability often forces companies to act differently, having to invest in ways to reduce their ecological footprint, which naturally tends to influence the price of their products or services. Studies have shown, however, that consumers are more inclined to purchase a product if it is sustainable. Thus, products or services that incur in greenwashing cause a double problem. Not only do they deceive the consumer, but they also compete unfairly in the market with truly sustainable products. In Portuguese, the term “*ecobranqueamento*” has been adopted when referring to this phenomenon. And the EU defines greenwashing as “*the practice whereby companies claim to be doing more for the Environment than they actually are*”.<sup>10</sup>

## 2.2. Types of greenwashing

It is possible to distinguish different forms of greenwashing, although there also is no harmony on how greenwashing manifests itself concretely. We can start by distinguishing *implicit greenwashing* from *explicit greenwashing*. The former is the type that arises from *association with environmental images*.<sup>11</sup> This happens when a product associates itself with the environment, such as nature, animals, or the color green,<sup>12</sup> uses in its

<sup>5</sup> Erica Orange and Aaron M. Cohen, “From eco-friendly to eco-intelligent”, *The Futurist*, v. 44, ed. 5 (2010): 2.

<sup>6</sup> Sebastião Vieira de Freitas Netto, Marcos Felipe Falcão Sobral, Ana Regina Bezerra Ribeiro and Gleibson Robert da Luz Soares, “Concepts and forms of greenwashing: a systematic review”, *Environmental Science Europe* (2020): 6.

<sup>7</sup> Erica Orange and Aaron M. Cohen, “From eco-friendly to eco-intelligent”, 2.

<sup>8</sup> Erica Orange and Aaron M. Cohen, “From eco-friendly to eco-intelligent”, 2.

<sup>9</sup> Les Carlson, Stephen J. Grove and Norman Kangun, “A content analysis of environmental advertising claims: a matrix method approach”, *Journal of Advertising*, v. 22, no. 3 (1993): 27-29.

<sup>10</sup> European Commission, Press Release “Screening of websites for ‘greenwashing’: half of green claims lack evidence”, January 2021, accessed October 22, 2021, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_269](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_269).

<sup>11</sup> “What Is Greenwashing? – Types & Examples”, accessed October 23, 2021, <https://www.feedough.com/what-is-greenwashing-types-examples>.

<sup>12</sup> “What is Greenwashing? Examples [2020]” accessed October 23, 2021, <https://greenandthistle.com/what-is-greenwashing/>.

marketing images that the consumer associates with the environment, such as nature, animals, or the color green,<sup>13</sup> creating an association in the consumer's mind of the product having positive environmental attributes. As a paradigmatic example, we can think that car ads often use natural landscapes as a backdrop, even though, as a rule, cars highly contribute to environmental degradation. The latter relates to the use of slogans, logos and/or information, which we can link to *misleading information*, *vague information*, *irrelevant information*, and in the most extremes cases, *wrong information*.

Misleading information or vague information happens when a product or service is vague with the information it gives or exaggerates a certain aspect. Usually, it happens when “green” buzzwords such as “ecological”, “natural” or “clean” are used, however it can be more complex when, for example, a product claims that its packaging is made from recycled material, whereas only a small part of the packaging really fits this claim. Another common case is the assertion that a certain plastic is “biodegradable”, the company omitting the fact that for this plastic to effectively degrade certain specific conditions need to be met. As a rule, in landfills, the plastic will only break into smaller pieces.<sup>14</sup> The case of *irrelevant information* refers to situations when unimportant information is given to convey the idea that the organisation has environmental concerns. It happens with spray products that claim to be free of CFCs, when their use is already prohibited by law.<sup>15</sup>

These examples, however, do not exhaust all the manifestations of greenwashing. Greenwashing can also happen when there are hidden trade-offs that are not apparent to the consumer, this is, when environmental issues are emphasised at the expense of another potentially more concerning issue.<sup>16</sup> An organisation also commits in greenwashing when it does not provide proof of its environmental claims or allows a certified third party to confirm them.<sup>17</sup>

### 2.3. Greenwashing in the EU and Portugal

On January 28, 2021, the European Commission and the consumer protection authorities of each Member State released the result of a sweep carried out on websites to identify violations of EU legislation in the markets linked to the issue of greenwashing.<sup>18</sup> They concluded that more than half of the allegations analysed on websites were too vague and general.<sup>19</sup> Of the 344 dubious allegations analysed, more than half did not provide sufficient information to consumers, and in 59% of the cases, easily accessible evidence was not provided. It was also found that 37% of the analysed cases used vague terms such as “conscious”, “sustainable” and “ecological”. 42% of cases even had information that could possibly be considered erroneous,

<sup>13</sup> “What is Greenwashing? How to Spot It and Stop it”, accessed October 23, 2021, <https://medium.com/disruptive-design/what-is-greenwashing-how-to-spot-itand-stop-it-c44f3d130d5>.

<sup>14</sup> “What is Greenwashing? How to Spot It and Stop..”

<sup>15</sup> “Greenwashing”, accessed October 23, 2021, <https://corporatefinanceinstitute.com/resources/knowledge/other/greenwashing/>.

<sup>16</sup> “Greenwashing”.

<sup>17</sup> “The nine types of Greenwashing”, accessed October 23, <https://www.buildinggreen.com/news-article/nine-types-greenwashing>.

<sup>18</sup> European Commission, Press Release “Screening of websites for ‘greenwashing’”.

<sup>19</sup> “‘Greenwashing’ is rampant in online stores, consumer authorities find”, accessed October 23, 2021, <https://www.reuters.com/article/eu-environmentgreenwashing/greenwashing-is-rampant-in-online-stores-consumer-authorities-findidINKBN29X1XA?edition-redirect=uk>.

making the company liable for unfair trade practice accusations.<sup>20</sup> Another issue raised was the fact that fossil fuels companies spend large amounts of money on advertising campaigns related to their reputation, in an attempt to mask their negative environmental impact.<sup>21</sup>

Portugal was included in this screening, with Direção-Geral do Consumidor (“DGS”) having verified more than a dozen allegations in areas such as textiles, energy, automobiles, and domestic equipment. DGS divided the allegations into two types: relating to the specific product or service (58%) and relating to the environmental responsibility of the economic operator (42%). In their analysis, it was found that 75% of the companies used only explicit ecological claims and 25% used a combination of explicit and implicit claims.<sup>22</sup> In Portugal, 75% of the allegations verified were deemed too general or vague and not possible to verify. The companies that committed greenwashing were not disclosed, but the national authorities got in contact with them for them to ratify their behaviour.

### 3. The EU fights against greenwashing

#### 3.1 *The European Green Deal*

##### 3.1.1. *Framework*

As a touching stone for the EGD, we can highlight the goal of transforming the European continent on a climatically neutral space until 2050.<sup>23</sup> This goal should be achieved without harming the economy. Therefore, the EU adopted the goal of creating economic growth decoupled from the exploration of resources.<sup>24</sup> In this manner, the EGD creates a plan based on two pillars: (i) the incentive for an efficient use of resources through the transition to a circular economy and the restoration of biodiversity and reduction of pollution; and (ii) the EU will ensure that no person or region will be left behind, and promises a just and inclusive transition.

It is also important to note that the EGD objectives are not purely centered around sustainability, or with other opportunities to be explored, particularly ones that have potential in creating economic growth, new business models and markets, new jobs, and support technological development. Thus, the EGD is built through different initiatives, all contributing to the same objective(s), creating a holistic approach to them. Some of the initiatives included in the EGD are the European Climate Law, the EU Biodiversity Strategy for 2030, the Farm to Fork Strategy and the Action Plan for a Circular Economy.<sup>25</sup> We will explore these last two initiatives in the next section of the paper. These initiatives do not have a direct aim in the fight against greenwashing. However, they will ensure a very important aspect: that all Europeans have access to truly sustainable food, products, and services.

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<sup>20</sup> European Commission, Press Release “Screening of websites for ‘greenwashing’”.

<sup>21</sup> “‘Greenwashing’ is rampant in online stores, consumer authorities find”.

<sup>22</sup> Portuguese Republic, Press Release “Ecobranqueamento: 75% das alegações ecológicas em páginas web são vagas e gerais”, February 2021, accessed October 22, 2021, <https://www.portugal.gov.pt/pt/gc22/comunicacao/comunicado?i=ecobranqueamento-75-das-alegacoes-ecologicas-em-paginas-web-sao-vagas-e-gerais>.

<sup>23</sup> European Council, “European Green Deal”, accessed October 22, 2021, <https://www.consilium.europa.eu/en/policies/green-deal/>.

<sup>24</sup> European Council, “Climate change: what the EU is doing”, accessed October 22, 2021, <https://www.consilium.europa.eu/en/policies/climate-change/>.

<sup>25</sup> European Council, “European Green Deal”.

### 3.1.2. *The Farm to Fork Strategy*

Presented by the Commission in May 2020, the Farm to Fork Strategy is one of the many measures the EU pursue to achieve climate neutrality by 2050. This strategy aims to transition the current EU food system to a more sustainable model, covering the food chain from food production to its consumption, thus involving both producers and consumers and taking in account the food system in its entirety. It is an ambitious goal, which seeks to redesign the food system, which is responsible for a third of the carbon dioxide emissions worldwide, in addition to causing other negative environmental consequences such as loss of biodiversity.<sup>26</sup>

However, the EU still plans on tackling other concerns with this strategy, namely related to health issues that arise from an unhealthy diet, resulting in more than 50% of adults in Europe having overweight problems,<sup>27</sup> and economic problems, particularly linked to unfair remuneration given to primary producers.<sup>28</sup> In a broad sense, the main objective is to guarantee sufficient, nutritious, and affordable food, produced within the sustainable limits of the planet. Therefore, the EU hopes to continue to produce high quality food, but now with a minimal impact on nature.

In summary, within this strategy, we find the objectives to be related to food production concerns, this is, ensuring that the production is sustainable (for example, by incentivising organic farming and a prudent and responsible use of pesticides, antimicrobial agents, and fertilisers), as well as objectives linked to consumption issues, namely with promotion of healthier eating habits to European citizens.<sup>29</sup> At the same time, targets such as reducing food loss and waste and promoting animal welfare are also foreseen in this strategy. Member States also agree to guarantee firm support and a fair income for primary producers, and Council ministers also emphasise the creation of conditions that allow the EU to still be competitive in the global agri-food market.<sup>30</sup> This strategy also brings new business opportunities for all operators in the food chain, as it aims for innovation in the creation of new technologies and new scientific discoveries.<sup>31</sup>

In the October 2020 Council conclusions, Member States also highlighted an important point, concerning the fact that European food is already a global reference in terms of safety, nutritional value, and quality, demonstrated by the fact that it is exported throughout the world.<sup>32</sup> Thus, by promoting the sustainability aspect of the European food systems, we could see other countries taking on a more ambitious commitment in terms of environmental protection, even if only to maintain their own competitiveness in the market.<sup>33</sup> The commitment to ensure that all Europeans, both living today and future generations, have access to safe, healthy, and nutritious

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<sup>26</sup> European Commission, “Farm to Fork strategy”, accessed October 22, 2021, [https://ec.europa.eu/food/farm2fork\\_en](https://ec.europa.eu/food/farm2fork_en).

<sup>27</sup> European Council, “From farm to fork making Europe’s food healthier and more sustainable”, accessed October 22, 2021, <https://www.consilium.europa.eu/en/policies/from-farm-to-fork/>.

<sup>28</sup> European Commission, “Farm to Fork strategy”.

<sup>29</sup> European Council, “From farm to fork making Europe’s food healthier and more sustainable”.

<sup>30</sup> European Council, Press Release “Council prioritises actions for sustainable food systems: conclusions on the farm to fork strategy”, October 2020, accessed October 22, 2021, <https://www.consilium.europa.eu/en/press/press-releases/2020/10/19/council-prioritises-actions-for-sustainable-food-systems-conclusions-on-the-farm-to-fork-strategy/>.

<sup>31</sup> European Commission, “Farm to Fork strategy”.

<sup>32</sup> European Council, “From farm to fork making Europe’s food healthier and more sustainable”.

<sup>33</sup> European Council, Press Release “Council prioritises actions for sustainable food systems”.

food is also highlighted.<sup>34</sup> In short, the Farm to Fork Strategy aims to create a food system with a neutral, or even positive, environmental impact, helping to mitigate the phenomenon of global warming, adapting to its impacts, and supporting the reversal of the loss of biodiversity. For this reason, it is a strategy aligned with the EU Biodiversity Strategy 2030.<sup>35</sup>

However, it is important to note that both the Farm to Fork Strategy and the Common Agriculture Policy (“CAP”), have been the target of criticism. The current CAP policy revision is accused of not addressing many issues, with several environmentalists claiming that it is a “*failure for citizens, for taxpayers, for the planet, for climate, and even for farmers*”.<sup>36</sup> Since 2018, scientists and civil society have put forth warnings about how the proposed new CAP is not fit for the purpose it’s seeking to achieve, with some arguing that this reshape will be even worse in terms of environmental performance.<sup>37</sup> Some criticism is raised about the fact that the policy does not pursue objectives of biodiversity, water protection and climate mitigation.<sup>38</sup> However, the biggest issue stems from the fact that the current CAP, from being outdated, might undermine the EGD.<sup>39</sup> Even the Commission itself recognises some potential weakness that might interfere with the ambition level of the EGD in the agricultural sector.<sup>40</sup>

The most extreme opinions go as far as calling this new policy “*big, huge greenwashing*”, justified by the fact that there are no real provisions in this reform that mandate Member States to put in place new practices that effectively decrease greenhouse gas emissions.<sup>41</sup> This worries environmentalists since they consider the stakes too high for failure.<sup>42</sup> Some of the criticism is rooted in the fact that each Member State will design its own strategic plan on how it expects to spend the funds provided by the CAP, giving Member States substantial flexibility in setting their own level of environmental ambition.<sup>43</sup>

The EU has addressed these criticisms, being also of the opinion that the CAP text could have gone a bit further, but has mostly put forth the opinion that “*all change is evolution, not revolution*”.<sup>44</sup> Some other voices consider that the EU agreement reaches the perfect balance between the economy and the environment, which is necessary since a stricter policy could be too impactful towards the economy of farmers.<sup>45</sup>

<sup>34</sup> European Council, “From farm to fork making Europe’s food healthier and more sustainable”.

<sup>35</sup> European Council, “From farm to fork making Europe’s food healthier and more sustainable”.

<sup>36</sup> “EU reforms to common agricultural policy branded ‘greenwashing’”, accessed October 22, <https://www.euronews.com/green/2021/06/30/eu-reforms-to-common-agricultural-policy-branded-green-washing>.

<sup>37</sup> “The EU must overhaul its farming policy to save the Green Deal”, accessed October 22, <https://socialeurope.eu/the-eu-must-overhaul-its-farming-policy-to-save-the-green-deal>.

<sup>38</sup> “The EU must overhaul its farming policy to save the Green Deal”.

<sup>39</sup> “Lawyers warn Commission over ‘illegal’ and conscious failure to align CAP reform proposal with Green Deal”, accessed October 22, 2021, <https://www.clientearth.org/latest/press-office/press/lawyers-warn-commission-over-illegal-and-conscious-failure-to-align-cap-reform-proposal-with-green-deal/>.

<sup>40</sup> “The European Commission must not greenwash the Common Agricultural Policy”, accessed October 22, <http://capreform.eu/the-european-commission-must-not-greenwash-the-common-agricultural-policy/>.

<sup>41</sup> “EU reforms to common agricultural policy branded ‘greenwashing’”.

<sup>42</sup> “The EU must overhaul its farming policy to save the Green Deal”.

<sup>43</sup> “The European Commission must not greenwash the Common Agricultural Policy”.

<sup>44</sup> “EU reforms to common agricultural policy branded ‘greenwashing’”.

<sup>45</sup> “EU reforms to common agricultural policy branded ‘greenwashing’”.

### 3.1.3. The Circular Economy Action Plan

The Action Plan for the Circular Economy was adopted by the Commission in March 2020, consisting in one of the main pillars of the EGD, and building on a first experience launched by the Commission in 2015 and completed in 2019.<sup>46</sup> A circular economy in the EU will have the advantage of reducing the pressure that is imposed on natural resources, while at the same time creating sustainable economic growth. It is a transition plan for a “*regenerative growth model*” consisting of several measures linked to the life cycle of products, created both through legislative and non-legislative measures.<sup>47</sup> With half of greenhouse gas emissions resulting from the extraction and transformation of resources, a circular economy is essential for the EU to achieve its goal of climate neutrality by 2050. The hope is to be able to maintain the resources used in the EU economy for as long as possible.<sup>48</sup> Frans Timmermans, Vice President of the Commission, demonstrates the importance of this plan by highlighting that only 12% of materials and secondary resources are reintroduced into the economy.<sup>49</sup>

We can break down the plan into four main objectives, which are hoped to be achieved through different proposed measures. The first is to make sustainable products the norm in the EU. This implies legislation to ensure that the products placed on the EU market are not only designed to last longer, but also that they are more easily repaired and recycled. Products should also contain recycled materials whenever possible, reducing the use of primary raw materials. Restrictions are also foreseen for single use products.<sup>50</sup>

A second objective is centered around consumer empowerment, by ensuring access to reliable information on issues such as product durability and repairability, allowing consumers to have a more sustainable choice.<sup>51</sup> Another objective concerns the sectors that use the most resources, namely the sectors of electronics and ICT, batteries and vehicles, packaging, plastics, textiles, construction and buildings and food. This objective can be considered a kind of central axis to this action plan, with measures adjusted to the needs and problematic issues of each one of these sectors.<sup>52</sup>

Finally, we can talk about the goal of waste reduction. Here, the priority is on preventing the creation of any type of waste, resorting to its transformation into high quality secondary resources.<sup>53</sup> As with the EGD in general, the idea that no one will be left behind is also reinforced here. For the plan, around 35 action points are

<sup>46</sup> European Commission, “Circular economy action plan”, accessed October 22, 2021, [https://ec.europa.eu/environment/strategy/circular-economy-action-plan\\_en](https://ec.europa.eu/environment/strategy/circular-economy-action-plan_en).

<sup>47</sup> European Council, Press Release “Council approves conclusions on making the recovery circular and green”, December 2020, accessed October 22, 2021, <https://www.consilium.europa.eu/en/press/press-releases/2020/12/17/council-approves-conclusions-on-making-the-recovery-circular-and-green/>.

<sup>48</sup> European Commission, “Questions and answers: a new Circular Economy Action Plan for a cleaner and more competitive Europe”, accessed October 22, 2021, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_419](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_419).

<sup>49</sup> European Commission, “Questions and answers: a new Circular Economy Action Plan for a cleaner and more competitive Europe”.

<sup>50</sup> European Commission, “Questions and answers: a new Circular Economy Action Plan for a cleaner and more competitive Europe”.

<sup>51</sup> European Commission, Press Release “Changing how we produce and consume”.

<sup>52</sup> European Council, Press Release “Council approves conclusions on making the recovery circular and green”.

<sup>53</sup> European Commission, “Questions and answers: a new Circular Economy Action Plan for a cleaner and more competitive Europe”.



foreseen, and in the action to implement these, the EU expects to be able to create around 700,000 new jobs by 2030.<sup>54</sup>

### 3.2. *The New Consumer Agenda*

Launched in November 2020 by the European Commission, the new consumer agenda aims to empower European consumers so they can play an active role in the green and digital transition.<sup>55</sup> This new agenda is based on the 2012 Consumer Agenda, but appears more ambitious, serving as a complement to the EGD and the Action Plan for a Circular Economy.<sup>56</sup> The agenda proposes strategic points to be addressed by the EU and its Member States over the next five years. Five priority areas are foreseen: (i) green transition; (ii) digital transformation; (iii) effective enforcement of consumer rights; (iv) specific needs of certain groups of consumers; and (v) international cooperation. The issue of greenwashing will be tackled in the first domain of ecological transition. To this end, the Commission intends to ensure that consumers not only have sustainable products to select, of which the Farm to Fork Strategy and the Action Plan for a Circular Economy will be of great importance, but also that they are able to identify them, thus not falling for the greenwashing traps created by organisations.

We already can identify two legislative initiatives in this regard. One consists of a proposal for the Regulation “*Environmental performance of products & businesses – substantiating claims*” on the environmental performance of products and companies, with an obligation to justify green claims.<sup>57</sup> That is, obliging companies to justify the claims they make regarding the environmental footprint of their products or services, using standardised methods for their calculation. The aim is to make all claims on environmental issues reliable, comparable, and verifiable across the EU, increasing consumer confidence in eco-labels and environmental information. There is yet another legislative initiative for the directive “*Consumer policy – strengthening the role of consumers in the green transition*” which aims to enhance the role of consumers in the green transition.<sup>58</sup> This initiative has three main goals, which meet the aforementioned goals: (i) to ensure that consumers obtain reliable information about the products or services they intend to purchase including, namely, the useful life and repair options of a given product; (ii) prevent too much irrelevant environmental information and ban products that have an excessively short lifespan; and (iii) establish minimum criteria for the use of sustainability logos or labels.

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<sup>54</sup> European Commission, Press Release “Changing how we produce and consume”.

<sup>55</sup> European Commission, Press Release “New Consumer Agenda: European Commission to empower consumers to become the driver of transition”, November 2020, accessed October 22, 2021, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2069](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2069).

<sup>56</sup> European Commission, Press Release “New Consumer Agenda: European Commission to empower consumers to become the driver of transition”.

<sup>57</sup> This initiative was accessed on October 22, 2021 and might be consulted at [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12511-Environmental-performance-of-products-&-businesses-substantiating-claims\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12511-Environmental-performance-of-products-&-businesses-substantiating-claims_en).

<sup>58</sup> This initiative was accessed on October 22, 2021 and might be consulted at [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Consumer-policy-strengthening-the-role-of-consumers-in-the-green-transition\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Consumer-policy-strengthening-the-role-of-consumers-in-the-green-transition_en).

### 3.3. *Unfair Commercial Practices Directive*

The Unfair Commercial Practices Directive<sup>59</sup> (“UCPD”) is a tool that has been available since 2005. It aims to improve consumers’ confidence and help businesses trade across borders, through the regulation of unfair commercial practices that might occur before, during and after any business-to-consumer transaction.<sup>60</sup>

On December 17, 2021, the European Commission put forward a Commission Notice on the interpretation and application of the Directive. It is called the Unfair Commercial Practice Directive Guidance (“UCDP Guidance”), which builds upon and replaces the previous guidance from 2016.<sup>61</sup> It provides additional legal interpretation on certain key topics such as environmental claims and planned obsolescence. It is important to notice that while the UCPD does not provide any specific rules on environmental claims it is still the main instrument of horizontal legislation available in the EU able to hold an organisation accountable for their environmental claims,<sup>62</sup> as “it provides a legal basis that ensures traders do not present environmental claims that are unfair for the consumer”.<sup>63</sup> Since we do not find a specific mandatory rule that enforces the substantiation of environmental claims in the UCPD, national authorities must work on a case-by-case scenario.

The application of the UCPD can be summarised by two main principles resting on Article 6(1)(a) and (b) and 7, about misleading actions and omissions: (i) first, to ensure that consumers are not misled, green claims must be truthful and presented in a specific, accurate and unambiguous manner; and (ii) pursuant to Article 12, if a green claim is challenged, traders must have scientific evidence ready to support their claims and are expected to provide it in an understandable way.<sup>64</sup> Other principles mentioned in the UCPD Guidance find their basis in Annex I of the UCPD, which presents a list of unfair practices that are prohibited in all cases, and are based on the general clause presented by Article 5(2), which functions as an additional “*safety net*” for any unfair practice that does not fall into any other provision predicted in the UCPD by providing an additional possibility to assess unfair commercial practices.<sup>65</sup>

The UCPD Guidance also tackles the issue of planned obsolescence, this is the deliberate production of goods and services with a short “*lifespan*”.<sup>66</sup> This means that the product is purposely created with a limited useful life, becoming obsolete or non-functional after a certain period, therefore stimulating consumers to repeatedly

<sup>59</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market Directive 2005/29/EC.

<sup>60</sup> European Commission, “Unfair commercial practices directive”, accessed on December 27, 2021, [https://ec.europa.eu/info/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive\\_en#documents](https://ec.europa.eu/info/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive_en#documents).

<sup>61</sup> European Commission, “Unfair commercial practices directive”.

<sup>62</sup> European Commission, “First Report on the application of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market”, Brussels, COM(2013) 139 final, 2013, 20-22.

<sup>63</sup> European Commission, Commission Notice, “Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market”, JO C 526/1, December 29, 2021, 89-90.

<sup>64</sup> European Commission, Commission Notice, “Guidance on the interpretation and application of Directive 2005/29/EC”, 93-94.

<sup>65</sup> European Commission, Commission Notice, “Guidance on the interpretation and application of Directive 2005/29/EC”, 93-94.

<sup>66</sup> Jana Valant Members, “Planned obsolescence: Exploring the issue”, *European Parliamentary Research Briefing* (2016): 1.

purchase said goods or services.<sup>67</sup> Like with environmental claims, the UCPD does not have a provision that specifically addresses planned obsolescence, so, in the same way, a case-by-case approach is needed, under the principles of Article 7 and 5(2).

The UCDP action, however, suffers from a big flaw rooted in its nature as a Directive, which might challenge its efficiency, as the transposition and enforcement level of these rules are not the same among Member States, resulting in a limited and fragmented application to greenwashing practices across the EU.<sup>68</sup>

### ***3.4. Single Market for green products initiative***

The EU has detected that a company hoping to market its product as environmentally friendly faces a confusing wide variety of methodologies of calculation of environmental impact that generate confusion both among companies and consumers.<sup>69</sup> About 59% of consumers think product labels do not provide enough information and 48% think that labels are not clear enough,<sup>70</sup> which leads to the statistic of 50% of European consumers claiming to have difficulties in distinguishing environmentally friendly products from non-environmentally friendly ones, creating a general lack of confidence in environmental performance claims.<sup>71</sup>

In response to this problem, and to provide consumers access to non-misleading information regarding the environmental impact of the products they consume, the Commission has studied a reliable methodology for calculating the environmental performance of a product's entire life cycle. The adopted method comes from the European Commission recommendation of April 9, 2013, on the use of common methods to measure and communicate the life cycle environmental performance of products produced by organisations.<sup>72</sup>

This recommendation introduces two types of methods for calculating the environmental impact: (i) the Product Environmental Footprint Method ("PEF"), which is a general method for measuring and communicating the potential environmental impact of a product's life cycle; and (ii) the Organisation's Environmental Footprint Method ("OEF"), a general method for measuring and communicating the potential environmental impact of an organisation's life cycle. The main purpose of using these methods is to promote the consumption of environmentally friendly products. However, there are also secondary objectives linked to allowing consumers to make more informed choices, and with the

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<sup>67</sup> European Commission, Commission Notice, "Guidance on the interpretation and application of Directive 2005/29/EC", 104.

<sup>68</sup> Iakovina Kindylidi and Tiago Sérgio Cabral, "Sustainability of AI: The Case of Provision of Information to Consumers", *Sustainability* (2021): 4-5.

<sup>69</sup> European Commission, "Single Market for Green Products Initiative", accessed December 28, 2021, <https://ec.europa.eu/environment/eussd/smgp/index.htm>.

<sup>70</sup> European Commission, "Single Market for Green Products Initiative".

<sup>71</sup> Millie Elsen, Roxanne van Giesen, Karolien van den Akker and Allison Dunne, "Consumer testing of alternatives for communicating the Environmental Footprint profile of products", European Commission, 2019, 5, accessed December 27, 2021, [https://ec.europa.eu/environment/eussd/smgp/pdf/2019\\_EF\\_commtest\\_report.pdf](https://ec.europa.eu/environment/eussd/smgp/pdf/2019_EF_commtest_report.pdf).

<sup>72</sup> European Commission, "Recommendation of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations", accessed December 27, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H0179&from=EN>.

growing demand for truly sustainable products, encourage the market to offer more ecological options at better prices. Thus, companies that strive to provide these types of products will be rewarded.<sup>73</sup>

PEF, as mentioned, looks at the entire life cycle of a certain product or service, encompassing the entire process and resources involved and their respective environmental impacts. This means that the extraction of raw material, its processing, the use of the final product and the final management of the waste created are all accounted for.<sup>74</sup> The final calculations generate sixteen categories of environmental impact, including, for example, the impact on climate change, use of mineral resources and impacts related to water, air, land use and toxicity.<sup>75</sup> These results are what form the PEF profile of the product. In turn, the OEF is aimed at organisations and seeks to “*optimize processes along the entire supply chain of an organization’s product portfolio*”,<sup>76</sup> creating a reputation system that gives visibility to organisations with good environmental development.

There is a third method that has been studied by the EU, the Product Environmental Footprint Category rules (“PEFCR”), which aim to be a support to PEF. These rules work as instructions for establishing category rules for PEF, describing how to calculate the ecological footprint of a given product. Thus, this initiative will provide the resources necessary for any organisation to be able to create sustainable products and promote them as such. The final aim is for the calculation of a PEF not to be so laborious and costly for a company.<sup>77</sup>

The 2020 Circular Economy Action Plan strengthens the importance of the EU Product and Organization Environmental Footprint methods, as it foresees that the Commission, through the already mentioned proposed initiative for the regulation “*Environmental performance of products & businesses – substantiating claims*”, will require the use of these methods for companies to substantiate their environmental claims.<sup>78</sup> In December of 2021 the Commission also adopted a revised Recommendation of Environmental Footprint methods, updating the previous 2013 Recommendation and incorporating methodological insights obtained with the pilot phase of these methods that lasted from 2013 to 2018.<sup>79</sup>

PEF has, however, been on the receiving end of some criticism, particularly from the textile industry, through the Make the Label Count initiative, which calls out the system for being misleading and outdated,<sup>80</sup> resulting in the concern that this will lead to oversimplified and inaccurate claims on clothing and footwear product

<sup>73</sup> Millie Elsen, Roxanne van Giesen, Karolien van den Akker and Allison Dunne, “Consumer testing of alternatives for communicating the Environmental Footprint profile of products”, 5.

<sup>74</sup> European Commission, “Recommendation of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations”.

<sup>75</sup> European Commission, News Article, “Environmental footprint methods”, accessed on December 28, 2021, [https://ec.europa.eu/environment/news/environmental-footprint-methods-2021-12-16\\_en](https://ec.europa.eu/environment/news/environmental-footprint-methods-2021-12-16_en).

<sup>76</sup> European Commission, “Recommendation of 9 April 2013 on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations”.

<sup>77</sup> “Product environmental footprint category rules (PEFCR)”, accessed October 24, 2021, <https://pre-sustainability.com/solutions/consulting/sustainablesectors/product-environmental-footprint-category-rules/>.

<sup>78</sup> European Commission, “Single Market for Green Products Initiative”.

<sup>79</sup> European Commission, News Article, “Environmental footprint methods”.

<sup>80</sup> Weronika Strzyżyńska, “EU eco-labels for fabrics not strict enough, say campaigners”, *The Guardian*, October 14, 2021, <https://www.theguardian.com/environment/2021/oct/14/eu-eco-labels-for-fabrics-not-strict-enough-say-campaigners>.

labels.<sup>81</sup> The idea shared by campaigners is that the new eco-labels are not strict enough and not in line with EU's current climate ambitions, since some key sustainability considerations, like microplastic pollution, biodegradability and renewability are not accounted for in the PEF.<sup>82</sup> This means that, under this system, fibers like polyester, a petroleum fiber, will be certified as more environmentally friendly than natural fibers.<sup>83</sup> The Commission has addressed some of the criticisms, claiming that the categories according to which PEF will be assessed are yet to be finalised and that the strategy for the textile industry is still a work in progress.<sup>84</sup> It was also noted that a science-based assessment in textile lifecycles will be prioritized.<sup>85</sup>

### 3.5. *The Sustainable Finance Disclosure Regulation*

In June 2020, and after two years of negotiation, the European Parliament finally approved the legal text that will serve to determine which investment measures can be considered sustainable.<sup>86</sup> The goal is to channel a large amount of European money into environmentally friendly investments over the next decade.<sup>87</sup>

The regulation aims to create a harmonious criteria, based on scientific evidence rather than political commitments, and to define which investments can be considered ecological.<sup>88</sup> Transparency will be required from all financial actors, who will have to reveal how sustainable their investments are.<sup>89</sup> These new rules make it more difficult for market participants to affirm the sustainability of their products without proving it since “*any sustainability-related claim by a financial product must be well justified*”.<sup>90</sup>

## 4. Conclusion

Didier Reynders, Commissioner for Justice and Consumers, when announcing the new Consumer Agenda, commented that “*more and more people want to live a green life*”,<sup>91</sup> and according to Virginijus Sinkevičius, “*Europeans are increasingly aware of their own environmental footprint, and many want to make environmentally friendly choices in their daily lives*”.<sup>92</sup> The Europeans consumers' concern and demand for sustainable products is crucial for the EU to achieve its goal of climate neutrality by 2050. But with more than 200

<sup>81</sup> Make the Label Count, “Make the Label Count - Briefing Document”, accessed October 28, 2021, <https://www.makethelabelcount.org/globalassets/make-the-label-count/documents/make-the-label-count-briefing-document.pdf>.

<sup>82</sup> Make the Label Count, “Make the Label Count - Briefing Document”.

<sup>83</sup> Weronika Strzyżyńska, “EU eco-labels for fabrics not strict enough, say campaigners”.

<sup>84</sup> Weronika Strzyżyńska, “EU eco-labels for fabrics not strict enough, say campaigners”.

<sup>85</sup> Weronika Strzyżyńska, “EU eco-labels for fabrics not strict enough, say campaigners”.

<sup>86</sup> “Pietikäinen – Final Approval for Eu Taxonomy Enables Green”, accessed October 24, 2021, <http://www.sirpapietikainen.net/2020/06/pietikainen-final-approval-for-eu-taxonomy-enables-green-recovery/>.

<sup>87</sup> “EU prepares to turn the screw on asset managers over greenwashing”, accessed October 24, 2021, <https://www.euractiv.com/section/energy-environment/news/eu-prepares-to-turn-the-screw-on-asset-managers-over-greenwashing/>.

<sup>88</sup> “Pietikäinen – Final Approval for Eu Taxonomy Enables Green”.

<sup>89</sup> “EU law against greenwashing approved by European Parliament”, accessed October 24, 2021, <https://www.transportenvironment.org/discover/eu-law-against-greenwashing-approved-european-parliament/>.

<sup>90</sup> “EU prepares to turn the screw on asset managers over greenwashing”.

<sup>91</sup> European Commission, Press Release “Screening of websites for ‘greenwashing’”.

<sup>92</sup> European Commission, News Article, “Environmental footprint methods”.

active environmental labels in the EU, and more than 450 worldwide,<sup>93</sup> consumer's confusion and distrust towards green claims seems only natural. Moreover, the Commission is the first to admit that the average consumer is not expected to know the meaning or significance of all public and private codes of conduct, labelling schemes, certificates or logos.<sup>94</sup> According to the Commission, it is up to traders to inform consumers about the relevant characteristics related to the green claim in question; to ensure that consumers have access to additional information in case they seek for it and to be transparent about whether the certification of the claim is done by a third party or not.<sup>95</sup>

As organisations find new strategies to forge an environmentally friendly image, with greenwashing being a multifaceted and ever evolving concept, the instruments and methods aim to fight this phenomenon should show themselves to have adaptability and flexibility in their approach. A fragmented approach, like the UCPD one, might be too fallible since a rigid action is necessary for the EU to achieve its planned ambitious environmental goals. We believe that the means that have been studied by the EU to fight the greenwashing phenomenon seem to be adequate, however it is not yet possible to analyse their effective application and further adaptations may be required in the future.

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<sup>93</sup> See: [https://ec.europa.eu/environment/eussd/smgp/initiative\\_on\\_green\\_claims.htm](https://ec.europa.eu/environment/eussd/smgp/initiative_on_green_claims.htm).

<sup>94</sup> European Commission, Commission Notice, "Guidance on the interpretation and application of Directive 2005/29/EC", 98.

<sup>95</sup> European Commission, Commission Notice, "Guidance on the interpretation and application of Directive 2005/29/EC", 98.