

POSITION PAPER ON THE GREEN CLAIMS DIRECTIVE

Policy recommendations for a robust legal framework to address greenwashing and support sustainable consumption and production.

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1. Why is the legislation important?

The proliferation of greenwashing is hampering the green transition: it hinders consumers' ability to make informed sustainable choices and makes it harder for the companies that strive to reduce their environmental impacts to differentiate themselves from free riders. We need clear EU rules to clear the market of misleading claims, and we need companies to provide the evidence behind their assertions: no data, no claim!

With over half of EU consumers shopping with sustainability in mind¹, green marketing is widespread: 75% of the products on the market in 2014 carried an implicit or explicit environmental claim. However, a study by the European Commission in 2020 found that more than half of green claims on the market provide vague, misleading, or unfounded information².

These results confirm the outcome of the sweep by the Consumer Protection Authorities from 2020 which revealed that 40% of claims were unsubstantiated and over half of claims sampled lacked evidence. In the past years, consumer authorities are increasingly investigating green claims and ruling against misleading advertisement by companies. NGOs are also exposing the systemic problem of greenwashing and successfully challenging misleading claims before courts³.

While Europeans increasingly look for ecolabels when shopping across Europe, ecolabels with varying levels of transparency and credibility have proliferated creating consumer confusion and reducing trust. The Commission study in 2020 revealed that almost half of the 230 ecolabels available in the EU have very weak or no verification procedures. Unfortunately, it is not easy for consumers to navigate the jungle of labels with different degree of robustness and identify the most reliable ones, such as the EU Ecolabel. This situation is detrimental for the market uptake of ecolabels based on higher transparency and more robust governance.

The EEB (European Environmental Bureau) strongly welcomes the Commission's proposal for a Directive on substantiating green claims or Green Claims Directive (GCD). This legislation is highly necessary to crack down on greenwashing and support sustainable consumption and production. It will do so by regulating how companies substantiate and communicate their green claims, and for the first time introducing an obligation to make supporting, independently verified evidence available alongside the green claims.

A common EU framework for green claims and labels will boost the competitiveness of companies making efforts to become more sustainable, provide legal certainty and a level playing field for traders. This is crucial as greenwashing negatively impacts traders communicating on green products based on robust methodologies and ecolabels compared to those that do not. Lack of EU harmonised guidance and requirements on how to substantiate green claims can also prevent companies from communicating their sustainability achievements as they can face serious consequences if their claims are found to be misleading (even if unintentionally).

Robust and harmonised requirements will also benefit companies by reinforcing a level playing field across the EU single market and reducing costs associated to the use of diverging assessment methods across different countries, notably considering the rapid emergence of private labels whose methods differ and are not equally robust.

This legislation is critical to better protect consumers against greenwashing and support more sustainable consumption choices. Evidence shows that the proliferation of labels and claims lead to

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confusion among consumers and increasing lack of trust on the reliability of environmental claims⁴. Consumers cannot tell the difference between sound and misleading claims and cannot discriminate between labels governed by third party certification schemes and those based on “self-certifications”.

To make efficient use of limited resources by market surveillance authorities, it is essential that they can rely on adequate instruments. While the Unfair Commercial Practices Directive (UCPD) offers the authorities a legal framework to investigate green claims, this happens ‘ex-post’ when the harm is done, after a misleading claim has been in the market for years and already negatively impacted purchasing behaviour.

The GCD creates a framework to ensure traders meet minimum requirements for the substantiation of their claims and ensure their reliability through ex-ante verification. It will work hand in hand with the Directive on Empowering the Consumers for the Green Transition (ECGT) revising the UCPD. While the ECGT Directive will rule what companies cannot do (i.e., which claims are considered unfair commercial practices), the GCD will establish how they can operate (i.e., which methodologies companies should use to substantiate and communicate their green credentials).

The Green Claims Directive will complement the Ecodesign for Sustainable Products Regulation (ESPR). While the latter sets obligations for mandatory information, the GCD concerns voluntary claims.

In this paper the EEB highlights key provisions of the GCD proposal which should be preserved during the negotiations and provides recommendations on further improvements necessary to ensure a robust future-proof framework for voluntary environmental claims.

2. Ensure a wide scope applying to all green claims

The EEB strongly supports the proposed regulatory framework aiming at ensuring the reliability of green claims through robust requirements for their substantiation and communication, along with provisions for verification and enforcement. However, several improvements to the scope of application of the GCD are necessary to ensure equal treatment of all green claims.

The EU should guarantee the reliability of all green claims regardless of the sector

The proposal exempts from its scope environmental claims regulated by sectorial regulation. While creating synergies with legislation offering an equivalent level of protection (e.g., EU Ecolabel Regulation or Organic Farming Regulation) and referring to requirements for substantiation of green claims in sectorial legislation is coherent, consumers should have equal protection against greenwashing regardless of the sector.

Beyond requirements for the substantiation of claims, the CGD provides rules for their communication and verification, as well as powers for market surveillance and enforcement. These are important provisions that will not apply if environmental claims regulated in sector-specific legislation are fully excluded without guaranteeing an equivalent level of protection. For instance, claims about recycled, reusable or compostable content of packaging are excluded because the Packaging and Packaging Waste Regulation will set harmonised requirements. However, a full exclusion implies that companies will not need to disclose independently verified evidence for claims on the recycled content of packaging contrary to recycled claims related to other materials. It should be noted that, in the case of the ongoing negotiations of the Packaging and Packaging Waste Regulation nothing is said about verification

requirements for future claims on recycled content – which may or may not be defined in a future implementing act.⁵

The EEB strongly recommends ensuring that while the GCD builds on requirements for substantiation of green claims in sector-specific legislation, all claims remain subject to the provisions for disclosure of supporting evidence, ex-ante verification, market checks and enforcement, unless sectorial obligation offers an equivalent protection. It is essential to avoid any circumvention of the GCD if future sector-specific legislation can opt out from the scope by adding requirements on environmental claims.

Moreover, it should be clarified that only the environmental claims which are specified in sectorial regulation are concerned by a possible exemption, providing they offer an equivalent protection, rather than any claims related to the products targeted by such legislations. For instance, the Packaging and Packaging Waste Regulation only covers claims related to recyclability and recycled content. Other type of claims related to the environmental impacts of packaging should be substantiated according to the GCD.

All sustainability labels should build on robust assessment and governance

The proposal aims to limit the proliferation of labels and ensure their reliability through more specific provisions than those set by UCPD with respect to substantiation, communication, and governance. This is essential as the high number of environmental labels available in the EU, combined with their varied methods, robustness, supervision, and transparency, are an obstacle for companies and consumers.

However, the scope of application only addresses environmental labels, which are defined *as sustainability labels covering only or predominantly environmental aspects of a product, a process, or a trader*. The term “predominantly” is not sufficiently objective and there is a risk that labels with a greater focus on quality or social aspects and a few environmental requirements can circumvent the obligations, but still give communicate on the greenness of products, services, or companies.

The EEB strongly recommends ensuring legal certainty so that the provisions apply consistently to all labels which cover one or more environmental aspects regardless of whether they integrate as well other dimensions such as social or quality aspects.

All green claims regardless of company size should be addressed

Currently microenterprises are excluded even though they represent a significant part of the market. The EEB believes that all claims should respond to an equal level of reliability, as consumers cannot distinguish between the size of companies when shopping and the scope of the Directive only applies to voluntary claims.

However, it is key that the integration of microenterprises does not lead to a weakening of the ambition of the proposal. As done for SMEs, specific provisions should be in place to support microenterprises wishing to make environmental claims. For instance, verification fees could consider the size and turnover of companies to enable easier access for microenterprises as foreseen in the EU Ecolabel Regulation.

In case legislators may decide to retain the exclusion of microenterprises from the scope of the GCD, it should be ensured that they are responsible for substantiating their claims in a truthful way (as required by the UCPD). Microenterprises should still comply with the GCD provisions on market checks, monitoring, and enforcement.

Overall the EEB suggests that the Green Claims Directive addresses the following considerations:

- Verification should not be disproportionately challenging for small companies, potentially excluding them from the opportunity of marketing green products
- Provisions to support small companies should not facilitate free-riding or misleading claims
- A basic level of compliance / verification should be required by all companies, i.e. exemptions should not cover all provisions in the directive.
- Having a significant threshold between no-responsibility to full responsibility could encourage free-riding by companies at this limit / size

3. EU harmonised and reliable requirements for the substantiation of green claims

The UCPD requires that all claims are substantiated based on truthful assessments, but it does not set specific requirements due to its horizontal nature. Therefore, the GCD provides a framework of requirements for the substantiation of environmental claims which can increase legal certainty for companies and facilitate enforcement by authorities.

Unfortunately, the requirements proposed by the Directive are too generic and might not avoid risks of greenwashing. While it also foresees a mandate for developing more detailed rules for green claims in the future, there are no specific timelines. Moreover, the EEB is concerned by the possibility that important claims and requirements would only be addressed when revising the Directive in the future (article 21.3). The EEB puts forward the following recommendations to fix these shortcomings.

Work plan for establishing EU rules for the substantiation of green claims

The Product Environmental Footprint method⁶ can be a good basis for establishing common rules for the environmental footprint assessment of products. It should be used as soon as possible for those sectors for which the method is suitable. The proposal acknowledges the shortcomings of PEF (Product Environmental Footprint) for certain aspects in specific sectors (e.g., food and textiles) and the need to further improve it. It also rightly highlights the need to consider the specificities of the sectors and products that require a specific methodological approach when developing future requirements for the substantiation of claims.

The GCD does not oblige the use of a specific common method and only provides general requirements for the substantiation of claims. These are rather general and open for interpretation. For instance, how should companies decide which methods are robust and science-based? How should they ensure that all significant environmental aspects are considered when assessing environmental performance? How can it be guaranteed that manufacturers make sufficient effort to use primary information to reflect real impacts - instead of relying on average data which does not sufficiently differentiate products' sustainability?

In the absence of detailed requirements for specific claims or sectors, companies will continue to lack harmonised guidance for the selection of reliable methodologies addressing all relevant impacts for

each sector. They might be confronted with diverging approaches, and potentially opt for the least ambitious one.

As a response to the above challenges, the GCD gives the mandate to the Commission for adopting more detailed requirements in future technical legislation (Delegated Acts). Unfortunately, it falls short of setting a clear working plan or roadmap for developing specific rules for commonly used claims and priority sectors. Instead, it delays any decision to future monitoring of green claims present in the market and the assessment of the Directive's implementation.

(The EEB calls on the EU Institutions to ensure that the legislation is supported by a working plan with binding timelines for establishing EU harmonized rules for claims used in priority sectors (e.g., textiles, electronics, detergents, and cosmetics) or transversally (e.g., recyclability, recycled content, use of natural content, biodegradability, and biodiversity).

This priority list can be established in synergy with the Ecodesign for Sustainable Product Regulation and any other relevant legislation (e.g., food). When the Joint Research Centre conducts market analysis to support Ecodesign measures, labels and best practices in the sector can be assessed. The development of requirements for voluntary environmental claims could be done in parallel to the adoption of mandatory performance and information requirements. The EEB has a strong belief that product policy tools (e.g., voluntary information schemes to regulatory requirements and incentives) can be most effective when they are developed synergistically rather than in silos.

In addition, the Commission, with support by the European Environmental Agency, should ensure an independent oversight of environmental claims and related assessment methods used in different sectors, to ensure that they are reliable. Making the EU registry of certificates of conformity publicly accessible through optimized search functions (e.g., type of claim, assessment method, sector...) can enable research on green claims and related substantiating methods and support EU efforts to guarantee that green claims are clear, reliable, and comparable.

Robust requirements to ensure trustworthiness and comparability of environmental claims

As the EU develops mandatory legislation to ensure that sustainable products become the norm across different sectors, it is essential that legislation on voluntary claims sets requirements that truthfully differentiate the most sustainable products and traders. The following improvements should be further integrated with respect to the general requirements set in article 3:

- **Green claims should show the real performance of products, services, and companies, instead of relying on offsetting.** The proposal highlights that an environmental claim should reflect the real environmental performance of the specific product or trader to be considered robust (recital 20) and further raises the problems of carbon neutral claims based on offsetting (recital 21). On the other hand, article 3.1.h surprisingly allows companies to make climate neutral claims based on offsetting, provided that they report as additional environmental information the offsets and whether they relate to emission reductions or removals. It also requires that offsets be of high integrity and accounted for correctly.

Allowing carbon neutral claims based on offsets is unacceptable, as carbon neutrality can only be achieved on a global or system level and not the level of products or companies⁷. It cannot

be scientifically proven that one carbon credit reliably neutralises or counterbalances one ton of CO₂ emitted.

Moreover, consumers do not understand what these claims are based on and the scientific flaws behind them. Instead, they are misled to believe that their purchases are climate-friendly and that consumption patterns do not need to change⁸. These claims also discourage companies from making the necessary changes at source to actively contribute to societal decarbonisation.

In February 2023, a Swedish Court issued its judgment prohibiting “net zero carbon” claims made on Arla’s milk based on the application of the UCPD⁹. The Swedish Court found that offsetting claims (neutral, compensated etc.) are unlawful, because they cannot guarantee the permanent benefit in comparison to the permanent impact of CO₂ emissions. Also, a Court in Germany recently ruled that TotalEnergies’ “CO₂-compensated” heating oil claim was misleading¹⁰. Neutrality claims have been prohibited by various advertising regulators across the EU¹¹. While these regulatory and judicial decisions are a positive development, they are not enough to genuinely (and uniformly) protect EU consumers from misleading corporate greenwashing practices. Neutrality claims based on offsetting must be prohibited through the UCPD as proposed by the European Parliament¹².

Beyond climate, neutrality claims based on offsetting are proliferating also for other type of environmental aspects and impacts (e.g., nature positive, plastic-neutral...) giving the false impression to consumers that products do not have an impact on the environment. The EEB strongly calls to prevent such claims through clear provisions in the GCD ensuring that claims reflect real environmental impacts and performance of products.

- **Claims on future environmental performance should be supported by detailed and stringent requirements.** Consumers are entitled to know whether companies genuinely are committed to a green transition. Therefore, companies should make publicly available understandable information setting out clear, objective, science-based, and verifiable commitments, and targets. There should be an implementation plan based only on existing economically and technically viable technologies and with budget allocation. Independent experts should monitor progress. Claims related to future environmental performance should only be used at the company level and not on product level, otherwise such claims can mislead consumers. Neutrality claims based on offsetting should be fully banned (see above).
- **Products containing hazardous chemicals should not be marketed as green.** The Chemicals Strategy for Sustainability¹³ has committed the EU to phase out the most harmful chemicals from consumer products. Ecodesign and REACH will in combination ensure that substances of concern which pose health or environmental risks or hamper the circular economy are phased out. While mandatory legislation is adopted to this purpose, the Green Claims Directive should require that hazardous substances are not present in consumer products displaying voluntary environmental claims, unless manufacturers can demonstrate that their use is essential.
- **Avoid trade-offs unless there are demonstrated overall improvements.** Currently the proposal requires that companies identify whether improving environmental aspects, impacts or performance subject to the claim leads to significant harm in relation to environmental impacts on climate change, biodiversity, and other environmental dimensions. However, to ensure coherence with the UCPD companies should further avoid trade-offs. The benefit

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claimed should not result in an undue transfer of impacts- unless the total net environmental benefit has been significantly improved based on assessment methods that are third-party verified¹⁴.

Green Claims Consultation Forum to ensure robust governance

It is essential that the requirements are established and reviewed in an independent and transparent manner with proper inclusion of interested parties. Major stakeholders such as environmental NGOs and consumer organisations should be properly involved in the discussions supporting decision making processes.

The Commission proposes to consult a national expert during the development of EU harmonised requirements and assessment methods for the substantiation of green claims (article 18). However, this excludes the participation of civil society, limiting transparency and consensus on relevant aspects regarding environmental claims.

While not clarified by the proposal, the development of PEF Category Rules, which could be adopted as Delegated Acts in the future, might continue to build on the current governance approach which does not sufficiently involve civil society. For instance, the development of the PEF Category Rules for apparel and footwear relies on a Technical Secretariat consisting notably of large apparel and footwear brands, while the number of non-industry organisations is small, and lack voting rights (contrary to industry)¹⁵. Similarly, the Technical Advisory Board of the Product Environmental Footprint initiative, though having a considerable level of expertise of life cycle assessment methods, it is overrepresented with industrial stakeholders and does not cover relevant aspects around communicating environmental claims (e.g., consumer acceptance).

For these reasons, the EEB strongly recommends setting up a dedicated Consultation Forum on Green Claims, building on the model of the Ecodesign Consultation Forum or the EU Ecolabelling Board. The GCD should take inspiration from the EU Ecolabel Regulation which highlights that for the public acceptance of the EU Ecolabel scheme, it is essential that environmental NGOs and consumer organisations are actively involved in the development of the scheme's criteria, ensuring balanced participation of interested parties.

4. Transparent communication of environmental claims: no data, no claim!

The EEB strongly welcomes the obligation for companies to make publicly available evidence demonstrating the validity of their claim through a QR code, weblink or equivalent. This is highly needed to complement existing legislation to prevent greenwashing, improve transparency and increase consumer trust in environmental claims.

Through the UCPD, traders must only provide evidence substantiating their claims if challenged by a public authority. However, the ex-post assessment approach is inadequate to address the systemic problem of greenwashing. Even though in some cases companies have been sanctioned for greenwashing, it takes time and resources for the authorities to undertake investigations, and meanwhile the harm is done. Misleading claims can remain in the market for many years before being challenged, and it is impossible for public authorities to investigate most claims.

The obligation to make the substantiating evidence available together with the claim increases their reliability and better supports market surveillance by authorities, as well as oversight by independent organisations. However, exempting information which is necessary to substantiate claims but considered a trade secret undermines effective enforcement by market surveillance authorities. The EEB considers that this exemption is unacceptable. Claims which cannot be publicly demonstrated should not be allowed.

5. Cleaning the market from misleading environmental labels and reinforcing the most reliable ones

As consumers take ecolabels into account when shopping¹⁶, companies increasingly make use of them to market products as green. This has led to a proliferation of labels with over [450 labels](#) in use worldwide today. While labels can give the impression to consumers of objective certification of verified environmental performance, almost half of the 230 labels available in the EU are based on companies' self-assessment or have very weak verification procedures in place¹⁷.

The multiplication of unreliable labels not only hampers sustainable consumption, but also undermines efforts of companies making use of trustworthy ecolabels, such as the EU Ecolabel and equivalent labelling schemes, to improve their environmental performance.

The EEB strongly supports the proposal's aim to avoid the proliferation of environmental labels causing market fragmentation and consumer confusion, while ensuring that only trustworthy ecolabels are available across the EU. This is addressed by requiring that ecolabels build on transparent governance and robust methodologies, as well as approving new ecolabels only when these bring additional value to existing ones. It is essential though to clarify and improve some of the provisions of the GCD to make sure that legislation will effectively enhance market use of trustworthy ecolabels over specific claims on single environmental aspects, impacts or performance. The following issues should be further improved:

- **Products certified with a compliant environmental labelling scheme should be able to display claims based on the verification procedures foreseen within the scheme without additional burden.** The legislation should explicitly recognise that if products or services are certified by environmental labelling schemes complying with the GCD, this is a valid proof to display a green claim on individual aspects corresponding to requirements within the ecolabel schemes.

For instance, it is logical to consider that products certified with the EU Ecolabel, or the Nordic Swan do not need to undergo an additional assessment by accredited verifiers to display a claim on general environmental excellence or on specific aspects covered by the scheme (e.g. use of recycled materials). Otherwise, companies would face unnecessary administrative burden and additional costs to get certified by the ecolabel scheme and in addition obtain a certificate of conformity as foreseen by the GCD.

It should be up to the organisations responsible for the environmental labelling schemes to prove compliance with the requirements of the GCD. This might be the intention of the GCD, but it should be made unambiguous in the legal text. The use of valid ecolabel licenses as proof for compliance with the GCD would thus save costs for ecolabelled companies. Otherwise, the environmental labelling schemes would be negatively affected and become less relevant for companies.

- **An EU registry should make publicly available the list of all environmental labelling schemes complying with the Green Claims Directive.** Member States and the Commission should put in place procedures to assess the compliance with legal requirements of both new environmental labelling schemes and the existing ones. While the proposal suggests the creation of an ecolabel registry by the Commission it is not sufficiently clear whether this registry will address all ecolabels or only some of them (e.g., recital 47 refers to new officially recognised ecolabels and new private schemes, while article 8.7 mentions only officially recognised labels). The registry should be publicly accessible to provide legal certainty with regards to the schemes that companies can use to substantiate and communicate their claims.
- **Officially recognised ISO Type I Ecolabels, as well as labelling schemes run by independent civil society organisations, should be better supported by the Green Claims Directive.** The legislative proposal on ECGT amending the UCPD foresees the use of the EU Ecolabel and officially recognised ISO Type I Ecolabels to demonstrate excellent environmental performance of products. Similarly, the GCD should recognise that these ecolabels comply with the provisions for substantiation, communication, and governance.

Official ISO Type I Ecolabels are already subject to control by Member States or independent organisations and are used in green public procurement. They comply with the transparency and credibility requirements proposed in article 8 and their criteria build on a life cycle approach (as required in article 3). There is only a handful of such environmental labelling schemes in the EU. This makes it possible for the Commission and Member States to undertake a “fast-track” assessment and recognition of conformity without putting unnecessary burden on these ecolabels to obtain a certificate of conformity through an accredited verifier.

The Commission proposal highlights that organisations running environmental labelling schemes should not face disproportionate costs for demonstrating compliance with the Green Claims Directive. The EEB believes that it is necessary that all ecolabels are assessed for compliance. However, Member States could put in place organisational and financial support for independent civil society organisations with limited resources, such as environmental NGOs, seeking a certificate of conformity for their ecolabels.

Moreover, the EEB welcomes the prohibition of environmental labels based on ratings and scores of aggregated indicators of environmental impacts, unless they are introduced through EU law. This is particularly needed in the absence of EU harmonised assessment methods for the substantiation of environmental claims. There is a risk of coexistence of graded labels whose methods build on different degrees of robustness, and which might lead to non-comparable or even contradictory results creating confusion among consumers. Still, it is necessary to bring more clarity on the type of labels addressed by this prohibition. For instance, we understand that some labels (e.g., reparability scores) aggregate environmental aspects and not environmental impacts. Additional guidance from the Commission in this respect would be helpful.

6. Supporting effective enforcement through ex-ante verification and monitoring of green claims

The EEB strongly supports the obligation for companies to ensure that accredited independent verifiers assess the adequate substantiation of their claims before they are displayed on the market. This provision is key to prevent greenwashing, as third-party verification is generally linked to higher accuracy of the assessments¹⁸.

The obligation to have all green claims assessed ex-ante by an independent verifier provides a level playing field for all companies. Today companies that go the extra mile to obtain an ecolabel based on third-party verification are penalised compared to those that make green claims based on self-assessment. Particularly, SMEs benefit from certification with schemes such as the EU Ecolabel and the Nordic Swan and therefore suffer from traders making claims without third-party assessment¹⁹.

Traders are increasingly confronted with different methodologies for evaluating and communicating their environmental performance. The choice of unreliable methods has negative consequences for companies when authorities challenge green claims and conclude that they are misleading. Ex-ante verification supported by a certificate of conformity, obtained in one Member State but effective across the EU, will increase legal certainty for companies on their claims.

The harmonised certificate of conformity will reduce costs for companies that can demonstrate legal compliance when marketing their products in the Single Market. Currently companies selling products in different countries might use various assessment methods according to their recognition in different countries. This leads to higher costs which could be reduced if companies can demonstrate their products' greenness based on one harmonised certificate of conformity.

The certificate of conformity will also reduce burden for market surveillance authorities and ensure a more efficient use of public resources. It is a crucial tool allowing authorities to carry out more efficient checks of claims' reliability and reducing costs for assessing potentially misleading claims. It will also support efficient monitoring and assessment of claims present in the EU market and help identifying potential gaps and needs for future legislative improvements.

The EEB strongly recommends considering a standardised format for the certificates of conformity with a digital format and all information necessary. This will support research and the oversight of the type of claims available in the market across sectors and the different methodologies used to substantiate them. The database where certificates are registered should be publicly accessible to enable access by interested research institutions and independent organisations.

The EEB welcomes the mandate provided to the Member States and the European Environment Agency to publish reports on the compliance of claims and labelling schemes. However, to ensure an effective enforcement, enough resources should be allocated to market surveillance authorities. In this respect, introducing some obligations with respect to mandatory checks by the authorities, instead of a general obligation to undertake regular checks, could support allocation of adequate resources to address greenwashing.

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