

Green Claims Directive: Open Consultation

Carbon Market Watch's response to the Green Claims Directive public consultation

Introduction

Carbon Market Watch welcomes the opportunity to provide feedback on the proposed Green Claims Directive (GCD).¹ Misleading and unsubstantiated green claims are widespread and must be addressed. Tackling this ubiquitous problem through the GCD (as a complement to the "Empowering Consumers for the Green Transition" (ECGT) proposal) falls short due to the failure to ban one of the most pervasive and contentious green claims – neutrality claims. In deliberately allowing the continued use of these kinds of claims, the EU will fail to meet the overall objective(s) of this proposed legislation: effectively curb greenwashing and strengthen consumer protection.

Continued allowance of misleading offsetting / neutrality claims is a misfire

The Commission appears to recognise why these kinds of claims are so problematic, but the GCD will do little to curb the burgeoning corporate greenwashing trend.

While we have identified other potentially problematic areas, the main – and fatal – shortcoming of this proposal is that it continues to permit the use of claims that imply that emissions have been "offset", "neutralised", "cancelled out", or otherwise compensated through, for example, the purchase of carbon credits on the voluntary carbon market (VCM). A non-exhaustive list of examples could include "carbon neutral", "climate neutral", "climate positive", "climate negative", "CO₂ compensated" and "net zero". These claims are highly problematic for a number of reasons, including with vast

¹ We have identified several areas that are ripe for improvement, but do not cover everything in this document and provide only "high-level" messaging.

uncertainties surrounding quantification; low carbon credit quality; and consumer misunderstanding, to name a few.

- **Problems with quantification:** there is a great deal of uncertainty around quantification. It cannot be scientifically proven, and therefore it remains uncertain, that one carbon credit can reliably neutralise or counterbalance one tonne of CO₂ emitted. “Tonne-for-tonne” offsetting is, therefore, an illusion. Furthermore, offsetting / neutrality claims are communicated as absolute claims and, as such, a high level of certainty about the accuracy must be present. This is simply not the case.
- **Low Carbon Credit Quality:** The quality of a carbon credit is dependent on certain criteria, such as permanence, additionality, and accurate baseline estimations (to name a few). Credits for “avoided deforestation” mitigation projects, for example, are some of the most widely used on the market, but they lack permanence, among other problems. Trees and other biological carbon sinks are susceptible to natural disasters, such as wildfires, which can quickly decimate an entire forestry-based mitigation project, and release all the stored carbon dioxide back into the atmosphere. This raises strong concerns about the suitability of using these projects to compensate for emissions that will stay in the atmosphere for centuries to millennia.

Mitigation projects must also be “additional”. This occurs if the project would not have happened without the revenue from the sale of carbon credits associated with the project. However, again, there is a high level of uncertainty in determining if this criterion has been met for several reasons, including lack of transparency among various market players. Many projects currently selling credits on the carbon market are unlikely to be additional, for example, large-scale renewable energy projects.

In addition, many projects’ impacts have been grossly overstated, leading to significant overestimation of the issuance of carbon credits.² Using such credits to offset emissions does not lead to appropriate accounting since a tonne of CO₂e will be compensated with credits that represent less than a tonne of CO₂e saved.

² The Guardian (2023): [“Revealed: more than 90% of rainforest carbon offsets by biggest certifier are worthless, analysis shows”](#): “The threat to forests had been overstated by about 400% on average for Verra projects, according to analysis of a 2022 University of Cambridge study.”

- Consumer misunderstanding

These claims also mislead because consumers, by and large, don't sufficiently understand them, as highlighted by consumer surveys that were conducted in various Member States.³ Since there is a high level of misunderstanding surrounding these claims, consumers might lack motivation to change their purchasing behaviour that could include more climate-friendly products or services because they assume what they are currently doing is enough: why purchase locally when there is "carbon neutral" overseas shipping available?; why take a train when your flight is "CO2 compensated"? Since we need consumer purchasing behaviour to massively shift in order to stay Paris aligned, failure to ban climate-related neutrality / offsetting claims could put our ability to maintain a habitable planet in jeopardy. These claims can act as mitigation deterrents to real climate action.

In fact, market players are starting to recognise the misleading nature of offsetting / compensation claims. For example, in the newly released VCMi Claims Code of Practice⁴ which provides companies with a rulebook for making credible climate claims, there is a clear shift away from "offsetting" and other compensation claims towards "contribution" claims, which more accurately reflect what a company is doing when it purchases carbon credits: making a contribution or a donation to a climate mitigation project without claiming that this same financial investment has "neutralised" emissions or "cancelled out" harmful claim impact.

Thus, GCD must expressly prohibit these kinds of claims. A minimum, and still insufficient, approach to regulating these claims if they are not banned, would be to ensure that there are adequate guardrails in place. GCD, as it is currently drafted, does not contain sufficient protections and will result in the continued greenwashing of "dirty" products and companies; potential failure to get consumers to truly change their

³ NRW Verbraucherzentrale (2022): "[Klimaneutrale Produkte: 89 Prozent für klare Regeln und geprüftes Siegel](#)"; Dutch Authority for Consumers and Markets (2022) : "[Consumers find claims regarding carbon offset unclear](#)"; UK ASA (2022): "[Climate Change and Environment - Consumer understanding of environmental claims](#)".

⁴ [VCMi Claims Code of Practice](#) (2023).

purchasing and consumption behaviours; and a lack of clarity for companies on unlawful climate claims.⁵

Efforts to create more stringent regulations around compensation claims are insufficient

Instead of banning neutrality / offsetting claims or even – at the very least – providing appropriate guardrails, the GCD sets forth weak substantiation rules for companies to abide by. For example, Article 3.1(h) requires companies to “separate any greenhouse gas emissions offsets [carbon credit used for offsetting] used from greenhouse gas emissions as additional environmental information, specify whether those offsets relate to emission reductions or removals, and describe how the offsets [carbon credits] relied upon are of high integrity and accounted for correctly to reflect the claimed impact on climate [.]”

This proposed firewall appears to require companies to separate carbon credits they've purchased for offsetting purchases from their GHG emissions (it should say “*emissions reductions*”) and provide this as “*additional environmental information*”. It does not, however, appear to require companies to separate this information in the claims or advertisements themselves. Therefore, a company could make a neutrality claim and then provide “*additional environmental information*” online elaborating on its offsetting practice(s), etc. This is not fundamentally different from current misleading practices, so it falls extremely short of its goal to tackle greenwashing.

In addition, the GCD requires companies to publish information about their carbon credits, but it neglects to even require publication of proof that such credits have been purchased and retired (used) or the age of the credits.

Thus, GCD's attempt to strengthen the rules and / or increase the transparency around these kinds of climate compensation claims, is wholly insufficient and misguided.

⁵ Neglecting to clearly ban these claims increases legal risk for companies who do not know whether their claim will be targeted or not for being unlawful. Various Courts and regulatory authorities in a handful of Member States have recently found neutrality claims to be misleading, e.g. a Swedish court who recently ruled that dairy company Arla Foods must stop making misleading climate-related claims which give the false impression that no harmful climate impacts were associated with its activities or that these impacts had been neutralised or compensated. The Court highlighted the difficulties consumers often face in critically evaluating the plausibility of such claims, and pointed out the lack of permanence in forest-based offsetting projects: Just Food (2023): [“Swedish Court Bans Arla's Net-Zero Advertising Claim”](#).

- **Demand side:** While the VCMi Claims Code of Practice (referenced above), does not recommend the use of carbon credits for the purpose of making offsetting / neutralisation / compensation claims, it does provide adequate guidance that companies can follow. In particular, it lays out clear and appropriate “prerequisites” that companies must meet before making claims about their environmental performance.⁶ More guidance can also be found in the 2023 Corporate Climate Responsibility Monitor, a report that analysed the corporate climate claims / strategies of 24 global companies.⁷
- **Supply side:** To ensure that only high quality carbon credits are used to underpin climate claims, certain criteria must be met, including robust quantification, additionality, permanence, etc. (see above). The Carbon Credit Quality Initiative is a good start and should be consulted.⁸

Future environmental performance claims are insufficiently addressed

Rules related to claims that are based on future environmental performance, e.g. “net zero by 2050” simply do not go far enough. Claims related to future performance must include time-bound commitments to reduce impacts within the value chain, but the wording is still vague. For example, it doesn’t stipulate how far in the future these commitments must be set, or how ambitious they should be.

Lack of definition of “significant” is problematic

Article 3.1(d): “where a claim is made on environmental performance, take into account all environmental aspects or environmental impacts which are significant to assessing the environmental performance [.]”

Under this provision, a company could be permitted to make e.g. a product- or company- level carbon neutrality claim, even if this claim does not adequately take into account its entire emission footprint. Due to the fact that “significant” is not defined in the text, it is difficult to understand what is envisaged in this context.

⁶ VCMi (2023): “[VCMi Claims code of Practice](#)”

⁷ NewClimate Institute and Carbon Market Watch (2023): [Corporate Climate Responsibility Monitor 2023 - Carbon Market Watch](#).

⁸ [The Carbon Credit Quality Initiative - Home](#).

For example, a company could potentially claim that a product is “carbon neutral”, even if this company completely ignores its indirect emissions (scope 3) or if it only purchased and retired (used) slightly more than half - 55%, for example - of its (low-quality) carbon credits as a basis for its claim.

Conclusion

The Commission has recognised that something more needs to be done to effectively curb greenwashing to sufficiently protect consumers and nudge them towards making truly sustainable purchasing and consumption decisions. While the proposed GCD contains several positive elements, it falls well short of accomplishing what it sets out to do, particularly (but not exclusively) because it continues to allow the use of inherently misleading neutralisation claims.

Contact

Lindsay Otis Nilles
Policy Expert, Global Carbon Markets
lindsay.otis@carbonmarketwatch.org