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Greenwashing: Beyond Consumer Protection

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INTRODUCTION

In June 2025, Italy withdrew its support for the EU's Green Claim Directives (GCD) Proposal, halting discussions on the landmark directive aimed at combating greenwashing, the new directive that the European Union had proposed to 'empower[...] consumers for the green transition',[1] pledging to put an end to greenwashing. Greenwashing is the act of providing misleading or false claims about the environmental impacts of the company's actions or products. One example of greenwashing is the Volkswagen "Dieselgate" scandal which surfaced in 2015 after Volkswagen was found to have installed software in millions of cars that manipulated emissions tests.[2]

The GCD should not be confused with the Empowering Consumers for the Green Transition (ECGT) Directive, which has already come into effect in March 2023, introducing regulations on generic and unsubstantiated labels unless they are backed by recognised environmental performance standards.[3] The GCD, published in March 2024, would further these objectives, and most notably, require pre-verification of environmental claims through mandatory disclosure. However, Italy's withdrawal of its support for this directive led the European Commission to consider scrapping the proposal. Italy cites concerns about the impact of the directive on micro-businesses under the directive through administrative burden.

Both the ECGT and the GCD attempt to use the consumer protection approach to regulate greenwashing. However, as Felix Pflücke highlights, there are limitations of this approach in greenwashing, though he acknowledges that consumer law has played the dominant role in ensuring sustainability in European Union Law.[4] First, the consumer protection approach leads to an increase in consumer costs via bureaucratic costs to substantiate their green claims. Consumer cost may also include the cost arising from missed

[1] Directorate-General for Energy, 'New EU rules to empower consumers for the green transition enter into force' (European Commission, 27 March 2024) <https://energy.ec.europa.eu/news/new-eu-rules-empower-consumers-green-transition-enter-force-2024-03-27_en> accessed 16 July 2025.

[2] Russell Hotten , 'Volkswagen: The Scandal Explained' *BBC News* (10 December 2015) <https://www.bbc.com/news/business-34324772> accessed 16 July 2025.

[3] Constantin Eikel, et al, 'Directive to Empower Consumers for the Green Transition ("Empowering Consumers Directive") Has Been Published' (Bird & Bird, 24 February 2024) <https://www.twobirds.com/en/insights/2024/global/directive-to-empower-consumers-for-the-green-transition-has-been-adopted> accessed 14 July 2025.

[4] Pflücke, Felix, 'The Limits of Consumer Law in Pursuing Sustainability', in Julian Nowag ed, *Research Handbook on Sustainability and Competition Law* (Edward Elgar Publishing, 2024), 318.

opportunities for potential innovation. Another limitation of this approach is the information overload for consumers. Font et al 2025 studied hotel sustainability information and found that 48% of customers described the sustainability information as “overload”, 47% found it “not easily interpretable”, and 41% deemed it unnecessary.[5] This shows that the GCD’s robust substantiation requirements might frustrate consumers instead.

This paper argues that policies like the Green Claims Directive Proposal should complement greenwashing regulations such as the ECGT. The main limitation of the ECGT lies in its focus on general consumer protection. Instead, it argues that greenwashing regulations should be seen as a backstop of green nudge. The green nudge lies in designing the market so that it encourages companies to make environmentally friendly decisions. After briefly overviewing anti-greenwashing directives in the EU, I will discuss the limitations of the consumer protection approach to greenwashing. Thereafter, I will explain the green nudge and evaluate greenwashing regulations.

GREEN NUDGE

Greenwashing regulations underpin green nudging. Greenwashing is an act that distorts consumer choice, undermining green nudging. Therefore, although it might sound counterintuitive, it is also necessary to use hard sanctions for these nudges to be effective and ensure that companies are not given the option of lying about sustainable practices.

Nudging, first introduced by Richard Thaler and Cass Sunstein, “is any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives”.[6] Nudging companies through their consumers and profits could be an effective way of not only reducing greenwashing but also encouraging more companies to turn towards green practices. Instead of punishing companies that are environmentally unsustainable, green nudges expect environmentally conscious consumers to encourage companies to go sustainable.

Nudges can sometimes fail. In his paper ‘Nudges That Fail’,[7] Cass Suntain uses the term ‘counternudges’, which are ‘[a] form of compensating behavior on the part of those whose economic interests are at stake, who may be able to move choosers in their preferred direction’.[8] Greenwashing is a type of counter nudge since it is an act of undermining green nudges through manipulating consumers to buy their non-sustainable products by agents whose financial interests are at stake in green nudges. Greenwashing allows those companies to profit from environmentally conscious consumer choice.

I argue that a greenwashing ban should be seen as a backstop of green nudges, using not an economic incentive but a traditional hard sanction. A green nudge leverages third-party consumers to shape companies’ decisions rather than guiding companies directly using traditional sanctions. It aims to protect the environment which cannot advocate for itself, rather than protecting consumers themselves. Due to this

[5] Hotel News Resource, ‘Hotel sustainability claims: a risk of greenwashing and information overload’ (Hotel News, 21 February 2025) <https://www.hotelnewsresource.com/article135311.html> accessed 27 July 2025.

[6] Richard H. Thaler and Cass R. Sunstein, *Nudge* (Penguin Books Ltd 2021) 6.

[7] Cass R. Sunstein, ‘Nudges That Fail’ (2017) 1 Behavioural Public Policy 4.

[8] ibid 6.

complex structure, a robust legal safeguard is needed to ensure that green nudging operates within a framework of accountability. Greenwashing regulation is necessary as a backstop in order to accurately shape consumer choices to pressure companies into sustainable behaviour.

EVALUATING REGULATION OVERREACH AND UNDERREACH

Compared to the consumer protection framework, seeing greenwashing regulations within the green nudge framework offers several advantages. It provides clearer tools to assess regulatory overreach and underreach. This framework also justifies the use of mandatory disclosures, ensuring companies report not only headline sustainability claims but also the underlying metrics and methodologies that support the claims. By emphasizing transparency and accountability, this approach can preempt greenwashing more effectively and reduce reliance on enforcement bodies. It can justify the use of mandatory disclosure, to enforce transparency, which would mandate companies to disclose all sustainability figures.

Consumer protection approach fails to account for regulatory underreach. By ‘regulatory underreach’, I refer to the phenomenon in which companies avoid regulations by making vague environmental claims. Under the consumer protection framework, it is difficult to argue whether vague statements are a breach of consumer rights since they are not blatantly false. In addition, as previously mentioned, recent research shows that consumers already feel overwhelmed by green information. For instance, a company could advertise itself as environmentally friendly since it uses recycled paper to print out documents. From green nudge perspectives, we would instead need to establish a mandatory disclosure system, requiring companies to reveal accurate information on how sustainable their practices are.

Consumer protection approach cannot account for regulatory overreach. By ‘regulatory overreach’ in the greenwashing context, I refer to the chilling effect of greenwashing regulation, by which companies become hesitant in making environmental claims, in fear of being penalised for unintentional errors in making them. Especially, smaller businesses may be unable to provide the evidence to support their green claims since they have the inability to collect it in the first place. This would severely impact the green nudge since green marketing would cease, and companies would have no financial incentive to be sustainable. This would reduce transparency and discourage innovation in sustainability communication. However, since no green claims are made, it is difficult for the consumer protection framework to address greenwashing overreach. Consumer protection laws would struggle to justify regulating silence from these companies, as they are no longer misleading consumers. However, this overreach scenario would undermine the green nudge, which requires transparency to function effectively.

Green nudge requires accurate, sincere, and transparent communication from companies on their sustainability so that it can reshape how environmental legitimacy is constructed. It relies on a certain consumer behavioural pattern: despite the higher cost, many consumers are willing to buy green products as they want the social recognition of being a sustainable person. According to Habermas’s ‘ideal speech situation’, legitimacy arises from open and rational discourse, meaning companies must be transparent and subject to public scrutiny through credible communication channels;

otherwise, they will erode public trust in them.[9] The information must flow through verified, accessible channels that allow for public and peer evaluation such as third-party certifications. This communication system is important for the green nudge to work as it aims to influence agents' behaviour.

CONCLUSION

Despite the progress made by the EU's ECGT and to combat greenwashing, challenges and limitations still stand. Governments should adopt strategies such as requiring companies to report environmental impacts publicly. The mandatory disclosure of that information will make sustainability performance a visible and competitive aspect of business operations. This creates peer pressure and consumer awareness that drives real change in a company rather than performative gestures and greenwashing. While many consumers do not want to be 'overwhelmed' by detailed sustainability information, the disclosed information is essential for a third party or law enforcers to verify the companies' green claims. This post has highlighted the fundamental shortcomings of traditional consumer protection approaches in accounting for those challenges and limitations. It has been argued instead that we should see greenwashing regulation not as a traditional consumer protection but as a backstop of green nudges. Green nudges justify the use of mandatory disclosure to combat greenwashing as it provides a level of transparency that is indispensable in influencing consumer behaviour and rewarding sustainable efforts through consumers' 'buying green'. The shift in perspective from consumer protection to green nudges provides us with a fruitful way to evaluate new greenwashing regulations, conducting subtle balancing while avoiding regulatory overreach and underreach.

[9] David Weinberger, 'Pointing at the Wrong Villain: Cass Sunstein and Echo Chambers' (Los Angeles Review of Books, 20 July 2017) <https://lareviewofbooks.org/article/pointing-at-the-wrong-villain-cass-sunstein-and-echo-chambers/> accessed 10 August 2025.