



# The challenge of greenwashing

ESG voices podcast series

## Host

*Hello and welcome to another episode of ESG voices. This podcast series addresses the opportunities and challenges within ESG through interviews with ESG specialists from KPMG and beyond. Throughout this series, we will discuss a broad range of environmental, social and governance issues aiming to support governments, businesses and communities in creating an equitable and prosperous future.*

*Consumers, investors, regulators and the public in general are increasingly demanding transparency and sustainable practices from companies. This trend is having significant impact on companies around the world. As a result, the global market expects changes in organizations behaviors and messaging around sustainability. 'Sustainable', 'carbon neutral', or 'net zero waste', are green claims that have been added to many products and services around the world.*

*It also serves companies to effectively communicate some of their ESG commitments. However, are their claims really substantiated?*

*In today's episode, we'll hear from Pilar Galán Gavilá Partner, KPMG in Spain, and Global Head of ESG Legal, KPMG Law, Conor Chell Partner, ESG Law, KPMG in Canada, and Lisa Navarro, Partner, Head of Regulatory Law, KPMG in the UK, who will explore the risks, challenges and regional differences in regulations associated with greenwashing.*

*This is a topic with much to discuss, so let's jump right in.*

*Pilar, before we jump into today's episode, could you explain to our audience who may not know what is greenwashing?*

## Pilar

Well, greenwashing is a term commonly used to refer to practices used by some companies to present themselves as more environmentally friendly than how they really are. Imagine, for example, walking through a store where every product boast about being green or being eco friendly. It sounds appealing, but especially for those clients, which are many that are keen to pay a premium for eco friendly products.

But how can we discern between authentic sustainability and mere marketing ploys? Well, it is not easy, and those that are not properly substantiated or that are exact durations mislead consumers and are these practices the ones that we call greenwashing? It is important to highlight that not always greenwashing is deliberate. It can be intentional or unintentional, but even when being non intentional, these behaviors can still mislead consumers.

Some non intentional greenwashing behaviors comes from the desire of companies to be branded as leaders in sustainability, which make them make exaggerations about their achievements, make bad statements, and the fact that these cannot be verified or that are even false claims are what we call greenwashing. And there have been many cases of greenwashing in, different kinds of sectors as varied as oil, fashion, cosmetics, mobile technology, retail, fast food. So we are seeing different, examples with different nuances that are very important to monitor.

## Host

*And Conor, if I can come to you next. What types of environmental claims can give rise to greenwashing risk?*

## Conor

There's certainly a wide variety of environmental claims that could be the subject of greenwashing. I'll run you through a few examples. Certainly not an exhaustive list as the list is incredibly long, but over generalized or vague claims. So Pilar touched on this already. But you know, anytime you attach a sustainability linked adjective to either a product, a service or a business activity that can attract attention from a greenwashing perspective, things like eco-friendly, sustainable or green. You also have unverified or unsubstantiated claims. So an example. There would be saying something like a product is 100 percent recycled, without documentation or sourcing of actual content. Another category might be false or exaggerated claims. So that would be things like advertising a product as plastic free when it actually contains microplastics or claiming significant environmental benefits when the actual impact is quite minimal. And greenwashing can also be as much about what you don't say.

So things like emissions or half truths in the energy industry. As an example, highlighting renewable energy use, without

mentioning continued reliance on fossil fuels or claiming low emissions while excluding, full supply chain emissions. Those would be, examples of potential greenwashing. Use of certifications is also something that that comes up quite often or has come up quite often recently. So things like using a green leaf logo and without having an actual certification. Also misleading or non credible eco labels when in just a word of general advice there, we've been telling our clients you don't want to rely on certifications alone. Not all certifications are created equally, and some certifications used improperly can actually increase your greenwashing risk.

Another category, is irrelevant or outdated claims. So this would include things like promoting a feature that is standard for all products. So for example, saying that a product is CFC free after CFCs had already been banned. That would be an example of greenwashing,. Misleading visuals, as well as one that's often overlooked. But oftentimes you'll see in advertising the use of green packaging or pristine natural environments to imply sustainability that can be construed as greenwashing as well.

And then one that we've seen globally, and particularly here in Canada as well, are claims about net zero offsetting and carbon neutrality that I'd include. That is, as a category in and of itself, as a focal point for many regulators and for many types of legislation that that's incoming relative to greenwashing. Those types of claims create significant uncertainty. And so that's not just a high level in terms of, the types of environmental claims that can give rise to greenwashing at risk.

#### **Host**

*Thanks, Connor. Lisa, how can greenwashing lead to significant reputational risks for companies and governments?*

#### **Lisa**

So I think, as Connor has demonstrated very well, the breadth of environmental claims that can be an issue here is wide, whether that's looking at the claims associated with net zero targets or characteristics of know products or services in the way that companies sell. And the reality is that in, you know, we're in a world where there's an increasing focus from consumers, from investors, from employees on the sustainability credentials that companies put out there.

There's increased reliance on them from a reputational perspective. And equally, there's increased transparency and expectations about the level of information that companies will put into the public domain. Now, all of that has a reputational impact. Ultimately, if companies want to demonstrate themselves as credible, untrustworthy, then you don't want to find yourself in a situation where the validity of those statements is challenged and found to be wanting.

So ultimately, a companies do engage in some form of greenwashing through any of the, you know, various means that kind of mentioned and that is challenged. In this said, we're seeing a rise in the number of cases being blue, whether that's from, you know, NGOs or other

activists, that are making use of the full range of tools that they have available to them, you know, legally and using softer reputational tools to shine a light on that perceived greenwashing. Then ultimately, companies need to know whether or not they can defend themselves in the face of those allegations or actually, if they're going to find themselves being challenged in that public forum.

#### **Host**

*And, Lisa, what are the main risks of being associated with greenwashing?*

#### **Lisa**

Yeah. So obviously we've just touched on the reputational risk, which can clearly have an impact on your interactions with consumers, on the willingness of investors to provide you with the necessary finance. But equally, I think we're seeing a big trend towards both an increase in the powers available across different jurisdictions to regulators to investigate green claims to take enforcement action where the evidence doesn't stack up.

And that comes both in the form of, the legislation. The jurisdictions have in place to directly tackle greenwashing. But equally, the scale of penalties that companies might face now, in some instances, that is very targeted legislations, for example, the Green Claims Directive, that is going to be very specifically focused on this particular issue. But equally, when we look across the range of jurisdictions that we and our colleagues cover, we can see a use of existing laws, and frameworks to tackle that greenwashing behavior.

So ultimately, the range of legal risk could be everything from direct regulatory enforcement action, which could result in fines or requirements to make behavioral change. And we've definitely seen some examples of that in the UK today, where there's been a big push from the regulator to look at behaviors and establish standards that companies should be adhering themselves to.

But equally, I think we will see an increase in the number of fines that companies will face. And on the back of all of that, we've got the threat of litigation that's brought privately, whether that's by NGOs or other environmental activists. And we've definitely seen those kind of cases being brought, you know, across the globe, whether that's challenging corporate statements around meeting climate change targets or equally challenging governments as well. And all of that has, a knock on effect on broader both public sentiment and then enforcement activity.

#### **Host**

*Thanks, Lisa and Pilar, what factors have contributed to the development of greenwashing practices?*

#### **Pilar**

Well, it is difficult to say, but, probably up until 2023, companies faced a rising number of greenwashing accusations, mainly given the rise in awareness of environmental and environmental concerns at global level. There is an increasing the scrutiny of different stakeholders as this asset from authorities, singles employees, but

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also consumers and competitors. However, I think it's important to highlight that, the latest studies on the number of greenwashing cases in 2024 show a slight decline in the number of greenwashing cases.

The reasons for this shifting trend, although are still not clear and are being closely monitored, point out to the fact that this trend may be attributed to an enhancement in corporate practices and higher regulatory scrutiny that has emerged mainly over the past year or the past couple of years. But it could also be linked to a rise in the practice of green hashing, where companies underreport their environmental initiatives to avoid scrutiny.

If these were the case, if it was because of a rise in the practice of green hushing, this trend could be detrimental as greenwashing itself as it would undermine the incentives necessary to drive sustainability initiatives. So that's why I think it's very important to closely monitor what happens in the coming months in order to identify what are the reasons behind this trend.

## Host

*This next question is for all of you. Do different countries or jurisdictions have different greenwashing regulations? Pilar, can I come to you first?*

## Pilar

As noted earlier, that stricter regulations that have played a significant role in their changes, some of the trends in greenwashing. There have been significant developments in the sustainable regulatory agenda, particularly in the European Union. The European Union will have key regulatory initiatives that have focus on service in enhancing transparency and accountability regarding sustainability claims. Examples include the Corporate Sustainability Reporting Directive, what we call CSRD, and the corporate Sustainability Due Diligence Directive, or CSS triple D, but we also have directives that tackle the issue of greenwashing directly.

The examples are mainly the Green Claims Directive, which is still a proposal, and the Directive on Empowering Consumers for the Green transition, which was approved in 2024 and should be transposed on national level by March 2026. Last but not least, it is important to highlight that authorities are focusing on the prevention of greenwashing practices. We are seeing it in sectors such as the airplane industry, but also in the financial sector where the Spanish and European supervisors are considering this topic as one of the main ones in the regulatory agenda.

## Conor

Yeah. Thanks, Pilar. I'll just jump in if that's okay. Canada, has just enacted some anti greenwashing provisions into the Competition Act. But it's actually quite interesting because here in Canada we don't have the equivalent or not quite yet of an overarching climate related financial disclosure requirement that would be comparable to something like CSRD, which makes it interesting because, as I say, the Competition Act was recently amended to include anti greenwashing specific provisions.

So just pretty interesting there in terms of the actual sequence of events, but nonetheless the Competition Act was amended here in June of 2024. And there's two new provisions. The first one relates to environmental product or service claims. And that must be backed up based on an adequate and proper test. The second provision relates to business or business activity claims. So those are the big ostentatious goals, things like net zero carbon neutral claims. And those must be backed up based on an internationally recognized methodology. Now, there's a few interesting points, in terms of those amendments to the Competition Act, the first is the significant penalty potential. So it's up to \$10 million per potential misrepresentation. So that's interesting too, because it doesn't apply on a disclosure by disclosure basis. It applies on a representation by representation basis. And based on some early work we've done with clients, we've seen somewhere in the neighborhood of one potential misrepresentation per page of sustainability disclosure. So obviously you multiply that by, you know, \$10 million per misrepresentation. Obviously the potential for massive, massive penalties. Also, interestingly, there's a private right of action that was introduced whereby any individual consumer can file a complaint with our competition Bureau.

And if the bureau determines that that complaint is in the public interest, i.e., has the potential to impact any sort of consumer or it's behavior, that it will be allowed to proceed through the tribunal process. So obviously, that will have a significant impact on the number of complaints that are filed. And the other interesting point is there's also a reverse onus provision.

So those two provisions that I mentioned earlier in terms of product or service or business activity claims, once those claims are certified by the Bureau, at that point, the onus in terms of proving that the representation is not the misrepresentation shifts to the organization that it's actually making the representation. So in simple terms, it's kind of the opposite of innocent until proven guilty. In many ways it's guilty until proven innocent. So all in all, we expect a significant increase in number of complaints of greenwashing that are going to be filed here in Canada. The number of resultant investigations, as well as the number of fines and penalties. We also expect the quantum of penalty is to increase substantially. And building on some of Pilar's earlier comments, there's also the potential for private litigation, which would also include class action lawsuits.

## Host

*And Lisa, would you add anything?*

## Lisa

I think it's quite interesting to reflect on some of the points that Conor raised there and thinking about the implications for the jurisdictions, because I think this is certainly one of those areas where countries will be looking at both legislative and regulatory enforcement trends in other jurisdictions, and seeing how they can learn from the experience in those countries. And equally, when we look at, you know, our client base, you have a broad

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jurisdictional reach. Then understanding the exposure they have in different countries will necessarily have an impact on, corporate compliance behaviors and interestingly in the UK. We have just had the Digital Markets Competition and Consumer Act come into force more fully this year. And one of the things that that does is to enhance the powers of the Competition and Markets Authority, which is the core regulator in the greenwashing space to find companies for consumer law breaches with penalties now raised to about 10 percent of global turnover. Now, the reason that that's particularly interesting is not only does it mean that the CMA has a stronger stick when it comes to bringing the enforcement action, but actually, in getting to that point, we did miss the opportunity to officially define greenwashing and then introduce a targeted greenwashing offense.

So where the CMA is exercising these powers, it's going to be doing so under the remit of preexisting kind of consumer laws around marketing of products and advertising. At the same time, we do have the Green Claims Code, which has been around for a little while now in UK law, in which we have seen the CMA utilize in enforcement cases over the last year, which actually is very much focused on helping companies drive behavioral change. And as I said, setting some of the standards and expectations around legitimate ways of advertising and marketing products, but also explaining from a regulator's perspective, the kind of evidence that they will expect companies to be able to put forward to substantiate, the claims that they're making.

I think the other thing that I would just call out from the UK perspective is, as I said, this awareness of how other laws on directly about greenwashing can have a read across. So, for example, we have coming into effect from September 2025, the Failure to prevent fraud offense, which will provide another means for authorities to look at statements or conduct by companies that results in statements that constitute greenwashing and have the right level of fraudulent, dishonest conduct associated with it, and provide another way to hold companies to account for those statements. So again, it requires those that are advising companies in what they're doing here. And bearing in mind what Connor said about the number of statements found, even across the sustainability related disclosure, and helping them to understand, you know, which jurisdictions these statements are going to have an impact in, where the regulatory exposure might be, and recognizing that there will be jurisdictional nuances that need to be factored into, the compliance strategies that they put in place.

#### **Host**

*Conor, coming back to you. What can companies do to mitigate the risks of greenwashing?*

#### **Conor**

Yeah, certainly. And that's a very nice segue that Lisa just provided there in terms of the inter international nuance. And I think that applies to, you know, not only kind of your standard sustainability mandatory disclosure

requirements like CSRD, but also greenwashing specific requirements and laws. But, I think I'd be a little bit remiss being on a podcast myself, being a lawyer with two other lawyers, not to start with just following the law. I think that's paramount in this new, heavily regulated environment that we find ourselves in, but complying with laws and regulations that govern environmental claims, I think is paramount, as I say, not only in the jurisdiction in which you operate, but also within other jurisdictions. I mentioned earlier, CSRD, we don't have the equivalent here in Canada, but nonetheless, I think we have somewhere in the neighborhood of 1300 companies that are subject to CSRD. And then there's similar statistics for other sorts of requirements internationally, like the California climate rules and others. We also did a KPMG law global comparative report, and they're somewhere in the neighborhood of 25 to 30 jurisdictions that have specific greenwashing laws on the books. So if your organization does business in any of those jurisdictions, obviously you need to be aware of those jurisdiction specific requirements beyond the law itself. You need to ensure that your claims are specific, accurate and verifiable. Obviously avoiding terms like eco friendly or green unless, they can be substantial, created using recognized standards and certifications. As I mentioned earlier, there is some risk there. But, if you're going to get those certifications, you want to rely and obtain those that come from reputable organizations, and you also want to be transparent about your data and methodologies.

You may have noticed there's kind of a key trend or theme through our discussion here today that has to do with evidence based claims and substantiation and obviously the bedrock or the foundation of that, is data and methodologies. You also want to avoid, exaggeration or omissions, as I say, avoid over claiming benefits or cherry picking data to appear more sustainable than an organization is.

And then last but not least, and I'll end where I started. Obviously you want to seek legal advice, given that we're now into a heavily regulated environment that had been historically voluntary across the globe.

#### **Host**

*Before we wrap up today's episode, I'd like to see if there's any final thoughts or advice you'd like to leave our listeners with. Pilar, can I come to you first, Followed by Connor and then Lisa?*

#### **Pilar**

Well, I would say that it is crucial for companies to understand their legal obligations, as Connor said, to seek for legal advice regarding sustainability and transparency in their claims about environmentally the environmental impact in in order to prevent greenwashing. By doing that and monitoring the trends, they will be able to anticipate, which is crucial in order to develop strategies that align with ethical practices and legal standards. So I think that this proactive approach will help them to mitigate the risk of litigation and reputational damage.

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## Connor

Just a few additional comments. Obviously I agree with everything Pilar said. But just incrementally, you know, again, many jurisdictions have moved rapidly from what I would call a completely unregulated voluntary sustainability disclosure environment to one that's heavily regulated. So even though and despite the fact that many jurisdictions previously had some form of consumer protection law in place, I think the focus and the scrutiny on on greenwashing has increased substantially. And these laws that that we're seeing pop up across the globe are very specific to greenwashing. So as such, organizations need to take these regulations seriously and need to engage with internal and potentially external legal counsel early and often to mitigate that risk. And just touching on a point I made earlier, you also need to consider, any and all forms and varieties of ESG disclosure or sustainability disclosure that your organization is making. So that would include things like environmental, obviously, but things like human rights, climate related financial disclosure, those sorts of things, as well as across the jurisdictions where you operate.

## Lisa

Maybe just to bring those thoughts together. I think it's also important for companies to realize that compliance in this space isn't a one shot game. Compliance needs to be considered across all facets of the business, whether

that's information being included in formal reporting, disclosures through to statements made by the chief exec in a speech to the market, but equally down to the grassroots of a business and the statements that your call center staff are making when dealing with customer complaints. It needs to be a holistic approach to compliance that looks at all of those risks that implements proportionate and sensible procedures to manage them, to understand the the evidence that sits behind the claims that you that you want to make and that recognizes it needs to evolve along with the business and along with the regulatory framework as as Connor rightly calls out. So start on the ESG compliance and greenwashing journey, but recognize it's probably one that you're on for the long haul.

## Host

*Thanks, Lisa. And I'd also like to thank Pilar and Connor for taking the time to join me today. It sounds like greenwashing accusations may have significant reputational risks, and the ever evolving landscape is only adding to the challenges. Thank you so much for covering this topic. For our listeners today. Join us again next time for more insights from ESG leaders and innovators. You can also find the latest KPMG insights covering a range of ESG topics, by visiting [KPMG.com/ESG](https://www.kpmg.com/ESG).*

*Thanks for listening.*

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