



DENTONS

Legal framework applicable to Greenwashing

Country focus: Belgium

Grow | Protect | Operate | Finance

Belgium	
Legal definition of greenwashing	X
Targeted greenwashing legislation	X
Direct regulation of greenwashing (through consumer protection, advertising standards, unfair competition or environmental law frameworks)	✓
Soft law guidance or standards on greenwashing	✓
Applicability of existing national legal frameworks to greenwashing (depending on facts)	✓

Summary of relevant laws and provisions

In Belgium, greenwashing, or the use of misleading or deceptive environmental claims, can be regulated by various legal frameworks, such as consumer protection law, contract law, unfair competition law, and criminal law.

1. Consumer protection law prohibits undertakings (*i.e.*, any natural or legal person pursuing an economic goal on a long-term basis), to use unfair business-to-consumer commercial practices with the aim of protecting consumers, including against practices related to greenwashing.

Guidelines by the Federal Government Service of Economy have been issued, specifically targeting greenwashing practices, and offering do's and don'ts for companies in their advertising / public announcements as regards products and services.

1. Unfair competition law imposes upon undertakings obligations to not (possibly) harm the business interests of one or more other undertakings, by committing any act contrary to fair market practices. This legislation can be utilized to sanction greenwashing practices that may adversely affect business interests by engaging in actions inconsistent with fair market practices.
2. Contract law allows the nullity of a contract based on deceit ("*bedrog*") or mistake ("*dwaling*") if the consent of a party was vitiated by a false or inaccurate representation of the essential characteristics of the good or service, encompassing potential environmental qualities or impact.

4. Criminal law does not expressly refer to greenwashing practices, but it could also be used to punish greenwashing practices utilizing forgery and or/ forged documents. The person found guilty of forgery and/or use of forgeries will be subject to criminal sanctions and will be required to compensate for the damage caused by the offence, whether material or moral.
5. As regards the guidance, fines can be imposed of up to EUR 80,000 (or 4% of annual turnover, whichever is highest).

Summary of guidance and soft law

In addition to the legal frameworks mentioned above, there are also some guidance and soft law instruments that aim to prevent or reduce greenwashing in Belgium. These include:

1. Environmental Advertising Code by the Jury for Ethical Practices, a self-regulatory body aiming to ensure fair, truthful and socially responsible advertising by examining the conformity of the content of advertising messages with the rules of advertising ethics, based on the laws and self-regulatory codes. Other codes from the Jury for Ethical Practices worth mentioning are the Code for Advertising of Motor Vehicles and their Components and Accessories (FEBIAC Code), which contains a section on respect for the environment and was recently amended to include an article forbidding advertisements to contain slogans or absolute expressions that can mislead consumers concerning the environmental effects of the features or specifications of the advertised vehicle; the International Chamber of Commerce Code, Chapter D of which concerns environmental claims in commercial communication; and the New Advertising Code for Foodstuffs.
2. The **Guidelines on Environmental Claims of the FPS Economy**, offering guidance for the identification and detection of greenwashing by providing a definition and examples. Examples include outright lie/false information; information that is not credible; disproportionate promise; vague, imprecise, ambiguous, absolute words or terms; insufficient or missing relevant information; misleading visuals; pseudo label/logo; irrelevant emphasis; or false exclusivity.

Claims & enforcement

Greenwashing claims can be brought by various actors and bodies, depending on the legal framework and the type of remedy sought. These include:

1. For unfair commercial practices towards consumers: the 'interested' parties; the Minister responsible for the matter concerned or the Director General of the Directorate General for Economic Inspection of the FPS Economy; a professional authority, a professional or inter-professional grouping with civil status; and an association whose purpose is to defend the interests of consumers and which has a legal personality.
2. For unfair market practices between undertakings: the interested parties; 2° the Ministers responsible for the Economy and the Self-Employed, jointly, if the application concerns a deceitful or aggressive act; a professional authority, a professional or inter-professional grouping with civil personality. The associations and groupings may take legal action to defend their statutorily defined collective interests.
3. For deceit: the claimant who possesses legal standing and interest to bring, *i.e.* the interest must be born and present.
4. For forgery and use of forged documents: the person injured by the offence and, where applicable, his or her heirs, creditors or those subrogated to the rights of the injured person.

Sanctions & remedies

The sanctions and remedies for greenwashing vary according to the legal framework and the nature and gravity of the infringement. They can include:

1. Imprisonment, contingent upon the offense committed and the presence of aggravating factors, determining the duration of the sentence.
2. Fines, determined based on the facts, influencing the prescribed amount of the penalty.
3. A proposal may be made (in the event of an established offence) to the alleged offender to pay a sum, the voluntary payment of which extinguishes the public prosecution. The sum may not exceed the maximum criminal fine that may be imposed for the offence found, increased by the additional surcharges.
4. Civil damages, which can be awarded to compensate for the harm suffered by the victims of greenwashing, such as the loss of customers, the loss of reputation, or moral prejudice.
5. Injunctions, which can be ordered by the administrative or judicial authorities to stop or prevent the continuation of the greenwashing practice, if necessary, under a penalty.
6. Publication of the decision, which can be ordered by the judicial authorities to inform the public of the greenwashing practice and its sanction, and to restore the truth.

Evidence & substantiation

The evidence and substantiation requirements for greenwashing claims depend on the legal framework and the burden of proof. In general, the following principles apply:

1. A person who wishes to assert a claim in court must prove the legal acts or facts on which it is based. All parties must, however, cooperate in providing the evidence. The court may determine, by a specially reasoned judgment, in exceptional circumstances, who bears the burden of proof when the application of the rules would be manifestly unreasonable. The court may only make use of this power if it has ordered all the necessary investigative measures and has ensured that the parties cooperate in the taking of evidence, without however obtaining sufficient evidence.
2. In the case of forgery and use of forged documents, the prosecution (public prosecutor and/or civil party) must bear the burden of proof, and it is up to them to demonstrate the existence of all the constituent elements of the offence (material and moral elements). The enforcement action can only be exercised by the officials (*i.e.*, mainly the public prosecutor) to whom it is entrusted by law.
3. The Economic Inspectorate of the FPS Economy is responsible for ensuring compliance with the legal provisions relating to commercial practices and to apply, where appropriate, the sanctions provided for in the Belgian Code of Economic Law, wielding a broad spectrum of investigative powers in the process.
4. Where there are serious and specific indications that a party or a third party is in possession of a document containing evidence of a relevant fact, the judge may order that this document or a certified copy of it be filed in the case file.

Recent litigation

Belgian courts lack comprehensive case law on greenwashing, as companies are hesitant to pursue legal action against competitors due to the potential for counterclaims involving allegations of unfair advertising. Despite the limited case law, a notable example is:

1. Brussels Court of Appeal, 28 June 2019, Werner & Merz “Froggy” v. Ecover: advertisements are considered misleading if they substantially impact consumer decisions. Despite a soap bottle falsely claiming 50% ocean-recycled plastic, the Court ruled it non-misleading, citing the average consumer's general interpretation of environmental claims, permitting the continued use of the advertisement.

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