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Article

D&O Risks in an Era of Stricter Anti-Greenwashing Regulation

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Why Greenwashing Is Becoming One of the Top Risks for Managers

Sustainability has evolved from a “nice-to-have” into a competitive advantage. Products, supply chains and entire corporate strategies are increasingly positioned around environmental credentials in advertising, investor reports and product packaging. Consumers are paying more attention to sustainability when making purchasing decisions. This creates a growing incentive for companies to present their products in a greener light, even when those claims may not be fully justified.

Against this backdrop, the German Bundestag passed an amendment to the Act Against Unfair Competition (UWG) on 19 December 2025, introducing anti-greenwashing provisions. The Bundesrat approved the legislation in January 2026. These new rules are set to take effect on 27 September 2026 and will establish stricter standards and specific prohibitions designed to combat greenwashing more effectively.

As a result, marketing risk is no longer solely a reputational issue. It is increasingly becoming a governance and liability concern. If sustainability claims are deemed misleading, companies may face cease-and-desist demands, injunctions and potential claims for damages, in some cases without requiring full proof that consumers were misled. This increases the exposure of board members and senior executives who are responsible for, approve or fail to adequately oversee such statements.

What the New UWG Means for Companies

The Act Against Unfair Competition (UWG) governs how companies are permitted to operate in the marketplace. Its purpose is to protect consumers and competitors from misleading, aggressive or unfair business practices. In doing so, it sets clear boundaries for corporate marketing and communications and helps ensure fair and transparent competition. For companies, this means that all commercial activities, including marketing and public communications, are subject to the standards established by the UWG.

The new provisions significantly raise the bar for marketing claims. Terms such as “sustainable”, “climate-neutral” or “environmentally friendly” may only be used if they are directly explained or certified by an independent and recognised label. Carbon offsetting alone will no longer be sufficient to market a product or service as climate-neutral. Claims must be substantiated, supported by evidence and verifiable, particularly when they relate to future environmental or climate objectives.

With the expansion of the UWG to include anti-greenwashing provisions, sustainability claims are becoming increasingly the responsibility of corporate leadership and management. From a D&O perspective, the key point is that not only the claims themselves, but also the processes by which they are created, reviewed and approved are becoming more relevant from a liability standpoint.

New Liability Scenarios

The stricter requirements create new and, in some cases, significantly expanded liability scenarios for executives. These include governance risks, reporting and disclosure risks, as well as marketing and product-related risks.

Governance risks arise particularly where internal controls for sustainability claims are incomplete or where there is insufficient oversight of ESG strategy and communications.

Reporting and disclosure risks stem from incomplete or inconsistent sustainability information. In the context of new European Sustainability Reporting Standards (ESRS), inaccurate statements made to investors, customers, consumers or regulators can quickly lead to allegations of inadequate due diligence.

Marketing and product risks primarily result from advertising claims that are insufficiently specific or from the improper use of labels and certifications. This may not only lead to consequences under competition law but can also result in the direct personal liability of board members and managing directors.

Another critical aspect is the considerable reputational risk involved. Allegations of greenwashing can rapidly escalate on social media, leading to public backlash and consumer boycotts.

Underwriting Strategies for This New Risk Landscape

ESG-related factors are becoming increasingly important in underwriting. More rigorous risk assessments now commonly include reviews of governance structures, clearly defined responsibilities and formal processes for validating environmental and sustainability claims. Regular external ESG audits are also playing an increasingly significant role.

For underwriting strategy, this means stronger risk differentiation based on sector and ESG maturity. Insurers may also consider sub-limits or exclusions for particularly high-risk marketing and sustainability claims. At the same time, demand is increasing for advisory and risk prevention services that help companies manage these emerging exposures.

As a result, dialogue between insurers, brokers and policyholders remains critical. Discussions are increasingly focused on transparent ESG strategies, sustainability reporting, carbon offsetting, future-facing commitments and supply chain management.

How Companies Can Protect Themselves

Companies should establish a robust system for validating sustainability-related product and corporate claims at an early stage. This includes regular internal and external audits as well as close collaboration between marketing, compliance, ESG specialists and senior management.

It is equally important to have a clearly defined crisis response plan for dealing with contentious marketing claims. A D&O insurance solution that goes beyond pure financial loss mitigation and also includes advisory and crisis communication services, such as those offered by Beazley, can provide valuable additional protection.

Anti-Greenwashing: The New Top Risk in Management Liability

The expanded UWG turns greenwashing into a strategic, legal and financial risk. For D&O brokers and underwriters, this creates a new and important area for risk assessment and advisory services.

Companies need to prepare for these new requirements at an early stage in order to build trust and ensure that their sustainability communications remain credible over the long term.

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1. Stärkerer Schutz vor irreführenden „grünen“ Werbeaussagen
2. Angeblich "umweltfreundlich": Bundestag beschließt "Anti-Greenwashing-Gesetz DIE ZEIT
3. Bundestag beschließt "Anti-Greenwashing-Gesetz
4. Utopia; 320°; Tageblatt)
5. hib-Meldung; BT-Drucksache 21/1855 (PDF