

LEGAL CONSTRAINT: AN EFFECTIVE LEVER TO COMBAT GREENWASHING?

March
2026

Dhafer SAÏDANE & Sana BEN ABDALLAH

In a world marked by deregulation and intensifying economic competition, Europe seeks to promote a model combining growth and environmental sustainability. However, this leaves companies facing a delicate balancing act: to survive in the marketplace, they must remain competitive while meeting the environmental objectives imposed upon them. In this context, some less scrupulous organisations choose expediency. Rather than adopt practices aligned with environmental objectives, they engage in “greenwashing”. This practice involves exaggerating environmental compliance efforts that do not in any way reflect a company’s actual performance in this area. To curb this fraudulent practice, our study “On the edge of green: how environmental performance benchmarks drive corporate greenwashing behavior?”¹ shows that an approach based on legal constraints is effective.

WHAT DRIVES COMPANIES TO ENGAGE IN GREENWASHING?

Despite the growing prominence of environmental, social and governance (ESG) policies, many companies continue to engage in greenwashing, making exaggerated environmental claims that are disconnected from their actual performance. The study, based on an analysis of **6,944 companies across 15 countries between 2009 and 2023**, proposes an innovative approach: to understand greenwashing not only in terms of firms’ absolute performance, but above all in relation to environmental benchmarks, drawing on Daniel Kahneman and Amos Tversky’s **prospect theory**², as well

¹ SU (Y.), BEN ABDALLAH (S.) & SAÏDANE (Dh.), “On the edge of green: how environmental performance benchmarks drive corporate greenwashing behavior?”, *Journal of Business Research*, Vol. 206, 2026, <https://doi.org/10.1016/j.jbusres.2025.115919>.

² KAHNEMAN (D.) & TVERSKY (A.), “Prospect theory: An analysis of decision under risk”, *Econometrica*, 47(2), 1979, pp. 263-292.

as the **behavioural theory of the firm** developed by Richard Cyert and James March³. It shows that companies assess their environmental performance in relation to historical or sectoral **reference points**, and that their propensity to engage in greenwashing varies depending on whether they are in a **position of gains** (above the benchmark) or **losses** (below it).

In a society where consumers are attentive to corporate values and projected image, **companies with poor environmental performance are more likely to engage in greenwashing** in order to avoid consumer boycotts. Environmental, social and governance (ESG) information is now an integral part of corporate communication strategies and influences stakeholders' perceptions of a company's legitimacy, responsibility and long-term value. Companies with weak environmental performance often face reputational pressure, which encourages them to resort to greenwashing to cultivate a positive image while avoiding the financial and operational costs associated with genuine environmental reforms. One example is Volkswagen. In 2015, the German car manufacturer's image was tarnished by the "Dieselgate" scandal. The group had rigged emissions tests on 11 million diesel vehicles by installing defeat devices.⁴ In addition to concerns over image, **company size is another factor that leads to greenwashing**. Smaller companies have fewer financial resources and, unlike large corporations, are less exposed to the level of media scrutiny illustrated by the Volkswagen case mentioned above.

A STRINGENT LEGISLATIVE ENVIRONMENT MINIMISES GREENWASHING

There is no magic bullet, and it is often external pressure that drives companies to adopt sustainable behaviour. Under pressure from investors, regulators and civil society, companies communicate more extensively about their ESG performance to enhance their legitimacy. In a stringent regulatory environment, companies are also reluctant to engage in greenwashing for fear of incurring external costs, including legal penalties and reputational damage. In the case of Volkswagen's "Dieselgate", the German courts sentenced four of the car manufacturer's former executives to prison terms of up to four and a half years.⁵ While greenwashing was once

³ CYERT (R. M.) & MARCH (J. G.), *A behavioral theory of the firm*, Englewood Cliffs, NJ, Prentice-Hall, 1963.

⁴ Reuters, "Volkswagen, un mensonge par émission", *France Inter*, 21 Sept. 2015, <https://www.radiofrance.fr/franceinter/volkswagen-un-mensonge-par-emission-3570377>.

⁵ BAER (S.), « Dieselgate : d'anciens dirigeants de Volkswagen condamnés à des peines de prison », *France Inter*, 26 mai 2025, <https://www.radiofrance.fr/franceinter/podcasts/l-info-de-france-inter/l-info-de-france-inter-4045278>.

a low-risk reputation management tool, it can now become a liability, encouraging companies to move towards more substantive environmental practices.

In addition to regulatory constraints, externally verifiable benchmarks are another approach for combating greenwashing. This is because companies that rely on internally defined criteria continue to misrepresent their environmental performance in order to appear virtuous. Establishing externally verifiable performance criteria strengthens credibility, reduces stakeholder scepticism and lessens the temptation for companies to engage in greenwashing. Meeting external performance standards significantly reduces symbolic CSR disclosure, because compliance is more readily verifiable by stakeholders.

WHAT ARE THE KEY TAKEAWAYS FROM THIS STUDY?

The study provides an important new insight: **greenwashing is not merely opportunistic behaviour; it is a phenomenon deeply influenced by decision-making psychology and normative pressure linked to benchmarks.**

A company's position in relation to environmental objectives is key. Companies that fall just short of the benchmark are the most likely to embellish their communications.

Robust regulations and visible external benchmarks are the most effective tools for reducing greenwashing.

Combating greenwashing requires a combined approach: behavioural understanding, institutional reinforcement, and greater transparency around sectoral benchmarks.