



CONSUMER MARKET STUDY ON ENVIRONMENTAL CLAIMS FOR NON-FOOD PRODUCTS

APPENDIX 6 *Enforcement*



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Consumer market study on environmental claims for non-food products

APPENDIX 6

Enforcement

LEGAL NOTICE

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Table of Contents

| | | |
|-------|--|----|
| 1 | Introduction | 5 |
| 2 | Enforcement | 7 |
| 2.1 | Methodology | 7 |
| 2.1.1 | Countries surveyed | 9 |
| 2.1.2 | “Sample sizes” | 10 |
| 2.1.3 | Data collection period | 10 |
| 2.1.4 | Template public enforcement instruments | 10 |
| 2.1.5 | Template self-regulatory enforcement instruments | 12 |
| 2.1.6 | Data validation measures | 14 |
| 2.2 | Country results | 15 |
| 2.3 | EASA | 15 |
| 2.4 | France | 17 |
| 2.4.1 | Overview | 17 |
| 2.4.2 | Public enforcement | 17 |
| 2.4.3 | Self-regulation | 22 |
| 2.4.4 | Summary | 28 |
| 2.5 | Germany | 30 |
| 2.5.1 | Overview | 30 |
| 2.5.2 | Public enforcement | 30 |
| 2.5.3 | Self-regulatory mechanisms | 30 |
| 2.5.4 | Summary | 36 |
| 2.6 | Italy | 37 |
| 2.6.1 | Overview | 37 |
| 2.6.2 | Public enforcement | 37 |
| 2.6.3 | Self-regulatory mechanisms | 43 |
| 2.6.4 | Summary | 48 |
| 2.7 | The Netherlands | 51 |
| 2.7.1 | Overview | 51 |
| 2.7.2 | Public enforcement | 51 |
| 2.7.3 | Self-regulation | 55 |
| 2.7.4 | Summary | 60 |
| 2.8 | Poland | 62 |
| 2.8.1 | Overview | 62 |
| 2.8.2 | Public enforcement | 62 |
| 2.8.3 | Self-regulation | 71 |
| 2.8.4 | Summary | 77 |
| 2.9 | Spain | 79 |
| 2.9.1 | Overview | 79 |
| 2.9.2 | Public enforcement | 79 |
| 2.9.3 | Self-regulation | 92 |

| | | |
|--------|----------------------------------|-----|
| 2.9.4 | Summary | 101 |
| 2.10 | United Kingdom | 104 |
| 2.10.1 | Overview | 104 |
| 2.10.2 | Public enforcement..... | 105 |
| 2.10.3 | Self-regulatory mechanisms | 117 |
| 2.10.4 | Summary..... | 127 |
| 2.11 | Norway..... | 129 |
| 2.11.1 | Overview | 129 |
| 2.11.2 | Public enforcement | 129 |
| 2.11.3 | Self-regulation | 133 |
| 2.11.4 | Summary | 133 |
| 2.12 | United States..... | 135 |
| 2.12.1 | Overview | 135 |
| 2.12.2 | Public enforcement | 135 |
| 2.12.3 | Self-regulation | 141 |
| 2.12.4 | Summary | 146 |

Introduction

One of the key tenets of the European Consumer Agenda¹ is that **consumers** should be **empowered, assisted and encouraged to make sustainable purchasing choices**. This will lead to cost savings for themselves and for society as a whole. For consumers to make sustainable choices, they need to have **clear and reliable information** in order to be able to easily identify the 'right' product or service to purchase. Information of this nature is provided by business by means of a range of environmental/green claims. The expressions '**environmental claims**' or '**green claims**' refer to the practice of suggesting or otherwise creating the impression (in the context of a commercial communication, marketing or advertising) that **a product or a service, is environmentally friendly** (i.e. it has a positive impact on the environment) **or is less damaging to the environment than competing goods or services**. This may be due to, for example, its composition, the way it has been manufactured or produced, the way it can be disposed of and the reduction in energy or pollution which can be expected from its use.²

To unlock the untapped potential for green growth there are some key challenges ahead that need special attention.

- Consumers are confronted with an increasing number of environmental claims³
- While the interest in purchasing green products is high, the Eurobarometer from June 2011⁴ also shows that consumer trust in environmental labelling has decreased.
- Cases of **misleading and unsubstantiated environmental claims** (e.g. 'greenwashing') in certain product markets have been reported by businesses, as well as by consumers and environmental NGOs. These undermine consumers' ability to contribute to green growth by means of their purchasing choices.
- Consumers not always truly understand the green claims they are confronted with⁵

In this context, the Consumers, Health and Food Executive Agency acting on behalf of European Commission (Directorate-General Health and Consumers) commissioned this **Consumer Market Study on environmental claims for non-food products**.

The **objective of the assignment** was to provide information on the current state of play on the presence of green claims in the Single Market for non-food markets, at the level of products (goods and services) and marketing strategies. It investigated the presence of green claims in consumer markets, and the different types of claims made e.g. general claims vs. more specific claims, self-declarations vs. verified claims, claim categories (general, climate, air, water etc.), explicit vs. implicit claims (marketing strategies that give a green impression through the use of colours, pictures, word-usage) etc. The assignment also examined the level of compliance with EU legal and regulatory requirements for a random selection of claims and assessed consumer

¹ European Commission (2012). *A European Consumer Agenda - Boosting confidence and growth*. Retrieved from http://ec.europa.eu/consumers/strategy/docs/consumer_agenda_2012_en.pdf

² The working definition of 'environmental claims' used in this report is taken from the Guidance on the implementation/application of the Unfair Commercial Practices Directive (Commission Staff Working Document SEC (2009) 1666).

³ - OECD (2011). *Environmental Claims - Findings and Conclusions of the OECD Committee on Consumer Policy*.

- DEFRA (2010). *Assessment of Green Claims on Product Packaging*.

- DEFRA (2010). *An assessment of green claims in marketing*.

- BEUC/ANEC position papers X/2011/067 of 14/12/11 and X/022/2011 of 28/02/11.

⁴ European Commission (2011). *Attitudes of European citizens towards the environment*. Retrieved from http://ec.europa.eu/environment/pdf/ebs_365_en.pdf

⁵ DEFRA. *Consumer understanding of green terms*, p. 6.

understanding and behaviour vis-à-vis different types of green claims on the market. Furthermore, an analysis of the effectiveness of the enforcement and self-regulatory instruments available in selected countries was also part of this assignment. Lastly, based on a thorough understanding of the current dynamics of green claims operating in key markets, the assignment provides policy recommendations for possible future EU policy initiatives in this field.

In particular **Appendix 6** provides further information on the enforcement systems in place. It determines for the selected countries the presence and functioning of public and/or self-regulatory enforcement.

Following **information** can be retrieved for the **enforcement systems**:

- The overall methodology
 - Countries surveyed
 - "Sample sizes"
 - Data collection period
 - Template public enforcement
 - Template self-regulatory enforcement
 - Data validation measures
- Country results

The **summary** of the enforcement systems identified and assessed of their functioning can be found in **chapter 6 of the main report**.

1 Enforcement

1.1 Methodology

The public enforcement practices can be very different in the EU member states (e.g. centralised or decentralised, or even fragmented competences); some models of enforcement occur in just one country (e.g. Germany). The final aim of the study was to present recommendations that may enable the levelling of the enforcement practices between the EU member states, based on the analysis of the diverging practices that are currently in place and based on an analysis of best practices, discovered through the examination of documents and discussions with stakeholders. These findings result in recommendations. The role of self-regulation can be important, and the study focussed on the different systems in a 'holistic approach'.

First step: Enforcement: Inventory and comparison

A wide variety of enforcement practices exist in EU Member States. As an initial step, the enforcement mechanisms in the selected countries were inventoried, and later analysed and compared with the enforcement in certain third countries. This inventory was carried out on the basis of desk research by national experts and the stakeholders' consultation.

Following documents were reviewed in this regard:

- National legislation regarding enforcement (consumer law, market practices, procedure law)
- National guidance regarding enforcement
- Guidelines to officers, agencies or prosecution policies, or information on the general policies applied by the surveillance authorities regarding surveillance of the market and sanctioning.
- Legal doctrine/literature

This collection of documents was carried out through desk research (guidance, legal doctrine) and discussions with stakeholders (authorities, consumer organisations, environmental organisations, etc.). The contractor developed a detailed questionnaire that could be used to interview stakeholders or to submit to them, which they filled in and returned.

Step two: Assessment of characteristics per instrument

Each identified instrument of enforcement system was analysed using the analysis template (see further). A generic analysis is sometimes necessary (e.g. enforcement by "the courts"), and the analysis template was therefore used insofar possible.

It is the purpose to find in a later stage differences between different models of enforcement, and to assess whether or not the differences result in more or less effective enforcement models in view of the protection of the consumer. The analysis templates therefore were compared with 'output of action' figures in order to find possible correlations between the output and possible causes thereof.

An overview per country, indicating the main characteristics of 'public' enforcement in the examined countries is provided. Through discussions with stakeholders and the analysis of quantified data (see outputs of action) it is examined whether the enforcement of the legislation concerning green claims is high on the priority list of the countries involved, whether sufficient means are available and whether stakeholders are satisfied or frustrated about certain aspects. The consistency of enforcement, the centralized or dispersed character of the enforcement, was an important topic as well. Perceived strengths, weaknesses and challenges are outlined.

The results are compared between the EU-member states, and between the EU-member states and the USA and Norway. The comparison will indicate the mainstream findings for each issue, as well as exceptional or original findings.

Step three: Analysis of outputs of actions

In order to assess the concrete functioning of these enforcement practices, an analysis of the outputs of the enforcement policies will be carried out. These outputs could take the form of:

- Data on number of agencies/officers involved in the surveillance (whether specifically dedicated or with general competence),
- Data on files regarding 'suspected green claims' treated by administrative authorities or agencies,
- Data on surveillance campaigns undertaken by administrations,
- Data on cases brought before a court, or on decisions or other measures by competent authorities, including interventions through "soft enforcement" tools (such as negotiations with traders); and,
- Data on consumer complaints submitted to enforcement bodies, taking into account the overall number of complaints received by the enforcement body in a given country.
- The differences in terms of appreciation of the misleading character of claims in the various countries.

The analysis of the outputs took into account the following characteristics, where available:

- Overall number of consumer or competitor complaints received by the body in the country;
- Overall number of complaints relating to green claims in the country;
- Number of 'green' complaints before courts versus administrative bodies;
- Number of awarded and rejected complaints;
- Number of appeals against decisions;
- Number of complaints per product category;
- Number of complaints based on labelling, on product information, on advertisements;
- Average duration of proceedings;
- Fines, costs or damage compensation awarded;
- Corrective action to the market required (publication of violation, relabelling).

It should however be noted that not all information was made available to our experts and the provided input can differ per country.

Based on these obtained data, we assessed whether in certain countries, the enforcement of the legislation is more strict than in others, whether there are differences in awareness, whether the results indicate that enforcement of the consumer legislation in the area at issue is a high priority or not. A comparison is also made with data gathered in the field of the SRO's (see here below) in order to compare which kind of organisation seems most active in the field of enforcement.

In addition the relationships between the concerns of stakeholders and the available data could be expressed by means of the general stakeholder consultation.

Step four: Self-regulatory instruments and sectorial codes of conduct

For the assessment of self-regulatory enforcement systems the following self-regulatory codes and schemes containing enforcement in the selected countries were collected and analysed:

- Advertising codes (advertising sector)
- Sectorial codes of conduct (e.g. textiles or car manufacturing)

- Other codes of conduct if these are considered self-regulatory, i.e. if these contain surveillance and/or sanctioning mechanisms.
- This information was collected through:
 - Desk research (advertising world, legal research, national guidances and reports, international overviews of consumer protection); and,
 - Discussions with stakeholders (authorities, stakeholders in the advertising business, the identified self-regulatory organisations (SRO's), consumer organisations, environmental organisations).
-

Step five: Self-regulation: Assessment of characteristics

It is the purpose to find differences between different models of self-regulatory 'enforcement', and to assess whether or not the differences result in more or less effective enforcement models in view of the protection of the consumer.

The approach is further identical to the 2nd step described here above, apart from the usage of a different template to be found further below.

Step five: Analysis of outputs of actions

In order to assess the functioning of these instruments, an analysis of the outputs of actions was carried out. These outputs could take the form of:

- Data on consumer or company complaints to self-regulatory bodies;
- Data on overall number of complaints received by the SRO in a given country, and the follow-up to these consumer complaints, including timeliness, preventive impact, effective sanctions (for comparison);
- The differences in terms of appreciation of the misleading character of claims in the various countries.
- The analysis of the outputs took into account the following characteristics, where available:
 - Overall number of consumer or company complaints received by the organisation;
 - Overall number of complaints relating to green claims received by the organisation
 - Number of awarded and rejected complaints;
 - Number of appeals against decisions;
 - Number of complaints per product category;
 - Number of complaints based on labelling, on product information, on advertisements;
 - Average duration of proceedings;
 - Fines, costs or damage compensation awarded
 - Corrective actions to the market required (publication of violation, relabelling)
 - Effectiveness of sanctions/corrective requirements

These data were collected through desk research, discussions with the EASA, with the relevant SRO's and with the stakeholders (advertising business, consumer organisations, environmental organisations). Where no concrete or transparent data was available a general assessment of the stakeholders was asked.

1.1.1 Countries surveyed

Nine countries were studied, seven of which are EU Member States, as well as two third countries, Norway and the USA. It should however be noted that some differences exist between the countries investigated in terms of public enforcement and self-regulatory enforcement. In Norway, for example, no SROs are in place. It should be noted that, for the self-regulatory instruments, an EU level analysis is also carried out for the EASA, the European Advertising Standards Alliance.

1.1.2 "Sample sizes"

The number of enforcement instruments inventoried and analysed differs upon the availability of such instruments in a country. The examined guidelines are listed and discussed in more detail in chapter 4 of the main report and in Appendix 4.

1.1.3 Data collection period

The first steps in the inventory of the guidelines already started in the proposal phase and the end date of the data collection was 16/12/2013.

1.1.4 Template public enforcement instruments

Following template was applied to analyse the public enforcement instruments.

| Name and category of Authority (general administration, specific agency, prosecution...) | |
|--|--|
| 1. Scope | |
| Products/markets/sectors covered | |
| Surveillance of advertising and/or product information / labelling/ presentation? | |
| 2. Organisation | |
| Based on legal rules and/or guidance? Which rules are applied? Based on detailed rules or general principles? Nature of enforcement proceedings (administrative / based on court actions) | |
| 3. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | |
| Who has the right to complain? (E.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels, etc.). | |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen? | |
| 4. Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer? | |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period? | |
| Are quantifications examined? (e.g. when | |

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| stated that "a product is made of 75% recycled materials") | |
| Are surveillance actions based on certain standards? | |
| 5. Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | |
| A priori clearance or prior opinions possible? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings? | |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | |
| Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors? | |
| Publication of decisions? | |
| 6. Procedure issues | |
| Maximum term to initiate complaints? (e.g. max. 2 years after advertising campaign) | |
| Right to be heard, right to present evidence | |
| Right to appeal? Does it suspend the decision? | |
| How long can procedures take? | |
| Cost of procedure, of experts (would this financial risk prevent complaints?) | |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? | |
| Conclusions based on interviews regarding: <ul style="list-style-type: none"> ▪ Clarity and security of guidance and approach ▪ High priority in the country of the issue of the enforcement of the rules regarding environmental claims? ▪ Efficiency and coherence ▪ Sufficient involvement and protection of all stakeholders ▪ Combination of public enforcement and SRO system ▪ Issues that were indicated as a good practice ▪ Other conclusions or remarks | |

1.1.5 Template self-regulatory enforcement instruments

Following template was applied to analyse the self-regulatory enforcement instruments.

| Name of the organisation | |
|--|--|
| 1. Scope | |
| Which set(s) of rules are applied by the SRO? (code of conduct, guidance, labelling scheme, legal provisions, etc.) Are the rules applied by the SRO referring to other rules? (e.g. ICC rules/UCPD) | |
| Trademark or logo available? Is the use of the logo or referral to the organisation dependent on compliance? Is there a specific logo regarding compliance with the rules on environmental claims? Compliance monitoring for members? Is the SRO sector related? | |
| Is the code of conduct and enforcement thereof applicable on an international, national, regional level? | |
| Focused on certain product categories/services? Focused on advertising, media, product labelling? | |
| Focused on certain concerns? (e.g. sustainability, organic) | |
| Focused on manufacturers, sellers, advertising agencies? | |
| 2. Organisation | |
| Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists?) | |
| Frequent updates of the rules regarding environmental claims? | |
| Application of detailed rules regarding environmental claims or general principles? | |
| How is the scheme or self-regulation system funded? | |
| 3. Active surveillance / complaints | |
| Is active surveillance done by the SRO (independent from complaints)? Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners) | |
| 4. Assessment | |
| How does the SRO make an assessment of the required substantiation of environmental claims? E.g. are the claims verified in labs? Does the assessment panel of the SRO request scientific reports or documentation? Must this | |

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| <p>documentation be submitted immediately? Must supporting documentation (scientific, tests) be retained by the producer during a certain time? Are quantifications examined (e.g. "75% recycled materials must really be 75%")?</p> | |
| <p>How is the assessment panel established when an environmental claim is assessed? Is it considered sufficiently independent and impartial?</p> | |
| <p>5. Measures/sanctions/prevention</p> | |
| <p>Is the sanctioning of environmental claims focused on hard sanctions and/or moral guidance, recommendations? Will public authorities be involved if the SRO's recommendations are not respected by advertisers? Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo... Can sanctions be imposed by law? Focus on prevention, prior opinions or pre-clearance? Focus on 'soft approach' through discussion, negotiation? Are decisions published? If so, is it considered as an effective measure?</p> | |
| <p>6. Procedure issues</p> | |
| <p>Procedure with hearing rights, legal assistance, evidence and counter evidence? Costs? Appeal possible? Does it suspend the decision? Precedence of court cases in case of double approach where the same case would be assessed both under a public enforcement and a self-regulatory system? How long can procedures take?</p> | |
| <p>7. Various</p> | |
| <p>Do assessment cases result in new guidelines regarding environmental claims that are available?</p> | |
| <p>Conclusions based on interviews regarding:</p> <ul style="list-style-type: none"> ▪ Clarity and security of guidance and approach ▪ High priority in the country of the issue of the enforcement of the rules regarding environmental claims? ▪ Efficiency and coherence ▪ Sufficient involvement and protection of all stakeholders ▪ Combination of public enforcement and SRO | |

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| system ▪ Issues that were indicated as a good practice ▪ Other conclusions or remarks | |
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1.1.6 Data validation measures

- A first step in the data collection and analysis was that of ensuring common ground using the above-mentioned template. It should be noted that this template was tested in advance via a pilot study ensuring all questions could be answered and that the research objectives were covered.
- A second step was the inclusion of various sources to identify the different enforcement instruments available in the selected countries, i.e. the application of desk research, complemented by stakeholder consultation and the involvement of legal experts.
- A third step involved the briefing of national experts either in person or by mail with a telephone follow up to explain to them the objectives, steps to be taken and the template in great detail. Where possible, desk research and names of contacts were already presented to them.
- A fourth step involved a regular follow-up of the national experts to receive intermediate results and/or answer questions they had.
- A fifth step in the data validation process consists of a double review. Questions were raised and repeated where the answer seemed uncertain or noteworthy. The completed templates were reviewed several times and, in some cases, national organisations were contacted centrally for more in-depth information.

These data validation measures were taken to ensure there is a common understanding among the people participating, as well as the comparability and validity of the data collected.

1.2 Country results

1.3 EASA

The European Advertising Standards Alliance (**EASA**)⁶ is a non-profit organisation created in 1991 and based in Brussels, that brings together national advertising self-regulatory organisations (SROs) and organisations representing the advertising industry (advertisers, agencies and media) in Europe and beyond.

EASA promotes high ethical standards in commercial communications by means of effective self-regulation, while being mindful of national differences of culture, legal and commercial practice. It issued an Advertising Self-Regulation Charter, expressing the belief that the advertising industry can and must regulate itself responsibly, by actively promoting high ethical standards in all commercial communications and safeguarding the public and consumer interest.

It issued a Best Practice Self-regulatory model, Best Practice recommendations and numerous other documents and studies. It published the EASA Blue Book, the seminal guide on advertising self-regulation, which provides a valuable information source for policy makers, advisers, researchers and academics, on practical and theoretical issues and regulations.

Most European countries have a SRO that is an EASA member, except Denmark, Norway, Iceland, and some Balkan states.

EASA is focused more on the characteristics of the self-regulatory practice (speed of decision making, low cost, impartiality, consumer protection, effective sanctioning etc.) than the content of regulations. It has not issued a true Advertising Code. Instead, the self-regulatory framework is rooted in the work of the International Chamber of Commerce, and the national codes of the member SROs are primarily based on the International Chamber of Commerce's Codes of Marketing and Advertising Practice, including the ICC framework for responsible environmental marketing communications (2011).

EASA's core principles are:

- Comprehensive coverage by self-regulatory systems of all forms of advertising and all practitioners.
- Adequate and sustained funding by the advertising industry proportionate to advertising expenditure in each country.
- Comprehensive and effective codes of advertising practice.
- Based on the globally accepted codes of marketing and advertising practice of the International Chamber of Commerce (ICC).
- Applicable to all forms of advertising.
- Broad consultation with interested parties during code development.
- Due consideration of the involvement of independent, non-governmental lay persons in the complaint adjudication process.
- Efficient and resourced administration of codes and handling of complaints thereon in an independent and impartial manner by a self-regulatory body set up for the purpose.
- Prompt and efficient complaint handling at no cost to the consumer.
- Provision of advice and training to industry practitioners in order to raise standards.
- Effective sanctions and enforcement, including the publication of decisions, combined with efficient compliance work and monitoring of codes.
- Effective awareness of the self-regulatory system by industry and consumers.

The organisation provides a one-stop-shop for copy advice on intended marketing campaigns.

⁶ See <http://www.easa-alliance.org/Home/page.aspx/81>

The issue of environmental claims and sustainability is considered as one of the key issues that should be monitored and clarified by guidance. EASA issued a position paper on sustainability. The website also refers to the UCPD and the Energy Labelling Directive. Furthermore, EASA issued a Best Practice Recommendation on such issues as Claims Substantiation, Copy Advice, Proactive Monitoring, etc.

It has also created a cross-border complaint system.

The EASA website is furthermore a contact point for people who intend to file a complaint and who don't know how to do this with their national SRO (providing a general complaint form), and it provides the contact data of the European SROs.

1.4 France

1.4.1 Overview

In France a mixed enforcement system is in place with a public enforcement procedure lead by the Directorate-General for Competition, Consumer Affairs and Fraud Repression (*Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes*) ('DGCCRF') and a self-regulatory mechanism for the control of advertisement managed by the Authority on Professional Regulation of Advertisement (*Autorité de régulation professionnelle de la publicité*) ('ARPP').

Public enforcement:

- DGCCRF
- Court action (general court proceedings)
- Negotiated Settlements and Ombudsmen

Self-regulatory mechanisms:

- ARPP (which includes the Jury on Advertisement Deontology acting as the assessment panel for complaints).

1.4.2 Public enforcement

DGCCRF

The DGCCRF is the main authority competent for the enforcement of the UCP Directive in France⁷. It may act on the basis of complaints, that are submitted to sub-departments of the DGCCRF, named departmental directorates on the protection of the population (*directions départementales de la protection des populations*) ('DDPP') and the departmental directorates on enterprises, competition, consumers, work and employment (*directions régionales des entreprises, de la concurrence, de la consommation, du travail et de l'emploi*) ('DIRECCTE'). Where a complaint is related to advertising, DGCCRF will sometimes advise a consumer to file a complaint with the French Authority on Professional Regulation of Advertising (*Autorité de régulation professionnelle de la publicité*) ('ARPP') the self-regulatory organisation that is supervising the advertising sector (which we will further review hereafter under section IV), but this is not standard practice.

| | |
|---|--|
| Name and category of Authority (general administration, specific agency, prosecution...) | DGCCRF – is an overarching supervisory authority, part of the Ministry for the Economy, Industry and Employment, competent amongst others for the implementation and enforcement of consumer law such as unfair commercial practices |
| 1. Scope | |
| Products/markets/sectors covered | All commercial practices that include environmental claims without distinction of products, markets, sectors covered. |
| Surveillance of advertising and/or product information / labelling/ presentation? | All |
| Organisation | |
| Based on legal rules and/or guidance? Which rules are applied? Based on detailed rules or general | The enforcement powers of the DGCCRF are embedded in Articles L121-2 and L141-1 of the Consumer Code (<i>Code de la</i> |

⁷ See art. L-121-2 of the Consumer Code (*Code de la Consommation*).

| | |
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| <p>principles? Nature of enforcement proceedings (administrative / based on court actions)</p> | <p><i>Consummation</i>). According to Article L121-3 of the Consumer Code, DGCCRF inspectors are authorised to report through official minutes (<i>procès verbaux</i>) unfair commercial practices in the entire French territory. They can request the allegedly responsible for unfair commercial practices to submit any relevant elements that could justify such practices. They can also request from advertisers or the advertising agency responsible for the advertisement to provide all available diffused commercial advertisements. The second paragraph of this Article requires that the official minutes must be sent to the public prosecutor of the Republic who decides whether or not a criminal action should be initiated. Pursuant to Article L141-1 V of the Consumer Code, the inspectors in charge of reporting infringements to the Consumer Code provisions (e.g. misleading environmental claims) may after a contradictory procedure, request the trader in a reasonable period of time, to comply with the law and to cease any illegal conduct. Under Article L141-1 VI of the Consumer Code the DGCCRF is also entitled, after notifying it to the public prosecutor of the Republic⁸, to bring a case before civil courts to request the judge to order, if necessary under periodic penalty payment, any measures to end infringements of unlawful conducts (e.g. misleading environmental claims). A guide on environmental claims was published in 2012 by the Ministries of Economy and Ecology setting recommendations on environmental claims for both consumers and professionals⁹. For the identification of misleading environmental claims, the DGCCRF is not bound by the guideline's recommendations. However, they consider that infringements on these recommendations lead to a higher presumption of non-conformity¹⁰.</p> |
| Active surveillance / complaints | |
| <p>Surveillance of the market (initiative of authority, thorough /occasional /</p> | <p>According to yearly National Orientation Directives, the DGCCRF conducts</p> |

⁸ The public prosecutor of the Republic is entitled to initiate criminal proceedings

⁹ Ministry of Ecology, Sustainable Development, Transportation and Housing, Ministry of Economy, Finances and Industry (2012). *A Practical Guide to Environmental Claims (Guide pratique des allégations environnementales)*.

¹⁰ Ibid.

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| sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | investigations and inspections on the market both on a regular basis (yearly control plans) and on a thematic basis (on environmental and sustainability claims among other subjects) ¹¹ . The DGCCRF is also the authority in charge with the reception of complaints through the departmental directorates on the protection of the population (<i>directions départementales de la protection des populations</i>) ('DDPP') and the departmental directorates on enterprises, competition, consumers, work and employment (<i>directions régionales des entreprises, de la concurrence, de la consommation, du travail et de l'emploi</i>) ('DIRECCTE'). |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | Everyone |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen? | Yes, everyone, including associations, has the right to complain to the DGCCRF. |
| Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer? Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period? Are quantifications examined? (e.g. when stated that "a product is made of 75% recycled materials") | The DGCCRF runs two types of controls on environmental claims: documentation controls and sample controls. All documentation must, according to Article L.121-2 of the Consumer Code, be detained by the producer and made accessible upon request as long as the product/service is on the market. In the context of documentation controls, the DGCCRF does not generally conduct scientific tests on environmental claims to assess the validity of supporting documentation provided by the producer of the goods/services. Tests through the DGCCRF's scientific lab are possible. It applies when quantifications are under scrutiny. In that case, samplings are taken and analysed. |
| Are surveillance actions based on certain standards? | No |
| Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) Corrective action (e.g. removal, | The focus of the DGCCRF is mainly on post-marketing sanctioning although it has participated in the preparation of published general non-binding guidelines on environmental claims that are being updated and that serve as benchmarks during the |

¹¹ DGCCRF, Directive Nationale d'Orientation (2013). P.11. Retrieved from <http://www.economie.gouv.fr/dgccrf/directive-nationale-dorientation-2013-dno>

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| <p>withdrawal of products, corrective labelling)? Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors? Publication of decisions?</p> | <p>enforcement procedure. Currently administrative proceedings aimed at facilitating the dialogue with the professionals, are the usual follow-up given to environmental claims (injunctions to conform, operator's commitments, warnings). As environmental claims become increasingly common, the DGCCRF acknowledges that a more repressive stance will become necessary. If the gravity of the infraction requires it, the DGCCRF may submit official minutes to the public prosecutor (<i>procureur</i>) who will decide whether to take the case to court or not.</p> |
| <p>A priori clearance or prior opinions possible? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings?</p> | <p>In exceptional and informal circumstances, the DGCCRF may answer to questions on environmental claims. These answers do not engage the authority and cannot be used as a proof by traders to show that their environmental claims are not misleading.</p> |
| Procedure issues | |
| <p>Maximum term to initiate complaints? (e.g. max. 2 years after advertising campaign)</p> | <p>There are no specific procedural rules on the subject.</p> |
| <p>Right to be heard, right to present evidence</p> | <p>Inspectors can hear the party if it is necessary to resolve the case.</p> |
| <p>Right to appeal? Does it suspend the decision?</p> | <p>N/A</p> |
| <p>How long can procedures take?</p> | <p>In questions relating to environmental claims, sampling and lab testing of products is rare. Hence the length of the procedures depend on the nature of the claims.</p> |
| <p>Cost of procedure, of experts (would this financial risk prevent complaints?)</p> | <p>According to Art. L-126-5 of the Consumer Code, in the circumstances where the controlled professional has infringed the law, the costs of sampling and testing procedures have to be compensated upon request of the administrative authority. As for administrative police measures, no compensation is prescribed. A law proposal on consumer protection that should be adopted and enter into force in 2014¹² prescribes that non-conformity to product regulation triggers compulsory compensation of all costs made by the administration in the case (samplings, transportation, testing).</p> |
| Various | |
| <p>Do assessment cases result in new guidelines regarding environmental claims that are available? Are decisions</p> | <p>It has not been the case.</p> |

¹² Assemblée Nationale (2013). *Projet de loi relatif à la consommation*, n° 1015. Retrieved from http://www.assemblee-nationale.fr/14/dossiers/projet_de_loi_consommation.asp

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| published? | |
| Conclusions based on interviews regarding: | The DGCCRF seems to have little or no experience with environmental claims since self-regulation through the ARPP deals with most of the complaints on advertising. |
| Clarity and security of guidance and approach | |
| High priority in the country of the issue of the enforcement of the rules regarding environmental claims? | |
| Efficiency and coherence | |
| Sufficient involvement and protection of all stakeholders | |
| Combination of public enforcement and SRO system | |
| Issues that were indicated as a good practice | |
| Other conclusions or remarks | |

Court action

Civil court actions

Under general civil law, any individuals that suffer from allegedly misleading environmental claims are entitled to launch a complaint to civil courts that have the competence to rule on unfair or misleading commercial and competition practices that infringe or threaten the interests of individuals (consumers or competitors)¹³.

Criminal proceedings

According to Article L121-3 of the Consumer Code, the cessation of unfair commercial practices can be ordered by the investigatory judge (*juge d'instruction*), by the Criminal Court automatically, or upon request of the Public Prosecutor. The Judge can also impose criminal sanction for unfair commercial practices within the framework of Article L121-6 of the Consumer Code (up to 2 years imprisonment and a fine up to 37 500 EUR or 50% of the advertisement or commercial expenses).

Prior to the decision of the public prosecutor to go to court Article L141-2 of the Consumer Code provides that negotiated settlement may be sought upon request of the DGCCRF and approval of the public prosecutor for cases concerning unfair commercial practices.

Collective actions

France does not have any provisions for collective actions as such since it relies on the Public Prosecutor to exercise the 'public action'. There are nonetheless different types of actions that are available to approved consumer associations¹⁴. On matters constituting a criminal offence harming the collective interests of consumers, civil actions may be introduced by the main plaintiff before the criminal or civil courts. Approved consumer associations have a right to intervene as a secondary plaintiff

¹³ See art. 31, Code de Procédure Civile.

¹⁴ For a list of French approved consumer associations see www.economie.gouv.fr/dgccrf/Liste-et-coordonnees-des-associations-nationales

before the civil courts in the context of a claim for damages introduced by a consumer who is concerned with an act which does not constitute a criminal offence. When several identified consumers suffering individual damage with identical origin, any authorized and nationally recognized association can be given the mandate by at least two of those consumers, to claim damages as a joint action before the Courts in the name of the affected consumers. According to Article L.421-6 of the Consumer Code, recognized associations are entitled to bring a case before the civil courts in order to obtain an injunction to stop an unfair commercial practice.

Settlements and negotiation

Negotiated settlements through Consumer Complaints Boards (*Commissions de règlement des litiges de consommation*) are available for consumers confronted with unfair commercial practices from traders. The CLRCs are still at an experimental stage and have so far been established in three out of ten pilot departments (Ille et Vilaine, Vosges, Pyrénées Orientales). The Settlement Committee for Consumers (*Commission de Médiation de la Consommation*) was established in 2010 with the objective of advising and proposing measures for improving and facilitating non-judicial settlements between consumers and professionals.

Output of actions

The action of the DGCCRF in relation to environmental claims is based on the general legislation on consumer protection and unfair commercial practices. The recommendations of the 2012 guidelines on environmental claims are not binding to them for assessing misleading environmental claims, but breaches of the guidelines result in the establishment of a high presumption of infringement of the law. Overall it seems that the DGCCRF has but only limited experience in dealing with environmental claims.

According to the DGCCRF this situation is bound to evolve towards stricter and more specific rules and implementation measures on environmental claims. They want to develop pro-active inspections and more awareness raising campaigns on the enforcement mechanism that is in place for consumers.

1.4.3 Self-regulation

The ARPP is the general self-regulatory organisation for the advertising sector. The ARPP issues general recommendations on advertising based on the International Chamber of Commerce (ICC) Code on Advertising and Communication Practice. Specific guidelines on sustainability claims, including environmental claims, were adopted in June 2009.

All stakeholders, including individual consumers, may file complaints with the ARPP. The assessment panel that decides on infringements is the Jury on Advertisement Deontology (*Jury de Déontologie Publicitaire*) ('JDP').

Enforcement is based on complaints only. The ARPP has no authority to impose sanctions. It issues a recommendation about a perceived infringement on the advertising rules. Advertisers generally comply with the recommendation. If they do not comply, the infringing advertisement will normally be blocked by the media, and the case can be referred to the public enforcement authorities mentioned above in view of further administrative or judicial proceedings.

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| Is the code of conduct and enforcement thereof applicable on an international, national, regional level? | The codes of conduct and their enforcement are exclusively applicable on the French territory. |
| Focused on certain product categories/services? | No, but specific codes of conduct exist on different themes (e.g. sustainability claims cover environmental claims), different supports or aimed at specific sectors (e.g. cosmetics). |
| Focused on advertising, media, product labelling? | The ARPP is focused on the regulation of advertising. |
| Focused on certain concerns? (e.g. sustainability, organic) | There is a specific code of conduct related to sustainability that covers environmental claims related or not to sustainable development assertions. |
| Focused on manufacturers, sellers, advertising agencies? | Every sector is concerned although specific codes of conduct exist for e.g. cosmetics, transportation, real estate, services, etc. |
| Organisation | |
| Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists.?) | The decision to establish new codes of conduct lies with the board of directors of the ARPP. After consultation of the Joint Commission on Advertisement (<i>Conseil Paritaire de la Publicité</i>) an <i>ad hoc</i> redaction committee is in charge with the creation of a new code of conduct. It is composed of: <ul style="list-style-type: none"> - members of the board of directors (representing advertising agencies and media in conformity with Art. 7 of ARPP Statutes) -representatives of the advertisement and media sectors (members of the ARPP) -representatives of specifically targeted business if applicable. After communication of the final draft to the Joint Commission on Advertisement, the draft must be validated by the Board of Directors in order to enter into force. |
| Frequent updates of the rules regarding environmental claims? | Within the ARPP, the Council on Advertisement Ethics (<i>Conseil de l'Éthique Publicitaire</i>) is in charge with analysing, evaluating and advising on emerging ethical challenges and on the efficiency of the self-regulatory process, with a view to stress the need for amendments or new codes where necessary. |

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| Application of detailed rules regarding environmental claims or general principles? | Detailed rules regarding environmental claims can be found in the code of conduct on sustainability claims. |
| How is the scheme or self-regulation system funded? | Financially independent from public authorities, most of the ARPP's funding originates from its members' contributions (associations/organisations active in the field of advertising). The amount of the fee is dependent on incomes and expenses from the advertising activity incurred by the organisation concerned in the preceding year (different tables according to the type of organisation/association). Printed press members pay annual fees depending on their diffusion on the printed press market. |
| Active surveillance / complaints | |
| <p>Is active surveillance done by the SRO (independent from complaints)?</p> <p>Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners)</p> | <p>After diffusion of contentious advertisements, the ARPP may intervene spontaneously or on the basis of a complaint. In both cases, the matter will be examined by the Jury on Advertisement Deontology (<i>Jury de Déontologie Publicitaire</i>) ('JDP').</p> <p>Any identified individual, association, organisation or administration has the right to complain.</p> |
| Assessment | |
| <p>How does the SRO make an assessment of the required substantiation of environmental claims?</p> <p>E.g. are the claims verified in labs ? Does the assessment panel of the SRO request scientific reports or documentation ? Must this documentation be submitted immediately? Must supporting documentation (scientific, tests) be retained by the producer during a certain time ?</p> <p>Are quantifications examined (e.g. "75% recycled materials must really be 75%") ?</p> | <p>The JDP assesses the validity of the environmental claims (including quantifications) through the documents provided by the parties (either voluntarily or upon request of the JDP). It does not benefit from the expertise of an independent lab or experts.</p> |
| <p>How is the assessment panel established when an environmental claim is assessed? Is it considered sufficiently independent and impartial?</p> | <p>Apart from the President who is nominated by the Board of Directors of the ARPP, the JDP is composed mainly of academics following this repartition:</p> <p>1/3 of members proposed by the Board of Directors</p> <p>1/3 of members proposed by the Council on Advertisement Ethics</p> |

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| | <p>1/3 of members proposed by the Joint Commission on Advertisement.</p> <p>Art. 5 of the internal rules of the JDP specifies that a person who has any interest or link with the parties to the case may not be nominated as member of the jury, nor may a person who is involved in the advertisement sector. It is generally considered to be sufficiently independent from both the parties and the general advertising business.</p> |
| 2. Measures/sanctions/prevention | |
| <p>Is the sanctioning of environmental claims focused on hard sanctions and/or moral guidance, recommendations? Will public authorities be involved if the SRO's recommendations are not respected by advertisers? Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo... Can sanctions be imposed by law? Focus on prevention, prior opinions or pre-clearance? Focus on 'soft approach' through discussion, negotiation ? Are decisions published? If so, is it considered as an effective measure?</p> | <p>If the JDP considers that the codes of conduct have been infringed, it requires, through the President of the ARPP, the contentious advertising campaign to stop. The decision of the JDP will be communicated to concerned parties and published on JDP's website.</p> <p>Public authorities are not involved if the assessment panel's resolutions are not respected by advertisers. Advertisers are requested by the panel to voluntarily comply with its decision. Sanctions cannot be imposed by law.</p> <p>Besides its role regarding complaints on specific advertising campaigns, the ARPP is significantly involved in the release of opinions and recommendations prior to the release of a campaign (that are however not considered pre-clearance mechanisms). The Joint Commission on Advertisement comments publicly on new laws and recommendations of the ARPP, whereas the Council on Advertisement Ethics anticipates and advises the Board of Directors on upcoming challenges that might be faced by the ARPP or its members.</p> <p>National TV advertisements are however subject to official and compulsory pre-clearance.</p> |
| Procedure issues | |
| <p>Procedure with hearing rights, legal assistance, evidence and counter evidence? Costs?</p> | <p>Complaints are examined for free by the JDP. No legal assistance is offered, it is however not required for a plaintiff to be represented by a</p> |

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| <p>Appeal possible? Does it suspend the decision?</p> <p>Precedence of court cases in case of double approach?</p> <p>How long can procedures take?</p> | <p>lawyer. The complaint is communicated to the advertiser and other parties concerned. They may submit a response to the JDP. In cases displaying obvious infringement of the codes of conduct, a simplified procedure exists.</p> <p>It is possible for any involved parties to require the JDP to review its decision, without it having any suspension effect on its first decision.</p> <p>Precedents are not used as jurisprudence.</p> <p>Procedures can take between two weeks for simplified procedures and two months for cases requiring a plenary session to be held.</p> |
| Various | |
| <p>Do assessment cases result in new guidelines regarding environmental claims that are available?</p> | <p>No. The Joint Committee is in charge with suggesting the amendments or creation of new recommendations.</p> |
| <p>Conclusions based on interviews regarding:</p> <p>Clarity and security of guidance and approach</p> <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims?</p> <p>Efficiency and coherence</p> <p>Sufficient involvement and protection of all stakeholders</p> <p>Combination of public enforcement and SRO system</p> <p>Issues that were indicated as a good practice</p> <p>Other conclusions or remarks</p> | <p>Guidance and approach of the ARPP is considered sufficiently clear and effective.</p> <p>Environmental and sustainability claims have been increasingly filed to the JDP; however the JDP does not give it a higher priority than other types of claims as these claims only represent but a small percentage of all claims. For 2011 and 2012, environmental claims represented respectively 2% and 2,8% of all advertising claims. The procedure is fast, recognised by the professionals of the sector and overall advertisers, who receive a recommendation, comply with the recommendation and modify or withdraw the criticised advertising.</p> <p>The stakeholders are represented in the different bodies of the ARPP. Furthermore, organisations, associations, individuals and companies are entitled to file complaints.</p> |

Output of actions

The 6th Report of the ARPP/Ademe¹⁶ on Environment and Advertising¹⁷ shows that the number of advertisement messages encompassing environmental claims represents

¹⁶ *Environment and Energy Agency (Agence de l'Environnement et de la Maîtrise de l'Energie).*

¹⁷ ARPP, ADEME (2013). *Advertising & the Environment (Publicité & Environment).*

around 3% of all advertisement (by comparison with 6% in 2009 when the sustainability guidelines started to be implemented). Out of a total of 4361 voluntary consultations professionals, 226 were related to environmental claims and amendments to 70% of them were suggested by the ARPP. As for the compulsory advice procedure applicable to all TV spots including environmental claims, only 9 amendments were required.

As for post diffusion intervention, in 2012, 3 cases related to environmental claims, were examined by the JDP in plenary session, 2 of which were upheld. As for evident breaches, the ARPP reported for 2012 a non-conformity rate of 5 % (21 cases) out of all advertisements displaying environmental claims.¹⁸ This situation demonstrates a global improvement compared to previous years (the conformity rate was 89% in 2011, 88% in 2010, and 90% in 2009, 82% in 2007 and 64% in 2006), Improvement is also noticeable in the case of minor violations (*reserves*) of the guidelines.¹⁹

In 2011, 36 complaints regarding environmental claims were submitted to the JDP, on a number of 707 advertisements based on environmental claims examined by the ARPP.

In general, advertisers who receive a recommendation comply with the recommendation and modify or withdraw the criticised advertising.

1.4.4 Summary

- Predominant system.

The most developed control of environmental claims takes place at SRO level, through the ARPP whose decisions are based on its Sustainability Recommendations. The action of the DGCCRF is drawn on general legislation on unfair and misleading practices as well as on non-binding guidelines which differ from the ones established by the ARPP. Note that the ARPP only covers environmental claims in advertisements.

- Combination of systems – coherence.

The combination of public enforcement and self-regulatory enforcement is not explicitly mentioned in the law. The action of the SRO is seen as good practice by professionals. However the lack of coercive mechanisms that can be deployed by the SRO combined with an absence of clear linkage with public authorities and different sets of guidelines might weaken the overall enforcement.

- Effectiveness.

The right to complain seems safeguarded for the stakeholders, including individual consumers. Competitors, consumer organisations, environmental organisations and individual consumers can file complaints under the public enforcement system (mainly courts under the condition of respecting a *locus standi*) as well as the self-regulatory system. Compulsory advice for new TV advertising campaigns with environmental claims and extensive consultations with professionals leads to satisfying and coherent applications of the ARPP's guidelines on environmental claims in advertising. Apart from urging the professional to modify or stop a campaign, the ARPP through public decisions has but limited means of enforcing its guidelines (ending the membership of a professional in case of severe violations of the status).

- Clear guidance.

As its last assessment suggests it, the ARPP's guidelines seem satisfactory in terms of coherence and clarity. Furthermore the DGCCRF relies on the recommendations of the 2012 guidelines on environmental claims to assess misleading environmental claims. They are however no bound to follow these recommendations.

¹⁸ Ibid.

¹⁹ Ibid.

- *Surveillance activity.*

The public enforcement is based on both complaints and pro-active controls. Pro-active controls must be further developed and represent a small part of the inspections.

- *Pre-clearance.*

There is no official pre-clearance mechanism in the public enforcement system. In the SRO domain, the release of national TV campaigns is subject to mandatory pre-clearance. For the other forms of advertising, only a voluntary consulting scheme is in place. Regarding general prevention, the ARPP provides brochures and it publishes the decisions of the JDP.

- *Data.*

In 2011 and 2012 respectively 36 and 21 cases were submitted to the JDP regarding environmental claims. No data is available from the DGCCRF.

1.5 Germany

1.5.1 Overview

In Germany **both enforcement systems** are available: a public enforcement procedure, namely the general court action and two private/self-regulatory mechanisms organised by

- the Centre for Protection against Unfair Competition ("Wettbewerbszentrale") in Frankfurt a.M.,
- the Federation of German Consumer Organisations ("Verbraucherzentrale") with its federal states consumer centers.

1.5.2 Public enforcement

Court action

Germany runs a self-regulating civil enforcement system. The German legislator gave the entire responsibility for surveillance of whether the rules of competition were respected to the market participants: it is not the state with its authorities that intervenes when it comes to unfair advertising methods (including green claims, e.g. unauthorized use of environmental related logos, false approval or endorsement of environmental statements, false claim of being a signatory to an environmental related code of conduct or that such a code of conduct has been endorsed), but individuals, companies and their organisations, only they themselves can initiate action out of court and in court against unfair competition including environmental claims by means of civil proceedings.

The stakeholders, individuals, companies, as well as the private enforcement organisations (ZBW and VZB) can submit a claim in court.

Public enforcement instruments, initiated by the authorities, are limited to measures of imprisonment and fines in case of deliberately committed unfair competition acts (§ 16 UWG).

Court action is furthermore interwoven within the SRO procedures described below, and will be further described below.

Output of actions

The output of cases handled by the courts in the field of environmental claims is unknown, but it is perceived as few.

1.5.3 Self-regulatory mechanisms

The Centre for Protection against Unfair Competition ("Die Zentrale zur Bekämpfung unlauteren Wettbewerbs e. V. – kurz: Wettbewerbszentrale – ZBW")

The ZBW was founded in 1912, immediately after the Act against Unfair Competition was passed, as an association of companies and trade associations from all sectors of industry. The ZBW is a registered nonprofit Association. According to § 8 UWG its aim is the advancement of trade, industry and commerce. All chambers of commerce, most trade corporations, about 800 other industrial or commercial associations and approximately 1200 companies are members of the ZBW. Its head office in Bad Homburg and five regional branch offices (Berlin, Dortmund, Hamburg, Munich, and Stuttgart) deal with about 14,000 complaints a year regarding unfair competition in general.

In order to avoid legal disputes from the beginning of the marketing cycle, the association gives advice to its members concerning advertising and marketing

practices in the planning stage (copy advice). The ZBW gives objective and neutral legal opinion on advertising campaigns which are submitted to it.²⁰

Members of staff also give workshops and seminars on current matters of interest concerning general and specific topics in competition law.

(see. <http://www.wettbewerbszentrale.de/media/getlivedoc.aspx?id=32204>)

Any member of the public (competitor or consumer) can submit a complaint to the ZBW. It also receives complaints from public authorities such as the police, trade and health authorities. If the complaint is of substance, the Executive Directors write to the infringing trader²¹, asking him to sign an undertaking to amend or discontinue the advertising/commercial practice. This declaration contains a penalty clause. Legal action is threatened in the case of non-compliance. If the trader is unwilling to amend or to discontinue the advertisement or commercial practice, the Executive Directors decide whether to institute legal proceedings.

Before taking court action, the ZBW will – in appropriate cases – try to reach an amicable agreement. The complaint can therefore be brought before the Board of Conciliation of the regional Chamber of Commerce (IHK).

Complaints are handled free of charge. In average, the queried advertisement or unfair commercial practice is withdrawn or amended within 1 to 2 weeks from receiving the complaint.

If the ZBW claims a preliminary injunction before the civil courts, a settlement can be achieved within a day by immediate order.

In order to take action effectively, the ZBW is authorized by law (§ 13 Unterlassungsklagengesetz / Law on injunctions; implementation of the Directive 98/27 EG on Injunctions for the Protection of Consumers' Interests) to request information from postal and telephone authorities and companies on a customer's personal data. Therefore the ZBW has the powers to disclose the identity of the owner of a German P.O. Box or telecommunication service.

The way of action mentioned above enables an effective withdrawal or amendment of the unfair commercial practice with minimum delay and costs. The danger of recurrence is minimal as a conventional penalty must be paid by the trader if he contravenes the undertaking or the settlement.

Offences by members of the association are dealt with in the same way as those by non-members. The ZBW has its own legal right to follow up complaints and does so in its own name. The complainant's identity is treated in the strictest confidence.

If an extrajudicial settlement cannot be achieved, the ZBW may initiate a court action. In the year 2011 court action was initiated in more than 600 cases (from 14.000 complaints) (see here below the number of environmental claims cases).

Two possible ways can be chosen: In urgent cases, the ZBW can claim a preliminary court injunction prohibiting the unfair commercial practice. Concerning competition law, the urgency of the case is usually assumed. Therefore, this is the most common way of taking court action. The court will normally issue the preliminary injunction within a day by immediate order. In the case of contravention, the court can charge the opponent with an administrative fee of up to 250.000€.

In fewer cases, the ZBW will initiate main proceedings in court. This is usually only necessary if the opponent does not accept the preliminary court injunction as a final agreement. This course of action is also chosen in rare cases in which the case is not claimed to be urgent.

The party that loses the case must pay all costs, including the court as well as the lawyers' fees of both parties. The result of the complaint is communicated to the member complainant. The court decisions may also be published.

²⁰ This opinion is not binding for third parties who can still complaint against the advertising campaign.

²¹ This can be any trader, it must not be a 'member', although there are indeed members who have specific benefits in other respect.

The ZBW deals with cross-border complaints in the way described for national complaints. In 2011, the ZBW received over 170 complaints from German competitors and consumers concerning marketing practices of companies abroad (mainly Austria, Switzerland, Great Britain and the Netherlands).

The ZBW is also involved in the cross-border enforcement of consumer law in the framework of the European Regulation EC/2006/2004 on Consumer Protection Cooperation (CPC). In this context, the Federal Office for Consumer Protection and Food Safety (Bundesamt für Verbraucherschutz und Lebensmittelsicherheit- BVL) has been nominated as the single liaison office in Germany for coordinating the application of the Regulation; it is also one of the main competent authorities for cross-border infringements. Art 8 of the CPC Regulation permits the national authority to fulfil its obligations under the Regulation by authorising an appropriate body with a legitimate interest to take all necessary measures to stop the infringement. In this context, the ZBW is such a body.

The Federation of German Consumer Organisations (“Verbraucherzentrale - VZB”)

The Federation of German Consumer Organisations is the “counterpart” to the ZBW and also an independent, non-partisan, non-profit and a registered non-profit organisation. The VZB is entitled to pursue Unfair Competition issues among them green claims according to § 8 UWG in the same way as the ZBW. It is financed by funds from the Federal Ministry of Consumer Protection, Federal Government and European Union project funds and by membership fees and the sale of consumer advice guides. The VZB should not be considered a SRO in a strict meaning of the word (as it's not funded by the industry), but rather a private enforcement mechanism.

The VZB acts via its **consumer centers** in the 16 German federal states, who offer advice and information on issues of consumer protection, help with legal problems and represent the interests of consumers at the federal state level, including action out of court and in court.

The umbrella organisation, the Federation of German Consumer Organisations (vzbv), represents the political, economic and social interests of consumers at the national level.

Consumer centers are located in all the German federal states and offer a comprehensive service in some 200 advice centers. These centers provide consumers with reliable, up-to-date information and independent consultation. The consumer centers are independent, predominantly state-financed and non-profit organisations. The goal of their work is to inform advice and support consumers with regard to issues of private consumption. They provide an overview of the market and help consumers deal with complex market conditions. They also identify health and environmental aspects including green claims that could influence purchasing decisions. The work of the consumer centers is supported by federal state funding, municipal and district support for the individual advice centers and by project funding from the national government. The consumer centers also contribute to this funding with charges for consultation services and the sale of consumer advice guides.

The VZB prosecute legal infringements (as in the case of misleading advertising including green claims) by means of written warnings and legal actions out of court and in court (see. above 1.2.2.)

Every year the Federation of German Consumer Organisations pursues some 300 cases against advertising practices among them green claims that are misleading or make use of dishonest means. The federation is particularly successful in this area. As a result, numerous businesses commit themselves to withdrawing the advertising

concerned even before the case is brought to court. And in the cases where the Federation of German Consumer Organisations has to enforce its position in court it achieves a high rate of success.

Every individual private competitor (consumer, companies and associations) may pursue unfair competition acts among them green claims by the same means and actions pointed out above (see. 1.2.2.). The complaints can be also brought before the Board of Conciliation of the regional Chamber of Commerce (IHK – Einigungsstellen) to reach a settlement. If a settlement is reached this settlement is binding for the parties and enforceable as court decisions.

| Name of the player | VZB, ZBW and Individuals |
|--|---|
| 1. Scope | |
| Products/markets/sectors covered | No restriction, all acts of competition, also environmental claims and non-food sectors |
| Surveillance of advertising and/or product information / labelling / presentation? | Both, especially through ZBW and VZB |
| 2. Organisation | |
| Based on legal rules and/or guidance? Which rules are applied? Based on detailed rules or general principles? Nature of enforcement proceedings (administrative / based on court actions) | The Act Against Unfair Competition (UWG) and Civil Process Order (ZPO) Combination of general principles (§§ 3, 5 UWG), substantiated by case-law and detailed UWG rules Pre-court warning-letters, arbitration and court proceedings |
| 3. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | Both, market surveillance by VZB and ZBW and complaints. |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels, etc.). | VZB, ZBW and individuals (competitors, consumer, companies and associations); VZB and ZBW also on behalf of individuals |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen? | Yes, VZB and ZBW may use Boards of Conciliation of the regional Chamber of Commerce (IHK – Einigungsstellen) for arbitration |
| 4. Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer? | All possible infringing claims must be proven in case they are contested in a complaint; |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period? | Yes, for evidence in case of complaints |
| Are quantifications examined? (e.g. when stated that "a product is made of 75% recycled materials") | Yes, in case of complaints |

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| Are surveillance actions based on certain standards? | No. |
| 5. Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | Rather on post-marketing sanctioning. |
| A priori clearance or prior opinions possible? (in general by guidance or case by case) | Yes, but uncommon. Third parties can still challenge the campaign notwithstanding the clearance. |
| Focus on 'soft enforcement' through negotiations, informal warnings? | Yes, usually by warning letters from VZB and ZBW |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | Warning letter, Cease order, Fine (usually up to 250.000,- EUR / arrest for disobedience to court orders |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | Removal and withdrawal |
| Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors? | Everybody using the claim |
| Publication of decisions? | Possible, but not necessarily, however most of the relevant court decision at least the second instance decisions are published |
| 6. Procedure issues | |
| Maximum term to initiate complaints? (e.g. max. 2 years after advertising campaign) | 6 months from knowledge of the claim; (30 years for tort actions before the ordinary courts, regardless of the knowledge; the general rules regarding tort apply |
| Right to be heard, right to present evidence | Yes |
| Right to appeal? Does it suspend the decision? | Yes |
| How long can procedures take? | 90% of the cases are settled through preliminary injunction, taking just a few weeks. Ordinary procedures: Depending on the instances (2 instances approx. 4/5 years) |
| Cost of procedure, of experts (would this financial risk prevent complaints?) | The costs will vary according to the circumstances of the case; usually not, since VZB or ZBW start most of the proceedings |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? | Yes, as case-law and as "guidelines" of the VZB and ZBW, however no special guidelines for green claims yet. A brochure is expected soon. |
| Conclusions based on interviews regarding: | |
| Clarity and security of guidance and approach | The approach is perceived as clear |

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| <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims? Efficiency and coherence Sufficient involvement and protection of all stakeholders Combination of public enforcement and SRO system Issues that were indicated as a good practice Other conclusions or remarks</p> | <p>and well balanced; VZB represents the consumer and ZBW the companies; however, the outcome of decisions of both organisations is considered coherent.</p> <p>Green claims receive a high attention, which is visible in the increasing number of court decisions; the system is perceived as efficient, coherent and flexible; sufficient involvement and protection of all stakeholders; no need of further public enforcement.</p> |
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The German Advertising Council ("Deutscher Werberat")

The German Advertising Council as the self-regulating representation/institution of the Association of the German Advertising Industry ("Zentralverband der deutschen Werbewirtschaft - ZAW e.V.") is dealing with specific types of advertising issues, i.e. concerning alcohol, discrimination matters etc. is not responsible for green claims issues. Such complaints are forwarded to the ZBW. For more information see <http://www.werberat.de/keyfacts>.

Self-regulatory instruments at company (group) level

Companies may use self-binding "Codes of Conduct" with provisions related to environmental aspects to document their corporate social responsibility. If these statements are meant to be legally binding by the company and if the statement affects the consumer's behaviour, i.e. trusting that the statement is legally binding, the provision may be subject of an unfair competition act.

Two examples:

RSPO-Case: Henkel advertising his products referring to the "Sustainable Palm Oil Standards (RSPO) [*not decided, only reported in the media*]
<http://www.henkel.de/reinigungsmittel.htm?countryCode=de&BU=detergents&parentredDotUID=0000000GHO&redDotUID=0000000GHO&brand=0000000NBV¶m1=specials> (date: 11. 6. 2013).

Volkswagen Code of Conduct published on the website: [*no case, only referenced in the media*]

http://www.volkswagenag.com/content/vwcorp/info_center/de/publications/2010/06/verhaltensgrundsae tze.bin.html/binarystorageitem/file/28052010_Verhaltensgrunds%C3%A4tze+des+Volkswagen+Konzerns.pdf (date: 11. 6. 2013).

Output of actions

Overview of green claims related cases handled by **the ZBW** between 2009-2013:

- Energy sector: about 10 cases mostly settled out of court:
- Chemical sector: about 13 cases mostly settled out of court:
- Car industry: about 50 cases mostly settled out of court, 7 cases were treated by the Board of Conciliation of the regional Chamber of Commerce (IHK), 3 cases were brought to court.
- About 15 cases carpet advertising with "bio-seal"
- 2 cases mattress advertising „free of..."
- Several cases candle advertising „environmental friendly..."
- Case seat advertising „environmental friendly..."

- Case phone advertising “selfmade Öko-Urteil”
- In total: about 100 cases, of which a very large part in the car industry.
- Every year the Federation of German Consumer Organisations (VZP) pursues some 300 cases against advertising practices among them green claims that are misleading or make use of dishonest means. The exact number of green claims cases is not known.

1.5.4 Summary

Green claims receive a high attention, which is visible in the increasing number of decisions and court decisions.

- *Predominant system.*

Germany runs a self-regulating civil enforcement system to ensure and protect the correct use of environmental claims. The role of public authorities is minimized.

- *Combination of systems – coherence.*

The combination of court action as public enforcement and the self-regulatory enforcement is perceived as well organised and effective. The courts generally respect and confirm the SRO’s decision, resulting in a coherent system.

- *Effectiveness.*

The system is perceived as efficient, coherent and flexible. All stakeholders are sufficiently involved;

The way of action mentioned above enables an effective control, withdrawal or amendment of the unfair commercial practice through green claims with minimum delay and costs.

- *Clear guidance.*

The approach is clear and well balanced, due to the involved parties industry/companies, consumer and individuals;

- *Surveillance activity.*

VZB and ZBW show surveillance activities and are active through complaints.

- *Pre-clearance.*

There are pre-copy advice activities carried out by VZB and ZBW; the advertiser can ask for legal advice, however that must be considered as general risk assessment, not as official clearance. For general prevention, VZB and ZBW provide (not legally binding) guidelines (until now not for green claims) and checklists for compliance, brochures and publish the decisions they are involved in.

- *Data.*

Over a period of approximately 4 years, ZBW handled about 100 official cases concerning environmental claims.

1.6 Italy

1.6.1 Overview

In Italy **both enforcement systems** are available: a public enforcement procedure lead by the AGCM – *Autorità Garante della Concorrenza e del Mercato* (Authority for Competition and Market) and a self-regulatory mechanism organised by IAP - *Istituto dell'Autodisciplina Pubblicitaria* (Self-regulatory Institute for Advertisement).

1.6.2 Public enforcement

1.6.2.1 Authority for Competition and Market (AGCM)

In Italy the public enforcement authority competent for environmental claims and misleading advertisement is the AGCM – *Autorità Garante della Concorrenza e del Mercato* (Authority for Competition and Market). AGCM is the antitrust authority and it is competent for surveillance of advertisement in order to protect businesses and consumers from competitors' misleading and illicit advertisement practices.

The Authority for Competition and Market (AGCM) is the organisation in charge of public enforcement in Italy. AGCM can take the initiative to prosecute infringers of consumer legislation or act based on complaints, although the vast majority of, if not all, the proceedings commenced to sanction violations in the area of environmental claims in the last years are based on complaints. Competitors, consumers or consumers' organisations have the right to submit a complaint.

AGCM is an independent authority that is not subject to the powers of the government. In this sense it acts as a quasi-jurisdictional authority that is assumed to be neutral and impartial. Like in courts, the parties have the right to be heard and to contest the evidence. But as opposed to court proceedings, procedures at AGCM are much faster and are subject to strict time limits.

State enforcement coexists with self-regulatory process and the law sets forth the possibility to suspend a procedure at AGCM so that parties can obtain a decision at the end of self-regulatory proceedings.

In Italy, the public enforcement process in relation to incorrect or misleading advertising, including the assessment of environmental claims, is not completely uncommon and AGCM deals with at least some proceedings regarding environmental claims every year.

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| Name and category of Authority (general administration, specific agency, prosecution...) | AGCM – <i>Autorità Garante della Concorrenza e del Mercato</i> (Authority for Competition and Market) Specific agency: anti-trust authority |
| 1. Scope | |
| Products/markets/sectors covered | All markets and sectors. The three main pillars of AGCM are competition, consumer protection and surveillance of conflict of interests for government members. |
| Surveillance of advertising and/or product information / labelling/ presentation? | AGCM is competent for surveillance of the domain of commercial communications in order to protect businesses from competitors' misleading and illicit advertising practices. AGCM is also competent for surveillance of illicit business |

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| | practices to protect consumers and micro-enterprises (up to 10 employees and turnover up to 2 M €). |
| 2. Organisation | |
| <p>a) Based on legal rules and/or guidance? Which rules are applied?</p> <p>b) Based on detailed rules or general principles?</p> <p>c) Nature of enforcement proceedings (administrative / based on court actions)</p> | <p>a) Based on legal rules (Consumer Code, Decree on misleading advertisement, Decree on business practices) and self-enacted rules on procedures to sanction misleading advertisement and other illicit facts (hereinafter 'Resolution') that fall under the competence of AGCM.</p> <p>b) Based on detailed rules (see above).</p> <p>c) Enforcement proceedings are administrative.</p> |
| 3. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | According to the law the surveillance is based on the initiative of the authority or based on complaints. To the best knowledge of the author based on the analysis of the AGCM decisions in the last 5 years, all proceedings started by AGCM are based on complaints by competitors, consumers or consumers' organisations. |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | <p>All subjects with an interest, being individual consumers, consumers' organisations, environmental organisations, business associations, competitors, scheme owners for labels. More precisely:</p> <p>Consumers</p> <p>Every legal or natural person that acts in the framework of its professional activity</p> <p>Micro-enterprises as defined above</p> <p>Every organisation with interest to complain.</p> |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen? | There are no legal limitations that prevent that such organisations are considered as subjects with interest to submit a complaint. In practice to the best knowledge of the author there are no complaints submitted by self-regulatory organisations or ombudsmen. |
| 4. Assessment | |

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| <p>Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer?</p> | <p>The evidences that AGCM uses to evaluate the substantiation of the claim are:</p> <p>Documents (including documentation about manufacturing process) provided by the parties – AGCM has the right to ask for information and documentation to the defendant in the proceedings;</p> <p>Expertise and statistical/economic reviews, including technical expertise performed by Universities, laboratories, etc.;</p> <p>Inspections performed by AGCM e.g. at the statutory office of the defendant in the proceedings.</p> <p>In the proceedings studies, scientific uncertainty, current state of the art will be analysed – no particular restrictions apply.</p> <p>In practice most supporting documents will be submitted by the producer and therefore there is at least <i>de facto</i> the necessity to retain documentation about manufacturing process.</p> <p>An analysis of the most recent AGCM decisions in the field of environmental claims shows that AGCM does not limit its evidence finding activity to documents and proofs requests to the parties but it encompasses also expertise carried out by independent third parties (such as the national health institute) and inspections of the headquarters of the defendant(s).</p> |
| <p>Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period?</p> | <p>Yes, although AGCM issued no rules about minimum retention period.</p> |
| <p>Are quantifications examined? (e.g. when stated that “a product is made of 75% recycled materials”)</p> | <p>Quantifications are examined.</p> |
| <p>Are surveillance actions based on certain standards?</p> | <p>No specific standards or conditions for surveillance have been disclosed. AGCM carries on surveillance actions when it suspects that a specific advertisement/marketing campaign is misleading.</p> |
| <p>5. Measures/sanctions/prevention</p> | |
| <p>Focus on prevention or post-marketing</p> | <p>Focus on post-marketing sanctions.</p> |

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| sanctioning? | |
| A priori clearance or prior opinions possible? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings? | There is no a priori clearance and the intervention of AGCM is <i>ex post</i> . AGCM can act through soft enforcement mechanisms such as moral suasion, although AGCM is not obliged to use moral suasion instead of a formal procedure (with possible sanctions at the end of the procedure). |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | Fine from 5.000 up to 500.000 €; Publication of AGCM decision or of a corrective statement at the expenses of the defendant. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | Provisional suspension of the illicit commercial practices; Provisional suspension as a precautionary measure of the misleading advertisement; Request to the defendant to engage to terminate the violation. |
| Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors? | The following categories can be held liable: The advertiser The author of the advertisement If the above are not identifiable, the owner of the medium where the advertisement is published or broadcasted or the person responsible for the radio or television broadcasting programs In general term, every legal or natural person that acts in the framework of its professional activity. |
| Publication of decisions? | Yes, publication of the decision is possible, based upon AGCM decision. |
| 6. Procedure issues | |
| Maximum term to initiate complaints (e.g. max. 2 years after advertising campaign) | The Resolution does not set forth a maximum term to initiate complaints. However AGCM can decide not to continue with the proceedings if the advertisement has been removed following a moral suasion intervention of AGCM. |
| Right to be heard, right to present evidence | Parties can ask to be heard and the officer responsible for the |

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| | proceedings can ask parties to be heard. The parties have the right to present evidence in the framework of the proceedings. |
| Right to appeal? Does it suspend the decision? | Appeal against the decisions of AGCM shall be introduced before the administrative courts (Regional Administrative Court of Lazio). The Court can suspend the decision upon request of the concerned party. To the best knowledge of the author so far the administrative courts (Regional Administrative Court of Lazio in first instance and State Council in last instance) have issued no decisions in the field of environmental claims. |
| How long can procedures take? | The proceedings are subject to a maximum term of 120 days as from the record of the communication that starts the proceedings, or 150 days if the opinion of AGCOM is required - AGCOM is the authority competent for the media and communication sector and its opinion is required when the communication has been spread on the press or has been broadcasted on the radio or television. In the average a procedure before AGCM takes 90 days. |
| Cost of procedure, of experts (would this financial risk prevent complaints?) | The procedure is at no costs for the claimant. The costs for the procedure are not calculated in a separate item in AGCM decisions. |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? Are decisions published? | No to both questions. |
| Conclusions based on interviews regarding: Clarity and security of guidance and approach High priority in the country of the issue of the enforcement of the rules regarding environmental claims? Efficiency and coherence Sufficient involvement and protection of all stakeholders Combination of public enforcement and SRO system Issues that were indicated as a good practice | The interviews show that according to the stakeholders in Italy: The guidance and approach is sufficiently clear and secure, but a practical overview with concrete examples (cfr. DEFRA in UK) would be much better; Environmental claims and greenwashing are not considered high priorities in Italy; Some stakeholders perceive the system as not efficient, especially due to lack of awareness of the |

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| Other conclusions or remarks | <p>public;</p> <p>Preventive action in the meaning of information and education of the public could be better;</p> <p>There are few cases that resulted in decisions;</p> <p>All stakeholders are sufficiently involved and protected;</p> <p>Public enforcement and SRO system are fairly well balanced.</p> |
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Court action

o Initiated by the public authority

AGCM has exclusive competence to order the termination of illegal commercial practices, including misleading advertisement, and the removal of the effect thereof (see article 27 of the Consumer Code). The courts have jurisdiction only as regards the actions for unfair competition ex article 2598 of the Civil Code and for the actions for the compensation of the damage arising out of the illegal commercial practices. Criminal actions for illegal commercial practices are also excluded from the competence of AGCM.

o Private court action

As stated above, the possibility to start proceedings before a court to ask the termination of a misleading advertisement is limited since the law (the Consumer Code) establishes that AGCM is competent to issue a binding decision to withdraw an infringing commercial communication.

Civil courts are competent to issue decisions on the compensation for the party that suffered damage from the infringing commercial communication. In practice litigation regarding such damage is not very common and one of the reasons is the difficulty to prove the damage that competitors or consumers suffered from an unfair environmental claim.

Civil courts have jurisdiction for the practices of unfair competition that fall under article 2598 of the Civil Code. The description of these practices is quite broad and it includes:

The use of names, logos or symbols that are aimed to make confusion with those used by competitors;

Any practice that is aimed to make confusion with the products or activities of a competitor;

Spread news or judgements on the products or activity of a competitor with the aim to discredit those products or activity;

The appropriation of merits of a competitor's products or business;

Damage a competitor's business in any direct or indirect way against the principles of professional fair play.

Some unfair practices related to environmental claims may fall under this article, e.g. if a business spread judgements about the alleged bad impact on environment of a competitor's product to damage its reputation, or the use of an environmental label to take advantage of the confusion with another product that has that label.

Output of actions

An analysis of the AGCM decisions regarding environmental claims show that they are quite reduced in number. While the output in absolute terms may appear limited, the action of the AGCM is overall not insignificant. AGCM has issued three relevant decisions in 2008, one in 2009, one in 2010, two in 2012 and one in 2013 (before 21/11). The products with alleged environmental benefits were cars, packaging (bottles of water), plastic bags and diapers. In all cases AGCM decided that the commercial communication was misleading and sanctioned the company with a fine and, when possible, with the order to terminate the advertisement.

The output of court actions in the field of environmental claims is not known, but perceived as very limited. Evidently the bulk of public enforcement is done through administrative law proceedings, which are supposedly more efficient in terms of costs/timing.

1.6.3 Self-regulatory mechanisms

1.6.3.1 IAP - Istituto dell'Autodisciplina Pubblicitaria (Self-regulatory Institute for Advertisement)

In Italy only one SRO was identified: IAP - Istituto dell'Autodisciplina Pubblicitaria (Self-regulatory Institute for Advertisement).

IAP enacted the Self-regulatory Code of Commercial Communication that governs the action and decisions of IAP including in the field of environmental claims. The Code is a general code of conduct that applies to all sectors and to all products/services.

IAP is the general self-regulatory organisation for the advertising sector and 'commercial communication' in a broad sense. As pointed out above, IAP issued the Self-regulatory Code of Commercial Communication that applies also to environmental claims.

Everyone who believes to be badly affected by a commercial communication and who believes that the communication does not respect the Code can submit a complaint to IAP. Therefore enforcement is based on complaints, basically made by competitors, consumers and consumers' organisations. Being a self-regulatory body, IAP has no authority to impose sanctions. IAP can order the termination of the infringing commercial communication and can also invite to modify the commercial communication before starting any formal proceedings.

Taking into account that the vast majority of media and advertisement companies are member of IAP, compliance with the decisions of IAP is generally high. In case of non-compliance, there is room for complaint to AGCM that will intervene and will issue a binding decision.

| Name of the organisation | IAP – Istituto dell'Autodisciplina Pubblicitaria (Self-regulatory Institute for Advertisement) |
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| 1. Scope | |
| Which set(s) of rules are applied by the SRO? (Code of conduct, guidance, labelling scheme, legal provisions...) Are the rules applied by the SRO referring to other rules? (e.g. ICC rules/UCPD) | The set of rules on which the action and decisions of the SRO are based is the " <i>Codice di Autodisciplina della Comunicazione Commerciale</i> " (Self-regulatory Code of Commercial Communication) – updated on April 6, 2013. The Code is binding for a wide audience (users, agencies, advertisement and marketing consultants, operators of advertisement media, all those who |

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| | <p>accepted the Code directly, contractually or through representative associations). The Code does not explicitly refer to other rules but it is inspired on the ICC rules.</p> <p>More than 90 % of advertisement on traditional media (press, radio, television, product labelling, etc.) is subject to the provisions of the Code, while its impact is more reduced as regards other media such as flyers and the Internet.</p> |
| <p>a) Trademark or logo available? b) Is the use of the logo or referral to the organisation dependent on compliance? c) Is there a specific logo regarding compliance with the rules on environmental claims? d) Compliance monitoring for members? e) Is the SRO sector related?</p> | <p>a) No. b) No, and the use of IAP logo or referral to its decisions is prohibited in advertising products or services for the parties involved in proceedings. c) No. d) IAP may verify compliance with the rules of the Code for members and start proceedings in case of violations. e) No, the SRO is not sector related.</p> |
| Is the code of conduct and enforcement thereof applicable on an international, national, regional level? | The code of conduct and enforcement is applicable on national level. |
| <p>Focused on certain product categories/services?</p> <p>Focused on advertising, media, product labelling?</p> | <p>No, the Code is not focused on particular product categories or services.</p> <p>The Code is focused on advertisement, media and product labelling with the exclusion of commercial practices and marketing techniques.</p> |
| Focused on certain concerns? (e.g. sustainability, organic) | No, the Code is not focused on certain specific concerns but it embraces all environmental claims. |
| Focused on manufacturers, sellers, advertising agencies? | The Code is focused on users, agencies, advertisement and marketing consultants, operators of advertisement media, all those who accepted the Code directly, contractually or through representative associations. |
| 2. Organisation | |
| Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists?) | Decisions about compliance of environmental claims with the Code are issued by the 'Giuri' (Jury) or by the 'Comitato di Controllo' (Control Committee). Members of both bodies are experts in advertisement |

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| | and marketing, legal experts and consumers' protection experts. |
| Frequent updates of the rules regarding environmental claims? | No, but it has to be reminded that the Code is not explicitly focused on environmental claims. |
| Application of detailed rules regarding environmental claims or general principles? | The IAP bodies apply general principles since there are no detailed rules regarding environmental claims. |
| How is the scheme or self-regulation system funded? | The scheme is funded with fees for the members and charges for the services. Some proceedings are subject to payment of a fee (from 400 to 4.000 € plus VAT) that is lower for members. |
| 3. Active surveillance / complaints | |
| Is active surveillance done by the SRO (independent from complaints)? Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners) | The Control Committee has the power to submit a request to the Jury to assess if the commercial communication is compliant with the Code. Everyone who believes to be injured by a commercial communication that is alleged not to respect the Code can submit a complaint to the Jury. Consumers and consumers' organisations can submit a complaint to the Control Committee. |
| 4. Assessment | |
| How does the SRO make an assessment of the required substantiation of environmental claims? E.g. are the claims verified in labs? Does the assessment panel of the SRO request scientific reports or documentation? Must this documentation be submitted immediately? Must supporting documentation (scientific, tests) be retained by the producer during a certain time? Are quantifications examined (e.g. "75% recycled materials must really be 75%")? | The assessment of the required substantiation of environmental claims is made based on the evidences and documents provided by the advertiser upon request of the deciding body. In proceedings before the Jury the parties can submit documents and memories. The Jury can order expertise carried on by a technical expert. If the Jury assumes that the technical evidence materials are not sufficient to issue a decision it will order a contradictory technical expertise (<i>'perizia tecnica d'ufficio'</i>). Quantifications can be examined in the framework of the above expertise. |
| How is the assessment panel established when an environmental claim is assessed? Is it considered sufficiently independent and impartial? | There is no special configuration of the assessment panel when it deals with environmental claims. The Regulation to guarantee impartiality in the self-regulatory proceedings assures that the members of the |

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| | Jury and Control Committee and technical experts are independent and impartial. |
| 5. Measures/sanctions/prevention | |
| <p>Is the sanctioning of environmental claims focused on hard sanctions and/or moral guidance, recommendations? Will public authorities be involved if the SRO's recommendations are not respected by advertisers?</p> <p>Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo... Can sanctions be imposed by law?</p> <p>Focus on prevention, prior opinions or pre-clearance? Focus on 'soft approach' through discussion, negotiation?</p> <p>Are decisions published? If so, is it considered</p> | <p>The sanctioning of environmental claims is focused on the sanction consisting in termination of the commercial communication infringing the Code (together with the possible publication of an extract of the decision on a medium). The Control Committee can also invite to modify the communication before starting any proceedings or can issue an injunction to stop the communication. No public authorities are involved if the SRO's decisions are not respected. The possible sanction of the Jury is the order to terminate the communication.</p> <p>No, sanctions cannot be imposed by law. The proceedings before the IAP bodies and those before public authorities/enforcing agencies are independent. However article 27 of the Consumer Code, after stating the principle of independence of the two proceedings, adds that after the beginning of self-regulatory proceedings the parties can agree not to start proceedings before State authorities (AGCM - <i>Autorità Garante della Concorrenza e del Mercato</i>, Authority for Competition and Market) or to ask to suspend the proceedings before AGCM until the decision in the self-regulatory procedure. AGCM can decide to suspend the proceedings for a period up to 30 days. The literature highlights that this possibility is not used often in practice. Not really, but the Control Committee can invite to modify the commercial communication before starting any proceedings or can issue a withdrawal order. There is no real room for discussion and negotiation. However pre-copy advice (not binding) is possible upon</p> |

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| as an effective measure? | request of the advertiser before the beginning of the commercial communication or advertisement campaign. The decisions are published in the website of IAP. As more effective measure extracts of the decisions may be published on some media upon decision of the Jury. |
| 6. Procedure issues | |
| <p>Procedure with hearing rights, legal assistance, evidence and counter evidence? Costs?</p> <p>Appeal possible? Does it suspend the decision? Precedence of court cases in case of double approach?</p> <p>How long can procedures take?</p> | <p>The procedure before the Jury is with hearing rights for the parties, who have the right to be assisted by a lawyer or consultant. The basic principle of evidence is that the defendant shall be able to prove the truthfulness of the claim, information, documents etc. that support the claim. A claim to the Jury costs 3.500 € (for members)/4.000 € (for not members) plus VAT. No appeal is possible.</p> <p>No, the proceedings before IAP and courts are completely separate and independent. Procedures tend to be fast, on average 12 days.</p> |
| Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? | Not yet. |
| <p>Conclusions based on interviews regarding:</p> <p>Clarity and security of guidance and approach</p> <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims?</p> <p>Efficiency and coherence</p> <p>Sufficient involvement and protection of all stakeholders</p> <p>Combination of public enforcement and SRO system</p> <p>Issues that were indicated as a good practice</p> <p>Other conclusions or remarks</p> | <p>Based on the interviews we can assess that:</p> <p>Guidance and approach are sufficiently clear and secure, although some stakeholders said that they can be improved (concrete examples (cfr. DEFRA in UK);</p> <p>The enforcement of the rules regarding environmental claims is not really a priority for the moment, but the topic is not neglected by enforcement bodies;</p> <p>The system is rather efficient and coherent but some stakeholders pointed out that the decisions and sanction are not sufficiently visible in the market and that good preventive action is missing;</p> |

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| | <p>As a consequence, stakeholders may be better protected if there were a stronger preventive action and better awareness of the public;</p> <p>Public enforcement is rather focused on post marketing sanctions whereas the SRO is more suitable for a first assessment of infringements and persuasion;</p> <p>The combination of public enforcement and SRO system tends to be efficient and the division between the competences of the State authority and the SRO is clear.</p> |
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Output of actions

In 2013 (until 21 November) the judging bodies of IAP issued 89 decisions and only 2 concern environmental claims, and in both cases the commercial communication has been declared to be infringing the Code.

An assessment of the jurisprudence of IAP makes clear that complaints regarding environmental claims are a small minority. To give an example, the vast majority of complaints that concern advertisement of cars regard the alleged infringing nature of the communication on the financial conditions that apply to the sale of the car. This reveals that companies, consumers and consumers' association are still not very aware of greenwashing or that they tend to consider it as less important than other forms of unfair commercial communication. This is probably partially due to the actual difficult conditions of European economy that push to give more attention to economic and financial claims than environmental ones. The current crisis is however not the sole factor accounting for the low level of attention: in certain national markets (especially for southern European countries), there is a lesser consumer sensitivity to the issue than in other markets due to local, cultural etc.

Finally we point out that, based on the information provided by IAP, the self-regulatory body is working on the preparation of specific guidelines regarding environmental claims.

1.6.4 Summary

In Italy there is a fairly balanced coexistence of a public enforcement system and a SRO, although proceedings regarding environmental claims that are alleged to be unfair are not numerous. That said, companies, individual consumers and consumers' organisations have the possibility to submit a complaint to AGCM or IAP in an easy way without useless red tapes.

It has to be highlighted that the two systems differ as regards the costs to submit a complaint (a complaint to IAP costs some thousand euros while a complaint to AGCM is for free) and the output of the procedure. Since AGCM may impose fines to the infringer, it is likely that a company submits a claim to AGCM when it wants that the infringing competitor be heavily punished. In other words the choice to opt for the self-regulatory body or for AGCM is a strategic decision, since the output of the decision of IAP is much less severe than that of AGCM.

Furthermore IAP is much faster than AGCM in issuing a decision, and this can also play a role in preferring to issue a complaint to IAP instead of to AGCM.

- *Predominant system.*

If one takes into account the number of proceedings before AGCM and IAP, it is extremely difficult to assess which is the predominant system. If one, for instance, considers the first ten months of 2013, AGCM issued one decision and IAP two decisions regarding environmental claims. Both systems are therefore fairly balanced. It is interesting to point out that consumers and consumers' organisations are not active in submitting complaints to AGCM or IAP, since the jurisprudence of both institutions is heavily based on complaints submitted by competitors.

- *Combination of systems – coherence.*

The combination of public enforcement and self-regulatory enforcement is not perceived as problematic. In general, the arguments that base the decisions of AGCM and IAP are consistent and their approach to unfair environmental claims is consistent as well.

- *Effectiveness.*

The decisions of IAP are effective since the majority of media and advertisement companies are members of IAP and they apply the decisions to withdraw a commercial communication. As far as AGCM is concerned things are different due to the different nature of its sanctions (fines and order to terminate the commercial communication) and to the possibility to make an appeal against the decisions. Appeal can be brought before the Regional Administrative Court of Lazio and in last instance before the State Council (that is the supreme administrative court).

Defendants before AGCM in the administrative proceedings generally may have interest to make an appeal against the fine, especially if the amount is considerable. From quantitative point of view, the system is not highly effective, probably due to the lack of proactive reactions by consumers' association to submit complains about misleading environmental claims and the channels to act against them.

- *Clear guidance.*

The existing rules in Italy are sufficiently clear but, as some stakeholders highlighted, these rules are focused on an ex-post approach rather than an ex-ante perspective. As a consequence sanctions of AGCM and IAP are issued when the commercial communication has been already spread and reached the consumers. Concrete guidance with examples such as DEFRA's guidance in the UK is suggested to enhance prevention.

- *Surveillance activity.*

The enforcement in practice is based on complaints, although enforcement agencies have the power to start proceedings without any complaint. This does not happen in practice.

- *Pre-clearance.*

IAP implemented a pre-clearance system (see Regulation for preventive advices of the Control Committee) according to the Self-regulatory Code of Commercial Communication. The Control Committee cannot start proceedings against a commercial communication that received the pre-clearance, but competitors, consumers, consumers' organisations etc. may still submit a complaint to IAP. In this case it is not very likely that IAP will follow the claimant's opinion against its previous pre-clearance judgement but the deciding body is not obliged to follow such a previous pre-clearance decision.

- *Data.*

As we said above, the proceedings regarding environmental claims before AGCM and IAP are not numerous and they are no more than a couple per year for each enforcement institution.

1.7 The Netherlands

1.7.1 Overview

In the Netherlands both enforcement systems are available: Two public enforcement procedures, namely

Authority for Consumers and Markets (Autoriteit Consument & Markt or ACM)

Court action

and a self-regulatory system organised by the Dutch Advertising Code Authority (Stichting Reclame Code or DACA).

1.7.2 Public enforcement

Authority for Consumers and Markets (Autoriteit Consument & Markt or ACM)

The **Authority for Consumers and Markets** (Autoriteit Consument & Markt - **ACM**) is the main authority competent for the enforcement of the UCP Directive in the Netherlands.²² It may act on the basis of complaints, that can be filed with an organisation named ConsuWijzer²³, which is an accessible public organisation constituted as an alliance between the ACM, and the telecommunications and competition authorities acting as a “desk” for the information of consumers seeking general information with respect to their rights or to the possible channels to file complaints.

ACM is in principle not competent to handle complaints of individual consumers against individual cases of infringement where only one consumer is harmed. However, it may act in cases of infringement where a collective of consumers is harmed (e.g. larger scale advertising, labelling of products).

The Netherlands have a strong tradition of self-regulation and thus in case of complaints related to advertising, Consuwijzer will normally advise a consumer to file a complaint with the Dutch Advertising Code Authority (DACA), the self-regulatory organisation that is supervising the advertising sector (discussed in more detail in Appendix 4). ACM has arrangements with instances that handle claims of consumers, such as DACA.²⁴ If the recommendation issued by DACA in case of perceived infringement, is not followed by the advertiser, DACA may refer the infringing advertiser to the ACM for further administrative persecution and sanctions. In that sense ACM should be seen as a **supervising authority**.

ACM has furthermore a specific supervising role regarding the enforcement of the rules regarding green electricity (correct or incorrect disclosure and certification).

In the Netherlands, the public enforcement process in relation to incorrect or misleading advertising, including the assessment of environmental claims, is uncommon and is clearly surpassed by the self-regulatory enforcement system.

| Name and category of Authority (general administration, specific agency, prosecution...) | Autoriteit Consument & Markt (Authority for Consumer and Markets) |
|---|--|
| Scope | |
| Products/markets/sectors covered | Environmental claims; non-food sectors |
| Surveillance of advertising and/or product information / labelling/ presentation? | Both |

²² See section 2.2 of the Act on the Enforcement of Consumer Protection (Wet Handhaving Consumentenbescherming).

²³ Consuwijzer is a general information and support desk, constituted as an alliance between the ACM, and the telecommunications and competition authorities. See e.g. their web page concerning advertising complaints <http://www.consuwijzer.nl/thema/misleidende-reclame>

²⁴ See art. 6.1 of the Act on the Enforcement of Consumer Protection.

| Organisation | |
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| Based on legal rules and/or guidance? Which rules are applied? Based on detailed rules or general principles? Nature of enforcement proceedings (administrative / based on court actions) | The Act on the Enforcement of Consumer Protection refers to many laws regarding consumer protection, where ACM has supervising authority. Since the ACM does in practice not act against individual cases of misleading advertising, there is no specific guidance of the ACM in respect of environmental claims. |
| Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | Occasional, rather based on complaints. In the Netherlands the first step regarding issues on misleading advertising is to file a complaint at the Dutch Advertising Code Authority (DACA, in Dutch: Stichting Reclame Code). The ACM receives little complaints on the subject of environmental claims. When advertisers don't respect the recommendation of the DACA, they can be brought before the ACM for further enforcement but that did not happen yet for environmental claims. |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels, etc.). | ACM does not deal with individual complaints regarding commercial actions that harm an individual consumer, it may only decide on commercial actions harming a collective of consumers, Organisations with a legitimate interest could file complaints with the ACM or start actions before a civil court, but this has not happened to date for green claims. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen? | Yes, DACA may transfer a case if its recommendation is not respected by an advertiser. The Netherlands did not appoint a Consumer Ombudsman (although there is a private initiative under that name). |
| Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer? | ACM had insufficient exposure to such claims. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period? | There is no such legal rule. |
| Are quantifications examined? (e.g. when stated that "a product is made of 75% | There is no such known precedent. |

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| recycled materials") | |
| Are surveillance actions based on certain standards? | There are no active surveillance actions. |
| Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | This enforcement system is focused on post-marketing sanctioning. There is no system in place that allows a prior assessment or pre-clearing of intended marketing actions. . |
| A priori clearance or prior opinions possible? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings? | No Yes |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | Various instruments; ACM applies guidelines for fines, and that would normally be the sanction for green claims (max. 450.000 EUR). A cease order is the other sanction possibility. New legislation is expected that may extend the sanctioning options. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | ACM may impose a cease order with a fine if it is not respected; indirectly this may result in the offender's action to withdraw products or advertisings or corrective action, but this cannot be ordered by ACM |
| Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors? | The producer or seller who is responsible for the commercial information. |
| Publication of decisions? | Yes, it occurs and is provided by law as an option. |
| Procedure issues | |
| Maximum term to initiate complaints? (e.g. max. 2 years after advertising campaign) | There is no legal maximum term; the general rules regarding tort are applicable. However, ACM may decide whether actions are needed or not according to the circumstances (opportunity principle), which implies that infringements must be recent. |
| Right to be heard, right to present evidence | Yes |
| Right to appeal? Does it suspend the decision? | Yes |
| How long can procedures take? | This varies according to the circumstances of the case. |
| Cost of procedure, of experts (would this financial risk prevent complaints?) | The costs will vary according to the circumstances of the case. |
| Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? | ACM is only an enforcement organisation that does not draft guidelines. |

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| <p>Conclusions based on interviews regarding:</p> <p>Clarity and security of guidance and approach</p> <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims?</p> <p>Efficiency and coherence</p> <p>Sufficient involvement and protection of all stakeholders</p> <p>Combination of public enforcement and SRO system</p> <p>Issues that were indicated as a good practice</p> <p>Other conclusions or remarks</p> | <p>ACM has little or no experience regarding environmental claims since the DACA (Stichting Reclame Code) receives the complaints. ACM does not deal with individual complaints.</p> <p>The approach seems clear, in that consumers with complaints are referred to the DACA (the Dutch SRO). Since complaints are handled by a centralised SRO that can supervise the market in a flexible manner without the need for stringent rules, the system is considered efficient and coherent. However there is no coherent active surveillance policy, and this enforcement is not considered high priority.</p> <p>Stakeholders are not protected by public enforcement but by the SRO system. However, ConsuWijzer, a public organisation, supports consumers to find their way in the enforcement system.</p> <p>Self-regulation is strongly supported by ACM. They have a good relationship with the DACA, the Dutch SRO.</p> <p>The role of the SRO is considered good practice by the Authority. There is no expression of a "need" for public enforcement. Furthermore, the guidance of consumers by the ConsuWijzer desk can be considered good practice.</p> |
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Court action

Court action initiated by the public authority

The Court in The Hague is competent, as a centralised jurisdiction, to order the cessation of most categories of infringements on consumer protection legislation upon the initiative of the ACM as claimant, but infringements of the UCPD rules, as implemented in the Netherlands, are not within this scope.²⁵ In relation to environmental claims, there is no provision organising court action by public authorities.

Court action initiated by private parties

The general civil procedure against unlawful acts, before Civil Courts, can be applicable in relation to environmental claims. Competitors may enter legal proceedings based on art. 6:194 Civil Code, while a consumer may enter legal proceedings based on art. 6:193 a to j Civil Code (unfair commercial practices versus consumers). Consumer organisations or environmental organisations protecting collective interests, may enter legal proceedings based on article 3:305a Civil Code.

²⁵ Section 3:305 of the Civil Code describes this competence, and it refers to infringement of specific consumer protection legislation listed in Annexe a to the Enforcement of the Consumer Protection Act, which does not include misleading practices.

The law states as a general principle that the advertiser has the burden of proof upon him to demonstrate that alleged misleading information is not misleading.

In view of the activity of the DACA, court action is de facto not applied for advertising infringements.

Output of actions

We perceive that in the Netherlands, for public enforcement, both by the ACM and court, the “direct” output of actions in the field of environmental claims, is (quasi) non-existent. However, via ConsuWijzer, the public authority fulfils an important role in supporting consumers that are searching for the available channels to undertake legal action, and it will guide them towards the SRO if their claim seems sufficiently acceptable.

1.7.3 Self-regulation

For the Netherlands only **one SRO** was identified: “Stichting Reclame code”.

Furthermore, as a general code of conduct: “Stichting Milieukeur”, was identified. This organisation licences a general logo, “Milieukeur”, as a national Eco label for approved products. This organisation may award the right to use the label on products certified by it, and it has the right to withdraw the right to use the label. Although such organisation may be regarded as a way of soft enforcement of environmental codes of conduct, solely by withdrawal of the right to use the label, it is not focused on the assessment of environmental claims and it only verifies the compliance with its requirements in view of the Eco label. Therefore we do not analyse this system within the context of our study.

The Dutch Advertising Code Authority (Stichting Reclame Code or DACA)

The **Dutch Advertising Code Authority (DACA)**, in Dutch the “Stichting Reclame Code”, is the general self-regulatory organisation for the advertising sector and ‘marketing’ in a broad sense. The DACA issued the Dutch Advertising Code, containing specific codes such as the Code for Environmental Advertising.²⁶

All stakeholders, including individual consumers, may file complaints with the DACA. ConsuWijzer, a public desk that gives information and support to consumers, refers consumers to DACA instead of public enforcement organisations. The assessment panel that decides on infringements is the Reclame Code Commissie (the Advertising Code Committee).

Enforcement is based on complaints only. The DACA has no authority to impose sanctions. It issues a recommendation about a perceived infringement on the advertising rules. Advertisers generally comply with the recommendation. If they do not comply, the infringing advertisement will normally be blocked by the media, and the case can be referred to the Authority for Consumers and Markets (ACM) in view of further administrative persecution.

| Name of the organisation | DUTCH ADVERTISING CODE AUTHORITY (DACA) In Dutch: STICHTING RECLAME CODE (SRC) |
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| 1. Scope | |
| Which set(s) of rules are applied by the SRO? (code of conduct, guidance, labelling scheme, legal provisions, etc.) Are the rules applied by the SRO referring to other rules? (e.g. ICC rules/UCPD) | The DACA uses the Dutch Advertising Code. ICC rules/UCPD are implemented in |

²⁶ Stichting reclame code. *MRC (Milieu Reclame Code)*. Retrieved from <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=271%20&deel=2>

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| | this code. |
| Trademark or logo available? Is the use of the logo or referral to the organisation dependent on compliance? Is there a specific logo regarding compliance with the rules on environmental claims? Compliance monitoring for members? | DACA has a logo, but it is not being used as a compliance label. There is no active surveillance monitoring on the correct use of a logo. Only after a complaint, DACA may decide that advertisers have been acting contrary to a decision of the DACA Committee, and in that case these will be monitored and placed on a black list. |
| Is the SRO sector related? | No. |
| Is the code of conduct and enforcement thereof applicable on an international, national, regional level? | Enforcement is national, but DACA also (partially) handles cross-border complaints in cooperation with the European umbrella organisation for the advertising sector EASA. |
| Focused on certain product categories/services? Focused on advertising, media, product labelling? | No, all products and services. All advertising, covering all kind of commercial expressions, including commercials, publicity, packaging, labelling. |
| Focused on certain concerns? (e.g. sustainability, organic) | No. The relevant Code for Environmental Advertising is applicable. ²⁷ |
| Focused on manufacturers, sellers, advertising agencies? | Focused on all advertisers (the broad definition includes manufacturers and sellers), covering all kind of commercial expressions, including commercials, publicity, packaging, labelling. |
| 2. Organisation | |
| Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists?) | The advertising industry (advertisers, advertising agencies and the media) formulates the rules. These rules should be in line with what is going on in society: they may be formulated in cooperation with consumer representatives and shall be comprehensible and practical and above all, they shall guarantee responsible advertising. These rules are part of the Dutch Advertising Code. ²⁸ Assessments of possible infringements are done by the Dutch Advertising Code Committee (discussed later). |
| Frequent updates of the rules regarding environmental claims? | In general there are updates of the advertising rules once or twice a year, |

²⁷ Ibid.²⁸ Stichting reclame code. *Algemeen*. Retrieved from <https://www.reclamecode.nl/nrc/pagina.asp?paginaID=262%20&deel=2>

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| | when it is convenient. |
| Application of detailed rules regarding environmental claims or general principles? | There is a Specific Code for Environmental Advertising (which is part of the Dutch Advertising Code) |
| How is the scheme or self-regulation system funded? | By the advertising industry |
| 3. Active surveillance / complaints | |
| Is active surveillance done by the SRO (independent from complaints)? Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners) | No. After blacklisting, there may be a specific follow-up where the advertiser is being watched. Companies, consumer organisations, other organisations or associations, individual consumers can file a complaint. |
| 4. Assessment | |
| How does the SRO make an assessment of the required substantiation of environmental claims? E.g. are the claims verified in labs? Does the assessment panel of the SRO request scientific reports or documentation? Must this documentation be submitted immediately? Must supporting documentation (scientific, tests) be retained by the producer during a certain time? Are quantifications examined (e.g. "75% recycled materials must really be 75%")? | Certain "environmental statements" must be justified when these are challenged by a complaint as being incorrect or misleading and the justifying materials must be submitted in due time before the hearing of the case. Similarly, absolute ²⁹ environmental claims must be specified and justified with materials. In certain cases, the scientific correctness of a statement is examined on the basis of acceptable scientific information, drafted in accordance with the state of the art (e.g. with correct methods). Pseudo-scientific statements that are not very comprehensible or irrelevant ("30% less harmful substances") must be interpreted in accordance with the likely interpretation by a common consumer. |
| How is the assessment panel established when an environmental claim is assessed? Is it considered sufficiently independent and impartial? | Many affiliated organisations have a member within the Authority, including sectorial organisations and consumer organisations. The Advertising Code Committee consists of five members: One member appointed by the organisations of advertisers affiliated with the Advertising Code Authority; One member appointed by the Consumer's Association; One member appointed by the |

²⁹ An environmental statement can be any precise statement, e.g. "90% recyclable" or imprecise, also called "an absolute statement", e.g. "a green car".

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| | <p>Association of Communication Consultancies;</p> <p>One member appointed by the media organisations affiliated with the Advertising Code Authority;</p> <p>One member, being the chairman, appointed by the Advertising Code Authority.</p> <p>The evaluation by the Committee members is independent of the organisation which appointed them. The Board of Appeal is organised similarly.</p> |
| 5. Measures/sanctions/prevention | |
| <p>Is the sanctioning of environmental claims focused on hard sanctions and/or moral guidance, recommendations?</p> <p>Will public authorities be involved if the SRO's recommendations are not respected by advertisers?</p> <p>Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo...</p> <p>Can sanctions be imposed by law?</p> <p>Focus on prevention, prior opinions or pre-clearance? Focus on 'soft approach' through discussion, negotiation?</p> <p>Are decisions published? If so, is it considered</p> | <p>In case of violation of the Advertising Code (including the specific Environmental Advertising Code) the Committee will recommend the advertiser involved to discontinue that kind of advertising. The Compliance department will thereupon check whether the advertiser has put the recommendation into effect. The Committee issues a recommendation in case of violation of the Code. The recommendation may be published with a press alert. If the recommendation is not respected, the name of the advertiser is published in a black list on the website of the DACA. Furthermore, the case may be transferred to the Authority for Consumers and Markets (ACM), the public regulator, for further enforcement. Furthermore, media organisations and publishers will no longer broadcast or press the non-compliant commercials, since they want to comply with the rules on a voluntary/moral basis. Not by the DACA.</p> <p>Not by the DACA.</p> <p>No official pre-clearance; there is a possibility of pre-copy advice, but that is voluntary and should be considered as risk-assessment, not as</p> |

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| as an effective measure? | <p>clearance.</p> <p>Regarding general prevention, the DACA provides checklists for compliance, brochures and it publishes the decisions of the Committee.</p> <p>This is considered an effective measure since the decisions provide additional guidelines to the written guidelines, and thus provides a flexible evolution of enforcement.</p> |
| 6. Procedure issues | |
| <p>Procedure with hearing rights, legal assistance, evidence and counter evidence? Costs?</p> <p>Appeal possible? Does it suspend the decision?</p> <p>Precedence of court cases in case of double approach where the same case would be assessed both under a public enforcement and a self-regulatory system? How long can procedures take?</p> | <p>There is a hearing where rights of defence are respected. Defence in writing, right to legal assistance and the right to provide evidence and counter-evidence. Witnesses and experts can be questioned. Consumers and organisations protecting the interests of consumers and the environment can file complaints for free. For companies the costs can vary, depending on their membership. The costs are a 1000 EUR per complaint, unless the company is a member that pays a membership fee of 1000 EUR (in which case a complaint is free of charge). If the company pays a membership fee of less than 1000 EUR, the cost of a complaint is 250 EUR.</p> <p>Yes, there is a Board of Appeal. The appeal has to be filed within 2 weeks after the first decision. The decision is not suspended as long as the appeal procedure is pending.</p> <p>There is no precedence, both procedures can be executed at the same time.</p> <p>The Advertising Code Committee will in general take a decision within 6 weeks after the hearing.</p> |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? | The decisions are published on the website ³⁰ and the experience can be included in newsletters ³¹ , brochures and checklists made available by the DACA. However, assessment cases do not automatically result in new |

³⁰ See <https://www.reclamecode.nl/zoekschermin.asp?hID=72>

³¹ See <https://www.reclamecode.nl/consument/default.asp?paginaID=123&hID=77>

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| | guidelines. |
| Conclusions based on interviews regarding: | The guidance, on environmental claims, as referred to in chapter 4, which is applied by the SRO is considered sufficiently clear. |
| Clarity and security of guidance and approach | The SRO system is considered effective by the SRO and by the Authority; 96% of the advertisers comply with the recommendations of the Advertising Code Committee or the Board of Appeal. |
| High priority in the country of the issue of the enforcement of the rules regarding environmental claims? | In 2011 and 2012 respectively 20 and 9 cases were submitted regarding environmental claims (1 to 2% of all advertising complaints). |
| Efficiency and coherence | The stakeholders are represented in the DACA. Furthermore, organisations, associations, individuals and companies are entitled to file complaints. |
| Sufficient involvement and protection of all stakeholders | |
| Combination of public enforcement and SRO system | |
| Issues that were indicated as a good practice | |
| Other conclusions or remarks | |

Output of actions

In 2012, 9 complaints were submitted regarding environmental claims, on a number of 1516 cases that were handled by the Advertising Code Committee (DACA received 4115 complaints concerning advertising and marketing of which a majority was dismissed or transferred to other competent administrations or jurisdictions).

In 2011, 20 complaints were submitted regarding environmental claims, on a number of 1528 cases handled by the Advertising Code Committee (3838 complaints were filed overall, but a majority was dismissed or transferred to other competent administrations or jurisdictions).

The cases on environmental claims decided in 2012 concerned:

Energy: 4 (3 upheld, 1 rejected)

Cars: 2 (both upheld)

Furnishing and household goods: 2 (1 upheld, 1 rejected)

Retail: 1 (1 rejected)

Thus 6 complaints out of 9 were upheld.

In general, 96% of advertisers who receive a recommendation, comply with the recommendation and modify or withdraw the criticised advertising.

1.7.4 Summary

The Netherlands have few, but well centralized enforcement systems for the rules regarding environmental claims.

- *Predominant system.*

The self-regulatory enforcement is by far considered as the standard procedure for the enforcement of the UCPD rules regarding environmental claims in the Netherlands. While, in theory, the administration (ACM) may act, it is in practice the DACA that will assess complaints, using the Dutch Advertising Code (and the specific Code for Environmental Advertising which is a part thereof). The public authorities and the courts receive very few or no "official" complaints on the subject of environmental claims; however, ConsuWijzer, an official portal linked to ACM, receives consumers with their concerns and may lead them to the appropriate channels in order to file their complaints. The ACM fulfils a role of support and guidance for consumers.

- *Combination of systems – coherence.*

The combination of public enforcement and self-regulatory enforcement is not perceived as problematic. In general, the predominant position of the SRO is perceived as a good practice. It results in a centralized, coherent and flexible policy regarding enforcement.

- *Effectiveness.*

The right to complain seems safeguarded for the stakeholders, including individual consumers. Competitors, consumer organisations, environmental organisations and individual consumers can file complaints under the public enforcement system (mainly courts) as well as the self-regulatory system. Consumers are in general aware of ConsuWijzer, a portal of the ACM and the competition and telecommunications authorities, where consumers may obtain information and advice regarding the filing of complaints. Regarding environmental claims, they will be advised to file a complaint with DACA. Regarding remedies, in practice the “soft sanction” mechanism of DACA is the most relevant. 96% of infringements are corrected by compliance with the recommendations of the DACA’s Committee. In case a recommendation of the Committee is not respected, the name of the advertiser is published in a black list on the website of the DACA. Furthermore, the media organisations and publishers will no longer broadcast or publish the non-compliant adverts. If a recommendation is not respected, the name of the advertiser may be sent to the Authority for Consumers and Markets (ACM) for further administrative enforcement.

- *Clear guidance.*

The DACA believes that the current rules, set forth in the Environmental Advertising Code, are sufficiently clear.

- *Surveillance activity.*

The enforcement is based on complaints, not on surveillance activity.

- *Pre-clearance.*

There is no official pre-clearance system, neither in the public, neither in the SRO domain. There is a possibility of pre-copy advice by the DACA if this is wanted by the advertiser, but this is voluntary and must be considered as general risk assessment, not as official clearance. Regarding general prevention, the DACA provides checklists for compliance, brochures and it publishes the decisions of the Committee.

- *Data.*

In 2011 and 2012 respectively 9 and 20 cases were submitted to DACA regarding environmental claims (1 to 2% of all advertising complaints).

1.8 Poland

1.8.1 Overview

In Poland both enforcement systems are available. Public enforcement is organised by the following organs:

the President of the Office of Competition and Consumer Protection (*Prezes Urzędu Ochrony Konkurencji i Konsumentów*);

the Trade Inspection (*Inspekcja Handlowa*);

Court action (general civil proceedings)

And the self-regulatory mechanism is the Union of Associations 'the Advertising Council' (*Związek Stowarzyszeń Rada Reklamy*), which includes the Commission of Ethics in Advertising (*Komisja Etyki Reklamy*) acting as the assessment panel for complaints.

1.8.2 Public enforcement

The President of the Office of Competition and Consumer Protection (*Prezes Urzędu Ochrony Konkurencji i Konsumentów*)

The President of the Office of Competition and Consumer Protection (hereinafter the President) is competent only in cases where an infringement of provisions of the law implementing the UCP Directive (i.e. the law on combating unfair commercial practices, *ustawa o przeciwdziałaniu nieuczciwym praktykom rynkowym*) violates consumers' collective interests. Consequently, cases concerning an individual/concrete consumer will not be dealt with by the President. In other words, the President of the Office of Competition and Consumer Protection can issue a decision declaring an infringement of the UCP Directive only if it is established that the commercial practice in question violates provisions of the legislation transposing the UCP and/or the collective interests of the consumers.

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| Name and category of Authority (general administration, specific agency, prosecution...) | The President of the Office of Competition and Consumer Protection – a central governmental authority competent in cases concerning competition and consumers. |
| 1. Scope | |
| Products/markets/sectors covered | Environmental claims and non-food sectors, among other products and sectors covered. |
| Surveillance of advertising and/or product information / labelling/ presentation? | All. N.B. The President of the Office of Competition and Consumer Protection is competent only in cases where an infringement of provisions of the law implementing the UCP Directive violates consumers' collective interests ; hence cases concerning environmental claims. Cases concerning an individual/concrete consumer will not be dealt with by the President. They will fall under the competence of |

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| | general civil courts. |
| 2. Organisation | |
| <p>Based on legal rules and/or guidance ? Which rules are applied ? Based on detailed rules or general principles ? Nature of enforcement proceedings (administrative / based on court actions)</p> | <p>Competences of the President of the Office of Competition and Consumer Protection are based on legal acts. In the case of environmental claims, proceedings before the President are primarily based on the Law on the protection of competition and consumers (<i>ustawa o ochronie konkurencji i konsumentów</i>, OJ No 2007 no 50 item 331) and the law on combating unfair commercial practices (<i>ustawa o przeciwdziałaniu nieuczciwym praktykom rynkowym</i>, OJ No 2007 no 171 item 1206), which implements the UCP Directive. Rules contained in the above acts describe in detail the competences of the President. Those rules have general character and are not specifically directed at handling cases concerning environmental claims. The competences of the President involve protecting collective interests of consumers, what includes issuing decision in cases related to untruthful advertisement and unfair commercial practices.</p> <p>Proceedings before the President have an administrative character. The Code of Administrative Proceedings shall apply to all aspects not covered specially by the Law on the protection of competition and consumers.</p> |
| 3. Active surveillance / complaints | |
| <p>Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints ?</p> | <p>The system is based on complaints - everyone can submit to the President, in writing, a notification about alleged infringement of the law implementing the UCP Directive. The President, however, is not obliged to start proceedings on the basis of such notification. Proceedings before the President are initiated <i>ex officio</i>. However, those sending complaints cannot be party to the proceedings. Before the procedure is initiated, the President can commence examination proceedings (<i>postępowanie wyjaśniające</i>) in order to establish whether provisions of unfair</p> |

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| | commercial practices have been infringed or not. |
| Who has the right to complain ? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | Everyone. No need to be interested or affected by the activity or infringement. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen ? | Yes, all organisations have the right to submit notifications to the President of the Office of Competition and Consumer Protection . |
| Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art.. Necessity to retain documentation about manufacturing process.. Must supporting documentation be submitted immediately by the producer ? | Producers are obliged to submit, on request of the President, all information and documents necessary for resolution of the case. The President can also decide to hear witnesses and can call experts if the case in question requires specialist information. Public authorities are obliged to make available for the President all documents and information necessary to solve the case. Within the Office, the Department of Consumer Policy conducts administrative proceedings concerning practices infringing collective consumer interests, including also examination of the environmental claims substantiation. In cases concerning special (e.g. technical) knowledge, the President can request an opinion of an expert(s). No requirement of 'immediate' submission of documentation has been identified. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period ? | Yes. The documentation must be retained by suppliers and made available on request of competent public authorities. |
| Are quantifications examined ? (e.g. when stated that "a product is made of 75% recycled materials") | No information has been identified. ³² However, the President is obliged to carefully consider all facts and circumstances relevant for the case; hence it is assumed that quantifications are also examined. |
| Are surveillance actions based on certain standards? | N/A |
| Measures/sanctions/prevention | |

³² Sources of information: relevant legislation, website of the Office and interviews.

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| Focus on prevention or post-marketing sanctioning? | Post-marketing sanctioning. |
| A priori clearance or prior opinions possible ? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings ? | If, during the proceedings before the President, is revealed that an entrepreneur is using unfair commercial practices and he commits to take actions to cease this infringement, the President decision could impose the obligation on the producer to fulfil his commitments or/and pecuniary sanctions. Producer shall regularly report to the President. If the producer does not fulfil his commitments in accordance with the President's decision, the President can impose a fine on the producer. Arbitration is possible in certain circumstances. |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | A decision stating that the practice in question infringes consumers' collective interests and obliging the producer to cease such a practice. Fines are also foreseen by the legislation. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | No. |
| Who can be held liable ? Liability of manufacturers, importers, distributors, advertising agencies, editors ? | The law states 'entrepreneurs ' – possibly this notion could cover all persons indicated, however in practice logos/claims are applied on products by producers and they will be held liable. |
| Publication of decisions ? | The President can decide to publish the decision at the expense of the producer. |
| 4. Procedure issues | |
| Maximum term to initiate complaints ? (e.g. max. 2 years after advertising campaign) | The proceedings cannot be initiated after one year from the date the unfair commercial practices ceased. |
| Right to be heard, right to present evidence | Yes. Producers are obliged to present all documents requested by the President. In addition, everyone, on his/her own initiative or upon request by the President, has the right to submit, in writing, all information relevant for the case in question. The president can decide to open a hearing and hear parties, witnesses and experts. |
| Right to appeal ? Does it suspend the decision? | Yes. The appeal can be lodged with the competition and consumer protection court in Warsaw. The |

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| | appeal suspends enforcement of decision. |
| How long can procedures take ? | Two months, in particularly complicated cases three months. The President is obliged to solve the case without undue delay. |
| Cost of procedure, of experts (would this financial risk prevent complaints ?) | Complainants are not parties to the proceedings, hence they are not concerned by the expenses. The cost of procedures is born by the infringing producer. |
| 5. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available ? Are decisions published ? | No guidelines regarding environmental claims are issued by the Office of Competition and Consumer Protection. Decisions of the President are published on the website of the Office of Competition and Consumer Protection. |
| Conclusions based on interviews regarding: Clarity and security of guidance and approach High priority in the country of the issue of the enforcement of the rules regarding environmental claims ? Efficiency and coherence Sufficient involvement and protection of all stakeholders Combination of public enforcement and SRO system Issues that were indicated as a good practice Other conclusions or remarks | Procedural rules are clear and understandable and therefore procedures are usually effective and coherent. Cases concerning environmental claims are not prioritised. The lack of legally binding act referring expressly to environmental claims does not contribute to enforcement of the UCPD rules for environmental claims in practice. As the party to the proceedings can only be the entrepreneur whose commercial practices are contested, stakeholders are not involved in the procedure. Decisions issued by the President can be appealed to the Court For Protection of Competition and Consumers in Warsaw, hence cooperation between the President and public courts is ensured. |

The Trade Inspection (*Inspekcja Handlowa*)

The Trade Inspection is competent to carry out inspections of entrepreneurs and their trade activities in Poland. The President of the Office of Competition and Consumer Protection is hierarchically the superior body of the Trade Inspection office. Generally, inspections are based on an inspection plan, however not-planned inspections may be also carried out if it is in the best interests of consumers and/or economic interests of the country. If, as a result of an inspection it is revealed that the product which is subjected to the inspection does not meet legal requirements and/or does not comply with declarations/claims/logos/certifications claimed on the product, the regional inspector (*wojewódzki inspektor*) may issue a relevant decision in this matter, e.g. can

decide to withdraw the product from the market. In practice, environmental claims are being subjected to inspection very rarely.

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| Name and category of Authority (general administration, specific agency, prosecution...) | The Trade Inspection – public administration authority |
| 6. Scope | |
| Products/markets/sectors covered | Environmental claims related to non-food sectors, among other products and sectors covered |
| Surveillance of advertising and/or product information / labelling/ presentation? | Surveillance of services and products, including labelling. Inspections cover production stage as well as trading of products. Certain groups of products and services are excluded from the scope of competences of the Trade Inspectorate, e.g. oil, fertilizers; IT, financial or health-care services. Advertising is not covered. |
| 7. Organisation | |
| Based on legal rules and/or guidance ? Which rules are applied ? Based on detailed rules or general principles ? Nature of enforcement proceedings (administrative / based on court actions) | Competences of the Trade Inspection are based on the Law on the Trade Inspection (<i>ustawa o Inspekcji Handlowej, OJ No 2009 no 151 item 1219</i>). Rules contained in the above act describe in detail competences of the Trade Inspection. Competences of the Trade Inspectorate with regards to environmental claims are not explicitly established by the law. The Inspectorate has general competences with regards to consumer protection: besides the surveillance of services and products on the market, it is competent to carry out consumer mediation and organise consumer arbitration courts. Proceedings before the Trade Inspection have an administrative character. The Code of Administrative Proceedings shall apply to all aspects not covered by the Law on the Trade Inspection. |
| 8. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints ? | The Trade Inspectorate carries out surveillance of the market and entrepreneurs (both individuals and companies). Inspections are carried out on the initiative of the Trade Inspectorate. The inspection procedure is based on detailed rules, is thorough and includes sampling, if |

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| | <p>necessary. Inspections are usually carried out on the basis of an inspection plan prepared by the President of the Office of Competition and Consumer Protection., however occasional inspections are also possible.</p> <p>No complaint system is explicitly foreseen in the law on the Trade Inspection. However, according to the Code of Administrative Procedure, everyone has the right to submit a notification/motion to a public administration authority and public authorities are obliged to examine the application in question. The trade Inspection, as a public authority, is also bound by this requirement.</p> |
| Who has the right to complain ? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | Everyone, including natural and legal persons. However, persons complaining cannot be parties in the proceedings. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen ? | Yes, According to the Code of Administrative Procedure, everyone has the right to submit a motion/notification to a public authority. This also includes organisations. |
| 9. Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art.. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer ? | Inspectors may have access to all documentation and facilities of the inspected companies. Inspectors can request the controlled entity to submit, in a designated time, all necessary clarifications; can hear witnesses and experts; take samples and collect all materials they deem important for the case. If sampling or other inspection activities require specialised knowledge, an inspector can appoint a specialist to carry out these activities. Samples of products are examined in laboratories of the Trade Inspectorate. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period ? | Yes. The documentation must be retained by suppliers and made available on request of competent public authorities. |
| Are quantifications examined ? (e.g. when stated that "a product is made of 75% recycled materials") | No information has been identified. |
| Are surveillance actions based on certain standards? | The law on the Trade Inspection establishes a set of procedural rules |

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| | applicable to inspections. |
| 10.Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | Post-marketing sanctioning. |
| A priori clearance or prior opinions possible ? (in general by guidance or case by case) | No. |
| Focus on 'soft enforcement' through negotiations, informal warnings ? | No. |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | No. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | Limitations in marketing, suspension of marketing, withdrawal of products from the market or immediate removal of the infringement. Decisions are enforceable immediately. |
| Who can be held liable ? Liability of manufacturers, importers, distributors, advertising agencies, editors ? | The law states 'entrepreneurs ' – possibly this notion could cover all persons indicated, however in most cases, manufacturers will be held liable as logos/claim/certifications are applied on their products. |
| Publication of decisions ? | The President of the Office of Competition and Consumer Protection can decide to publish the decision. |
| 11.Procedure issues | |
| Maximum term to initiate complaints ? (e.g. max. 2 years after advertising campaign) | N/A |
| Right to be heard, right to present evidence | Inspectors can examine documents and information being subjected to control, request the controlled person to submit, in writing, all necessary information related to the case and can hear the party, experts and witnesses if it is necessary to resolve the case. The need to hear the above mentioned persons is determined on a case-by-case basis by the inspector. |
| Right to appeal ? Does it suspend the decision? | Yes. A decision of the regional inspector can be appealed to the President of the Office of Competition and Consumer Protection. The decision of the President can be further appealed to a regional administrative court (<i>wojewódzki sąd administracyjny</i>). An appeal suspends enforcement of the decision. |
| How long can procedures take ? | Inspections, depending on the case, last two-three days. The decision must be taken within one month or, |

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| | in complicated cases – two months, from the start of the proceedings. |
| Cost of procedure, of experts (would this financial risk prevent complaints ?) | Generally, costs are covered by the Trade Inspection. If laboratory examination of a sample of a product proved that the product does not meet requirements claimed, the controlled entity must bear costs of the laboratory tests. |
| 12. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available ? Are decisions published ? | No guidelines regarding environmental claims are issued by the Trade Inspection. Decisions of the Trade Inspection are published on the website of the Office of Competition and Consumer Protection or on the websites of regional trade inspections. |
| <p>Conclusions based on interviews regarding:</p> <p>Clarity and security of guidance and approach</p> <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims ?</p> <p>Efficiency and coherence</p> <p>Sufficient involvement and protection of all stakeholders</p> <p>Combination of public enforcement and SRO system</p> <p>Issues that were indicated as a good practice</p> <p>Other conclusions or remarks</p> | <p>Procedural rules are clear and understandable and therefore procedures are usually effective and coherent.</p> <p>Cases concerning environmental claims do not benefit from prioritised track of proceedings. In fact, in practice, very few cases concerning environmental claims are dealt with by the Trade Inspection. This is mainly due to financial and human resources constraints as well as to the fact that inspections focus primarily on infringements of binding legal provisions, whereas very often environmental claims are based on self-regulatory rules. UCPD does not explicitly refer to environmental claims; therefore the Inspectorate does not control the compliance of environmental claims with Polish transposing legislation. The focus is currently on dangerous products.</p> <p>The party to the proceedings can be only the entrepreneur (both individual and company) whose commercial activity is being contested. In certain cases NGOs can commence proceedings or join pending proceedings, so involvement of stakeholders is ensured to a certain extent.</p> <p>There is no involvement of SRO foreseen for the procedure before the Trade Inspection.</p> |

Court action

In Poland, the enforcement of the provisions implementing the UCP Directive is primarily carried out by civil courts. According to Article 12 of the Law on combating unfair commercial practices, consumers whose interests have been infringed or threatened by an unfair commercial practice can lodge a case before the civil court and request that, *inter alia*, the unfair commercial practice in question is ceased, consequences of such practice are removed or compensation is paid. Under certain conditions, a complaint can be also filed by the Ombudsman, the Ombudsman for Insured Persons, organisations protecting consumers' rights and ombudsmen of consumers.

According to Article 61 of the Code of Civil Procedure, consumer organisations and environmental organisations can, upon consent of a natural person (e.g. consumer), start civil proceedings or join pending proceedings. This rule is applicable also to civil procedures concerning unfair commercial practices.

Competitors may enter legal proceedings on the basis of Article 18 of the Law on unfair competition (*ustawa o nieuczciwej konkurencji*). According to this act, the term 'unfair competition' includes practices such as labelling of products and services, or lack of such labelling, that can mislead consumers as to the origin, quantity, quality, usage and other important characteristics of the product or service in question. Competitors, whose interests have been infringed or threatened by an act of unfair competition, may turn to a civil court.

Moreover, consumer arbitration courts, established with regional trade inspectorates, can adjudicate pecuniary disputes between consumers and producers. The scope of cases dealt with by these courts could possibly cover disputes arising with regards to unfair consumer practices.

Output of actions

No relevant information has been obtained. According to the interviewers, cases concerning environmental claims rarely reach public enforcement authorities and there are no specific statistics on this matter.

1.8.3 Self-regulation

The Union Of Associations 'The Advertising Council'

The Union of Associations 'the Advertising Council' (*Związek Stowarzyszeń Rada Reklamy*) (hereinafter the Advertising Council) is the self-regulatory body for the advertising sector in Poland. The Advertising Council issued the Code of Ethics in Advertising. The Code consists of nine chapters; a chapter entitled "Advertising containing ecological information" regulates certain aspects of environmental claims used in advertising.

All natural and legal persons, including organisations active in the advertising industry as well as individual customers, may file complaints on the violation of the Code to the **Advertising Council**. In addition, complaints may be also submitted by one of the bodies of the Advertising Council, i.e. **the Board**. The **Assessment Panel** that decides on infringements is linked to the **Commission of Ethics in Advertising** (*Komisja Etyki Reklamy*). The assessment panel is established separately for each case by the President of the Commission of Ethics in Advertising and consists of three members of the Commission of Ethics in Advertising.

There is no specific enforcement procedure for environmental claims hence general procedural rules in the Regulation on enforcement (*Regulamin rozpatrywania skarg*) apply. Enforcement is based on complaints. The **Assessment Panel** has no authority to impose sanctions. It issues resolutions and invites infringing advertisers to voluntarily comply with them. If they do not comply, the panel can file a complaint

with the Commission of Ethics in Advertising to suspend or cease the advertiser's right to use the logo of the self-regulatory organisation in the advertisement.

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| Name of the organisation | The Union of Associations 'the Advertising Council' |
| 7. Scope | |
| Which set(s) of rules are applied by the SRO ? (code of conduct, guidance, labelling scheme, legal provisions...) Are the rules applied by the SRO referring to other rules ? (e.g. ICC rules/UCPD) | <p>The Code of Ethics in Advertising is an example of a code of conduct which regulates all aspects of communication in advertising.</p> <p>The Code does not set up any binding rules. It confirms that it does not replace any binding legal provisions and that it establishes a set of rules additional to existing legal provisions. It provides that relevant legal provisions are applicable to matters not regulated in the Code.</p> <p>Provisions of the Code regulating a specific matter differently to the legal regulations do not relieve advertisers from compliance with such legal regulations.</p> |
| Trademark or logo available? Is the use of the logo or referral to the organisation dependent on compliance ? Is there a specific logo regarding compliance with the rules on environmental claims ? Compliance monitoring for members ? | All persons/entities (i.e. advertisers) interested to join the advertising self-regulatory system must sign a licence agreement which allows them to use a trademark 'I advertise ethically' ('Reklamuję etycznie'). The licence agreement establishes in detail rights and obligations of its signatories and contains a description of the enforcement procedure. The agreement is concluded for 12 months, with an automatic renewal option. |
| Is the SRO sector related? | |
| Is the code of conduct and enforcement thereof applicable on an international, national, regional level? | The Code and enforcement thereof is applicable at a national level. |
| Focused on certain product categories/services? Focused on advertising, media, product labelling? | All products and services that are being advertised are covered. The focus is on advertising, taking into account specificity of different media. Product labelling is not covered. |
| Focused on certain concerns? (e.g. sustainability, organic) | No focus on particular concerns. |
| Focused on manufacturers, sellers, advertising agencies? | The focus is on advertising activities , including promotion of sales, direct marketing and sponsoring. |

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| Organisation | |
| Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists.. ?) | The Union of Associations ' the Advertising Council ' (hereinafter 'the Council') decides on the Code's provisions, including those on advertising containing ecological information and environmental claims (chapter IV of the Code). The Council consists of associations and other organisations representing entities operating in the advertising market. |
| Frequent updates of the rules regarding environmental claims ? | According to the Articles of Association of the Council, provisions of the Code shall be assessed annually with the view of introducing amendments, where necessary. |
| Application of detailed rules regarding environmental claims or general principles? | The Code of Ethics in Advertising does not focus solely on environmental claims but regulates all aspects of communication in advertising. It consists of nine chapters, one of them being a chapter titled 'Advertising containing ecological information'. This chapter contains a number of rules regarding environmental claims. |
| How is the scheme or self-regulation system funded? | The scheme is funded by associations or organisations active in the field of advertising and is primarily based on fees paid to obtain a certificate 'I advertise ethically'. The amount of the fee depends on the income and expenses related to the advertising activity incurred by the organisation in the preceding year. Advertising agencies pay an annual fee whereas media's fees depend on their shares in the advertising market. |
| 8. Active surveillance / complaints | |
| Is active surveillance done by the SRO (independent from complaints)? | Complaints may be filed by one of the bodies of the Council, i.e. the Board (Zarząd) . Such mechanism can be considered as a form of surveillance done by the SRO. |
| Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners) | In addition to the Board, the right to lodge a complaint is exercised by all natural and legal persons. Complaints may be filled collectively or individually. |
| 9. Assessment | |
| How does the SRO make an assessment of the required substantiation of environmental | The Assessment Panel of all advertisements, including those |

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| <p>claims ?</p> <p>E.g. are the claims verified in labs ? Does the assessment panel of the SRO request scientific reports or documentation ? Must this documentation be submitted immediately ? Must supporting documentation (scientific, tests) be retained by the producer during a certain time ?</p> <p>Are quantifications examined (e.g. "75% recycled materials must really be 75%") ?</p> | <p>containing environmental claims, considers the material and documents submitted by the parties to the proceedings as well as the evidence gathered by the Office of the Council. In addition, the Office of the Council runs a list of experts who can be requested to issue an opinion/report, if resolution of a particular case requires specialised knowledge. The assessment panel can also request appointment of experts outside the list.</p> |
| <p>How is the assessment panel established when an environmental claim is assessed ? Is it considered sufficiently independent and impartial?</p> | <p>The assessment panel is established, for every case separately, by the President of the Commission of Ethics in Advertising and consists of three members of the Commission of Ethics in Advertising, representing separate groups of the advertising market. According to a general rule, members of the assessment panel must be impartial and independent from the parties/circumstances of the case. The Regulation on enforcement (<i>'Regulamin rozpatrywania skarg'</i>) foresees a detailed procedure for ensuring impartiality of the panel. No particular procedure is foreseen in the case when an environmental claim is assessed, hence general rules are applied.</p> |
| 10.Measures/sanctions/prevention | |
| <p>Is the sanctioning of environmental claims focused on hard sanctions and/or moral guidance, recommendations?</p> <p>Will public authorities be involved if the SRO's recommendations are not respected by advertisers ?</p> <p>Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo...</p> <p>Can sanctions be imposed by law?</p> <p>Focus on prevention, prior opinions or pre-clearance ? Focus on 'soft approach' through discussion, negotiation ?</p> <p>Are decisions published? If so, is it considered as an effective measure?</p> | <p>If provisions of the Code are infringed, the assessment panel can take, depending on the case in question, the following resolutions:</p> <ol style="list-style-type: none"> 1) stating that the advertisement violates the Code; 2) stating that the advertisement should be changed so as to remove the violation of the Code; 3) stating that dissemination of the advertisement should be ceased. <p>If the advertiser persistently and grossly violates the Code, the assessment panel can additionally suspend or terminate its right to use the trade mark 'I advertise ethically'.</p> <p>In cases referred to in point 1) and 2), the assessment panel may decide to inform the advertising agency and</p> |

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| | <p>media that designed the advertisement about its resolution . In addition, the assessment panel always publishes resolutions on its web-site and may decide about their publication in relevant professional media.</p> <p>Public authorities will not be involved if the assessment panel's resolutions are not respected by advertisers. Advertisers are requested by the panel to voluntarily comply with its decision. If they do not comply, an internal SRO procure is initiated by which the panel can file a complaint with the Commission of Ethics in Advertising to suspend or cease the advertiser's right to use the trademark 'I advertise ethically'. Sanctions cannot be imposed by law. From the above it follows that the sanctions focus on post-factum rather than preventive measures. No pre-clearance system with mandatory outcomes is possible .</p> |
| 11.Procedure issues | |
| <p>Procedure with hearing rights, legal assistance, evidence and counter evidence? Costs?</p> | <p>Hearing is mandatory; the President of the Commission of Ethics in Advertising choses the time of the hearing and inform parties thereof. In addition, the President can also invite experts for the hearing. In this case, during the hearing, experts orally present their opinion/report and members of the panel as well as parties and their representatives can ask the experts questions. The representative of the complainant is an arbiter-referee – who is a member of the panel (appointed by the Board of Advertising Council) but without voting rights.</p> <p>During the hearing, parties have the right to 15 minutes' speeches and, afterwards, to 7 minutes' replies in the following order: the claimant and the advertiser. If one or both parties are not present or if they refuse to actively participate in the hearing, the assessment panel still can take decision in the case.</p> <p>Generally, costs of the proceedings are not born by the claimant, except if the claim is filed by an entrepreneur and is associated with his economic</p> |

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| <p>Appeal possible? Does it suspend the decision?</p> <p>Precedence of court cases in case of double approach?</p> <p>How long can procedures take ?</p> | <p>activity. In this case, fees are determined by the Board on the basis of the regulation of fees.</p> <p>Appeals are possible within 10 days from the receipt of the decision by the party. An appeal can be based solely on new facts or evidence. If an expert has issued his opinion in the first instance proceeding, there is no possibility to request another opinion of the expert. Decisions issued in appeal proceedings are final. Logging of an appeal suspends the decision.</p> <p>No.</p> <p>Procedures take approximately 30 days.</p> |
| 12.Various | |
| <p>Do assessment cases result in new guidelines regarding environmental claims that are available?</p> | <p>All resolved cases can be considered as guidelines for future adjudications.</p> |
| <p>Conclusions based on interviews regarding:</p> <p>Clarity and security of guidance and approach</p> <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims?</p> <p>Efficiency and coherence</p> <p>Sufficient involvement and protection of all stakeholders</p> <p>Combination of public enforcement and SRO system</p> <p>Issues that were indicated as a good practice</p> <p>Other conclusions or remarks</p> | <p>'the Advertising Council' (<i>Związek Stowarzyszeń Rada Reklamy</i>) (hereinafter the Advertising Council) is the SRO/self-regulatory body for the advertising sector in Poland which issued the Code of Ethics in Advertising. The Code includes a specific chapter on environmental claims where key requirements are set. However, the procedural rules are not specific to environmental claims.</p> <p>The approach seems effective as the procedures are clear and short. However actions are only ex-post with not action aiming to prevent infringements. Furthermore, the effectiveness of such a voluntary system requires several sanctioning steps. Advertisers are requested by the panel to voluntarily comply with its decision. If they do not comply, the panel can file a complaint with the Commission of Ethics in Advertising to suspend or cease the advertiser's right to use the trademark 'I advertise ethically'.</p> <p>Public enforcement authorities are not involved in the enforcement of the SRO system. Both systems are independent and while the regulatory system focuses solely on advertising,</p> |

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| | the public enforcement system covers all aspects of enforcement of the law implementing the UCP Directive. The use of independent experts in the Assessment panel or the list of experts ensures proper assessments. |
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Output of actions

No information was available.

1.8.4 Summary

Poland has a system based on public and self-regulatory enforcement procedures which are complementary. Whereas the regulatory system focuses solely on advertising, the public enforcement system covers all aspects of enforcement of the law implementing the UCP Directive.

- *Predominant system.*

The public enforcement system is considered as the standard procedure for the enforcement of the UCPD rules regarding environmental claims. In practice, however, public authorities receive very few or no complaints on the subject of environmental claims. This may imply that public awareness on environmental claims is still not yet developed. One could also conclude that environmental claims are not a priority for public enforcement authorities. The UCPD does not explicitly refer to environmental claims; therefore the Inspectorate does not control the compliance of environmental claims with Polish transposing legislation. The focus is currently on dangerous products. Regarding *advertising*, the predominant system is the one designed by the SRO – the Union of Associations 'the Advertising Council' based on the Code of Ethics in Advertising.

- *Combination of systems – coherence.*

The combination of public enforcement and self-regulatory enforcement is not perceived as problematic. Those systems are two separate systems and public authorities are not involved if the decisions issued by the SRO are not respected by advertisers. Cooperation between the Trade Inspectorate and the President of the Office of Competition and Consumer Protection is considered to be effective.

- *Effectiveness.*

The right to complain is safeguarded for all stakeholders, including individual consumers, competitors as well as consumer and environmental organisations. They can file complaints under the public enforcement system as well as under the self-regulatory system. The web-site of the President of the Office of Competition and Consumer Protection does not explicitly contain information about enforcement of the UCP Directive, but consumers may obtain necessary information by contacting local/regional consumers' ombudsman or other consumer organisations (whose list is available on the web-site of the President). There is also a separate Q&A section on the President's website where consumers may find practical information about procedures carried out by the President. Whereas the procedures before the President may concern only infringement of collective interests of consumers, procedures before the Trade Inspection concern individual cases. As far as remedies are concerned, decisions taken by the President of the Office have a general character and oblige the infringing party to cease the infringement whereas measures ordered by the Trade Inspectorate are of corrective nature. Decision taken by the public authorities can be ultimately appealed to the court. The SRO is effective: if decisions of the SRO are not

respected, the infringing party can be deprived from his/her right to use the trademark of the organisation.

- *Surveillance activity.*

Surveillance of the market is carried out by the Trade Inspection on the basis of an annual planning or ad-hoc inspections. However, the inspections are not specific to environmental claims and, in practice, public authorities do not carry out inspections for communications on environmental claims as they are not determined by law. Inspections can be carried out within the framework of the UCPD and could lead to a decision seeking to cease the infringement. Should an infringement of the law implementing UCP Directive be revealed.

- *Pre-clearance.*

There is no pre-clearance system in the public enforcement or in the SRO system.

- *Data:*

Not available.

1.9 Spain

1.9.1 Overview

In Spain both enforcement systems are available. Public enforcement is organised by the following organs:

Administrative enforcement

Spanish Consumer Arbitration system

Court Action;

and the self-regulatory mechanisms are organised by the Self-Regulatory Body Autocontrol to ensure enforcement of the Self-Regulation Code on Environmental Claims included in Commercial Communications (Código de autorregulación sobre argumentos ambientales en comunicaciones comerciales).

Autocontrol is the Self-Regulatory Organisation composed of the main advertisers, main advertising industry associations, agencies and media agents (TV, press, radio, internet...).

1.9.2 Public enforcement

The administrative procedures

The Law 29/2009 of 30 December 2009 amending the statutory regime of unfair competition and advertising in order to enhance protection afforded to consumers and users transposes the UCP Directive amending the following pieces of legislation relevant for the enforcement of environmental claims:

the Unfair Competition Act (Law 3/1991);

Consumers and Users Act (Legislative Royal Decree 1/2007);

the Retail Trade Act (Law 7/1996);

General Advertising Act (Law 34/1988)

According to these Acts, the enforcement by public authorities in Spain includes Administrative procedure and the procedures before the Court. The administrative enforcement of the legislation for consumer protection could be the responsibility of national, regional or local authorities to be defined on a case by case basis (Royal Decree 1945/1983 regulating infringements and sanctions related to consumer protection). The Local Consumer Information Offices are responsible of dealing with complaints or forwarding them to the competent authority.

Enforcement of the Unfair Competition Act, Law 3/1991 and of the General Advertising Act, Law 34/1988 is only possible through Court action. The administrative orders cannot declare the existence of unfair commercial practices or request the company to repair the damages.

The protection of consumers' rights is enshrined in the Consumers and Users Act (FR 1/2007) as well as in specific regional laws. When consumers see their rights violated they can resort to the Administration and submit a claim to initiate an administrative proceeding against the entity that allegedly infringed their rights. The national and the regional authority for consumer affairs (Dirección General de Consumo) are the competent administrative authorities to deal with cases of environmental claims. The local authority for consumer affairs (Oficina Municipal del Consumidor) has competences for managing the complaints.

In case the administrative authority considers that the entity's conduct constitutes an infringement, it can initiate an administrative proceeding in order to declare the infraction and sanction the entity.

However, when the administrative authority receives the claim and no infringement is identified, the claim is forwarded to the entity and a procedure aiming to reach an agreed solution to the claim is started. This proceeding consists on mediation where the parties try to reach an agreement and the administrative authority acts as a mediator. The agreement reached has no enforceable character. If no agreement is reached or the entity does not reply, the consumer can resort to the Arbitration system in order to obtain an enforceable decision.

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| Name and category of Authority (general administration, specific agency, prosecution...) | The Competent Public Administration generally is the Direction General for Consumers at national or/and regional (Autonomous Communities) level. Local consumer offices have also some enforcement role for the management of complaints. |
| 1. Scope | |
| Products/markets/sectors covered | All consumer protection matters based on the definition of consumer which excludes actions by individuals or entities exercising a professional or business related activity. |
| Surveillance of advertising and/or product information / labelling/ presentation? | Inspection Service at national level and Technical Inspectors of Quality and Consumption (<i>Inspectores técnicos de calidad y consumo</i>) at local level monitor and control goods and services provided to consumers in order to enforce the legal requirements and to protect consumers' rights. Preliminary diligences may be order to clarify facts in administrative proceedings. |
| 2. Organisation | |
| Based on legal rules and/or guidance ? Which rules are applied ? Based on detailed rules or general principles ? Nature of enforcement proceedings (administrative / based on court actions) | Complaints can be submitted before the Local Consumer Information Office (OMIC) or the Direction General Consumer Affairs at regional or national level. The complaints are registered and processed including transferring them to the competent authority at national, regional or local level. The complex administrative structure in Spain would require that the determination of the relevant body is made on a case by case basis according to specific regulations defining competence. The administrative sanctioning procedure follows Royal Decree |

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| | <p>1945/1983 regulating infringements and sanctions related to consumer protection. The proceedings will end with a decision by the Director General for consumer affairs declaring the infringement and imposing sanctions. The decision can be appealed before the Court for Administrative Affairs.</p> <p>The public enforcement of environmental claims through administrative procedures ensures implementation of:</p> <p>Law 29/2009 of 30 December 2009 amending the statutory regime of unfair competition and advertising in order to enhance protection afforded to consumers and users (transposing legislation of the UCP Directive).</p> <p>the Unfair Competition Act (Law 3/1991);</p> <p>Consumers and Users Act (Legislative Royal Decree 1/2007);</p> <p>Retail Trade Act (Law 7/1996);</p> <p>General Advertising Act (Law 34/1988)</p> <p>In addition to the administrative system, enforcement of the Unfair Competition Act (Law 3/1991) and the General Advertising Act (Law 34/1988) can only be ensured through Court action.</p> <p>The administration authorities cannot force companies to repair the damages caused to consumer(s). Compensation can only be claimed through arbitration or judicial action.</p> <p>According to the information provided by one of the regional offices for Consumers (Comunidad de Madrid), their database does not allow for a selection of the cases of unfair competition regarding environmental claims.</p> <p>When complaints are submitted before the local or the regional competent administrative authorities, local and/or regional laws apply.</p> |
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| 3. Active surveillance / complaints | |
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| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints ? | <p>The administrative enforcement system can be originated by complaints from consumers, communication by a public authority or the proceedings issued by the Inspection Service. The enforcement administrative procedure can only be initiated by public authorities. Preliminary measures may be ordered to clarify the facts.</p> <p>The above mentioned Technical Inspector of Quality and Consumption in charge of enforcement of the UCP Directive issues deals with environmental claims cases as well.</p> |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | <p>Any consumer can file an administrative complaint. 'Consumer' is defined as an individual or entity that is not exercising a professional or business related activity. Consumers' associations also have the right to file complaints on behalf of their members.</p> <p>Under Spanish law, complaints can also be introduced anonymously as long as they are not filed by an individual or entity while exercising a professional or business related activity.</p> |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen ? | <p>Autocontrol or the Monitoring Committee in charge of ensuring the compliance of the Self-Regulation Code on Environmental Claims included in Commercial Communications (<i>Código de autorregulación sobre argumentos ambientales en comunicaciones comerciales</i>) can submit complaints or initiate legal Court actions.</p> <p>Citizens can submit a complaint to the Ombudsman when they consider that their rights have been infringed by an act of the Administration. The Ombudsman does not have the competence over conflicts between particulars or private companies.</p> |
| 4. Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art, necessity to retain | When processing a complaint, if the administration considers that there is evidence of infringement, the case will be transferred to the inspection |

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| documentation about manufacturing process... Must supporting documentation be submitted immediately by the producer? | services in order to initiate, where appropriate, disciplinary proceedings and impose sanctions. The inspection services' main duties are to monitor and control the goods and services offered to consumers to test their compliance with the laws and to verify the claims submitted by consumers. The DG in charge of the file, will also examine the substantiation and relevant documentation of the claim in order to take the decision. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period? | No specific legislation on this point. |
| Are quantifications examined? (e.g. when stated that "a product is made of 75% recycled materials") | No specific legislation on this point. |
| Are surveillance actions based on certain standards? | The law does not establish surveillance actions started ex officio on environmental claims. Technical inspectors carry out on-site inspections on consumer products. Public administration action on environmental claims is mainly based on complaints. |
| 5. Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | The administrative procedure based on complaints is a post-marketing enforcement tool which may lead to sanctions. |
| A priori clearance or prior opinions possible? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings? | N/A |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | According to the Consumers and Users Act (Art 51 Legislative Royal Decree 1/2007): Minor Infringements can be sanctioned with fines up to 3,065.06 Euros while fines for serious infringements can go from 3.005,07 to 15.025,30 Euros. Very serious infringements can be sanctioned with fines from 15.025,31 to 601.012,10 Euros. Serious and very serious infringements can also be subject to penalties estimated as up to five |

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| | <p>times the value of the good or services connected to the infringement. When very serious infringements have been committed, additional penalties such as the temporary closure of the premises can be imposed.</p> <p>The Retail Trade Act (Art 68 Law 7/1996) sets forth the following sanctions:</p> <p>Minor Infringements can be sanctioned with fines up to 6.000,00 euros.</p> <p>Serious infringements can be sanctioned with fines from 6.000,00 up to 30.000,00 euros.</p> |
| <p>Corrective action (e.g. removal, withdrawal of products, corrective labelling)?</p> | <p>The Consumers and Users Act (Art 51 Legislative Royal Decree 1/2007) refers to other subsidiary sanctions such as the publication of the sanction including the name of the infringing trader.</p> <p>The Retail Trade Act (Art 68 Law 7/1996) includes additional sanctions such as the seizure and loss of the goods subject of the commercial activity concerned. Temporary closure of the premises (for a maximum term of one year) can be ordered if it was the third time the infringer committed a very serious infringement.</p> <p>Consumers can request compensation for the damage caused (according to Article 128 of the Consumers and Users Act). In addition to this, if the Administration deems that the company or entity causing the damage has committed any administrative infringement, an administrative sanction can be imposed by the Administration.</p> |
| <p>Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors?</p> | <p>Anyone causing damages to consumers either by action or omission (art 9 RD 1983). The Consumers and Users Act establishes the possibility to consider liable both the trader (art 118) or the producer or manufacturer (art 124). Liability for damages can be applied jointly to all those intervening. Regional</p> |

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| | <p>legislation refers to producers, importers, distributors and traders of products or services (e.g. Article 7, Law 11/1998 of 9 July, on Protection of Consumers in Madrid, Article 8, Law 6/2003 on the Statute of Consumers of the Basque Country, Article 82, Law 13/2003 on the Law of Consumers of Andalusia).</p> |
| Publication of decisions? | <p>Administrative authorities may decide the publication of decisions and sanctions. According to Article 51 of Legislative Royal Decree 1/2007 when very serious infringements have been committed, additional penalties such as the publication of the sanction can be imposed.</p> <p>Publication of the decision and the sanction can only be imposed within three months from the notification of the administrative decision.</p> |
| 6. Procedure issues | |
| Maximum term to initiate complaints ? (e.g. max. 2 years after advertising campaign) | <p>The procedures are different according to the body responsible for dealing with the complaint and the law to be enforced. However, in general, there are not many formalities required for lodging administrative complaints in addition to submitting it in writing, specifying the parties involved and describing the situation and the potential breach.</p> <p>Art 17 RD 1983 refers to articles 133-137 of the Administrative Procedural Act.</p> <p>Complaints can be accompanied by any documental evidence; no specific requirements are necessary. When the claim is submitted electronically, consumers have to use the form required by the relevant body.</p> <p>Once the Administration receives a complaint, it is forwarded to the party that has allegedly caused the damage. It has 10 days to present evidence and make any allegations.</p> <p>Under Administrative proceedings, violations expire after five years. The term of limitation begins to run from the day on which the offense was committed.</p> <p>The decision related to the publication of the decision and sanction can only</p> |

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| | <p>be taken within three months from the notification of the administrative decision.</p> <p>In disciplinary/sanctioning proceedings, the administrative authority studies the evidence submitted by the Inspection Services or the public authorities and makes an evaluation . The decision may determine whether there is infringement and may impose a sanction.</p> <p>The administrative authority may also try to mediate between the parties to reach an agreement for the compensation of damage. If no agreement is reached the consumer can resort to the Arbitration or Judicial systems. It is important to note that these procedures are dealt at regional and local level and regional and local administrations may have their own procedural particularities.</p> |
| Right to be heard, right to present evidence | <p>The administrative procedure to stop the action that infringes the Consumer and Users Act enables the participation in the proceedings of the National Institute for Consumer, the bodies or entities of the autonomous communities and the competent local authorities in defense of the consumers and users, the associations for consumer protection and the Public Prosecutor if appropriate for the defense of the interests they represent.</p> <p>The facts collected contained in the Inspection proceedings shall be deemed certain, unless the body of evidence conclusively proves otherwise.</p> <p>Regarding the right to present evidence, the complainant will submit the claim accompanied by documental evidence, but since he/she is not part of the procedure cannot present further evidence during the procedure.</p> <p>In the administrative procedure initiated by complaint to claim damages, both parties have the right to be heard and present evidence to support their arguments as it is a</p> |

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| | mediation procedure where the administrative authority acts as a mediator. |
| Right to appeal ? Does it suspend the decision? | There is no right to review the administrative decision. However, decisions can be appealed before the Administrative Courts without preventing civil or criminal action. In the administrative mediation procedure, if there is no agreement between the parties, the case can be referred to the Consumer Arbitration System or to the Judicial System. ³³ |
| How long can procedures take ? | Depends on the region where the administrative bodies are established, but in general there is not a fixed time frame. |
| Cost of procedure, of experts (would this financial risk prevent complaints?) | This procedure is free of charge ³⁴ . |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? Are decisions published? | NA |
| Conclusions based on interviews regarding: Clarity and security of guidance and approach High priority in the country of the issue of the enforcement of the rules regarding environmental claims? Efficiency and coherence Sufficient involvement and protection of all stakeholders Combination of public enforcement and SRO system Issues that were indicated as a good practice Other conclusions or remarks | The administrative system is not properly designed for environmental claims. It follows the general administrative procedural rules and those more specific for consumer protection which are focused on hygiene or the security of products. The system is not perceived as efficient and therefore, complaints on environmental claims are rarely dealt with at the administrative level. Environmental claims in commercial communications are mainly dealt with by the SRO system. |

Spanish consumer Arbitration system

Disputes between a consumer and a company may be solved through the Spanish Consumer Arbitration System³⁵ which is an out-of-court service, voluntary and free of charge. It is quite fast compared to other procedures like the judicial one, as cases are processed in a maximum period of six months from the date of the admission of the application.

³³ Information from Regional and Local Consumers' Offices. For Basque country see www.kontsumobide.euskadi.net and for Madrid see www.madrid.es

³⁴ KonstumoBIDE, Instituto Vascode Consumo. Retrieved from www.kontsumobide.euskadi.net

³⁵ Instituto Nacional del Consumo. Retrieved from <http://consumo-inc.es/arbitraje/home.htm?id=60>

It is carried out by an Arbitration board (composed of three or one individual arbitrator) which examines the case and issues a binding decision to settle it. The consumer arbitration is regulated by Law 60/2003, of December 23, on Arbitration, and by Royal Decree 231/2008, of 15 February, regulating the Consumer Arbitration System. The Royal Decree 1/2007 on the Defense of Consumers and Users Act also refers to the Consumer Arbitration System.

The Consumer Arbitration Tribunals (Juntas Arbitrales) are the administrative bodies that manage the arbitration process including the handling of applications and promote the system among consumers and professionals. These Tribunals exist at local, regional and national level. Within them the arbitration colleges are designated for every occasion to solve the discussion raised, with impartiality, independence and confidentiality. They issue an arbitration award that is binding and has the same value as a final judgment (the issue cannot be raised again in arbitration or be taken to the courts). Should the consumer choose this way to solve the conflict, the court action would be void.

The research has not revealed any single case related to environmental claims that has been treated through the consumer arbitration system yet.

| Name and category of Authority (general administration, specific agency, prosecution...) | Consumer Arbitration Tribunals (Juntas de Arbitraje)/Arbitration Board (Órganos Arbitrales) |
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| 1. Scope | |
| Products/markets/sectors covered | All conflicts between consumers and private bodies related to consumers' rights (except intoxication, injuries, death or where there is evidence of crime) (Article 1 and 2 RD 231/2008). |
| Surveillance of advertising and/or product information / labelling/ presentation? | N/A |
| 2. Organisation | |
| Based on legal rules and/or guidance? Which rules are applied? Based on detailed rules or general principles? Nature of enforcement proceedings (administrative / based on court actions) | <p>The basic rules on the Consumer Arbitration system are:</p> <p>Royal Decree 231/2008 of 15 February regulating the Consumer Arbitration system</p> <p>Articles 57 and 58 RD 1/2007 Defense of Consumers and Users Act.</p> <p>With subsidiarity the Law 60/2003 on Arbitration will apply. Electronic Arbitration is regulated under Law 11/2007 on the electronic access of citizens to public services. The activities of the Consumer Arbitration Tribunals are established by Law 30/1992 on the Administration and the Administrative Procedure. These proceedings have an extrajudicial nature and the resolutions are binding for both</p> |

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| | parties and have the same effects as a judgment. |
| 3. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | The Consumer Arbitration System can only be initiated via complaint submitted by a consumer, a consumers' association or any other representative. |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | Individual consumers or Consumer' Associations can submit a complaint to a Consumer Arbitration Tribunal against a company or private business. Since it is a voluntary system in which parties need to give their consent, the arbitration will only take place when the company or private business accepts the invitation to be a party to the arbitration proceeding. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen ? | According to the research this has not occurred. |
| 4. Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art.. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer ? | The Consumer Arbitration Tribunal will assess the complaint and verify whether it meets the requirement established in article 34 of the RD 231/2008 (name and details of the claimant and the reclaimed, description of the facts, if possible a copy of a document stating that both parties accept the recourse to the arbitration system (<i>convenio arbitral</i>) and the place, date and signature of the claimant. Consumer Arbitration Tribunals provide for forms to facilitate the system. Paragraph 3 of Article 34 allows for the submission of further documents such as evidence. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period ? | There has not been sufficient exposure to environmental claims and therefore this situation has not occurred yet. |
| Are quantifications examined ? (e.g. when stated that "a product is made of 75% recycled materials") | |
| Are surveillance actions based on certain standards? | |
| 5. Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | This procedure is a post-marketing enforcement tool that can lead to sanctions. |

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| A priori clearance or prior opinions possible ? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings ? | Before the procedure starts, the Consumer Arbitration Tribunal can try that parties find an agreement through mediation. |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | The final decision taken under the Arbitration system (<i>laudo arbitral</i>) is legally binding (has the same value as a judgment) and must be enforced within the specific period of time stated. If one of the parties fails to do so, the other party can request for its immediate enforcement to the Consumer Arbitration Tribunal that will send the request to the Civil courts for its enforcement. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | Yes, it is a possible outcome of the arbitration system. |
| Who can be held liable ? Liability of manufacturers, importers, distributors, advertising agencies, editors ? | Private companies, businesses and professionals that harm consumers' rights. |
| Publication of decisions ? | According to the research, regional authorities publish the decisions. |
| 6. Procedure issues | |
| Maximum term to initiate complaints ? (e.g. max. 2 years after advertising campaign) | The legislation (at national, regional or local) level does not state a term to file a complaint. |
| Right to be heard, right to present evidence | Both parties have the right to be heard and to present evidence. |
| Right to appeal ? Does it suspend the decision? | Parties can appeal against an arbitration decision before the civil or criminal Courts within 2 months from the decision. Since this is a voluntary system, the complainant can withdraw his/her claim. |
| How long can procedures take ? | Maximum 6 months from the beginning of the proceeding. |
| Cost of procedure, of experts (would this financial risk prevent complaints ?) | This is a free proceeding. Parties may only pay for the intervention of experts. |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available ? Are decisions published ? | |
| Conclusions based on interviews regarding: Clarity and security of guidance and approach High priority in the country of the issue of the enforcement of the rules regarding environmental claims ? Efficiency and coherence | The system is too recent and no conclusions can be drawn on its efficiency to solve problems related to environmental claims. |

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| Sufficient involvement and protection of all stakeholders | |
| Combination of public enforcement and SRO system | |
| Issues that were indicated as a good practice | |
| Other conclusions or remarks | |

Court action

In Spain, only Court action would ensure the public enforcement of the Unfair Competition Act (Law 3/1991) and of the General Advertising Act (Law 34/1988) as amended by Law 29/2009 amending the statutory regime of unfair competition and advertising in order to enhance the protection afforded to consumers and users. Unfair competition practices, including unlawful advertising, are regulated by article 32 of the Unfair Competition Act (Law 3/1991) as modified by Law 29/2009.

According to article 249.4 of the Civil Procedural Act (Law 1/2000) claims regarding unfair competition will be dealt through ordinary proceedings, regulated by the Civil Procedure Act 1/2000. According to Article 86.ter.2.a) of the LO 6/1985 of the Judicial Power, Commercial Courts (Juzgados de lo Mercantil) have the exclusive competence on proceedings regarding actions related to unfair competition including actions to cease an unfair practice.

Actions through the Court may include:

1. Action declaring the existence of unfair commercial practices.
2. Injunction against the unfair conduct or prohibition of its continued practice. An injunction may also be brought to prevent the practice before it occurs.
3. Action to counteract the effects produced by the unfair practice.
4. Action to rectify misleading, incorrect or false information.
5. Action to compensate damages.
6. Action against unfair enrichment.

In addition Article 53 of the Consumer and Users Act adopted through the Legislative Royal Decree 1/2007 sets up the Action to Cease which can also be initiated by the National Institute for Consumption (*Instituto Nacional de Consumo*), the competent regional offices, the local consumer offices or the General Prosecutor (*Ministerio Fiscal*) for Unfair competition issues including environmental claims. Article 46 of the Consumers and Users Act (RD 1/2007) recognizes the possibility of recourse of an administrative decision imposing a sanction to the Administrative Courts without prejudice to undertake civil or criminal action to request the corresponding responsibilities. In case a criminal court initiates a criminal investigation the administrative claim as well as the possible administrative sanctions will be suspended, and the criminal procedure will prevail.

The actions under Article 32 of the Unfair Competition Act (Law 3/1991) can be initiated by any legal or individual person operating in the market if its economic interests are directly injured or threatened by an unfair practice (including competitors). The action based on unlawful advertising can also be initiated by any

individual or legal person affected by it or by anyone with a subjective right or legitimate interest. Compensation of damage from an unfair practice can be claimed through legal action by anyone authorised under Article 11(2) of the Civil Procedural Act (Law 1/2000).

Furthermore, actions can also be initiated by associations when the interests of their members are affected. The following institutions and bodies are entitled to take legal actions in defence of the collective interests of consumers:

The National Institute of Consumer Affairs and its counterparts in the Autonomous Regions and Local Governments with competence in consumers and users protection;

Consumer and user associations subject to the requirements under the General Consumer and User Protection Act or regional legislation on consumer protection.

Organisations for consumer protection of other EU Member States and included in the list published for that purpose in the Official Journal of the EU.

The Public Prosecutor may also order injunctions in defence of the general, collective or diffuse interests of consumers and users.³⁶ It is also important to note that the actions included in article 32 of the Unfair Competition Act (Law 3/1991) must be exercised within 1 year from the moment that the unfair act and the person responsible for the unfair act are known, and within 3 years from the moment that the unfair act is terminated.³⁷ The Action to Cease established by Article 53 of the Consumers and Users Act (RD 1/2007) do not prescribe.³⁸

Commercial Courts dealing with unfair competence cases follow the ordinary proceedings, regulated by the Civil Procedure Act. No specific rules regarding evidence are required; the general provisions under the Spanish Procedural Act apply.

Regarding the publication of judgments, according to Article 221(2) of the Spanish Civil Procedural Act (Law 1/2000) the Court in charge of deciding on proceedings for the defence of the general interests of consumers and users may order the publication of decisions or part thereof.

Art 32 of the Unfair Competition Act (Law 3/1991) enables the Judge to order the publication of the decision.

Output of actions

Data and concrete information on cases dealt with by the administration, Court or Consumer arbitration system are not in detail available.

According to the interviewees, cases concerning environmental claims rarely reach public enforcement authorities and there are no specific statistics on this matter.

1.9.3 Self-regulation

The "Asociación para la Autorregulación de la Comunicación Comercial (AUTOCONTROL)": Autocontrol Advertising Jury, the Monitoring Committee and the Technical Cabinet

The Self-Regulation Code on Environmental Claims included in Commercial Communications (*Código de autorregulación sobre argumentos ambientales en comunicaciones comerciales*) has been developed by the public authorities (Ministry for Environment, rural and marine environment), companies in the energy and

³⁶ See article 32.4 of the Unfair Competition Act (Law 3/91) and 54 of the Consumers and Users Act.

³⁷ See article 35 of the Unfair Competence Act (Law 3/91).

³⁸ See article 56 of the Consumers and Users Act.

automobile sectors and AUTOCONTROL, the national association for self-regulation of commercial advertising composed of the main advertisers, main advertising industry associations, agencies and media agents (TV, press, radio, internet...). The body in charge of the Code's enforcement is the Autocontrol Advertising Jury which is responsible for dealing with complaints related to advertising by those companies signatory of the Code and which might have incurred in an infringement of the rules contained in the Code. The Monitoring Committee is in charge of the Code's implementation.

Complaints can be submitted by the adhering companies, NGOs, the Monitoring Committee, Autocontrol, public authorities, the Environmental Advisory Council (national body on environmental issues gathering stakeholders and representatives of the relevant ministries) or any company or association with a legitimate interest. In addition to this "a posteriori" control, there is an "a priori" system or consultation before the environmental claim is used. In this case, the companies may voluntarily submit to the Autocontrol Technical Cabinet a confidential copy of the advertisement containing the environmental claim that they may intend to use for non-binding advice.

The supervisory role of the competent authorities is referred to under the implementation rules where these describe the Self-regulatory system and enable the Monitoring Committee to sue the infringing company before the competent authorities or to exercise appropriate legal action in the event that any of the companies adhering to the Code fails to implement a resolution issued by the Jury of Advertising related to an infringement of the Code and the legislation on advertising.

Any issues not specifically regulated by the Code would be ruled by the Autocontrol Self-Regulation Code of Conduct in Advertising and the Consolidated Advertising and Marketing Communications Code by the International Chamber of Commerce.

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| Name of the organisation | Autocontrol - Asociación para la Autorregulación de la Comunicación Comercial |
| 1. Scope | |
| <p>Which set(s) of rules are applied by the SRO? (code of conduct, guidance, labelling scheme, legal provisions...)</p> <p>Are the rules applied by the SRO referring to other rules? (e.g. ICC rules/UCPD)</p> | <p>The Self-Regulation Code on Environmental Claims included in Commercial Communications regulates the use of environmental claims in communication and advertising. These rules are enforced ex-post by the Autocontrol Advertising Jury and ex-ante by the Technical Cabinet.</p> <p>The Code is mandatory. It does not cover corporate branding.</p> <p>The Code sets up an "a posteriori" enforcement system which is the responsibility of the Autocontrol Advertising Jury. It is based on complaints related to advertising by those companies adhering to the Code which may have committed an infringement of the rules contained in the Code.</p> <p>The Code refers to the AUTOCONTROL Self-Regulation Code of Conduct in Advertising which includes a general chapter on unfair publicity but which</p> |

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| | <p>does not refer specifically to environmental claims. It also refers to the Consolidated Advertising and Marketing Communications Code by the International Chamber of Commerce whose Chapter E is devoted to environmental claims and establishes 7 basic principles.</p> |
| <p>Trademark or logo available? Is the use of the logo or referral to the organisation dependent on compliance? Is there a specific logo regarding compliance with the rules on environmental claims?</p> <p>Compliance monitoring for members?</p> <p>Is the SRO sector related?</p> | <p>There is no logo related to the implementation of the Code, however, companies adhering to the Code may inform of their participation and accession to the Code through their web pages, in their Corporate Responsibility Reports or even in commercial communications in the manner determined by the Monitoring Committee. Since the non-compliance or infringements can cause the termination of the company's participation in the system, the referral to the organisation depends on compliance.</p> <p>The monitoring of compliance is carried out by the Monitoring Committee which can order a sampling of environmental claims used in commercial communications to analyse their level of compliance, and decides about complaints.</p> <p>As in most European Countries SROs are always general. Their independence is better guaranteed if they don't belong to any specific sector. The Code is not sector specific. Currently it is only applied to the energy and automotive sectors as they were the ones involved in their development and drafting. However, it is open to any other sector that may want to join in the future.</p> |
| <p>Is the code of conduct and enforcement thereof applicable on an international, national, regional level?</p> | <p>It is applicable at a national or regional level.</p> |
| <p>Focused on certain product categories/services?</p> <p>Focused on advertising, media, product labelling?</p> | <p>The Code has been prepared jointly by public authorities (Ministry for Environment, rural and marine environment), companies in the energy and automobile sectors and Autocontrol, the national association for self-regulation of commercial advertising.</p> <p>While it applies to the companies in the energy and automobile sectors that</p> |

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| | <p>adhere to the "Agreement on self-Regulation of environmental claims in commercial communications", the Code is not of sectorial nature and the objective is to open this initiative to other sectors and undertakings acting in commercial communications or advertising.</p> |
| <p>Focused on certain concerns? (e.g. sustainability, organic)</p> | <p>The Code is focused on environmental claims.</p> <p>It establishes various rules in order to assure that environmental claims are, among others, legal, truthful, in accordance with good faith principles, done with a sense of social responsibility, etc. It has 9 different Chapters and various rules. For example it prohibits the use of generic claims such as "green" or "ecologic", unless those claims are completed with a specific claim that explains why the product is "green" or "ecologic". It also establishes concrete rules for the use of comparative claims, or claims suggesting superiority. It also contains a definition of the following environmental claims:</p> <ul style="list-style-type: none"> Compostable Degradable Recyclable Recycling Reduced energy consumption Reduced water consumption Reduced use of resources Reusable |
| <p>Focused on manufacturers, sellers, advertising agencies?</p> | <p>The Code applies to advertisers.</p> |
| <p>2. Organisation</p> | |
| <p>Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists.. ?)</p> | <p>The Code's rules have been drafted by the public authorities (Ministry for Environment, rural and marine environment) and companies in the energy and automobile sector jointly with Autocontrol.</p> |

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| | <p>The Code's rules can be amended, updated or improved on the basis of proposals by the Monitoring Committee. The Monitoring Committee is composed of the Secretary of State for Climate Change, which acts as Chair of the Committee, two representatives of civil society, one from the Consumer Council and another one from the Environment Advisory Council, one representative of the Ministry of Energy, Industry and Tourism, one representative of the Ministry of Health and Social Policy, an academic expert and / or scientist, two representatives from each of the sectors that have signed up for the Code, one representative of the Spanish Association of Advertisers (AEA) and one representative of Autocontrol with voice but no vote, which shall exercise the function of Secretariat.</p> <p>The complaints related to environmental claims are submitted to the Autocontrol Advertising Jury that is in charge of adopting the resolutions. The system is open to adhering companies, NGOs, the Monitoring Committee, Autocontrol, public authorities, the Environmental Advisor Council or any company or association with a legitimate interest.</p> |
| Frequent updates of the rules regarding environmental claims ? | When needed. To be proposed and decided by the Monitoring Committee. |
| Application of detailed rules regarding environmental claims or general principles? | The Code has a full section dedicated to the implementation rules which are clear and fairly detailed. It covers three different procedures: The "a priori" consultation, the "a posteriori" extrajudicial resolution of infringements and complaints system and the regular monitoring or surveillance system carried out by Autocontrol and the Monitoring Committee. |
| How is the scheme or self-regulation system funded? | <p>The voluntary "a priori" consultation enables the Autocontrol Technical Cabinet to provide, upon request by the companies, non-binding advice on environmental claims before they are used. This tool is voluntary but the Monitoring Committee may decide to set up a mandatory system for its use with specific media.</p> <p>The "a posteriori" enforcement system is based on complaints related to</p> |

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| | <p>advertising by those companies adhering to the Code which may have committed an infringement of the rules contained in the Code. The complaints are submitted to the Autocontrol Advertising Jury that is in charge of adopting the resolutions.</p> <p>The system is open to adhering companies, NGOs, the Monitoring Committee, Autocontrol, public authorities, the Environmental Advisor Council or any company or association with a legitimate interest. Furthermore, the Monitoring Committee has the right to decide on the expulsion of the company in case of a reoffending breach of the Code's provisions or a breach of a resolution of the Autocontrol Advertising Jury.</p> |
| Active surveillance / complaints | |
| <p>Is active surveillance done by the SRO (independent from complaints)?</p> <p>Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners)</p> | <p>The role of the Monitoring Committee is to assess regularly the implementation of the code and order samplings of environmental claims used in commercial communications to evaluate compliance. Autocontrol is responsible for producing regular reports on the Code's implementation that are submitted to the Monitoring Committee.</p> <p>Furthermore, complaints may be filed by Autocontrol itself or the Monitoring Committee which requires a certain degree of control and surveillance by the SRO with regard to the implementation of the Code.</p> <p>Complaints can be submitted by the adhering companies, NGOs, the Monitoring Committee, Autocontrol, public authorities, the Environmental Advisory Council (national body on environmental issues gathering stakeholders and representatives of the relevant ministries) or any company or association with a legitimate interest. Consumers may also submit a complaint concerning alleged infringements on the Code but they need to address their complaints to the Monitoring Committee, which will examine the complaint. If the Monitoring Committee finds that it refers to an advertising that may be in breach of the Code, the Monitoring Committee will forward the consumers'</p> |

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| | claim to the Autocontrol Advertising Jury |
| 3. Assessment | |
| <p>How does the SRO make an assessment of the required substantiation of environmental claims? E.g. are the claims verified in labs ? Does the assessment panel of the SRO request scientific reports or documentation? Must this documentation be submitted immediately? Must supporting documentation (scientific, tests) be retained by the producer during a certain time? Are quantifications examined (e.g. "75% recycled materials must really be 75%") ?</p> <p>How is the assessment panel established when an environmental claim is assessed? Is it considered sufficiently independent and impartial?</p> | <p>The assessment of advertisements containing environmental claims could be based on material and documents submitted by both parties to the proceedings. They could also use the reports and evidence gathered by Autocontrol in its reports on the implementation of the Code. If necessary the Jury may ask for further evidence, such as experts' or third parties' reports (Public Administrations, for instance).</p> <p>The Autocontrol Technical Cabinet, responsible for providing on-request non-binding advice on environmental claims before they are used, is considered sufficiently independent. The Autocontrol Advertising Jury who is in charge of adopting the resolutions for the "a posteriori" enforcement system based on complaints is a specialised body composed of persons of renowned reputation in the field of advertising or commercial communications. The President and the various Vice-presidents and vocals have to fulfil the obligation of impartiality. The Jurado de la Publicidad 's out-of-court dispute settlement mechanism has been recognised by the Spanish authorities and the EU institutions because of its compliance with the principles established in the EC/98/257 Recommendation: Since 2000 the Jurado is the only Spanish self-regulatory body which makes part of DG SANCO's EEJ-NET (now called ECC-Network). The Autocontrol Advertising Jury is thus the only private ADR system (alternative dispute resolution) included in the "ECC-Net". 25% of the members of the Autocontrol Advertising Jury are directly appointed by the Spanish National Consumer Protection Institute (<i>Instituto Nacional de Consumo</i>).</p> <p>The composition of the Monitoring Committee (described under point 2) ensures its independence and impartial</p> |

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| | judgement. |
| Measures/sanctions/prevention | |
| <p>Is the sanctioning of environmental claims focused on hard sanctions and/or moral guidance, recommendations? Will public authorities be involved if the SRO's recommendations are not respected by advertisers ? Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo...</p> <p>Can sanctions be imposed by law?</p> <p>Focus on prevention, prior opinions or pre-clearance ? Focus on 'soft approach' through discussion, negotiation ?</p> <p>Are decisions published? If so, is it considered as an effective measure?</p> | <p>The sanctions that can be imposed include the right of the Monitoring Committee to decide on the expulsion of the company as signatory of the Code in cases of failure to comply with a resolution issued by the Jury or when the company repeats an infringement of the Code's provisions. The Monitoring Committee will make public the expulsion of the company and the reasons why it has been expelled. The re-entry of the company may be considered but only after a year and if the company explicitly agrees not to carry out the practices prohibited by the Code. The Monitoring Committee has also the right to sue the offending company before the competent authorities or to take appropriate legal action in the event that a company fails to comply with the content of a resolution issued by the Jury of Advertising or when the company commits an infringement of the legislation on advertising. Sanctions imposed thereby would be based on the relevant law. The Code establishes a voluntary "a priory" system for consultation before the environmental claim is used. In this case, the companies may voluntarily send to the Autocontrol Technical Cabinet a confidential copy of the advertisement containing the environmental claim that they may intend to use for non-binding advice. This tool prevents infringements if the advice is followed. Decisions of the Jury of Advertising pursuant to the Code are meant to be immediately communicated to the stakeholders for compliance. Subsequently, all decisions are made public through their inclusion on the website or other Autocontrol media (Newsletters).</p> |
| 4. Procedure issues | |
| <p>Procedure with hearing rights, legal assistance, evidence and counter evidence?</p> | <p>The Code refers to general procedural principles for the handling and resolution of claims related to the violation of the Code by business</p> |

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| <p>Costs?</p> <p>Appeal possible? Does it suspend the decision?</p> <p>Precedence of court cases in case of double approach?</p> <p>How long can procedures take?</p> | <p>advertising. The Autocontrol Jury of Advertising is governed by the principles of independence, transparency, effectiveness, legality, the consumer's freedom of choice and rights to hearing and to legal assistance according to Commission Recommendation 98/257/EC on the out-of-court settlement of consumer disputes of the Jury's Regulation.</p> <p>Proceedings are initiated ex officio or upon complaints in relation to a particular advertisement, and shall be processed in accordance with the Regulation of the Jury.</p> <p>The Costs are determined in the resolutions by the Jury where it is decided which party or parties shall bear the administrative burden of processing the complaint with Autocontrol. Decisions are based on whether the claimant's requests are accepted or rejected and the existence of imprudence or bad faith in any of the parties.</p> <p>However, the Administration authorities, the members of the Environmental Advisory Council, non-profit organisations and the Monitoring Committee are exempt from payment of such administrative costs before Autocontrol and in such cases the company in breach will bear the costs.</p> <p>The Plenary of the Jury has jurisdiction to decide on appeals filed against decisions by the Jury Sections. The decision is not firm until the timeframe for appeal is over, or in case of appeal, until the Plenary of the Jury adopts its decision.</p> <p>According to art. 39 Unfair Commercial Practices Law, a legal action that is based on the infringement of a Code of Conduct must be handled by the SRO before judicial proceedings can be entered.</p> <p>Normally, 14 days for a decision of the Autocontrol Advertising Jury and 28 days for a decision of the Plenary of the Jury.</p> |
| Various | |
| Do assessment cases result in new guidelines regarding environmental claims | All resolutions are binding for the parties involved, and the new |

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| that are available? | guidelines that may be established by the Autocontrol Technical Cabinet, therefore they might be applicable not only to the parties at stake but to all members of the association. |
| <p>Conclusions:</p> <p>Clarity and security of guidance and approach</p> <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims?</p> <p>Efficiency and coherence</p> <p>Sufficient involvement and protection of all stakeholders</p> <p>Combination of public enforcement and SRO system</p> <p>Issues that were indicated as a good practice</p> <p>Other conclusions or remarks</p> | <p>The SRO system has a high priority for the enforcement of the rules regarding environmental claims. The lack of specific legally binding provisions explicitly related to environmental claims contrasts with the specific nature of the Code on environmental claims.</p> <p>The system is seen by companies and users as efficient in terms of the procedure to solve the cases and effective to ensure consumers' protection.</p> <p>The a priory copy advice system is a good practice.</p> |

Output of actions

From 2010 until the end of 2013 respectively 32 cases were submitted to Autocontrol on environmental claims related to the Self-Regulatory Code. This represents 4.69% of all advertising complaints that Autocontrol has assessed in this period.

In 2010, 6 cases were submitted to the Jury of Advertising related to environmental claims.

In 2011, 9 complaints were submitted related to environmental claims, out of 146 cases handled by the Jury of Advertising.

In 2012, 13 complaints were submitted regarding environmental claims out of 154 cases that were handled by the Jury of Advertising.

In 2013, 4 cases were handled by the Jury of Advertising.

The cases on environmental claims decided in 2012 and related to cars were 13 (5 not upheld, 5 accepted, 2 rejected and 1 upheld).

1.9.4 Summary

- *Predominant system.*

While the judicial public enforcement system might be considered the standard procedure for the enforcement of the UCPD rules regarding environmental claims, in practice, public authorities receive very few complaints related to environmental claims. However, the Self-Regulatory system of Autocontrol is well developed and active as an out-of-court resolution of conflicts on environmental claims. The Self-Regulatory system, insofar it is focused on environmental claims, was developed with the participation of the automotive and energy sectors. Indeed these are sectors very much concerned with environmental claims. Even though the system is open to other sectors, no other sector has applied. The system may deal with environmental claims in any sector if requested so by consumers or authorities.

- *Combination of systems – coherence.*

There are public enforcement authorities at regional and local level directly connected to the national level (Consumer National Institute/Instituto Nacional de Consumo, as part of the Ministry of Health, Social Services and Equality). Despite the complexity of the system, consumers are provided with information at all levels (national, regional and local) on their rights as consumers and how to exercise them.

The public enforcement and self-regulatory enforcement systems are complementary and interrelated through clear mechanisms and rules. However, public authorities are not involved if the decisions issued by the SRO are not respected by advertisers. The Monitoring Committee of the SRO may decide on the expulsion of the company as signatory of the Code in cases of failure to comply with a resolution issued by the Jury or when the company repeats an infringement of the Code's provisions. The Monitoring Committee will make public the expulsion of the company and the reasons why it has been expelled. Furthermore, the Monitoring Committee has the right to sue the offending company before the competent authorities or to take appropriate legal action if that company fails to comply with a resolution issued by the Jury of Advertising or when it commits an infringement of the legislation on advertising.

- *Effectiveness.*

The right to complain is safeguarded for all stakeholders, including individual consumers, competitors as well as consumer and environmental organisations. They can file complaints under the public enforcement system as well as under the self-regulatory system regarding any sector. Decision taken by the public authorities can be ultimately appealed to the court. If decisions of SRO are not respected, the infringing party can be deprived from his/her right to be a member of the organisation and also can be sued to the competent administrative or judicial authorities. Spain does not have a public enforcement system designed for environmental claims. However, this is equal for all countries assessed: in fact, as a rule public enforcement systems are not designed for environmental claims as such, but for dealing with unfair commercial practices, which include misleading environmental claims. The administrative procedures are only initiated when there is an infringement identified by the competent authority based on information from complaints, communications by authorities or the Inspection services. However, the lack of legally binding rules explicitly related to environmental claims makes it difficult to enforce the principles by the public enforcement system. The public enforcement system is not specifically focused on environmental claims but applies to all competition and consumer cases under the UCP Directive. On the other hand, the Self-Regulatory rules are specific in relation to environmental claims and are clear and effective. While they are open to other sectors, they are currently only applied to the energy and automotive sectors. A formal decision opening the scope of the system should be reconsidered.

- *Clear guidance.*

The Self-Regulation Code on Environmental Claims included in Commercial Communications used by Autocontrol is perceived as sufficiently clear.

- *Surveillance activity.*

According to the *Self-Regulation Code on Environmental Claims included in Commercial Communications*, the Monitoring Committee assess the compliance of the Code by requesting monitoring reports of the Spanish advertisements using environmental claims.

- *Pre-clearance.*

The "a priory" consultation system of the Self-Regulatory organisation (Copy Advice system) is voluntary and seems to be effective and efficiently carried out by the Technical Cabinet. During the period 2010 – September 2013, there have been 282 requests. There is no public pre-clearance system.

- Data.

From 2010 until September 2013 respectively 32 cases were submitted to Autocontrol on environmental claims related to the Self-Regulatory Code. This represents 4,69% of all advertising complaints that Autocontrol has assessed in this period.

1.10 United Kingdom

2.10.1 Overview

In the United Kingdom, a mixed enforcement system is in place. The Trading Standards Services ('TSS') have recently taken over the predominant role of the Office of Fair Trading ('OFT') in the field of public enforcement, whereas the self-regulatory mechanism is organised by the Advertising Standards Authority ('ASA').

Public enforcement:

- Office of Fair Trading (OFT): <http://oft.gov.uk/>³⁹
- Trading Standards Services (TSS): (Weights and Measures authorities) with the support of the National Trading Standards Board (which is not a legal entity) and the Scottish Consumer Protection Network.

http://www.tradingstandards.gov.uk/advice/Complaints_process.cfm

- Department of Enterprise Trade and Investment (DETI) in Northern Ireland: <http://www.detini.gov.uk/> with support from the Trading Standards Service
- Court action (general court proceedings)

Further, in the UK, enforcement is specific to individual boroughs/counties/districts. A general overview and information on trading standards services in the UK can be found at <http://www.tradingstandards.gov.uk/>.

Self-regulatory mechanisms:

- The Advertising Standards Authority takes complaints about all advertisements and promotions, including broadcast adverts, which ensures standards are adhered to through the application of the advertising standards codes (CAP and BCAP codes). Trading Standards is the legal backstop power for the ASA.

³⁹ The Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (S.I. 2013 No. 783) provides that local Trading Standards authorities will now take the lead in enforcing most of consumer protection legislation. In addition, the Enterprise Regulatory Reform Bill seeks to abolish the OFT and Competition Commission from April 2014 and replace these bodies with the Competition Markets Authority.

2.10.2 Public enforcement

Office of Fair Trading (OFT)

In the UK, the UCP Directive is implemented by the Consumer Protection from Unfair Trading Regulations 2008⁴⁰ and The Business Protection from Misleading Marketing Regulations 2008.⁴¹ General enforcement of the Regulations is handled by the OFT but with individual cases being handled by the Trading Standards Authorities. In Northern Ireland, the Department of Enterprise Trade and Investment in Northern Ireland ("DETI") is the general enforcer (see below). In Scotland, prosecutions are carried out by the Crown Office and Procurator Fiscal's Service, typically by the Procurator Fiscal for the area in which the offence is alleged to have occurred.

As a rule, the OFT seeks to obtain compliance through awareness raising, education, negotiations, giving advice and guidance unless circumstances of the case indicate that enforcement action is necessary, which may include investigation and finally prosecution or court action.

http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

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| Name and category of Authority (general administration, specific agency, prosecution...) | Office of Fair Trading (OFT) |
| 8. Scope | |
| Products/markets/sectors covered | Not specified |
| Surveillance of advertising and/or product information / labelling/ presentation? | Both |
| 9. Organisation | |
| Based on legal rules and/or guidance ? Which rules are applied ? Based on detailed rules or general principles ? Nature of enforcement proceedings (administrative / based on court actions) | The OFT (with Trading Standards Authorities -please see below) are responsible for the enforcement of key UK consumer protection legislation, including the Consumer Protection from Unfair Trading Regulations 2008 that transpose the UCP Directive. The OFT is a named "enforcement authority" under the Consumer Protection from Unfair Trading Regulations 2008 but with the changes that occurred in April 2013, Trading Standards Authorities are now the lead enforcers of this legislation. Proceedings before the OFT are of administrative nature. The OFT must act in accordance with the Regulators' Compliance Code ⁴² in carrying out enforcement action. |

⁴⁰ Statutory Instrument 2008 No 1277

⁴¹ Statutory Instrument 2008 No 1276.

⁴² BERR (2007). *Regulators' Compliance Code*. Retrieved from <http://www.bis.gov.uk/files/file45019.pdf>.

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| | OFT is involved in formal and informal legal actions which primarily focus on breaches of consumer protection law. For an overview of completed and ongoing cases see: http://oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-archive/ |
| 10.Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints ? | The OFT's work is based on both complaints and surveillance of the market carried out by the OFT on its own initiative. Consumers are encouraged to contact the Citizens Advice at first instance to discuss their consumer related problems: http://www.citizensadvice.org.uk/ |
| Who has the right to complain ? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | Any person, including legal persons/organisations, may make an administrative complaint about commercial practices (including environmental claims) to the OFT. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen ? | Following changes in 2013 the Advertising Standards Authority (ASA) can submit issues to Trading Standards (rather than the OFT) under the terms of contracts between the ASA and the NTSB/London Borough of Camden; the DETI (for Northern Ireland) and the Convention of Scottish Local Authorities (COSLA) for Scotland. Trading Standards has become the ASA's legal backstop power (November 2013). |
| 11.Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer ? | So far, OFT has had little exposure to environmental claims. Due to changes introduced by the UK Government in 2013 to the consumer protection regime, the OFT's focus will be on general problems/trends in the market rather than with individual cases. Local Authority Trading Standards Services have now taken on the role of lead enforcer of individual cases. In other words, the OFT will generally not take action in relation to individual disputes/complaints, but |

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| | <p>will rather log the information and look at the complaints to decide on areas that might require monitoring of traders' activities or further investigation, in order to determine enforcement priorities. As a result the OFT will tend to use its enforcement powers where breaches of consumer protection law point to systemic failures in a market.</p> <p>However, when a case is investigated by the TSS/OFT, TSS/OFT examines substantiation of the claim. The trader is asked to provide documentation supporting the claim. In addition, the TSS/OFT undertakes to find the evidence by its own means. If there is evidence that the trader has infringed the law, the TSS/OFT can take legal action against the trader.</p> |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period ? | As prosecution for a false or misleading claim could be brought at any time up to 3 years from commission of the offence, this documentation should be held for at least 3 years from when the claim was last made. |
| Are quantifications examined ? (e.g. when stated that "a product is made of 75% recycled materials") | If circumstances of the case require so, the examination (assessment) of the claim can include quantifications. |
| Are surveillance actions based on certain standards? | No info identified. |
| 12.Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | TSS/OFT covers both prevention and sanction once breach of law is confirmed. TSS/OFT provides guidance to help businesses comply and information for business and consumers about current and past consumer enforcement work. It provides also information on the outcome of formal and informal legal actions. |
| A priori clearance or prior opinions possible ? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings ? | Yes, the OFT offers guidance to traders. This is usually of a general nature. More specific (case by case) guidance is given by the TSS. Yes, most measures taken by the OFT/TSS take form of 'soft enforcement,' measures which aim at ensuring that businesses comply with the law. These measures include |

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| | <p>education, advice and guidelines, consultations, negotiations and informal warnings.</p> <p>If a trader does not comply with OFT/TSS decisions or if he breaches the law, the OFT/TSS may refer the case to the court. The court, on application of the OFT/TSS, may grant an injunction on such terms as it may think fit to secure compliance with the law. The court can also impose penalties.</p> <p>However, primarily, the OFT/TSS will seek to stop an infringement through 'soft measures' before applying to the court for an enforcement order. Instead of seeking an order, they may accept an undertaking from the trader not to engage in or repeat the conduct constituting an infringement.</p> |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | Focus on 'soft enforcement' measures rather than sanctions or penalties. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | The OFT/TSS focuses on soft enforcement measures (warnings, negotiations, consultations) rather than on corrective measures. The OFT/TSS may ask a trader/producer/manufacturee to publish a corrective statement. |
| Who can be held liable ? Liability of manufacturers, importers, distributors, advertising agencies, editors ? | Manufacturers, importers, distributors, advertising agencies (however, claims concerning advertising will initially be dealt with by ASA rather than by OFT/TSS), editors. There is an "honest publication" defence for publications/editors. |
| Publication of decisions ? | Yes, see the case archive: http://oft.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-archive/ |
| 13.Procedure issues | |
| Maximum term to initiate complaints ? (e.g. max. 2 years after advertising campaign) | No such term is foreseen for the enforcement procedure before the OFT/TSS but for prosecutions there is a time limit of three years from commission of the offence or one year from the prosecutor's discovery of the offence – whichever is the |

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| | earlier. |
| Right to be heard, right to present evidence | The right to be heard and produce evidence is conferred upon the party. In particular, the party has the right to consultation under the Enterprise Act 2008 (part 8). |
| Right to appeal ? Does it suspend the decision? | The party can apply for judicial review of the decision issued by the OFT/TSS. This would suspend the decision. |
| How long can procedures take ? | Approximately, procedures take 1 year. |
| Cost of procedure, of experts (would this financial risk prevent complaints ?) | Costs of investigation before the OFT are born by the OFT. |
| 14.Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available ? Are decisions published ? | To-date there has been very little exposure to environmental claims. |
| Conclusions based on interviews regarding: <ul style="list-style-type: none"> - Clarity and security of guidance and approach - High priority in the country of the issue of the enforcement of the rules regarding environmental claims ? - Efficiency and coherence - Sufficient involvement and protection of all stakeholders - Combination of public enforcement and SRO system - Issues that were indicated as a good practice | The enforcement procedure is considered to be clear and coherent, and thus in most cases it is effective. Environmental claims do not have a high priority status. The party has the right to be heard and their rights are properly secured. The OFT (now TSS) closely cooperates with ASA (e.g. ASA can submit issues to the TSS, the TSS can refer complaints to ASA). Case handling principles are now in place between the ASA and London Borough of Camden; COSLA and DETI. |
| Other conclusions or remarks | |

Local Authority Trading Standards Services

Following changes to the consumer protection regime introduced by Government in April 2013, local authority Trading Standards Services now take a lead role in the enforcement of consumer protection law at national level, including individual cases.

TSS are funded by and accountable to local authorities. They work to local priorities set by councillors who focus on the particular needs of the local community, as well as national priorities set by government departments and agencies.

TSS aim to provide expert advice that empowers consumers to resolve their own problems. Where this is not possible, more in-depth assistance and direct intervention such as mediating with a trader might be provided. This type of help is targeted to those consumers who are least able to resolve their problem without it. Typically, these will be the most vulnerable members of the local community, such as older people and people with learning disabilities.

Trading Standards Officers typically work in one of approximately 200 UK local authority trading standards offices, except in Northern Ireland where trading standards is provided by central government. Trading standards professionals work with consumers and businesses to maintain fair trading and safety of consumer goods.

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| Name and category of Authority (general administration, specific agency, prosecution...) | Trading Standards Services (TSS) |
| 1. Scope | |
| Products/markets/sectors covered | Not specified. |
| Surveillance of advertising and/or product information / labelling/ presentation? | Both. |
| 2. Organisation | |
| Based on legal rules and/or guidance ? Which rules are applied ? Based on detailed rules or general principles ? Nature of enforcement proceedings (administrative / based on court actions) | TSS enforce a broad range of legislation which, as well as fair trading, often includes responsibility for animal health, food safety and underage sales of tobacco, alcohol, knives and fireworks. Along with the OFT, and Department of Enterprise Trade and Investment, the TSS are responsible for enforcing the Consumer Protecting from Unfair Trading Regulations 2008 transposing the UCP Directive. Like the OFT, the TSS have both soft enforcement powers as well as hard powers. Their enforcement powers range from informal regulatory (or self-regulatory) procedures to a civil action for an enforcement order, and, in worst cases, criminal proceedings. When the TSS makes an application for an enforcement order, it must notify the OFT on this action. |
| 3. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints ? | In the main, local authority TSS offices receive complaints from the public in its area. Consumers may be advised to contact the Citizens Advice consumer service. However, where they provide advice and assistance to local consumers, TSS themselves benefit from the collection of detailed intelligence about local traders and how they operate. Indeed many breaches of criminal and civil legislation that TSS have a duty to enforce are detected in this way. This type of intelligence allows TSS to target enforcement action and |

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| | consumer education initiatives to where they have the greatest impact in terms of enhancing the economic and social welfare of local consumers and driving down the number of complaints about local businesses. |
| Who has the right to complain ? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | Any person, including legal persons or organisations, may make complaints or submit queries to their local TSS. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen ? | It is open to self-regulatory bodies (e.g. ASA) to refer issues to the TSS. |
| 4. Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art.. Necessity to retain documentation about manufacturing process.. Must supporting documentation be submitted immediately by the producer ? | In any complaint investigation the TSS will request full disclosure of supporting scientific and other documentation. The TSS will utilise the services of experts where necessary. If a trader is unable or unwilling to disclose documentation, this might lead to prosecution of the complaint. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period ? | Suppliers should retain such documentation throughout the period a claim is made. In addition, as a prosecution (e.g. of a false or misleading claim) can be brought up to 3 years from the alleged offence, the documentation should be retained for at least that period. |
| Are quantifications examined ? (e.g. when stated that "a product is made of 75% recycled materials") | In investigating a claim of this type the TSS will require evidence of the accuracy of the claim. |
| Are surveillance actions based on certain standards? | TSS officers must act in a professional manner and if, for example, they are collecting evidence that might be used in relation to a prosecution, this must be done having due regard for the Criminal Procedure & Investigations Act 1996 and its Code of Practice. |
| 5. Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | Just like the OFT, local authority TSS endeavour to prevent breaches of consumer law happening in the first place or try to stop them. However, if they are unsuccessful in their prevention actions, they will exercise their enforcement powers. |

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| <p>A priori clearance or prior opinions possible ? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings ?</p> | <p>The TSS offer guidance to traders on a range of issues, including claims and product labelling. This is done through the TSS in the trader's "home" authority.</p> <p>Focus appears to be on "soft enforcement".</p> |
| <p>Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties)</p> | <p>In relation to enforcement of The Consumer Protection from Unfair Trading Regulations 2008, powers range from informal regulatory (or self-regulatory) procedures to a civil action for an enforcement order, and, in worst cases, criminal proceedings. Enforcement officers will have the power to test compliance by purchasing products and can enter premises in certain circumstances (regulation 21 of Consumer Protection from Unfair Trading Regulations 2008).</p> <p>At the lower end of the scale, enforcers can refer complaints to existing regulatory bodies to be dealt with under their own codes of practice. An obvious example would be the Advertising Standards Authority.</p> |
| <p>Corrective action (e.g. removal, withdrawal of products, corrective labelling)?</p> | <p>The TSS has a wide range of powers which can be used depending on the severity of the issue. This might be voluntary removal of the product or labelling; through to an injunction or criminal prosecution.</p> |
| <p>Who can be held liable ? Liability of manufacturers, importers, distributors, advertising agencies, editors ?</p> | <p>Any person may be prosecuted under the Consumer Protection from Unfair Trading Regulations 2008. This includes individuals and bodies corporate. Editors and agencies may have an "honest publication" defence.</p> |
| <p>Publication of decisions ?</p> | <p>Proceedings in Court will always be open to the public and therefore might be reported by the media. The TSS might issue a press release of a successful prosecution or civil enforcement.</p> |
| 6. Procedure issues | |
| <p>Maximum term to initiate complaints ? (e.g. max. 2 years after advertising campaign)</p> | <p>Complaints can be made by the public to TSS at any time.</p> <p>There is a time limit for criminal prosecutions under Regulation 14 of</p> |

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| | the Consumer Protection from Unfair Trading Regulations 2008 – no later than 3 years after the date of commission of the offence or no later than one year after the date of discovery of the offence by the prosecutor. |
| Right to be heard, right to present evidence | The right to be heard and produce evidence is conferred upon the party. In particular, the party has the right to consultation under the Enterprise Act. |
| Right to appeal ? Does it suspend the decision? | It might be open to the party to apply for judicial review of the TSS action or (in relation to a prosecution) to appeal to a higher court. |
| How long can procedures take ? | It is difficult to assess but a minor issue involving an amenable trader might be resolved very quickly (within days) whereas a serious case involving prosecution could take many months to progress through the courts. |
| Cost of procedure, of experts (would this financial risk prevent complaints ?) | It is likely that the cost of bringing an action will be a determining factor. The local TSS have limited resources and must judge whether action is in the public interest. |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available ? Are decisions published ? | The TSS do monitor the market and issue (and revise) guidance notes to traders in general terms. |
| Conclusions based on interviews regarding: <ul style="list-style-type: none"> - Clarity and security of guidance and approach - High priority in the country of the issue of the enforcement of the rules regarding environmental claims ? - Efficiency and coherence - Sufficient involvement and protection of all stakeholders - Combination of public enforcement and SRO system - Issues that were indicated as a good practice | In general, TSS exposure is too recent and insufficient for conclusions. |
| Other conclusions or remarks | |

Department of Enterprise Trade and Investment (DETI) in Northern Ireland

As established above, DETI is the main enforcement authority regarding the Consumer Protection from Unfair Trading Regulations 2008 and The Business Protection from Misleading Marketing Regulations 2008, transposing the UCP Directive in Northern Ireland. The enforcement system is very efficient and involves the consumer, as well as the producers/industry.

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| Name and category of Authority (general administration, specific agency, prosecution...) | Department of Enterprise Trade and Investment (DETI) |
| 1. Scope | |
| Products/markets/sectors covered | Not specified. |
| Surveillance of advertising and/or product information / labelling/presentation? | Both. |
| 2. Organisation | |
| Based on legal rules and/or guidance ? Which rules are applied ? Based on detailed rules or on general principles ? Nature of enforcement proceedings (administrative / based on court actions) | The good practice principles set out in the Enforcement Concordat and the Regulator's Compliance Code: http://www.detini.gov.uk/trading_standards_service_enforcement_concordat.pdf DETI acts upon infringements of Trading Standards law. Administrative enforcement proceeding which can result in legal proceedings. |
| 3. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints ? | Based on complaints. |
| Who has the right to complain ? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | The following procedures bring possible infringements to the attention of DETI: <ul style="list-style-type: none"> • Complaints made by members of the public • Complaints made by traders • Inspections of trade premises carried out by Trading Standards Officers • Targeted investigation of individual traders, trade sectors or practices • Matters referred by other agencies • Other sources of information and intelligence |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen ? | Inspections of trade premises carried out by Trading Standards Officers are submitted to DETI. |
| 4. Assessment | |

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| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art.. Necessity to retain documentation about manufacturing process.. Must supporting documentation be submitted immediately by the producer ? | DETI asks the producer to submit evidence and substantiation and examines the latter. Upon request. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period ? | N/A |
| Are quantifications examined ? (e.g. when stated that "a product is made of 75% recycled materials") | N/A |
| Are surveillance actions based on certain standards? | N/A |
| 5. Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | Post marketing sanctions: DETI deals only with possible infringements of Trading Standards law. |
| A priori clearance or prior opinions possible ? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings ? | The focus is on collaboration. Yes. |
| Enforcement measures: Warnings, operator's undertakings/commitments, sanctions (fines, penalties) | The following measures can be taken by DETI: •A Written Warning •A Formal Caution •A Formal Undertaking •A Recommendation to prosecute or commence • other legal proceedings, including injunctive action |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | No. |
| Who can be held liable ? Liability of manufacturers, importers, distributors, advertising agencies, editors ? | Anyone, but in practice distributors and advertising agencies, since they reflect the business to consumer axe. |
| Publication of decisions ? | No, confidentiality is maintained except where there is a legal obligation to disclose information. |
| 6. Procedure issues | |
| Maximum term to initiate complaints ? (e.g. max. 2 years after advertising campaign) | The time limit to prosecute is 1 year after discovery or 3 years after commission of offence, whichever comes first (under Regulation 14 of The Consumer Protection from Unfair Trading Regulations 2008). |

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| Right to be heard, right to present evidence | Yes. |
| Right to appeal ? Does it suspend the decision? | Yes, against court decisions. |
| How long can procedures take ? | Normally 6-9 months, maximum 1 year. |
| Cost of procedure, of experts (would this financial risk prevent complaints ?) | DETI has to pay but recovery from defendant in case of a conviction is possible. The financial risk does not prevent complaints but may influence the submission to court. However this has not happened in practice as yet, according to the interviewee. |
| 7. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available ? Are decisions published ? | No, in addition no decisions focusing on environmental claims exist. |
| Conclusions based on interviews regarding: <ul style="list-style-type: none"> - Clarity and security of guidance and approach - High priority in the country of the issue of the enforcement of the rules regarding environmental claims ? - Efficiency and coherence - Sufficient involvement and protection of all stakeholders - Combination of public enforcement and SRO system - Issues that were indicated as a good practice | <p>The approach of DETI is clear and documented, as well as efficient and coherent. All complaints are addressed equally although admittedly environmental claims are not a high priority.</p> <p>The public can submit complaints; the enforcement scheme's focus is on prevention and collaboration, producers seeking to advertise can contact DETI for advice and guidance. Thus all stakeholders are involved.</p> <p>The enforcement scheme is merely public, no best practices are identified. Complaints are processed fast and efficiently, the timeframe is maximum one year.</p> |
| Other conclusions or remarks | |

Court action⁴³

Any person can prosecute breaches of the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008. In other words, the right to prosecute is not restricted to the enforcement authorities. However the powers of entry and other powers which facilitate the collection of evidence cannot be used by private prosecutors. Enforcement authorities are defined in regulation 2 of both of these Regulations as being the OFT, every local weights and measures authority (Trading Standards Services) in Great Britain (within the meaning of section 69 of the Weights and Measures Act 1985(1)) and the Department of Enterprise, Trade and Investment in Northern Ireland).

These enforcement authorities can file actions before the Court against a trader for breaches of the above-mentioned regulations. In relation to civil enforcement the court on application of the OFT, TSS or DETI may grant an injunction on such terms as it may think fit to secure compliance with the regulations. The court can also impose penalties: the potential penalties are a fine of not more than the statutory maximum on summary judgment (£5,000 for civil enforcement). Further, in the case of a conviction for indictment, an unlimited fine and imprisonment for a term not exceeding two years is possible (criminal enforcement).

The DETI is required to notify the OFT of any application made by it for an injunction from the courts and the outcome of any application made by it to enforce a previous order of the court.

Output of actions

OFT publishes all consumer enforcement cases (formal and informal) on its website, around 20 cases in total are published each year. The number of cases directly relating to environmental claims is not published. Currently (11.09.2013) ten cases are still pending, although none of them concerns misleading environmental claims.

DETI has not reported any enforcement actions regarding environmental claims but the interviewee said that an emerging issue is the marketing of energy products and the declared amount of energy that can be saved through purchasing these products.

2.10.3 Self-regulatory mechanisms Advertising Standards Authority (ASA)

The ASA is the UK's independent body for ensuring that all advertisements, wherever they appear, are legal, decent, honest and truthful for the benefit of consumers, business and society.


The ASA administers the UK Advertising Codes that are written and maintained by two industry bodies, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP).⁴⁴

⁴³ *Enforcement fiche for United Kingdom.* Retrieved from <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.viewEnforcement&countryID=UK>

⁴⁴ CAP, (2013). *Insider's Guide to the ASA.* Retrieved from www.cap.org.uk

The Advertising Codes⁴⁵ are developed in line with widely accepted better regulation principles. These require that regulation is transparent, accountable, proportionate, consistent and targeted.

The ASA system is both self-regulatory⁴⁶ (for non-broadcast advertising) and co-regulatory⁴⁷ (for TV and radio advertising). Whilst the regulatory structures behind the broadcast and non-broadcast Codes may therefore differ (e.g. the CAP and BCAP Code writing bodies have different industry memberships) both sets of Codes are predominantly aligned and the spirit of the Codes is consistently applied by the independent ASA.

| Name of the organisation | Advertising Standards Authority (ASA) |
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| 13.Scope | |
| <p>Which set(s) of rules are applied by the SRO? (code of conduct, guidance, labelling scheme, legal provisions...) Are the rules applied by the SRO referring to other rules? (e.g. ICC rules/UCPD)</p> | <p>The ASA administers the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code) and the UK Code of Broadcast Advertising (BCAP Code). Where necessary, the rules reflect (although ASA does not enforce) relevant laws, for example the Audiovisual Media Services Directive and the Unfair Commercial Practices Directive (UCPD) – the latter being particularly relevant for environmental claims having been transposed fully into UK law as the Consumer Protection from Unfair Trading Regulations (CPRs).</p> |
| <p>Trademark or logo available? Is the use of the logo or referral to the organisation dependent on compliance? Is there a specific logo regarding compliance with the rules on environmental claims? Compliance monitoring for members?</p> <p>Is the SRO sector related?</p> | <p>Please find below the ASA logo</p>  <p>Please note, however, that there is no specific logo which represents compliance. N/A N/A</p> <p>CAP offer free advice and guidance to help advertisers get their ads right in the first place. In 2012, CAP provided over 100,000 pieces of advice and guidance for industry – the great majority of which is free. Compliance with the Codes is mandatory for all advertisers and broadcasters – there is no opt-out. The ASA compliance surveys show that the majority of advertisers, and the millions of ads that appear in the UK each year, comply with the rules.</p> <p>The Codes apply to the content of most</p> |

⁴⁵ CAP, (2013). *Advertising Codes*. Retrieved from <http://asa.org.uk/Advertising-Codes.aspx>

⁴⁶ ASA, (2013). *Self regulation of non-broadcast advertising*. Retrieved from <http://asa.org.uk/Regulation-Explained/Control-of-ads/Self-regulation-non-broadcast.aspx>

⁴⁷ ASA, (2013). *Co-regulation of broadcast advertising*. Retrieved from <http://asa.org.uk/Regulation-Explained/Control-of-ads/Co-regulation-broadcast.aspx>

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| | advertisements, sales promotions and direct marketing in the UK, but not for all. See below on products/categories. |
| Is the code of conduct and enforcement thereof applicable on an international, national, regional level? | The Codes apply nationally – the ASA is responsible for administering the Codes. In the event that a complaint regarding advertising originates overseas, the ASA will utilise, where appropriate, the European Advertising Standards Alliances (EASA) cross-border complaints mechanism which operates on a country of origin principle. |
| Focused on certain product categories/services? | The following types of advertising are dealt with: <ul style="list-style-type: none"> •Magazine and newspaper advertisements •Radio and TV commercials (not programmes or programme sponsorship) •Television Shopping Channels •Advertisements on the Internet, including: <ul style="list-style-type: none"> •banner and display ads •paid-for (sponsored) search •Marketing on companies’ own websites and in other space they control like social networking sites Twitter and Facebook •Commercial e-mail and SMS text message ads •Posters on legitimate poster sites (not fly posters) •Leaflets and brochures •Cinema commercials •Direct mail (advertising sent through the post and addressed to you personally) •Door drops and circulars (advertising posted through the letter box without your name on) •Ads on CD ROMs, DVD and video, and faxes •Sales promotions, such as special offers, prize draws and competitions wherever they appear. •Online behavioural advertising |
| Focused on advertising, media, product labelling? | Focus on all advertisements, sales promotions and direct marketing in the UK. Product labelling / packaging is not covered by the Codes/the ASA. |
| Focused on certain concerns? (e.g. sustainability, organic) | No. |
| Focused on manufacturers, sellers, advertising agencies? | ASA rulings are made against advertisers – i.e. to those businesses that advertise their products or services. The wider self-regulatory system expects, however, all parts of the system – advertisers, media space owners and the advertising agencies – comply with the Codes and to co-operate and comply with the ASA. |
| 14.Organisation | |

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| <p>Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists.. ?)</p> | <p>The Advertising Codes are written, revised and enforced by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). CAP and BCAP's membership comprises organisations that represent advertisers, agencies, media space owners, direct marketers and broadcasters.</p> |
| <p>Frequent updates of the rules regarding environmental claims?</p> | <p>CAP updates its online guidance to ensure the industry has access to the most up-to-date information. This includes advice notes on environmental claims: http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Advice-Online-Index.aspx#E</p> <p>The Advertising Codes were subject to a full review and public consultation in 2010. The Advertising Codes were revised following a comprehensive two-year review by CAP and BCAP to make sure the rules remain effective and relevant for the future.</p> <p>CAP and BCAP looked at the rules around environmental marketing as part of the review, and updated the environmental section in both the Non-broadcast and Broadcast Codes, including a new section in the Broadcast Code on environmental claims to provide greater clarity for advertisers and the public.</p> <p>CAP and BCAP are open to receiving evidence that a Code update or change might be necessary, at any time.</p> <p>The numbers of environmental claims complaints increased between 2006 and 2007; however the years 2008 and 2009 saw fewer ads receiving complaints. Furthermore, whilst the overall number of complaints received increased in 2009, 939 of these 1,109 complaints were about a single DECC ad campaign on climate change.</p> <p>Following the increase in complaints, the ASA commissioned independent research into public perceptions of green claims and undertook some proactive work to help marketers avoid making unfair or misleading environmental claims. Notably, the ASA has held industry training events; spoken at a number of industry seminars on green advertising claims and promoted articles in industry publications about how to advertise green claims responsibly.</p> <p>In 2008, the ASA held a stakeholder consultation seminar entitled 'Environmental Claims in Advertising: Is Green a Grey Area?' which brought together consumer groups,</p> |

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| | <p>environmental specialists and the industry to discuss the issues at hand. The findings were published in a report on the ASA website.⁴⁸ The objectives of the seminar day were to gauge stakeholders' opinions on the various challenges and provide advertisers with greater clarity about the advertising rules on environmental claims and the ASA's likely interpretation of those rules.</p> <p>The ASA also conducted a proactive survey of advertisements making green claims in 2008. The survey found a compliance rate of 94% with the Advertising Codes.⁴⁹</p> |
| Application of detailed rules regarding environmental claims or general principles? | <p>Advertisers seeking to make green claims in their advertising targeted at consumers must comply with the UK Advertising Codes. Both the Advertising Codes administered by the ASA (the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing, and the UK Code of Broadcast Advertising) contain dedicated environmental sections that sit above the more general Code provisions that ads should not mislead, harm or cause serious or widespread offence. Additionally, both Codes contain clear references to the Green Claims Code published by the Department for Environment Food and Rural Affairs (Defra).</p> <p>Claims in advertising are subject to rules which reflect the relevant requirements of the Unfair Commercial Practices Directive (UCPD), transposed fully into UK law as the Consumer Protection from Unfair Trading Regulations (CPRs).</p> <p>CAP has issued detailed guidance for advertisers on how the ASA is likely to interpret and apply the advertising Codes, both generally and with regard to specific environmental claims.</p> |
| How is the scheme or self-regulation system funded? | <p>The system is funded by a levy on advertising spend. This is collected on behalf of the ASA by two bodies: the Advertising Standards Board of Finance (Asbof) and the Broadcast Advertising Standards Board of Finance (Basbof). The levy is set at 0.1% of advertising space costs and 0.2% of Mailsort contracts.</p> |
| 15.Active surveillance / complaints | |
| Is active surveillance done by the SRO (independent from complaints)? | Yes, proactive checking of adherence to the ASA Codes and rulings, as well as monitoring of |

⁴⁸ ASA. Retrieved from <http://www.asa.org.uk/Media-Centre/2008/ASA-puts-greenwash-in-the-limelight.aspx>

⁴⁹ ASA, (2008). *Compliance Report Environmental claims survey 2008*. Retrieved from http://www.asa.org.uk/Resource Centre/~/_/media/Files/ASA/Reports/EnvironmentalClaimsSurvey2008.ashx

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| <p>Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners)</p> | <p>the media is carried out. Activities are concentrated on high-profile sectors (such as alcohol, health and beauty) or sectors with low compliance.</p> <p>Companies, consumer organisations, other organisations or associations, individual consumers can file a complaint (competitor complaints have to provide evidence of an attempt to resolve the issue directly with the advertiser concerned first)</p> |
| 16. Assessment | |
| <p>How does the SRO make an assessment of the required substantiation of environmental claims? E.g. are the claims verified in labs? Does the assessment panel of the SRO request scientific reports or documentation? Must this documentation be submitted immediately? Must supporting documentation (scientific, tests) be retained by the producer during a certain time? Are quantifications examined (e.g. "75% recycled materials must really be 75%") ?</p> | <p>The ASA operates a system of reverse burden of proof - the burden of proof rests with the advertiser, who is given the opportunity to defend their ad (through providing evidence e.g. to substantiate a claim).</p> <p>At the beginning of an investigation ASA contacts all parties involved (complainant, advertiser and, if appropriate, the broadcaster) and informs them of the process.</p> <p>The advertiser is provided with a full description of the complaint, the issues ASA intends to investigate, what substantiation is required and the deadline for their response. ASA then assesses the ad against the applicable Advertising Code in light of the responses received. If more information to make a judgement is needed, ASA may seek further clarification, evidence or independent expert advice.</p> <p>ASA draws up a draft recommendation outlining the complaint, the response we received, the assessment of whether the ad breaches the applicable Advertising Code and a recommended course of action. ASA gives the appropriate parties to the complaint the opportunity to comment on the factual accuracy of the draft. The draft recommendation is then sent to the ASA Council for their consideration and final decision.</p> <p>The ASA Council is the independent jury responsible for deciding if the Advertising Codes have been breached. The full review procedure is published online: http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML/How-the-system-works.aspx and http://www.asa.org.uk/Consumers/~media/Files/ASA/Misc/Broadcast_Complaint_Handling_Pr</p> |

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| | <p>cedures.ashx.</p> <p>More information on the investigations process is available here: http://www.asa.org.uk/Industry-advertisers/~media/Files/ASA/Misc/ASA_Complaints_leaflet-FINAL.ashx</p> |
| <p>How is the assessment panel established when an environmental claim is assessed? Is it considered sufficiently independent and impartial?</p> | <p>The assessment of a complaint is made by the ASA staff. When there are technical issues, expert advice is obtained. There is no specific panel on environmental claims. The ASA Council makes the decision on whether the environmental claim breaches the applicable Code.</p> <p>The Council consists of the ASA Chairman and 13 Council members. Two thirds of the members are independent of industry and the remaining members have current knowledge of the advertising or media sectors. Nearly all members judge both non-broadcast and broadcast advertisements, although there are two alternating industry members – one who looks at broadcast advertisements only and another who looks at non-broadcast advertisements.</p> <p>The members represent a cross section of society, including young people, families, charities and consumer groups.</p> <p>The ASA Council also operates as the Board of the ASA.</p> <p>Council Members are appointed for a maximum of two three-year terms and receive an honorarium up to £17,500 p.a. A register of Council Members' interests may be requested from the Company Secretary.</p> <p>Short biographies of the members and contact details are included on the website: http://www.asa.org.uk/About-ASA/Our-team/ASA-Council.aspx</p> |
| <p>17.Measures/ ▪ sanctions/prevention</p> | |
| <p>Is the sanctioning of environmental claims focused on hard sanctions and/or moral guidance, recommendations?</p> <p>Will public authorities be involved if the SRO's recommendations are not respected by advertisers ?</p> | <p>In case of violation of the CAP Code or BCAP Code (including the specific chapters on environmental advertising) the primary sanction of the ASA is to have the advertisement withdrawn and prevented from appearing again.</p> <p>Rulings about TV and radio ads are [followed immediately under the broadcasters' licences]. For non-broadcast advertising, in the case the advertiser refuses to comply with an ASA ruling, CAP can impose further sanctions such as withholding access to advertising space, withdrawal of trading privileges and vetting before publication. For more information see</p> |

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| <p>Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo...</p> <p>Can sanctions be imposed by law?</p> <p>Focus on prevention, prior opinions or pre-clearance ? Focus on 'soft approach' through discussion, negotiation ?</p> <p>Are decisions published? If so, is it considered as an effective measure?</p> | <p>http://www.asa.org.uk/Industry-advertisers/Sanctions/Non-broadcast.aspx Regarding TV and radio ads, the broadcasters have a legal obligation to ensure that the advertisements comply with the rules applicable to advertising, which results in practice in a strong prior assessment policy (which is performed by Clearcast for TV ads). This should however not be considered as an obligatory, nor binding pre-clearance.</p> <p>In exceptional circumstances where an advertiser has seriously or repeatedly infringed on one of the Codes, the ASA can refer the case to Trading Standards or the Office of Fair Trading.</p> <p>See above. The ASA has a range of industry sanctions that it will bring to bear against non-compliant advertisers. On the rare occasion that the ASA is unable to bring about compliance, the ASA has recourse to refer advertisers to statutory backstops – Trading Standards, the OFT and Ofcom. These bodies can take legal action under the CPRs and Communications Act 2003.</p> <p>The ASA does not have power to take legal action, but as indicated can refer non-broadcast advertisers to Trading Standards or the OFT, and broadcasters to Ofcom.</p> <p>The focus is on prevention rather than cure. The ASA system offers comprehensive advice and guidance services, through the Committee of Advertising Practice, to help advertisers get it right in the first place. This includes industry seminars, bespoke events, a free Copy Advice service and online guidance materials. In 2012, CAP provided over 100,000 pieces of advice and guidance for industry – the great majority of which is free.</p> <p>As the advertising regulator, ASA is able to provide industry with guidance on how to get their ads right and how to use terminology in their ads in a way that will not be misleading or unfair to consumers. However, it is not generally its role to dictate the meaning of particular scientific terms. In these matters, the favoured approach would be to refer to definitions that have been agreed amongst experts or Government, taking into account the way those terms are likely to be understood by consumers.</p> <p>ASA rulings are published on its website each Wednesday.</p> |
| 18.Procedure issues | |
| Procedure with hearing rights, legal | Complaints must be made within three months |

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| <p>assistance, evidence and counter evidence? Costs?</p> <p>Appeal possible? Does it suspend the decision ?</p> <p>Precedence of court cases in case of double approach?</p> <p>How long can procedures take?</p> | <p>of the marketing communication's appearance, although in exceptional circumstances complaints about older marketing communications will be considered. Consumers can file complaints for free.</p> <p>Advertisers or complainants can request a review of an ASA Council decision by the Independent Reviewer of ASA Adjudications. A request of this type must be sent within 21 days of the date of the ASA's letter of notification of adjudication. Requirements for appeal/review are to establish that a substantial flaw of process or adjudication is apparent or that additional relevant evidence is available. If the Independent Reviewer accepts a request for a review the ASA Council is asked to reconsider its ruling. More information about the Independent Review procedure can be found here http://www.asa.org.uk/Industry-advertisers/Industry-Independent-review-process.aspx</p> <p>The ASA is considered the established means for gaining compliance with the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008 in relation to advertising.</p> <p>This means that the law itself is not usually enforced formally through the courts; instead the ASA is first allowed to tackle any problems under the Advertising Codes. This approach works well in the overwhelming majority of cases. The ASA is able to take action quickly and this avoids clogging up the court system.</p> <p>The ASA's decisions are subject to judicial review. In its adjudication of complaints the ASA will reflect legal precedent where applicable. To date, ASA has not experienced a problem of inconsistency with statutory regulators, such as the OFT and Trading Standards, which have the power to enforce the same consumer legislation that the ASA codes reflect.</p> <p>Some complaints are straightforward to resolve and if those responsible agree to make appropriate changes to bring an ad in line with the relevant Advertising Code a full investigation can be avoided. Other complaints, however, are more complex and may take weeks, or sometimes months, to resolve.</p> |
| 19.Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? | The decisions are published on the ASA website. New rulings may result in new or updated |

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| | <p>guidance (Advice Online or Help Notes) which are published on the CAP website.</p> <p>AdviceOnline is a comprehensive database offering the latest interpretation of the Code. Advertisers can search over 400 entries for information on a wealth of topics.</p> <p>Help Notes are formal CAP and BCAP guidance on the application of the Advertising Codes in specific sectors or on particular subjects</p> <p>See Advice and Guidance here: http://www.cap.org.uk/Advice-Training-on-the-rules.aspx</p> |
| <p>Conclusions based on interviews regarding:</p> <ul style="list-style-type: none"> - Clarity and security of guidance and approach - High priority in the country of the issue of the enforcement of the rules regarding environmental claims? - Efficiency and coherence - Sufficient involvement and protection of all stakeholders - Combination of public enforcement and SRO system ■ - Issues that were indicated as a good practice - Other conclusions or remarks | <p>The approach of the ASA is well documented and clear. It works efficiently and in a coherent manner, as the process is clearly documented.</p> <p>Environmental claims are not a high priority but an important field in the ASA enforcement work. In 2010, 1% of all complaints submitted related to environmental claims.</p> <p>The approach of ASA is considered efficient and coherent.</p> <p>The different stakeholders are involved through stakeholder surveys, representation on the ASA Council and through the right to submit complaints.</p> <p>The ASA cannot take legal action itself but can refer issues to the Trading Standards, the OFT and Ofcom, which bodies can take legal action. New rulings under the Codes may result in changes to the Codes and/or new or updated guidance (Advice Online or Help Notes).</p> <p>In its recent policy paper, 'Connectivity, content and consumers: Britain's digital platform for growth', the UK Government commented that the ASA was an "...exemplar of successful self-regulation" and that the "UK has found self-regulation of (...) emerging advertising practices to be a useful and effective approach".</p> |

Output of actions

According to the ASA Annual Report 2012, 70% of the in total 18,990 cases handled by it were about misleading advertising. In 2012, 102 advertisements received complaints about environmental claims.

The number of advertisements receiving complaints about environmental claims (a superior indication than looking at overall complaint numbers) has been in broad decline in the UK since 2007, when 408 ad campaigns received complaints. In 2008 this figure was 264, in 2009 it was 183, in 2010 it was 146, in 2011, 156 ads received complaints, and in 2012, 102 ads received complaints.

In 2008, the ASA also conducted a proactive survey of advertisements making green claims. The survey found a compliance rate of 94% with the Advertising Codes.

2.10.4 Summary

- The UK has few, but well centralized enforcement systems, although there are some differences between the regions. A recent modification results in a more localized approach for public enforcement.
 - *Predominant system.*
- The public enforcement organisations have had little exposure to the issue of environmental claims, whereas ASA, the SRO, handles a substantial amount of claims involving environmental claims (albeit declining from 408 campaigns in 2007 to 102 campaigns in 2012). Complaints relating to advertising are typically handled by ASA. On the other hand, the public authorities have an important impact on prevention and clarification of the existing rules. The DEFRA guidance is often cited as a clear and practical guidance, which may explain why the number of complaints relating to environmental claims has declined over time.
 - *Combination of systems – coherence.*
- The UK Government has stated that ASA was an example of successful self-regulation and a useful and effective approach. The public enforcement system and SRO system seem to co-exist very well. While the ASA administers its own Codes of broadcast and non-broadcast advertising, these Codes refer to the Green Claims Code of DEFRA, a public organisation (that is however not an enforcement organisation). There is coherence in the different systems. Most complainants will file a complaint with ASA, in order to obtain a practical settlement of the complaint. On the other hand, as a typical SRO, ASA cannot impose hard sanctions and therefore it relies on the sanctioning mechanisms of public enforcement.
 - *Effectiveness.*
- The rights of the stakeholders are sufficiently protected under the systems of public enforcement and the SRO system. The practical approach of ASA is considered effective. The ASA rulings are published and this contributes to an effective guidance.
 - *Clear guidance.*
- The guidance is considered clear and practical in the U.K. The DEFRA Green Claims Code is often cited as an example. Furthermore, the ASA administers specific codes for broadcast and non-broadcast advertising, which refer to the DEFRA code where useful.
 - *Surveillance activity.*
- The public enforcement organisations as well as ASA undertake a proactive surveillance activity, although it is admitted that the issue of environmental claims is not the highest priority in the area of advertising in general and the UCPD.
 - *Pre-clearance.*
- ASA offers a general possibility for prior advice and guidance, which is not considered binding. Regarding television advertisement broadcasts, the broadcasting companies have a legal obligation to ascertain that the advertisements comply with the rules, which means that in practice a strong prior copy advice service is organised. This does however not constitute a true pre-clearance that would be binding for the authorities or third parties.
 - *Data.*

- The public enforcement organisations have had little exposure to the issue of environmental claims. ASA handled 102 complaints about green claims in advertisements in 2012 (less than 1% of the claims concerning advertising). There is a remarkable decline in the number of complaints since 2007 (2007: 408, 2008: 264, 2009: 183, 2010: 146, 2011: 156, and 2012: 102).

1.11 Norway

1.11.1 Overview

In Norway, only public enforcement is available and is organised by:

The Consumer Ombudsman

The market Council

Court action

1.11.2 Public enforcement

The Consumer Ombudsman and the Market Council

The Marketing Control Act 2009 (the "**MCA**") is the legal basis for marketing control in Norway. Pursuant to Section 32 of the MCA the proper functioning of the MCA shall be supervised by the Consumer Ombudsman and the Market Council.

The Consumer Ombudsman is an independent administrative body charged with supervising marketing, hereunder control of environmental claims marketed towards consumers. The Consumer Ombudsman considers complaints from consumers, stakeholders and traders, and will also review marketing measures on its own initiative. Complaints concerning alleged violations of the marketing regulations in the MCA must first be considered by the Consumer Ombudsman.

The Consumer Ombudsman will often seek to arrive at voluntary arrangements through negotiations with traders. Should it not be possible to reach such voluntary solutions the Consumer Ombudsman may submit the matter to the Market Council. The Market Council also considers appeals on the Consumer Ombudsman's decisions. Both the Consumer Ombudsman and the Market Council have the authority to issue decisions on unlawful marketing and advertising, including the illegal use of environmental claims. The decisions may include specific measures such as prohibiting specific marketing, compulsory fines, and attributing fees. Decisions of the Consumer Ombudsman can be appealed to the Market Council. Decisions made by the Market Council cannot be appealed to a superior administrative body, but they can be continued in ordinary court proceedings.

The option to complain to the Consumer Ombudsman is actively used and the Consumer Ombudsman receives approximately 8500 inquiries annually. Most of these inquiries are not related to marketing with environmental claims. In 2012 the Consumer Ombudsman received 3 formal complaints regarding environmental claims. However, the Consumer Ombudsman receives a larger number of informal requests regarding phrasing used in marketing, including environmental claims.

The Consumer Ombudsman has issued several guidelines regarding its interpretation and enforcement of the MCA's provisions as applied to environmental claims in marketing towards consumers. These guidelines express how the Consumer Ombudsman will apply the MCA to different types of environmental claims in marketing and therefore has substantial influence on traders. The relevant guidelines are set forth in Appendix 4 of this report.

Other authorities may also be competent to consider and enforce various regulations regarding environmental labelling at a secondary level. For example the Norwegian Water and Energy Directorate (the "**NVE**") is responsible for the energy labelling of the consumption of energy of houses and buildings, and energy consumption of household products, cf. the Act on labelling of consumer goods of 1981. Infringements on the labelling system can be sanctioned with fines issued by the NVE.

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| Name and category of Authority (general administration, specific agency, prosecution...) | Forbrukerombudet (Consumer Ombudsman) Public authority |
| 1. Scope | |
| Products/markets/sectors covered | All consumer markets |
| Surveillance of advertising and/or product information / labelling/ presentation? | Commercial practices incl. advertising and unfair contract terms |
| Organisation | |
| Based on legal rules and/or guidance? Which rules are applied? Based on detailed rules or general principles? Nature of enforcement proceedings (administrative / based on court actions) | Legal rules (Marketing Control Act implementing UCP Directive). Both. Administrative. |
| 2. Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | Both. |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels...). | All. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen? | No such organisations exist in Norway. |
| Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer? | Documentation of claims must be submitted. The CO may ask other public authorities with necessary scientific knowledge to assess the documentation. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period? | No minimum period, but at least for as long as the product is advertised and/or sold. |
| Are quantifications examined? (e.g. when stated that "a product is made of 75% recycled materials") | No cases yet where this has been looked at. |
| Are surveillance actions based on certain standards? | Internal standards based on legislation and previous practice. |
| Measures/sanctions/prevention | |

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| Focus on prevention or post-marketing sanctioning? | Preventive. |
| A priori clearance or prior opinions possible? (in general by guidance or case by case) Focus on 'soft enforcement' through negotiations, informal warnings? | No, the CO does not give binding prior advice. Focus on negotiations. This follows from the national legislation. The Consumer Ombudsman is obligated to seek solutions through informative work, dialogue, and negotiations with the traders, cf. MCA Section 35. |
| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | All. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | Removal of advertising. |
| Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors? | All. |
| Publication of decisions? | Yes. |
| Procedure issues | |
| Maximum term to initiate complaints? (e.g. max. 2 years after advertising campaign) | None. |
| Right to be heard, right to present evidence | Yes. |
| Right to appeal? Does it suspend the decision? | Yes. |
| How long can procedures take? | Normally just 1-2 months. Sometimes up to a year. |
| Cost of procedure, of experts (would this financial risk prevent complaints?) | Not significant. |
| Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? Are decisions published? | Yes. Yes. |
| Conclusions based on interviews regarding: Clarity and security of guidance and approach High priority in the country of the issue of the enforcement of the rules regarding environmental claims? Efficiency and coherence | Excellent. The Ombudsman issued very extensive guidance on environmental claims. Yes. Yes, there are not so many official complaints, but there is strong preventive action and informal negotiation. |

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| Sufficient involvement and protection of all stakeholders | Yes. |
| Combination of public enforcement and SRO system | Little. |
| Issues that were indicated as a good practice | Only products that leave a neutral or positive footprint on the environment may use the term "environmentally friendly". |
| Other conclusions or remarks | Extensive guidance. |

Court action

Court actions initiated by the public authorities.

Norwegian courts have competence to consider any case which falls within the MCA. Legal proceedings in the ordinary courts may in particular follow the administrative process of the Consumer Ombudsman and/or the Market Council due to the right to appeal these decisions.

Consumers who file a complaint to the Consumer Ombudsman will not become a party to later court proceedings. Instead the Norwegian State will represent the Consumer Ombudsman or the Market Council who will be party to the proceedings.

It is not necessary to proceed to an administrative process prior to proceeding to the ordinary courts.

As a starting point Norwegian courts shall not pass judgments on the use of administrative discretionary competence. The courts can however issue judgments to affirm or set aside the administrative orders of the Consumer Ombudsman and/or the Market Council. In addition, the courts can impose criminal liability, including economic sanctions.

The contractor has not identified any case actions initiated by the public authorities regarding use of environmental claims in marketing towards consumers in Norway.

Court actions between private parties.

Private parties have the opportunity to take court actions regarding the use of environmental claims in marketing.

It is not necessary to proceed to an administrative process prior to proceeding to the ordinary courts. However, pursuant to the Civil Procedure Act 2005 the plaintiff must have legal interest in the outcome of the matter in order to initiate legal proceedings.

In other words, a consumer may not initiate legal proceedings simply to receive a confirmation that an environmental claim is incorrect. Furthermore, legal proceedings are very expensive compared to a complaint to the public authorities.

The study did not identify any court case between private parties regarding the use of environmental claims in marketing towards consumers in Norway.

Output of Action

The annual overall number of complaints to the Consumer Ombudsman in 2011 was 4826, whereof 8 complaints were related to the use of environmental claims in marketing. In 2012 there were submitted 3772 formal complaints, whereof 3 complaints were related to environmental claims. By 1 November 2013, the Consumer Ombudsman has received 3 formal complaints regarding the use of environmental claims in marketing towards consumers. Nearly all cases resulted in voluntary correction of the advertising by the traders.

1.11.3 Self-regulation

The only self-regulated environmental label that covers all aspects of a product's life cycle in Norway is "Svanemerket" (the Swan label), which is a Nordic Eco label and corresponds to the EU Eco label. Other labels may be issued for various environmental considerations, such as ecological production, energy labelling, fair trade, animal welfare, health benefits and so on. Such organisations may be considered soft enforcement of environmental codes of conduct, through their power to withdraw the right to use the label. However, these organisations do not focus on the use of environmental claims in marketing in general since they only verify compliance with their own specific requirements in view of their labels, such as the Nordic Eco label. For this reason these mechanisms are not considered relevant for the study and these will not be addressed further in this report.

1.11.4 Summary

- *Predominant system.*

In Norway there are two enforcement systems for wrongful environmental claims in marketing: (1) enforcement by public administration and (2) enforcement in court. The study did not reveal any self-regulatory organisations in Norway with direct relevance for the study of environmental claims. The administrative enforcement is led by the Consumer Ombudsman and the Market Council acting in accordance with the Marketing Control Act. The enforcement is based on both complaints and surveillance activity. It is not uncommon for legal proceedings in the ordinary courts to follow the administrative process as a result of traders appealing the administrative decisions. The study did not reveal whether an SRO is actually wanted or not, but both the public authorities and the stakeholders seem satisfied with the enforcement of environmental claims even without SROs.

- *Combination of systems – coherence.*

Since no SRO is active in Norway, the question on the combination of the enforcement systems is not relevant.

- *Effectiveness.*

The Consumer Ombudsman plays an active role monitoring marketing in Norway, and settles the majority of cases. Nearly all of these cases are resolved through negotiations between the Consumer Ombudsman and the traders. Thus, there are few official cases regarding administrative decisions in relation to the use of environmental claims towards consumers.

- *Clear guidance.*

The most important legal source regarding marketing in Norway is The Marketing Control Act (MCA) supplemented with the guidelines of the Consumer Ombudsman regarding the use of environmental claims in marketing. The guidelines provide the traders good guidance and information on how the Consumer Ombudsman will apply the MCA to different types of environmental claims. This information has a great preventive impact on the traders, and seems to be an important reason why there are so few complaints regarding the use of environmental claims to the public authorities in Norway.

- *Surveillance activity.*

The Consumer Ombudsman is quite active in reviewing the market even if no complaint is formulated.

Pre-clearance.

The Consumer Ombudsman gives non-binding information about the rightful use of environmental claims in marketing towards consumers.

- *Data.*

During the former years, 3 to 8 official cases were handled per year by the Consumer Ombudsman.

1.12 United States

1.12.1 Overview

In the United States both enforcement systems are available: Public enforcement is organised by the following organs:

- Federal Trade Commission (FTC)
- Consumer Product Safety Commission (CPSC)
- Environmental Protection Agency (EPA)
- Court action
- The self-regulatory mechanisms are organised by the National Advertising Division framework (NAD) and, on a secondary level, by the Children's Advertising Review Unit.
- Green Claims are regulated by three primary bodies, two of which have authoritative power to levy fines: FEDERAL LAW (including the Federal Trade Commission ("FTC"), and -- in some cases where the green claim involves safety – the Consumer Product Safety Commission ("CPSC"); STATE LAWS (mostly enforced by attorneys general in each state), and SELF-REGULATORY AGENCIES/ORGANISATIONS (SROs). Finally, the Environmental Protection Agency ("EPA") can become involved with green products, from a labelling perspective.

The SROs do not have significant enforcement power, but federal budget constraints and the sheer number of claims that must be vetted afford the SROs significant influence over the management of green claims, and federal agencies look to them to be on the cutting edge of technology and self-enforcement. SROs use as an incentive to companies to participate in the self-regulatory process the SROs timely attention to a matter, often fully completing an investigation in a matter of 60 days or less; the low cost of assessment over general courts; and the relatively low-impact of a decision from a public relations perspective. As an enforcement incentive – although limited in their own power – SROs can rely on the threat of a full-scale FTC investigation. Because the SROs are generally funded by the trades themselves, its assessments are less hampered by budget constraints, more specialized and focused, and are often relied upon by federal and – to a lesser extent -- state agencies to provide an initial assessment of the green claim.

1.12.2 Public enforcement

The FTC, CPSC and EPA Legal Framework

FTC

The **Federal Trade Commission** is primarily responsible for green claims, as most green claims relate to consumer advertising, which is under the FTC's mandate. In 2012, the FTC released its updated Green Guides to assist marketers and advertisers in determining the scope of claims they could make about the sustainability or biodegradability of their products and services. The Guide was not a series of new laws, but rather specific application of existing regulatory power as it relates to "green" claims. For instance, The Guide discusses the use of terms like "free of," "renewable," "biodegradable," "compostable," and so forth, with a focus on how those claims would be evaluated under the current regulatory standard.

The FTC has statutory power to regulate advertising under the FTC Act (the Act). Section 5 allows the FTC to regulate "unfair or deceptive acts or practices." Sections 12-13 of the Act prohibit misleading claims as they relate to food, drugs, devices, services, or cosmetics. Section 13(b) of the Act authorizes the FTC to bring suit in US District Court.

The focus of the FTC's regulation relates both to deception and to unfairness. An advertisement is deceptive if it contains a material misrepresentation or omission that

is likely to mislead consumers acting reasonably under the circumstances to their detriment. An advertisement or trade practice is unfair if it causes or is likely to cause substantial consumer injury not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition.

The FTC requires that express and implied claims made in advertising must be properly substantiated. In short, an advertiser must have a reasonable basis for making objective claims before those claims can be used in advertising.

The FTC is allowed to require that the advertisers remedy the unfair or deceptive practice in a number of ways: corrective advertising, cease and desist orders, fencing in, new disclosures, education of the public, digital security patches, and the like. In extenuating circumstances, civil penalties will be assessed.

The CPSC

The FTC can be considered the primary federal enforcement tool for green claims, but the Consumer Product Safety Commission ("CPSC") helps to regulate certain green claims. The CPSC augments, rather than focuses, on green claims, leaving the FTC to pursue the deceptive advertising issues, and concentrating on the safety issues pertaining to the product make-up itself.

Primarily, the CPSC is focused on mandatory standards and bans and focuses on regulatory guidelines pertaining to safety, and not marketing claims. It does, however, weigh in in cases where "green" products being sold may be unsafe to consumers. For instance, the CPSC may enforce its regulations on products that make claims of being both green and "safe" for surfaces (such as biodegradable colour safe bleach). Of note, the CPSC often looks at the chemical composition of antimicrobial products and the application of those products as they relate to safety.

Of primary relevance to "Green Claims" management is the fact that the CPSC works with individual industries to develop standards for voluntary compliance, straddling the gap between self-regulatory agencies and federal agencies. Accordingly, in addition to requiring outright bans and clarifications from manufacturers, it also works with the trade to develop standards that serve as internal guidelines. The CPSC encapsulates its marketing perspective in its "Manufacturing Guidelines," which provide general guidelines relating to marketing claims, such as "safety messages must stand out from the other message and be immediately recognized as safety-critical;" or "if you include too many safety messages for highly unlikely and trivial hazards, you weaken the effectiveness of the more significant messages;" or "mixing marketing message and up-beat statements with the safety message can undermine warnings."

EPA

The Environmental Protection Agency, another federal agency with the power to enforce through its own administrative proceedings and/or through the courts, can – in rare cases – also weigh in on products, but its focus is largely related to labelling issues as opposed to advertising claims. Title 40 of the Code of Federal Regulations outlines the EPA's authority, and provides strict guidelines and rules pertaining to protecting the environment, including "greening" the environment with sustainability practices. Generally speaking, the EPA tends to focus on goods such as pesticides and building materials that can harm or adversely affect the environment, leaving consumer "safety" and "voracity" claims to the CPSC and FTC, respectively.

The EPA may also require certain mandatory labelling under its authority. While these mandatory labels are not per se green label claims, they do provide information about the make-up of the product so that its use will not end up harming the environment. Over time, the EPA has seen its role as a green regulator increase.

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| Name and category of Authority (general administration, specific agency, prosecution...) | Federal Trade Commission, Environmental Protection Agency, and Consumer Product Safety Commission. |
| 1. Scope | |
| Products/markets/sectors covered | Any advertising or labelling "green" claims |
| Surveillance of advertising and/or product information / labelling/ presentation? | Both. |
| Organisation | |
| Based on legal rules and/or guidance? Which rules are applied? Based on detailed rules or general principles? Nature of enforcement proceedings (administrative / based on court actions) | A more detailed description is outlined above, but each government division has its own detailed guidelines, codified in U.S. law. Enforcement proceedings begin as administrative, but can move to U.S. courts on appeal. State agencies and authorities can similarly enforce through their own proceedings and can move to state courts as they deem appropriate and/or as appealed by the target. Administrative. |
| Active surveillance / complaints | |
| Surveillance of the market (initiative of authority, thorough /occasional / sampling / operations ('campaigns' focused on certain products or certain types of environmental claims); or based on complaints? | FTC, CPSC and EPA all have the power to initiate cases based upon their own reviews, which are typically initiated by consumer or competitor complaints. Typically, cases are brought by public or private corporate complaints, or, in some instances, by individuals. The FTC will take into account general practices within an industry as well as practical limitations relating to technology. That said, the FTC is chiefly concerned with the advertising statement made and whether they will mislead consumers, regardless of the standard practice. If a message is misleading, then it is false. |
| Who has the right to complain? (e.g. individual consumers, consumer organisations, environmental organisations, business associations, competitors, scheme owners for labels, etc.). | Individuals, state agencies, and corporations all may file complaints with public agencies. As a matter of practicality, most complaints come from individuals, which are taken in the aggregate. All agencies have phone numbers and websites for which a complaint can be made. At a practical level, complaints are often significant in number. |
| Are possible "issues" submitted by organisations such as self-regulatory organisations, ombudsmen? | Yes, indeed, in the self-regulatory realm, if the advertiser does not follow the advice of the SRO, the SRO may bring |

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| | the complaint to the FTC, at its option. Generally, if the complaint is deemed worthy enough to bring, the FTC will investigate. |
| Assessment | |
| Examination of substantiation of the claim (scientific documentation)? Assessment of studies, assessment of scientific uncertainty, current state of the art. Necessity to retain documentation about manufacturing process. Must supporting documentation be submitted immediately by the producer? | In all cases, when an investigation is launched, the respondent advertiser must submit requested evidence, the type and amount of which will necessarily depend upon the inquiry. |
| Must suppliers retain documentation about claims (e.g. test report, scientific studies) during a minimum period? | Private companies are allowed to set their policies for retention of documentation, but it is generally accepted that documentation must be retained for the period of time for which claims can be brought. It is not an excuse that documents were destroyed. As a practical matter, most companies retain the information for many years. |
| Are quantifications examined? (e.g. when stated that "a product is made of 75% recycled materials") | Yes. Agencies look specifically at whether the 'materials claims' are accurate. Even when accurate, agencies query whether the claim may be misleading, or whether qualifications of the claim are too far removed from the advertising claims. |
| Are surveillance actions based on certain standards? | Agencies are not required under the law to specifically review or investigate as a matter of law without notification by consumers or other third parties. It is unlikely that such authorities have general surveillance programs that would track and review actions without any notification by a third party. |
| Measures/sanctions/prevention | |
| Focus on prevention or post-marketing sanctioning? | As a practical matter, when claims rise to the level of investigation, they are already in the public domain; accordingly, post-marketing is the focus. |
| A priori clearance or prior opinions possible? (in general by guidance or case by case) | In some cases, but not generally. If such "clearance" were granted, it would protect the advertiser from a claim by the "clearing" agency and would likely have evidentiary value in court, but would not necessarily prevent actions by other agencies or private claimants. |
| Focus on 'soft enforcement' through negotiations, informal warnings? | Yes. |

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| Enforcement measures: Warnings, operator's undertakings/ commitments, sanctions (fines, penalties) | Corrective advertising, sanctioning, monetary damages, are all available. |
| Corrective action (e.g. removal, withdrawal of products, corrective labelling)? | Yes. |
| Who can be held liable? Liability of manufacturers, importers, distributors, advertising agencies, editors? | The manufacturer is the responsible party, even if the false claim can be attributed to an affiliated party (such as a consumer who was rewarded on a social media site for writing a false review). |
| Publication of decisions? | Yes. Such decisions are usually public. |
| Procedure issues | |
| Maximum term to initiate complaints? (e.g. max. 2 years after advertising campaign) | There is no legal maximum term; practically speaking, most actions arise within 3 years of the claim. |
| Right to be heard, right to present evidence | Yes. |
| Right to appeal? Does it suspend the decision? | Yes, appeals are sometimes possible, but because consumer safety is often on the line, the advertising claim is generally required to be pulled. |
| How long can procedures take? | This varies according to the circumstances of the case. |
| Cost of procedure, of experts (would this financial risk prevent complaints?) | The costs will vary according to the circumstances of the case. |
| 2. Various | |
| Do assessment cases result in new guidelines regarding environmental claims that are available? | New guidelines are the result of changes in consumer behaviour, changes in technology, or changes in legislation. The FTC updated the Green Guides in 2012. |
| Conclusions based on interviews regarding: Clarity and security of guidance and approach High priority in the country of the issue of the enforcement of the rules regarding environmental claims? Efficiency and coherence | The FTC updated its "Green Guides" after a very broad consultation of the market and the stakeholders. The Green Guides are extensively explained through various instruments, available on FTC's website, and including video and specific consumer information. Furthermore, the FTC organises several workshops around specific types of environmental claims. Thus, the FTC has spent important attention to the issue, and tried to issue clear information and guidance. Furthermore, this indicates that the issue is regarded as a high priority. |

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| <p>Sufficient involvement and protection of all stakeholders</p> <p>Combination of public enforcement and SRO system</p> | <p>Green claims are becoming more prevalent, as advertisers attract buyers with claims of environmentally friendly products and services. The regulatory agencies have increased scrutiny with regard to green claims. Indeed, the FTC recently updated its "Green Guides" to reflect more stringent rules surrounding them.</p> <p>The interests of the stakeholders are taken into consideration in the enforcement process as well as in the guidance process (e.g. the broad consultation that was held before issuing the updates Guides).</p> <p>The enforcement by the FTC is co-existent with the SRO enforcement. It is considered that the SRO is predominant in the monitoring of the environmental claims and soft enforcement, whereas the FTC is predominant in relation to sanctioning.</p> <p>Government agencies are typically cash-strapped, so as a practical matter, some green claims are left to the private sector (competitors) to bring, leaving the cases most likely to affect consumer or environmental safety/protection to the government agencies.</p> |
| <p>Issues that were indicated as a good practice</p> | <p>As a general rule, these organisations make public all cases and provide incentive for cooperation from businesses by lowering sanctions or fines in order to get compliance. Government agencies also work with self-regulatory agencies, although neither is binding on the other. While agencies attempt to publicize the law and their positions, it is common for companies to only come into contact with the law after an individual or agency has taken issue with a given advertisement. Of course, larger companies with more experience and with in-house and outside counsel are less likely to be unknowingly tripped up.</p> |
| <p>Other conclusions or remarks</p> | <p>As good practice, we refer to:</p> |

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| | <p>The extensive guidance and information of advertisers, industry and consumers. The extensive consultation that was held in order to support good guidance. Certain regulators of other countries have indicated the USA as an example in this respect.</p> <p>The focus on certain types of claims, including enforcement action, workshops. The fact that public enforcement agencies sometimes rely on decisions made by the SRO.</p> |
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Court Action

In the United States, state and federal law both apply. Unless it is a field that has been subsumed by federal law, most actions can be brought in both state and federal court, and by state or federal authorities, that is, the state and federal courts have concurrent jurisdiction.

A federal agency (as listed above), would be enforcing federal law, and would use the federal courts. FTC may bring suit in US District Court.

State Attorney-General on the other hand, would be bringing claims under state law and use the state courts.

Courts often respect the authority of the SRO (the NAD, discussed below). They cite decisions of the NAD and sometimes suspend cases until a decision of the NAD provides guidance.

Output of actions

The output of actions of the agencies and the courts could not be assessed in numbers.

In general the effectiveness of the system is difficult to assess after recent modifications of the Guides and the increasing awareness.

1.12.3 Self-regulation

Self-Regulatory Agencies/Organisations are typically the first line of defence and enforcement in the green marketing world. SROs are divided, generally, into two categories (with some overlap). Private certification programs, such as the LEED program for green building do not offer dispute or enforcement mechanisms, but are self-regulatory in nature because failure to complete and pass periodic requirement results in loss of certification.

ASRB: The Advertising Self-Regulatory Council is the umbrella organisation that houses the policies and procedures for the National Advertising Division, the Electronic Retailing Self-Regulation Program, the Children's Advertising Review Unit, and the National Advertising Review Board. All of the foregoing is administered by the Better Business Bureau.

NAD: The National Advertising Division of the Better Business Bureau ("NAD") is the primary self-regulating organisation for green claims in the United States. Unlike certification programs, the NAD does provide a dispute mechanism. Participation and enforcement are voluntary, although U.S. courts and the FTC take into account findings from the NAD should a company refuse to comply with an NAD ruling. As noted earlier, it is in companies' interest to use and participate in the NAD process, because it often avoids costly litigation and public relations challenges. Finally, the NAD forum represents a speedy solution to challenged marketing claims.

ERSP: The Electronic Retailing Self-Regulation Program (ERSP) is also involved in self-regulation as a Division of NAD, but is focused, as the title suggests, on electronic retailing. Like the NAD process that will be described in greater detail below, the ERSP encourages member participation and uses the FTC as its referral services should companies not wish to comply. For purposes of this document the ERSP process is roughly identical to the NAD process described below. Most of the claims made in the electronic retailing world, however, often do not encompass green marketing.

CARU: Similarly, the Children’s Advertising Review Unit (CARU), which regulates children’s privacy and marketing to children, is rarely focused on green claims, but the process for bringing a challenge is identical to that of NAD.

NARB: The National Advertising Review Board (NARB) is the appellate body of the NAD, ERSP, and CARU, and also operates in the SRO arena. As will be outlined further, the NARB allows third parties to appeal decisions rendered by the NAD prior to – or in lieu of – taking the decisions to courts of law.

The NAD is made up of employees of the Better Business Bureau who are experts in the area of advertising. These individuals are employed by the Better Business Bureau. The decisions made by the NAD regarding green claims often mirror the reasoning of the FTC and it uses Section 5 of the Act and/or the underlying principles pertaining to misleading advertising to render its decision in adverse proceedings. NAD further identifies remedies that reflect many of the FTC remedies, including removal of an offending ad or claim, corrective advertising, consumer education programs, and so forth. The NAD does not suggest or rule on civil penalties, including financial remedies. All remedies are corrective in nature. Court proceedings are separate proceedings from NAD or other self-regulatory proceedings. Courts have no jurisdiction over NAD decisions and vice versa. Courts do, however, reference proceedings at the NAD from time to time.

The NAD has no independent enforcement power. Its findings, however, are often cited in court documents. Indeed, courts have suspended proceedings on false advertising claims in order to review a pending decision from the NAD. Moreover, NAD often uses the threat of federal oversight as an incentive to get compliance.

NAD Process: The process for bringing a claim is simple: an aggrieved party (typically a competitor), referred to as the Challenger, brings the false green claim to the NAD by filing a short document identifying the offending statements and offering evidence of their fallacy. The advertiser, or Respondent, is allowed to provide proof of the voracity of the claim. Pursuant to review of the documents and any additional investigation NAD feels is necessary to render an equitable decision, a decision is made.

NARB: Decisions of the NAD are not final. They can be appealed by the Challenger in federal court, and by both the Challenger and the Respondent at the administrative level with the National Advertising Review Board. The NARB is made up of 70 professionals in the following categories: 40 National Advertiser members, 20 Advertising Agency members, and 10 Public members (academics, largely). Members serve for a period of two years.

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| Name of the organisation | Better Business Bureau, which includes the National Advertising Division, and the Children’s Advertising Review Unit⁵⁰ |
| 1. Scope | |
| Which set(s) of rules are applied by the | The NAD/CARU uses codes of conduct |

⁵⁰ The Children’s Advertising Review Unit is of secondary importance in this matter; it decides on health claims in relation to children, including green claims.

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| SRO? (code of conduct, guidance, labelling scheme, legal provisions, etc.) Are the rules applied by the SRO referring to other rules? (e.g. ICC rules/UCPD) | based upon fair business practices, but relies on U.S. law codified in the U.S. Code to render decisions. All decisions and investigations are based in U.S. code law and clarifying U.S. case law. |
| Trademark or logo available? Is the use of the logo or referral to the organisation dependent on compliance? Is there a specific logo regarding compliance with the rules on environmental claims? Compliance monitoring for members? Is the SRO sector related? | No. But "members" often state their membership, and as a perk of membership, members may contact the SRO for guidance prior to allowing advertising to go to publication. |
| Is the code of conduct and enforcement thereof applicable on an international, national, regional level? | Enforcement is national, as is the code of conduct. |
| Focused on certain product categories/services? Focused on advertising, media, product labelling? | No, all products and services. All advertising, covering all kind of commercial expressions, including commercials, publicity, packaging, labelling. |
| Focused on certain concerns? (e.g. sustainability, organic) | The SROs are always concerned with false or misleading claims that affect the purchasing decision of the consumer. |
| Focused on manufacturers, sellers, advertising agencies? | Focused on all advertisers (the broad definition includes manufacturers and sellers), covering all kind of commercial expressions, including commercials, publicity, packaging, labelling. The SROs are also concerned with third party advertising on social media sites. In particular, SRO looks carefully at "astroturfing" and "sockpuppet" practices. |
| Organisation | |
| Rules regarding environmental claims decided by? (e.g. majority of members from business sector or panel of specialists?) | A more detailed explanation of the panel is listed above, the rules are generally codified in U.S. law, however. Specifically, SROs focus on Section 5 of the FTC Act, governing false and misleading claims. |
| Frequent updates of the rules regarding environmental claims? | No. |
| Application of detailed rules regarding environmental claims or general principles? | The SRO decisions, once decided are made public view, and the decisions are based upon Section 5 of the FTC Act governing false and misleading claims. There are over 6000 cases on a searchable database available for public view. SROs do not make law, but do influence law and judges may cite to SRO decisions in false advertising cases before their courts. In 2010, the U.S. saw the first case in U.S. courts where a court |

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| | case was stayed by a judge pending the outcome of a challenge pending with NAD, an advertising SRO. This stay underscored the value, quality, and thoroughness of the decision. |
| How is the scheme or self-regulation system funded? | By the trade, its corporate members. |
| Active surveillance / complaints | |
| Is active surveillance done by the SRO (independent from complaints)? Who has the right to complain? (e.g. competitors, consumer organisations, individual consumers, business associations, environmental organisations, scheme owners, collective trademark owners) | No. Typically SROs receive their complaints from competitors, not from the public. Consumers do not participate in the SRO process, because they are not part of the trade. On rare occasions, the SRO will initiate a case itself. Also, consumer organisations, like local Better Business Bureaus who hear consumer complaints, can initiate a complaint. A complaint must be pled, as with a court proceeding. All official complaints are reviewed, unlike FTC complaints, where the government has the power to reject the complaint. |
| Assessment | |
| How does the SRO make an assessment of the required substantiation of environmental claims? E.g. are the claims verified in labs? Does the assessment panel of the SRO request scientific reports or documentation? Must this documentation be submitted immediately? Must supporting documentation (scientific, tests) be retained by the producer during a certain time? Are quantifications examined (e.g. "75% recycled materials must really be 75%")? | The SRO follows the same guidelines as do the government agencies. Claims must be substantiated. The level of substantiation is related specifically to the claim. For instance, if it is a "better" claim, the claim might not require two independent studies, but if the ad claims to reduce greenhouse gases, the claimant must supply scientific object data that is non-trivial. There is little place for "puffery" in the area of green claims, however. Claims made about the biodegradability or environmentally friendly nature of a product, no matter how general, must be qualified. Moreover, evidence must be sufficient to qualify the claim. Finally, disclaimers may "clarify", but not negate a claim. |
| How is the assessment panel established when an environmental claim is assessed? Is it considered sufficiently independent and impartial? | The panel makeup is outlined above. The initial panel is made up of professional employees of the SRO. Appeals panels rotate and are outlined above. |
| Measures/sanctions/prevention | |
| Is the sanctioning of environmental claims focused on hard sanctions and/or moral | SROs, as noted above, only have advisory power. They all, however, rely |

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| <p>guidance, recommendations?</p> <p>Will public authorities be involved if the SRO's recommendations are not respected by advertisers?</p> <p>Sanctions (in relation to environmental claims): warnings, fines, corrective action, withdrawal of products, withdrawal of right to use a logo...</p> <p>Can sanctions be imposed by law?</p> <p>Focus on prevention, prior opinions or pre-clearance? Focus on 'soft approach' through discussion, negotiation?</p> <p>Are decisions published? If so, is it considered as an effective measure?</p> | <p>on the government organisations (largely the FTC) to open official investigations if their recommendations are not followed. This has proven to be an effective tool, because companies can largely escape fines and injunctions by cooperating. The expense of defending claims is also reduced.</p> <p>The SRO has the power to refer the case to the FTC, though it does not always do so. Where SROs refer the case to the FTC, there is nearly always an investigation.</p> <p>The focus of SROs is on prevention, and companies may reach out to the SRO for an evaluation of an ad claim if the company is a member of the SRO. Those decisions are not public or official. Accordingly, a company cannot be guaranteed at an official level that the claim review will stand in a challenge, but it is generally considered to be unofficially binding. Cases brought by competitors are public.</p> <p>Sanctions cannot be imposed. SROs have only advisory power.</p> <p>Public statements and press releases and what is contained in them are subject to negotiation from both parties.</p> |
| Procedure issues | |
| <p>Procedure with hearing rights, legal assistance, evidence and counter evidence? Costs?</p> <p>Appeal possible? Does it suspend the decision?</p> <p>Precedence of court cases in case of double approach where the same case would be assessed both under a public enforcement and a self-regulatory system?</p> <p>How long can procedures take?</p> | <p>The process is outlined in detail above. Because these organisations have no power to enforce, companies are free to continue to advertise the claim upon appeal.</p> <p>The appeal process is outline above.</p> <p>.</p> <p>.</p> |
| Various | |

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| Do assessment cases result in new guidelines regarding environmental claims that are available? | The decisions are published on the BBB websites, but assessment cases do not automatically result in new guidelines. |
| <p>Conclusions based on interviews regarding:</p> <p>Clarity and security of guidance and approach</p> <p>High priority in the country of the issue of the enforcement of the rules regarding environmental claims?</p> <p>Efficiency and coherence</p> | <p>Private companies actively and vigorously participate in the SR process because it is fast (generally 6-15 weeks start to finish), considerably less expensive than a private action, and do not involve uninformed or under-educated juries – as do private corporate actions – so decisions rendered are more likely to reflect an appropriate reading of the law.</p> <p>The system allows companies to regulate the advertising of their competitors out of the public eye.</p> <p>The NAD is respected by agencies and courts; its decisions are often cited and procedures pending before the “public” enforcement organisations are sometimes suspended in order to obtain the NAD’s guidance.</p> |

Output of actions

In 2012, the cases relating to environmental claims handled by the SRO are estimated at approximately 45.

1.12.4 Summary

- *Predominant system.*

The systems are regarded as balanced. The SRO seems important as the first line of defence in the monitoring of environmental claims, and the first remedy through soft approach. Hard enforcement comes from the FTC.

- *Combination of systems – coherence.*

The public and private enforcement systems seem to coexist well. The SRO refers cases of non-compliance to the FTC (although not in all cases). The threat of public enforcement supports the decisions of the SRO. On the other hand, the public enforcement organisations often respect the authority of the SRO.

- *Effectiveness.*

The systems are regarded as effective. All stakeholders are involved; the SRO handles a substantial number of official cases. Regarding the FTC and the value of the Green Guide, experience is still recent and must be awaited.

- *Clear guidance.*

The Green Guides have been updated recently after a broad public consultation. Many efforts were spent to explain the issues and to offer clear guidance, to advertisers,

industry as well as consumers. Stakeholders from other countries sometimes refer to the USA as an example in this field.

- *Surveillance activity.*

Enforcement is mostly initiated by complaints, although there is some surveillance by the FTC.

- *Pre-clearance.*

Pre-clearance is applied in some cases, but not generally. If such "clearance" were granted, it would protect the advertiser from a claim by the "clearing" agency and would likely have evidentiary value in court, but would not necessarily prevent actions by other agencies or private claimants.

- *Data.*

About 45 green claims cases were officially handled in 2012 by the SRO. No data were available of the FTC.

