

# **Environmental Claims**

*Report from the Multi-Stakeholder Dialogue*

Helping consumers make informed green choices and  
ensuring a level playing field for business

**Report presented at the European Consumer Summit**

**18-19 March 2013**

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*Comments on this report and its recommendations are welcome:*

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## **1. INTRODUCTION**

### **1.1. General context**

The European Consumer Agenda, adopted in 2012, underlines that consumers should be empowered, assisted and encouraged to make sustainable choices in the marketplace. This will contribute to cost savings for individual consumers and for society as a whole and help lower the environmental footprint of private consumption<sup>1</sup>. The Consumer Agenda states that consumers should be supported in easily identifying the truly sustainable choice, and have the right to know the environmental impacts throughout the life cycle of the products they intend to buy. It also highlights that effective tools are needed to protect consumers against misleading and unfounded environmental claims<sup>2</sup>.

Reaching the EU climate, energy and resource efficiency targets depends on consumer engagement which in turn requires co-ordinated engagement strategies. Building trust in the "messages" of products and services is an important element to this end.

In this context, the use and promotion of genuine and truthful environmental claims is very important for consumers and for businesses. Companies should be encouraged and supported to make good and accurate environmental claims: this will contribute to building a positive image, enhance the appeal of their products and show their commitment to meeting or exceeding legal requirements.

The purpose of the Multi-stakeholder Dialogue on Environmental Claims (MDEC) is to help consumers make informed green choices and to ensure a level playing field for business in making good environmental claims.

### **1.2. The Multi-stakeholder Dialogue on Environmental Claims (objective and composition)**

On the occasion of the European Consumer Summit on 29 May 2012, the European Commission organised a workshop on greenwashing and misleading environmental claims. Through the various interventions, panel discussions and input from the workshop participants, the European Commission gathered views from stakeholders on the use of green marketing, greenwashing and misleading green claims in different European markets and on the possible way forward<sup>3</sup>. One of the key conclusions was the need to focus on enforcement: further support for national enforcers is needed to properly implement the requirements of the Unfair Commercial Practices Directive. This Summit workshop was also the starting point for the Multi-stakeholder Dialogue on Environmental Claims (MDEC), established in collaboration between the Directorate-Generals Health and Consumers (SANCO), Environment (ENV) and Justice (JUST).

Subsequently three MDEC meetings were held in Brussels, with the participation of 25-30 representatives from national and EU-level consumer organisations, environmental

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<sup>1</sup> Consumer expenditure accounts for 56 % of EU GDP.

<sup>2</sup> A European Consumer Agenda - Boosting confidence and growth, COM(2012) 225 final (22 May 2012). Available at [http://ec.europa.eu/consumers/strategy/docs/consumer\\_agenda\\_2012\\_en.pdf](http://ec.europa.eu/consumers/strategy/docs/consumer_agenda_2012_en.pdf)

<sup>3</sup> See more info at [http://ec.europa.eu/consumers/events/ecs\\_2012/workshops1\\_en.htm](http://ec.europa.eu/consumers/events/ecs_2012/workshops1_en.htm). The conclusions and presentations are available at [http://ec.europa.eu/consumers/events/ecs\\_2012/presentations.htm](http://ec.europa.eu/consumers/events/ecs_2012/presentations.htm)

NGOs, EU-wide business associations, Member States' national authorities, self-regulatory bodies, and academics.

Participants were selected on the basis of their expression of interest in the context of the 2012 Consumer Summit and subsequent stakeholder meetings<sup>4</sup> of DG SANCO. Attention was given to ensuring a balanced representation of interests and a broad geographical coverage. In addition, expert speakers, e.g. from international organisations or from outside EU, were invited to give presentations. The European Commission chaired the meetings and provided secretarial support to the MDEC.

The objective of the MDEC is to protect consumers against misleading environmental claims and support the provision of relevant and credible information for the benefit of both consumers and businesses. It should contribute to making it easier for businesses to market positive environmental efforts while countering attempts to "greenwash" products. This will help safeguard real and fair competition between traders and support consumers 'buying green' and business 'making green'.

To this end, the MDEC participants have first tried to get a better understanding of the presence of environmental claims; assess the scope of the problem of misleading environmental claims; identify the challenges that the different stakeholders are facing; map best practices and finally highlight potential areas of improvement. The conclusions and recommendations of the three MDEC meetings are presented in this report. The MDEC participants recognise that the report is a compromise of sometimes different views from different stakeholders and perspectives.

The MDEC report was presented at the European Consumer Summit of 18-19 March 2013. It provides input into the reflection on environmental claims' policies at EU level and will serve as input for the revision of the environmental claims chapter of the Guidance Document on the implementation of the Unfair Commercial Practices Directive<sup>5</sup> (UCPD) as announced by the European Consumer Agenda.

### 1.3. Scope

The scope of the Multi-stakeholder Dialogue on Environmental Claims and its report are environmental claims as defined by the UCPD Guidance Document.

#### ***Definition of environmental 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 off and the reduction in energy or pollution which can be expected from its use. When such claims are not true or cannot be verified this practice can be described as 'greenwashing'. p.37 UCPD Guidance Document.*

<sup>4</sup> DG SANCO network meetings with consumer organisations (ECCG - European Consumer Consultative Group) and with Member States' national authorities and enforcers (CPN - Consumer Policy Network, CPC - Consumer Protection Cooperation).

<sup>5</sup> SEC(2009) 1666 – Chapter 2.5 Misleading Environmental Claims in Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices [http://ec.europa.eu/justice/consumer-marketing/files/ucp\\_guidance\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf)

Based on this definition, examples can include a short text on a product claiming its energy efficiency, that it is produced in an environmentally friendly way or that its package is recyclable or biodegradable; labels and logo's claiming that a product meets multiple or certain environmental criteria, or advertisements presenting products in a green and natural environment and suggesting that they are more environmentally friendly.

The ambition of the MDEC is to cover *all types* of environmental claims (e.g. text, logo's, symbols, pictures ...) and made *via different communication channels* to consumers (e.g. on pack, via marketing, advertising, information leaflets and through using new types of communication such as internet and social media etc.)

The focus of the MDEC is on *environmental claims* and the legislation, challenges, best practices and recommendations in the report specifically refer to environmental claims. However, it is possible that future exercises that approach other aspects of sustainability, such as *social and ethical aspects*, may also find these recommendations useful as a starting point.

## 2. REGULATORY FRAMEWORK

### 2.1. EU legislation

In order for environmental claims to be informative for consumers and to be effective in promoting goods and services with lower environmental impacts, it is imperative that they are clear, truthful, accurate and not misleading<sup>6</sup>. Also, they must not emphasise one specific environmental issue while hiding trade-offs or negative impacts on the environment.<sup>7</sup>

The use of truthful environmental claims is also important in order to protect traders making genuine claims from unfair competition from those making unfounded environmental claims. Besides the aspects covered by specific EU legislation (for example, the "bio" or "eco" labels<sup>(8)</sup> or in the energy sector<sup>(9)</sup>), *the Unfair Commercial Practices Directive* (UCPD) is the main body of horizontal legislation used to assess environmental claims as well as establishing whether a claim is misleading either in its content or in the way it is presented to consumers<sup>10</sup>.

Under Article 6(1) (a) and (b) of the UCPD:

*"a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct (...) and causes or is likely to cause him to take a transactional decision that he would not have taken otherwise", in relation to one or more of the following elements: "(a) (...) the nature of the product; (b) the main characteristics of the product such as its (...) benefits, risks, composition, (...) method (...)of manufacture, (...) fitness for purpose, (...) geographical or commercial origin or the results to be expected from its use, or the results and material features or tests or checks carried out on the product;"*

<sup>6</sup> UCPD Guidance Document.

<sup>7</sup> This sentence is described on p. 38 in the UCPD guidance document. While the MDEC participants agree in principle with this sentence, some highlight the difficulty to enforce it. Business stakeholders also request that it should not be discouraged to highlight specific environmental issues.

<sup>8</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, OJ L 189, 20.7.2007, p. 1–23. Other examples of specific legislation are Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products; Regulation (EC) No 1222/2009 of the European Parliament and of the Council of 25 November 2009 on the labelling of tyres with respect to fuel efficiency and other essential parameters; Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO<sub>2</sub> emissions in respect of the marketing of new passenger cars.

<sup>9</sup> For example, the Third Energy Package Directive 2009/72/EC (electricity) and Directive 2009/73 (natural gas) and the Renewable Energy Directive 2009/28/EC. The first two stipulate that the consumer must receive transparent information concerning the generation mix of their supplier. The renewable directive is relevant insofar as it refers to certification of green electricity, which is the basis of any green claim in energy.

<sup>10</sup> As stated in Recital 10 of the Directive, it indeed *"provides protection for consumers where there is no specific sectoral legislation at Community level and prohibits traders from creating a false impression of the nature of products"*.

This provision applies to commercial communications including environmental claims (such as text, logos, pictures and use of symbols, in marketing and on packaging).

Under Article 6(1)(a) and (b) of the Directive, national authorities perform a case-by-case assessment of the practice, the content of the claim (including environmental claims) and its impact on the average consumer's purchasing decision.

As the European Commission clarified in the UCPD Guidance Document, the application of the provisions of the Directive to environmental claims can be summarised in two main principles:

- Based on the Directive's general clause, traders must, above all, present their green claims in a specific, accurate and unambiguous manner;
- Traders must have scientific evidence to support their claims and be ready to provide it in an understandable way in case the claim is challenged.

#### *The average consumer*

The assessment of an environmental claim will have to take into account the impact which the claim is likely to have on the average consumer or on the average member of a group (when a commercial practice is directed to a particular group of consumers), whom it reaches or to whom it is addressed. The Court of Justice has interpreted the average consumer as a reasonably well informed and reasonably observant and circumspect consumer, taking into account social, cultural and linguistic factors.<sup>(11)(12)</sup>

#### *Annex I of the Unfair Commercial Practices Directive*

The Annex I of the Directive lists a number of practices which are particularly relevant to environmental claims and which are prohibited, regardless of the impact they have on the consumer's behaviour. They concern unauthorised use of logos (n. 2), false approval or endorsement by public or private bodies (n. 4), falsely claiming to be a signatory of a code of conduct (n. 1) or falsely claiming that a code of conduct has been endorsed by a public or private body (n. 3). The recently adopted Consumer Rights Directive<sup>13</sup> (article 6.1 n) requires businesses to inform consumers in distance and off-premises contracts when they have subscribed code of conducts as defined in the UCPD (article 2 f).

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<sup>11</sup> Case C-210/96 Gut Springheide and Tusky (1998) ECR I-4657, para. 31 and Case C-220/98 Estée Lauder Cosmetics GmbH & Co. OHG v Lancaster Group GmbH. (2000) ECR I-00117, para 29.

<sup>12</sup> For example, the Swedish Market Court addressed the question of the average consumer in decision MD 2011:12 Mercedes Benz. The Market Court stated that before the green claim can be addressed, the ability of the average consumer to understand the message has to be clarified. The conclusion of the Market Court was that even though consumers are aware of the fact that motor vehicles cause environmental damage, they cannot be presumed to possess any deeper knowledge in environmental techniques or the impact on the environment that motor vehicles cause. Source: The Swedish Market Court, 2011:12 (Ref no B 2/10) Mercedes-Benz Sweden AB

<sup>13</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>



## 2.2. Self-regulation and co-regulation

Self-regulation of environmental claims has developed in recent years. The International Chamber of Commerce (ICC) developed a *Framework for Responsible Environmental Marketing Communications* and several self-regulatory organisations have developed sections of their national codes on environmental claims. The objective of self-regulatory initiatives is to allow for swift and flexible reactions in changing markets within the framework of existing legal requirements. Self-regulation works as a complement to legislation and the codes are interpreted both in letter and spirit.

Self-regulation in the advertising sector is the recognition that the advertising industry (advertisers, agencies and the media) should create advertising that complies with a set of ethical rules; and cases of non-compliance are addressed by self-regulatory organisations in many EU countries.

In terms of claims in advertising - and this of course includes environmental claims - the codes of self-regulatory advertising bodies foresee that no claim should be misleading to the average consumer. The definition of average consumer in these codes is the same as the definition in the UCP Directive. Therefore, when a complaint arises on an allegedly misleading environmental claim advertising self-regulatory bodies can adjudicate on the issue, based on their code.

A number of national self-regulatory organisations have specific references to environmental claims in their codes and others have detailed chapters on environmental claims. This may depend on whether consumers in that country are more environmentally conscious and therefore whether those types of claims are made and possibly contested.

The scope and competences of self-regulatory advertising bodies vary between EU countries. For example, self-regulatory bodies and codes may cover not only advertising but also the information on product packaging. Self-regulation organisations may also associate in varying degrees civil society (consumer or environmental NGOs), independent experts or government officials as members of some of their boards. Self-regulatory bodies can refer cases to regulators or they may work together with national authorities to develop co-regulatory rules and agreements<sup>14</sup>. In such cases the national

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<sup>14</sup> Co-regulation (at national level) is defined as follows by the EASA (European Advertising Standards Alliance) Bleu Book: "System of regulation combining statutory and self-regulatory elements and sometimes involving other stakeholders". <http://www.easa-alliance.org/Publications/Blue-Book/page.aspx/266>

Co-regulation at EU level does not exist in the area of environmental claims as defined by the 2003 Inter-institutional Agreement on Better Law Making (2003/C 321/01) : "*Co-regulation means the mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognised in the field (such as economic operators, the social partners, non-governmental organisations, or associations). This mechanism may be used on the basis of criteria defined in the legislative act so as to enable the legislation to be adapted to the problems and sectors concerned, to reduce the legislative burden by concentrating on essential aspects and to draw on the experience of the parties concerned.*"

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0005:EN:PDF>

This being said, the UCPD encourages self-regulation. Indeed its Article 10 on codes of conduct provides that "*The Directive does not exclude the control, which Member States may encourage, of unfair commercial practices by code owners and recourse to such bodies by the persons or organisations referred to in Article 11 if proceedings before such bodies are in addition to the court or administrative proceedings*

authorities may recognise self-regulation in laws or agreements and they can, for example, make copy advice (i.e. advice on a proposed advertising campaign provided by a self-regulatory body) mandatory for certain products.

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*referred to in that Article. Recourse to such control bodies shall never be deemed the equivalent of foregoing a means of judicial or administrative recourse as provided for in Article 11".*

### 3. CHALLENGES

Rising consumption around the globe has increased the pressure on the environment and created greater competition for resources. Well designed and implemented consumer policies can enable consumers to make informed choices that meet their needs, reward competition, and support the goal of sustainable and resource-efficient growth. This is a key contribution to meeting the Europe 2020 objective of smart, inclusive and sustainable growth.

All different kinds of environmental claims operating on the market, on product packaging and in marketing, have to be reliable, clear, verifiable and comparable, for consumers to be truly empowered to make sustainable choices if they wish to do so, when faced with the wide variety of products available.

Businesses that make relevant sustainability efforts should be given the opportunity to communicate on these efforts (e.g. through claims on products or other type of information) and should be protected from unfair competition against those that make unfounded environmental claims. Fair competition is essential to a level playing field for businesses and to ensure the proper functioning of the Single Market. It is clear that many companies today are undertaking valuable work and initiatives to support informed green choices for consumers, whilst working to address the sustainability agenda as a wider goal. However, in spite of progress, important challenges remain and further efforts will be needed. Many companies in the EU have not yet fully integrated environmental concerns into their operations and core strategy.<sup>15</sup> The proliferation of (self-declared) environmental labels may also have contributed to consumer confusion.

Notwithstanding that *providing information* alone will not be sufficient to change consumption behaviour, a responsible and non-misleading use of environmental claims, labels and marketing strategies is essential both for consumers and for a well-functioning market for greener products and services. This chapter describes the different *challenges related to environmental claims* that are highlighted by the MDEC.

#### 3.1. Challenges related to the knowledge base

- *Need for consistent and comprehensive data throughout the EU*

Some recent studies and reports indicate that there are an increasing number of products that claim to have environmentally beneficial qualities (e.g. in relation to their components, to how they are produced, packaged and distributed) and that consumers are confronted with an increasing number of environmental claims on products, at least in certain EU countries<sup>16</sup>. Other studies point in the other direction and show that the use of environmental claims *in advertising* is limited and in recent years decreasing in some

<sup>15</sup> A renewed EU strategy 2011-14 for Corporate Social Responsibility, COM(2011) 681 final

<sup>16</sup> - OECD (2011); Environmental Claims - Findings and Conclusions of the OECD Committee on Consumer Policy.

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

<http://www.defra.gov.uk/environment/economy/products-consumers/green-claims-labels>

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

Member States<sup>17</sup> and that the market share of products with improved environmental performance is still relatively small.<sup>18</sup>

There are cases of unsubstantiated and misleading environmental claims in different product markets, which undermine consumers' ability to assess correctly environmental claims and contribute to green growth through the choices they make in the marketplace. The example in box 1 shows some recent cases of unfounded 'eco' claims.

**Box 1: Examples of recent greenwashing practices**

*Recent consumer tests show that small electrical appliances presented as 'environmentally friendly' ("eco"), such as irons, vacuum cleaners, coffee machines, frequently do not better perform (or even worse) than similar products that don't make such claims<sup>19</sup>. Other product tests in markets such as 'tyres' showed mixed results concerning the environmental performance of the 'eco tyres' and their impact on fuel consumption<sup>20</sup>.*

Research at national level shows that not all environmental claims comply with basic principles such as truthfulness and clarity<sup>21</sup> and that consumers do not always truly understand the green claims they are confronted with<sup>22</sup>. However, for many EU countries there are no studies and reports available. Consumer complaints to national authorities and self-regulatory bodies on environmental claims seem relatively limited<sup>23</sup>. On the other hand, recent Eurobarometer surveys show that consumer trust in environmental labelling has decreased and that one third of consumers feel misled by environmental claims.<sup>24</sup>

The points mentioned above indicate that the knowledge basis should be further extended to ensure a better understanding of environmental claims *throughout the European Union*. As a first step, a newly launched EU consumer market study on environmental claims will further examine these aspects.<sup>25</sup>

<sup>17</sup> DEFRA (2010) An assessment of green claims in marketing. <http://www.defra.gov.uk/environment/economy/products-consumers/green-claims-labels>  
- Publicité et Environnement, 2012, Autorité de Régulation Professionnelle de la Publicité et Agence de l'Environnement et de la Maîtrise de l'Énergie. [http://www.arpppub.org/IMG/pdf/Bilan\\_Publicite\\_et\\_environnement\\_2011-2.pdf](http://www.arpppub.org/IMG/pdf/Bilan_Publicite_et_environnement_2011-2.pdf)

<sup>18</sup> European Commission, Ecodesign preparatory studies for energy-related products; AEAT (2004), The Direct and Indirect Benefits of the European Ecolabel. Report produced for the European Commission, DG Environment;

<sup>19</sup> Greenwash claims investigated, Which?, August 2012

<sup>20</sup> Les pneus verts tiennent ils leurs promesses ? Institut national de la Consommation, p. 40 in '60 millions de consommateurs, novembre 2012 edition n °476

<sup>21</sup> ARPP ADEME Report Publicité & Environnement (2012).

<sup>22</sup> DEFRA – Consumer understanding of green terms, p. 6.

<sup>23</sup> See also Annex 2 country trends. There can be different reasons for the limited number of consumer complaints: the phenomenon may not be widespread; consumers may not have the means (information/knowledge) to check if a claim is misleading or not; consumers may be less inclined to issue complaints in this area compared to other areas that concerns them more directly in their daily life (e.g. own health or economic situation), etc.

<sup>24</sup> [http://ec.europa.eu/environment/pdf/ebs\\_365\\_en.pdf](http://ec.europa.eu/environment/pdf/ebs_365_en.pdf)

[http://ec.europa.eu/consumers/consumer\\_research/editions/docs/consumer\\_eurobarometer\\_2012\\_en.pdf](http://ec.europa.eu/consumers/consumer_research/editions/docs/consumer_eurobarometer_2012_en.pdf).

<sup>25</sup> The Consumer Market Study on environmental claims for non-food products: this study will examine the presence of green claims in different markets, the level of compliance with EU legal requirements, consumer understanding and behaviour aspects; different enforcement and self-regulatory instruments and

### 3.2. Challenges related to definitions, terminology and methodology

#### ➤ *Vague and not well-defined environmental claims*

Environmental claims are sometimes too general, vague and not well-defined, using terms such as "environmentally friendly", "eco-friendly", "eco", "carbon neutral", "green", "sustainable", "natural", "energy efficient", "non-toxic", "low-carbon", "pollutant-free, clean", "zero emissions", etc.

Some MDEC participants suggest that these claims are too vague in order to be substantiated and should therefore be banned through legislation. They refer e.g. to ISO<sup>26</sup> 14021 standards on self-declared claims which stipulates that vague or non-specific claims "shall not be used". However, others indicated that those general terms should not be banned provided they are substantiated and understandable for the consumer.

According to the 2011 Guidelines of International Chamber of Commerce, it is important that such claims are either "qualified" or valid in "all reasonably foreseeable circumstances".<sup>27</sup> According to the Swedish Market Court, general claims such as "environmental friendly" can be made if the trader/manufacturer clearly shows the environmental benefit compared to other similar products and qualifies the claim.<sup>28</sup> The Belgian Ecological Advertising Code states that "Expressions, statements or absolute slogans such as "good for the environment" or "ecologically safe", implying that the product or the service has no impact on the environment, at any stage of its life cycle, shall be forbidden, unless a proof is established in accordance with article 14 of the Code. According to this article, "the advertiser shall be able to substantiate in a firm manner and without any delay, any statement, indication, illustration or representation referring to impact(s) on the environment".

Overall, most MDEC participants agree that the use of those general terms are likely to be inappropriate and misleading in the vast majority of cases and strong and clear evidence is needed to substantiate such a general claim and should be - for certain product categories – probably best avoided in all cases.

The MDEC also highlights that the introduction by national legislation of general prohibitions for the use of those types of terms would be incompatible with the UCPD due to its full harmonisation effect.<sup>29</sup>

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provide policy recommendations for future policies. It has been kicked-off in January 2013 and is expected to be finalised by end 2013.

<sup>26</sup> International Organisation for Standardisation

<sup>27</sup> Article E1 ICC Code. The term "qualification" is described as follows in the Consolidated ICC Code of Advertising and Marketing Communicating Practice: The term "qualification" means an explanatory statement that accurately and truthfully describes the limits of the claim.

<sup>28</sup> The Swedish Market Court, Dnr B 2/10, Mercedes- Benz Sverige AB

<sup>29</sup> The UCPD is based on full harmonisation, meaning that Member States may not retain or introduce stricter consumer protection rules (except in certain areas such as financial services and immovable property).

➤ *Poor understanding of product life cycle impact across some business sectors*

MDEC participants indicated that there is an improving but still poor understanding of product life cycle impacts across certain sectors and how to define and measure impacts. This results in a lack of understanding by some business of which environmental impacts are significant in product life cycles.

➤ *Different methods for assessing environmental performance*

There are many different methods currently used for measuring different aspects of environmental performance, whether of products or of organisations. Typically, those methods vary and are tailored to different products and issues as diverse as sustainability of fish sourcing, recyclability of packaging, energy efficiency of electrical products. The number of generic methods, methods targeting specific sectors or addressing certain environmental aspects may generate confusion and unnecessary costs for business.

If businesses wish to make a claim, they will need to select the appropriate label or method, ensuring that it is robust, verifiable, and relevant for their product or organisation, relevant for the claim and also for the country. In this context, the European Commission is finalising a common Life Cycle based method for the calculation of the Product Environmental Footprint (PEF) based on current existing international standards.<sup>30</sup> The PEF method, and the related method for Organisation Environmental Footprint (OEF), is expected to be published in the first semester of 2013 as part of the Commission Communication "Building the Single Market for Green Products". It will be accompanied with recommendations that will invite Member States and the private sector to use these methods. In addition, a three year testing phase will be launched with the participation of volunteering stakeholders in order to develop product category rules, to test different verification systems and to test different approaches for Business-to-Business and/or Business-to-Consumer communication.

Some MDEC participants highlighted that Life Cycle Assessment (LCA) methods feature fundamental shortcomings including dependency on subjective choices, lack of adequate data and lack of precision. Others, on the contrary, were supporting the consistent use of LCA as the best way to provide reliable environmental information.

### **3.3. Challenges related to confusion and understanding**

MDEC participants highlighted concerns about consumer confusion and understanding of environmental claims, decreasing consumer trust in environmental labels and the proliferation of labels. There is a fear that scepticism will devalue legitimate environmental claims and reduce consumer confidence in the market for environmentally friendly products.

The following specific challenges were highlighted in this context:

➤ *Difficulties for companies to find the "right language"*

Companies with more environmentally friendly products often seem to struggle to find the right language which is *both accurate and easily understood*. This situation can be

<sup>30</sup> More information available at [http://ec.europa.eu/environment/eussd/product\\_footprint.htm](http://ec.europa.eu/environment/eussd/product_footprint.htm)

improved by setting EU-wide specifications for certain claims. The "Practical Guide to Environmental Claims", elaborated in France (2012) and the "Green Guides" of the USA Federal Trade Commission can be seen as good examples as they clearly mention cases when claims are legitimate or not.<sup>31</sup>

Some MDEC participants highlighted that companies need further help to communicate *relative* improvement – i.e. compared to earlier product versions - without claiming that the products are totally 'green' or giving a misleading impression about the extent of improvement (e.g. contains 50% less mercury, when the amount has dropped from 0.0003% to 0.0002%). Others indicated however that this type of claims, referring to earlier product versions that are not available anymore, are not relevant to consumers and do not support informed choices.

➤ *No standardisation of labels*

A recent consumer study<sup>32</sup> pointed out that in the absence of a (mandatory) standardised label<sup>33</sup> on environmental performance (e.g. for all products of the same category), consumers are not in a good position to compare products. The report recommends a label which is clear, immediately understandable, using colours (preferably in the form of a sliding scale). The recent 'pilot testing' of environmental labels in France showed similar results. In the framework of this pilot testing, each participating company had developed its own label which made it difficult to compare products, although it was noted that 'comparability' was not the focus of the pilot.<sup>34</sup>

➤ *Trademarks: "green terms" in brand names*

The use of "green terms" in product names is highlighted as an issue. Some of these names have a long history and were in use before sustainability became a policy focus. They were therefore not necessarily intended as a green claim from the onset. However, today the message to consumers may be unclear and may give rise to some consumer expectations that are not met. For example, the pre-fix "bio" in the brand name of a cosmetic product might imply to the consumer that this product is an organic cosmetic product.

Although the MDEC highlights some legal uncertainty regarding the use of green claims in well-established trademarks, the example of Sweden in Box 2 shows that in some Member States there is "no safe haven" for misleading environmental claims in product names.

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<sup>31</sup> See the Best practices chapter and Annex 1 for an overview of existing guidelines on environmental claims.

<sup>32</sup> Evaluation par les consommateurs de l'expérimentation sur l'affichage environnemental, report COFACE member, July 2012.

<sup>33</sup> Standardised label means in this context a label where the underlying criteria and the label layout is the same for each product that consumers see in shops.

<sup>34</sup> More info on the pilot testing: <http://affichage-environnemental.afnor.org/http://www.developpement-durable.gouv.fr/-Experimentation-de-l-affichage,4303-.html>



**Box 2: Green terms in brand names in Sweden**

*The Swedish Market Court has previously addressed the marketing of an oil product called Hydro Miljö Plus (Hydro Environment Plus). The Market Court stated that the terms “environmental” together with “plus” in the product name gave the impression that the product had certain environmental advantages, even though fuel oil always causes damage to the environment. In this respect, the Swedish Market Court judged that the term “Environment” could not be used in the product name.<sup>35</sup>*

➤ *Business concerns about unsubstantiated complaints on (genuine) green claims*

Certain business representatives of the MDEC expressed concerns about companies being accused wrongly about greenwashing practices with the risk of continued reputational damage. Although it is important that civil society is able to challenge the claims made in ads and on packaging, this should not act as a disincentive to businesses in terms of making legitimate green claims about their products.

➤ *Confusion between green claims and mandatory (information) requirements*

The EU places information requirements on products, in particular when there are possible safety risks for consumers. It was highlighted that businesses are sometimes using green claims that may “hide” other important information. For example, the claim “ecologic” is sometimes prominently used on products which also contain certain dangerous components and therefore should not be disposed off in household waste. Indeed, if the product is claimed to be “ecologic”, mandatory symbols such as the “crossed-out wheeled bin” for electrical and electronic equipment<sup>36</sup> may not be well understood by consumers.

MDEC participants also highlighted that companies should not make claims about aspects that are “legally required”. The example was given about “biodegradable surfactants” in the case of detergents as this is a legal requirement from the Detergents Regulation<sup>37</sup>. This issue has been already clarified in existing guidelines on environmental claims but may still be a point of confusion.

### **3.4. Challenges related to achieving a coherent enforcement**

➤ *Verification of environmental claims*

Market surveillance authorities and advertising self-regulatory bodies need to verify the truthfulness of a claim, when enforcing the provisions of the UCP Directive. MDEC participants highlighted that the *trader has the burden of proof* and should therefore be able to prove the correctness of the claims used in advertising or on packaging. Claims which cannot be substantiated by relevant and appropriate scientific evidence are misleading and should therefore not be used.

<sup>35</sup> The Swedish Market Court, 1990:20 Norsk Hydro Olje AB

<sup>36</sup> Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE)

<sup>37</sup> Regulation 648/2004/EU on detergents



However, some MDEC participants highlighted that Member States face different challenges in assessing the evidence required from traders in relation to a claim. For instance, it can be difficult to establish which level of evidence is credible and sufficient to substantiate a given claim. Moreover, verification methods differ between Member States. Some of them only check the documentation without performing (scientific) tests on products. Some MDEC participants highlighted that the 'verification of documents' is a simple method, and may be often sufficient as a first step. However, as product documentation can be unclear or falsified, market surveillance authorities and self-regulatory bodies may need to carry out laboratory tests on a meaningful sample of products. This is in particular important for product groups where EU-wide legal obligations exist, such as for Ecodesign requirements.<sup>38</sup>

It was highlighted that difficulties in verification may also be linked to a lack of scientific expertise among enforcement authorities. Certain MDEC participants indicate that it is difficult to verify the correctness of claims *from imported products or products made from imported parts or raw materials*. Experiences from enforcement show that businesses have difficulties in obtaining the necessary documents to justify the claim when the suppliers are based abroad. Hence, this needs to be taken into account by companies before making a given environmental claim as only aspects should be advertised which can be substantiated. Advertiser and/or companies have indeed a duty to have at hand the documentation substantiating the claim before it is made.

➤ *Accessibility and reliability of data*

An environmental claim will usually either concern resource use and/or pollution aspects. In both cases it should be possible to quantify the effects and to underlay the claim with concrete data. MDEC participants highlighted that - for transparency, credibility and verification reasons - it is important that these data (and the way they have been obtained) are accessible and made available for national authorities and civil society.

It was indicated that further guidance is needed on the standards to measure the environmental performance of products and on how the underlying achievements justifying the claim should be documented and made available. Furthermore, an agreement on a set of common indicators to be used (e.g. greenhouse gas emissions, land use, water use and resource input.) would be helpful. Some MDEC participants highlighted that EU wide standards are currently missing on the *eligible* scientific literature to substantiate a claim (for example, a classification system where independently peer-reviewed studies would have a higher value than other studies).

➤ *Applicability of court decisions*

In order to ensure that both consumers and traders are subject to the same rules across the EU, it is important that national authorities and courts contribute to the uniform implementation and consistent enforcement of the UCP Directive.

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<sup>38</sup> Ecodesign Directive (2009/125/EC)

The need to assess claims on a case by case basis by national authorities is perceived as a challenge by some MDEC stakeholders. Other stakeholders, nevertheless, note that, like in other areas, precedents serve as guidance and can contribute to legal certainty.

This challenge is further clarified with the example in Box 3.

**Box 3: The "very energy saving" refrigerator**

*A German consumer organisation took legal action against a retailer in 2010 because they used in an advertisement the slogan "very energy saving" for a refrigerator/freezer which was of energy efficiency class "A". This had been considered to be misleading as 308 out of 543 appliances already belonged to class "A+" and almost 17% of all available appliances on the German market belonged even to energy efficiency class "A++". As the consumer centre Hamburg won the case, the retailer was not allowed to use this advertisement anymore.*

*The advertisement has been considered to be misleading only for this particular case. In case another retailer would use the same advertisement and wording, a new case against this retailer would need to be undertaken.*

➤ *Enforcement in absence of agreed standards*

It is highlighted by MDEC participants that it is more challenging to assess environmental claims for aspects where no agreed standards or parameters exist. For instance, from the example in Box 3, because of the provisions of the EU Energy Label, it was easy to verify that a refrigerator of class "A" cannot be considered as "very energy saving" when there are models on the market which perform already two classes higher and class "A" refrigerators will be among the worst performing appliances due to mandatory Ecodesign requirements. In other cases, where such standards or parameters do not exist, the trader must base its claims on solid applicable evidence.

➤ *Enforcement of 'implicit' claims*

Certain MDEC participants argue that some environmental claims convey a "positive feeling" that could be potentially misleading while at the same time those claims cannot be classified as misleading advertising based on the UCP Directive in the absence of concrete and specific criteria.

Furthermore some claims don't present themselves as "environmental", but put forward friendly aspects that can be interpreted as being friendly for the environment as well. A typical example is the "SUV car in a natural environment".

It was highlighted that the ICC framework for responsible environmental marketing communication covers "pictures, colours and logos" as ways that green claims can be made in ads. In this way, the national self-regulatory organisations handle complaints regarding imagery used in ads and its potential to be misinterpreted. Furthermore, the guidelines of the Danish Consumer Ombudsman also clarify that "marketing must not be designed so as to exploit in an unfair manner consumers' concern for the environment or any lack of knowledge on their part about the environment."<sup>39</sup>

<sup>39</sup> Point 6.1 in the Danish Guidelines. See also Annex 1.

➤ *Sanctions: Need for more coherent approach*

There are currently different types of sanctions against misleading environmental claims and there is no harmonisation across Europe. However, Article 13 of the UCPD provides that penalties laid down by Member States must be effective, proportionate and dissuasive.

MDEC participants indicated that the sanctions foreseen by the law are not implemented in a uniform way throughout the EU. They also highlighted the need for a more coherent approach between the legal remedies and the sanctions established by self-regulatory organisations.

In cases where self-regulatory bodies rule that an advertisement does not comply with their code, they notify the advertiser of the ruling (usually requesting the modification or withdrawal of a campaign); they also publish the adjudication and provide a report of the ruling to the relevant national business association. Sanctions put in place by self-regulatory organisations can include: naming and shaming, mandatory pre-clearance, refusal of media space and, as a last resort, referral to the authorities. See Box 4 with an illustration of the UK sanction system.

Some MDEC participants indicated that an assessment of the dissuasive effects of these sanctions to prevent misleading claims could be useful.

**Box 4: The UK sanction system**

*As with the majority of self-regulatory organisations, advert removal is the primary sanction of the Advertising Standards Authority (ASA). Advertisers are expected to comply immediately with an ASA ruling. If this does not happen, industry sanctions to bring about compliance will be applied and can include the refusal of media space, mandatory advertising pre-clearance and, online, the removal of paid-search links. All ASA adjudications are published online and stay there for 5 years.*

*Whilst ASA cannot fine, it is recognised by the government, the Office of Fair Trading (OFT) and other regulators as being the established means' for bringing about compliance with the consumer legislation relating to misleading claims. This means that in the event of serious sustained non-compliance, advertisers can be referred to the OFT under agreed established case handling principles. The OFT acts therefore as the ASA's 'statutory backstop' and supports self-regulation by acting as a strong deterrent against non-compliance.*

➤ *Different national interpretations and variations in guidelines*

In several countries, stakeholders have come together to create guidelines on how to use green claims in an acceptable way. As these guidelines are the outcome of different processes, there can be variations in the advice given. This can create problems for companies active in multiple EU Member States, e.g. if the understanding of “appropriate use” of a certain claim is different in various EU countries.

For example, there seems to be different national interpretations on the use of general terms (such as 'environmentally friendly'). While some guidelines suggest that their use should be absolutely avoided, other guidelines and case law indicates that some of these terms can still be used under certain conditions.

**Box 5: Different interpretations of “recyclable”**

*Some MDEC participants also expressed concerns about different national interpretations on the term "recyclable". Businesses are designing products so that they can be recycled. Should they decide to promote these products as “recyclable”, they could, depending on the country, be sued if there is no guarantee that there are the necessary 'recycling facilities' available. However, other MDEC participants highlighted that this kind of provisions may be necessary in avoiding consumers' deception: a 'recyclable' package that cannot be “recycled” in a given country is not “recyclable” for those consumers.*

It was highlighted that here is a need to increase industry awareness of the European Copy Advice Facility<sup>40</sup>. Copy advice is advice on a proposed advertising campaign provided by a self-regulatory body, usually on a non-binding basis. The facility allows advertisers, agencies and the media to seek copy advice in a different country from their own as well as in multiple countries at the same time; it currently covers 16 EU countries. Awareness of the facility is growing and the total number of requests doubled between 2010 and 2011 to 158.

➤ *Company decision-making, reporting and marketing*

MDEC participants highlighted that there is a relationship between company decision-making, its reporting and the marketing aspects.

Companies that integrate environmental concerns properly into their decision-making will often also include information on these efforts in their "non-financial" reporting<sup>41</sup>. This can be valuable information for shareholders, investors, suppliers, consumers and society in general. Marketing of the company and more specifically of the products will also reflect this.

Conversely, recent research shows that companies that use misleading environmental claims in the marketing of the products are often the same companies that provide insufficient, irrelevant or unreliable reporting on environmental performance<sup>42</sup> and do not properly integrate environmental concerns into their decision-making<sup>43</sup>.

<sup>40</sup> [www.ad-advice.org](http://www.ad-advice.org) ; managed by EASA.

<sup>41</sup> Non-financial information is generally seen as environmental, social and governance (ESG) information. This can be disclosed in the form of a statement in the annual reports, or a separate corporate governance statement, a separate report, or published on company websites, etc.

<sup>42</sup> Empirical studies show that this is a problem of some magnitude – and the ugliest companies may tend to use the most make-up. See for example “Towards a Sustainable Development: Internalising Externalities in Norwegian Company Law”, *International and Comparative Corporate Law Journal* Volume 8 (2011), Issue 1, pp. 103-136, available at <http://papers.ssrn.com/abstract=1712796> with further references.

<sup>43</sup> See for example “Why Law Matters: Corporate Social Irresponsibility and the Futility of Voluntary Climate Change Mitigation”, *European Company Law*, Volume 8 (2012), Issue 2-3, pp. 56–64, available at <http://papers.ssrn.com/abstract=1774759>. Based also on research undertaken in the international Sustainable Companies Project (2010-2013), led by the University of Oslo. See for example “Regulating Companies as if the World Matters: Reflections from the ongoing Sustainable Companies project”, 47 (2012) *Wake Forest Law Review* pp 113-134, University of Oslo Faculty of Law Research Paper No. 2011-35. Available at SSRN: <http://ssrn.com/abstract=1964213>. For more information about the project, see the website: <http://www.jus.uio.no/ifp/english/research/projects/sustainable-companies>

Allowing companies to externalise the environmental costs of the business may tend to give the environmentally unfriendly companies a competitive advantage over companies that seriously work to make profit in an environmentally friendly and sustainable manner.

Recognising the link between the regulation of marketing, reporting/accounting and corporate governance/company law is seen by some MDEC participants as important for ensuring the consistency between policies that the environmental integration and consumer protection rules of the Treaty of the European Union requires.

## 4. BEST PRACTICES

This chapter describes different best practices highlighted by MDEC participants.

### 4.1. Existing guidelines

In 2009, the guidance document on the application of the Unfair Commercial Practices Directive was published in order to support a common understanding and a convergence of practices when implementing and applying the Directive. It also includes a chapter on 'Misleading Environmental Claims' in order to help competent national authorities to identify and to address these claims.

Since 2009, national, cross-sectoral and sectoral guidelines on environmental claims have been *further developed, revised or updated, and cover detailed provisions* on principles, definitions of terms, clarification of symbols, specific requirements, evidence support and manuals for business. These guidelines and the way they have been elaborated – i.e. through a multi-stakeholder approach - were highlighted by many MDEC participants as a best practice that could be followed at EU level.

A selection of recent general/cross-sectoral guidelines are summarised in Box 6. A longer list including sectoral guidelines is available in Annex 1.

#### ***Box 6: Summaries of recent guidelines on environmental claims***

##### ***The Danish Consumer Ombudsman guidelines (2011)***

Denmark issued the “Guidance from the Consumer Ombudsman on the use of environmental and ethical claims etc. in marketing” in January 2011. These guidelines concern environmental claims as well as ethical claim and refer to the Danish Marketing Practices Act, which is based on the UCPD. The guidelines must be regarded as general preliminary information on the applicable principles; they contain requirements (‘must’) and general directions (should’). Regarding possible sanctions, the guidelines refer to the courts and the Consumer Ombudsman (fines, injunctions, administrative orders and possibly criminal offence - referral to the Marketing Practices Act and the Executive Order on Unfair Business-to-Consumer Commercial Practices). The requirements of special legislation are out of scope. The overall impression of a presentation to the consumer is the main criterion to assess an environmental claim. Especially when general statements are made, the relevant product must rank within the top products on the market regarding the environmental impact. If the statement is specified by a more detailed explanation, the Danish guidelines set requirements such as: the reduced environmental impact emphasised must be one of the most important environmental benefits and be of material importance to the environmental impact, the environmental benefit marketed must not be obtained through efforts which cause damage to the environment in themselves, other environmental aspects of the product must not significantly reduce or neutralise the benefit; and the emphasized environmental benefit is not a general characteristic of similar products.

##### ***The UK DEFRA Green Claims Guidance (2012)***

The green claims guidance was published by the UK Department for Environment, Food and Rural Affairs in February 2011. It is aimed at anyone producing, selling, marketing or advertising products or services in the UK and more specifically at those making self-declared environmental claims. Several supporting studies had been undertaken to prepare the guidance. Its purpose is to promote the use of clear, accurate and relevant environmental claims in advertising and marketing.

It sets a detailed compliance check procedure in order to make a good environmental claim and provides examples of "best practices" and "poor practices" throughout the entire document. The



procedure contains three key steps to be followed by traders preparing an environmental claim and contains several supporting questions for each of the steps:

*Step 1: Ensure the content is relevant and reflects a genuine benefit;*

*Step 2: Present the claim clearly and accurately*

*Step 3: Check the claim can be substantiated.*

#### ***The French practical guide (2012)***

The practical guide to environmental claims for traders and consumers is based on recommendations formulated by the *Conseil National de la Consommation* (CNC). The second and final version of the guide was published in 2012 by the Ministries of Economy and Sustainable Development and provides explanations on the use of fifteen of the most common claims such as "compostable", "Eco-", "Ecological" (and claims of the same kind), "natural", "organic" (for non-food) and "Renewable". For example, following criteria are set for the term "*renewable*":

- The claim must be clear enough for the consumer to understand that it refers to the energy used to manufacture the product.
- The consumer must know the nature of the energy used, if known and the overall proportion of renewable energy used in the product's manufacturing process.
- The trader must be able to provide evidence of actual use of renewable energy in the product's manufacturing process.

In addition, the guide sets also general criteria to be applied by traders when preparing an environmental claim. For example, the environmental benefit claimed must not result in a transfer of pollution i.e. create or increase other environmental impacts at other stages of the product's life cycle. The recommendations of the guide are not compulsory, but provide useful guidelines for traders, consumers and enforcers.

#### ***The Norwegian guidelines on environmental, ethical and climate neutral claims (2009)***

Norway issued "The Consumer Ombudsman's Guidelines on the Use of Environmental and Ethical Claims in Marketing" in September 2009 and "The Consumer's Ombudsman's Guidelines on Using Claims such as "Climate Neutral" etc. in Marketing" in December 2009. The guidelines are based on the Marketing Control Act, which is based on the UCPD. Special legislation is excluded from the scope. The guidelines refer to the general assessment criteria of misleading statements, closely following the UCPD, including the requirements regarding clarity and not-obviousness, balanced and overall correct impression, vagueness, information that is misleading by omission of information, and the impact on the transactional decision of the consumer. The guidelines state that traders may obtain *a priori guidance* from the Consumer Ombudsman when they are in doubt about their compliance. Vague green claims are not allowed without an explanation that is visible with the claim. If the green claim is not explained, the product must outperform other products during its entire life cycle and for the product as a whole. Claims such as "climate neutral" are discussed in a separate document and must fulfil specific criteria. The trader must calculate the emissions of greenhouse gases from the business activity or service/product being marketed, following scientifically recognized calculation methods. Greenhouse gases" refers to the six gases included in the Kyoto Protocol.

#### ***The USA green guides (2012)***

The USA Federal Trade Commission issued in October 2012 new revised guides for the use of environmental marketing claims. These guides provide general principles (e.g. on 'qualifications and disclosure' and 'comparative claims'), specific guidance on the use of particular environmental claims ("free of claims", "degradable claims", "carbon offsets") and concrete examples throughout the document. The green guides indicate that marketers should not make broad, unqualified general environmental benefit claims like 'green' or 'eco-friendly.' Broad claims are difficult to substantiate, if not impossible. Marketers should qualify general claims with specific environmental benefits. Qualifications for any claim should be clear, prominent, and specific. **Example:** The brand name "Eco-friendly" likely conveys that the product has far reaching environmental benefits and may convey that the product has no negative environmental

impact. Because it is highly unlikely that the marketer can substantiate these claims, the use of such a brand name is deceptive. A claim, such as “Eco-friendly: made with recycled materials,” would not be deceptive if: (1) the statement “made with recycled materials” is clear and prominent; (2) the marketer can substantiate that the entire product or package, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement’s context does not imply other deceptive claims.

***The ICC Framework for Responsible Environmental Marketing Communications (2011)***

The text is a Framework on the use of environmental claims, issued in 2011. They are guidelines on Section E of the Consolidated ICC Code of Advertising and Marketing Communication Practice issued in 2006 and revised in 2011. It provides practical guidelines to the business sector, including advertisers and advertising agencies, as well as to self-regulatory advertising organisations and national authorities. This document does not contain sanctioned regulations. It states that legal obligations must be respected in first instance, but it promotes self-regulation as an efficient means of enforcement. The text contains general guidelines and a practical table with a detailed checklist with questions and answers for self-assessment. It also contains a table with the principles of the Code and a specific application to environmental issues and a table with specific terms used in advertising. The general criterion for assessment of an environmental claim is the overall impression of a communication, sound, visual element. Claims should be based on sound, appropriate scientific information relevant to the actual use, operation or disposal of the advertised product, not on unsupported assumptions. General environmental claims that may prove difficult to substantiate using accepted scientific methods, at the time the claim is made, should be avoided.

## **4.2. Advertising watchdogs: co-regulatory and self-regulatory approaches**

Self-regulation developed at national level could be seen as a best practice provided that key conditions are in place at the outset. These include conditions such as: high ethical standards, effective monitoring and inspection, robust sanctions in case of violations, redress for consumers, binding nature for the ‘subscribers’ and large industry take up. These are crucial to ensuring the credibility and effectiveness of those systems. To this end, they also need to ensure the participation and involvement of civil society in order to be trusted and therefore effective.

When those pre-conditions are met, those organisations and their juries can act as independent adjudicators within the advertising system and can make sure all advertising, wherever it appears, meets the standards laid down in the advertising codes.

There are currently 25 advertising self-regulatory bodies in 23 EU Member States, they cover over 98% of the EU’s population and ad-spend. Besides addressing consumer complaints regarding advertisements, self-regulatory bodies may also, amongst other things:

- Give copy advice
- Provide pre-clearance for ads<sup>44</sup>
- Monitor ads to check that they comply with the code

<sup>44</sup> Pre-clearance is the examination of an advertisement by a self-regulatory body as a compulsory pre-condition of publication or transmission



The European self-regulatory bodies that make up the European Advertising self-regulatory network are members of the European Advertising Standards Alliance (EASA). EASA works with its members to create guidance on how to go about advertising self-regulation across the Single Market for the benefit of consumers and business. This includes producing best practice recommendations (cf. Box 7)

**Box 7: EASA guide "Best Practice Recommendations on Claims Substantiation"**

In 2012 EASA developed a set of Best Practice Recommendations on Claims Substantiation for its members that cover general claims in terms of market claims, scientific claims, testimonials and comparative claims. This requires the advertiser to prove that the claim they are making is truthful, rather than the complainant having to demonstrate that it is not. Therefore, before offering an advertisement for publication, advertisers should be able to provide documentary evidence to substantiate their direct or implied claims, which can be objectively judged. If requested by the self-regulatory organisation, e.g. in case of a complaint, the advertiser should produce the necessary evidence to the self-regulatory organisation.

*Self-regulatory bodies and environmental claims*

The codes used by the advertising self-regulatory bodies are generally based on (or are similar to) the Consolidated ICC Code of Advertising and Marketing Communication Practice, which was updated in 2011. This updated version now also includes the *Framework on Environmental Claims* to which the European Advertising Standards Alliance (EASA) and its members provided input through the EASA Sustainability Task Force.

**Box 8: Environmental claims and the Spanish self-regulatory body on advertising**

Following problems and concerns related to the use of environmental claims in advertising, in particular claims referring to global warming, biodiversity and sustainable development, the Spanish government decided that a coordinated answer was needed and involved all relevant stakeholders to establish a Code on the use of environmental claims in commercial communications. In July 2009, the Spanish Self-Regulation Code on Commercial Communications including Environmental Claims was signed by the government, AUTOCONTROL (the Spanish self-regulatory body on advertising), and many Spanish companies especially those active in the car and energy sectors.

The Code applies to commercial communications in Spain for the promotion of any product (goods or services) and establishes a double function of copy advice for participating companies (queries are addressed within 3 days) and an alternative dispute resolution system where complaints can be submitted to AUTOCONTROL's Advertising Jury consisting of representatives of public authorities, consumer organisations, companies and advertising industry. A Steering Commission evaluates on a regular basis the Code's application in relation to its objectives and assesses the need for possible revisions.

The codes of all self-regulatory bodies cover the issue of misleading claims. Therefore when a complaint arises on an allegedly misleading environmental claim all advertising self-regulatory bodies can adjudicate on the issue, based on their code. Further to this, a number of self-regulatory bodies have specifically referenced the issue of environmental

claims within their national codes. Many self-regulatory organisations and codes cover not only advertising but also the information on product packaging.<sup>45</sup>

#### *National co-regulatory approaches and environmental claims*

Self-regulation of environmental claims co-exists with legislation in 23 EU Member States. In three countries (Belgium, France and the UK) this relationship goes further and can be defined as national co-regulation<sup>46</sup>.

#### **Box 9: French cooperation between self-regulators and regulators on environmental claims**

The "Autorité de régulation professionnelle de la publicité (ARPP), the self-regulatory body on advertising in France, also covering the area of environmental claims, includes members external to advertising business in its different boards as listed below:

- The "Conseil de l'Éthique Publicitaire" (CEP) consists of independent experts and professionals, and is a place for open discussions on advertising ethics.
- The "Conseil Paritaire de la Publicité" (CPP) gather representatives of civil society (consumer and environmental associations) and of the advertising industry.
- The "Jury de Déontologie Publicitaire" (JDP) is ARPP's Jury and Complaints Committee. It handles consumer complaints regarding ads that seem to breach the rules. It is composed of 9 members appointed on proposals from the Presidents of the CPP, CEP and ARPP. The President of the Jury is a senior governmental or judicial officer.

The ARPP and the French public agency for environment and energy management (ADEME) monitor since 2009 jointly the implementation of a "Sustainable Development Code" for advertisements. The share of environmental advertisements showing full compliance with the Sustainable Development Code is 89%. This is constant during the last years. 5% of environmental advertisements are not in line with the sustainable development code and 6% contains minor flaws.

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<sup>45</sup> 16 of 25 EASA's self-regulatory organisations cover also information on product packaging.

<sup>46</sup> According to EASA following its definition of co-regulation in the EASA Bleu Book: "System of regulation combining statutory and self-regulatory elements and sometimes involving other stakeholders". <http://www.easa-alliance.org/Publications/Blue-Book/page.aspx/266>

### **4.3. A regulatory approach in the Nordic Countries: the Consumer Ombudsman**

The Consumer Ombudsman can take legal action against unfair commercial practice and can work pro-actively with self-regulatory measures.

#### ***Box 10: The Swedish Consumer Ombudsman***

The Swedish Consumer Ombudsman can take legal action against unfair commercial practice by enforcing the UCPD through the Swedish Marketing Act. The Ombudsman intervenes when there is a general consumer interest, in precedent order, in preventive action or/and in accordance with the Consumer Protection Cooperation network. In cases of minor importance, the Ombudsman can issue prohibitions against a trader whose marketing is unfair and order a trader to provide information. Prohibitions and orders shall be combined with conditional financial penalties.

The Consumer Ombudsman can also initiate cases to the Market Court. If a trader intentionally or negligently contravenes provisions of the Swedish Marketing Act, the Consumer Ombudsman can initiate proceedings in respect of a 'market disruption charge' at the Stockholm District Court. The charge can amount to between 5000 to 5 million Swedish Krona (600 to 600 000 euro). The pro-active work of the Consumer Ombudsman covers information to consumers and businesses and agreements between industries and the Swedish Consumer Agency. The agreements are one way of reaching high consumer protection, creating good practices for businesses and an effective way of addressing challenges within specific markets.

In 2009, the Swedish Consumer Ombudsman performed an inspection regarding environmental claims in marketing of passenger cars. As a result, 13 cases were initiated. The Consumer Ombudsman sued one of the traders in the Market Court; the other cases could be closed since the traders corrected the marketing in accordance with the view of the Ombudsman.

#### 4.4. **Good business practices: Pan-European industry activities and internal company guidelines**

Many business sectors and individual companies develop 'tailor-made' guidelines and best practices, based on existing guidelines available and relevant expertise from that sector. Those are in most cases also subject to regular updates/reviews, to ensure that they are constantly up to date and relevant and drive progress of sustainability in the sector. Such efforts - whilst recognising the need to make them transparent, truthful and relevant for consumers - should be encouraged to achieve the goal of "greening the business". Various examples of such initiatives are provided in Annex 1.

#### 4.5. **Environmental labels – easy "shortcuts" for consumers**

When well designed, recognised, understood, trusted and perceived relevant by consumers, environmental labels can have a significant influence on the purchasing behaviour of consumers. Under these conditions, labels can be a powerful tool to guide and shape consumer behaviour towards more environmentally friendly choices. Using a reputable labelling scheme with clear criteria will often be one of the most effective ways for businesses to demonstrate to consumers that they are meeting high environmental standards.

- *Public labels and labels of environmental excellence*

The EU Ecolabel as well as the Nordic Swan and Blue Angel are labels of environmental excellence. For example only 10-20% of the environmentally best performing products on the market will be able to apply for the EU Ecolabel as the criteria are ambitious and are regularly revised to be kept up to speed with technological progress and market developments. Due to their underlying institutional framework such labels are of particular value for consumers. The label concept is credible as a sound criteria development and revision process is foreseen, the message is simple to understand and national competent bodies are involved in checking their application to their respective markets. These labels are often also referred to as "ISO-Type I" labels according to the definition given by the International Organization for Standardisation<sup>47</sup>.

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<sup>47</sup> ISO (standard 14024:1999) Type I: *a voluntary, multiple-criteria based, third party program that awards a license that authorises the use of environmental labels on products indicating overall environmental preferability of a product within a particular product category based on life cycle considerations.*

The International Standardisation Organisations also identifies 2 other types of voluntary environmental labels:

ISO (standard 14021:1999) Type II – *self-declared environmental claims that is made, without independent third party certification, by manufacturers, importers, distributors, retailers or anyone else likely to benefit from such a claim.*

ISO (standard 14025:2006) Type III - *voluntary programmes that provide quantified environmental data of a product, under pre-set categories of parameters set by a qualified third party and based on life cycle assessment, and verified by that or another qualified third party*

The ISO (14020:2000) series provides general principles for environmental labels.

**Box 11: The EU Ecolabel**

The EU Ecolabel helps consumers to identify products and services that have a reduced environmental impact throughout their life cycle, from the extraction of raw material through to production, use and disposal.

The EU Ecolabel scheme is a commitment to environmental sustainability. The criteria have been developed and agreed upon by scientists, NGOs and stakeholders to create a credible and reliable way to make environmentally responsible choices.

From the raw materials to manufacturing, packaging, distribution and disposal, EU Ecolabel products are evaluated by independent experts to ensure they meet criteria that reduce their environmental impact. The EU Ecolabel is an easy way to make an informed choice about the products consumers are buying. The scheme is voluntary, but hundreds of companies across Europe have joined up because of EU Ecolabel's competitive edge and commitment to the environment. Consumers can rely on the logo because every product is checked by independent experts.

More info at <http://ec.europa.eu/environment/ecolabel/>

- *Private labels with public support*

In some Member States, private labels have been developed where national authorities had a convening role but with the industry driving the process forward. This approach has resulted in reliable labels (guaranteed by an independent third party) on specific environmental aspects (e.g. recyclable, biodegradable) and a good level of penetration in the market.

- *Other environmental labels*

Recent estimates indicate that there are worldwide over 400 environmental labels marking consumer products in nearly every product category<sup>48</sup>. This competition between environmental labels carries benefits and pitfalls. On the one hand, it shows there is a wide-scale business interest and the competition between labels may raise the bar on their performance and ambition level. On the other hand, the proliferation of labels may confuse consumers and make them insecure about which labels they can really trust.

Existing national and sectoral guidelines on environmental claims provide *principles, conditions and 'best practice' criteria* to promote the transparency, credibility and ambition level of environmental labels (cf. Box 12 for the example from Denmark).

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<sup>48</sup> <http://www.ecolabelindex.com>

**Box 12: Criteria and conditions to support transparency of private labels in Denmark**

The guidelines from the Danish Consumer Ombudsman on environmental and ethical claims make a distinction between "private, generally recognised labelling and certification schemes" and "other private labelling schemes". For schemes to be considered generally recognised, they must be well documented and have been applied over number of years. Private labelling schemes, etc., may be recognised by different NGOs and semi-governmental organisations and developed in cooperation with public authorities or with the support of authorities.

The guidelines clarify that "private, generally recognised labelling and certification schemes" should satisfy the following conditions:

- The body responsible for the labelling scheme must be clearly identified;
- Relevant stakeholders must be involved in the development of clear criteria;
- The criteria must be established and reviewed on the basis of a complete life cycle assessment of a product or an activity ('cradle to grave') and cover relevant categories of (environmental) conditions and impacts, etc., based on scientifically approved calculation methodologies, etc.
- The scheme must be subject to independent third-party controls as regards the assessment and establishment of criteria as well as the use of the label. The company's self-inspection may form part of the overall control system.

The principles of ISO 14020 and descriptions of ecolabel schemes (ISO 14024) or ecolabels and declarations (ISO 14025) may serve as inspiration for the development of private ecolabels, etc. Moreover, the label may not be likely to be confused with other labels, including labels of official labelling schemes."

"Other private labelling schemes" are defined in the Danish guidelines as labelling schemes adopted by a trade organisation or trader's private labelling scheme. The guidelines explain as follows: "Traders must bear in mind that the use of many different private labelling schemes, symbols and certificates may make it difficult for consumers to understand their meaning. This applies in particular to fields covered by official labelling schemes or certifications. If a trader or industry chooses to use own labelling schemes, symbols or certificates for marketing purposes, the product or the trader must possess qualitative benefits compared with similar products or traders. Otherwise, the labelling may be misleading in itself. In addition, the Consumer Ombudsman finds that clear criteria must be met to achieve and/or use a label of a labelling scheme and that such label must not be likely to be confused with other labels, including own labels of a labelling scheme with multiple ratings or labels of official labelling schemes." Reference is also made to other clauses in the guidelines.

#### **4.6. Comparison Tools covering environmental aspects**

In parallel with the Multi-Stakeholder Dialogue on Environmental Claims, a similar multi-stakeholder dialogue process was launched on Comparison Tools at the European 2012 Consumer Summit.<sup>49</sup> The purpose of the Multi-Stakeholder Dialogue on Comparison Tools (MSDCT) was to provide a better understanding of the functioning of the various types of information intermediaries, analyse the interaction between all the stakeholders involved, map best practices in the comparison of products and services across different sectors and identify potential areas of improvement.

The MSDCT also highlighted the existence of *comparison tools covering environmental aspects*. New initiatives are emerging in this area, such as for example Noteo, a recently launched Comparison Tool in France that includes besides price information also environmental, health and social parameters to support the comparison of consumer goods. Inspired by the EU Energy Label put in place for household appliances, this Comparison Tool has developed a traffic light system for a number of product categories which rates the performance of each product in various fields: environmental performance, health impact, social responsibility and price levels. A fifth indicator aggregates the four thematic ones to provide an overall rating of the product. The MDEC participants have not discussed this methodology nor the criteria used to classify the environmental performance of this new Comparison Tool.

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<sup>49</sup> See more info at [http://ec.europa.eu/consumers/events/ecs\\_2012/workshops2\\_en.htm](http://ec.europa.eu/consumers/events/ecs_2012/workshops2_en.htm) .



## 5. RECOMMENDATIONS

The participants of the Multi-Stakeholder Dialogue on Environmental Claims – hereafter the MDEC - call on the European Commission and Member States to take further action to protect consumers from misleading environmental claims and ensuring a level playing field for business, through a set of different instruments and actions.

Based on the understanding of the challenges and the best practices described in the previous chapters, *the MDEC recommends that the EU explores different policy options to address misleading environmental claims and to support informed green choices for consumers and puts forward the following recommendations for the short, medium and longer term.*

### 5.1. Further development of the knowledge base

- The *MDEC recommends developing and deepening the knowledge base* on environmental claims including via further research on consumer understanding and behavioural insights. In this context, it is also important that the EU and Member States actively monitor (misleading) environmental claims, report on a regular basis and exchange results of relevant studies, surveys and data, including on court cases and consumer complaints.

### 5.2. Practical advice for designing environmental claims

- On the basis of the analysis of existing national and sectoral guidelines, *the MDEC recommends the following key principles when designing environmental claims:*

- *Claim substantiation:* Before communicating to consumers, every environmental claim needs to be sufficiently substantiated and verifiable by third parties.
- *Reliability:* Consumers should be able to trust the environmental claims. Reliability requires that information should be factual, unbiased, up-to-date. Information should be based on objective evidence and it should be possible to successfully pass independent third-party verification. Therefore, it should be easily accessible and fulfil defined quality standards, which are a precondition to enable independent verification. Reliability refers also to taking all reasonable effort to reduce uncertainties and limit the risk of mistakes in measuring and reporting environmental performance.
- *Relevance and usefulness:* Environmental claims must be relevant to the consumer and relevant for the product. Claims must not be presented in a manner that overstates the benefits, explicitly or implicitly. The information provided should be of use to consumers and allow them to prioritise the choice of one product over another. This requires that information should be provided simply and comprehensibly, however it should not be simplified to the point where it ceases to be objective or loses its meaning, neither it should be so detailed that the consumer is ‘drowning’ in information. Where information is conveyed by means of logos or pictograms, these should be accompanied by programmes to educate consumers as to their meaning in order to ensure that consumers properly understand them.



- *Transparency:* The information should be disclosed in such a way as to provide intended users with all the elements necessary to take a decision and to enable them to assess its robustness and reliability. The criteria on which the environmental claims are based should be publicly available and susceptible to background checks on the underlying research. Information should be provided on the assessment method, tools used, system boundaries<sup>50</sup>, data sources etc.
- *Clarity:* It means that the information should be presented in a format that is clear, precise and easily understandable for the users.
- *Proportionality:* The effective provision of environmental claims should be in proportion to consumer needs and not impose a disproportionate cost for business nor for consumers that will need to pay for the product.
- *Accessibility:* The information provided should be accessible to consumers at the point of sale (including online points of sale). Additional information which is not directly needed to take a purchase decision but which may be useful to the consumer may be provided through different media so long as it is known to (or easily accessible free of charge) consumers when they need it.
- *Completeness:* Information should be included on all significant environmental impacts on a life-cycle basis.
- *Comparability:* Environmental information is most effective in shaping consumer behaviour when it enables consumers to make comparisons between various products. Consumers should be able to easily compare the information between products of the same category and across sellers.

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<sup>50</sup> The system boundaries define which parts of the product life cycle and which associated processes belong to the analysed system.

### 5.3. Future EU guidance document on environmental claims - first concrete contributions

- Based on the MDEC analysis of existing national/cross-sectoral/sectoral guidelines on environmental claims, *the MDEC recommends that future EU guidance on environmental claims - i.e. an update of the environmental claims chapter of the Guidance Document on the implementation of the Unfair Commercial Practices Directive - could include following elements:*

- *Define key terms and provide the conditions for use*

The MDEC highlights the need to further clarify in future EU guidance *when* certain claims and terms are ‘misleading’ for consumers and demonstrate *in which sense and why*. Future EU guidance should provide the conditions on the basis of which these claims can be used and provide concrete examples of 'good' and 'bad' practices. Further clarification is needed on 'points of confusion' such as cases where environmental claims are perceived to be misleading although they are based on existing norms and standards. An example is packaging that is marked as “compostable”, leading consumers to the justified assumption that such materials would decompose in their own garden compost which is not necessarily the case.

- *Provide further guidance on the use of general claims*

Environmental claims are sometimes too general, vague and not well-defined, using terms such as environmentally friendly, eco-friendly, carbon neutral, green, sustainable, natural, energy efficient, non-toxic, low carbon, pollutant-free, clean, zero emissions, life-cycle, ethical and fair.

Future EU guidance on environmental claims should provide specific requirements for this type of general claims. Examples can be: the need to be among the top products on the market regarding the environmental performance, the condition to make a complete product life cycle assessment or to accompany the general claim prominently with accurate qualifications.

- *Provide guidance on general requirements such as on documentation of environmental claims and access to information*

The MDEC recommends developing guidance on general requirements for environmental claims, for example, on what kind of evidence and documentation is needed and eligible to substantiate the (different) environmental claims. This would also be relevant for those businesses that import products into the EU to determine which information they need to collect from suppliers based in third countries. EU-wide criteria for claims substantiation is recommended to be developed including a classification system where e.g. independently peer-reviewed studies have a higher value than other studies. Furthermore, recommendations on access to information concerning this documentation should be developed as well.

- *Provide positive examples that stimulate environmental progress*

Future EU guidance should stimulate the market for more environmentally friendly products. It should help companies defining the way to communicate relative improvement i.e. compared to earlier product versions. Positive examples should be

provided of how claims could and should be used. The guidance should also illustrate the role of voluntary, third-party verified labels.

- *Allow company leadership and use of language reaching to consumers*

Future EU guidance should allow companies to better leverage leadership position and drive market differentiation. It should also allow engaging consumers through relevant communication, not only transmission of facts

- *Clarify the definition and scope of environmental claims*

The MDEC recommends the future EU guidance to clarify that an environmental claim *relating to the packaging* of a product is also covered in the assessment of environmental claims in the context of the UCPD and that *all channels of communication* are included as well.

- *Provide guidance on collaboration with NGOs and trade associations*

A trader may collaborate with particular NGOs, trade associations, etc., for the purpose of having specific products recommended to consumers. Such recommendation may appear more trustworthy to consumers. The MDEC recommends developing specific guidance for this type of cooperation, including transparency rules concerning payments or other compensations.

- *Raise awareness of the European Copy Advice Facility*

Copy advice is advice on a proposed advertising campaign provided by a self-regulatory body. EASA's European Copy Advice Facility allows advertisers, agencies and the media to seek copy advice in a different country from their own as well as in multiple countries at the same time; it currently covers 16 EU countries. The MDEC proposes that awareness is raised about this facility in future EU guidance on environmental claims.

- *Clarify points of contact and communication channels for consumer advice, including complaint channels available for consumers*
- *Develop EU wide criteria to ensure reliability of environmental labels (see 5.7)*

#### **5.4. Further develop the EU guidance in a multi-stakeholder context and review the effectiveness on a regular basis**

- In addition to the first concrete contributions in the previous section, *the MDEC recommends the further development of EU guidance on environmental claims in a multi-stakeholder context.*

If all stakeholders agree to the interpretations put forward, a greater sense of ownership on part of business, consumer organisations, public authorities etc., will be achieved as a result of their contribution to the interpretation of misleading versus good marketing practices. Such a guidance document will result in better and more accurate environmental claims and provide national enforcement authorities with a uniform standard. It will lay the foundation for equal and fair competition and support relevant and credible information.

- In the context of the future revision of the UCPD Guidance Document, *the MDEC recommends the European Commission to evaluate the effectiveness of this approach in protecting consumers from misleading environmental claims on a regular basis.*

### **5.5. Promote coherent and coordinated enforcement approach**

- In addition to the EU guidance, *the MDEC recommends a coherent and coordinated enforcement approach on environmental claims through the following actions:*

- *Foster exchanges of views between national enforcement authorities on enforcement activities in relation to environmental claims*

The MDEC recommends that authorities discuss relevant enforcement activities on environmental claims and issues of interpretation of the UCP Directive in this field, including in the framework of the activities of the Consumer Protection Cooperation network.

- *Enhance administrative cooperation and improve verification methods*

The MDEC recommends developing a common enforcement approach through enhanced administrative cooperation and exchange of best practices and of information such as on complaints handling and "case law". This cooperation should also include exchange on verification methods and evidence support. It is specifically suggested that recommendations are developed for enforcers on the verification method, for example in which cases laboratory testing are needed or when controls on documents are sufficient. To facilitate such cooperation between enforcers, a good IT-system for information exchange is recommended.

- *Act on claims when decisions available in other EU countries*

The MDEC recommends that national market surveillance authorities consider acting on misleading claims in their jurisdictions in cases where other Member States have already achieved a decision of an enforcement body or even a court decision.

- *Secure appropriate enforcement capabilities to preserve the Single Market and prevent different national interpretations*

In the context of the difficult economic and budgetary situation in EU Member States, the MDEC recommends that sufficient and appropriate enforcement capabilities are set in order to secure compliance with consumer protection rules throughout the Single Market, including in the area of environmental claims, and as a result to ensure a high level of consumer protection and a level playing field for business.

## 5.6. Strengthen self-regulatory initiatives and encourage co-regulatory approaches

- *The MDEC recommends strengthening self-regulatory initiatives and encourage co-regulatory approaches with following actions:*

▪ *Promote self-regulatory systems when meeting 'best practice' criteria*

The MDEC advises the European Commission, national authorities and civil society to consider how they can give recognition and promote self-regulatory systems when these fulfil 'best practice' criteria such as adequate monitoring and accountability of performance and outcomes, involvement and participation of civil society (consumer organisations and environmental NGOs) in decisions, transparency of those decisions, user-friendly complaint system, etc.

▪ *Facilitate meetings between different types of regulators*

The MDEC recommends discussing on a regular basis issues of implementation and enforcement associated with the UCPD, including on environmental claims, with both regulators and self-regulators.

▪ *Encourage co-regulatory national approaches and more consistency of sanctions between national enforcers and self-regulatory bodies*

The MDEC recommends self-regulatory bodies and national authorities to work together and to develop co-regulatory rules and agreements. It also recommends that a more coherent approach between the "legal" sanctions (determined in legal acts) and the sanctions established by self-regulatory organisation is promoted throughout the EU.

## 5.7. Support ambitious and credible environmental labels

- *The MDEC recommends to support ambitious and credible environmental labels with the following actions in this area:*

▪ *Promote robust labelling schemes including "labels of environmental excellence"*

Using a reputable scheme with clear criteria will often be the most effective way for businesses to demonstrate to consumers that they are meeting high environmental standards. The MDEC encourages businesses to apply for robust labelling schemes including the most ambitious ISO-type I "labels of environmental excellence".

▪ *Develop EU wide criteria to support transparency and credibility of all environmental labels*

The MDEC recommends the development of EU wide criteria and recommendations to promote transparency and credibility of all environmental labels, for possible inclusion in future EU guidance on environmental claims. To this end, inspiration can be found in existing national and sectoral guidelines, including guidelines in related areas, such as the 'EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs'.<sup>51</sup>

<sup>51</sup> Although these guidelines are designed for voluntary *food* labelling schemes and going beyond environmental aspects, many recommendations are not food specific and could be used as a basis for further work. COMM 2010/C 341/04. Available via <http://ec.europa.eu/agriculture/quality/certification>

## **5.8. Assess the regulatory framework with a view to possible new approaches**

- *The MDEC recommends assessing the regulatory framework on environmental claims with a view to possible new approaches for the medium or longer term.*

In the context of the regular review of the EU legislative framework, such as the (upcoming) Commission report on the application of the Unfair Commercial Practices Directive<sup>52</sup> and other Commission initiatives such as the EU Consumer Market Study on environmental claims (that will provide policy recommendations for future policies), the MDEC suggests to explore on the basis of these upcoming results possible new approaches for the medium or longer term that would offer the best policy options for protecting consumers against misleading environmental claims.

*Elements for further examination could include following:*

- *Experiences from EU co-regulation in other fields, as defined by the 2003 Inter-institutional Agreement on Better Law Making<sup>53</sup>.*
- *Experiences from other EU legislation such as the Nutrition & Health Claims Regulation<sup>54</sup>.*
- *The needs, feasibility, costs and benefits of new regulatory options such as a ban of certain misleading environmental claims, or more harmonised environmental labels to facilitate product comparisons for consumers.*

## **5.9. Continue MDEC with a new mandate of work**

- *The MDEC recommends continuing the work and agreeing on a new mandate, covering in particular the following areas:*

- *Provide input and stakeholder feedback in the recently launched EU consumer market study on environmental claims.*
- *Assist the European Commission in the development of new EU guidance on environmental claims.*
- *Contribute with input and feedback with a view of possible new approaches for the medium or longer term.*

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<sup>52</sup> As provided for by Article 18 of the UCPD.

<sup>53</sup> 2003/C 321/01. See above Section 2.2 Self-regulation and co-regulation.

<sup>54</sup> Regulation (EC) 1924/2006

## ANNEXES

### Annex 1 - Existing guidelines on environmental claims

#### **General/cross-sectoral guidelines:**

- Chapter 2.5 Misleading Environmental Claims, p. 37 – 46, in Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices [http://ec.europa.eu/justice/consumer-marketing/files/ucp\\_guidance\\_en.pdf](http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf)  
All language versions of this Guidance document can be found via [http://ec.europa.eu/justice/consumer-marketing/unfair-trade/unfair-practices/index\\_en.htm](http://ec.europa.eu/justice/consumer-marketing/unfair-trade/unfair-practices/index_en.htm)
- Guidelines for making and assessing environmental claims, December 2000, European Commission. [http://ec.europa.eu/consumers/cons\\_safe/news/green/guidelines\\_en.pdf](http://ec.europa.eu/consumers/cons_safe/news/green/guidelines_en.pdf)
- Environmental and Ethical Marketing Claims Guidance, Denmark (2011) <http://www.consumerombudsman.dk/Regulatory-framework/dcoguides/Environmental-and-ethical-marketing>
- DEFRA Green Claims Guidance, United Kingdom (2011) <http://www.defra.gov.uk/publications/2011/06/03/pb13453-green-claims-guidance>
- Practical Guide to Environmental Claims, France (2012) [http://www.economie.gouv.fr/files/files/directions\\_services/dgccrf/documentation/publications/brochures/2012/Guide\\_allegat\\_environ\\_en\\_2012.pdf](http://www.economie.gouv.fr/files/files/directions_services/dgccrf/documentation/publications/brochures/2012/Guide_allegat_environ_en_2012.pdf)
- Italian Advertising Self-Regulation Code (Codice di Autodisciplina Pubblicitaria), which was lastly updated in August 2012 <http://www.iap.it/it/codice.htm>
- Italian Guidelines on Greenwashing adopted in April 2011 by the main regional business federation, Assolombarda [www.assolombarda.it/fs/201141511447\\_129.pdf](http://www.assolombarda.it/fs/201141511447_129.pdf)
- Inter-sectoral Code of conduct in the field of “green advertising”, Belgium. [http://economie.fgov.be/fr/spf/structure/Commissions\\_Conseils/Commission\\_Etiquette\\_Pubeco](http://economie.fgov.be/fr/spf/structure/Commissions_Conseils/Commission_Etiquette_Pubeco)  
[http://economie.fgov.be/nl/fod/structuur/Commissies\\_Raden/Commissie\\_milieu\\_etikettering\\_reclame/](http://economie.fgov.be/nl/fod/structuur/Commissies_Raden/Commissie_milieu_etikettering_reclame/)  
[http://www.jep.be/media/pdf/code\\_intersectoriel/milieu\\_fr.pdf](http://www.jep.be/media/pdf/code_intersectoriel/milieu_fr.pdf)  
[http://www.jep.be/media/pdf/intersectoriele\\_code/milieu\\_nl.pdf](http://www.jep.be/media/pdf/intersectoriele_code/milieu_nl.pdf)
- Guidelines International Chamber of Commerce, Framework for Responsible Environmental Marketing Communications (2011). <http://www.iccwbo.org/advocacy-codes-and-rules/document-centre/2010/framework-for-responsible-environmental-marketing-communications>
- Norwegian Consumer Ombudsman's guidelines on environmental claims and "climate neutral" claims in marketing (2009) [http://www.forbrukerombudet.no/asset/3645/1/3645\\_1.pdf](http://www.forbrukerombudet.no/asset/3645/1/3645_1.pdf)  
[http://www.forbrukerombudet.no/asset/3603/1/3603\\_1.pdf](http://www.forbrukerombudet.no/asset/3603/1/3603_1.pdf)
- Guides for the Use of Environmental Marketing Claims, United States, proposed revisions in 2011 and published on 1<sup>st</sup> October 2012 <http://www.ftc.gov/opa/2012/10/greenguides.shtm>



**Sectoral guidelines/codes of conduct/communication principles**

- Best Practice Principle for environmental claims in automotive marketing to consumers  
[www.lowcvp.org.uk/assets/banner/files/4250575342495a58.pdf](http://www.lowcvp.org.uk/assets/banner/files/4250575342495a58.pdf)
- Cosmetics Europe Guiding Principles on responsible advertising and marketing communication  
<https://www.cosmeticseurope.eu/news-a-events/news/355-launch-of-the-cosmetics-europe-guiding-principles-on-self-regulation-in-advertising.html>
- List of common criteria for cosmetic product claims (including those that are environmental, as far as they refer to the functions and the characteristics of products); these criteria will be published in an EU Regulation, expected in 2013. The criteria relate to legal compliance; truthfulness; evidential support; honesty; fairness; informed decision-making (by the end user).
- Food Sustainable Consumption and Production Round Table 'Guiding Principles' and Report on 'Communicating environmental performance along the food chain'  
[http://www.food-scp.eu/files/Guiding\\_Principles.pdf](http://www.food-scp.eu/files/Guiding_Principles.pdf)  
[http://www.food-scp.eu/files/ReportEnvComm\\_8Dec2011.pdf](http://www.food-scp.eu/files/ReportEnvComm_8Dec2011.pdf)
- EUROOPEN – Packaging Supply Chain: EUROOPEN Guidelines on how to communicate LCA based environmental information throughout the packaging supply chain (business to business): website: [LCA guidelines](#)
- Packaging Supply Chain: Global Protocol on Packaging and Sustainability (GPPS) , initiated by the Consumer Goods Forum website:  
<http://globalpackaging.mycgforum.com>
- French sectoral guidelines - Conseil National de l'Emballage (CNE) – Environmental Claims on Product Packaging: French Packaging Council Views and Recommendations:  
[http://www.conseil-emballage.org/Img/Publications/97\\_1.pdf](http://www.conseil-emballage.org/Img/Publications/97_1.pdf)
- AISE Charter for Sustainable Cleaning. The Charter for Sustainable Cleaning is a voluntary initiative of the European soaps, detergents and maintenance products industry, led by A.I.S.E.  
[http://www.sustainable-cleaning.com/en.companyarea\\_documentation.orb](http://www.sustainable-cleaning.com/en.companyarea_documentation.orb)  
AISE is undertaking also campaigns to encourage consumers to use their laundry detergents in a more-environmental-friendly way.  
([www.washright.com](http://www.washright.com) , [www.cleanright.eu](http://www.cleanright.eu) )
- UK sectoral guidance documents:
  - o Green claims guidance in the decorative coatings sector
  - o Green claims guidance in the aerosol sector
  - o Best Practice Principles for Environmental claims in the automotive sector (Society of Motor Manufacturers and Traders, Low Carbon Vehicle Partnership and ISBA)
  - o Upcoming: the UK Cleaning Products Industry Association is developing sector guidance



## **Annex 2 - Country section: recent trends, complaints, surveys, case law examples and enforcement actions**

### **Complaints related to environmental claims in advertising**

In terms of complaints received by European self-regulatory organisations related to advertising content, the numbers are low. In total European advertising self-regulatory bodies received 60147 complaints about advertising in 2011. Issues varied from misleading advertising to taste and decency.

1% of complaints were related to misleading environmental claims. The complaints received by self-regulatory organisations on environmental claims related to both pure claims and imagery in the ad that gives the impression that the product advertised is more environmentally friendly than it is.

In terms of numbers of complaints received on environmental claims by national self-regulatory organisations there are noticeable differences between EU Member States. In 2011 France, Belgium, Germany and the UK received the most complaints with regards to environmental claims. In the Central- and Eastern European countries however, environmental claims are low to non-existent. The Hungarian self-regulatory organisation on advertising, ORT, for example has a section on environmental claims in its Self-regulation Code but does not identify complaints regarding environmental claims to be an issue. They believe that as a result of perceived low levels of environmental sensitivity amongst consumers that the industry has so far stayed away from using environmental claims in their advertisements.

### **Belgium**

#### **A. Number of complaints related to “greenwashing” :**

For a comprehensive overview in Belgium there are several sources to examine.

- *The Belgian Federal Ministry of Economy*

This Ministry is competent for the enforcement of the national law transposing the UCPD. Consumers and businesses can introduce a complaint against unsubstantiated or misleading claims, including on environmental aspects. The Economic Inspection Department of the Ministry can also take the initiative to identify misleading green claims on the Belgian market.

At this stage in time, only very few consumers (and no companies) have filed a complaint on this issue. In 2011-2012, only 2 complaints regarding misleading environmental claims were reported. More complaints have been reported on the transposition of the Directive 1999/94 relating to the availability of consumer information on fuel economy and CO2 emissions for new passenger cars.

- *JEP (Jury d’Ethique Publicitaire/Jury voor Ethische Praktijken inzake Reclame): self-regulatory body on advertising and Belgian member of EASA*

JEP is competent for cases involving misleading advertising (both on the basis of the relevant legislation and on the basis of the ICC Code), and applies both the Belgian Code

on Environmental Advertising and the (much more recent) section of the ICC Code dedicated to this issue when necessary<sup>55</sup>. On the whole, complaints on environmental claims do not constitute a large proportion of the total complaints the JEP receives.

In 2009 JEP handled 57 cases involving environmental claims; in 2010 this number rose to 387 and in 2011 fell to 243. In 2010 and 2011, the (absolute) majority of these cases were related to the visibility and legibility of the mentioning of CO<sub>2</sub>-emission and fuel use in car advertising. Since 2011 a joint action by JEP, the media and the car sector has addressed this problem.

- *The Belgian Federal Ministry of Environment :*

The Ministry is competent for management, and technical control of the EU Ecolabel scheme in Belgium.

- *The Regional authorities:*

The Regions are competent for the management and technical control of the organic label on food<sup>56</sup>, as well as for the management and control of the “Entreprise Eco-dynamique” label ) related to the environmental performance by enterprises.

B. Information campaigns or websites:

Following information websites have been developed with the financial support of public authorities and in cooperation with environmental and consumer NGOs:

- [www.labelinfo.be](http://www.labelinfo.be)
- [www.ecoscore.be](http://www.ecoscore.be)
- [www.ikkiesduurzaam.be](http://www.ikkiesduurzaam.be)

In addition, several environmental and consumer NGO's are active in the field of “eco-consumption” in Belgium such as Netwerk bewust verbruiken (<http://www.bewustverbruiken.be/>) and Eco-consommation (<http://www.ecoconso.be/>). They provide information to consumers about green claims and how to promote sustainable consumption patterns. For example, a Greenwashing campaign on cleaning and household products has been undertaken during 2012 <http://www.ecoconso.be/Campagne-2012-d-ecoconso-On-ne-se>. Some products were awarded by prizes such as the “best greenwash of the week”! In 2011, a Greenwashing Observatory of citizens was created and invited consumers to share the ads they consider to be “greenwashing” <http://www.iewonline.be/spip.php?article4179>.

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<sup>55</sup> Since 2001, labeling and packaging are outside of the JEP's remit.

<sup>56</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products

## Denmark

Recent case examples in Denmark in the area of environmental claims:

- A gas company made the claim '5 % less CO<sub>2</sub>. Same price – better for the environment'. A potential environmental benefit from replacing benzine/gas with bio ethanol consists of a reduction of greenhouse gases. However, a life cycle assessment would show that the effect varies considerably depending on the origin of bio ethanol and the way in which it is produced. The Consumer Ombudsman concluded that if expert studies give rise to significant disagreement or doubt as regards the environmental impact, the trader must refrain from marketing the message altogether. The Consumer Ombudsman also informed the company that misleading or incorrect marketing is not allowed. Where factual statements are made, these must be capable of being substantiated by documentation. The claims must be correct and material information must not be omitted. In the advertising material grass grew out of a car and as it drove away it left behind a trace of flowers. The Consumer Ombudsman was of the opinion that the advertising conveyed the impression to the consumers that the product was harmless to the environment; hence such means or effects should not be used in the marketing as the environmental benefit was not capable of substantiation.<sup>57</sup>

- An airline-company marketed a campaign "Fly green". The company stated that the emission of CO<sub>2</sub> from their propeller planes, on a specific flight, was less than the emission from a jet plane. As the company, in its comparison between different types of transport means, failed to mention that trains emitted far less CO<sub>2</sub> than planes, the Consumer Ombudsman considered the campaign misleading. The wording of the ad, along with its layout, use of colours, images etc., contributed to conveying the impression of an environmental advantage. According to the Consumer Ombudsman the marketing message was not loyal and balanced in the description of fuel consumption and environmental and climate impact. The advertising omitted material information which was considered misleading pursuant to section 3(1) of the Danish Marketing Practices Act, cf. Article 7(1,2) of the UCP Directive. The company also stated that you could neutralise the emission of CO<sub>2</sub> from your flight by changing 3 ordinary 60 watts electric bulbs with one energy-saving bulb. Linking the consumer's own private environmental initiatives to that of the company was considered misleading and a violation of the principle of good marketing practices.<sup>58</sup>

- The Maritime and Commercial Court of Copenhagen (Case ref. H-9-10) issued a decision 30 December 2011 regarding the presentation of the environmental benefits of packaging in a leaflet entitled 'Choose plastic! Safe, sustainable & modern appeal'. One of the claims stated; 'The metal packaging is far higher on CO<sub>2</sub> emission'. The Court concluded that to prevent unfair competition, the accurateness of the environmental claims must meet strong requirements. They must be clearly worded, true, accurate and not misleading and must be substantiated by documentation assessed by an independent body. The Court found that the statements were not sufficiently documented as the company only referred to its own calculations which were not verified by an independent body. Furthermore, it was not sufficiently clear that the environmental statements only concerned certain phases of the product life cycle and thus for example did not take into

<sup>57</sup> <http://www.forbrugerombudsmanden.dk/Sager-og-praksis/Markedsfoeringsloven/Sager-efter-markedsfoeringsloven/miljoeoetik/groenmarkedsf>

<sup>58</sup> <http://www.forbrugerombudsmanden.dk/Sager-og-praksis/Markedsfoeringsloven/Sager-efter-markedsfoeringsloven/miljoeoetik/Flyv-Groent-kampagne>

account the possibility of recycling metal in the production of new metal packaging. The statements were considered misleading and capable of significantly distorting consumers' or other traders' economic behaviour on the market. The company was found in breach of the Marketing Practices Act, sections 1, 3, 5(2, subsections 1, 3 and 5) and the ICC Framework for Responsible Environmental Marketing Communications, articles 11, 12 and 22) and chapter E as well as the Environmental Protection Act, section 8(5). The company was forbidden to use these statements.<sup>59</sup>

## **France**

In France, the use of environmental claims is increasing particularly :

- in supermarkets ;
- for industrial products.

Environmental claims for food are present for a longer time, and are regulated for example via Council Regulation 834/2007 about organic farming.

The number of green claims is also increasing in the services sector, particularly in tourism.

The French authorities received until now only a limited number of consumer complaints concerning misleading green claims. One of the reasons may be that consumers and business are not well informed about the conditions for a responsible use of environmental claims.

In order to control and punish misleading green claims, the enforcers use the Unfair Commercial Practices Directive (UCPD). In recent years, different stakeholders produced pedagogic documents on green claims. For instance, the French "*Conseil national de la consommation*" has formulated recommendations in a "*Guide des allégations environnementales*" based on an extensive multi-stakeholder dialogue between businesses, enforcers and consumer associations.<sup>60</sup>

The "*Autorité de régulation professionnelle de la publicité* (ARPP), the self-regulatory body on advertising in France, and the "*Agence de l'Environnement et de la Maîtrise de l'Energie*" (ADEME), the French public agency for environment and energy management monitor since 2009 jointly the implementation of a "Sustainable Development Code" for advertisements. The share of environmental advertisements showing full compliance with the Sustainable Development Code is 89%. This is constant during the last years. 5% of environmental advertisements are not in line with the sustainable development code and 6% contains minor flaws. Before this monitor mechanism was established, 50% of the complaints ARPP received were related to green claims. Today only 10% of complaints to ARPP concern green claims, however this is still much higher compared to the EU average (1%) A positive aspect of the French system is that the whole "life cycle" of the advert is covered: the creation (codes and copy advice), the broadcast (clearance) and after the broadcast (annual monitoring and Jury).

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<sup>59</sup> <http://domstol.fe1.tangora.com/Søgeside---domme.13990/H-0009-10.1211.aspx>

<sup>60</sup> Available at [http://www.economie.gouv.fr/files/guide\\_allégations\\_31janv.pdf](http://www.economie.gouv.fr/files/guide_allégations_31janv.pdf)

## **Italy**

The Competition Authority (Autorità Garante per il Mercato e la Concorrenza/AGCM)<sup>61</sup> ([www.agcm.it](http://www.agcm.it)), is the responsible administrative authority that enforces unfair commercial practices rules in Italy. Its activity is based on competences that have been widened and on powers that have been strengthened over the last decades. In terms of competences, several new areas have been included: misleading advertising (1992); comparative advertising (2000); unfair commercial practices (2007); unfair contractual terms (2012). The competence on unfair commercial practices has been extended to B2B in 2012.

In terms of powers, with particular reference to the field of unfair commercial practices, the AGCM has been granted a wide set of tools: identify and suggest changes in existing or draft legislation (advocacy); start investigation on its own initiative (ex officio) or upon complaint; order, ex officio, the suspension of a commercial practice in particularly serious/urgent cases (interim measure); invite the undertaking to stop the practice when the infringement is not serious (moral suasion); ask anybody for information and inspect business premises with the cooperation of the Tax Police in the course of formal investigation proceedings; accept commitments, except for clear and serious law infringements; at the end of the investigation, order to stop the unfair practice and impose fines, up to 5 million euro (the threshold, previously of 500 thousand euro, was raised in 2012); if the effect of an unfair practice still exist, impose measures to inform the consumers (e.g. by statements on mass media); class actions (e.g. for damages) before civil courts. It is worth mentioning that, since 2007 and up to the end of September 2012, the AGCM has concluded 1383 investigation and imposed a total amount 113 million euro of fines for misleading/unfair commercial practices.

The AGCM carried out a number of proceedings in the area of green claims, covering sectors such as heating systems, packaging; automotive; energy efficiency; drinking water. It is worth mentioning a list of cases: Iaber Caldaie Beretta (1999 – case PI/2486); Turconi, Marchi e certificazioni (2005 – case PI/4874); Sacchetti Coop biodegradabili al 100% (2006 – case PI/4927); Citroen C4 HDI FAP (2006 – case PI/5391); Acqua San Benedetto – La scelta natural (2009 – case PS/4026); Itacom – ECM biodegradabili (2010 – case PB/385); Ferrarelle Impatto zero (2012 – case PS/7235); Acqua Sant’Anna Bio bottle (2012 – case PS6303). For example, in the recent case Acqua Sant’Anna Bio bottle, the AGCM prohibited the dissemination of the advertisement (on the packaging, the trader website and in newspapers) that emphasized the reduction of greenhouse gas emissions by selling mineral water in bio plastic bottles. The environmental claim was misleading as the reduction of emissions was presented as directly related to compositional characteristics of the bottle (made of vegetal plastic) although it was in reality also linked to the compensation of the energy used for its production through the purchase of renewable energy certificates (since the trader took part in a funding system for the energy production from renewable energy sources). In addition, the ecological claim was presented as linked to the entire annual production instead of only a marginal part of it. The AGCM fined the trader 30.000 euro.

In evaluation of the above-mentioned cases, the AGCM took into consideration established principles and criteria stemming from, inter alia, the UCPD Guidance

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<sup>61</sup> <http://www.agcm.it/en/>

Document from the European Commission, the International Chamber of Commerce Framework as well as the OECD<sup>62</sup>.

### **Lithuania**

Recently the Supreme Administrative Court of Lithuania<sup>63</sup> has decided on misleading advertising of “Heinz” ketchup. The company was advertising the production of “Heinz” in particular tomato ketchup. The advertisement contained information “*without any preservatives or artificial colorant! Heinz uses the colorant only once – when it prints the label!*” The court stated that according to the legal acts of Lithuania no colorants can be added to any ketchup being produced. Thus the advertising activity emphasising the specific quality of the product was misleading as such quality was not specific to this particular product.

The similar decision was also passed by the Supreme Administrative Court of Lithuania in another similar case where the words “*natural, without preservatives*” were used for advertising the cheese products and ice cream. It was established that the products do not have these features or are similar to the product of the same kind.<sup>64</sup>

Law on Prohibition of Unfair Business-to-Consumer Commercial Practices was invoked in the case only remotely related to the environmental claims: the company UAB “Biosola” was publishing the magazine “*Gamtos namai*” (engl. *Home of the Nature*), and was advertising various products, however, not clearly disclosing that this was advertising.<sup>65</sup> The court has recognized that such actions can be recognized as misleading under the Law on Prohibition of Unfair Business-to-Consumer Commercial Practices.

### **Sweden**

Recent trends in Sweden show a declining rate of consumer complaints on environmental claims. During the period 2010-2012 the Swedish Consumer Agency received a total of 58 complaints, in 2010 it was 22, in 2011 it was 11 and in 2012 it was 12. The majority of the complaints concern the energy sector (e.g. hydropower, electricity). During the same period, the Swedish Consumer Agency had initiated 13 cases. One case in the Market Court regarding misleading claims (MD 2011:12) and one case in the Stockholm District Court regarding proceedings for imposition of a conditional financial penalty (Dnr 2009/1064 – KIA “environmentally friendly”). There was also one prohibition of certain marketing (FF 2012:07 – Granngården “environmentally friendly”).

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<sup>62</sup> See “*misleading environmental claims*”, Chapter 2.5 of the “*Commission staff working document. Guidance on the implementation/application of directive 2005/29/CE on unfair commercial practices*”, Brussels, 2009; ICC “*Framework for responsible environmental marketing communication*”, July 2011; OECD, “*Environmental claims. Finding and conclusions of the OECD Committee on Consumer Policy*”, March 2011.

<sup>63</sup> Lietuvos Vyriausiojo Administracinio Teismo 2012 m. rugsėjo mėn. 20 d. nutartis administracinėje byloje Nr. A-662-2895-12

<sup>64</sup> Lietuvos Vyriausiojo Administracinio Teismo 2011 m. rugpjūčio mėn. 11 d. nutartis administracinėje byloje Nr. A-492-2642-11

<sup>65</sup> Vilniaus apygardos administracinio teismo 2009 m. lapkričio mėn. 9 d. sprendimas administracinėje byloje Nr. I-2429-38/2009



In recent years, the Agency also notes a more frequent use of the term “ecological” on non-food products, for example cosmetics, household products (frying pans) and it identifies more subtle ‘green’ messages in the marketing such as images of leaves, trees and butterflies. The use of “self-declared” labeling schemes and symbols to emphasize the environmental benefits of a product is common in Sweden. The term “eco” or “organic” are frequently used on cosmetic products and often in combination with a symbol. The Swedish Consumer Agency has recognized the use of self-declared “eco”-symbols as a problem for consumers. Such symbols may give consumers the impression that the product has been approved by a third party (official body or organisation) which is not the case.

The Market Court (case MD 2011:12) further developed its case law on the use of environmental claims in marketing of passenger cars. The Market Court stated that it should be possible for a manufacturer to use the term “environmentally friendly” on condition that the manufacturer clearly shows the environmental benefits referred to in the car model. Furthermore, the manufacturer is required to qualify the claim through information which is clearly prominent, easy to understand and positioned in proximity to the environmental claim, or if the trader in another way can ensure that the claim and the qualification is read together.

The Market Court (case MD 2011:13) regarding the use of the claim “environmentally friendly” on a product with a public label (Nordic Swan)<sup>66</sup>. The Market Court concluded that public labels, in this case the Nordic Swan, is obtained based on certain predetermined criteria and means that the product has a reduced environmental impact in relation to products in the same category that do not meet the requirements, but does not in itself result that the product can be marketed as “environmentally friendly”.

### **United Kingdom**

The number of advertisements receiving complaints about environmental claims 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, and, in 2011, 156 ads received complaints. In 2010, a little over 1% of the ads complained about to the ASA received complaints on the grounds of environmental claims made.

In 2008, the ASA conducted a proactive survey of advertisements making green claims. The survey found a compliance rate of 94% with the Advertising Codes (ASA). Of the 195 ads that were looked at, 12 breaches were identified. All the breaches recorded were against non-broadcast ads. The breaches that were identified predominantly involved the use of, without qualification, general terms like ‘environmentally friendly’ or ‘green’ or ‘easy on the environment’. Breaches also included a ‘zero carbon’ claim for a hybrid car.

Defra’s<sup>67</sup> 2009 assessment of green claims in marketing found:

- *Adverts carrying a green claim made up 0.68% of all adverts sampled, however this figure rose to up to 2.7% for the most prominent sectors; automotive, energy and the public sectors.*
- *Green claims tripled in number between 2006 and 2007/8, although have fallen back since.*

<sup>66</sup> <http://www.marknadsdomstolen.se/Filer/Avgöranden/Dom2011-13.pdf>

<sup>67</sup> UK Department for Environment, Food and Rural Affairs



- 68% of claims were found in print media, mainly in the broadsheets, despite TV and internet accounting for a much larger segment of adverts as a whole. This suggests they are targeted at the upper segments of the market.
- Around 61% of green claims relate to a specific product or service, with around 21% relating to a company's broader brand message. Many of the remainder are from public campaigns, e.g. encouraging the public to recycle more. These figures varied by sector.

Defra's 2009 assessment of green claims on product packaging found:

- *Claims are widespread.* From 3,234 items, 4,492 claims were observed in total. 63% of the items sampled had at least one green claim. However this reduced to 41% if advisory claims that could be said to not infer an environmental benefit, such as 'please recycle', were excluded. When an item had at least one green claim, the average was 2.2 claims per item.
- *The frequency of green claims varied by product or service.* 5 products (*cars, household surface cleaners, bottled water, baby food & paint*) had at least one green claim on every item viewed. A further 7 (*Shampoo, milk, baby lotion, nappies, washing machines, fabrics washing products & windows*) had at least one green claim on 90% of items viewed. Overall, over two thirds of the 32 different products and services sampled had a green claim on over 50% of the items viewed.
- *"Third-party logos" are widespread, "self-made logos" are not.* 53% of all claims are third-party logos (mostly advisory recycling logos), 36% of these third-party logos are "verified logos" that comply with a code or set of criteria checked by an independent organisation. Only 2% of all claims were self-made by the company making the claim<sup>68</sup>.
- *Many claims could be argued as not inferring a product's environmental benefit.* Claims such as 'please recycle' or the Mobius Loop, which suggests a product can be recycled, arguably do not claim a specific benefit. These types of claims made up 44% of all claims seen. Most referred to recycling or recyclability and, when removed, 11 of the 32 different product types surveyed had the numbers of claims observed on them drop by 50% or more.

<sup>68</sup>Following definitions are used in the DEFRA study:

Self-made logo	Logos created by the product manufacturer, not used by other manufacturers or organisations
Third-party logo	Logos that are not self-made by the product manufacturer. These include logos that are either mandatory or voluntary, rule based or non-rule based, verified or not verified
Verified logo	Logos where compliance with the standard or criteria is verified by an independent third party, ecolabel organization, or other party

Source:

<http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=0&ProjectID=16568>



**Mercedes-Benz (United Kingdom) Ltd , 30 September 2009**



A press ad for Mercedes-Benz vehicles stated “It’s a pleasure, but not a guilty one.” The body copy stated “CO2 emissions for the range are down to 139g/km\*, which means it’s better for the environment. It also means you pay less tax. And there’s something else that’s lower than you’d expected as well. The price.” The asterisk linked to a footnote which stated “CO2 emissions: 139-261/km

The ASA considered that the claim "CO2 emissions for the range are down to 139 g/km\*, which means it’s better for the environment" was likely to be understood by readers as meaning that the range as a whole was low in emissions relative to previous models and also when compared with other vehicles in the class.

The ASA noted, however, that although those vehicles in the range with the lowest emissions of 139 g/kg compared favourably with competitors vehicles of a similar class, a number of vehicles in the range had emissions levels that were at the higher end of the DfT emissions bandings. The ASA concluded that the body copy of the ad misleadingly implied that the whole E-Class Saloon range had emissions of 139 g/kg or similar and the claim was likely to mislead.

## Shell Europe Oil Products Ltd, 7 November 2007



A national press ad, for Shell, was headlined "DON'T THROW ANYTHING AWAY THERE IS NO AWAY"

The ASA noted Shell used some of its waste CO<sub>2</sub> to grow flowers and that this had environmental benefits. However, the ASA considered that, in the absence of qualification, most readers were likely to interpret the claim "We use our waste CO<sub>2</sub> to grow flowers", especially in the context of the image and the headline claim "Don't throw anything away there is no away", to mean that Shell used all, or at least the majority, of their waste CO<sub>2</sub> to grow flowers, whereas the actual amount was a very small proportion. The ASA concluded that the claim was likely to mislead.

## Finnair, 6 January 2010



A poster for an airline featured an image of an Airbus flying over the Finnish coastline.

The ASA considered that readers were likely to interpret the claim eco-smart, without qualification, as a claim analogous to environmentally friendly which conveyed the impression that flying with Finnair would have little or no detrimental effect on the environment. Because this was not the case, the ASA concluded the claim was likely to mislead.

**Annex 3 - List of the MDEC Participants and Speakers**

<b><u>Consumer associations, NGOs and academic</u></b>	
<i>Participants:</i>	
BEUC - The European Consumer Organisation	Sylvia Maurer Agustin Reyna
Confederation of Family Organisations	Martin Schmalzried
Consumer Focus	Heidi Ranscombe
Friends of the Earth	Martin Wildenberg Kewin Comploi
Luxembourg Consumer Union	Bob Schmitz
The Swedish Consumers' Association	Jens Henriksson
Transport Environment	Greg Archer
University of Oslo	Prof. Beate Sjøfjell
<i>Speaker:</i>	
ISEAL Alliance	Patrick Mallet
<b><u>Public bodies, national authorities and enforcers</u></b>	
<i>Participants:</i>	
Belgium Federal Economy Ministry	Nathalie Jouant Dominique Lemaigre
Danish Consumer Ombudsman	Henrik Saugmandsgaard Øe
Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, France (DGCCRF)	Aurélien Hauser
Institut National de la Consommation, France	Amandine Roujas
Italian Competition Authority (AGCM)	Marina Catalozzi
Italian Ministry of Economic Development	Francesco Piccarreta
Swedish Consumer Agency	Emy Gustavsson
UK Department for Environment, Food and Rural Affairs	Alice Baverstock Ruth Coward Adam Lavis
<i>Speakers:</i>	
United Nations Environment Programme	Liazzat Rabbiosi
USA Federal Trade Commission	Danica Noble
<b><u>Business associations and advertising self-regulatory bodies</u></b>	
<i>Participants:</i>	
AIM – The European Brands Association	Katrin Recke
Business Europe	Ariane Thomas

Cosmetics Europe	Manuela Coroama
Eurocommerce	Götz Brandau
European Advertising Standards Alliance (EASA)	Oliver Gray Jennifer Pearson
EUROPEN	Virginia Janssens Francois Paquet
FoodDrinkEurope	Tove Larsson
International Association for Soaps, Detergents and Maintenance Products (AISE)	Valerie Sejourne
World Federation of Advertisers	Ian Twinn
<i>Speakers:</i>	
Autocontrol (Spanish EASA member)	Fernando Garcia
GfK Significant	Marcelline Bonneau
JEP (Belgian EASA member)	Piet Jaspert
<b><u>European Commission</u></b>	
<i>Participants:</i>	
DG Health and consumers	Carina Törnblom Olivier Micol Jeroen Van Laer Siv Elin Aanestad Gianpaolo Scacco
DG Justice	Angelo Grieco Sophie Ridoux
DG Environment	Pavel Misiga Patrice Gruszkowski Imola Bedo Peter Czaga
<i>Speakers:</i>	
DG Agriculture and Rural Affairs,	Maria Fladl
DG Communications Networks, Content and Technology	Andrea Glorioso