



Netherlands Institute
for Sustainable Packaging

FACTSHEET

Environmental claims



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Introduction

Companies can feature so-called sustainability claims on their packaging. Sustainability claims can be divided into environmental claims and ethical claims. Environmental claims concern a positive impact on the environment, while ethical claims are about working conditions, animal welfare or corporate social responsibility, among others.

Sustainability claims on packaging are generally environmental claims. The Advertising Code Foundation (Stichting Reclame Code, SRC) defines an environmental claim as follows:

'Claim that suggests or otherwise implies that a product or activity has a positive, reduced or no environmental impact. Such claims may concern the environment in general or certain aspects of the environment, such as air, water, soil, ecosystems, biodiversity or the climate.'

The Netherlands Authority for Consumers and Markets (ACM) employs a similar definition of environmental claims:

'Claims that imply that a company's product or activity has a positive or no impact on the environment or is less harmful to the environment than competing goods or services. The products in question attain their environmentally friendly nature through e.g. their composition, the manner of their production, the manner in which they can be disposed of or the fact that their use is more energy efficient or less polluting.'

For businesses, it is often difficult to determine when environmental claims are allowed and when they cannot be used because they are misleading. The Netherlands Institute for Sustainable Packaging (KIDV) aims to provide more clarity on this by showcasing a series of examples (see part II of this fact sheet). Where relevant, these examples refer to applicable laws and legislation, rulings of the Advertising Code Committee (Reclame Code Commissie, RCC) or the SRC's Board of Appeal (BoA) and to the Sustainability Claims Guideline of the Netherlands Authority for Consumers and Markets (Autoriteit Consument & Markt, ACM). KIDV wants to stress that any (environmental) claims should always be evaluated on a case-by-case basis and in the specific context in which they are used. Therefore, the examples in this fact sheet are not necessarily applicable at all times. Rather, they are intended to provide insight into the interpretation of the legal framework. This legal framework is explained in more detail in part I of this fact sheet.

This fact sheet was drawn up by the Netherlands Institute for Sustainable Packaging (Kennisinstituut Duurzaam Verpakken, KIDV) in cooperation with Axon Advocaten.

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PART I: Legal framework

There are several (legal) sources that prohibit misleading and other unauthorised claims, including European and national legislation as well as self-regulatory advertising codes and standards.

Although enforcement authorities monitor compliance with the law and not self-regulation, self-regulation often plays a role in interpreting the law. The aforementioned sources of law therefore coexist in a sense. Companies making environmental claims for packaging materials are therefore advised to act in accordance with each of these sources. Key sources are detailed below.

Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food

This European Regulation¹ forms the basis of food contact material legislation and is therefore also referred to as the 'framework regulation'. This Regulation sets requirements for the suitability and safety of food contact materials. Article 3 (2) of this Regulation states that the labelling, advertising and presentation of a material or article shall not mislead the consumer. This Regulation is directly applicable in the Netherlands; enforcement of the above-mentioned prohibition on misleading claims is based on national law, namely the Packaging and Consumer Articles (Commodities Act) Decree.²

The Netherlands Food and Consumer Product Safety Authority (Nederlandse Voedsel- en Warenautoriteit, NVWA) is responsible for ensuring compliance with the above rule. The Administrative Fines (Commodities Act) Decree³ specifies that violations are punishable with a fine of €525 for companies employing 50 or fewer people on the day of the violation and with a fine of €1,050 for companies employing more than 50 people on the day of violation. These amounts may be increased if the offender has previously been fined for a similar offence in the past two years and is no longer subject to legal remedies, such as objection and appeal. Furthermore, the severity of the violation, the degree of culpability and the circumstances under which the violation occurred may result in a higher fine. Although the above amounts appear to be relatively small, in practice companies are particularly affected by reputational damage due to an imposed fine and/or a published negative inspection report.

¹ Available online at <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:02004R1935-20090807&from=NL>.

² Article 2 (3) of the Packaging and Consumer Articles (Commodities Act) Decree. Available online at <https://wetten.overheid.nl/BWBR0018370/2021-07-01/o>.

³ Available online at <https://wetten.overheid.nl/BWBR0011841/2023-07-01>.



Unfair Commercial Practices Act

Section 3A, Title 3 of Book 6 of the Dutch Civil Code (CC)⁴ contains provisions on so-called unfair commercial practices. These provisions are referred to as the Unfair Commercial Practices Act, which implements European Directive 2005/29⁵ into Dutch law. Among other things, this Act determines that providing factually incorrect information or information that misleads or is likely to mislead the average consumer constitutes a misleading commercial practice and is not permitted. The determining factor here is whether the average consumer, as a result of the misleading information, decides to buy the product in question (or enter into some other type of agreement), when they would not otherwise have made that decision.⁶ A more detailed interpretation of the concept of deception and other unfair commercial practices pertaining to environmental claims can be found in section 4.1 of the European Commission's guidance documents for Directive 2005/29.⁷

The Netherlands Authority for Consumers & Markets (Autoriteit Consument & Markt, ACM) ensures that companies compete fairly and comply with the Unfair Commercial Practices Act. Consumers and competitors can tip off the ACM in case of an (alleged) violation. In the event of a violation of this Act, the ACM has the power to impose fines of up to €900,000 or, if greater, a certain per mill of the company's total annual turnover. The exact fine amount will depend on the relevant fine category as stated in the Annex to the ACM 2014 Fining Policy Rules.⁸ Fine-increasing and fine-reducing circumstances also play a role in determining the fine amount, such as repeated violations and the provision of compensation to injured parties, respectively.

However, the ACM can also first issue a binding instruction or a warning to a company that is violating a legal standard. Furthermore, the ACM may impose a penalty payment to prevent the recurrence of the violation. Sanction decisions of the ACM are made public through its website, taking into account business-sensitive information.^{9, 10}

To stay informed about new disclosures, interested parties can subscribe to an email service via the ACM website.

⁴ https://wetten.overheid.nl/BWBR0005289/2022-07-01#Boek6_Titeldeel3_Afdeling3A.

⁵ <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:02005L0029-20220528&qid=1658754110579&from=NL>.

⁶ Article 6:193c CC.

⁷ [https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:52021XC1229\(05\)&qid=1647944133608&from=NL](https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:52021XC1229(05)&qid=1647944133608&from=NL).

⁸ <https://wetten.overheid.nl/BWBR0035322/2016-07-01>.

⁹ See also the ACM Disclosure Procedure. Available online at <https://wetten.overheid.nl/BWBR0036859/2020-02-12>.

¹⁰ For published sanction decisions, see the ACM's publication website. Available online at <https://www.acm.nl/nl/publicaties/zoeken-in-publicaties?datasource=entity%3Anode>.



Enforcement by the ACM is separate from the ability of competitors to go to civil court if they believe they have been harmed by unfair competition.

ACM Guidance on Sustainability Claims

The ACM, the enforcement authority in the field of consumer law, drew up its own guidance on sustainability claims in 2021. This guidance was updated in June of 2023.¹¹ With this guidance, the ACM intends to help consumers make sustainable choices and protect companies from unfair competition from industry peers who engage in 'greenwashing'. The guidance is presented as a tool to help companies comply with the law. The ACM applies the guidance itself in the context of enforcing the Unfair Commercial Practices Act (see above).

The ACM Guidance on Sustainability Claims is based on the following five rules of thumb, which are explained in more detail and illustrated through practical examples:

1. Use accurate, clear, specific and complete sustainability claims.
2. Support sustainability claims with facts and keep them current.
3. Make sure comparisons to other products or competitors are fair.
4. Describe future sustainability ambitions in a concrete and measurable manner.
5. Make sure visual claims and labels are helpful to consumers and not confusing.

Dutch advertising code of the Advertising Code Foundation

The Advertising Code Foundation (Stichting Reclame Code, SRC) is the Dutch body concerned with self-regulation. The SRC employs a general advertising code,¹² also referred to as the Dutch Advertising Code (Nederlandse Reclame Code, NRC) and several specific advertising codes, including the Sustainability Advertising Code (Code voor Duurzaamheidsreclame, CDR)¹³. The CDR entered into force on 1 February 2023 to replace the Environmental Advertising Code (Milieu Reclame Code, MRC). Environmental claims are subject to both the NRC and the CDR.

¹¹ https://www.acm.nl/system/files/documents/leidraad-duurzaamheidsclaims_o.pdf.

¹² https://www.reclamecode.nl/nrc_taxonomy/algemeen/.

¹³ <https://www.reclamecode.nl/nrc/code-voor-duurzaamheidsreclame-cdr/>.



In short, the CDR covers the following topics and rules:

1. Definition of sustainability claims (including environmental claims and ethical claims).
2. Scope of the CDR: all sustainability advertising.
3. Sustainability claims must not be misleading.
4. Sustainability claims must be demonstrably accurate.
5. Clarify the components/aspects of the product to which the environmental claim applies.
6. Conditions for sustainability claims regarding the absence / reduction of environmentally harmful components.
7. Conditions for comparisons to other products or businesses.
8. Conditions for the use of sustainability designations and symbols.
9. Waste processing and collection must be utilised in practice and a sufficient degree of reuse / recycling must be achieved in order to make a claim about this.

The SRC offers both consumers and competitors an accessible way to report complaints about advertising that violates the self-regulatory rules to the independent Advertising Code Commission (Reclame Code Commissie, RCC). Companies can then lodge an appeal against a decision made by the RCC with the Board of Appeal (BoA). Rulings of the RCC and the BoA are published on the RCC's website.¹⁴ The RCC and the BoA can only make recommendations. Although they cannot impose fines, they are in close contact with the relevant enforcement agencies, such as the ACM. Furthermore, the rulings of the RCC and the BoA are not legally enforceable, although they are authoritative. For example, a study conducted by the SRC shows that over 96 percent of advertisers follow the recommendations of the RCC to modify or withdraw non-compliant advertising.¹⁵ One reason for this is the impact of such a ruling on the reputation of the company concerned. Moreover, the CDR and the decisions of the RCC and the BoA are very helpful for the interpretation of open standards, such as the prohibition of false advertising in European and national legislation.

Standards

Standards are basically tools to ensure compliance with the law, but they can also play a role in the interpretation of law. The choice of whether to abide by standards or not is voluntary, as companies are free to demonstrate their compliance with the law in other ways. However, customers may require their suppliers to ensure that products meet certain (certified) standards. The International Organization for Standardization (ISO) has developed three standards on environmental claims: ISO 14024:2018¹⁶ for environmental claims substantiated by third parties for which companies can

¹⁴ <https://www.reclamecode.nl/uitspraken/>.

¹⁵ <https://www.reclamecode.nl/compliance/>.

¹⁶ <https://www.iso.org/standard/72458.html>.



obtain certification, ISO 14021:2016¹⁷ for environmental labels and declarations issued and made by companies themselves, and ISO 14025:2006¹⁸ on life cycle impacts. In addition, the European Commission has developed guidance documents to help companies formulate environmental claims that have not been substantiated by third parties.¹⁹ These guidance documents serve to create clarity regarding standard ISO 14021 and facilitate its implementation.

¹⁷ <https://www.iso.org/standard/66652.html>.

¹⁸ <https://www.iso.org/standard/38131.html>.

¹⁹ Guidelines for the formulation and evaluation of environmental claims, December 2000, European Commission. Available online at https://ec.europa.eu/consumers/archive/cons_safe/news/green/guidelines_nl.pdf.



PART II: Practical examples

Example 1 - Recyclable

The claim that a packaging is recyclable must be demonstrably accurate. This is evident from article 4 of the Sustainability Advertising Code (Code voor Duurzaamheidsreclame, CDR) of the Advertising Code Foundation (Stichting Reclame Code, SRC). In 2017, an advertiser successfully referred to compliance with the guidelines of the European PET Bottle Platform (EPBP) to substantiate their 'recyclable' claim.²⁰ Another example of an accepted substantiation of a recyclability claim is factual evidence of collection of the product and its reprocessing into other products.²¹ Quality marks issued by renowned independent bodies can also serve as justification of a sustainability claim if said claim is specifically based on these quality marks.²²

If recycling of the packaging is (theoretically) possible, but the necessary collection and/or processing method for the packaging bearing the claim is not (yet) sufficiently available to the target group (generally the users of the packaging), the packaging cannot be advertised as being 'recyclable'. A sufficient recycling percentage must be achieved for the packaging in question. How absolute recycling options are presented is an important factor.²³ If a packaging has limited recyclability in practice, a company should be honest about this fact. Furthermore, claims of '100% recyclable' should be avoided if there are no facts to back up these claims. Click [here](#) to consult KIDV's Recycle Checks for more information about recyclability.

To avoid deception with regard to the recyclability of packaging, it may be necessary to provide additional information. For example, if the claim does not relate clearly to the packaging or the contents of the packaging, this must be clarified.²⁴ Further clarification is also necessary if the claim applies exclusively or almost exclusively to certain parts of the packaging.²⁵ It is important that any *disclaimer* is not printed so small that it would be easily overlooked by the average consumer.²⁶ Where such *disclaimers* are not immediately apparent from the claim itself, they may be explained elsewhere on the packaging, e.g. by means of an asterisk. If this explanation is communicated in a place other than on the packaging or in the relevant advertisement, while there is room to do so on the packaging or in the advertisement, this may be misleading. For example, in December 2015, the

²⁰ RCC 20 December 2017, file 2017/00812.

²¹ RCC 28 November 2022, file 2022/00324.

²² Article 8 CDR.

²³ Article 9 CDR.

²⁴ RCC 27 March 2019, file 2019/00127.

²⁵ Article 5 CDR. See also RCC 28 November 2022, file 2022/00324.

²⁶ RCC 30 November 2010, file 2010/00549.



RCC deemed the claim that a bottle of dishwashing liquid was made of plastic fished from canals to be misleading, despite the fact that the neck tag around the bottle stated that the bottle was made of 10 percent canal plastic and 90 percent recycled plastic. It was noted that there was enough space left in the advertisement to clarify that the bottle was only partially made of canal plastic.²⁷ For radio or television advertisements, *disclaimers* can be conveyed via a voice-over. For example, the RCC ruled in February 2022 that a television advertisement for a 100% recyclable condiment bottle was not misleading, because the voice-over specified that the packaging's label had to be manually removed before disposal.²⁸ This clarifies to consumers that the recyclability claim pertains to the bottle without its label.

Finally, the use of environmental designations and symbols, such as the Möbius strip, is permitted when the origin of the logo is clear and there can be no confusion about its meaning.²⁹ This will generally not be a problem with regard to the Möbius strip. The provenance of lesser known environmental designations and symbols (including quality mark logos) can be explained by referring on the packaging or in the advertisement to a website containing easily accessible information about its meaning and, where relevant, the criteria that have to be met. When using quality marks, independent quality marks are preferable over company quality marks.³⁰ However, you should also be mindful of what quality marks you use. Even the quality of independent quality marks can vary significantly. You should only use quality marks that guarantee significant improvements with regard to sustainability.³¹ A quality mark that refers to the recyclability of your packaging can be misleading if it is a standard feature of similar types of packaging and therefore offers no specific sustainability benefits. The Quality Mark Guide (Keurmerkenwijzer)³² drawn up by Milieu Centraal can help businesses find the right quality mark to use.

²⁷ RCC 15 December 2015, file 2015/01154.

²⁸ RCC 2 February 2022, file 2022/00050.

²⁹ Article 8 CDR.

³⁰ ACM Guidance on Sustainability Claims, p. 4.

³¹ ACM Guidance on Sustainability Claims, p. 25.

³² <https://keurmerkenwijzer.nl/>.



Example 2 - Fully circular

Environmental claims must be demonstrably accurate.³³ Here, the more absolute the environmental claims, the tougher the evidence requirements. In this case, the addition of 'fully' makes this an absolute claim, but even without this addition, consumers may perceive the claim to be absolute in the context of the advertisement.

Moreover, it is essential to explain in what way the packaging is circular to avoid possible false advertising. After all, circularity can be defined in various ways. It should also be clearly stated if the claim of circularity does not apply to the packaging as a whole, but exclusively or almost exclusively to certain components thereof.³⁴

References to circularity will usually touch on waste collection, processing and/or reuse. In this case, it is important that the touted methods are sufficiently available and accessible for the target group (generally the users of the packaging) and are not merely theoretically possible. For claims pertaining to reuse, it is important that the advertised packaging or its components are actually reused to a sufficient degree.³⁵

Example 3 - Compostable and biodegradable

Environmental claims must be demonstrably accurate.³⁶ Here, the more absolute the environmental claims, the tougher the evidence requirements. Nevertheless, in its decision of March 9, 2020 regarding coffee cups, the RCC ruled that the term 'compostable' can be used when a packaging is compostable in accordance with European standard EN 13432.³⁷ After all, this makes the accuracy of the claim demonstrable. In the above decision, the RCC also noted that claiming a cup to be '100%' compostable is not allowed, as the criteria of EN 13432 are also met if laboratory testing shows that the product in question breaks down by at least 90 percent within a certain time span. After all, the claim of '100%' gives the impression that the packaging is fully compostable, even though this cannot be demonstrated. The assumption that 90 percent degradation during the test period will ultimately lead to 100 percent degradation does not change this.

Make sure that any claims concerning the compostability or biodegradability of a packaging do not mislead users with regard to the available waste collection or processing method.³⁸ At the moment, compostable and biodegradable packaging cannot be disposed of as organic waste in the Netherlands, even if the packaging are suitable for industrial composting in accordance with the EN 13432 standard. An exception is made for tea bags and coffee pads and filters (not for coffee cups).

³³ Article 4 CDR.

³⁴ Article 5 CDR.

³⁵ Article 9 CDR.

³⁶ Article 4 CDR.

³⁷ RCC 9 March 2020, file 2020/00059.

³⁸ Article 9 CRD.



Rijkswaterstaat has drawn up the so-called 'Organic waste Yes/No list' (Wel/niet lijst GFT) to help make this assessment.³⁹ More information about the current status of composting in the Netherlands can be found in KIDV's [Fact sheet Biodegradable plastic packaging](#). Confusion with regard to the available waste collection or processing method can be avoided by including clear disposal instructions on the packaging. KIDV has made [Waste Disposal Guide logos](#) available for this purpose.

Example 4 - 100% sustainable

The term 'sustainable' does not have a single fixed definition, so the interpretation of this term must be assessed on a case-by-case basis and may vary from one advertisement to the next. When assessing such claims, attention must be paid to how the term is used and explained in the advertisement, as well as to how the average consumer is likely to interpret the term in the context of the advertisement.⁴⁰ In February 2019, the Board of Appeal (BoA) ruled that the qualification 'sustainable' is not used exclusively in relation to the environment in the present day, but rather as an 'umbrella term' that can also refer to aspects of animal welfare or working conditions.⁴¹ Since 1 February 2023, this is also included in the clarification of article 2 of the CDR. Advertisements will therefore have to be assessed on an individual basis in order to determine whether the interpretation of 'sustainable' is made sufficiently clear. In the context of packaging materials, it will generally be clear that sustainability claims pertain to environmental aspects.

When using the general term 'sustainable', the sustainability benefits of the packaging must be clarified in the advertisement.⁴² The BoA ruled in 2015 that companies should carefully explain how and to what extent they can substantiate their sustainability claim in order to avoid consumer confusion.⁴³ In addition, when making general or absolute claims, the ACM Guidance on Sustainability Claims requires that there must be proven evidence of a significant sustainability benefit.⁴⁴ An absolute claim such as 'sustainable' therefore cannot be substantiated with a reference to a minor aspect of the packaging's overall impact on sustainability. When referring to '100%', a qualification of the claim is also not a given. It is best to use specific claims that immediately clarify what is sustainable about the packaging.

³⁹ <https://lap3.nl/beleidskader/deel-f-bijlagen/f12/>.

⁴⁰ BoA 17 March 2015, file 2014/00812.

⁴¹ BoA 6 February 2019, file 2018/00826.

⁴² Article 3 CDR.

⁴³ BoA 17 March 2015, file 2014/00812.

⁴⁴ ACM Guidance on Sustainability Claims, p. 19.



Sustainability claims must be clear and demonstrably accurate.⁴⁵ The requirements regarding the substantiation of absolute claims (in this case 'sustainable', further strengthened by the designation '100%') are strict. Consumers will expect that the packaging has no negative impact on the environment whatsoever. To substantiate this, the ACM Guidance on Sustainability Claims refers to the use of e.g. a Life Cycle Assessment or the True Cost Method.⁴⁶ At the same time, the ACM notes that it is currently impossible to properly substantiate any absolute sustainability claims for virtually all products.⁴⁷

To demonstrate an ambition, such as 'on the way to 100% sustainability,' the ambition must be achievable. It is misleading to advertise an ambition that cannot reasonably be expected to ever be attained. The ambition must be backed up by clear, objective and verifiable goals and concrete plans must be in place to achieve these goals.⁴⁸ For example, in July 2019, the RCC ruled that the above claim made by a chip shop was unacceptable, because the claim was only based on using meat with a 'Beter Leven' quality mark and non-broiler chicken products where possible and did not apply to the company's entire range of products or its business operations, as the claim suggested.⁴⁹ It is also important that the advertisement clearly shows that the company is pursuing a future ambition and that it does not paint too rosy a picture of the current situation.⁵⁰ Furthermore, the company must have already started work on realising the ambition or do so in the very near future.⁵¹ You may publish any sustainability ambitions that meet the above requirements on your website. Do not include these ambitions on concrete packaging if doing so might wrongfully give the impression that the packaging in question offers sustainability benefits.⁵²

Example 5 - This packaging is more sustainable

The claim that packaging is more sustainable does not immediately make it clear in what respect it is more sustainable ('more sustainable than what?').⁵³ For example, does this refer to a previous packaging that your company used for the same product or to a competitor's packaging? What aspect of the packaging does the comparison pertain to? – think of e.g. the (production) phase, the usage phase or the waste phase.

The comparison must be concrete and current and objectively compare one or more actual, relevant, verifiable and representative characteristics of the packaging.⁵⁴ This also means that the

⁴⁵ Article 4 CDR.

⁴⁶ ACM Guidance on Sustainability Claims, p. 17.

⁴⁷ ACM Guidance on Sustainability Claims, p. 17.

⁴⁸ Article 3.2 CDR. See also ACM Guidance on Sustainability Claims, p. 23.

⁴⁹ BoA 4 July 2019, file 2019/00209.

⁵⁰ Article 3.2 CDR. See also RCC 25 November 2019, file 2019/00656/A.

⁵¹ ACM Guidance on Sustainability Claims, p. 23.

⁵² ACM Guidance on Sustainability Claims, p. 23.

⁵³ RCC 21 September 2020, file 2020/00310.

⁵⁴ Article 7 CDR.



same calculation methods must be used in the comparison and that these methods must be applied consistently. For example, a comparison of carbon emissions excluding transport emissions and carbon emissions including transport emissions does not meet this requirement.⁵⁵ Furthermore, the packaging being compared must fill similar needs or be designed for the same purpose.⁵⁶ A packaging for product X made of material Y therefore cannot be compared to a packaging made of material Z if the latter material cannot be used for product Y (e.g. for safety reasons). The claimed sustainability benefit also cannot be the result of legislative changes that will make the improvement in question mandatory for all similar products.⁵⁷ It may also be necessary to revise a claim following legislative changes, new standards or technological advancements to ensure the claim is still up to date.⁵⁸

Since 'sustainability' is an umbrella term without a fixed definition,⁵⁹ it is also relevant that the advertisement clearly shows how this term is interpreted (see also example 4).

Example 6 - Made of organic material

Organic materials that fall within the scope of the EU Organic Regulation⁶⁰ may be designated as 'organic' if the requirements specified in this Regulation are met. Examples of such materials include cotton, beeswax and cork. Materials that fall outside the scope of the EU Organic Regulation may not be designated as 'organic'. Furthermore, no translations, derivations or diminutives of the word 'organic' (e.g. 'bio' or 'eco') may be used in this case.⁶¹

According to the ACM's Guidance on Sustainability Claims, the designation 'organic' may be used for the packaging as a whole if more than 95 percent of the packaging's material comes from certified organic production and the remaining components do not substantially reduce or negate the benefits of said organic production. If the packaging contains a smaller percentage of organic materials, the packaging as a whole cannot be designated as 'organic'. However, it is possible to specify the percentage of certified organic materials used, e.g. "this packaging is made of 60% organic cotton". Alternatively, you can use a reasonable bandwidth, e.g. 60-65%.⁶²

⁵⁵ ACM Guidance on Sustainability Claims, p. 21.

⁵⁶ Article 7 CDR.

⁵⁷ Article 7 CDR.

⁵⁸ ACM Guidance on Sustainability Claims, p. 20.

⁵⁹ Article 2 CDR. See also BoA 17 March 2015, file 2014/00812 and BoA 6 February 2019, file 2018/00826.

⁶⁰ Regulation 2018/848 on organic production and labelling of organic products.

⁶¹ Article 30(1) of Regulation 2018/848 on organic production and labelling of organic products, with reference to annex IV thereof.

⁶² ACM Guidance on Sustainability Claims, p. 16.



Example 7 - Made of recycled material

The claim that a packaging is made of recycled material must be demonstrably accurate.⁶³ Here, the more absolute the claim, the tougher the evidence requirements. Thus, the claim that a package is made entirely or 100 percent of recycled material is subject to more stringent requirements. Even if packaging is only claimed to be 'made of recycled material' and no percentage is given, consumers may interpret this as a claim that the packaging is made entirely of recycled material.

If the packaging is not made entirely of recycled material, this must be clarified. This is the case if e.g. the packaging also contains non-recycled material or if the claim applies exclusively or almost exclusively to certain components of the packaging (e.g. a bottle without its cap or label).⁶⁴ Such *disclaimers* must be clear to consumers and should not be easily overlooked. See example 1.

Finally, the use of environmental designations and symbols, such as the Möbius strip, is permitted when the origin of the logo is clear and there can be no confusion about its meaning.⁶⁵ This will generally not be a problem with regard to the Möbius strip. Please note that companies must indicate for what percentage the packaging consists of recycled material, as omitting this percentage suggests that the entire packaging is recyclable.⁶⁶ See example 1 for more information on how the provenance of lesser known environmental designations and symbols (including quality mark logos) can be explained.

⁶³ Article 4 CDR.

⁶⁴ Article 5 CDR.

⁶⁵ Article 8 CDR.

⁶⁶ Guidelines for the formulation and evaluation of environmental claims, December 2000, European Commission. Available online at https://ec.europa.eu/consumers/archive/cons_safe/news/green/guidelines_nl.pdf, p.13.



Example 8 - Made entirely of [raw material]

It is paramount that if it is claimed that a packaging is made entirely of a particular raw material, this claim must be demonstrably accurate.⁶⁷ It should also be clarified if the raw material claim does not apply to the packaging as a whole, but exclusively or almost exclusively to certain components thereof.⁶⁸ Even if the packaging is not emphatically claimed to be made entirely or '100 percent' of a particular raw material (e.g. claims along the lines of 'made of [raw material]'), consumers may still be given this impression, which would constitute deception if it were not the case. For example, in July 2020, the chairman of the RCC ruled on a case involving a bowl that was advertised as being 'made of bamboo with bamboo fibres', while it was actually made of melamine with bamboo fibres. The chairman of the RCC ruled that it was plausible that the advertisement in question would give the average consumer the impression that the bowl was made entirely of bamboo fibres, making this a misleading claim.⁶⁹ Incidentally, raw material claims made with regard to standard features of a packaging are also misleading.⁷⁰

Example 9 - Lower carbon emissions than [competitor's product]

This is a so-called comparative claim, which explicitly or implicitly mentions a competitor or their packaging or production process. A ruling from the Board of Appeal from October 2019 clarifies that the rules concerning comparative claims also apply when a product, in this case so-called tree-free paper, is compared to the products made by, in this case, paper and cardboard producers, without naming a specific producer or product.⁷¹ Comparative claims may also refer to a comparison with a previous packaging or its production process from the same company, or to a comparison with the generally accepted industry standard. See example 5 for more information about comparative claims.

A comparative environmental claim must not be misleading and must be demonstrably correct. It is therefore advisable to make the comparison as specific as possible, e.g. by referring to percentages or absolute values.⁷² Finally, especially with comparative claims, it is relevant that the claim be regularly checked for accuracy and amended if necessary.⁷³ After all, the products and production methods of competing products may change over time, meaning the claim in question may no longer be accurate.

⁶⁷ Article 4 CDR.

⁶⁸ Article 5 CDR.

⁶⁹ VT 28 July 2020, file 2020/00238.

⁷⁰ ACM Guidance on Sustainability Claims, p. 14.

⁷¹ BoA 2 October 2019, file 2019/00285.

⁷² ACM Guidance on Sustainability Claims, p. 10.

⁷³ ACM Guidance on Sustainability Claims, p. 20.



If CO₂ is offset through carbon equalisation, you must explain what this means using clear and objective terminology. Among other things, this means that you must clarify that carbon equalisation does not make a packaging any less harmful to the environment, but that you offset your packaging's carbon emissions with the help of projects. You must also clarify the manner of carbon equalisation, e.g. by explaining what projects these are, how much CO₂ is offset and how this figure was calculated. For this purpose, you may consider joining independently certified or monitored projects. You should also be critical of the risks and reliability of your chosen carbon-equalisation projects.⁷⁴ If a CO₂ benefit compared to a previous packaging used by your company or a competitor's packaging is based on carbon equalisation, it is not possible to make a comparative claim, as any such comparison would not be fair.

Example 10 - Plastic-free

The claim 'plastic-free' implies that the packaging actually contains no plastic. First of all, therefore, it must be clear what plastic is. At the European level, this term is defined in the Plastics Regulation (10/2011⁷⁵). It is also defined in the SUP Directive (2019/904⁷⁶). According to these laws and the accompanying guidance documents drawn up by the European Commission (EC)⁷⁷, a material is a plastic if:

- there is a polymer,⁷⁸ to which additives and other substances may have been added;
- the polymer can be used as a structural main component.

The required structural main component has to be considered in finished materials and articles (according to the Plastics Regulation) or in finished products (according to the SUP Directive). The type of finished material or article, or finished product, is not specified or limited. This can therefore concern both the packaging and a material/product used as a component thereof.

⁷⁴ ACM Guidance on Sustainability Claims, p. 15.

⁷⁵ <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX%3A02011R0010-20230831>.

⁷⁶ <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:32019L0904&from=NL>.

⁷⁷ The EC Guidance document for the Plastics Regulation is available at https://food.ec.europa.eu/system/files/2016-10/cs_fcm_plastic_guidance_201110_en.pdf; the EC Guidance document for the SUP Directive is available at [https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:52021XC0607\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:52021XC0607(03)&from=EN).

⁷⁸ For the definition of 'polymer', article 3(1) of the SUP Directive refers to article 3(5) of Regulation 1907/2006 ("REACH Regulation"): <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:02006R1907-20220501&from=NL>. Article 3(3) of the Plastics Regulation defines a polymer as 'any macromolecular substance obtained by a) a polymerisation process such as polyaddition or polycondensation, or by any other similar process of monomers and other starting substances; or

b) chemical modification of natural or synthetic macromolecules; or c) microbial fermentation'.



In practice, the question of what constitutes a structural main component is the subject of much debate, particularly under the SUP Directive. According to the EC guidance document to the SUP Directive, in principle, a wide range of polymers can meet the aforementioned requirement.⁷⁹

The Dutch government has explicitly taken the position that polymers added to food packaging to give it grease- or water-repellent purposes, including polymeric lacquers, form a structural main component of the packaging.⁸⁰ Indeed, without these polymers, the packaging would not be suitable for its intended use. Given that the definitions of plastic used in the SUP Directive and the Plastics Regulation are nearly identical, the same interpretation of the structural main component requirement under the Plastics Regulation is obvious.

No plastic-free claim for packaging covered by the SUP Directive

If packaging is covered by the SUP Directive, the claim "plastic-free" cannot be justified. After all, in that case the packaging, or a component thereof, meets the definition of plastic. Moreover, such a claim on an SUP packaging would prevent an effective application of the SUP Directive and would mislead the consumer with regard to the material used. For example, a coffee cup made of paper or cardboard with a plastic layer or coating to provide protection against water or grease cannot be advertised as 'plastic-free'.

Paints, inks and adhesives

In principle, paints, inks and adhesives are kept outside the scope of the SUP Directive⁸¹; similarly, adhesives, coatings (other than in the case of multi-layer, multi-material materials and articles) and printing inks are generally kept outside the scope of the Plastics Regulation.⁸² However, this does not mean that these materials cannot be qualified as plastics. In fact, the reason these materials are kept out of the scope of the above legislation is due to the purposes of that legislation and not to the definition of plastic.

In order to justify the claim 'plastic-free', it must first be assessed whether polymeric materials were used, such as paints, inks or adhesives containing this material. If so, it must then be assessed whether the polymeric material used can be used as a structural main component. Usually, this requirement will be met. This is because it is not excluded that this can be tested on the paint, ink or adhesive itself; it does not necessarily have to be tested on the product that the paint, ink or adhesive is used in or on. This means that a packaging may not qualify as 'plastic-free' if e.g.

⁷⁹ Section 2.1.2 of the EC Guidance document for the SUP Directive.

⁸⁰ P. 15 van de Explanatory Memorandum for the Single-Use Plastics Directive, available at <https://open.overheid.nl/repository/ronl-9b1cda6564e27b4ef7267c9a13aff00e46cba6e1/1/pdf/bijlage-2a-ministeriele-regeling-kunststofproducten-voor-eenmalig-gebruik.pdf>.

⁸¹ Recital 11 of the SUP Directive.

⁸² Section 3.3.4 of the EC Guidance document for the Plastics Regulation.



polymer-based adhesives were used, despite the packaging otherwise not containing any plastic. Whether a looser approach can be adopted is not clear at present. There are no court or self-regulatory body rulings to support this (yet).

Biobased and biodegradable plastics

Natural polymers that have not been chemically modified do not constitute a plastic.⁸³ The EC guidance document for the SUP Directive explains in detail when this is or is not the case, with reference to the REACH Regulation and the associated ECHA guidance document.⁸⁴

Natural polymers are polymers that result from a polymerisation process that has occurred in nature, independent of the extraction process by which they were extracted; the term 'non-chemically modified substance' is to be understood as a substance whose chemical structure remains unchanged, even though the substance has undergone a chemical process, a chemical treatment or a physical mineralogical transformation. Such treatments may be applied to e.g. remove impurities.

Polymers that are the result of biosynthesis, i.e. human-initiated breeding and fermentation processes in industrial settings, are not natural polymers, as they are not the result of a polymerisation process that has occurred in nature.

A similar approach is taken in the Plastics Regulation, which explicitly applies to polymers obtained by

- (a) a polymerisation process,
- (b) chemical modification of natural (or synthetic) macromolecules, and by
- (c) microbial fermentation.⁸⁵

Biobased and biodegradable plastics that are obtained in one of the above ways thus qualify as plastic (provided that the structural main component requirement is also met). The claim 'plastic-free' cannot be justified in that case.

⁸³ Article 3(1) SUP Directive and article 3(3) Plastics Regulation.

⁸⁴ Section 2.1.3 of the EC Guidance document for the SUP Directive.

⁸⁵ Article 3(3) Plastics Regulation.