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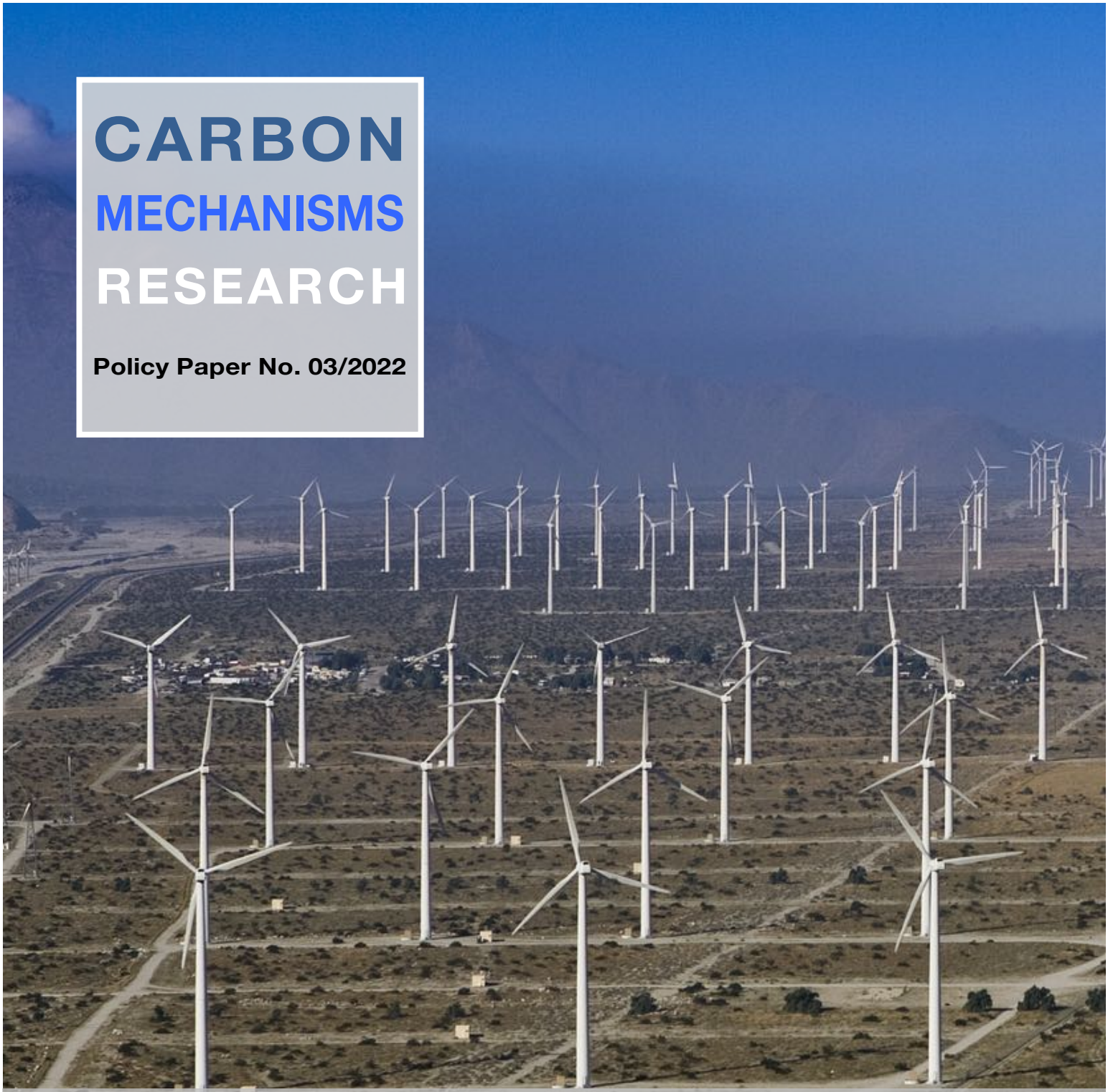

Governing Corporate Claims:

Increasing transparency of climate-related claims

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Summary

This policy paper provides an overview on how climate-related claims such as 'climate neutral' are regulated in selected jurisdictions and analyses the current status of private initiatives working towards internationally agreed use of such claims. Based on these findings, we discuss what the emerging regulation and governance at different levels might mean for the voluntary carbon market as a supplier of the carbon credits underpinning these corporate claims.

In all countries analysed, existing **legislation on consumer rights and fair competition provides the basis** for dealing with climate neutrality and similar claims. Legislation and related guidance documents usually require companies to adhere to basic criteria and principles when marketing their products and services. Criteria that companies must adhere to in different countries include the following: claims must be truthful, accurate, specific, substantiated and not exaggerated. In addition to establishing specific criteria for claims, many guidance documents highlight that it is the overall impression that counts: Claims must not be misleading.

We found **five different approaches in dealing with climate-related claims**. These different governance approaches are not mutually exclusive but usually combined within one jurisdiction:

- guidance on the use of environmental claims,
- industry self-regulation and extra-judicial litigation,
- judicial proceedings,
- government accredited certification programs for carbon neutrality and
- expanding and improving the legal basis.

A number of countries have published guidance on the use of environmental claims for marketing purposes. While in most countries, guidance documents are rather generic (e.g., UK, NL, DK, US), some countries have published guidance that is more specific. Norway's Consumer Authority's Guidelines for instance contain more detailed requirements on the information that companies should publish when using claims such as 'climate neutral' in marketing. In many countries, industry self-regulation and extra-judicial litigation are particularly relevant (e.g., UK, France and Sweden). Some countries rely on judicial proceedings with courts having to assess whether climate-related claims are in line with companies' legal obligations (e.g. Germany).

There are also countries that have adopted fundamentally different approaches: As the first country worldwide, France has been expanding and improving the legal basis of climate-related claims requiring companies to substantiate their climate neutrality claims and providing the basis for sanction of companies that fail to meet the requirements. In the European Union, two legislative initiatives are underway tha point in a similar direction of regulation. In Australia, by contrast, companies can obtain a national government certification for 'carbon neutral' if they meet specific requirements. This reveals a fundamentally different stance towards climate-related claims: While in France (and possibly the EU) the provisions on climate neutrality can be used as a basis for sanctioning misleading claims, Australia incentivizes companies to make such claims.

Climate neutrality and other claims have not only been subject to regulation by national governments, but there is also a growing interest from **private initiatives.** Two initiatives have published detailed proposals on the claims that companies should be allowed to make when using carbon credits, namely the Nordic Dialogue on Voluntary Compensation and the Voluntary Carbon Markets Integrity Initiative (VCMI). The analysis of the initiatives' draft codes finds that they apply fundamentally different approaches. While the Draft Nordic Code differentiates claims according to the attributes of the credits used, under the VCMI companies can make claims depending on their performance in reducing internal emissions and the coverage of residual emissions through carbon credits.

The analysis of voluntary carbon market initiatives shows that despite growing consensus on key elements of non-state climate action, there is **still no common understanding on corporate claims**. A common understanding of what claims companies should be allowed to make is still missing, as the analysis of the Draft Nordic Code and VCMI proposal showed. In our view, the Nordic Code's approach to differentiate claims according to the carbon credits' relationship with the host country's NDC seems to be a more promising approach as it addresses the key question about whether (and under which circumstances) carbon credits should be backed by corresponding adjustments and more transparently allows companies to make different types of claims.

The analysis of national shows that there is a **strong momentum for enhancing the regulation of climate-related claims**. France can be considered a frontrunner in this regard. The French consumer code was strengthened and expanded by prohibiting the use of the term 'carbon neutral' as a claim unless the company makes additional information publicly available. Making the use of climate-related claims conditional on such transparency requirements seems to be a promising way forward for ongoing initiatives in the EU and the United States. At the same time, ensuring access to key information is not sufficient – it must also be ensured that the claims can be understood by the general public, in particular consumers.

When adopting such policies, policy makers should take into account that **the regulation of climate neutrality claims is a double-edged sword**. By legally defining terms such as 'climate neutrality' for subnational entities and products, they are establishing a standard that will enable companies to make respective claims on a legal basis. While this increases the legal certainty for companies in advertising, such regulation translates the global concept of climate neutrality to sub-national entities. However, applying the concept of climate neutrality to (sub-national) organizations is problematic, as companies do usually not have the resources (in particular land) to neutralize their climate impact. In any case, the overarching objective of the regulation should be to address the risk of misleading claims, while incentivizing companies to make such claims should not play a primordial role.

The ongoing regulatory initiatives in different jurisdictions are already having far-reaching consequences. Recent developments cause marketing departments to be more careful about the claims they use in advertising, while another consequence is regulatory fragmentation. As the regulation of climate-related claims evolves, the **alignment of regulation across countries and markets will be key**. The installation of a Task Force on Net Zero Regulation, as called for by the UN's High Level Expert Group, can be expected to make an important contribution towards regulatory consistency, with existing international initiatives potentially providing important input into the process.

1 Introduction

Climate change is increasingly seen as a problem that requires all actors to do their fair share, including companies and other organizations. This has led to a continued momentum of corporates adopting some sort of neutrality targets, such as 'carbon neutrality', 'climate neutrality' or 'net zero emissions'. Most of these companies, however, will not be able to entirely eliminate all of their emissions and will need to balance those emissions that cannot be avoided. This has sparked an increased interest in the voluntary carbon market (VCM) as a supplier of carbon credits that may be used to offset the remainder of the companies' residual emissions.

The VCM, however, is confronted with fundamental challenges on both, the supply and the demand side (Hermwille & Kreibich, 2016; Kreibich & Hermwille, 2021): On the supply side, the discussions are dominated by questions about how to ensure the quality of credits and the interaction of the market with the Paris Agreement, in particular whether double claiming of emission reductions should be allowed (see Box 1 below). On the demand side, the discussions revolve around how to ensure a legitimate use of credits and avoidance of greenwashing, by for instance requiring companies to prioritize mitigation within their own value chain, set ambitious reduction targets and transparently communicate on their climate-related activities.

One aspect that is becoming increasingly relevant is the question about the claims that companies and other users of carbon credits should be allowed to make on the basis of the credits used. This is key, as sustainability has become an important factor in consumers' purchasing decisions. Many companies therefore claim to sell environmentally-friendly products or services and try to present themselves as part of the solution to climate change. Making claims - for instance in advertising and CSR reporting – is a key motivation for companies to engage in the VCM. At the moment, however, the claims that companies use differ widely and are not easily understood by the general public. Can a flight, for instance, really be labelled as "carbon neutral" and what does this mean exactly?

Box 1: Double claiming and corresponding adjustments in the voluntary carbon market

Should companies be allowed to use carbon credits for the achievement of their climate neutrality targets if the mitigation impacts of the underlying activities do also contribute to the achievement of the host Party's climate target? This is the key question that has been dividing VCM stakeholders since the emergence of the new structure established by the Paris Agreement.

While not entirely a new phenomenon, double claiming gained increased relevance under the Paris Agreement, which requires all Parties, including developing countries, to communicate such climate targets as Nationally Determined Contributions (NDCs). This reduces the so-called uncapped environment where carbon credits have traditionally been generated. In consequence, under the Paris Agreement there is a higher probability of emission reductions being used by companies for voluntary purposes while at the same time assisting the host Party of the underlying activity in achieving its NDC.

While some VCM stakeholders maintain that such double claiming between private and public actors could be allowed, others have clearly opposed it. Following the latter view, corporates should only be allowed to use credits from mitigation activities that do not contribute to the host Party's NDC. This can be achieved through so called corresponding adjustments (CAs), which require host Parties add to adjust their reported emissions upwards by the emissions that corresponds to the emission reductions exported. While such corresponding adjustments are mandatory if units are used by the buyer for NDC achievement or by airline operates to meet obligations under the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), the Glasgow outcome on Article 6 does not prescribe these CAs if units are used on a voluntary basis. However, the Article rulebook agreed in Glasgow allows CAs to be applied for these uses.

Climate neutrality and other claims are increasingly questioned by advertisement regulators and consumer protection organizations. A screening of websites by a large number of European national consumer authorities in 2020 found that more than half of the analyzed green online claims lack sufficient information. In 42% of cases, the authorities considered the claims to be exaggerated, false or deceptive and considered them as potentially misleading (European Commission, 2021). Environmental NGOs and self-regulatory organizations, such as the German Wettbewerbszentrale, have increasingly filed complaints against companies over allegations of greenwashing.

Against this background, this policy paper provides an overview on how claims are governed in different countries and jurisdictions and what the emerging regulation might mean for the VCM as a supplier of the carbon credits underpinning these claims. For this purpose, section 2 first looks at how climate-related claims are regulated through public governance in selected countries[1]. Section 3 explores private governance initiatives that are developing provisions for the claims that companies can make. Subsequently, section 4 summarizes observed developments in both public and private governance initiatives and discusses how these might impact the VCM as a provider of carbon credits used for making corporate claims.

[1] Please note that we will in the following use the term country for all jurisdictions analysed, including the European Union as a supranational entity.

2 National regulation of claims

The objective of this section is to provide an overview of how climate-related claims are regulated in different countries. The focus is put on the regulation of claims such as 'climate neutrality', 'GHG neutral', 'carbon neutral' or 'net-zero emissions'. Despite important differences (see Box 2 below), all these claims have one element in common: They indicate that the climate-related effect (or a part of it) is being neutralized or balanced. We will therefore in the following use 'climate neutrality claim' as an umbrella term for these claims.

The focus of the analysis is put on the regulation of these claims, while other closely related aspects, such as provisions on corporate greenhouse gas (GHG) emissions reporting are not taken into consideration. Similarly, we are not exploring the design of domestic offsetting schemes and the guidance related to the use of respective units. Furthermore, and in light of the dynamic evolution of the global landscape of claims regulation, it should be noted that this analysis is not exhaustive. The following section 2.1 briefly describes the case studies identified, while section 2.2 presents the interim findings and key observations.

We have identified eleven case studies, a brief description of which is provided in the following. All of the countries studied have legal provisions regarding unfair commercial practices or consumer protection enshrined in national laws that also provide broad orientation for making climate-related claims. Based on these laws, five different governance approaches were identified:

- guidance on the use of environmental claims,
- prohibition of misleading advertisement through self-regulatory bodies,
- judicial proceedings,
- government accredited certification programs for carbon neutrality and
- expanding and improving the legal basis.

As can be seen from Table 1 in the Annex, many countries apply more than one of these governance approaches. They have different strengths and weaknesses and vary in terms of bindingness and level of detail.

The following section presents the country case studies in detail. As you can see, a number of countries have published guidance on the use of environmental claims for marketing purposes (e.g. UK, NL, DK, US). Norway has also published a guidance document, which is more specific than in the other countries. The Consumer Authority's Guidelines on using claims such as "climate neutral" in marketing contain more detailed requirements on the information that the advertiser should publish than in the other countries. New Zealand's Ministry for the Environment published a guidance for voluntary carbon offsetting.

In several countries, self-regulatory bodies enforce standards for advertisement set by the industry based on legal provisions. They ensure that climate neutrality claims that fail to meet the requirements of the respective marketing guidance applicable in the country will be corrected or removed. We found that the bodies in UK, France and Sweden are particularly active in fighting greenwashing.

Other countries saw a number of court cases regarding misleading climate related claims. Germany serves as an example for this. Australia, unlike all the other countries has a government certification scheme for carbon neutrality, providing a positive incentive for companies to make such claim. France, by contrast, has developed specific legal provisions on carbon neutrality claims. This approach is also pursued by the European Union through a set of ongoing legislative initiatives.

Box 2: Terminology of climate neutrality

In the debate about corporate climate action and the role of carbon credits different terminologies are being used. The understanding of these terms is often highly context-specific and terms are can mean different things if used in the context of corporate climate action.

The term **'net-zero'** is gaining increasing salience in the field. The IPCC states that "[n]et zero emissions are achieved when anthropogenic emissions of greenhouse gases to the atmosphere are balanced by anthropogenic removals over a specified period" (IPCC, 2018). In the context of corporate climate action, the concept is linked to the ambition level of the targets set by companies. The Science-Based Targets Initiative (SBTi) for instance uses the term in its Corporate Net-Zero Standard for long-term targets that are consistent with reaching 1.5 °C globally while requiring any residual emissions to be neutralized through removals (SBTi, 2021).

Another term often referred to is carbon neutrality. From a scientific point of view, **'carbon neutral'** means the neutralization of CO_2 emissions. In the context of corporate climate action, by contrast, the term is often used to describe a situation in which a company has offset not only CO_2 but also other GHG emissions with carbon credits.

The IPCC describes '**climate neutrality'** as "a state in which human activities result in no net effect on the climate system" (IPCC, 2018). Achieving this state would not only require balancing of GHG emissions but also take into account regional or local biogeophysical effects of human activities. Companies, by contrast, often use the term climate neutral as a claim for products or services the GHG emissions of which have been balanced while not taking into account such biogeophysical effects that are particularly relevant for products from the land use sector.

2.1 Regulation of claims in selected countries

2.1.1 Sweden

Like any other marketing activity in Sweden, marketing related to climate neutrality is regulated on the basis of the Marketing Act (Riksdagsförvaltningen, 2008), which inter alia prohibits traders to make incorrect or misleading statements in marketing. On the basis of this act, the Swedish Patent and Market Court has had cases related to environmental claims. Until 2021, no cases related to climate neutrality claims have been filed (Konsumentverket, 2021).

More recently, however, the dairy producer Arla Foods is facing a lawsuit from the Konsumentombudsmannen, the Director General of the Swedish Consumer Agency (Konsumentverket, 2021). The government agency argues that the claim "zero climate footprint" the company used on its packaging of milk and cheese is misleading (Newsfounded, 2021). Given the uncertain legal situation regarding climate neutrality claims in Sweden, Konsumentverket conducted surveys, studies and several workshops in the course of 2020 and 2021 (Nordic Dialogue on Voluntary Compensation, 2021). In its study on the current guidance and regulation of climate-related claims, Konsumentverket concludes that claims such as 'climate neutral', 'climate compensated' and 'net zero' are unclear and lack precision, making it difficult for the consumer to understand their meaning and make informed choices. At the same time, it concludes that the existing regulatory marketing framework also covers climate neutrality claims. However, the agency sees a need to clarify how the legal framework is to be applied to individual cases through court practice and will therefore continue to monitor the developments (Konsumentverket, 2021).

Claims are also being regulated by the industry itself: in 2020 and 2021, the Swedish advertising industry self-regulator Reklamombudsmannen disallowed 17 advertisements that made climate-related claims (Hedin, 2022).

2.1.2 Germany

In Germany, unfair commercial practices fall within the scope of the German Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb - UWG). The UWG requires companies to transparently disclose the essential information that consumers need to make an informed decision, including in advertising. The act does not contain specific references to environmental or climate-related claims but more generally requires companies not to engage in misleading business practices directed either towards consumers or competitors.

Corporations that violate the act can be sued for injunction by their competitors but also other organizations (UWG, para 8). The largest and most influential institution for ensuring the enforcement of the UWG is the Centre for Protection against Unfair Competition (Wettbewerbszentrale). In cases of unfair commercial practices, the Wettbewerbszentrale usually first takes extrajudicial action: Based on complaints received from competitors or consumers, the Wettbewerbszentrale asks the company concerned to discontinue or amend the commercial practice. If an extrajudicial settlement is not achieved, the Wettbewerbszentrale can take legal action usually by claiming a preliminary court injunction that prohibits the unfair commercial practice (Wettbewerbszentrale, 2021c)

In 2021, the Wettbewerbszentrale issued warnings against twelve companies for using misleading claims related to 'climate neutrality' and demanded compliance with existing transparency requirements (Wettbewerbszentrale, 2021b). The Wettbewerbszentrale has further sued four companies for injunction. One main point criticized by the association was the lack of information regarding the role of offsetting of residual emissions. By omitting information about the purchase of offsets, the companies sued gave the impression that climate neutrality was achieved in the production and consumption of the products as such. According to the Wettbewerbszentrale, omitting this information is not in line with the requirements of para 5a of the UWG (Wettbewerbszentrale, 2021a). In December 2021, the Wettbewerbszentrale won its first cases and two companies had to cease from using the climate neutrality claim (VKU, 2021). Other lawsuits, including one case against the large supermarket discounter Aldi Süd, are still pending.

German courts had already in 2013 and 2016 decided that claims regarding the climate neutrality of products were misleading. With the ongoing court proceedings, the Wettbewerbszentrale aims at achieving a fundamental clarification regarding legally-compliant advertising with the claim "climate neutral" (Wettbewerbszentrale, 2021a). Increasingly, also other actors are taking legal action in Germany: The German NGO Deutsche Umwelthilfe (DUH) has in May 2022 initiatied legal proceedings against eight companies that use the claim climate neutral for the comercialisation of their products (DUH, 2022).

These developments show that companies using the term climate neutral or other related claims in Germany should transparently communicate the role of carbon offsetting and make other information easily accessible. Consequences for companies can be severe: a recent case law of the German Federal Court of Justice clarified the scope of an injunctive relief: in the event of a conviction, the misleadingly labelled products can even be recalled from the distribution channels (Smielick, 2021).

2.1.3 United Kingdom

In the United Kingdom (UK), the principal consumer protection legislation is the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). On the basis of this key piece of legislation, the Competition & Markets Authority (CMA) published the Green Claims Code, a guidance for business making environmental claims in the UK. The guidance published in September 2021 is designed to help companies understand and meet their existing obligations under current consumer protection law when making environmental claims. The Code sets out six principles about the information that companies provide. Claims must be truthful and accurate, clear and unambiguous, not omit important information, be fair and meaningful, take into account the entire life cycle of the product or service, and all claims must be substantiated (CMA, 2021). Thus, while the Code does not explicitly regulate the use of terms such as 'climate neutrality', it makes it more difficult to use such claims if they are not adequately substantiated. The Code, for instance, specifies that businesses "should include accurate information about whether (and the degree to which) they are actively reducing the carbon emissions created in the production of their products or delivery of their services or are offsetting emissions with carbon removal" (CMA, 2021). In the event of non-compliance, the CMA and other bodies (e.g. Trading Standards Services) may take legal action in relation to the Code.

In terms of ensuring existing legal provisions are adhered to, the CMA and non-state authorities, such as the Advertising Standards Authority (ASA) play a key role in the UK. The CMA can take legal action to enforce consumer protection law. In addition to initiating legal proceedings, the Department for Business, Energy and Industrial Strategy (BEIS) is currently discussing proposals to give the CMA the power to impose financial penalties.[2] Apart from the financial impact, this would further damage a brand's reputation. In January 2022, the CMA has begun a review of companies' claims in the fashion sector (Competition and Markets Authority, 2022).

Industry self-regulation is also relevant in the UK: the country's independent advertising regulator, the ASA, makes sure that advertising across UK media is compliant with the advertising rules that are developed by its sister organization, the Committee for Advertising Practice (CAP). The Authority can ban ads when they are, for instance, misleading. ASA has been dealing with numerous complaints related to companies' climate-related claims, including a complaint against Shell for its "drive carbon neutral" claim (ASA, 2020) and a complaint against Ryanair which had claimed to be "Europe's…Lowest Emissions Airline" (Advertising Standards Authority, 2020). In both cases, ASA decided that the ads must not appear again in their current forms.

2.1.4 The Netherlands

In the Netherlands, the requirements for climate-related claims are also grounded in the legal framework for unfair business practices (Article 6:193a of the Dutch Civil Code). The central actor is the Authority for Consumers & Markets (ACM), which falls under the responsibility of the Ministry of Economic Affairs and Climate and can enforce compliance if claims violate guiding principles. For this purpose, the ACM developed Guidelines with five rules of thumb for the formulation of sustainability-related claims (Autoriteit Consument & Markt, 2021):

1. Make clear what sustainability benefit the product offers

[2] A penalty of up to 10% of turnover for breaches of consumer law and 1% of turnover for failure to comply with information gathering powers

2. Substantiate your sustainability claims with facts, and keep them up-to-date
3. Ensure that comparison with other products, services, or companies is fair
4. Be honest and specific about your company's efforts with regard to sustainability
5. Make sure that visual claims and labels are useful to consumers, not confusing

Misleading or false sustainability claims are considered unfair business practices for which the ACM may impose fines of up to EUR 900,000 or 1% of the company's annual turnover (Autoriteit Consument & Markt, 2019). The examples provided in the Guidelines are intended to illustrate sustainability claims that could be considered misleading. However, whether a particular claim is considered misleading in practice will depend on the specific circumstances and decided on a case-by-case basis. The independent body in charge of deciding whether an ad is in conflict with the Dutch Advertising Code and the guidance on claims is the Advertising Code Committee. The rulings of the Advertising Code Committee are not legally binding. In case of violation of the rules in the Dutch Advertising Code, the Committee recommends the advertiser(s) involved to discontinue their way of advertising.

One example of rulings by the Advertising Code Committee is the case against the Dutch aviation operator KLM. The Committee found the airline's CO2-neutral claim and the CO2ZERO program were misleading. KLM's advertisement is also subject to an ongoing legal case in the Netherlands. In July 2022, the Dutch environmental organization FossielVrij NL together with the environmental law charity ClientEarth and Reclame Fossielvrij filed a claim against KLM in the Amsterdam District Court. The organizations accuse the airline of misleading advertisement regarding its "Fly responsibly" campaign (Sabin Center for Climate Change Law, 2022).

2.1.5 United States

In the United States, marketing is overseen by the Federal Trade Commission (FTC), which is empowered by the Federal Trade Commission Act to inter alia prevent unfair methods of competition (FTC, 2013). Environmental claims are regulated by the Guides for the Use of Environmental Marketing Claims (Guides), which reflect the FTC's interpretation of the FTC Act. The Guides are not legally-binding, but provide market participants with general principles to consider when making environmental claims. Despite not being legally-binding, the Guides have in the past been used by the FTC against companies whose green marketing was inconsistent with the Guides. The Guides do not explicitly discuss climate neutrality or related claims, but more generally require companies to use clear language and not to overstate the environmental benefits. Environmental benefits must not be stated or implied if they are negligible - even if the claim as such is 'technically true'. The US regulator is currently reviewing and updating the Guides, potentially adding language that could clarify existing ambiguities related to climate neutrality claims and making the guides easier to use (Markowitz et al., 2021).

In parallel to these developments, the U.S. Securities and Exchange Commission (SEC) has proposed rules to enhance climate-related disclosures. The proposal would require public companies to disclose scope 1 and scope 2 emissions as well as relevant scope 3 emissions without including offsets used (SEC, 2022).

As highlighted by Rosenfeld et al. (2022), public companies looking to make climate-related claims should be mindful that certain claims governed by the Green Guides could go hand in hand with the disclosure requirements proposed by the SEC: Companies making claims that are based on carbon offsetting should therefore be

prepared to disclose the role that these offsets play in their respective business strategy. This shows that companies' strategies must align across climate-related claims, ESG reporting and SEC disclosure rules (Rosenfeld et al., 2022).

2.1.6 Denmark

The Danish Consumer Ombudsman, an independent public authority that monitors compliance with Danish marketing law (Danish Consumer Ombudsman, 2021), published a guidance on the use of environmental and ethical claims already in 2014 (Danish Consumer Ombudsman, 2014). The guidance was created on the basis of the Marketing Practices Act, which sets the minimum standards for business market practices and ensures that business owners comply with fair trade practices and trade customs (HjulmandKaptain, 2022). By the end of 2021, the Consumer Ombudsman further published a „Quick Guide on Environmental Claims" (Danish Consumer Ombudsman, 2021), which makes the rules more accessible to companies.

The Consumer Ombudsman's guidance from 2014 also addresses companies' climate neutrality claims. A company claiming climate neutrality in accordance with the guidance must perform a calculation of the total greenhouse gases covered by the Kyoto Protocol, for example, for the product being marketed. Calculation methods such as the Greenhouse Gas Protocol or relevant ISO standards are permitted. The company must also provide information on the calculations. If emissions are not zero, remaining emissions shall be brought to zero through the purchase of mitigation certificates from selected certification standards.

The guidance can be considered "general preliminary information" in which the Consumer Ombudsman explains how the marketing rules should be interpreted in relation to specific areas, such as the use of the term carbon neutrality for products or other business activities. However, the guidance does not clarify in detail when claims are in compliance with the Marketing Practices Act. Ultimately, it will be for the courts to decide whether or to what extent misrepresentations constitute a violation of the Marketing Practices Act and whether there will be respective legal consequences (Danish Consumer Ombudsman, 2014).

In terms of legal action, a first climate related lawsuit was filed in 2021 by three Danish NGOs against the pork producer Danish Crown. The NGOs claim that the company is misleading consumers with its "climate-friendly" claims regarding pork production that was used in marketing (Gratham Research Institute on Climate Change and the Environment, n.d.).

2.1.7 Norway

In Norway, guidelines on using claims such as 'climate neutral' were developed by the Consumer Authority as early as 2009. The Consumer Authority is a public enforcement authority aiming to prevent illegal marketing and other forms of illegal commercial practices. The most important law enforced by the Consumer Authority is the Marketing Control Act (MCA) (Consumer Authority, n.d.), which also provided the basis for the development of the guidelines. The guidelines, which are explicitly not a regulation, recommend claims to be as specific, neutral and objective as possible. They apply to business activities and services/products and ask companies to fulfill the following four criteria if claims such as "climate neutral" are to be used (Consumer Ombudsman Norway, 2009):

1. Calculation of GHG emissions (GHG Protocol for business activities, „best available life cycle analysis" for services/products)

2. Reduction plan (plan with mitigation measures to be verified by an impartial third party)

3. Offset purchase (Residual emissions must be bought to offset residual emissions (credits approved by the UN and/or Gold Standard)

4. Disclosure (Disclose method of calculating GHG emissions, reduction plans, climate accounts as well as the proportion of emissions compensated).

Two aspects are particularly remarkable: First, for the calculation of GHG emissions of products, the guidelines require the "best available life cycle analysis" to be used. Hence, claiming climate neutrality of a product is only possible if all associated emissions (including Scope 3 emissions) are neutralized. Second, the reduction plan must include measures for reducing GHG "as much as possible at all stages", unless an impartial third party verifies that all reduction potential of the product/service is exhausted (Consumer Ombudsman Norway, 2009).

Another relevant player in Norway is the Norwegian Consumer Council, 'Forbruker Radet'. The Council had in the past filed a lawsuit against a company that had labeled its smartphones as being climate positive. Since the positive contributions were achieved through the purchase of offsets, the claim was considered to be vague and misleading. In the end, the company changed its claim and further added explanatory text that clarified the role of offsets (Konsumentverket, 2021).

2.1.8 New Zealand

The Commerce Commission of New Zealand is a so called independent Crown entity that is run independently from the government. It is NZ's regulatory agency responsible for enforcing laws related to competition and consumer protection (Commerce Commission, 2021).

The Commerce Commission first published a guidance on environmental claims for traders in 2009, which was last updated in 2020 (Commerce Commission, 2020). The document is explicitly intended to provide general guidance only and is neither exhaustive nor legally binding. It contains overarching principles relevant for all types of environmental claims. Claims should be truthful and accurate, be specific and substantiated on 'reasonable grounds'. Businesses are further encouraged to use plain language, to not exaggerate their claims and consider the overall impression of the claim. The guidance also includes advice on climate neutrality and use of offsets. Companies claiming climate neutrality should take into account the whole lifecycle of the good or service, while claims that are only related to specific aspects of a product or service are considered to be misleading (e.g. claiming climate neutrality when the claim only relates to the production process, not to its use delivery and use)(Commerce Commission, 2020). In New Zealand, a complaint before a non-judicial oversight body was filed in 2021. The Advertising Standards Authority (ASA) is a self-regulatory body comprising advertisers, agencies and the media. The complaint was filed before the ASA's Complaints Board against the utility Firstgas Group, which had claimed that its natural gas is going "zero carbon". The ASA found that the statement was misleading because it made environmental claims that had not been substantiated (ASA Complaints Board, 2021).

2.1.9 Australia

In Australia, the federal government collaborates with Australian businesses under the Climate Active initiative, which provides a framework for managing emissions and achieving carbon neutrality. Under this initiative, the Climate Active Carbon Neutral Standard was developed, which includes five different certification categories (organizations, products and services, events, buildings and precincts). Entities meeting the requirements of the Standard can be certified 'carbon neutral' by the Australian government. Broadly speaking, this means that they must calculate the GHG emissions generated by their activity, reduce these emissions as much as possible, offset any remaining emissions by purchasing carbon offset units and then publicly report on their achievement(Climate Active, 2022). Details on how to achieve and maintain a carbon neutrality

claim for products and services are included in the Product and Service Standard, which is developed and administered by the Australian Government Department of Industry, Science, Energy and Resources (Climate Active, 2020).

As highlighted by Markowitz et al. (2021), the Product and Service Standard does not require entities to base carbon neutrality claims on the entire life cycle of the product but allows them to exclude final product use and end-of-life emissions (see section on life cycle assessment in Climate Active, 2020). Offset units must meet offset integrity principles which include aspects such as additionality, permanence and third-party auditing. Notably, the avoidance of double claiming is not one of the criteria. The Australian Government Department of Industry, Science, Energy and Resources reviews publicly available offset units against these integrity principles and publishes a list of eligible units, all of which must have a vintage year later than 2012. Eligible units include Australian Carbon Credit Units (ACCUs), CERs and RMUs from the Kyoto Protocol, VERs issued by the Gold Standard as well as VCUs from the Verified Carbon Standard. The list of eligible units may be updated in the future (Climate Active, 2020, p. 20).

Australia is also among the countries where corporations are being sued due to misleading net-zero claims that are considered to be in violation of national consumer or corporate laws. In August 2021, the Australasian Centre for Corporate Responsibility (ACCR) sued the gas company Santos, which claims to be achieving net-zero emissions by 2040. The ACCR argues that the claim constitutes misleading or deceptive conduct that is unlawful according to Australian Consumer Law (ACL), since the company is relying on projected carbon capture and storage technology that either does not exist or has not been disclosed The ruling of the Federal Court of Australia is still pending (Benjamin et al., 2022).

More recently, Australia's corporate regulator, the Australian Securities and Investment Commission (Asic) has issued its first penalty for greenwashing. The Australian company Tlou Energy had to pay a penalty for claiming that the electricity it produced would be carbon neutral (Cox, 2022).

2.1.10 France

In August 2021, the French Climate and Resilience Law was adopted, containing specific measures to prevent greenwashing. Article 12 of the Climate and Resilience Law introduces restrictions on the use of the term 'carbon neutrality' or other wording of similar meaning (e.g., 'climate neutral', 'zero carbon'). It prohibits the use of a carbon neutrality claim in advertising, unless the advertiser makes information on the following three elements publicly available (LOI n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, 2021):

- A greenhouse gas emission inventory
- A description of how greenhouse gas emissions of the product or service are first avoided, then reduced and finally offset, including a GHG reduction trajectory
- How offsetting of the remaining emissions complies with minimum standards.

The information must be made easily accessible online via a link or QR code provided on the advertisement or packaging bearing the carbon neutrality claim. Failure to comply with these requirements may be punished.

A decree that sets out the terms and conditions for the implementation of Article 12 was adopted in April 2022 (Décret n° 2022-539 du 13 avril 2022 relatif à la compensation carbone et aux allégations de neutralité carbone dans la publicité, 2022). It will enter into force on January 1, 2023. The decree specifies the transparency requirements of the law: The GHG inventory is to be carried out in accordance with the requirements of standard NF EN ISO 14067, or any other standard

consistent with the requirements of this standard. It has to be updated annually. This allows the monitoring the evolution of the GHG emissions. If it can be shown that the emissions associated with the product or service before offsetting have increased between two consecutive years, the advertiser has to withdraw the carbon neutrality claim. The report is to be accompanied by three annexes that provide further details:

- Results of the assessment and details about the methodology used
- An explanation of the target trajectory with quantified annual progress targets, covering at least ten years
- A description of the offset projects and units used, including their cost category (below 10 €/ tCO2, 10 - 40 €/ tCO2 or above 40 €/ tCO2)

The decree further specifies that advertisements failing to comply with these requirements may be subject to an administrative fine set at 100,000 EUR for a legal person and may be increased to the full amount of the expenditure devoted to the noncompliant advertisement (Décret N° 2022-538 Du 13 Avril 2022 Définissant Le Régime de Sanctions Applicables En Cas de Méconnaissance Des Dispositions Relatives Aux Allégations de Neutralité Carbone Dans La Publicité, 2022).

Besides being a frontrunner in the regulation of climate neutrality claims, France also has an active self-regulatory body for advertising. The control body of the French Advertising Regulation Authority (l'ARPP), the Jury of Deontology in Advertising (JDP), has dealt with numerous complaints regarding climate claims in the past (Jury de Déontologie Publicitaire, n.d.). In addition, L'ARPP has expanded its scope of action by setting up a new form of advisory service. National campaigns (regardless of the broadcasting medium used) with environmental claims can be checked by the Authority within 72 hours. The Authority controls compliance with their recommendations regarding the right use of environmental claims as laid out in their guidance.

With regard to court rulings, one concrete case could be found that relates to "net zero". Greenpeace France and other NGOs sue TotalEnergies over climate marketing claims. TotalEnergies claims in an advert that it is aiming for carbon neutrality in 2050, which is considered misleading by the Environmental groups that have filed the lawsuit. The case was brought under the French national law that is implementing the EU's Directive on Unfair Commercial Practices. It's outcome will therefore also be relevant to other companies in the EU (Climatecasechart, 2022).

2.1.11 European Union

In the European Union, commercial practices including marketing are regulated by the Directive on Unfair Commercial Practices (European Commision, 2013). The Directive and in particular its Article 6 regarding misleading actions is thus the basis for further action on carbon neutrality claims. European Member States had to transpose the Directive into national law. They either incorporated the provisions into existing national legislation or by adopting a new law. The Directive was also implemented in the three EEA countries Iceland, Liechtenstein and Norway (European Commision, 2013).

A guidance to assist in the interpretation of the Directive which also specifies how to apply it to environmental claims was published in 2021 (European Commission, 2021). The guidance states that, in order to comply with Article 6 of the Directive, green claims must be "truthful, not contain false information and be presented in a clear, specific, accurate and unambiguous manner, so that consumers are not misled" (European Commission, 2021). Businesses must have the evidence to support their claims. Notably, the guidance also indicates that an environmental claim can be misleading even if the information is factually correct (European Commission, 2021).

To further strengthen consumer protection and tackle false green claims, two legislative initiatives are currently underway as part of the New Circular Economy Action Plan (European Commission, 2020c) adopted in 2020:

- 'Substantiating Green Claims') (European Commission, 2020b);
- "Strengthening the Role of Consumers in the Green Transition" (European Commission, 2020a)

Both initiatives run in parallel but with different timelines. The legislative proposal for the initiative on substantiating green claims is expected to be published in the second half of 2022. It will specify how those claims that are still allowed are to be sufficiently substantiated against standard methodologies in order to make the information regarding the environmental performance more reliable, comparable and verifiable across the (European Commission, 2020b).

The initiative on "Strengthening the Role of Consumers in the Green Transition" is at a more advanced stage, with the European Commission having published a proposal in March 2022 (European Commission, 2022). The proposal includes several amendments to the Directive on Unfair Commercial Practices (Unfair Commercial Practices Directive, 2005) and also amendments to the Consumer Rights Directive (Directive 2011/83/EU on Consumer Rights, 2011). It aims at regulating and even prohibiting the most misleading environmental claims.

More specifically, the proposal suggests that claims such as "climate neutral" continue to be allowed under specific requirements.

First, businesses can use a climate neutral claim, if they comply with information requirements further specified by the Directive. As long as "clear, objective and verifiable commitments and targets" are provided, such a claim can be made. The claim is to also be supported by an independent monitoring system to monitor the progress of the trader with regard to the commitments and targets. The proposal also mentions that specifications for a claim should be provided "in clear and prominent terms on the same medium, such as the same advertising spot, product's packaging or online selling interface"(European Commission, 2022, para 9).

Second, 'generic environmental claims'[3], such as "climate friendly", "carbon neutral" or "carbon positive" can be used if the trader is able to demonstrate 'recognised excellent environmental performance' [4] relevant to the claim. This means that 'generic environmental claims' are prohibited unless the claim is compliant with the EU ecolabel Regulation, specific ISO ecolabelling schemes or compliant with other top environmental performance in accordance with other applicable EU law.

The legislative proposal is currently being discussed by the European Parliament and the Council. Once the Directive is adopted at EU level, all Member States have to adopt and publish within 18 month their respective laws, regulations and administrative provisions necessary to comply with this Directive.

[3] "'generic environmental claim' means any explicit environmental claim, not contained in a sustainability label, where the specification of the claim is not provided in clear and prominent terms on the same medium;" (European Commission, 2022)

[4] "'recognised excellent environmental performance' means environmental performance compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance in accordance with other applicable Union law;

2.2 Trends and developments in national regulation of claims

Consumer rights and legislation on fair competition as a common basis

In all countries, existing legislation on consumer rights and fair competition provides the basis for dealing with climate neutrality and similar claims. Legislation and related guidance documents usually require companies to adhere to basic criteria and principles when marketing their products and services. Criteria that companies must adhere to in different countries include the following: claims must be truthful, accurate, specific, substantiated and not exaggerated. In addition to establishing specific criteria for claims, many guidance documents highlight that it is the overall impression that counts: ensuring that the claim as such is true is not sufficient, it must also be ensured that the overall impression is not misleading.

Guidance on climate-related claims often limited in detail

While these overarching criteria and principles do also apply to climate-related claims, some countries have further developed specific guidance for such claims. Guidance on climate-related claims is either included in the (green) claims guidance (e.g. United Kingdom, Netherlands, New Zealand) or it is developed separately (e.g. Norway, Australia). Guidance is usually not legally binding but intended to assist companies in interpreting their obligations under the existing law. The level of detail provided differs significantly among countries, but is generally limited. An exception is the case of Australia, which uses it as a basis for certification.

Approaches in dealing with (misleading) claims differ and are not mutually exclusive

Differences cannot only be observed with regard to the level of detail provided by countries' legislation and guidelines. Also, the approaches in dealing with climate-related claims differ fundamentally: Many countries rely on case law with courts having to assess whether climate-related claims are in line with companies' legal obligations (e.g. Germany). In some countries, non-judicial cases are also particularly relevant (Australia, New Zealand).

However, there are also countries that have adopted fundamentally different approaches: As the first country worldwide, France has adopted reporting obligations to substantiate their climate neutrality claims and has further agreed on sanctions for companies that fail to meet the requirements. In Australia, by contrast, the national government certifies entities as "carbon neutral" if they meet specific requirements. This reveals a fundamentally different stance towards climate-related claims: While in France the provisions on climate neutrality can be used as a basis for sanctioning misleading claims, Australia incentivizes companies to make such claims and supports them in becoming (certified) carbon neutral. As can be seen from Table 1 in the Annex, the different governance approaches are not mutually exclusive and countries combine multiple approaches.

Enforcement often (still) insufficient

Enforcement in most countries is built on a bottom-up approach, allowing entitled non-state (e.g. self-regulatory entities) as well as public actors (e.g. Consumer Protection Agencies) to file a lawsuit against companies that do not comply with their legal obligations. While this has led to a growing number of cases before judicial and non-judicial courts, enforcement of companies' legal obligations is often being criticized as insufficient, also in the EU with regard to the Directive (*European Consumer Summit 2022. Workshop 3: Consumer Information and Green Claims*, 2022).

Recently, the European Commission and national consumer authorities have published the findings of a website screening, highlighting that more than 40 per cent of the websites used claims that were misleading. This does not only show that there is an urgent need for better monitoring of claims but also that a top-down enforcement could hold large potential. In the United Kingdom, the competition and markets authority (CMA) announced it would begin reviewing companies' claims for compliance with the Green Claims Code (CMA, 2021). In light of the increasing relevance of climate-related claims top-down enforcement of legal obligations may become more relevant in the future.

3 Private governance initiatives

Climate neutrality and other claims have not only been subject to regulation by national governments, but there is also a growing interest from private initiatives to define what claims companies should be allowed to make, in particular if these claims are made on the basis of carbon credits generated by the voluntary carbon market. The emergence of these initiatives must be seen in the context of growing concerns about the integrity of voluntary offsetting and the uncertainties related to the functioning of the voluntary carbon market under the Paris Agreement.

The initiatives vary significantly in terms of their scope and while some cover the demand side focusing on how companies should set ambitious mitigation targets, others establish quality criteria for the mitigation activities that generate carbon credits, targeting the supply side of the market. A description and comparison of some of these initiatives has been provided in a previous paper (Kreibich, 2021) Figure 1 below provides an overview of selected initiatives and their main areas of work. The figure differentiates five areas:

- Measurement and management of emissions;
- Target setting;
- Offsetting activities;
- Use of credits; and
- Claims.

In the figure, dark green color highlights an initiative's focus areas while areas less extensively covered are shown in brighter color. Please note that some initiatives focus only on selected aspects while others have a broader scope.

Since this paper puts the focus on the claims that companies can make when using carbon credits, we will take a closer look at two initiatives that more closely deal with climate-related claims, namely the Nordic Dialogue on Voluntary Compensation and the Voluntary Carbon Markets Integrity Initiative.

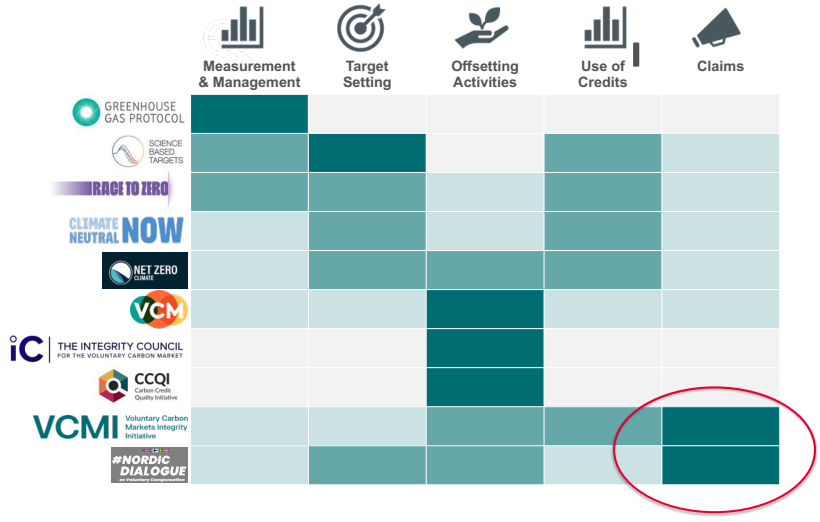

Figure 1: Overview on initiatives and their focus areas (Source: Wuppertal Institute)

Before delving into the details of the draft documents published by these two initiatives, we shed some light on ongoing work undertaken by the UN's High-Level Expert Group as well as the International Organization for Standardization (ISO) together with one of its national standards bodies, the British Standards Institution (BSI). Due to their overarching scope and global reach, these

initiatives can be expected to also be relevant for the claims that companies can make. However, since details on these meta initiatives are not publicly available, they will not be included in the subsequent in-depth analysis.

3.1 Meta-initiatives

3.1.1 UN's High-Level Expert Group

The High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities (HLEG) was launched by United Nations Secretary-General António Guterres in March 2022 with the objective of developing recommendations for net-zero pledges by corporations, financial institutions and local and regional governments. The Expert Group comprises 17 experts appointed by the UN Secretary General and is chaired by Catherine McKenna, Canada's former Minister of Environment and Climate Change.

The HLEG launched a public consultation inviting submissions from stakeholders and individuals, including on standards and definitions of Net Zero, the governance of targets and criteria to ensure credibility (HLEG, 2022b). On the occasion of 27th Conference of the Parties to the UNFCCC that took place in Sharm el Sheikh in November 2022, the UN Secretary-General presented the group's final report. The report defines five overarching principles and provides ten recommendations to enhance integrity, transparency and accountability of net zero commitments (HLEG, 2022a):

1. Announcing a Net Zero Pledge

2. Setting Net Zero Targets

3. Using Voluntary Credits

4. Creating a Transition Plan

5. Phasing out of Fossil Fuels and Scaling Up Renewable Energy

6. Aligning Lobbying and Advocacy

7. People and Nature in the Just Transition

8. Increasing Transparency and Accountability

9. Investing in Just Transitions

10. Accelerating the Road to Regulation

The report encourages companies and other non-state actors to use carbon credits to "balance-out" their annual unabated emissions, while specifying that such credits cannot be counted towards an actor's interim target. With regard to the claims that companies can make, the report underscores the need for transparency and requires claims that are associated with the use of credits to be „easily understandable, consistent and verified" (HLEG, 2022a).

The report differentiates between being net zero-aligned and being net zero. Non-state actors that are on their way to net zero and have met their interim target can claim to be net zero-aligned. Non-state actors can claim to "be net zero" if they have reached their long-term target and any residual emissions have been neutralized by permanent GHG removals. This is in line with SBTi's Net Zero Standard, which requires Parties to reach their long-term target before they can claim to have reached net zero (SBTi, 2021). However, the HLEG does not allow non-state actors that continue to build or invest in new fossil fuel supply to claim to be net zero (HLEG, 2022a).

With regard to double counting of emission reductions, the report refers to the need for a framework to "ensure *credits* are only used once" (HLEG, 2022a, emphasis added). While this excludes the double use of credits (one credit used by more than one actor) as one form of double counting, there is no reference to the need to avoid double claiming of the underlying emission

reductions or removals.[5] While there is some uncertainty regarding this implicit distinction of the different forms of double counting, double claiming seems to be allowed.

It remains to be seen how the recommendations of this meta-initiative will impact the other initiatives as well as regulation at the national level. With regard to the former, the report calls on existing initiatives to update their guidance and requirements with the recommendations of the HLEG as soon as possible. Regarding the latter, the HLEG calls for the installation of a Task Force on Net Zero Regulation to help policymakers and regulators to develop rules for corporate climate action that are internationally consistent.

3.1.2 ISO's 14068 and BSI's Net Zero Guiding Principles

The International Organization for Standardization (ISO) is an independent, non-governmental international organizations comprising 167 national standards bodies. ISO is best known for its International Standards but it has also other deliverables that serve the standardization purpose.

One such alternative is a Publicly Available Specification (PAS)[6], which is also the format of the first standard on carbon neutrality: "PAS 2060 Carbon Neutrality" was developed by the British Standards Institution (BSI), an ISO national standards body. PAS 2060 specifies four stages for companies to demonstrate carbon neutrality (BSI, 2022):

- Assessment of GHG emissions
- Reduction of GHG emissions through a carbon management plan
- Offsetting excess emissions usually by purchasing carbon credits
- Documentation and verification through statements and public disclosure

Businesses that want to claim "carbon neutrality" can be verified against this PAS to substantiate their claims. Building on this PAS, ISO is currently developing "ISO/CD 14068 Greenhouse gas management and climate change management and related activities — Carbon neutrality" as a new International Standard. However, little is known publicly about this process that started in 2021 and is to result in a new International Standard in 2023.

In parallel, the Our 2050 World initiative, which is led by BSI and includes the ISO and the Race to Zero campaign, proposed the development of Net-Zero Guiding Guidelines through an International Workshop Agreement (IWA) facilitated by ISO.[7] These Net Zero Guidelines (ISO, 2022), which were presented at COP27, have been developed through a collective, open process that involved stakeholders through a series of workshops and consultation processes. The final document provides guiding principles and recommendations that are to enable a common approach across existing initiatives.

The Guidelines include "recommendations for the use of offsets to meet net zero targets" (ISO, 2022), while guidance for organizations on the use of offsets in the context of carbon neutrality and other claims will be provided by the above-

[5] In another section of the report, entities are required to transparently report on "whether or not the credits used can also be counted towards Nationally Determined Contributions under the Paris Agreement" (HLEG, 2022a). This is somewhat misleading since this would be in conflict with the requirement to avoid any double use of credits. We therefore assume that the word "credit" stands for "mitigation outcome" or "emission reduction". Following this reading, double claiming is not prohibited but entities must report on it.

[6] A PAS is published to respond to urgent market needs, is valid for a maximum time period of 6 years and represents consensus among those who have developed it but not necessarily broader societal consensus as required for an International Standard. A PAS can transform into an International Standard at a later stage (ISO Website, 2022).

[7] The International Workshop Agreement (IWA) is another ISO format. It is a document developed outside the normal ISO committee system allowing for a broader participation (ISO Website, 2022).

mentioned ISO 14068, according to the document.

3.2 Voluntary Carbon Markets Integrity Initiative

The Voluntary Carbon Markets Integrity Initiative (VCMI) is a multi-stakeholder platform co- funded by the Children's Investment Fund Foundation (CIFF) and the UK Government Department for Business, Energy, and Industrial Strategy (BEIS). It was established in 2021 with the objective "to drive credible, net-zero aligned participation in voluntary carbon markets" (VCMI, 2021). The VCMI considers itself an umbrella initiative that seeks to connect with, align and amplify existing initiatives that share its vision for high integrity voluntary carbon markets. While the initiative also explores supply-related aspects, a focus is put on the categorization of corporate claims that build on the use of the voluntary carbon markets.

In June 2022, the VCMI published its Provisional Claims Code of Practice (VCMI, 2022). The purpose of the Provisional Claims Code is to provide guidance to companies and other nonstate actors on how to use carbon credits and ensuring that the claims made regarding the use of carbon credits are credible. The Provisional Claims Code was open to public consultation until mid-August 2022. Until June 2023, the Provisional Claims Code will be road tested in order to further refine the Code of Practice (VCMI, 2022).

Brief description of the VCMI's Provisional Claims Code of Practice

The Provisional Claims Code builds on and integrates with existing provisions from other initiatives. For setting science-aligned targets, companies may use SBTis Net-Zero Standard. In terms of unit quality, the Provisional Claims Code makes reference to the IC-VCM, the International Civil Aviation Organization's (ICAO) Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) and guidance related to Article 6.

The Code comprises four steps for companies for making credible claims: (1) They must first meet a set of **prerequisites**, compliance of which must be confirmed by a third Party: The prerequisites include a commitment to a science-aligned long-term net zero emissions target, setting of interim targets with detailed implementation plans and maintaining a GHG inventory. One notable additional requirement is a public statement declaring that the company's advocacy activities are consistent with the goals of the Paris Agreement.

In a second step (2), companies must **identify the claim(s)** they want to make. These can either be enterprise-wide or limited to a specific brand, product or service. VCMI allows companies that meet all prerequisites of step 1 to make carbon-neutral brand, product and service-level claims. Additional requirements that must be met include a public inventory covering scope 1 to 3 emissions of the brand, product or service and application of a carbon neutrality guidance from existing standards such as PAS 2060. Fulfillment of these and other requirements must be verified by a third Party.

For enterprise-wide claims, VCMI differentiates three levels that companies can choose from. Claims differ depending on whether the company is on track to achieve its next interim target for Scopes 1, 2 and 3 and the degree of "coverage" of remaining unabated emissions through carbon credits. The three enterprise-wide claims are as follows:

- **VCMI Gold.** The company must be on track to achieve its next interim target for Scope 1, 2 and 3 and cover all (100%) remaining unabated emissions through carbon credits.
- **VCMI Silver.** The company must be on track to achieve its next interim target for Scope 1, 2 and 3 and cover at least 20% of its remaining unabated emissions through carbon credits.

- **VCMI Bronze.** The company must be on track to achieve its next interim target for Scope 1, 2. Scope 3 emissions must be reduced through a combination of internal emission reductions and retirement of carbon credits (up to 50% of Scope 3 emissions). The company has to cover at least 20% of its remaining unabated emissions through carbon credits.

The next step (3) of the Code requires companies to purchase quality carbon credits in line with specific quality criteria.

In the final step (4), companies must transparently report on the use of carbon credits. In addition to information related to the credits used, companies must also provide information on the proportion of credits used to cover emissions beyond their targets and whether units are backed by corresponding adjustments.

3.3 Nordic Dialogue on Voluntary Compensation

The Nordic Dialogue on Voluntary Compensation (Nordic Dialogue) is an initiative funded by the Nordic Council of Ministers, the official body for inter-governmental co-operation in the Nordic Region (Nordic Co-operation, 2022). The Nordic Dialogue is managed by Perspectives Climate Research and facilitated by a team of experts from Perspectives Climate Research, IVL Swedish Environmental Research Institute, Carbon Limits and Tyrsky Consulting. The Nordic Dialogue aims to inform Nordic and international stakeholders on using voluntary compensation of emissions, which may include offsetting as well as non-offsetting use of credits.

The initiative started in 2021 with a survey and interviews to gather stakeholders' views on the topic and published a report that provides an overview of key concepts and mapping of existing initiatives)(Nordic Dialogue on Voluntary Compensation, 2021). In June 2022, the Nordic Dialogue published its "Draft Nordic Code of Best Practice for Voluntary Compensation of Greenhouse Gas Emissions" (Draft Nordic Code) (Nordic Dialogue on Voluntary Compensation, 2021), a final version of which is to be published by the end of 2022 following a public consultation phase.

Brief description of the Nordic Dialogue's Draft Nordic Code

The Draft Nordic Code establishes best practice requirements and recommendations for organizations and actors engaging in voluntary compensation. The code requires organizations to quantify their emissions, set targets and reduction pathways that are aligned with 1.5 °C and transparently report on their emissions and progress towards targets, as well as how voluntary compensation has been used. The code also establishes high-quality criteria for mitigation outcomes, carbon crediting programmes and carbon registries that must be met in the context of compensation activities.

The code differentiates claims depending on whether they count *towards* or *beyond* the host country's existing NDC and whether they are used to counterbalance (or offset) specific emissions attributed to an organization, product or service. There are three different types of claims all of which must be verified by a third-party entity:

Offsetting claims involve the use of carbon credits representing "mitigation outcomes that are exclusively claimed for offsetting and not claimed towards any other mitigation purpose, including towards any country's existing mitigation targets." With this, double claiming is clearly excluded. "Carbon neutrality" is considered a specific type of offsetting claim. In order to claim carbon neutrality, companies must fully offset residual GHG emissions *after* having taken action to mitigate their emissions in line with the requirements of the 1.5 °C-aligned pathway.

National mitigation contribution claims build on mitigation outcomes that help the host country in achieving its existing mitigation target.

OMGE claims enable companies to make a contribution to overall mitigation in global emissions (OMGE). The mitigation activity supported does not assist the host country in meeting its NDC (as with the national mitigation contribution claims) nor can the units be used to offset specific emissions of the company (as under the offsetting claim).

3.4 Zooming in: Comparing VCMI's Provisional Claims Code and the Draft Nordic Code

What role do 1.5°C-aligned pathways and net zero targets play for making claims?

Both codes are integrated into the broader landscape of corporate climate change action and align with existing initiatives in the field, albeit to varying degrees.

The Draft Nordic Code expects companies to reduce their emissions with a 1.5 °C-aligned pathway without further specifying what this means in terms of coverage of emissions. The VCMI requires companies to make a "public commitment" to achieve science-aligned long-term net zero emissions no later than 2050 covering all value chain emissions and to set respective interim targets. For some scopes, however, companies are allowed to not fully reduce their emissions in line with this long-term target, at least for an interim time period.[8] Hence, while both codes rely on the idea of 1.5-aligned (or net zero) pathways, the Draft Nordic Code is more rigorous when it comes to reducing emissions in line with this pathway, while VCMI's Provisional Claims Code is more specific.

Who can use the codes and what performance is required?

Another fundamental difference relates to the target group. VCMI's Provisional Code is to be applied to companies and other non-state actors. The Draft Nordic Code, by contrast, adopts a broader scope with requirements and recommendations being also applicable to individuals.

The codes also differ with regard to their applicability. While the Draft Nordic Code is explicitly meant to be a best practice guidance document, VCMI's proposal allows for companies to transition from a less ambitious level (VCMI Bronze) to a more ambitious level (VCMI Gold) therefore having a broader applicability.

How are claims differentiated?

Both codes allow for different types of claims to be made. However, they differ fundamentally in terms of how claims are differentiated. The VCMI proposes a differentiation depending on the companies' performance in reducing its own emissions and the degree by which residual emissions are covered through carbon credits. The Draft Nordic Code, by contrast, expects all companies to reduce their emissions with a 1.5 °C-aligned pathway and differentiates claims depending on how the mitigation outcomes used by the company relate to the Party where these are generated. If mitigation outcomes contribute to the host Party's NDC - and are therefore not backed by corresponding adjustments – they cannot be used to make offsetting claims.

Is the application of corresponding adjustments required?

Whether corresponding adjustments should be required in the context of the voluntary carbon market has been a particularly contentious issue for years (see Box 1 in the Introduction), and there was the expectation that additional

[8] Parties that aim to claim VCMI Bronze can "reduce" Scope 3 emissions through a combination of within value chain mitigation actions and the purchase of carbon credits. VCMI Bronze will only be available until 2030.

guidance on corporate claims could provide more clarity on this topic.

VCMI's Provisional Claims Code does not require carbon credits to be backed by corresponding adjustments but asks companies to transparently report on whether carbon credits used have been correspondingly adjusted or not. However, the VCMI announces to further explore this issue as part of its work to refine the code.

The Draft Nordic Code takes a more differentiated stance by requiring companies to address any types of double claiming in the context of offsetting claims and OMGE claims. Both claims must be based on mitigation outcomes that is are not counted towards national mitigation targets. In practice, this would mean that mitigation outcomes must be backed by corresponding adjustments if the mitigation outcomes are used to offset specific emissions or if a contribution to OMGE is to be made. The application of corresponding adjustments can only be evaded if the mitigation outcomes are to support the host Party in achieving its NDC.

Do the codes allow for offsetting?

One of the main drivers for companies to engage in the voluntary carbon market is to balance out or offset residual emissions in order to make claims such as carbon neutral. Therefore, the question whether the codes allow companies to offset residual emissions and make respective claims is of key relevance. Notably, the two codes differ fundamentally in this regard.

The Draft Nordic Code explicitly includes offsetting as one possible claim that companies can make based on the purchase, ownership and use of mitigation outcomes. Claims about offsetting require companies to ensure that the carbon credits used are only claimed once and that double claiming is avoided (see above on the role of corresponding adjustments). If the emissions are fully offset, claims about carbon neutrality can be made.

VCMI's Provisional Claims Code, by contrast, is less explicit on whether its application allows to make offsetting claims. The Code stresses that "[c]arbon credits underpinning VCMI claims are not counted as internal emission reductions that a company undertakes to meet decarbonization targets [but that] these purchases [rather] represent a contribution to both the company's climate goals and to global mitigation"(VCMI, 2022). This differentiation between goals and targets is somewhat confusing as the document does not provide an indication of what a "company's climate goals" might be. Goals are usually considered to be more abstract and less specific and tangible than targets.

A possible answer whether offsetting claims are allowed could be provided by the prerequisites section if read carefully together with the glossary section of the document. The Provisional Claims Code requires companies to "only use carbon credits in addition to – **not as a substitute** for – science-aligned decarbonization across their value chains" (VCMI, 2022, p. 20, emphasis added). At the same time, the glossary section defines offset as "[t]he **use of a carbon credit as a substitute** for within value chain emissions abatement and counted as reductions toward an emissions reductions target." (VCMI, 2022, p. 39, emphasis added). Following this narrow definition, the Draft Claims Code does not allow for offsetting.

At the same time, the code requires certain shares of remaining unabated emissions to be "covered" through the purchase and retirement of carbon credits (e.g. coverage of all remaining emissions (100%) to achieve VCMI Gold Net Zero). The document does not specify what is meant by "coverage". It could hence be interpreted as an indication of an offsetting requirement, even if the word "offsetting" is not used.

Another factor indicating that offsetting claims could be allowed, is the fact that the VCMI announces to further explore the issue of corresponding adjustments, a topic that, until now, has

	VCMI	Nordic Code
Scope	Organisations (companies and other non-state actors)	Organisations and individuals
Approach	Step-by-step approach with the aim of the broadest possible application	Best practice approach
Possible claims	• Gold • Silver • Bronze + 'carbon neutral' claims for brands, products and services	Offsetting claim (inkl. carbon neutralily) OMGE claim National mitigation contribution claim
Differentiation of claims	Emission reduction performance according to interim targets & coverage of emissions through credits	Relationship between units used used and host country NDC and OMGE
Corresponding adjustments (CAs)	Implementation of CAs not mandatory but transparency required	Implementation of CAs implicitly mandatory for use in offsetting claims and OMGE claims
Offsetting claims	Role of offsetting is unclear	Offsetting possible if carbon credits are backed by CAs

Table 1: Comparing VCMI's Provisional Code of Practice with the Draft Nordic Code

only been discussed in the context of offsetting. Another aspect that points into this direction is the carbon neutral claim for brands, products and services, which is clearly based on offsetting.

3.5 Discussion of observed trends

The rising numbers of companies and organizations adopting some sort of neutrality target and at least implicitly relying on carbon credits to offset residual emissions led to a strong push for increased scrutiny of corporate climate action and the role of the VCM therein. In response to this, numerous initiatives emerged, some explicitly focusing on single aspects of corporate climate action, such as GHG emissions accounting or corporate target-setting, while others have adopted a much broader scope. The orchestration of these initiatives is ongoing with meta initiatives such as the ISO's Net Zero Guidelines trying to find a consensus through broad involvement of stakeholders.

While many of the initiatives do also cover corporate claims to a certain extent, only two of them have published detailed proposals on the claims that companies should be allowed to make when using carbon credits.

As can be seen from the comparison of the draft codes in Table 1, there is still no consensus in this regard. The question about the need to implement corresponding adjustments can be considered the main reason preventing a common position. However, the VCMI announced that it would continue to explore the issue in the future. Therefore, it remains to be seen how the draft codes of these two initiatives evolve in the future and whether a common ground will be found.

4 Conclusions

This policy paper explored the governance of climate-related claims by linking the analysis of the regulation of claims in selected jurisdictions with the current status of private-sector initiatives from the voluntary carbon market. It shows how the question of corporate claims is being approached from both angles.

Still no agreement on the role of the VCM in underpinning corporate claims

As we have seen in the analysis of international initiatives, the voluntary carbon market is only cautiously approaching the questions of regulating claims. In terms of the private governance initiatives, we find that there are some areas of increasing convergence: companies are expected to measure their emissions, set internal emission reduction targets that are in line with the overall objective of the Paris Agreement and transparently report on where they are in achieving these targets. With regard to carbon credits there is a growing understanding that they can only play a supplementary role and that a focus must be put on emission reductions within companies' value chain. Despite these areas of convergence, there are important differences at a more nuanced level, as the comparison of the Nordic Dialogue with the VCMI has shown. The former can be considered to be more ambitious than the latter, as it does require companies to reduce all their emissions in line with their science-aligned emissions pathways. The VCMI by contrast, has adopted a more pragmatic approach that allows for broader applicability by allowing companies to only be partially on track with some of their emissions (Scope 3) for a limited period of time.

With regard to the claims that companies can make, the approaches adopted by the VCMI and the Nordic Council differ fundamentally: While the Draft Nordic Code differentiates claims according to the attributes of the credits used, the type of VCMI claim that companies can make depend on its performance in reducing its internal emissions and the coverage of residual emissions through carbon credits. VCMI's approach does not seem to answer the most pressing questions related to the functioning of the VCM under the Paris Agreement. Instead, an additional layer of differentiation is introduced that comes on top of the sector-specific provisions from other initiatives such as the SBTi.

In our view, the Nordic Code's approach to differentiate claims according to the carbon credits' relationship with the host country's NDC seems to be a more promising approach. It addresses the key question about double claiming and whether (and under which circumstances) carbon credits should be backed by corresponding adjustments, allowing companies to choose what type of claim they want to make. It remains to be seen whether this regional approach can more broadly inform the international discussions about claims.

Putting the consumer centre stage and ensuring fair competition

At the national level, the driving forces that push for more scrutiny of corporate claims operate in a bottom-up manner while often making use of the existing national legislation related to consumer protection and fair commercial practices that is to prevent misleading advertising. Civil society organizations, national authorities in charge of fair competition and consumer protection agencies have been actively advocating for more clarity of companies' climate related claims in several countries. These organizations and agencies highlight enforcement gaps and show the need for increased regulatory certainty. This is

particularly true if legal measures are taken: court rulings on misleading advertisement are having a strong signaling effect and show legal and reputational risks of companies making unfounded claims.

Strenghtening laws and regulation of climate-related claims

More generally, there is a strong momentum for enhancing the regulation of climate-related claims, with respective windows of opportunity being open in the globe's two largest economies. In the United States, the ongoing revision of the 'Guides for the Use of Environmental Marketing Claims' represents an opportunity to specify what climate neutrality claims are and how misleading claims could be avoided. In the European Union, two ongoing legal initiatives will be of utmost importance – not only for EU member states that will have to implement these regulations on the ground but its outcomes might also indicate the direction of travel for countries outside the EU.

When deciding on how to regulate climate-related claims, policymakers in the US, the EU and other countries can build on experiences made and approaches pursued by other Parties. France can be considered a frontrunner in this regard. The French consumer code was tightened up by adding an environmental dimension and introducing fines. For the first time, the use of the term 'carbon neutral' as a claim is prohibited by law unless the advertiser makes additional information publicly available. Making the use of climate-related claims conditional on such transparency requirements seems to be a promising way forward. At the same time, ensuring access to key information is not sufficient – it must also be ensured that the claims can be understood by the general public, in particular consumers. The risk of consumers misinterpreting the claims is reduced, not fully addressed. There might still be a considerable risk that such claims, even if regulated, obfuscate the actual climate impact of a company and its products and services. This could adversely impact consumer behavior leading to increased consumption of resources (see: Günther et al., 2020). Hence, it remains to be seen how strong the outcomes from the processes in the EU and the US will be and whether they will effectively discourage companies from making unfounded and misleading claims.

Regulation of climate neutrality claims as a double-edged sword

When adopting such a regulation, policy makers should take into account that by legally defining terms such as 'climate neutrality' for subnational entities and products, they are establishing a standard that will enable companies to make respective claims on a legal basis. While this increases the legal certainty for companies in advertising, such regulation translates the global concept of climate neutrality to sub-national entities. However, applying the concept of climate neutrality to (sub-national) organizations is problematic. In contrast to states, organizations such as companies do usually not have the resources (in particular land) to neutralize their climate impact. With the regulation of climate neutrality and similar claims, a legal basis for the application of the global concept to sub-national entities is established. This must be seen as the downside of such regulation. In any case, the overarching objective of the regulation should be to address the risk of misleading claims, while incentivizing companies to make such claims should not play a primordial role.

Corporates operating internationally are affected by multiple regulations in different jurisdictions

The ongoing regulatory initiatives in different jurisdictions are already having far-reaching consequences. Recent developments cause marketing departments to be more careful about the claims they use in advertising. An increasing demand for legal certainty explains why more and more advertising guidelines are published in several

countries. Another consequence of this development is regulatory fragmentation. At the moment, internationally operating businesses have to tailor their marketing activities to different legal frameworks in the countries where they offer their services and goods.

As the regulation of climate neutrality claims evolves, it will be key to aim for the alignment of such regulation across countries and markets. The installation of a Task Force on Net Zero Regulation, as called for by the UN's High Level Expert Group, can be expected to make an important contribution towards regulatory consistency. Existing international initiatives, such as the VCMI and the Nordic Dialogue of Voluntary Compensation could provide important input to such a process.

Governance of claims pushes the VCM towards more integrity

What are the effects of the changing governance frameworks on the voluntary carbon market? A key question is if the actors in the voluntary carbon market perceive the developments as an opportunity for further diversifying the market. The regulation of claims can be an opportunity to sell high quality certificates at better prices. In light of the changing regulatory landscape, there is an opportunity for carbon credit suppliers and other actors on the market to expand on their advisory role by supporting them in aligning their communication strategies with the evolving regulation.

In terms of demand, the regulation of claims might also be beneficial for those companies that already have very ambitious climate plans but failed to be able to distinguish themselves from competitors due to the lack of transparency and comparability. Given the looming credibility crisis of voluntary carbon offsetting, this external push could maybe be necessary because the market has not been able to sufficiently respond to these issues on its own without external pressure.

Alternative models also need regulation

Another open question relates to the potential role of the so-called 'contribution claim model'. With this approach, companies invest in climate change mitigation activities without using the resulting emission reductions for the achievement of their own climate targets. Instead, the support provided to activities is communicated separately from the company's own value chain emissions. The model is currently gaining increased traction due to the double counting challenges under the Paris Agreement and the difficulties for companies to acquire units that are backed by corresponding adjustments. Since the contribution claim model builds on the idea of supporting countries in achieving their national climate targets, corresponding adjustments are not required. A key advantage of the approach is that it might be perceived as less misleading towards consumers.

Since this approach does not allow companies to claim neutrality, its use however means to put the whole corporate communication on a different footing. Furthermore, clear provisions on how to communicate the use of this option will also be of utmost importance for making this new concept a viable alternative to climate neutrality claims based on offsetting. To support this, increased exchange and mutual learning between national regulation and private sector initiatives should be fostered.

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6 Annex

Country	Legal basis for development of guidelines / lawsuits	Minimum criteria for (green) claims (true, substantiated, etc.) based on legal requirements	Guidance on the use of environmental claims for marketing purposes	Guidance with concrete criteria for climate neutrality claims in marketing (binding vs. non-binding)	Carbon neutrality certification scheme endorsed by government	Specific legal provision on climate neutrality	Key actor / Initiator	Legal cases	Non-judicial cases in particular initiated by self-regulatory entities
Germany	German Act against Unfair Competition (UWG)	Yes	No	No	No	No	Wettbewerbszentrale	Yes, several cases	Yes, the Wettbewerbszentrale has issued warnings against several companies
Sweden	Marketing Act	Yes	No	No	No	No	The Swedish Advertising Ombudsman Reklamombudsmannen, Swedish Consumer Agency	Yes, but number of cases limited	Yes, the Reklamombudsmannen disallowed several advertisements related to climate neutrality
UK	Consumer Protection Law	Yes	Yes	No (but examples provided)	No	No	Competition & Markets Authority (CMA)	No judicial cases on climate related claims found	Yes, the self-regulator ASA has been dealing with numerous complaints related to companies' climate-related claims
NL	Unfair Trading Practices Act	Yes	Yes	No (but examples provided)	No	No	Authority for Consumers & Markets (ACM)	Yes, but number of cases limited	Possible, but no cases identified

Country	Legal basis for development of guidelines / lawsuits	Minimum criteria for (green) claims (true, substantiated, etc.) based on legal requirements	Guidance on the use of environmental claims for marketing purposes	Guidance with concrete criteria for climate neutrality claims in marketing (binding vs. non-binding)	Carbon neutrality certification scheme endorsed by government	Specific legal provision on climate neutrality	Key actor / Initiator	Legal cases	Non-judicial cases in particular initiated by self-regulatory entities
US	Federal Trade Commission Act	Yes	Yes	No	No	No	Federal Trade Commission	Possible, but no cases related to climate neutrality have been filed to the United States' Federal Trade Commission (FTC)	Possible, but no cases identified
Denmark	Danish Marketing Practices Act	Yes	Yes	No (but examples provided)	No	No	Danish Consumer Ombudsman	One case identified	No
Norway	Marketing Control Act (MCA)	Yes	Yes	Yes (non-binding)	No	No	Consumer Authority	No judicial cases on climate related claims found	Yes, but numbers are limited
New Zealand	Fair Trading Act	Yes	Yes	Yes, guidance for voluntary carbon offsetting	No	No	Commerce Commission Advertising Standards Authority (ASA) Ministry for the Environment	Yes, but number of cases limited	Yes, but numbers are limited
Australia	Australian Consumer Law (companies must comply with)	Yes	Yes	Yes, as part of the Climate Active Initiative	Yes	No	Government and businesses (Climate Active initiative), Australian Competition and Consumer Commission	Yes, but number of cases limited	Yes, but numbers are limited

Country	Legal basis for development of guidelines / lawsuits	Minimum criteria for (green) claims (true, substantiated, etc.) based on legal requirements	Guidance on the use of environmental claims for marketing purposes	Guidance with concrete criteria for climate neutrality claims in marketing (binding vs. non-binding)	Carbon neutrality certification scheme endorsed by government	Specific legal provision on climate neutrality	Key actor / Initiator	Legal cases	Non-judicial cases in particular initiated by self-regulatory entities
France	French Consumer Code complemented by the Climate and Resilience Law	Yes	Yes	Yes (binding), Climate Resilience Law and a Decree	No	Yes	Government, Ministry of Ecological Transition, Citizens' Climate Convention	Yes, but number of cases limited	Yes, the self-regulator JDP (Jury de Déontologie Publicitaire) has been dealing with numerous complaints related to companies' climate-related claims
EU	Unfair Commercial Practices Directive	Yes	Yes	No	No	Yes, forthcoming	European Commission	Not applicable	Not applicable

Table 2: Overview on governance of claims in selected jurisdictions

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