

ARTICLE

# How to Navigate the Tricky Landscape of Sustainability Claims in the Food Sector

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## Abstract

Consumers are increasingly interested in the sustainability of food products, but so far, no specific European Union (EU) legislation has been developed to harmonise sustainability claims. We analyse which efforts already undertaken within the EU dealing with sustainability claims on products apply to sustainable food claims. We show that whilst sustainability can address three different dimensions (environmental, social and economic), it is crucial to clearly define sustainability in order to allow for the development of concrete regulations and guidance documents. EU legislative initiatives so far seem to be focused on environmental aspects, whilst Member States approach sustainability more broadly. At the same time, substantiation methods can only be successful when sustainability is well defined. We conclude that whilst there is a large range of initiatives taken at different levels, the foundation of these initiatives remains weak when there is no clear scope of terminology nor clarification of substantiation requirements. Currently existing self-regulatory initiatives could support protecting consumers from misleading claims by providing specific provisions for (food) business operators on how to make sustainability claims. Only when claims can be trusted and understood by consumers will they be able to make more sustainable purchase decisions. This plays an important role in the overall policy objective of the EU of climate neutrality by 2050.

**Keywords:** claims; EU food law; food information; green claims; sustainability

## I. Introduction: how to navigate sustainability claims

Turtle safe, CO<sub>2</sub> neutral (by 2045), eco-friendly, 100% compostable; these and various other examples can be found that communicate existing or future efforts related to sustainability or the environment. Such claims, both in words and by means of graphic depictions, can be considered sustainability claims. Food business operators are increasingly interested in using claims to indicate that a product or its packaging has a positive (or less negative) impact on the environment or in showing the efforts they have made related to the “sustainability” of goods, services or even (internal) company processes.<sup>1</sup> The increased interest in sustainability of consumers, producers and other actors in the food

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<sup>1</sup> The fisheries and aquaculture industries, for example, have been analysed by S Lucas, L-G Soler and C Revoredo-Giha, “Trend Analysis of Sustainability Claims: The European Fisheries and Aquaculture Markets Case” (2021) 104 Food Policy 102141.

system gives rise to the question how communicating about sustainability (efforts) can be dealt with from a legal or regulatory perspective.

The foundation of the European Union (EU) legislative framework dealing with food and food production was laid in 2002 with the entry into force of the General Food Law (Regulation (EC) No 178/2002).<sup>2</sup> This regulation was adopted after various food scares had shown that the legislative system was insufficiently effective in dealing with food safety issues, which had put the need to establish legislation to offer the greatest level of consumer protection concerning foods high on the agenda.<sup>3</sup> When food safety concerns became less prominent due to the aforementioned stricter rules, the main interest of actors in the food system shifted to nutrition and health: how could (functional) foods be used to maintain and increase the health of consumers and how could they be truthfully informed about this? In 2006, the European Commission responded to this increased interest in health by adopting Regulation (EC) No 1924/2006,<sup>4</sup> which required that communication regarding the nutritional benefits or health effects of food products would be based on scientific studies supporting such benefits. Today, with the growing interest of consumers in sustainability and sustainable food consumption,<sup>5</sup> similar developments could be triggered when it comes to protecting consumer interest with regards to sustainability information.

In their recently published Inception Impact Assessment, the European Commission analyses the impact of its “Sustainable food system framework initiative”, part of the Farm to Fork Strategy, which addresses the challenges of sustainable food systems and recognises the inextricable links between healthy people, healthy societies and a healthy planet.<sup>6</sup> The main objective of this initiative is to ensure that all foods placed on the EU market are becoming increasingly sustainable, such as by introducing new comprehensive framework legislation on the sustainability of the Union food system. This should consist of general objectives, definitions, principles and requirements for ensuring that sustainability considerations, beyond the already applicable safety-based requirements, are taken into account when food is produced or placed on the Union market. This potential framework legislation would form the basis for further *lex specialis* that will address specific elements regarding sustainability. This framework may, for example, contain general minimum standards for food that could be linked to environmental or social aspects and/or rules on the provision of information on the sustainable performance of the food (sustainable labelling).<sup>7</sup> Attention being paid to communication on sustainability is not new. The European Commission has previously issued guidance for the use of green claims as part of the implementation of the Unfair Commercial Practices Directive of 2005. At the same time, however, different initiatives have already been undertaken within Member States, as exemplified in the Netherlands, where the Authority for Consumers and Markets (ACM) published a guidance document for

<sup>2</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] OJ L 31, 1.2.2002, pp 1–24 (General Food Law).

<sup>3</sup> E Vos, “EU Food Safety Regulation in the Aftermath of the BSE Crisis” (2000) 23 *Journal of Consumer Policy* 227, p 246.

<sup>4</sup> Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods [2006] OJ L 404, 30.12.2006, pp 9–25 (hereafter Nutrition and Health Claim Regulation, NHCR).

<sup>5</sup> I Vermeir and W Verbeke, “Sustainable Food Consumption: Exploring the Consumer ‘Attitude–Behavioral Intention’ Gap” (2006) 19 *Journal of Agriculture and Environmental Ethics* 169.

<sup>6</sup> European Commission, “A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system” COM(2020) 381 final.

<sup>7</sup> , European Commission, “Sustainable Food System Framework Initiative” (Inception Impact Assessment) Ares(2021)5902055, 28 September 2021, pp 4–6.

making sustainability claims on any goods and services and where self-regulatory initiatives are in place specifically addressing advertising that highlights environmental benefits. Within this article, we provide an overview of EU developments in the field of sustainability and green claims. Based on existing regulatory requirements and initiatives for future legal regulatory requirements, we aim to establish a common definition of such claims and to explore methodologies for how such claims can be substantiated.

## II. Defining sustainability claims

Before addressing how sustainability claims are understood, it is important to address the concept of “sustainability” itself. The Farm to Fork Strategy of the European Commission<sup>8</sup> revolves around sustainable food systems but does not provide an exact definition of “sustainability”. The concept is addressed only indirectly by describing the EU’s goals in reducing its environmental and climate footprint whilst ensuring food security in the face of climate change and biodiversity loss. This aligns with the holistic approach suggested in 2019 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) to healthy, sustainable diets,<sup>9</sup> encompassing the dimension of sustainability and health and adding the concept of fairness to it. As specified further in the Farm to Fork Strategy, this means that this transition of the EU food system aims to ensure the following aspects: “that the food chain . . . has a neutral or positive environmental impact” and that “food security, nutrition and public health” are ensured whilst “preserving the affordability of food, while generating fairer economic returns in the supply chain”.<sup>10</sup>

The scientific literature also uses a broad definition for “sustainability” when addressing sustainable food and sustainable food systems, and various terms are considered relevant. Research papers often refer to the widely adopted Brundtland Commission definition of “sustainable development”: “those developments that meet the needs of the present without compromising the ability of future generations, to meet their own needs”.<sup>11</sup> This broad definition has been further operationalised by Elkington as the “triple bottom line”, highlighting the environmental, economic and social pillars as the three pillars of sustainability.<sup>12</sup> When addressing food and food production, the term “sustainable food system” is often used.<sup>13</sup> Most recently (February 2021), the UN’s Committee on

<sup>8</sup> COM(2020) 381.

<sup>9</sup> In 2019, the FAO defined sustainable healthy diets in their guiding principles (available at <<https://www.fao.org/3/ca6640en/ca6640en.pdf>>): “Sustainable Healthy Diets are dietary patterns that promote all dimensions of individuals’ health and wellbeing; have low environmental pressure and impact; are accessible, affordable, safe and equitable; and are culturally acceptable. The aims of Sustainable Healthy Diets are to achieve optimal growth and development of all individuals and support functioning and physical, mental, and social wellbeing at all life stages for present and future generations; contribute to preventing all forms of malnutrition (i.e. undernutrition, micronutrient deficiency, overweight and obesity); reduce the risk of diet-related NCDs [non-communicable diseases]; and support the preservation of biodiversity and planetary health. Sustainable healthy diets must combine all the dimensions of sustainability to avoid unintended consequences”.

<sup>10</sup> COM(2020) 381.

<sup>11</sup> G Brundtland, “Report of the World Commission on Environment and Development: Our Common Future” (1987) United Nations General Assembly Document A/42/427.

<sup>12</sup> Y van der Meer, “Life Cycle Sustainability Assessment” in W Leal Filho, A Marisa Azul, L Brandli, A Lange Salvia and T Wall (eds), *Decent Work and Economic Growth* (Berlin, SpringerReference 2019); J Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* (Gabriola Island, New Society Publishers 1998).

<sup>13</sup> In 2016, the UN’s High Level Task Force on Global Food and Nutrition Security (available at <<https://www.un.org/en/issues/food/taskforce/pdf/ZHC%20ANS-%20All%20Merged%20Rev%20May%202016.pdf>>) defined a sustainable food system as a system that “delivers food and nutrition security for all in such a way that the economic, social and environmental bases to generate food security and nutrition for future generations

World Food Security defined sustainable food systems as “food systems that enable food safety, food security and nutrition for current and future generations in accordance with the three dimensions (economic, social and environmental) of sustainable development. Sustainable food systems must be inclusive, equitable and resilient”.<sup>14</sup>

These definitions again show that “sustainability” is a broad concept and is challenging to define<sup>15</sup> as it relates to short- and long-term environmental, economic and social effects.<sup>16</sup> At the same time, studies analysing the sustainability of foods do not necessarily discuss sustainability in this broad context but are, for example, focused on organic food production,<sup>17</sup> sustainable production and/or location claims<sup>18</sup> or the sustainability of specific food chains such as seafood<sup>19</sup> or meat.<sup>20</sup> Even though these studies provide detailed insights into specific elements related to sustainability, no studies so far have reported a holistic approach to measuring the economic, social and environmental sustainability of foods. It may even be questioned whether such a holistic approach would be appropriate: Kuhlman and Farrington, for example, describe that economic sustainability – in their perspective similar to social sustainability – actually refers to well-being, whilst they believe that the environmental dimension represents the actual sustainability perspective, being concerned with the well-being of future generations.<sup>21</sup>

When it comes to claims, environmental, green or sustainability claims such as the examples given in Section I can be used for a range of products and goods, from foodstuffs to electricity and from (wood) stoves to clothing. For this article, we focus on the aspects of such claims that are relevant for food business operators active in the EU. When claimed effects specifically relate to benefits for the environment, the term “green claim” or “environmental claim” is often used. The terminology “claim” is not unknown in the field of food law. Since 2006, nutrition claims (highlighting the beneficial nutritional content of a product) and health claims (which focus on the health benefits of specific foods or food ingredients) have been regulated in the EU.<sup>22</sup> The European Food Safety Authority’s

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are not compromised” (p 32). In their 2018 brief on the concept and framework for sustainable food systems (available at <<https://www.fao.org/3/ca2079en/CA2079EN.pdf>>), the FAO added that such a sustainable food system therefore should be “profitable throughout” (covering economic sustainability), should have “broad-based benefits for society” (addressing social sustainability) and (dealing with environmental sustainability) “has a positive or neutral impact on the natural environment”.

<sup>14</sup> Committee on World Food Security (CFS), “CFS Voluntary Guidelines on Food Systems and Nutrition” (2021). Available at <[https://www.fao.org/fileadmin/templates/cfs/Docs2021/Documents/CFS\\_VGs\\_Food\\_Systems\\_and\\_Nutrition\\_Strategy\\_EN.pdf](https://www.fao.org/fileadmin/templates/cfs/Docs2021/Documents/CFS_VGs_Food_Systems_and_Nutrition_Strategy_EN.pdf)>.

<sup>15</sup> In their technical brief on the sustainable food systems concept and framework, the FAO stipulates the complexity of defining sustainability in the context of food systems: FAO, “Sustainable Food Systems – Concept and Framework” (2018). Available at <<https://www.fao.org/3/ca2079en/CA2079EN.pdf>>.

<sup>16</sup> H Aiking and J de Boer, “Food Sustainability: Diverging interpretations” (2004) 106(5) *British Food Journal* 359–65.

<sup>17</sup> M Laureati, D Jabes, V Russo and E Pagliarini, “Sustainability and Organic Production: How Information Influences Consumer’s Expectation and Preference for Yogurt” (2013) 30(1) *Food Quality and Preference* 1–8; U Niggli, “Sustainability of Organic Food Production: Challenges and Innovations” (2015) 74(1) *Proceedings of the Nutrition Society* 83–88; S Hemmerling, U Hamm and A Spiller, “Consumption Behaviour Regarding Organic Food from a Marketing Perspective – A Literature Review” (2015) 5 *Organic Culture* 277–313.

<sup>18</sup> C Feldmann and U Hamm, “Consumers’ Perceptions and Preferences for Local Food: A Review” (2015) 40(A) *Food Quality and Preference* 152–64.

<sup>19</sup> S Jaffry, H Pickering, Y Ghulam, D Whitmarsh and P Wattage, “Consumer Choices for Quality and Sustainability Labelled Seafood Products in the UK” (2004) 29(3) *Food Policy* 215–28.

<sup>20</sup> EJ van Loo, V Caputo, RM Nayga Jr and W Verbeke, “Consumers’ Valuation of Sustainability Labels on Meat” (2014) 49(1) *Food Policy* 137–50.

<sup>21</sup> T Kuhlman and J Farrington, “What Is Sustainability?” (2010) 2(11) *Sustainability* 3436.

<sup>22</sup> NHCR.

scientific opinion on the evidence collected by the food business operators to support such claims is the foundation from which the Commission authorises or denies a claim.<sup>23</sup> Only claims that have obtained this pre-market authorisation can be used to support statements on food labels, as well as suggestions and implications about the health benefits of such products in any other form, including online information, graphical representations, brand names and advertisements.

Whereas legal definitions are provided for claims related to nutrition and health and a pre-market authorisation system is established in EU legislation, this is not the case for environmental or green claims. Until now, no harmonised definition of environmental or green claims can be found in EU law. At the same time, however, different documents refer to types of claims or provide definitions related to sustainability, environmental or green claims. Firstly, in its guidance document on the implementation/application of Directive 2005/29/EC on unfair commercial practices, updated in 2016, the European Commission uses the following definition: “The expressions ‘environmental claims’ and ‘green claims’ refer to the practice of suggesting or otherwise creating the impression (in a commercial communication, marketing or advertising) that a good or a service has a *positive or no impact on the environment* or is *less damaging to the environment than competing goods or services*. This may be due to its composition, how it has been manufactured or produced, how it can be disposed of and the reduction in energy or pollution expected from its use”.<sup>24</sup> On 17 December 2021, the European Commission adopted a new Guidance document, replacing the 2016 Guidance document, in which the definition of environmental and green claims remains unchanged.<sup>25</sup>

The definition thus specifically focuses on the effects on the environment. When analysing the definition in more detail, the element that a good or service can be “less damaging . . . than competing goods or services” stands out. It shows that, in the view expressed by the Commission, environmental claims or green claims may have a comparative advertising angle. Another striking element of this definition is “positive or no impact on the environment”. This shows that green claims are often not associated with claims that indicate a negative relationship with the environment. Although at a first glance such claims may not often be used in practice, their use could very well be an option. For example, in the context of food advertising, initiatives such as “Eco-Score” are of interest. Eco-Score rates products on a scale from A to E based on an assessment of the environmental aspects associated with the product. An “E” rating may be associated with a negative impact on the environment. In that case, the rating may not fall under the aforementioned definition of a green claim.

Considering the broad definition of green claims, graphical depictions such as logos referring to impacts on the environment could also be considered green claims.<sup>26</sup> In practice, many different logos and other graphical elements are used (either individually or under private schemes) to communicate efforts around sustainability. A well-known existing harmonised logo in the EU is the Ecolabel,<sup>27</sup> which, however, is currently not used for food products.<sup>28</sup> Although Regulation 66/2010 leaves room for use of the Ecolabel for

<sup>23</sup> Arts 16–17, NHCR.

<sup>24</sup> Section 5.1, European Commission, “Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices”, SWD(2016) 163 final (emphasis added).

<sup>25</sup> Section 4.1, European Commission, “Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market”, 2021/C 526/01.

<sup>26</sup> *ibid.*

<sup>27</sup> Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel [2010] OJ L 27, 30.1.2010, pp 1–19.

<sup>28</sup> In her 2016 paper analysing the regulation of sustainability claims on seafood, Hanna Schebesta argues that these claims should not be addressed through Ecolabels but suggests that information requirements can be laid

food products, the European Union Ecolabelling Board did not support<sup>29</sup> the development of EU Ecolabel criteria for food due to the findings of the EU Ecolabel for food and feed products feasibility study in 2011.<sup>30</sup> However, the European Union Ecolabelling Board also concluded that this may change in the future.

In practice, however, claims are increasingly being used to provide information about benefits in a broader sense than merely highlighting environmental benefits. Examples are the communication of efforts related to social factors (better payment for local farmers or working conditions) or of measures related to (increased) animal welfare. Such claims often cannot be covered by the narrow definition of environmental or green claims, as the claimed effects do not directly relate to the environment but are often referred to as “sustainability claims”.

In an international context, the International Chamber of Commerce (ICC) also addresses environmental marketing in the 2019 ICC Framework for Responsible Environmental Marketing Communications.<sup>31</sup> This document consists of general principles applicable to marketing (including specific considerations for environmental marketing communications), a checklist and guidance on selected environmental claims. The 2019 framework used the terms “green”, “environmental” and “sustainability” interchangeably in defining green and environmental/sustainability claims,<sup>32</sup> but also provided a specific definition of “sustainability”: “‘Sustainability’ encompasses considerations of economic activity, social values, action by public and private institutions and environmental impacts, but many ‘sustainability’ claims seen in the marketplace focus on the environmental aspects of the product or service”.<sup>33</sup> Interestingly, in their newly published version of the framework document of 6 December 2021, the ICC acknowledges the momentum on climate action globally and addressing, for example, emerging claims seen in the marketplace, including terms such as “net zero”, “climate positive”, “carbon neutral” and “microplastics free”, and recyclability claims.<sup>34</sup> The new version expressly stipulates that, as not all terms are subject to globally agreed definitions or criteria, it does not attempt to offer specific definitions in all instances.<sup>35</sup> The ICC thereby changed its course by abandoning the goal of capturing these types of claims in definitions. The ICC thus embraces the fact that it is very difficult to find common, all-encompassing definitions. For example, the ICC now states in broad terms: “Environmental claims refer to any statements, symbols, images or graphics that convey an environmental aspect of a product, component,

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down in the Regulation on the Common Organisation of the Markets in Fishery and Aquaculture Products: H Schebesta, “Regulating Sustainability Claims on Seafood – EU Ecolabel, Unfair Commercial Practices Directive or Seafood Information Requirements?” (2016) 7(4) European Journal of Risk Regulation 784.

<sup>29</sup> European Union Ecolabelling Board, “Opinion of the European Union Ecolabelling Board: On the development of EU Ecolabel for food and feed products” (2011). Available at <[https://ec.europa.eu/environment/ecolabel/documents/EUEB\\_position\\_on\\_food\\_final.pdf](https://ec.europa.eu/environment/ecolabel/documents/EUEB_position_on_food_final.pdf)>.

<sup>30</sup> Oakdene Hollins Research & Consultancy, “EU Ecolabel for Food and Feed Products – Feasibility Study” (2011) ENV.C.1/ETU/2010/0025. Available at <[https://ec.europa.eu/environment/ecolabel/about\\_ecolabel/pdf/Ecolabel%20for%20food%20final%20report.pdf](https://ec.europa.eu/environment/ecolabel/about_ecolabel/pdf/Ecolabel%20for%20food%20final%20report.pdf)>.

<sup>31</sup> International Chamber of Commerce, “ICC Framework for Responsible Environmental Marketing Communications (2019)” (2019). Available at <<https://iccwbo.org/publication/icc-framework-for-responsible-environmental-marketing-communications/>> (hereinafter ICC Framework 2019).

<sup>32</sup> *ibid.*, 4.

<sup>33</sup> *ibid.*, 3.

<sup>34</sup> ICC, “ICC Issues New Guidance on Environmental Claims in Marketing and Advertising” (6 December 2021). Available at <<https://iccwbo.org/media-wall/news-speeches/icc-issues-new-guidance-on-environmental-claims-in-marketing-and-advertising/>>.

<sup>35</sup> ICC, “ICC Framework for Responsible Environmental Marketing Communications (2021)” (2021), p 2. Available at <<https://iccwbo.org/publication/icc-framework-for-responsible-environmental-marketing-communications-2/>> (hereinafter ICC Framework 2021).



package, service or company's business operations".<sup>36</sup> As regards sustainability, the ICC notes: "An unqualified 'sustainability' claim may be understood to involve company actions beyond efforts to reduce environmental impacts. Claims may state or imply that the claim involves social and economic impacts, such as support for fair working conditions, diversity and inclusion, communities or charities, or the like, as well. Marketers making general sustainability claims in advertising should be mindful that consumers may take away a broader corporate social responsibility message and must substantiate all express and implied messages and qualify claims accordingly". The ICC takes the surprisingly firm (but, in the view of the authors, understandable) viewpoint that as long as there are no definitive, generally accepted methods for measuring sustainability or confirming its accomplishments, no claim to have achieved it should be made.<sup>37</sup>

With no detailed definition of sustainability in EU legislation, no clear-cut definitions of sustainability claims are provided. At the national level, such definitions of green, environmental or sustainability claims can be found. For example, in the Netherlands, the ACM uses the overarching term "sustainability claim" for a combination of environmental claims (based on the aforementioned definition of the European Commission) and ethical claims.<sup>38</sup> ACM clarifies in its guidance document that it applies the broad concept of sustainability following UN Resolution 66/288 from 2012 describing sustainable development as the development towards "an economically, socially and environmentally sustainable future for our planet and for present and future generations. This may include the protection of the environment, biodiversity, climate, public health, animal welfare, human rights, general working conditions and fair trade".<sup>39</sup>

Another narrower definition can be found in the Dutch self-regulatory framework for advertising.<sup>40</sup> This system is built around self-regulatory advertising codes, consisting of one general and various specific advertising codes. One of the specific codes is the Environmental Advertising Code, which applies to environmental claims. In this Environmental Advertising Code, established in 1991 and revised in 2000, environmental claims are defined as "all advertising that implicitly or explicitly refers to environmental aspects related to the production, distribution, consumption or waste processing of goods or services".<sup>41</sup> In this broad definition, the comparative advertising element that follows from the definition of the European Commission is not present. It should be noted that "environmental claims" as defined in the Environmental Advertising Code are not synonymous with "sustainability claims". However, the Environmental Advertising Code is currently being revised, and it is reported that it will be renamed as the "Environmental and Sustainability Advertising Code" to be able to cover the broader concept of sustainability as used in practice.

These definitions are just a few examples of definitions used and referred to within the EU. The aforementioned definitions seem to aim for broad applicability related to products or goods in scope as well as the claimed effects. Although the Commission's existing

<sup>36</sup> *ibid.*, 3.

<sup>37</sup> *ibid.*, 12.

<sup>38</sup> The Netherlands Authority for Consumers and Markets, "Guidelines Sustainability Claims" (2021). Available at <<https://www.acm.nl/sites/default/files/documents/guidelines-sustainability-claims.pdf>> (hereafter ACM guidelines). Ethical claims are defined as follows: "Claims that give the impression that the manufacture of a product or the activity of a company has been carried out according to certain ethical standards, for example, in relation to general working conditions, animal welfare and/or corporate social responsibility (CSR)".

<sup>39</sup> *ibid.*, 6.

<sup>40</sup> Dutch Advertising Code (NRC), to be consulted at <[www.reclamecode.nl](http://www.reclamecode.nl)>. An English-language version with information about the working procedures of the Advertising Code Committee and the Board of Appeal is available at <[https://www.reclamecode.nl/wp-content/uploads/2018/10/SRCNRCENboekje\\_oktober2017.pdf](https://www.reclamecode.nl/wp-content/uploads/2018/10/SRCNRCENboekje_oktober2017.pdf)>.

<sup>41</sup> *ibid.*

definition of green claims in the guidance on unfair commercial practices focuses on impacts on the environment, the communication in practice seems to have broadened over the years and to have shifted towards a more encompassing meaning of “sustainability”. Therefore, considering the definitions provided above, it may be concluded that sustainability claims indeed represent a broader concept than environmental claims, as not only the environmental aspects but also, for example, public health, human rights and economic aspects are taken into consideration. An interim conclusion that may be drawn is that although nearly every actor in EU food law is working with the concepts of green claims, environmental claims and sustainability claims, from research to practice and from self-regulation to enforcement authorities, there are no fixed EU definitions as yet. For this article, we use the term “sustainability claim” when referring to both environmental or green claims and ethical claims. Green claims and environmental claims are considered to be synonyms.

### III. Legal framework: EU rules applicable to sustainability claims

Whilst several initiatives have been set up to deal with sustainability claims within the EU, as will be described in the following sections, no legislation has yet been developed to address such claims. Claims in general are, however, always bound by general EU provisions related to advertising. Within the EU, sustainability claims are first and foremost governed by the general principles following from the Unfair Commercial Practices Directive (UCPD) that, amongst others, prohibit misleading commercial practices.<sup>42</sup> For the food industry specifically in communication around food, the provisions following from the Food Information to Consumers (FIC) Regulation<sup>43</sup> are applicable. The FIC Regulation contains, for example, the provision that food information shall not be misleading as to the characteristics of the food<sup>44</sup> and the provision that food information shall be accurate, clear and easy to understand for the consumer.<sup>45</sup> For comparative claims, the provisions following from Directive 2006/114 concerning misleading and comparative advertising are of relevance.<sup>46</sup> Article 4 of Directive 2006/114 stipulates, for example, under which conditions comparative advertising is permitted. As the definition of comparative advertising is broad<sup>47</sup> and considering the comparative advertising angle in the definition of “green claim” by the European Commission,<sup>48</sup> the applicability of the provisions may often be considered in the context of sustainability claims. The rules may be applicable in cases when efforts regarding sustainability are (implicitly) compared with those of competitors, for example.

The legal framework currently applicable to sustainability claims is thus (merely) formed by general principles related to advertising and unfair commercial practises, since there are no specific rules for such claims as yet. In its Guidance, the European Commission specifically stipulates that the UCPD does not provide specific rules on environmental claims, but that it provides a legal basis to ensure that traders do

<sup>42</sup> Following from, for example, Arts 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practises in the internal market, OJ L 149, 11.6.2005, pp 22–39.

<sup>43</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (2011) OJ L 304, 22.11.2011, pp 18–63 (hereafter FIC).

<sup>44</sup> Art 7(1)(a) FIC.

<sup>45</sup> Art 7(2) FIC.

<sup>46</sup> Directive 2005/29/EC.

<sup>47</sup> C-381/05 *De Landtsheer Emmanuel SA v Comité Interprofessionnel du Vin de Champagne and Veuve Clicquot Ponsardin SA* [2007] ECJ.

<sup>48</sup> European Commission, “Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices”, SWD(2016) 163 final.



not present environmental claims in ways that are unfair to consumers. It does not prohibit the use of “green claims” as long as they are not unfair. “On the contrary, the UCPD can help traders investing in the environmental performance of their products by enabling them to communicate these efforts to consumers transparently and by preventing competitors from presenting misleading environmental claims”.<sup>49</sup> The document provides specific focus points for green claims with various examples. Traders must be able to substantiate environmental claims with appropriate evidence. Consequently, claims should be based on robust, independent, verifiable and generally recognised evidence that takes into account updated scientific findings and methods.<sup>50</sup> The burden of proof rests on the advertiser.<sup>51</sup> In practice, these requirements may often lead to discussion regarding the suitability of such evidence, since there are no predefined requirements or standards for substantiation.

The fact that there are no EU harmonised rules applicable as yet complicates enforcement. After all, the assessment of a claim on the basis of the general principles on (misleading) advertising and unfair commercial practises should be done on a case-by-case basis, taking into account the content of the environmental claim and its impact on the average consumer’s purchasing decision. Such assessments take time, are open to interpretation and thus require, for example, supervising authorities to carefully prepare any enforcement decisions. With open norms alone as the legal basis, this may lead to differences in interpretation between Member States.<sup>52</sup>

As part of the European Farm to Fork Strategy, new specific rules on claims may be expected. The European Commission announced that it will examine ways by which to harmonise voluntary green claims and to create a sustainable labelling framework that covers, in synergy with other relevant initiatives, the nutritional, climate, environmental and social aspects of food products.<sup>53</sup>

#### IV. Legal framework: rules applicable to sustainability claims in the Netherlands

In addition to the implementation and application of the general rules described in Section II, at the national level, specific rules or guidance specifically dedicated to sustainability or green claims may be applicable in different Member States. We give examples from the Netherlands.

The Dutch ACM Guidance document on sustainability claims<sup>54</sup> presents and explains five rules of thumb for companies using sustainability claims to follow in order to avoid making unclear, incorrect or misleading claims. These are illustrated with several examples. The European Commission also refers to the ACM Guidelines in its 2021 version of the Guidance document related to unfair commercial practices.<sup>55</sup> The guidance document

<sup>49</sup> European Commission, “Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market”, 2021/C 526/01, Section 4.1.1.5.

<sup>50</sup> *ibid*, Section 4.1. The 2016 version of the guidance document refers to “the *latest* scientific findings and methods” (Section 5.1.5., SWD (2016)163, emphasis added). It is not clear whether the change in wording was a deliberate choice by the Commission.

<sup>51</sup> Art 12, Directive 2005/29/EC.

<sup>52</sup> Slide 3 in presentation of Mrs Patrycja Gautier BEUC, “How to Effectively Get Rid of Greenwashing”, 16 November 2020 (Workshop 1: Communicating Green Claims). Available at <<https://ec.europa.eu/environment/eusds/smgp/pdf/Workshop%201.zip>>.

<sup>53</sup> Chapter 2.4, COM(2020) 381.

<sup>54</sup> ACM guidelines, *supra*, note 38.

<sup>55</sup> European Commission, “Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market”, 2021/C 526/01, Sections 4.1.3 and 4.1.7.

addresses sustainability claims in general, but it also contains specific examples that relate to foodstuffs. As an example of an unclear claim in the dairy sector, the ACM refers to milk packaging carrying the claim “sustainable”, with explanatory text on the back of pack stating that the cows that produce this milk can go outside often and that the farm generates its own electricity. According to the ACM, even with this explanation it would be difficult for consumers to identify the exact sustainability benefit. Considering the number of such examples related to the food sector, the guidance document is highly relevant for the food industry. Shortly after its publication, the ACM sent a letter to 170 parties in the energy, dairy and clothing sectors, urging the companies to check their sustainability claims for compliance with the rules.<sup>56</sup> The ACM may decide to take enforcement measures such as imposing a fine, with a maximum of EUR 900,000 per violation, or even a turnover-related fine.<sup>57</sup> In November 2021, following the announced investigations in the dairy, energy and clothing sectors, the ACM published a news item on its website regarding the results of its investigation of the clothing sector. The ACM indicates that it will continue its research with follow-up investigations of the six companies with the highest numbers of sustainability claims.<sup>58</sup> It is likely that the results of the investigations of the energy and dairy sectors will also be published shortly.

Interestingly, enforcement of food-related unfair commercial practises such as food advertising matters would typically fall under the competence of the Netherlands Food and Consumer Product Safety Authority (NVWA), while the ACM focuses on consumers (consumer law) and markets (competition law) in general. Following the detailed examples in the ACM Guidance document regarding sustainability claims for food products, a change may be coming in terms of issues related to sustainability. After all, the ACM is now likely to take enforcement measures in cases when a sustainability claim is used for a food product.<sup>59</sup> In practice, this means that the ACM and the NVWA may overlap in their enforcement activities and may need to decide on how to divide up their enforcement tasks. The practical result for food business operators is that they may need to realise that not only the NVWA but also the ACM may take enforcement measures. These are different authorities with different priorities and potentially different approaches, maximum fines and communication styles. There are no published court cases in which the NVWA has taken enforcement measures against sustainability claims. The ACM is also responsible for the enforcement of the Competition Act (“Mededingingswet”). In addition, from a competition law perspective, sustainability initiatives and cooperation between parties will be closely monitored. For example, in the Netherlands, the ACM has invited parties to voluntarily share cooperation initiatives to allow for reviewing these plans from the perspective of competition law.<sup>60</sup> This may also be relevant for claims. For example, if all parties in one sector participate in the same initiative, would it be fair from a misleading advertising perspective if all parties use

<sup>56</sup> An example of such a letter, sent to the dairy sector dated 28 April 2021, is available (in Dutch) at <<https://www.acm.nl/sites/default/files/documents/sectorbrief-zuivel-duurzaamheidsclaims.pdf>>.

<sup>57</sup> ACM, “ACM Launches Investigations into Misleading Sustainability Claims in Three Sectors” (3 May 2021). Available at <<https://www.acm.nl/en/publications/acm-launches-investigations-misleading-sustainability-claims-three-sectors>>.

<sup>58</sup> ACM announced it was continuing its campaign against misleading sustainability claims in the clothing sector in a press release of 4 November 2021, available at <<https://www.acm.nl/en/publications/acm-continues-its-campaign-against-misleading-sustainability-claims-clothing-sector>> and in the energy sector in a press release of 25 January 2022, available at <<https://www.acm.nl/en/publications/acm-continues-its-campaign-against-misleading-sustainability-claims-energy-sector>>.

<sup>59</sup> The letter of the ACM to (amongst others) the dairy sector testifies to this.

<sup>60</sup> Publication of the ACM of 28 February 2022 regarding cooperation in the energy sector related to sustainability. Available at <<https://www.acm.nl/nl/publicaties/acm-positief-over-samenwerking-bedrijven-om-duurzaamheid-energiesector-te-bevorderen>>.

the same sustainability claims, thus claiming a uniqueness that is in fact common for the market? Discussion of this topic falls outside the scope of this article.

## V. Self-regulatory advertising system

The self-regulatory system plays an important role in the field of food advertising (including labelling). After a complaint, which can be filed online and by anyone, the Advertising Code Committee checks whether the advertising is compliant with the Netherlands Advertising Code (“Nederlandse Reclame Code”). The Nederlandse Reclame Code contains one general and multiple specific advertising codes. One of the specific codes is the “Environmental Advertising Code”. Remarkably, until 2020, nearly all complaints (94%) regarding environmental claims were filed by consumers.<sup>61</sup> These data suggest that Dutch consumers are highly interested in environmental claims.

The Environmental Advertising Code<sup>62</sup> has a broader scope than just food. The Environmental Advertising Code indeed stipulates as a main principle (based on the general principles of the law as described above) that environmental claims should not be misleading and should be substantiated by the advertiser in case of a challenge. The more absolute the wording of the claim, the stricter the requirements for substantiating evidence. In a landmark decision,<sup>63</sup> the Board of Appeal stipulated that the claim “sustainable” has no defined meaning. Therefore, the interpretation of the broad concept should be assessed on a case-by-case basis and may vary per advertising. For the interpretation, regard should be given to the way in which the claim is used and explained in the advertising, as well as to the interpretation of the average consumer considering the context of the full advertising. Article 7 of the Environmental Advertising Code stipulates that “environmental designations and symbols shall not be used unless the origin of the designation or symbol is clear and no confusion can arise on the meaning of the designation or symbol”.

The term “sustainable” may thus also be used when it is used only to focus on a specific aspect of sustainability, such as animal welfare. According to the Board of Appeal, the average consumer does not always associate the term “sustainable” with (protection of) the environment. Sustainability is, according to the Board of Appeal, still a broad term for which the specific meaning can vary per advertising. Therefore, it may (still) be possible to claim that a meat product is sustainable if the advertiser explicitly and specifically explains in the communication that the claim is only applicable to animal welfare, and of course provided that it can be substantiated.<sup>64</sup> Such specificity of sustainability claims has also been considered to contribute to claim credibility and consumer trust.<sup>65</sup>

Considering the aforementioned principles, absolute claims such as “100%” may be difficult to substantiate. When only being able to partially substantiate a claim or when the reference to exceptions to claims is insufficiently clear, absolute claims such as “100% compostable” on coffee cups<sup>66</sup> or “100% made of recycled plastic from bottle to bottle”<sup>67</sup> have been found to be in breach of the Environmental Advertising Code. Numerous cases related to environmental claims have already been handled by the Advertising Code Committee or Board of Appeal, with the above-mentioned cases included as examples.

<sup>61</sup> Presentation of Fiona Vening on 8 October 2020, Dutch Association for Advertising (Vereniging voor Reclamerecht), available at <<https://vvr.nl/archief/2020-archief/>>.

<sup>62</sup> Code for Environmental Advertising, available via NRC, supra, note 40.

<sup>63</sup> College van Beroep [Board of Appeal] Stichting Reclame Code, File number 2014/00812 (17 March 2015).

<sup>64</sup> College van Beroep [Board of Appeal] Stichting Reclame Code, File number 2018/00826 (6 February 2019).

<sup>65</sup> B Ganz and A Grimes, “How Claim Specificity Can Improve Claim Credibility in Green Advertising: Measures That Can Boost Outcomes from Environmental Product Claims” (2018) 58(4) *Journal of Advertising Research* 476–86.

<sup>66</sup> Advertising Code Committee, File number 2020/00059 (9 March 2020).

<sup>67</sup> President Advertising Code Committee, File number 2021/00421 (12 October 2021).

The decisions show a specific and unique “jurisprudence” around environmental and (other) sustainability claims. An advantage of a (strong) self-regulatory system is that in a relatively short timeframe (compared to a traditional legislative procedure) detailed rules can be established that are generally accepted by the industry concerned. As regards specific topics, such as environmental claims, this may therefore provide clarity for both consumers and companies concerned in an area where the law may provide relatively scarce guidance.

Dutch governmental organisations also rely on this self-regulatory framework. For example, the ACM refers in its Guidance document to the rules in the self-regulatory advertising system and the decisions of the Advertising Code Committee and Board of Appeal. The ACM furthermore explicitly mentions that, in its assessment of sustainability claims, it will take into account changes in the law and case law published after the publication date of the Guidance document. The potential upcoming EU rules on green claims shall undoubtedly affect the framework applied in the Netherlands.

## VI. Developments around green claims: EU initiatives

“Screening of Websites for ‘Greenwashing’: Half of Green Claims Lack Evidence”, heads the press release of the European Commission of 28 January 2021.<sup>68</sup> In a sweep coordinated by the European Commission and carried out by twenty-seven national enforcement authorities in 2020, almost half of the 344 assessed sustainability claims used on consumer-targeted websites were determined to be potentially false or deceptive. The sweep was part of the larger programme “European Green Deal of 11 December 2020” of the European Commission, which aims to reset the European Commission’s commitment to tackling climate- and environment-related challenges. In the European Green Deal, as part of the chapter on “designing a set of deeply transformative policies”, it was stated that reliable, comparable and verifiable information plays an important part in enabling buyers to make more sustainable decisions and reduces the risk of “greenwashing”.<sup>69</sup>

In practice, as described in this article, the number of sustainability claims or green certifications is large and ever increasing. According to the Commission, there are more than 200 environmental labels active in the EU and more than 450 active worldwide.<sup>70</sup> Examples of systems to communicate sustainability efforts in the food sector are the recently introduced “Eco-Score”,<sup>71</sup> Fair Trade or the (not-so-recently introduced) Italian logo “Made Green in Italy”. Not long after the introduction of Eco-Score, this French initiative was adopted for a trial by retailers in other Member States.<sup>72</sup> Meanwhile, another initiative was further developed in France: Planet-Score. Just like Eco-Score, Planet-Score is based on a life-cycle assessment (LCA) methodology, but it rates a product based on the elements of pesticide use, biodiversity, climate impacts and animal welfare.<sup>73</sup>

<sup>68</sup> European Commission, “Screening of Websites for ‘Greenwashing’: Half of Green Claims Lack Evidence” (28 January 2021). Available at <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_269](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_269)>.

<sup>69</sup> European Commission, “The European Green Deal” (COM(2019) 640 final, Section 2.1.3).

<sup>70</sup> DG Environment, “Initiative on substantiating green claims”, European Commission. Available at <[https://ec.europa.eu/environment/eussd/smgp/initiative\\_on\\_green\\_claims.htm](https://ec.europa.eu/environment/eussd/smgp/initiative_on_green_claims.htm)>.

<sup>71</sup> F Southey, “First Nutri-Score for Nutrition, Now Eco-Score for the Environment: New FOP Lands in France” (foodnavigator.com, 12 January 2021). Available at <<https://www.foodnavigator.com/Article/2021/01/12/Eco-Score-New-FOP-label-measures-the-environmental-impact-of-food>>.

<sup>72</sup> K Askew, “Eco-Score’s European Expansion: Lidl and Colruyt Adopt Environmental Footprint Labelling” (foodnavigator.com, 9 April 2021). Available at <<https://www.foodnavigator.com/Article/2021/04/09/Eco-Score-s-European-expansion-Lidl-and-Colruyt-adopt-environmental-footprint-labelling>>.

<sup>73</sup> ITAB, Sayari and Very Good Future, “Planet-Score – Une proposition ITAB, Sayari et Very Good Future pour l’affichage environnemental des produits alimentaires” (13 July 2021). Available at <[http://itab.asso.fr/downloads/actus/itab\\_-\\_dossier\\_de\\_presse\\_planet-score\\_-\\_13072021.pdf](http://itab.asso.fr/downloads/actus/itab_-_dossier_de_presse_planet-score_-_13072021.pdf)>.

Against this background of the industry continuing to make rapid developments in terms of communicating sustainability efforts (in a standardised way), the European Commission is moving towards specifically regulating such claims. The Commission stipulates in the Unfair Commercial Practices Guidance that the New Consumer Agenda and the Circular Economy Action Plan 2020 foresee further proposals to tackle greenwashing.<sup>74</sup> Since 2013, the Commission has been active in developing initiatives for methods of information provision regarding the environmental performance of both the products and practises of organisations, with the aim of facilitating the uptake of more environmentally friendly products and practises within the Single Market.<sup>75</sup> These efforts (further described in Section VII) were targeted at broadly stimulating green, eco-friendly developments and making “clear, reliable and comparable information” available to “all relevant stakeholders”. On 20 July 2020, an inception impact assessment on the “legislative proposal on substantiating green claims” was published<sup>76</sup> (known as the Green Claims Initiative) in which the objectives of the Initiative for addressing green claims, policy options and potential impacts were described. This was followed by a public consultation later in 2020. The European Parliament published a resolution of 25 November 2020 in which it requested the development of clear guidelines and standards for green claims and welcomed the announced legislative proposal. The European Parliament even recommended assessing the possible need for establishing a public European register listing authorised and banned environmental claims, as well as the conditions and steps to be made to assert a claim.<sup>77</sup> This suggestion of the European Parliament makes us draw a parallel with the system for health and nutrition claims in the context of food. The European Consumer Organisation (BEUC) has already announced that it is in favour of such a pre-approval system for all green claims and labels, thus introducing a system with the obligation to submit evidence before being able to use a claim.<sup>78</sup> In February 2021, in another Resolution, the European Parliament again called for measures against greenwashing and false environmental claims for products offered both online and offline.<sup>79</sup>

According to the Farm to Fork Strategy’s draft action plan (described in its Annex), a proposal for a sustainable food labelling framework to empower consumers to make sustainable food choices is expected in 2024.<sup>80</sup> In this respect, in 2021, the European Commission published its inception impact assessment on a sustainable food system framework initiative,<sup>81</sup> including a proposal for a sustainable food labelling framework to empower consumers to make sustainable food choices. It was noted that while the Union’s food system has achieved high levels of food security and food safety and wide consumer choice, there is currently no horizontal regulatory instrument in place at the Union level that could act as a guiding framework instrument that coordinates and drives changes across food systems as well as an operational tool within and across its different sectors to improve the overall sustainability of the EU food system.<sup>82</sup> It is

<sup>74</sup> European Commission, “Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market”, 2021/C 526/01, Section 4.1.

<sup>75</sup> European Commission, “Building the Single Market for Green Products Facilitating better information on the environmental performance of products and organisations” COM(2013) 0196 final.

<sup>76</sup> European Commission, “Legislative Proposal on Substantiating Green Claims” (Inception Impact Assessment), Ares(2020)3820384, 20 July 2020.

<sup>77</sup> Point 31 in European Parliament, “Towards a more sustainable single market for business and consumers” (Resolution) P9\_TA(2020)0318, 25 November 2020.

<sup>78</sup> Presentation of Mrs Gautier BEUC, *supra*, note 52.

<sup>79</sup> Point 28 in European Parliament, “New Circular Economy Action Plan” (Resolution) P9\_TA(2021)0040, 10 February 2021.

<sup>80</sup> COM(2020) 381, p 22.

<sup>81</sup> Sustainable Food System Framework Initiative, *supra*, note 7.

<sup>82</sup> *ibid.*

described that there is a lack of sustainability assessment for food products and insufficient transparency on sustainability aspects across the food system including, but not limited to, reliable and relevant sustainability-related information for consumers enabling them to make sustainable food choices. In this context, several policy options are explored that may also influence the use of sustainability claims. In the inception impact assessment, for example, the inclusion of a provision on the information regarding the sustainable performance of food (sustainable labelling) is put forward for consideration.

From these different initiatives, it becomes clear that the regulation of sustainability (claims) is high on the agenda of EU politicians. Already various aspects of claims addressing (perceived) sustainable practises are dealt with in separate legal initiatives (including the Regulation on organic production, labelling and control<sup>83</sup>) or are addressed by private certification schemes (eg the V-Label for vegetarian and vegan foods<sup>84</sup>). Furthermore, in the context of origin labelling<sup>85</sup> and protected designations,<sup>86</sup> sustainability may play an increasingly important role. Vandecandelaere et al, for example, highlight that geographical indication labelling can positively affect sustainability on various dimensions.<sup>87</sup> Therefore, developments could be expected in this area as well. Following from our analysis, the proposal for new rules dealing with sustainability claims *as such* is to be expected soon. For now, the contents and the approach of the new legislative framework have not yet been defined. Whether and how these different initiatives will intertwine and provide guidance to all relevant actors is currently unknown.

## VII. Substantiating and assessing sustainability claims

Depending on the definition of the claim and the exact scope it can cover, a claim must be justifiable. In the context of EU food legislation regarding various regulatory procedures, evidence first must be provided before a new product or claim can be brought to market.<sup>88</sup> The Commission's sustainable food systems framework initiative<sup>89</sup> highlights various problems of the current food system, together with the regulatory and market failures that are seen to drive these problems. One of the aspects highlighted is the lack

<sup>83</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products [2007] OJ L 189, 20.7.2007, pp 1–23.

<sup>84</sup> The V-Label is an international certification scheme for vegetarian and vegan food products. More information available at <<https://www.v-label.eu>>.

<sup>85</sup> Following Art 26 of Regulation 1169/2011, it is mandatory to inform consumers about the origin of a product for different foods and food categories. For providing voluntary information on the origin of a food, different voluntary national and industry schemes have been developed. As described on the Commission's website at <[https://ec.europa.eu/food/safety/labelling-and-nutrition/food-information-consumers-legislation/proposal-revision-regulation-fic\\_en](https://ec.europa.eu/food/safety/labelling-and-nutrition/food-information-consumers-legislation/proposal-revision-regulation-fic_en)>, it is currently being studied whether origin labelling requirements should be extended (ie in relation to sustainability aspects of food production).

<sup>86</sup> E Vandecandelaere, L Fernando Samper, A Rey, A Daza, P Mejia, F Tartanac and M Vittori, "The Geographical Indication Pathway to Sustainability: A Framework to Assess and Monitor the Contributions of Geographical Indications to Sustainability through a Participatory Process" (2021) 13(14) Sustainability 7535.

<sup>87</sup> *ibid.*

<sup>88</sup> Such pre-market authorisation processes are used for different types of products that are newly introduced on the market, such as food additives or novel foods. Similarly for nutrition, pre-approval procedures exist, such as the previously mentioned nutrition and health claims. Depending on the type of authorisation requested, a dossier containing scientific evidence regarding the safety or health effects of consuming the food (ingredient) needs to be submitted to the European Commission. Upon receipt by the Commission, the European Food Safety Authority is often requested to assess this scientific dossier and subsequently form a scientific opinion. This scientific opinion is a key consideration for the Commission in their decision to authorise a new product or claim on the EU market. The process of scientific assessments in EU food law is further analysed in A de Boer, "Scientific Assessments in EU Food Law: Making it Future-Proof" (2019) 108 Regulatory Toxicology and Pharmacology 104473.

<sup>89</sup> Sustainable Food System Framework Initiative, *supra*, note 7.



of assessment of sustainability: whereas risk assessment is a prerequisite for many regulated products following from the General Food Law and subsequent sectoral legislation, the General Food Law currently does not call for such an assessment. Simultaneous with exploring *how* to assess sustainability, the question arises as to *who* should be responsible for such assessment.

How to assess “sustainability” will depend on how it is defined. As described in Section II, various organisations have defined sustainability and sustainable food systems with rather all-embracing definitions and broad concepts encompassing effects on people, planet and profit (or prosperity).<sup>90</sup> Such broad definitions bring about various challenges with regards to what elements to measure when comparing the sustainability of products (eg CO<sub>2</sub> footprint, greenhouse gas emissions or water or land usage) and how to weigh these various aspects. When bringing together the environmental effects, economic effects and social effects of food systems, this becomes even more complex. This probably explains why most research into sustainable food systems so far has focused mainly on environmental aspects of foods (eg the 2019 EAT–Lancet report<sup>91</sup>).

One approach to measuring the sustainability of products is using a LCA. Over the last few decades, LCAs have been developed to assess the quantitative effects of products or organisations on the environment. A LCA is a method to analyse the different phases in the life cycle of a produced product, including the extraction of materials from the environment, manufacturing or processing of the product and its distribution, usage and disposal or recycling.<sup>92</sup> Specifically, a LCA addresses both direct and indirect emissions associated with the product, activity or service.<sup>93</sup> In this “cradle-to-grave” or “cradle-to-cradle” analysis technique,<sup>94</sup> environmental aspects are analysed in four steps<sup>95</sup>: (1) the goal and scope of the assessment are defined to decide upon what elements of the life cycle will be analysed and what the aim is of the assessment; (2) a life-cycle inventory analysis will provide insights into the inputs (consumption of resources) and outputs (emissions) of the system that is analysed; (3) a life-cycle impact assessment connects the findings from the life-cycle inventory to environmental impacts and impact categories; after which in (4) the results from the previous steps are analysed and a conclusion may be reached in the interpretation phase. In its initiatives to build a Single Market for Green Products<sup>96</sup> and specifically to establish a common methodology to analyse and communicate about the environmental effects of products and organisations, the European Commission has developed two LCA-based methods to analyse these environmental effects: the Product Environmental Footprint (PEF) and the Organisational Environmental Footprint (OEF). In this approach, specific category rules (Product Environmental Footprint Category Rules; PEFCR) should be used in studies analysing the environmental footprint to allow for comparability of findings within such a product category.<sup>97</sup> In Recommendation

<sup>90</sup> van der Meer, *supra*, note 12.

<sup>91</sup> W Willet et al, “Food in the Anthropocene: The EAT–Lancet Commission on Healthy Diets from Sustainable Food Systems” (2019) 393(10170) *The Lancet* 447–92.

<sup>92</sup> D Rajogopal, C Vanderghem and HL MacLean, “Life Cycle Assessment for Economists” (2017) 9 *Annual Review of Resource Economics* 361–81.

<sup>93</sup> *ibid.*

<sup>94</sup> IV Muralikrishna and V Manickam, “Life Cycle Assessment” in IV Muralikrishna and V Manickam (eds), *Environmental Management: Science and Engineering for Industry* (Oxford, Butterworth Heinemann 2017) pp 57–75.

<sup>95</sup> van der Meer, *supra*, note 12; ISO 14040:2006 Standard Environmental management – Life cycle assessment – Principles and framework.

<sup>96</sup> COM(2013) 196.

<sup>97</sup> L Zampori and R Pant, *Product Environmental Footprint (PEF) Method* (Luxembourg, Publications Office of the European Union 2019). PEFCRs are “life cycle based rules that complement general methodological guidance for PEF studies by providing further specification at the level of a specific product category. PEFCRs help to shift the focus of the PEF study towards those aspects and parameters that matter the most, and hence contribute to

2013/179/EU, the Commission proposed to use the PEF and OEF as the main tools to measure and communicate about the environmental performance of products or organisations as a response to the “proliferation of different methods and initiatives” addressing environmental performance.<sup>98</sup>

In a pilot phase from 2013 to 2016, methodological advancements were made in the development of PEFCRs and their verification and communication, strengthening the method and its reliability.<sup>99</sup> Methods such as the ENVIFOOD Protocol developed by different stakeholders from food and beverage supply chains from 2009 onwards were used to support the establishment of PEFCRs.<sup>100</sup> Especially for food-related PEFs, this pilot phase allowed for the improvement of the modelling of agricultural production.<sup>101</sup> In its report on the pilot phase, the Joint Research Centre proposes different use-stage assumptions for specific food categories, grouping, for example, meat, fish and eggs, but separating these from milk and pasta,<sup>102</sup> and it provides default loss rates per type of product category.<sup>103</sup> These assumptions can be used when no better data are available to calculate the PEF.

As is shown in the literature, various LCAs and LCA guidelines were developed for food to quantitatively assess, amongst others, the environmental impacts of ruminants and poultry, animal feed and pigs,<sup>104</sup> comparing the impacts of livestock products<sup>105</sup> or analysing the supply chains of dark, milk and white chocolate.<sup>106</sup> The LCA has become the standard methodology to measure sustainability in International Organization for Standardization (ISO) standards as well: ISO 14024:2018, addressing voluntary third-party schemes for sustainability that are based on multiple criteria,<sup>107</sup> requires a LCA, as well as ISO 14021:2016,<sup>108</sup> which provides a standard for making self-declared environmental claims (which are often based on single attributes such as product carbon or water footprints), and ISO 14025:2006,<sup>109</sup> which is developed for providing information about the ecological profile of a product.<sup>110</sup> At the same time, it has become clear that there is currently no single LCA that can cover all aspects of sustainability for food production: LCAs are often used to measure and highlight one dimension of sustainability,

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increased relevance, reproducibility and consistency of the results by reducing costs versus a study based on the comprehensive requirements of the PEF method” (p 21).

<sup>98</sup> European Commission, “Commission Recommendation on the use of common methods to measure and communicate the life cycle environmental performance of products and organisations” 2013/179/EU.

<sup>99</sup> Zampori and Pant, *supra*, note 97.

<sup>100</sup> E Saouter et al, “The ENVIFOOD Protocol: Facilitating Consumer Choice for Greener Products” (2014) presented at Workshop Knowledge and information for Sustainable Food Systems of the FAO/UNEP Programme on Sustainable Food Systems (Rome, 10–11 September 2014).

<sup>101</sup> Zampori and Pant, *supra*, note 97, p 25.

<sup>102</sup> *ibid.*, Annex D.

<sup>103</sup> *ibid.*, Annex F.

<sup>104</sup> S Fraval, CE van Middelaar, BG Ridoutt and C Opio, “Life Cycle Assessment of Food Products” in P Ferranti, EM Berry and JR Anderson (eds), *Encyclopedia of Food Security and Sustainability* (Amsterdam, Elsevier 2019) pp 488–96.

<sup>105</sup> M de Vries and IJM de Boer, “Comparing Environmental Impacts for Livestock Products: A Review of Lifecycle Assessments” (2010) 128 *Livestock Science* 1.

<sup>106</sup> FR Bianchi, L Moreschi, M Gallo, E Vesce and A Del Borghi, “Environmental Analysis along the Supply Chain of Dark, Milk and White Chocolate: A Life Cycle Comparison” (2021) 26 *International Journal of Life Cycle Assessment* 807.

<sup>107</sup> ISO 14024:2018 Standard Environmental labels and declarations – Type I environmental labelling – Principles and procedures.

<sup>108</sup> ISO 14021:2016 Standard Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling).

<sup>109</sup> ISO 14052:2006 Standard Environmental labels and declarations – Type III environmental declarations – Principles and procedures.

<sup>110</sup> Fraval et al, *supra*, note 104; H Karl and C Orwat, “Economic Aspects of Environmental Labelling” in H Folmer and T Tietenberg (eds), *The International Yearbook of Environmental and Resource Economics 1998/1999* (Cheltenham, Edward Elgar 1999) 107–70.

environmental sustainability in particular.<sup>111</sup> Even though recent suggestions have been made to add, for example, nutritional insights into LCAs,<sup>112</sup> the added value of assessing environmental sustainability and nutrition together through such an approach has been questioned. Today, such assessments do not seem to provide more information by combining both elements instead of separately analysing them.<sup>113</sup> Nevertheless, nutrition research increasingly aims to investigate how health and (environmental) sustainability are aligned.<sup>114</sup>

For sustainability dimensions other than the environment, other life-cycle methods have been developed, including life-cycle costing (LCC) for economic impacts and social life-cycle assessment (S-LCA) for the social impacts that human activities have.<sup>115</sup> As it is acknowledged that the three pillars of sustainability (environment, social and economic) can be independent, related and even in conflict with each other,<sup>116</sup> we believe it is of the utmost importance to assess sustainability comprehensively, across all three domains. For such assessments, it has been suggested by various authors<sup>117</sup> to combine LCA, LCC and S-LCA into the life-cycle sustainability assessment (LCSA) framework, as all efforts are based on the same ISO standard – ISO 14040 – and follow similar methodologies. The use of single LCAs or combined LCSAs provides transparent insights into the environmental impacts or, more generally, sustainability of products. The calculation of these impacts must, however, fulfil several conditions in order to become meaningful, of which we highlight two that have been discussed in the literature. First, it is essential to determine what is included and excluded from the scope of the analysis. When analysing the production of foods, it must be clear, for example, whether the analysis includes land use,<sup>118</sup> water resources<sup>119</sup> and food waste,<sup>120</sup> but also whether the packaging of the product is considered in the analysis. The development of PEFCR-like rules or evaluation criteria<sup>121</sup> should support such comparability. Nevertheless, the international standardisation of such rules may be necessary to increase the comparability of study outcomes.<sup>122</sup>

<sup>111</sup> S Cucarachi, L Scherer, J Guinee and A Tukker, “Life Cycle Assessment of Food Systems” (2019) 1(3) *One Earth* 292.

<sup>112</sup> B Ridoutt, “Bringing Nutrition and Life Cycle Assessment Together (Nutritional LCA): Opportunities and Risks” (2021) 26 *International Journal of Life Cycle Assessment* 1932–36.

<sup>113</sup> *ibid.*

<sup>114</sup> Examples of such analyses can be found in S Biesbroek et al, “Reducing Our Environmental Footprint and Improving Our Health: Greenhouse Gas Emission and Land Use of Usual Diet and Mortality in EPIC-NL: A Prospective Cohort Study” (2014) 13 *Environmental Health* 27; or in ME van de Kamp et al, “Healthy Diets with Reduced Environmental Impact? – The Greenhouse Gas Emissions of Various Diets Adhering to the Dutch Food Based Dietary Guidelines” (2018) 104 *Food Research International* 14–24.

<sup>115</sup> As described by van der Meer, *supra*, note 12, LCC studies can take a rather narrow approach, limiting themselves only to actual costs of investment, production and disposal, or they can take a broader perspective by also including more indirect costs (including emission taxes) and social costs, or even societal costs, including all private and external costs and benefits related to a product. Whereas LCC studies have been performed some time to date, S-LCAs are rather novel approaches to reporting on the “positive and negative social impacts over the life cycle of a product”. S-LCAs show the impacts on qualitative as well as quantitative indicators that are related to different stakeholder categories who are impacted by the production of a product: workers, the local community, society, consumers and value chain actors. Nevertheless, they have been described as sometimes being based on subjective information, which does not support the development of a meaningful comparison.

<sup>116</sup> van der Meer, *supra*, note 12.

<sup>117</sup> Including but not limited to van der Meer, *supra*, note 12; and W Kloepffer, “Life Cycle Sustainability Assessment” (2008) 13 *International Journal of Life Cycle Assessment* 89–95.

<sup>118</sup> de Vries and de Boer, *supra*, note 105.

<sup>119</sup> P Roy, D Nei, T Orikasa, Q Xu, H Okadome, N Nakamura and T Shiina, “A Review of Life Cycle Assessment (LCA) on Some Food Products” (2009) 90(1) *Journal of Food Engineering* 1.

<sup>120</sup> Aiking and de Boer, *supra*, note 16.

<sup>121</sup> HK Pottier and E Rös, “Multi-Criteria Evaluation of Plant-Based Foods – Use of Environmental Footprint and LCA Criteria for Consumer Guidance” (2021) 280(1) *Journal of Cleaner Production* 124721.

<sup>122</sup> Roy et al, *supra*, note 119.

Similarly, it must be clear to consumers how the various inputs and outputs have been selected to support transparent communication and to allow for meaningful comparisons. Second, high-quality and detailed data should be available regarding the various inputs and outputs that are considered in the analysis: there may be a lack of sufficiently detailed data to conduct in-depth analyses of specific processes or specific markets.<sup>123</sup>

Environmental impacts can increasingly be measured using LCA studies, which require a clear scope and good-quality data, but covering all three domains (environment, social and economic) in one assessment of sustainability may still be challenging. Over recent decades, methodological developments have strengthened sustainability analyses through LCAs (specifically for measuring environmental impacts), and for system approaches LCSAs have also been developed. At the same time, important considerations to address when using LCA studies to assess sustainability claims are the quality of data used in the study and a clear formulation of the scope of the study. We show that these considerations are especially challenging when taking a system approach to sustainability that covers all three domains (environment, social and economic). Whereas environmental impact studies are known to be more restrictive, they also allow for generating more comparative results within product categories. However, this gives rise to the question of whether addressing environmental sustainability, analysed through LCA (or LCA-based) approaches, is sufficient for consumers who want to make a sustainable choice. Will it be clear to consumers that sustainability in such cases only addresses environmental sustainability or will it provide a “halo-like” effect<sup>124</sup> such that they infer these suggestions to other dimensions of sustainability as well? It is important that consumers who read that their head of lettuce was produced with less water can realise that this does not necessarily mean that the product performs best in all areas of (environmental) sustainability.

If requirements for sustainability analyses have been set, they could form the basis for making sustainability claims. This gives rise to the question of who should be responsible for assessing such claims. From a comparison with requirements laid down in food legislation for other analyses related to regulated products (ie novel foods<sup>125</sup> and health claims<sup>126</sup>), we may assume that companies will have to conduct the analyses themselves to develop a sustainability claim. When following this approach, sustainability-related claims on foods would only be possible after obtaining pre-market approval from the Commission, who could request that an authority conducts the scientific assessment of the dossier submitted to support such a pre-market approval request from a food business operator. This will be different from the currently applicable legal framework, in which the food business operator is free regarding the wording and ways of substantiating its sustainability claims. Even though the European Food Safety Authority was set up to deal with food safety and health considerations specifically,<sup>127</sup> it could be expected that, in such

<sup>123</sup> HK Potter and E Rööös, *supra*, note 121; van der Meer, *supra*, note 12.

<sup>124</sup> The “halo-like” effect describes the intuitive response that consumers have to certain positive product features, which may induce a positive opinion on unrelated characteristics of that product; see EL Thorndike, “A Constant Error in Psychological Ratings” (1920) 4(1) *Journal of Applied Psychology* 25–29. The health halo is well-known in food and nutrition sciences, but halo effects have also been associated with other (verbal) claims regarding foods; see HNJ Schifferstein, A de Boer and M Lemke, “Conveying Information through Food Packaging: A Literature Review Comparing Legislation with Consumer Perception” (2021) 86 *Journal of Functional Foods* 104734.

<sup>125</sup> Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, OJ L 327, 11.12.2015, pp 1–22; further analysed in eg A de Boer and A Bast, “Demanding Safe Foods – Safety Testing Under the Novel Food Regulation (2015/2283)” (2018) 72 *Trends in Food Science & Technology* 125–33; or E Verweris et al, “Novel Foods in the European Union: Scientific Requirements and Challenges of the Risk Assessment Process by the European Food Safety Authority” (2020) 137 *Food Research International* 109515.

<sup>126</sup> NHCR; further analysed in eg A de Boer, “Fifteen Years of Regulating Nutrition and Health Claims in Europe: The Past, the Present and the Future” (2021) 13(5) *Nutrients* 1725.

<sup>127</sup> General Food Law.

a pre-approval approach, the European Food Safety Authority will play a prominent role in the scientific assessment of sustainability efforts in food production, considering its independent status and expertise in EU risk assessments (related to food). Whether they are the most suitable scientific authority for assessing sustainability substantiation requirements (for non-food or feed products) remains to be seen/addressed.

### VIII. Self-regulation as the way forward?

The increasing interest of consumers and producers in (communicating) sustainability and sustainable foods has driven policymakers and regulators to initiate procedures for rules and implementation documents on how to deal with claims related to sustainability. Sustainability is a credence attribute of a food, and as it cannot be seen or evaluated by a consumer themselves, it is something they need to receive information upon through labelling.<sup>128</sup> Sustainability claims can therefore be a very powerful tool to support consumers in their decision-making when purchasing food products.<sup>129</sup> At the same time, because of sustainability being a credence attribute, it is important that this communication by food business operators is not misleading (eg by using very detailed and careful wording of communications and by critically analysing the substantiating evidence). In line with the previous literature, our analysis highlights that sustainability is a broad concept that can be challenging to operationalise. Most importantly, however, we show that currently sustainability is interpreted in a rather restrictive fashion: the Commission's first steps to regulate sustainable claims only target green – thus environmental – claims, whilst the EU's Farm to Fork Strategy addresses sustainability within its wider scope.<sup>130</sup>

Within the Netherlands specifically, a self-regulatory framework system has been introduced with criteria regarding environmental claims. Whereas sustainability claims in the EU have so far been considered only to encompass green claims, in the Netherlands change is coming through the broader Sustainability Advertising Code that will replace the Environmental Advertising Code. Providing information on sustainability seems paradoxical: on the one hand, the information must be very specific and well-founded and must not be exaggerated, but on the other hand, providing such information also requires one to take a helicopter view on the concept of “sustainability”. These self-regulatory efforts as already organised in the Netherlands could provide a good foundation to ensure that consumers are not misled with information provided by (food) business operators addressing sustainability. The consistently high compliance rate (97% of the advertisers complied with the decision in 2020<sup>131</sup>) underlines the effectiveness of the self-regulatory system. The existing literature also suggests that self-regulation (researched in the context of private standards) could pave the way to better cooperation between the various sectors that directly or indirectly impact the sustainability of food products.<sup>132</sup> That such self-regulatory approaches are also being considered EU-wide is shown in both the inception

<sup>128</sup> O Bonroy and O Constantatos, “On the Economics of Labels: How Their Introduction Affects the Functioning of Markets and the Welfare of All Participants” (2015) 97(1) *American Journal of Agricultural Economics* 239–59; de Boer, *supra*, note 126.

<sup>129</sup> Karl and Orwat, *supra*, note 110.

<sup>130</sup> H Schebesta and JLL Candel, “Game-Changing Potential of the EU's Farm to Fork Strategy” (2020) 1 *Nature Food* 586.

<sup>131</sup> Stichting Reclame Code, “Annual Report 2020” (2020). Available at <[https://www.reclamecode.nl/wp-content/uploads/2021/05/SRC\\_Code\\_Opmaak-Jaarverslag-uitgebreid\\_2021\\_WT.pdf](https://www.reclamecode.nl/wp-content/uploads/2021/05/SRC_Code_Opmaak-Jaarverslag-uitgebreid_2021_WT.pdf)>.

<sup>132</sup> S Majer, S Wurster, D Moosmann, L Ladu, B Sumfleth and D Thrän, “Gaps and Research Demand for Sustainability Certification and Standardisation in a Sustainable Bio-Based Economy in the EU” (2018) 10(7) *Sustainability* 2455.

impact assessments for green claims<sup>133</sup> and the sustainable food system framework initiative.<sup>134</sup> As these address issues that are highly interconnected, we believe that these efforts cannot be seen separately from each other. In both inception impact assessments, various policy options are highlighted to address green claims and the sustainability of foods, respectively. One of the options present in both initiatives is the possibility to establish “a voluntary EU legal framework enabling companies to make green claims in accordance with the Environmental Footprint methods as a complement to existing methods” (for green claims) or to analyse “... to which extent voluntary approaches through soft-law instruments can contribute in the long term to the transition towards a Union sustainable food system ...”. Both initiatives, however, also outline the possibility of providing stricter regulatory measures, with the Green Claims initiative specifically describing in Option 3 that an EU legal framework could be established under which companies would need to substantiate claims through environmental footprint methods (ie PEFCRs and organisation environmental footprint sector rules) or via a study compliant with this method. The inception impact assessment on sustainable food systems also highlights the current lack of sustainability assessments for food products.

Whilst a voluntary approach may offer flexibility to industry and could result in a swift adoption of rules to govern the use of sustainability claims, the various limitations of such an approach need to be considered. First, a disadvantage of a voluntary EU legal framework could be that it will not be used often if the criteria are insufficiently detailed or clear. In that case, the wide range of labels and initiatives active across the EU may not be reduced and harmonisation may still be lacking. This may negatively affect consumer decision-making, as it could result either in a lack of clarity for food business operators to assess and communicate sustainability aspects and thereby reduce the amount of information available for consumers or it could protect insufficiently these consumers from unsubstantiated claims. Furthermore, it should be considered that, while in some countries self-regulation is well-known and is used, this may not be the case for all Member States. Thus, incentives may be necessary to urge and convince companies to comply with a self-regulatory framework. On the other hand, streamlining the applicable framework for sustainability claims by introducing a harmonised set of rules in the form of a Regulation will increase transparency, legal certainty and clarity for all parties involved (from supervisor to consumer), but it may also lead to less flexibility for communication around sustainability efforts and may have impacts on (communication around) innovation. It remains to be seen to what extent private law initiatives will be considered sufficient to support the development of harmonised and concrete sustainability claims, particularly regarding foods.

Considering that a definition of sustainability is yet to be established, there is a risk that any (voluntary) framework with only general suggestions on how to make such claims in accordance with the environmental footprint methods as a complement to existing methods would become a dead letter. After all, without a clear definition of sustainability or scope, open norms may lead to a lack of understanding of the scope and subsequent requirements. It will thus be difficult for industry, which would actually need to work with such a framework, to formulate and substantiate meaningful communication around sustainability to consumers.

In its framework for responsible environmental marketing communications, the ICC took a step closer towards the “closed” system of nutrition and health claims. It highlights several environmental claims and provides suggestions per claim on how to substantiate them. Should the EU legislator also decide only to allow specific claims that comply with legally defined criteria, there is a risk that legislation could need to be updated frequently

<sup>133</sup> Legislative proposal on substantiating green claims, *supra*, note 76.

<sup>134</sup> Sustainable Food System Framework Initiative, *supra*, note 7.



in order to keep up with developments or “trendy claims” in practice. The EU legislator could, however, follow the example of the ICC and create a list of claims plus the preferred methods for substantiation. Such an approach would be comparable to the pre-market approval of nutrition and health claims that is currently already embedded within the food system, with the main difference being that it would allow for flexibility in *how* the food business operator substantiates the claim. At the same time, such an approach would require substantial efforts from both food business operators and regulatory assessors. From research into the assessment of health claims it has become apparent that clear guidelines and requirements will be essential in making a pre-market authorisation procedure a successful endeavour that can support the highest level of consumer protection from misleading information whilst stimulating innovation.<sup>135</sup>

## IX. Concluding remarks and future outlook

By providing an overview of EU developments in the field of sustainability and green claims, highlighting governmental and self-regulatory initiatives in the Netherlands and analysing substantiation requirements for such claims, we have shown that this is a fast-moving field where we can expect developments to further support protecting consumers from misleading information on sustainability. At the same time, the complexity of the concept of sustainability is expected to influence significantly any development of policy.

A first step towards consumer protection is provided with self-regulatory initiatives and guidance from both the European Commission and the national supervisor, but at an EU-wide level it can be questioned whether such approaches could be considered sufficient to address the various challenges facing both green claims and food system sustainability. As described in the previous sections, it is clear that all policy options – ranging from no action and voluntary self-regulation activities to strict framework regulation with pre-market authorisation of claims – will have both benefits and pitfalls when it comes to how much time would be required before action could be taken, the impacts on innovation and the impacts on consumer protection.

Ultimately, it is in everyone’s interest to make the food system sustainable so that all EU citizens (and those further afield) will have access to sufficient, safe and healthy food in 150 years’ time. Communication about sustainability is therefore very important. It is encouraging to see that there are already various initiatives that aim to tackle sustainability assessment and communication, but it is necessary to take a more unified approach regarding what does and what does not fall under the concept of sustainability and how we want this to be demonstrated. As currently there are so many different initiatives, resulting in a lack of clarity and thus uncertainty for companies and consequently increasing the potential risk of misleading the consumer, it is time to take the next step either through self-regulation or legal action by the European Commission. Potentially, even co-regulation could be an option. For example, in the Netherlands, the (recently renewed<sup>136</sup>) cooperation between the supervising authority (the NVWA) and the self-regulatory institute (Keuringsraad) in the area of health products might be considered

<sup>135</sup> KGM Lenssen, A Bast and A de Boer, “Clarifying the Health Claim Assessment Procedure of EFSA Will Benefit Functional Food Innovation” (2018) 47 *Journal of Functional Foods* 386–96; S Khedkar, S Bröring and S Ciliberti, “Exploring the Nutrition and Health Claims Regulation (EC) No. 1924/2006: What is the Impact on Innovation in the EU Food Sector?” (2017) 68(1) *International Journal of Food Sciences and Nutrition* 10–17.

<sup>136</sup> NVWA en Keuringsraad, “Werkafspraken NVWA en Keuringsraad” (25 January 2022). Available at <[https://www.keuringsraad.nl/keuringsraad.nl/media/KoagKag/Documenten/werkafspraken-nvwa-en-keuringsraad-\(1\).pdf](https://www.keuringsraad.nl/keuringsraad.nl/media/KoagKag/Documenten/werkafspraken-nvwa-en-keuringsraad-(1).pdf)>.

a form of co-regulation and an example for addressing claims. Due to the complexity of the task of increasing clarity and reducing uncertainty, we believe that self-regulation could be a useful step in setting norms across the EU and protecting consumers, pending further action by the Commission. Clarifying Guidance documents that, for example, indicate how substantiation could be achieved whilst opening the floor to other methodological initiatives, may guide the industry without enforcing restrictive measures. This can create sufficient certainty whilst acknowledging that there are many roads leading to Rome.

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