






DENTONS

Legal Framework Applicable to Greenwashing

Country Focus: The Netherlands

Grow | Protect | Operate | Finance

The Netherlands	
Legal definition of greenwashing	
Targeted greenwashing legislation	
Direct regulation of greenwashing (through consumer protection, advertising standards, unfair competition or environmental law frameworks)	
Soft law guidance or standards on greenwashing	
Applicability of existing national legal frameworks to greenwashing (depending on facts)	

* There is no statutory definition. However, the former version of the guidelines of the Netherlands Authority for Consumers and Markets (“ACM”) stated that greenwashing is misleading consumers by claiming that products are more sustainable than they actually are.

Summary of relevant laws and provisions

In the Netherlands, greenwashing, or the use of misleading or deceptive environmental claims, is regulated by various legal frameworks such as consumer protection law, contract law and tort law.

1. Consumer protection law prohibits misleading commercial practices that may affect the economic behaviour of consumers. This law applies to any action, omission or practice related to the promotion, sale or supply of goods or services by undertakings. Articles 6:193a -193j of the Dutch Civil Code (“DCC”) are most important.
2. Abovementioned articles apply only to undertakings in their relation to consumers. Similar provisions may apply between undertakings on the basis of Article 6:194 DCC et seq. in order to protect injured competitors.
3. If the party that has entered the contract would not have entered knowing X whilst the other party was obliged to inform about X, contract law allows for annulment when:
 - the contract was based on mistake (“dwaling”); or
 - the contract was based on fraud (“bedrog”).
4. Article 6:162 DCC is the main provision governing tort law in the Netherlands. In some cases, greenwashing can’t be captured under consumer protection law and/or contract law. In such cases tort law presents a potential fallback provision, as it also prohibits an act or omission that is contrary to a statutory duty or to what is socially acceptable according to unwritten law.

Summary of guidance and soft law

In addition to the legal frameworks mentioned above, there are also some guidance and soft law instruments that aim to prevent or reduce greenwashing in the Netherlands. These include:

1. [The Sustainability Claims Guideline](#) aims to prevent greenwashing by companies. The guideline is drawn up by the Netherlands Authority for Consumers and Markets (“ACM”) and contains rules with the specific aim to assist companies in formulating their sustainability claims. It also includes practical examples to help companies understand when greenwashing is taking place and when it is not.
2. Advertising standards: companies must comply with the rules for making responsible advertising. These rules have been drawn up by the Advertising Code Foundation (“SRC”) and can be found in the various codes and the rulings of the Advertising Code Committee (Reclame Code Commissie) and the Board of Appeal (College van Beroep).

Claims & enforcement

Greenwashing claims can be brought by various actors and bodies, depending on the legal framework and the type of remedy sought. These include:

1. Consumers, companies, organisations and potentially other parties can file a complaint regarding advertisements at the SRC. The decision of the SRC can be appealed before a court.
2. Complaints can be filed to the ACM. The ACM then considers whether it will launch an investigation. After investigating the ACM may impose sanctions.
3. (Legal) persons that are protected by the relevant provisions preventing greenwashing may directly initiate proceedings before a court.

Sanctions & remedies

The sanctions and remedies for greenwashing vary according to the legal framework, the nature and gravity of the infringement. They can include:

Public:

1. The public warning: the issuance of a public warning is possible if the ACM has identified an infringement or if it is reasonably necessary to inform consumers quickly and effectively about a harming commercial practice.
2. Fines up to € 900,000 or, if higher, 1.0% of the offender’s turnover, even 10% in exceptional cases. Prior sanctioned violation in the last 5 years may lead up to a 100% increase of the fine.

Civil:

3. Injunctions, which can be ordered by the administrative or judicial authorities to stop or prevent the continuation of the greenwashing practice (3:296 DCC).
4. Reduction of the price (7:22 DCC).
5. Annulment of the agreement (6:193a -193j DCC, 7:22 DCC or 6:228 DCC).
6. Civil damages, which can be awarded to compensate for the harm suffered by the victims of greenwashing (6:193a -193j DCC, 6:194 DCC and 6:162 DCC). Damage may exist in (e.g.):
 - A. the increased price that results from the greenwashing practice;
 - B. reputational damage for resellers and/or other third parties making use of the products or services in question.

Evidence & substantiation

The evidence and substantiation requirements for greenwashing claims depend on the legal framework and the burden of proof. In general, the following principles apply:

1. The claimant must prove the existence of the greenwashing practice, unless there is a legal presumption in its favour.
 - A. Such presumptions may apply under consumer law
2. For damages to be claimed the most important components are:
 - A. Damages
 - B. Causal relation between damages and the greenwashing practice involved
3. Under consumer law the respondent must prove the accuracy and the justification of the environmental claim, unless there is a legal presumption in its favour.

Recent litigation

Litigation

1. District court Amsterdam 14 July 2021, *ECLI:NL:RBAMS:2021:3617 (Car Claim v Volkswagen c.s.) (in Dutch)*
2. District court Amsterdam 20 March 2024, C/13/719848 / HA ZA 22-524 (*Fossielvrij v KLM*) (in Dutch)

Decisions by the ACM

1. ACM, 'Going forward, Decathlon and H&M will provide better information about sustainability to consumers', 13 September 2022
2. ACM, 'Going forward, Greenchoice and Vattenfall will provide better information about sustainability to consumers', 10 October 2022
3. ACM, 'Ryanair clearer about CO2 compensation following ACM action', 20 January 2023

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