



Event Report | Nov. - Dec. 2022

Self-regulation for sustainability: Combatting greenwashing in ads

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As concerns about the climate crisis grow, demand for products that cause minimal environmental harm is also rising, leading to a proliferation in sustainability claims from the companies selling them.

Trust in the veracity of these claims is low, however, and members of the marketing sector are now calling for greater efforts to address this issue and boost the validity of environmental labels and consumer confidence in them.

A number of EU-level and national initiatives have in recent years focused on the issue of greenwashing and potential solutions, but those in the advertising industry stress the need for this to be combined with self-regulatory actions that offer guidance and set standards for businesses to ensure that positive climate action can become more widespread.

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Marketers promote industry standards to combat greenwashing

By Molly Killeen | euractiv.com



The push for more trustworthy climate action within the industry comes amid similar efforts at EU level, where the Commission has introduced a number of initiatives in recent months designed to enforce certain standards when it comes to green claims in advertising. [Shutterstock / The KonG]

As greenwashing undermines trust in sustainability claims, marketers are looking into ways to self-regulate to promote credibility.

As public attention towards the climate crisis grows, consumers are increasingly seeking out verifiably sustainable products. As the EU begins to address false environmental labels, the advertising industry is looking at how it could

self-regulate.

If the EU's climate goals are to be met, the marketing industry must play a part in promoting both sustainable products and practices. That was the consensus reached at the event on Responsible Marketing for the Green Transition, hosted by the European Advertising Standards Alliance on Wednesday (16 November) to mark the organisation's 30th anniversary.

The push for more trustworthy climate action within the industry comes amid similar efforts at the EU level, where the Commission has recently introduced several initiatives designed to enforce specific standards regarding green claims in advertising.

Speakers at EASA's event, however, emphasised that, while an important component, legislation alone would not be enough to ensure

a more responsible turn within the sector and that broad self-regulatory efforts, particularly those that encompassed digital platforms, would also be vital for success.

Greening and greenwashing

“We have a duty to step up as marketers” to contribute to reducing emissions and reaching climate goals, said Stephen Loerke, CEO of the World Federation of Advertisers.

Companies should not see this as a restriction, he said, adding that “we want to get brands to embrace the climate transition as an opportunity” beyond the planetary and social benefits of an increased focus on genuine sustainability.

In the three decades since the founding of EASA, which advises standards bodies and advertising organisations on self-regulatory action, “what has changed is the urgency of the green transition and the need to ensure that consumers are on board”, said the EU Justice Commissioner Didier Reynders.

However, greenwashing is high in prevalence, as is consumer concern about it, he added, meaning that trust in environmental claims, in general, is being eroded. This comment was echoed by MEP Biljana Borzan, who told the event’s audience that “we live in a jungle of unsubstantiated environmental claims”, for which further regulation is needed.

Legislation and self-regulation

Recent years have seen the rollout of several initiatives by the European Commission to address the issue of unsubstantiated and false claims, with comparable action also being undertaken at a national level in many countries.

Among them, the importance of substantiation is outlined in both the European Green Deal and Brussels’ 2020 Circular Economy Action Plan, and in March this year, the Commission put forward its proposed Directive on Empowering Consumers for the Green Transition, designed in part to bolster consumer protections against unfounded statements of sustainability credentials.

The initiative, which will update the Unfair Commercial Practices Directive, will include prohibitions on making generic or vague environmental claims, such as ‘environmentally friendly’, making claims about an entire product when in reality it only concerns one part, and displaying sustainability labels not based on verification schemes run by third-parties or public authorities.

Although important as legislative initiatives are, speakers stressed that a combined approach that includes self-regulatory efforts would be crucial to ensuring a widespread turn towards genuine claims and increased public trust.

“Legislation alone cannot solve all our problems,” said Reynders, adding that the regulatory and self-regulatory measures should be seen as complementary.

Last November, a revised Framework for Environmental Marketing Communications was published by the International Chamber of Commerce, a major initiative within the sector to respond to growing societal attention to the environmental impacts of consumption and concerns about the validity of proliferating green marketing claims.

The document includes guidance on ensuring the truthfulness of environmental claims and advice for stakeholders on how to develop and analyse them.

The approach was replicated by national authorities, such as the UK’s Competition and Markets Authority, which published its Green Claims Code last year, designed to assist businesses in complying with consumer protection law when making environmental claims.

Systems of self-regulation such as EASA, however, “can only have a future if platforms play their role” by joining these alliances, said Loerke of the WFA, a sentiment repeated by other speakers who emphasised the need for digital actors to also contribute, given the rising proportion of trade and marketing that is now occurring online.



INTERVIEW

Dark patterns, online ads will be potential targets for the next Commission, Reynders says

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By Luca Bertuzzi | euractiv.com



Didier Reynders is the European Commissioner for Justice and Consumers [European Union, 2022]

Transparency in the online advertising market, dark patterns and ‘cookie fatigue’ are all topics on which the European Commission might regulate in the next mandate, the EU’s consumer protection chief told EURACTIV.

European Commissioner for justice and consumer protection, Didier Reynders, added that some existing commercial practices, like

greenwashing, could be banned under the Unfair Commercial Practices Directive.

At the same time, he acknowledged that the directive, which was adopted in 2005, would need to be updated to be aligned with the online world, adding that his Commission department had carried out a [study](#) on the possible gaps in the directive.

The study is focused on dark patterns and manipulative personalisation, commercial techniques used to make internet users do something against their will or interest.

The Commission opened a [public consultation](#) on digital fairness last week, with an EU official [publicly inquiring](#) about the need for a Digital Fairness Act to ensure equal fairness

offline and online.

With the European elections in 2024 fast approaching, this is the phase of the mandate when the EU executive is carrying out a series of studies and consultations intended to inform the agenda of the next Commission.

In the context of the Digital Services Act, EU policymakers, mostly MEPs but also some member states, have shown an appetite to regulate online advertising and dark patterns, which was only partially satisfied in the final compromise.

Points of concern

“The first problem we want to address is transparency. If you want to maintain the consumers’ trust, it’s very important that the consumers understand why they see so many ads,” the Commissioner explained.

Secondly, the EU executive is looking into the fact that it is easy to subscribe to a service, whereas the unsubscribe process is often made unnecessarily complicated. The idea is to reach an industry standard that reasonably allows users to withdraw their consent.

The third and final aspect is cookies, banners to request online users’ consent to process their personal data. For the Commissioner, the current system with users constantly requested to agree to some terms has led to ‘cookie fatigue’.

In this regard, he stressed the intention to explore voluntary commitments to find an easier way to ask for consent that is not based on a false choice between

giving consent or losing one’s time trying to reach a specific website or marketplace.

For example, when meeting with the Irish Data Protection Commissioner Helen Dixon, who is in charge of enforcing the EU’s data protection rules on most Big Tech companies, Reynders proposed an internet ID where the users can centralise their choice in terms of data processing.

“We don’t want to ban all the different practices because it’s important to have an open activity online of fair competition that must be possible to organize advertising,” Reynders said, distancing himself from [centre-left lawmakers](#) who want a complete ban on targeted ads.

Soft and hard law

The EU consumer chief appears to be setting the path for the regulatory approach in this area, stressing that the process could be initiated with some instruments of soft law to test the ground ahead of ‘hard’ law that requires a lengthy legislative process.

“Voluntary commitment is maybe a first step that is possible to use to see with some actors what is possible to do online. After that pilot phase, we can see if it’s needed to come up with a regulation to have a level playing field to impose the best possible practices to all the actors,” he added.

He noted that the EU followed a similar approach in fields like due diligence and product safety. Also, the content moderation rules under the Digital Services Act were

primarily anticipated by the EU Code of Practice on Disinformation.

That might again be the case for greenwashing. “It’s possible to have some voluntary commitments, but it’s better to try to organise with a mandatory approach a real control about the content of the communication to the public,” Reynders said.

More regulatory attention

The Commission’s consumer department is not the only one scrutinising the online advertising market. The directorate-general for digital policy (DG CNECT) has also commissioned a study for the agency AWO, which is currently with the EU executive for final review before publication, expected in January.

According to a source informed on the matter, the study might feed into a new legislative initiative intended to replace the ePrivacy Regulation, which was tabled in 2017 but fell victim to a negotiation stalemate between the EU Council and Parliament.

The EU executive has so far denied any intention to withdraw the proposal, but a new collage of Commissioners goes hand in hand with new political priorities. And the competition for whom will own the conversation on dark patterns and online advertising seems to have already started.



PROMOTED CONTENT

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Self-regulation: responsible advertising for the green transition

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By Lucas Boudet | EASA



[Juststock/Getty Images]

Advertising self-regulation contributes to responsible advertising for the green transition. Helping protect consumers from greenwashing for decades, it now uses A.I. technology to monitor online ads at scale and supports the industry in enhancing

advertising as a force for good.

Lucas Boudet is Director General at EASA

The UN Climate Change Conference, which recently took place in Egypt, stressed the

importance of sustainable patterns of consumption and production to address climate change. The European Commission, in line with its ambitions set out in the European Green Deal, has recently tabled a proposal for a Directive on *Empowering Consumers for the Green*

transition aiming to tackle the issue of greenwashing and will soon issue one on *Substantiating environmental claims*.

Everyone in our society bears a share of the responsibility to rise to the challenges related to climate change. Advertisers are very much aware of the instrumental role they can play. Marketing must make sustainable products attractive and desirable to consumers. Responsible marketers need to be able to tread a fine line, communicating about the positive environmental attributes of their products and services whilst staying clear from any greenwashing. This is where the numerous unique assets of collective advertising self-regulation (SR) come into play. EU Commissioner for Justice underlined that “[[European Advertising Standards Alliance](#), EASA’s] *self-regulatory approach to ensure that companies advertise products and services responsibly whilst staying clear from greenwashing has impressive results.*”

Collective Advertising self-regulation protecting consumers – effectively complementing regulation

Members of the advertising industry, including marketers, agencies, and media, developed and support robust collective self-regulatory systems to help ensure marketing practices are responsible. They strongly believe that legal, decent, honest, and truthful advertising is necessary to foster and safeguard consumer trust which, in turn, is crucial for brand reputation, sustainable business, and growth.

Advertising self-regulation is collective in that it is an entire sector committing as a whole, allowing for checks and balances and wide industry buy-in. All parties are engaged and accountable. It is a credible and robust system that features codes of conduct, as well as independent mechanisms to enforce them via national self-regulatory organisations (SROs). No wonder numerous EU legislative instruments such as the Unfair Commercial Practices and the Audiovisual Media Services Directives recognise such non-regulatory means. As the European Commissioner for Justice put it *“Legislation alone cannot solve all our problems [...] both regulatory and self-regulatory instruments are complementary to each other”*.

Compared to statutory regulation, SR allows for quicker enforcement and for preventive actions contributing to a responsible advertising environment. In addition to any judicial or administrative recourse granted by law, consumers can lodge complaints for free via their local SRO against ads that they deem problematic and see their cases handled swiftly and effectively. Every year, SROs handle an average of around 60,000 complaints from consumers but also from competitors, authorities, and NGOs and, in most cases, they do so in less than one or two weeks.

In addition, local SROs do massive preventive work. They help raise awareness and provide guidance to marketers and to influencers about the applicable legislation and standards through training, workshops, and educational material. The aim is to enable them to express their creativity whilst remaining compliant with applicable rules. Last year SROs

reviewed over 188,000 pieces of ad content for compliance with ad standards and, in many countries, with legislation too, well before the ad is even made available to consumers. Lastly, complementing administrative and judicial controls, SROs carry out monitoring exercises to check the conformity of ads with the applicable law and standards, providing valuable feedback to enhance compliance over the long term.

Collective Advertising self-regulation protecting consumers – nimble and fit for the future

Advertising adapts quickly to changing contexts and, through an iterative improvement process, the creation and update of standards are informed by feedback from a wide range of stakeholders including consumer-facing SROs, which are well placed to identify trends, early signals of change, and the evolving concerns of society. Responding to those, new guidelines can be established in a matter of months, not years. Anticipating the growth of new marketing practices, EASA quickly developed Best Practice Recommendations on Digital Marketing Communications back in 2007 and on Influencer Marketing in 2018. The International Chamber of Commerce’s [Advertising and Marketing Communications Code](#), which serves as the backbone of national advertising self-regulatory codes, is 85 years old but is constantly being updated; it features a full chapter on environmental claims and is complemented by [Framework on Responsible Environmental Marketing Communications](#) which has been updated last year.

In this spirit of constantly keeping pace and anticipating upcoming evolutions, last October, in Madrid, all EASA members signed "[*EASA's 30th Anniversary Declaration for proactive and effective advertising self-regulation and the enhancement of socially responsible advertising in Europe*](#)". This declaration serves as a stepping stone to the future.

Aiming to accompany the industry when it addresses societal issues, moving from good to better advertising, EASA commits in the Declaration, "*to support the industry in enhancing advertising as a force for good, recognising that advertising has the capacity to contribute to promoting attitudes and behaviours that help respond to EU and global challenges*". To name a few: sustainability, diversity, social inclusion, equity, minors protection, or privacy.

Acknowledging the rise in volume of online advertising and the issues

of monitoring online advertising at scale, the declaration underlines the need to be at the forefront of technology unleashing its full potential in tackling irresponsible advertising. It calls for EASA to "*Promote the use of data-driven solutions where relevant*". Today, half and soon two-thirds of EASA's SRO members use artificial intelligence technology to monitor the content of commercial communications. In some markets, these tools have been geared to monitor influencer posts and videos relating to green claims.

Advertising self-regulation is undeniably part of the equation and part of the solution. EASA is committed to doing its share for the green transition, working together with marketers, policymakers, and the wider community. EASA, as its European network of 27 SROs, 13 advertising industry organisations and 1 digital pure-play company, are there to ensure self-regulation contributes to

ensuring an advertising landscape where consumers are safe from greenwashing and misleading green claims and where marketers are safe to promote products, services, brands, as well as sustainable behaviours.



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