



# Criminal and Regulatory Responses to Climate Change : Ecocide and Greenwashing

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CORNERSTONE CLIMATE TRAINING MONTH – May 2024



# Ecocide

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# Introducing ecocide – various definitions

**International:  
ecocide as 5<sup>th</sup>  
international  
crime under  
the ICC**

**Regional: EU  
Environmental  
Crimes  
Directive**

**Local:  
proposed UK  
laws**

# International Criminal Court (ICC)

- Established by the Rome Statute in 2022 to prosecute four severe international crimes: genocide, war crimes, crimes against humanity, and aggression.
- 124 countries are state parties
- Court of last resort, active when national courts cannot prosecute



# International Definition

Ecocide means “unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”

Defined in June 2021 by the Independent Expert Panel convened by the Stop Ecocide Foundation



**Polly Higgins (1968-2019)  
and Jojo Mehta co-founded  
Stop Ecocide International**

# Progress to international adoption

**In 2019  
Vanuatu urged  
state parties to  
consider  
ecocide**

**But no state  
party has yet  
proposed  
amendment**

**2024 ICC  
prosecutor  
consultation**

# Revised EU Environmental Crime Directive (ECD)

- Directive (EU) 2024/1203
- Establishes EU-wide minimum rules on the definition of criminal offences and penalties
- Applies to both natural and legal persons
- Only apply to offences committed within the EU
- Conducts constituting a criminal offence increases from 9 to 20, including timber trafficking water abstraction, ship recycling and pollution and spreading alien invasive species
- National authorities are obliged to take swift action in instances of environmental crime

# EU Definitions

For listed conducts to constitute environmental crimes at EU level, they must:

- be unlawful (in breach of EU environmental law or of national laws giving effect to such EU law); and
- be intentional or, in certain cases, committed with serious negligence



“Qualified criminal offences” are punishable with more severe penalties if they cause certain types of destruction or widespread and substantial damage which is either irreversible or long-lasting to, an ecosystem of considerable size or environmental value or a habitat within a protected site; or to the quality of air, soil or water



# Local recognition of ecocide: France

- 24 August 2021 Climate Resilience Act (Art 231-3)
- Introduced a “délit” (criminal offence like a misdemeanour) providing for up to 10 years in jail, for offences which “**cause serious and lasting damage to health, flora, fauna or the quality of the air, soil or water.**”

## First trial

- December 2022
- Discovery of industrial solvent in residential area (housing on an old industrial laundry site)
- Traces of the chemical were 800 times the legally acceptable limit

# Local recognition of ecocide: Belgium

- 23 Feb 2024 Belgian Penal Code recognised ecocide
- The offense carries a level 6 sentence, signifying its gravity with a punishment ranging from 10 to 20 years of imprisonment

## Definition

The intentional commission of an unlawful act resulting in severe, widespread, and long-term damage to the environment, with the perpetrator being fully aware of the consequences of their actions.

# Local ecocide initiatives: UK

**Dec 2023  
Private  
Members' Bill  
in HOL  
(E&W)**

**The Bill has  
reached its  
second  
reading**

**Nov 2023  
consultation  
on proposed  
Scottish Bill**

# How would ecocide work?

- ICC level – **individual criminal accountability**, including evidencing the accused’s knowledge that there is a substantial likelihood their actions would cause severe or widespread or long-term environmental harm
  - Is this akin to recklessness?
- EU and others – both individual and **corporate criminal accountability** which holds corporations liable for specific polluting behaviours
  - Could there be such liability for greenhouse gas emissions?



# Greenwashing

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# Definition

Greenwashing is the term applied to environmental claims, usually made by companies and organisations in the course of their promotional activities or in their corporate reporting, which wrongly create the impression that a product or service has a positive environmental impact or no less or no impact on the environment.

Pic: Banned HSBC advert (Adfree Cities)



# European Regulatory Mechanisms

Generic  
enviro  
claims

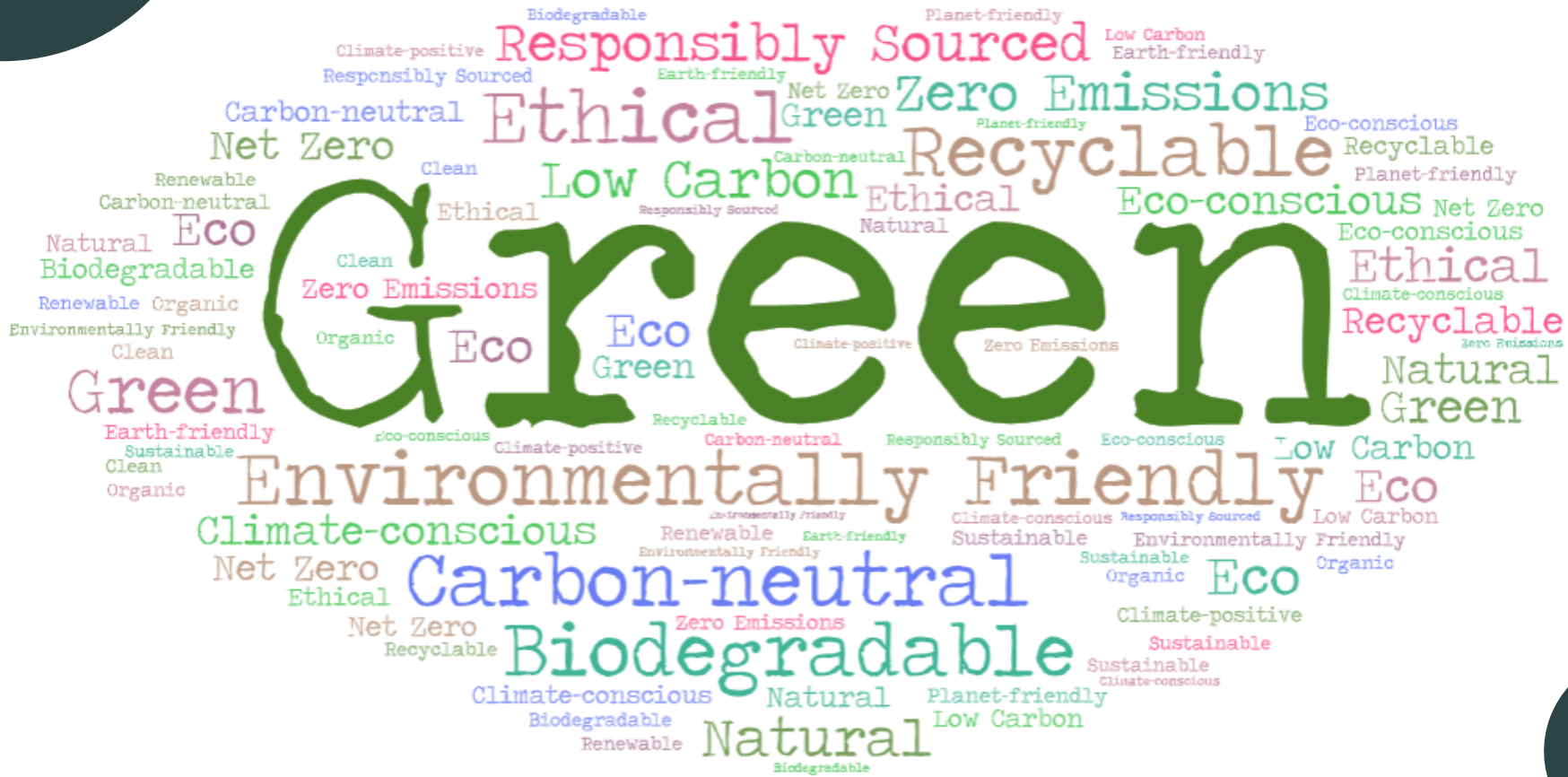
Entire  
product  
claims

Directive (EU)  
2024/825  
“Sustainable  
Labelling”  
Directive

Labels :  
certific  
schemes

Legal  
oblig

# Terms identified as potential greenwashing





# EU – Proposed Green Claims Directive

**Offsets  
separate from  
carbon  
footprint info**

**Demonstrate  
offsets of high  
integrity &  
accounted for**

**Offsetting  
only used for  
residual  
emissions**

# UK Regulatory Mechanisms

01

**Advertising  
Standards  
Agency  
(ASA)**

02

**Competition  
and Markets  
Authority  
(CMA)**

03

**Financial  
Conduct  
Authority  
(FCA)**

04

**OECD's UK  
National  
Contact  
Point  
(UK NCP)**

# Advertising Standards Agency

## Regulatory Codes

- Regulates advertising across UK media in light of the Advertising Codes: the UK Code of Non-broadcast Advertising and Direct and Promotional Marketing (“**CAP Code**”) and the UK Code of Broadcast Advertising (“**BCAP Code**”)
- New Code of Practice: Environment Misleading Claims and Social Responsibility in Advertising Guidance (non-broadcast and broadcast)

## Decisions on Complaints

- October 2022: HSBC complaint upheld on the basis that its adverts were misleading as a result of what information was omitted
- June 2023: Shell UK Ltd, Repsol, Petronas ads highlighted companies' clean energy initiatives omitted info re balance of current activities
- December 2023: Lufthansa, Air France-KLM and Etihad, no detailed substantiation or info on the basis

# Competition and Markets Authority

## Regulatory Codes

- September 2021 **new Green Claims Code**
- Study found 40% of green claims made online could be misleading consumers
- Six principles – environmental claims must be: truthful and accurate; clear and unambiguous; not omit or hide important information; only make fair and meaningful comparisons; consider the full lifecycle of the product or their services; and be substantiated

## Investigations and enforcement

- CMA power to conduct investigations and to take enforcement action through the courts
- July 2023: investigation into environmental claims made by ASOS, Boohoo and George at ASDA – led to formal undertakings
- March 2024 Open letter to fashion retail sector
- Significant increase in powers: Digital Markets, Competition & Consumers Bill

# Financial Conduct Authority

## Regulatory Codes and Reach

- Regulates “financial services” (45K businesses)
- Can issue enforcement notices and levy financial penalties
- Since 2023 fund managers were subject to Sustainability Disclosure Requirements, setting rules on information given to investors about the sustainability of their investments
- New final Guidance on anti-greenwashing rules coming into force 31 May 2024 – applies to **all FCA-authorised firms** not just fund managers
- Mirrors EU approach: objective criteria for sustainability claims; imposing restrictions on how certain terms – such as ‘ESG’, ‘green’ or ‘sustainable’ – can be used

# OECD UK NCP

Part of  
the DTI

Corp due  
diligence

OECD  
Guidelines for  
Multinational  
Enterprises

Climate  
& enviro  
focus

Airlines  
comp-  
laint



# Questions

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# Cornerstone Climate Month

## Still to come!

- 13-5-24 (am) The Energy Transition: Renewables
- 15-5-24 (am) Carbon Delivery Budget Plan
- 15-5-24 (pm) UK Progress towards Net Zero
- 20-5-24 (am) Power to the People: renewable energy from source to user
- 21-5-24 (pm) Carbon Capture and Storage
- 22-5-24 (am) From Old to Gold: challenges in retrofiting
- 23-5-24 (pm) Climate Change and the Law: The Basics #2: the international perspective
- 28-5-24 (am) Financing the Green Transition
- 29-5-24 (am) Climate and the right to protest
- 29-5-24 (pm) Climate litigation in the civil courts
- 30-5-24 (pm) Climate Change and Human Rights

## Catch up on previous sessions:

- Climate Change and the Law: The Basics #1
- Policy Making: How to Plan for Net Zero
- Real estate and ESG
- Climate as a material planning consideration