

Compliance Criteria on Environmental Claims

***Multi-stakeholder advice to support the implementation/application
of the Unfair Commercial Practices Directive 2005/29/EC***

Helping consumers make informed green choices and ensuring a level
playing field for business

**Developed by the
Multi-stakeholder Dialogue on Environmental claims
2016**

Disclaimer

This document has been developed by the participants to the meetings of the Multi-Stakeholder Dialogue on Environmental Claims (MDEC). It is based on a common understanding of the MDEC concerning the application of the Unfair Commercial Practices Directive 2005/29/EC (UCPD) in the area of greenwashing and misleading environmental claims.

Please note that this document cannot provide a formal interpretation of community law. In accordance with the Unfair Commercial Practices Directive and its transposition into national legislation, national courts and authorities perform a case-by-case assessment of whether a claim is misleading either in its content or in the way it is presented to consumers, taking into account its impact on the average consumer's purchasing decisions.

1. INTRODUCTION

1.1. General context

In 2012, the European Commission launched a Multi-stakeholder Dialogue on Environmental Claims (MDEC) with representatives of national authorities, European business organisations, consumer associations, environmental NGOs and academics, with the purpose to:

- provide a better understanding of the use of environmental claims;
- assess the scope of the problem of misleading environmental claims;
- identify the challenges in the field of environmental claims that different stakeholders are facing i.e. in their role as enforcer, manufacturer, advertiser, consumer association, environmental NGO etc.;
- map best practices in the field of environmental claims and highlight potential areas of improvement;
- put forward recommendations.

The MDEC also aims to build a common understanding concerning the interpretation of the Unfair Commercial Practices Directive (UCPD) in this area, with a view to achieving a uniform application throughout the EU.

A report of the MDEC with the main findings and recommendations was presented at the 2013 European Consumer Summit¹. The report provides information about the EU regulatory framework, the different challenges and best practices. It also puts forward key recommendations for the short, medium and longer term, such as the further development of the knowledge base, a revision of the most relevant EU guidance (in particular the Commission Staff Working Document Guidance on the implementation of the Unfair Commercial Practices Directive – UCPD²) and an active enforcement approach by Member States. Finally, it recommends businesses to follow key principles such as reliability, transparency and relevance when formulating environmental claims.

As a follow-up to the report of the MDEC, a dedicated study was undertaken on EU consumer markets and environmental claims for non-food products. The study examines the presence of environmental claims in different markets (e.g. via mystery shopping), consumer understanding and behavioural aspects, the level of compliance with EU legal requirements (in particular with the Unfair Commercial Practices Directive), and different enforcement and self-regulatory instruments in a selection of EU and third countries. The study also includes suggestions for future policy work, including on future UCPD guidance.³

This document, "Compliance Criteria on Environmental Claims - Multi-stakeholder advice to support the implementation/application of the Unfair Commercial Practices Directive 2005/29/EC", further builds on this work. It is the result of a consultation and discussion between the participants of the MDEC in 2014 and 2015, with a view to developing multi-stakeholder advice to be followed by businesses to support compliance with the UCPD as regards environmental claims, and to improve the transparency of

¹ http://ec.europa.eu/consumers/archive/events/ecs_2013/docs/environmental-claims-report-ecs-2013_en.pdf

² SEC(2009) 1666 – Chapter 2.5 Misleading Environmental Claims in Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices- http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf

³ http://ec.europa.eu/consumers/consumer_evidence/market_studies/environmental_claims/index_en.htm

environmental claims. The document draws on existing guidelines on environmental claims.⁴

This work of the MDEC was presented at a stakeholder conference⁵ in September 2015 arranged by the European Commission on the revision of the UCPD guidance document. It has been also referred to in the EU Action Plan for the Circular Economy adopted by the European Commission in December 2015.⁶

This document has been published on the European Commission's website in 2016 as a report reflecting the MDEC's common interpretation of the Unfair Commercial Practices Directive in this area. MDEC stakeholders have committed to disseminate, promote and implement the document and/or support its implementation. This document has also fed into the revised Commission's guidance to the Directive. Both documents were published in May 2016.⁷

1.2. The purpose of this document

The Unfair Commercial Practices Directive (UCPD) does not provide specific rules in relation to environmental claims. However, its provisions apply to all claims made in the context of business-to-consumer commercial practices, including those related to the environment. Thus, the Directive provides a legal basis to ensure that traders do not present environmental claims in ways that are unfair to consumers. As stated in Recital 10 of the Directive, it "provides protection for consumers where there is no specific sectorial legislation at Community level and prohibits traders from creating a false impression of the nature of the products".⁸

⁴ In particular:

- Environmental and Ethical Marketing Claims Guidance, Denmark (2011)
<http://www.consumerombudsman.dk/Regulatory-framework/dcoguides/Environmental-and-ethical-marketing>
- DEFRA Green Claims Guidance, United Kingdom (2011)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69301/pb13453-green-claims-guidance.pdf
- Practical Guide to Environmental Claims, France (2012)
http://www.economie.gouv.fr/files/files/directions_services/dgccrf/documentation/publications/brochures/2012/Guide_allegat_environ_en_2012.pdf
- Guidelines for making and assessing environmental claims (2000), commissioned by the European Commission.
http://ec.europa.eu/consumers/archive/cons_safe/news/green/guidelines_en.pdf

⁵ http://ec.europa.eu/justice/newsroom/consumer-marketing/events/150909_en.htm

⁶ COM (2015) 614/2 ; for example on p. 6 "The Commission is working with stakeholders to make green claims more trustworthy, and will ensure better enforcement of the rules in place, including through updated guidance on unfair commercial practices."

⁷ http://ec.europa.eu/consumers/consumer_rights/unfair-trade/unfair-practices

⁸ Examples of specific sectorial EU legislation in the "environmental claims area" include:

- Regulation (EC) No 66/2010 on the EU Ecolabel;
- Regulation 834/2007 on organic production and labelling of organic products;
- Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products;
- Directive 1999/94/EC relating to the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars.

Definition of environmental claims⁹

The expressions "environmental claims" or "green claims" refer to the practice of suggesting or otherwise creating the impression (in the context of a commercial communication, marketing or advertising) that a product or a service, is environmentally friendly (i.e. it has a positive impact on the environment) or is less damaging to the environment than competing goods or services. This may be due to, for example, its composition, the way it has been manufactured or produced, the way it can be disposed of and the reduction in energy or pollution which can be expected from its use. When such claims are not true or cannot be verified this practice can be described as 'greenwashing'.

As the European Commission clarified in its UCPD Guidance Document from 2009 the application of the provisions of the Directive to environmental claims can be summarised in two main principles:

- Traders must, above all, present their environmental claims in a specific, accurate and unambiguous manner;
- Traders must have scientific evidence to support their claims and be ready to provide it in an understandable way in case the claim is challenged.¹⁰

This document provides a *multi-stakeholder developed set of criteria* which provide advice on how these two principles can be understood, with a view to supporting a uniform application of the UCPD and feeding into the review process of the UCPD guidance provided by the Commission.

The document relates to all forms of business-to-consumer commercial practices concerning the environmental attributes of goods or services. Business-to-consumer commercial practices means any act, omission, course of conduct or representation, or commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of goods or services to consumers. This includes all types of statements, information, symbols, logos, graphics and brand names, and their interplay with colours, on packaging, labelling, advertising, in all media (including websites) and made by any private organisation, if engaging in commercial practices to consumers.

The overall purpose of this document is to contribute to improving the application of existing legal provisions against misleading and unfounded environmental claims and to support the provision of relevant and credible information for the benefit of consumers. Misleading claims such as false, unclear, unintelligible, or ambiguous information can result in consumers losing confidence in environmental claims and labels and in companies being discouraged from making truthful and relevant claims.

This document is aimed at providing useful information for enforcement authorities and for those traders that make self-declared claims in environmental statements, graphics or imagery. It also provides guidance to traders and enforcement authorities for any other type of environmental claims, in line with the definition set out above, including third party certification and labels.

⁹ SEC(2009) 1666

¹⁰ SEC(2009) 1666

Finally, the document is intended to help safeguard fair competition between traders, make it easier for traders to market positive environmental efforts, and counter any attempts to greenwash products. When traders follow the criteria set out in this document, the risk of being accused of greenwashing is likely to be lower than if the criteria are not applied.

It should be noted that although certain compliance criteria indicating possible misleading aspects of environmental claims are listed in Section 2 of this document, the presence of one or more of these criteria will not automatically make an environmental claim misleading. In order to decide whether a claim is misleading, it must be concretely assessed on a case-by-case basis according to the criteria laid down in Articles 5 to 9 of the UCPD. Section 3 of this document sets out a number of principles to further increase the transparency of environmental claims towards consumers, beyond the legal requirements.

2. COMPLIANCE CRITERIA – SUPPORTING COMPLIANCE WITH THE LEGISLATION

2.1. Content of the claim

In order not to be misleading, environmental claims should reflect a verifiable environmental benefit or improvement and this should be communicated in a precise manner to consumers.

Main environmental impacts

- When making a claim, traders should consider the main environmental impacts of the product (good or service) over its life cycle, including its supply chain. The environmental claim should relate to aspects that are significant in terms of the product's environmental impact.¹¹

Clarity on which aspects the claim relates to

- The claim should be clear and unambiguous regarding which aspect(s) of the product or its life cycle the claim refers to: the whole product, the whole company/organisation, or specific elements such as the manufacturing process, the packaging of the product, the transportation throughout the supply chain, or specific resource efficiency aspects.¹²

Meaningful in the relevant market

- The claim should be meaningful and relevant to the environmental performance of the product and/or service and should reflect an environmental benefit beyond that which is already considered as a common practice (¹³) in the relevant market concerned.¹⁴
- Environmental claims should not relate to an improvement compared to a product from the same trader or a competitor that is no longer available on the market or the trader no longer sells to consumers, unless this improvement is significant and recent.

11 Unless traders are aware about the most significant environmental aspects, it is recommended that traders perform a life cycle assessment (LCA) taking into account the pilot phase of the Product Environmental Footprint and the Organisation Environmental Footprint in 2013-2016. See <http://ec.europa.eu/environment/eussd/smgp/>

12 See also Annex on the 'life cycle concept'.

13 A common practice could be described as a practice that is already applied by a majority of the traders active in the relevant market.

14 The "relevant market" combines the product market and the geographic market, and can be defined as follows:

- a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer by reason of the products' characteristics, their prices and their intended use

- a relevant geographic market comprises the area in which the firms concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.

Source: Commission Notice on the definition of relevant market for the purposes of Community competition law (Official Journal C 372 of 9.12.1997)

Undue transfer of impacts

- The benefit claimed should not result in an undue transfer of impacts, i.e. the creation or increase of other negative environmental impacts at other stages of the product's life cycle should be avoided, unless the total net environmental benefit has been significantly improved, for example according to a life-cycle assessment.

Comparative advertising

- Directive 2006/114/EC on misleading and comparative advertising lays down the conditions under which comparative advertising is permitted. In accordance with this Directive, when traders make direct claims of superior performance to others on the market, comparisons should be not misleading (within the meaning of Articles 6 and 7 of the UCPD), and should be objective and relevant. Thus, they should compare products serving the same function and using the same methods and assumptions for comparison, and objectively compare one or more material, relevant, verifiable and representative features of those products. Moreover, where possible or practical, the basis of the comparison (e.g. energy use or use of chemicals) should be clearly stated in the claim, or alternatively in accompanying documentation published on the trader's website.

Exceeding what is required by law

- Companies shall not make claims about aspects that are legally required, cf. No. 10 of Annex I to the UCPD.¹⁵ Claims should always exceed what is required by legislation as a minimum.¹⁶

2.2. Clear and accurate presentation

Once the content of the claim has been established (section 2.1), it should be presented in a way that is accurate, clear, specific and unambiguous to ensure consumers are not misled about the intended meaning, and are thus able to make informed purchasing choices.¹⁷

Presentation of the product

- The wording, imagery and overall product presentation (i.e. layout, choice of colours, images, pictures, sounds, symbols or labels), should be a truthful and accurate representation of the scale of the environmental benefit, and should not overstate the benefit achieved. Even if factually correct, the way the claim is presented should not mislead the average consumer, for example by omitting material information that the average consumer needs in order to take an informed transactional decision.

Scope and boundaries of the claim

- The scope and boundaries of the claim should be clear from the way it is presented. It should be evident whether a claim is referring to the whole product or organisation, or

¹⁵ The Annex I of the Directive lists a number of practices which are considered unfair in all circumstances.

¹⁶ For example traders should not claim that a product is free of certain substances if such substances are prohibited by legislation.

¹⁷ This follows from Articles 6 and 7 of the UCPD.

just specific aspects. The particular environmental impact or process it addresses should also be clear.

Avoidance of vague, ambiguous and broad claims

- Plain language should be used that is clear and easy for consumers to understand. Traders should avoid using vague, ambiguous and broad "general environmental benefit" claims which are difficult, if not impossible, to substantiate.¹⁸ Such claims are likely to convey the impression to consumers that a product or an activity of a trader has no negative impact or only a positive impact on the environment. Such general benefit claims presented without further qualifying language are likely to create confusion about the actual properties or benefits of individual products; they will likely be perceived as absolute statements, or recommendations concerning a product, which may not be accurate in respect of the product or a part of the product.
- In case traders choose to use general broad claims, they should be accompanied by clear and prominent qualifying language that limits the claim to a specific benefit or benefits.¹⁹
- Some products may be subject to detailed and ambitious rules and achieve such an excellent environmental performance that the use of a general benefit claim (presented without further qualifications) may be justified.
 - o This could be the case if a product is covered by a license to use the ecolabel of a publicly run ecolabel scheme (such as the Nordic Ecolabel 'the Swan', the German 'Blue Angel' or the European Union Ecolabel 'the Flower') or other robust and reputable labelling schemes subject to third party verification.²⁰
 - o This could also be the case if the life cycle assessment studies of the product have proven its excellent environmental performance. These studies should be made according to recognised or generally accepted methods applicable to the relevant product type and should be third-party verified.²¹ If such methods have not yet been developed in the relevant field, traders should refrain from using general benefit claims (on documentation and methods, see also section 2.3).

¹⁸ Examples (not exhaustive) of general environmental benefit claims could include: "environmentally friendly", "eco-friendly", "eco", "good for the environment", "sustainable", "green", "carbon friendly", "carbon neutral", "natural", "non-toxic", "ecologically safe", "pollutant free", "zero emissions", "an ethically correct choice".

¹⁹ For example, a claim in an advertisement, such as "Eco-friendly: made with recycled materials," would not be misleading if: (1) the statement "made with recycled materials" is clear and prominent; (2) the trader can substantiate that the entire product, excluding minor, incidental components, is made from recycled material; (3) making the product with recycled materials makes the product more environmentally beneficial overall; and (4) the advertisement's context does not imply other misleading claims.

²⁰ For example, "ISO-Type I" labels according to the definition given by the International Organisation for Standardisation: ISO (standard 14024:1999) Type I: a voluntary, multiple-criteria based, third party program that awards a license that authorises the use of environmental labels on products indicating overall environmental preferability of a product within a particular product category based on life cycle considerations.

²¹ A pilot phase on Product Environmental Footprint and Organisation Environmental Footprint is ongoing between 2013 – 2016. In case the claim for environmental excellence requires a comparison to an "average" competing product or a specific product of competitors, the study could follow either:

- an existing Product Environmental Footprint Category Rule (PEFCR) that allows comparisons between products (through benchmarking and performance classes), or
- the rules established in ISO 14040 series regarding comparative assertions.

For such products, traders should nevertheless ensure transparency concerning the relevant environmental aspects, and make sure that such information is easily available to consumers, including by displaying the relevant logo.

Private labelling schemes

- If a trader or industry chooses to use own labelling schemes, symbols or certificates for marketing purposes, these labels must only be applied to the products/services or traders which meet the criteria set to qualify for use. The criteria should demonstrate clear environmental benefits compared with competing products or traders and should be easily publicly accessible. Otherwise, the labelling is likely to be misleading. Moreover, traders should consider third party verification to ensure the credibility and relevance of the label. The meaning or significance of the label must also be made clear to the consumer. Finally, such labels must not be capable of being confused with other labels, including, for example, labels of publicly run labelling schemes or schemes of competitors.

Black listed practices

- Traders must not engage in commercial practices that are included in the "black list" in Annex I of the UCPD. These commercial practices are in all circumstances considered unfair and prohibited by the UCPD. Such practices include, inter alia, claiming to be a signatory to a code of conduct when the trader is not, displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation, claiming that a code of conduct has an endorsement from a public or other body which it does not have, claiming that a trader (including their commercial practices) or a product has been approved, endorsed or authorised by a public or private body when they have not, or making such a claim without complying with the terms of the approval, endorsement or authorisation.²²

2.3. Claim substantiation and documentation

In accordance with the UCPD, any claim or information in advertising and marketing (whether it is environmental or not) must be correct and not misleading. As such, claims should be based on robust, independent, verifiable and generally recognised evidence which takes into account the latest scientific findings and methods.

The powers of the national competent bodies²³

- On request, and taking into account Article 12 of the UCPD, the relevant national competent bodies in each Member State are entitled to receive or have access to all relevant documentation pertaining to the accuracy of factual claims in relation to a commercial practice (including confidential business information if need be, which the competent body will treat confidentially) verifying any environmental claims used by a trader for marketing purposes.²⁴ In this context, traders must have scientific

22 For the full black list, see Annex I of UCPD available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0029&from=en>

23 Competent bodies according to the definition given in Art. 11 of the UCPD.

24 Art. 12 of the UCPD refers to this requirement as follows:

"Member States shall confer upon the courts or administrative authorities powers enabling them in the civil or administrative proceedings provided for in Article 11:

(a) to require the trader to furnish evidence as to the accuracy of factual claims in relation to a commercial practice if, taking into account the legitimate interest of the trader and other party to the proceedings,

evidence to support their claims and be ready to provide it in an understandable way to the competent bodies in case the claim is challenged.

Criteria for the evidence

- Evidence should be clear and robust, and claims should be measured using the most appropriate methods. Independent third party testing should be made available for the competent bodies if the claim is challenged. If expert studies give rise to significant disagreement or doubt over environmental impacts, the trader should refrain from marketing the message altogether.
- The content and scope of the documentation will depend on the specific content of the statement. The complexity of the product or activity will be of relevance in this respect.
- Claims should be reviewed and updated regularly to ensure that they remain relevant. Claims should be reassessed and updated as necessary, in view of technological development, and the emergence of comparable products or other circumstances that may affect the accuracy or currency of the claim.

Future aspirations

- Traders should rather communicate about environmental *achievements* instead of *aspirations* of future environmental performance, which by definition are not eligible for substantiation by evidence. This does not prevent companies from communicating on future environmental efforts (via Corporate Social Responsibility reporting or also advertising) if they deem this necessary or useful. Nevertheless, in order to avoid the risk of being accused of greenwashing practices, companies should only do this when they have established a realistic plan with clear targets and timescales, involved relevant stakeholders and ensured third party monitoring of commitments.

Environmental statements in company/product names

- If a trader uses environmental statements in its company name, product name etc., and the name is used for marketing purposes, such marketing is subject to the same documentation requirements as those which apply to other environmental claims in marketing communications, unless the company can prove that this name has no environmental connotation or existed already before environmental issues were taken up on the political/business agenda. However, in order to be contrary to the UCPD, a name used in marketing will need to mislead the average consumer and be likely to cause him to take a transactional decision he/she would not have taken otherwise.

Period to keep evidence available

- The trader must be certain that factual statements are true at the time of marketing. Clear and transparent information/documentation to substantiate a claim should be available by traders when claims are published or the traders must at least be certain that this evidence can be obtained and presented upon request. Moreover, this information should be retained by the company making the claim for a reasonable period after the claim has been used in a commercial communication. The

such a requirements appears appropriate on the basis of the circumstances of the particular case (article 12, UCPD).

- (b) to consider factual claims as inaccurate if the evidence demanded in accordance with (a) is not furnished or is deemed insufficient by the court or administrative authority.

assumptions and approach taken should be transparent, and be made available upon request by competent authorities.

Transparency to the public

- Traders should be transparent in making relevant information available to the public to support a claim. To assist consumers wishing to find out further information about the basis of a claim, traders should consider disclosing further information on their websites which can be helpful to substantiate the claim e.g. the criteria underlying a claim or the results from third-party verification. This will also help to promote and enable wider understanding of particular claims and the environmental conditions relating to a particular product or group of products.

3. IMPROVING TRANSPARENCY TO CONSUMERS

This section sets out a number of principles to further improve the transparency of environmental claims to consumers beyond the legal requirements. In order to promote transparency and enable wider understanding of particular claims and the environmental conditions relating to a particular product or group of products, traders should consider:

- providing the public with a reasonably detailed, intelligible explanation of their environmental claims, and information on how these have been documented;²⁵
- making the documentation supporting the environmental claims available to the public, subject to confidentiality considerations, or not making the claim if all the information needed to verify it is confidential;
- independent verification and assurance of environmental claims as the default option, in order to avoid the risk of undermining consumer confidence.

²⁵ For example, this may be done by the trader providing a summary of the findings of the studies made, including the nature of the studies and the organisations and experts involved.

4. LIST OF THE ORGANISATIONS AND PARTICIPANTS OF THE MULTI-STAKEHOLDER DIALOGUE ON ENVIRONMENTAL CLAIMS

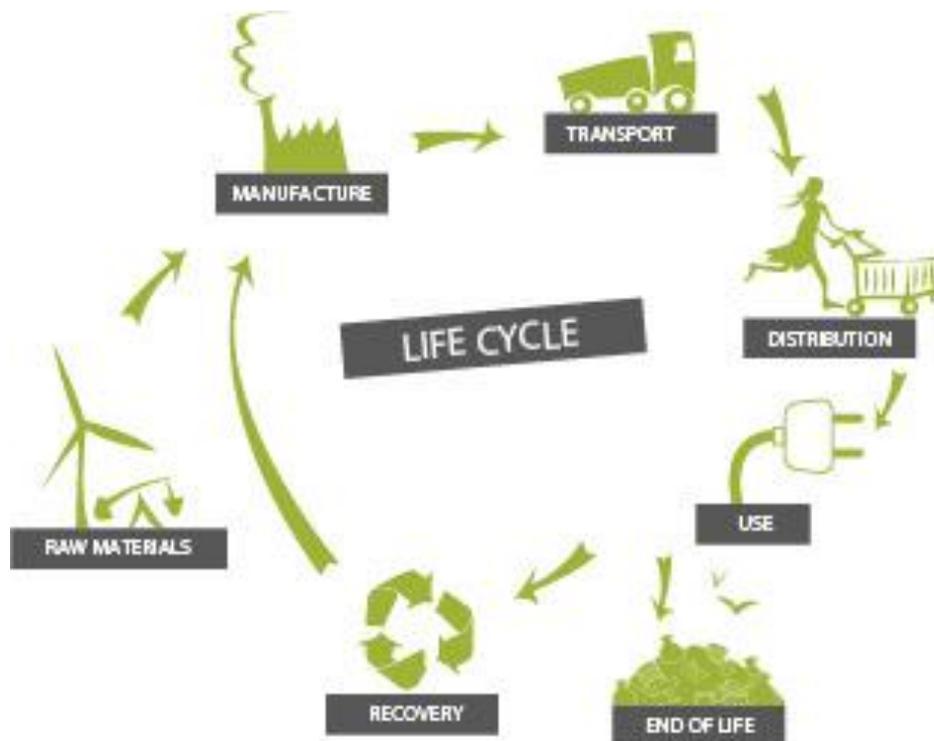
Organisations	Participants
<u>Consumer associations, NGOs and academic</u>	
BEUC - The European Consumer Organisation	Agustin Reyna; Sylvia Maurer; Angeliki Malizou
Friends of the Earth Austria	Kewin Comploi
Iseal Alliance	Amy Jackson
Luxembourg Consumer Union	Bob Schmitz
The Swedish Consumers' Association	Jens Henriksson
Transport Environment	Greg Archer
UK Citizens Advice	Heidi Ranscombe
University of Oslo	Beate Sjøfjell
<u>Public bodies, national authorities and enforcers</u>	
Belgian Federal Ministry of Economy	Nathalie Jouant
Danish Consumer Ombudsman	Henrik Saugmandsgaard Øe; Anne Zerman Nielsen
Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, France (DGCCRF)	Christelle Manima
Institut National de la Consommation, France	Amandine Roujas
Italian Ministry of Economic Development	Anastasia Crudele
Italian Competition Authority (AGCM)	Antonio Mancini, Marina Catalozzi, Andrea Venanzetti
Romanian National Authority for Consumers' Protection	Laura Radut
Swedish Consumer Agency	Ulf Stefansson
UK Department for Environment, Food and Rural Affairs	Adam Lavis
<u>Business Association and advertising self-regulatory bodies</u>	
AIM - European Brands Association	Katrin Recke
AISE - International Association for Soaps, Detergents and Maintenance Products	Valerie Sejourne; Mohamed Temsamani
BusinessEurope	Ariane Thomas; Pedro Oliveira
Cosmetics Europe	Manuela Coroama
EuroCommerce	Christel Davidson; Götz Brandau ; Ralph Kamphöner
EuroCoop	Rosita Zilli
European Advertising Standards Alliance	Oliver Gray, Sibylle Stanciu
EUROPEN	Virginia Janssens, François Paquet
FoodDrinkEurope	Tove Larsson
Independent Retail Europe	Elisabeth von Reitzenstein
World Federation of Advertisers	Ian Twinn ; Chris Payne
<u>European Commission</u>	
DG Justice and Consumers	Despina Spanou; Carina Törnblom; Katia Viertio; Angelo Grieco; Joachim Nilsen; Jeroen Van Laer
DG Environment	Imola Bedo; Rasmus Boldsen; Peter Czaga

ANNEX

UNDERSTANDING THE LIFE CYCLE CONCEPT

A product can have environmental impacts at every stage of its life cycle.

Those impacts will depend on how it has been manufactured, the raw materials employed, the transport needed to take it to the sales outlet and the way in which it is consumed and then discarded.



Source: @ADEME