



Main findings & conclusions

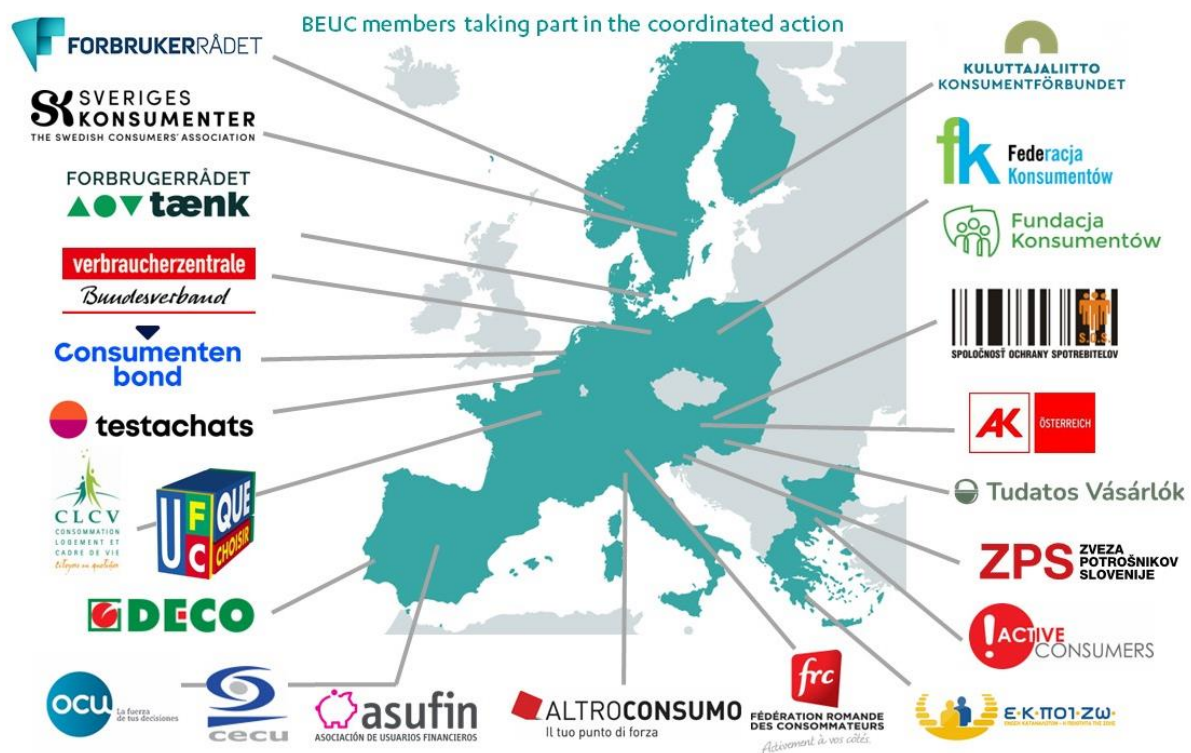
This document builds on the key findings and conclusions of the report “The legality of climate-related marketing claims by the aviation sector under the Unfair Commercial Practices Directive” by Dr. Clemens Kaupa (University of Amsterdam) published in June 2023.

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1. Participating BEUC member organisations

This alert to the CPC-Network is coordinated by BEUC together with 23 of our member organisations from 19 European countries, namely Altroconsumo in Italy, DECO in Portugal, Асоциация Активни потребители/Active consumers in Bulgaria, Forbrugerrådet Tænk in Denmark, EKPIZO in Greece, CLCV and UFC-Que Choisir in France, OCU, CECU and ASUFIN in Spain, Tudatos Vásárlók Egyesülete in Hungary, Fundacja Konsumentów and Federacja Konsumentów in Poland, Testachats/Testaankoop in Belgium, Spoločnosť ochrany spotrebiteľov (S.O.S.) in Slovakia, Kuluttajaliitto – Konsumentförbundet ry in Finland, Forbrukerrådet in Norway, Verbraucherzentrale Bundesverband in Germany, Sveriges Konsumenter in Sweden, Arbeiterkammer in Austria, Fédération romande des consommateurs in Switzerland and Zveza potrošnikov Slovenije in Slovenia.



2. Problem description

Consumers want to take an active part in the green transition and are aware that they need to act to fight climate change. This was clearly reflected in the 2022 Eurobarometer survey on fairness perceptions of the green transition, which showed that 77% of Europeans feel a personal responsibility to act to limit climate change. In addition, according to a 2023 Consumer Market Scoreboard, 62% of consumers consider “very or fairly important” the environmental impact when choosing airline-related services.¹ Yet many traders are

¹ Consumer Condition Scoreboard, 2023 edition (https://commission.europa.eu/document/89ea35fe-728f-4749-b95d-88544687583c_en).

contemplating green claims solely as new business opportunities and a way to distinguish themselves from competitors (i.e., they undertake greenwashing rather than implement effective sustainability practices). They do not hesitate to try to influence consumers' decision-making process through climate-related marketing claims that are in reality dubious, misleading or lack scientific evidence. By incentivising consumers to pay additional climate-related fees when they buy flights, airlines tend to downplay the impact of their commercial business on the environment and, even worse, also convey the misleading message that they are indeed positively contributing to the protection of the environment.

The lack of suitable options to decarbonise aviation is one of the reasons explaining the ever-increasing use of carbon offsetting by many airlines. Airlines argue that they invest in projects to counterbalance their flights' emissions and that their products or services can ultimately be carbon-compensated/or climate-neutral. However, these advertising and marketing practices are often misleading and deceptive. While consumers are induced to believe that the products or services they buy are carbon neutral, the projects that traders invest in are by no means equivalent in terms of climate benefits to the climate harm caused by the CO₂ emissions of the flights they are supposed to compensate.

Consumers need to be informed correctly and should not be targeted by deceptive claims arguing that flying is, or can be, a sustainable mode of transport. Whereas airlines should not be deterred from investing in environmentally friendly technologies or projects with positive impact, consumers must clearly be informed and not misled about what is at stake.

3. Practices identified

Based on our research, climate-related marketing claims may be grouped into five main categories:

1. Airlines claiming that the CO₂ emissions for certain supplementary "green" fares are counterbalanced through emissions reductions from the use of offset credits, alternative aviation fuels, or both. This is notably the case of the Lufthansa Group (except for Eurowings) when claiming that "the choice of our Economy Green and Business Green fares will reduce 20% of flight-related CO₂ emissions by the use of sustainable aviation fuels (SAF) and offset the remaining 80% of the CO₂ emissions by an equivalent contribution to high-quality climate protection projects".
2. Airlines offering a reduction (or compensation) of CO₂ emissions from flying in the form of a supplementary services, usually based on offsets credit. For example, Eurowings proposes a service called "Fly more sustainably" marketed with the slogan: "let's make flying more sustainable together: you can offset your flight's carbon emissions". Other companies like Ryanair, Volotea, TAP and Vueling propose similar services with similar claims.
3. Airlines claiming that passengers can financially contribute to the development of sustainable aviation fuels reducing future emissions. This is for example the case of Air France proposing to consumers that they pay between €42 and €138 Euros for a flight between Paris and Copenhagen – see Annex 2)²
4. Airlines claiming that emissions from a specific flight are relatively lower than those of a selected benchmark. This is for instance the case of Norwegian, Air Baltic and Wizz Air.
5. Airlines promoting themselves as moving towards net-zero greenhouse gas emissions (GHG). This is for instance the case of Austrian Airlines with the claim "together with all Lufthansa Group companies, Austrian Airlines is on its journey to become carbon-neutral by 2050", although current scientific evidence tends to show that even with continued improvements in aircraft technology and operations efficiency, the aviation sector could emit three times more GHG in 2050 than it does today².

² See Annex 2, p. 21.

Although the details of climate-related marketing claims by airlines differ, they are all based on similar false assumptions, which are that first, greenhouse gas (GHG) emissions from aviation could be compensated in an equivalent way using offset credits, second that the use of alternative aviation fuels is possible and “sustainable” and third that air travel can be “sustainable”, “responsible” or “green”.

4. Relevant EU legislation: EU Directive 2005/29/EC on unfair commercial practices

Article 6 of Directive 2005/29/EC (the Unfair Commercial Practices Directive - UCPD) prohibits misleading actions. A commercial practice is prohibited if it fulfills three criteria - if:

- 1) It “contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct,”
- 2) it relates to characteristics of the promoted product or of the trader that are listed in Article 6(1) UCPD, which includes “the existence or nature of the product” and the “main characteristics of the product”, and
- 3) it “causes or is likely to cause [the consumer] to take a transactional decision that they would not have taken otherwise.”

Article 7 UCPD prohibits misleading omissions. A commercial practice is prohibited if it fulfills two criteria:

- 1) It “omits material information that the average consumer needs, according to the context, to take an informed transactional decision.” Whether this is the case must be established within the broader factual context of the commercial practice, “taking account of all its features and circumstances and the limitations of the communication medium”.
- 2) The omission “causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.” According to Article 7(2) UCPD, a trader misleads through omission if material information is provided in “an unclear, unintelligible, ambiguous or untimely manner”.

Article 12 UCPD provides that the trader must have the evidence to support their claims. Therefore, the burden of proof rests with the trader.

At national level, a growing number of court judgements and decisions by advertising authorities have clarified the illegality of climate-related claims (they are further detailed in the associated report accompanying the alert).

5. Application to the identified climate-related marketing claims

As explained in more detail in our report, the identified climate-related marketing claims used by airlines fall within the scope of Articles 6 and 7 of the UCPD. They relate to the main characteristics of the product as they present the product’s climate impact as a key distinguishing feature. Moreover, airlines have built their communication strategy around such claims. This is for instance the case of Lufthansa Group when claiming on social media that it is “on its journey to become carbon-neutral by 2050” (see Annex 2).

Moreover, the information about the climate impact of air travel plays an important role when it comes to influencing the decision-making process of the average consumer.³

³ As reported above, according to a 2021 Eurostat survey, 93% of Europeans believe that climate change is a serious problem and 96% have taken at least one action to tackle climate change. According to a 2022 Eurobarometer survey on fairness perceptions of the green transition, 77% of Europeans feel a personal responsibility to act to limit climate change (Perceptions Fairness of the green transition, <https://europa.eu/eurobarometer/surveys/detail/2672>; Consumer Condition Scoreboard, 2023 edition, https://commission.europa.eu/document/89ea35fe-728f-4749-b95d-88544687583c_en).

Evaluation of the misleading potential of climate-related marketing claims:

When it comes to evaluating the misleading potential of the identified claims, it is important to highlight that:

First, claims arguing that offsets credits can offset/neutralize/compensate CO₂ emissions are factually incorrect⁴. The underlying premise of offsetting claims is that the climate benefits of offset credits are equivalent to the climate harm associated with the CO₂ emissions from air travel, so that the former can effectively offset/compensate/neutralise the latter. Whether this is indeed the case is for the advertiser to prove. Yet as clearly evidenced in our report, offsetting claims do not stand up to scientific scrutiny. The climate benefits that can be attributed to offsetting activities are significantly less certain than the climate harm caused by the CO₂ emissions associated with air travel. This means that no equivalence between the two can be assumed. Offsetting claims must therefore be considered as factually incorrect. Some airlines (e.g., Ryanair, see Annex 3, p. 37) have added more information available to consumers about the offsetting schemes that they propose. However, as explained in our accompanying study⁵, such disclaimers use vague language and often make messages that are contradictory to the main advertising statements. As such, they fail to address the misleading nature of the claims.

Second, claims arguing that the use of alternative aviation fuels is “sustainable” are factually incorrect and therefore misleading. First, sustainable aviation fuels (‘SAF’) are not yet market-ready and will not be widely available before at least the end of the next decade. In April 2023, the EU agreed on the ‘ReFuel Aviation’ rules which foresee minimum shares of SAF to be made available at EU airports between 2025 and 2050⁶. This legislation only foresees a minimum share of 2% of green fuels in 2025, followed by 6% in 2030 and 20% in 2035. According to the new rules, sustainable aviation fuels will only be above 50% between 2045 and 2050. Hence, suggesting to consumers that, by paying an extra fee, they contribute to mainstreaming SAF is highly misleading. Second, as evidenced in our report⁷, alternative aviation fuels are not sustainable. When burning, they still cause both CO₂ and non-CO₂ emissions. While the CO₂ emissions of alternative aviation fuels can be lower than those of fossil fuel when calculated on a life cycle basis, they are not zero. Moreover, their calculation is complex, subject to significant uncertainties, and their outcomes depend on the chosen methodology, which frequently excludes significant sources of CO₂ emissions. The fact that alternative aviation fuels are not “sustainable” is also well-recognised in the aviation industry⁸.

Third, claims arguing that air travel can be “sustainable”, “responsible” or “green” are deceptive. As shown in our report, none of the strategies employed by the aviation sector are currently capable of preventing these emissions. Air travel is responsible for a significant amount of GHG emissions, its climate impact is on the rise as the sector continues to develop, and unlike other transport modes, the sector is very unlikely to decarbonize in the short and medium term due to the absence of market-ready technological solutions. Second, when airlines claim that they can make air travel “more sustainable” or “more responsible”, or that their flights have “lower CO₂ emissions” than a chosen benchmark, they refer to CO₂ emissions only. However, aviation also causes non-CO₂ GHG emissions, and their warming impact is up to three times that of CO₂. The use of relative terms suggesting an environmental benefit of air travel is thus deceptive, *inter alia* because it obscures the fact that the only effective strategy to decarbonise the aviation sector is to fly less.

⁴ See Annex 3, p. 13-16 and p. 26-31.

⁵ See Annex 3, p. 29-31.

⁶ www.europarl.europa.eu/news/en/press-room/20230424IPR82023/fit-for-55-parliament-and-council-reach-deal-on-greener-aviation-fuels

⁷ See Annex 3, p. 10-13

⁸ For example, Wizz Air CEO Jozsef Varadi himself described the concept of “sustainable aviation fuels” as “greenwashing” in an interview. www.bloomberg.com/news/articles/2021-09-30/wizz-air-ceo-says-green-jet-fuel-offsets-are-greenwashing (30 September 2021). www.euronews.com/green/2021/10/11/wizz-air-ceo-calls-carbon-offsetting-a-bit-of-a-joke-yet-offers-it-to-customers (11 October 2021).

6. Airlines targeted in this alert and EU-wide dimension of the infringements

Our research clearly shows that the problem of misleading climate-related marketing claims by airlines is a sector-wide problem. In our alert, we raised the attention of the CPC-Network to the claims made by 17 airlines⁹, which are all listed in the Annex 2 (p. 1-3). In particular, these include Ryanair, Lufthansa group, Wizzair, Vueling, SAS and Air France/KLM, which are among Europe's top 10 airlines¹⁰ with several millions of passengers annually and hundreds of routes across Europe and worldwide. Albeit of more modest size, the other, medium-sized, airlines are based in a wide range of Member States in northern, southern and eastern Europe (Volotea (ES), Air Baltic (LV), Finnair (FI), Norwegian (NO), TAP (PT)). These airlines are all operating between various European countries with several routes across Europe. They are also using misleading climate-related marketing claims.

Therefore, we believe that the infringements reported in this alert constitute a wide-spread infringement of EU consumer rules with a Union-wide dimension.

7. Our call to the European Commission and the European network of national consumer Authorities (CPC-Network)

We call on the CPC-Network to:

- Start a coordinated enforcement action and to publish a joint position. This will be essential to send a clear and strong signal to the airlines concerned and to the entire sector about the misleading nature of climate-related marketing claims based on offsetting schemes and/or supposed use of Sustainable Aviation Fuels.
- Require airlines to stop misleading consumers through climate-related marketing claims and practices.
- Clearly inform consumers that whereas airlines may invest in climate-protection projects, the latter should not be presented or featured as neutralising, offsetting, or compensating flights' emissions. Airlines should make it transparent to consumers that flying is not sustainable and will not be sustainable in the near future.
- Monitor the use of climate-related marketing claims by the airline sector and impose fines on airlines in the event that they would continue to use such claims (or a variation thereof) in a misleading manner.
- Request airlines to reimburse consumers when they have proposed to consumers that they pay extra fees for flights presented as "greener".² If these amounts are small and the concerned consumers cannot be easily identified, the unduly received fees could be dedicated to an environmental or consumer protection cause, to be agreed upon by the CPC-Network.

END

⁹ In alphabetical order: Air Baltic, Air Dolomiti, Air France, Austrian, Brussels Airlines, Eurowings, Finnair, KLM, Lufthansa, Norwegian, Ryanair, SAS, SWISS, TAP, Volotea, Vueling, Wizz Air.

¹⁰ <https://simpleflying.com/europes-top-10-airlines-april-june-2023/>