

LEGAL MEMO

*The use of the term
‘Sustainable
Aviation Fuels’ in
B2C commercial
communications*

Prof. dr. Paul Verbruggen [.<research profile page>](https://www.paulverbruggen.nl/en/research-profile)

Full professor of Private Law, Tilburg Law School

Tilburg University, The Netherlands

September 2024

Disclaimer:

This study was commissioned by BEUC – the European Consumer Organisation. The views expressed in this document are the responsibility of the author. They do not necessarily represent the official position of BEUC or its members.

Copyright:

© 2024 Paul Verbruggen

No part of this study may be reproduced in any form, by print, photoprint, microfilm or any other means without written permission from the author.

Contents

EXECUTIVE SUMMARY.....	1
1. Introduction: scope of analysis	2
2. Environmental claims and the current UCPD (2022)	3
3. The ReFuelEU Aviation Regulation and its interplay with the UCPD	7
3.1 The objectives and provisions of the ReFuelEU Aviation Regulation.....	8
3.2 The interplay with the UCPD.....	9
4. Environmental claims under the UCPD (2024)	11
4.1 The use of term SAF as a generic environmental claim	11
4.2 The use of the term SAF as a specified environmental claim	13
4.3 The use of alternative aviation fuels as a regulatory requirement.....	14
5. Conclusion.....	15

EXECUTIVE SUMMARY

Concern has arisen as to the legal conditions under which the aviation industry can use the term “sustainable aviation fuels” (SAF) in commercial communications targeting European consumers. In particular, the question has emerged of whether and to what extent the so-called ReFuelEU Aviation Regulation (Regulation (EU) 2023/2405) involves that airlines can lawfully use the term SAF in B2C commercial communications.

This memo establishes that the conditions for the lawful use of environmental claims pertaining to alternative aviation fuels in B2C commercial communications are governed by the Unfair Commercial Practices Directive (UCPD, Directive 2005/29/EC) as recently amended by the Directive Empowering Consumers for the Green Transition Directive (Directive (EU) 2024/825). The ReFuelEU Aviation Regulation does not overrule the provisions of the UCPD. Moreover, the Regulation does not provide a safeguard against the application of the UCPD to B2C commercial communications involving the term SAF, nor does it immunize airlines against enforcement action under the UCPD.

Based on grammatical, structural and teleological interpretation of the applicable framework of EU law, it is considered that the general use of the term SAF in B2C commercial communications is prohibited on several legal grounds of the UCPD. Only to the extent that the term SAF and the environmental impact of these alternative fuels are clear, specific, accurate and substantiated, the use of the term may be considered lawful. However, the threshold of meeting these requirements is high, as evidenced by the legislative guidance and case law at EU and national level.

1. Introduction: scope of analysis

The European Union (EU) has taken concrete steps to strengthen the legal framework protecting European consumers against greenwashing as a result of “environmental claims” or “green claims” in marketing and advertising. Such claims, in the context of commercial communications, suggest that a product, product category, brand or trader has a positive or no impact on the environment or is less damaging to the environment than competing products, product categories, brands or traders.¹ The Unfair Commercial Practices Directive (UCPD),² as recently amended by the Directive Empowering Consumers for the Green Transition,³ lays down the conditions under which environmental claims are lawful in business-to-consumer (B2C) commercial communications.⁴

Within this legal framework, the question has emerged as regards the conditions under which the aviation industry can lawfully use the term “sustainable aviation fuels” (SAF) in commercial communications targeting consumers. The European Consumer Organisation (BEUC), the European Commission and EU consumer authorities (Network of Consumer Protection Cooperation - CPC - Authorities) have reported that airlines regularly make environmental claims in such communications. They are concerned about the misleading potential of these claims. Amongst the potentially misleading claims are those using the term SAF, as an acronym or in full.⁵

The term SAF has become part of the nomenclature of the global aviation industry.⁶ The term denotes fuels that the aviation industry uses, or proposes to potentially use in the future, as alternatives to conventional jet fuel. More specifically, these alternative aviation fuels involve a wide range of different technologies that comprise jet fuels that are employed as a lower-carbon emission alternatives to traditional jet fuel.⁷ However, the commercial readiness and availability of these technologies varies greatly.⁸

¹ European Commission Notice, ‘Guidance on the interpretation and application of Directive 2005/29/EC’, OJ 2021/C 516, p. 1, 29.12.2021 (hereinafter: Commission Guidance 2021), p. 72 and Art. 2(1)(o) UCPD (2024).

² Directive (EC) 2005/29, OJ L149, 11.6.2005, p. 22, amended by Directive (EU) 2019/2161, OJ L328, 18.12.2019, p. 7.

³ Directive (EU) 2024/825, OJ L, 2024/825, 6.3.2024.

⁴ The proposed Green Claims Directive will add further conditions for the lawful use of environmental claims in B2C commercial communications. However, the legislative process about this proposal is in full swing (see: <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-substantiating-green-claims>). Therefore, this memo will not take this proposal into account.

⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2322

⁶ <https://www.iata.org/en/iata-repository/pressroom/fact-sheets/fact-sheet---alternative-fuels/>

⁷ See for an extensive and critical analysis of these technologies, their associated costs, and emissions profiles: M.J. Watson et al, ‘Sustainable aviation fuel technologies, costs, emissions, policies, and markets: A critical review’, 449 *Journal of Cleaner Production* (2024), 141472, p. 1-17, available at: <https://www.sciencedirect.com/science/article/pii/S095965262400920X>.

⁸ *Ibid.*, p. 5. See in detail at para. 2 below.

The term SAF was recently also included in the EU acquis, namely via the ReFuelEU Aviation Regulation.⁹ Here, the alternative aviation fuels are defined to include either: (a) synthetic aviation fuels; (b) aviation biofuels; or (c) recycled carbon aviation fuels.¹⁰ The Regulation is part of the so-called FitFor55 package, which involves a set of legislative measures to implement the EU's target under the European Climate Law of reducing net greenhouse gas emissions with at least 55% by 2030.¹¹

The integration of the term SAF and specific alternative aviation fuels into the ReFuelEU Aviation Regulation raises the specific question of *whether and to what extent this Regulation enables airlines to lawfully use the term SAF in B2C communications*. This central question will be answered in this memo by relying on the grammatical, structural and teleological interpretation of the UCPD and the ReFuelEU Aviation Regulation, as well as on legislative guidance and case law at EU and national level. In Section 2, the current legislative framework governing the legality of environmental claims is set out. Section 3 analyzes the ReFuelEU Aviation Regulation and its relationship with the UCPD to discuss the meaning of this sector-specific piece of EU legislation with respect to environmental claims made in the context of B2C commercial communications. Section 4 assess whether and how the changes to the UCPD by the Directive Empowering Consumers for the Green Transition will impact the legal status quo. Section 5 offers brief conclusions to answer the central question.

2. Environmental claims and the current UCPD (2022)

The UCPD provides the general legal framework setting out the conditions under which environmental claims can be made lawfully in B2C commercial communications in Europe. Such claims are defined as descriptions, imagery and other representations in the context of a commercial communication that create the suggestion that a product, product category, brand or trader has a positive or no impact on the environment or is less damaging to the environment than competing products, product categories, brands or traders.¹²

The UCPD carries a full harmonisation character, meaning that the national laws of the Member States cannot afford a greater level of consumer protection than the provisions of the UCPD.¹³ In case other EU legislation exists that regulate specific aspects of unfair

⁹ Regulation (EU) 2023/2405, OJ L, 2023/2405, 31.10.2023.

¹⁰ Art. 3(7), (8), (9) and (12) ReFuelEU Aviation Regulation.

¹¹ <https://www.consilium.europa.eu/en/press/press-releases/2023/10/09/refueleu-aviation-initiative-council-adopts-new-law-to-decarbonise-the-aviation-sector/>

¹² See Commission Guidance 2021, 72 and Art. 2(1)(o) UCPD (2024).

¹³ Art. 4 UCPD and Recitals 5, 12 and 13 UCPD. See also: Joined Cases C-261/07 and C-299/07, *VTB-VAB NV v Total Belgium*, and *Galatea BVBA v Sanoma Magazines Belgium NV*, 23 April 2009, para. 52.

commercial practices, the UCPD will complement this legislation and offer a general legal standard ‘ensuring that a high common level of consumer protection against unfair commercial practices can be maintained in all sectors’.¹⁴ As such, the material scope of the UCPD is horizontal in nature. However, it follows from Article 3(4) UCPD that where EU law, sector-specific or other, is in place and its provisions overlap with the provisions of the UCPD, the corresponding provisions of the *lex specialis* will prevail.¹⁵ This also applies to EU environmental legislation, including for example the EU Ecolabel Regulation¹⁶ and the Energy Labelling Regulation.¹⁷

The UCPD provisions that are currently in force include open norms and standards that are applicable to environmental claims. Most prominently, Article 6 and 7 UCPD (on misleading actions and misleading omissions) require that environmental claims are truthful, do not contain false information and are presented in a clear, specific, accurate and unambiguous manner, so that consumers are not misled. In addition, Article 12 UCPD demands that traders have the evidence to support their environmental claims and can share this evidence with competent enforcement authorities in an understandable way if the claim is challenged.¹⁸ As explained in the European Commission’s Guidance Notice on the interpretation and application of the UCPD, The principles set out in Articles 6, 7 and 12 UCPD have been applied to address misleading environmental claims in recent years through multiple national guidance documents of consumer protection authorities of the Member States, in case law of national courts, and in industry codes and decisions of (international) self-regulatory bodies.¹⁹

¹⁴ Commission Guidelines 2021, 8.

¹⁵ Art. 3(4) UCPD: ‘In case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects’. See also Recital 10 UCPD.

¹⁶ Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel, OJ L 27, 30.1.2010, p. 1.

¹⁷ Regulation (EU) 2017/1369 of the European Parliament and of the Council setting a framework for energy labelling and repealing Directive 2010/30/EU, OJ L 198, 28.7.2017, p. 1.

¹⁸ See extensively Commission Guidance 2021, 75. See in the context of Greenhouse Gas offsetting claims (e.g. ‘carbon neutral’, ‘CO2 zero’, ‘net-zero emissions’) C. Kaupa, ‘Promotion of Greenhouse Gas “Offsetting” as a Misleading Commercial Practice’ (2022) 11 *Journal of European Consumer and Market Law*, p. 139-146.

¹⁹ See Commission Guidance 2021, 75-86, EU Agency for Fundamental Rights, *Enforcing Consumer Rights to Combat Greenwashing*, 7 March 2024, p. 19-42, available at: <https://fra.europa.eu/en/publication/2024/enforcing-consumer-rights-combat-greenwashing>; and International and Chamber of Commerce, Framework for Responsible Environmental Marketing Communications, November 2021, <https://iccwbo.org/wp-content/uploads/sites/3/2021/11/2023-ICC-Environmental-Framework-ENG.pdf>. An important recent example of national case law is the decision of the German Bundesgerichtshof (BGH - I ZR 98/23) of 27 June 2024 on the alleged “climate-neutral” production of sweets. See for a discussion of the application in the aviation industry: C. Kaupa, The legality of climate-related marketing claims by the aviation sector under EU Directive 2005/29/EC, (Study accompanying the external alert submitted by BEUC to the CPC-Network, June 2023), p. 22-33, available at https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-084_Green_F-Lying_full_report.pdf

This body of rules has recently been applied in a high-profile Dutch court case concerning various commercial communications containing environmental claims made by the international airline KLM, including a number about KLM's use of alternative aviation fuels in its business operations.²⁰ In these communications, the District Court of Amsterdam found, KLM misrepresented the current potential of such alternative fuels to decrease the adverse environmental impacts of commercial flights and contribute to a more sustainable future. To be specific, two communications included claims that alternative aviation fuels are a "sustainable fuel" and constitute a "promising solution" for CO2 emission reductions. In relation to these claims, the District Court held:

4.41. SAF is presented here as "sustainable" aviation fuel. Although SAF can contribute to reducing the harmful environmental aspects of flying, the term "sustainable" here is too absolute and not concrete enough. The statement that it is a "promising solution" also paints too rosy a picture. KLM then does nuance the share of SAF and its application on a larger scale to some extent, but given the firm starting claim "Sustainable aviation fuel: a promising solution", it does not do so sufficiently. At the moment, SAF's share in total fuel consumption (and thus in CO2 emission reduction) is still very limited due to various reasons. A more substantial share can only be expected in the distant future, and is thus uncertain. The expression is therefore misleading.

(...)

4.53. KLM is free to express its ambitions [as to ecological sustainability and CO2 emissions reduction/PV] and to advertise flying. Yet these expressions are misleading on a number of counts. KLM states in the expressions that it is investing heavily in sustainable fuel. The term "sustainable fuel", which often recurs in the expressions, is too absolute. Furthermore, KLM does not make sufficiently clear to consumers what it is investing in SAF and what environmental benefits can be achieved. In essential parts of these expressions, KLM creates too rosy a picture and makes (implicit) claims that are insufficiently substantiated. Such as that "sustainable jet fuel" reduces CO2 emissions by "at least 75%" compared to fossil fuel. KLM uses the term "more conscious travel" and creates the impression that flying with KLM is sustainable, when in fact it is a price stunt. Although the statements are correct and informative in parts, the court concludes that the statements are misleading when viewed in their entire context.

The decision of the District Court of Amsterdam makes clear that, within the framework of the UCPD, the use of the term SAF or any similar terms suggesting environmental

²⁰ District Court of Amsterdam 20 March 2024, [ECLI:NL:RBAMS:2024:1512](#) (*Fossielvrij/KLM*). See for an analysis P.W.J. Verbruggen, 'De regulering van misleidende milieueclaims: Over fossielvrij/KLM en verder' (2024) *Tijdschrift voor consumentenrecht & handelspraktijken*, p. 124-132.

benefits (e.g. ‘sustainable fuels’) of alternative aviation fuels in commercial communications targeting European consumers constitutes an environmental claim. Within that setting, these terms can only be lawfully used on the condition that they are sufficiently clarified, specified and substantiated such that consumers are not deceived. Without such clarification, specification and/or substantiation, the use of the term SAF in B2C commercial communications constitutes a misleading claim and therefore qualifies as an unfair commercial practice.²¹

The question arises of how airline operators can then clarify, specify and substantiate their environmental claims regarding alternative aviation fuels. To do so, they should at least disclose and be accurate about the exact environmental benefits their use of such alternative fuels effectively has in comparison to the use of only conventional jet fuels. Here, three variables directly impact the degree of the acclaimed environmental benefits of the use of alternative fuels. The first is the type of alternative aviation fuels available to operate commercial flights. As the critical review of Watson et. al. demonstrates, several technologies qualify as alternative aviation fuels. The CO₂ emission reduction average of these technologies compared to conventional jet fuels varies between 27% and 92%.²² However, not all of these technologies are readily available in the global aviation fuels market. Currently, just one technology, namely HEFA – Hydroprocessed Esters and Fatty Acids, also called HVO – Hydrotreated Vegetable Oil, is commercially available.²³ It is this technology that has the lowest CO₂ emissions reduction average (27%) out of the range of alternative technologies.

A second variable concerns the blending limits for alternative aviation fuel technologies and conventional jet fuels. These limits define the percentage of how much alternative fuels can be mixed with traditional jet fuels. The limits, as set by the leading certification bodies of alternative aviation fuel technologies (incl. ASTM), vary between 5% for the

²¹ See for another court case in which the claims around alternative aviation fuels in a B2C commercial communication by Austrian Airlines were held to be misleading and unfair: District Court Korneuburg (Austria), 29 June 2023, [29 Cg 62/22 – 16](#). In this case, Austrian Airlines created the false impression that a commercial flight was operated fully on alternative fuels (“100% SAF”) and that the use of such fuels would lead the flight to be CO₂ neutral. Like the Amsterdam court, the Korneuburg court thus ruled that the claims regarding the use of alternative fuels and its environmental benefits were unspecified and therefore misleading.

²² Watson et al 2024, p. 5-7. See also Kaupa 2023, p. 11-13 (with further references) and European Aviation Safety Agency, *European Aviation Environmental Report (2022)*, p. 75, available at: https://www.easa.europa.eu/eco/sites/default/files/2023-02/230217_EASA%20EAER%202022.pdf.

²³ Watson et al 2024, p. 5. See also: I. Abrantes, ‘Sustainable aviation fuels and imminent technologies - CO₂ emissions evolution towards 2050’, 313 *Journal of Cleaner Production* (2021), 127937, p. 6 and, more generally about the challenges in meeting the (alternative) fuel demands of the aviation sector, European Federation for Transport and Environment, *Roadmap to climate neutral aviation in Europe* (March 2022), p. 58-62, available at: <https://te-cdn.ams3.cdn.digitaloceanspaces.com/files/TE-aviation-decarbonisation-roadmap-FINAL.pdf>.

co-processing of fats, oils and greases up to 50% for biomass, solid waste and vegetable and animal fat. HEFA/HVO also has a blending limit of 50%.²⁴

However, the maximum average CO₂ emissions reduction that airlines can achieve through available alternative fuels depends on another variable, namely the actual purchase and use of such fuels in their business operations. As the European Aviation Safety Agency reported in 2022 the sale and supply of alternative fuels remains extremely low, at less than 0.05% of total EU aviation fuel use.²⁵ This third variable again influences the accuracy of the environmental claims made by airlines. Some airlines buy and use more alternative fuels than others, and they need to be frank about their business operations in this respect. Consequently, the actual use of alternative fuel technologies in airline business operations and the resulting emissions reduction compared to the use of conventional jet fuel only should be made clear.

Provided that an airline operator is clear, specific and accurate about these three variables, and of feasible plans regarding alternative aviation fuels, then consumers may be properly informed about the actual environmental benefits of these fuels. However, should this clarification, specification and substantiation be absent, the airline is prohibited to use the term SAF in B2C commercial communications under the current UCPD framework. Such use is also prohibited where the particular clarification, specification and substantiation leads to the conclusion that the use of alternative fuels do not adequately mitigate the environmental impact of aviation and that this use only marginally contributes to better environmental performance of the airline. In that case, term SAF constitutes – adopting the reasoning of the Amsterdam District Court in the *Fossielvrij/KLM* case – too absolute a claim, painting too rosy a picture of the environmental benefits alternative aviation fuels currently have in practice. In such a situation, the specification contradicts the environmental claim the term SAF inherently embodies. Accordingly, in these circumstances, its use should be banned.

3. The ReFuelEU Aviation Regulation and its interplay with the UCPD

How does the ReFuelEU Aviation Regulation relate to the UCPD? Does the Regulation, which will apply as of 1 January 2024, provide any specific rules about the use of the term SAF in commercial communications that differ from the UCPD and set it apart? To answer these questions the principal objective and provisions of the Regulation need to be analyzed.

²⁴ Watson et al 2024, p. 5 and European Aviation Safety Agency 2022, p. 70.

²⁵ European Aviation Safety Agency 2022, p. 77.

3.1 The objectives and provisions of the ReFuelEU Aviation Regulation

The ReFuelEU Aviation Regulation lays down harmonised rules on the uptake and supply of SAF.²⁶ It is part of a wider policy framework of the EU to decrease greenhouse gas (GHG) emissions. Within this policy framework – branded as the ‘FitFor55 package’ – the EU adopts legislative measures to meet the goal it set in the European Climate Law, namely to achieve climate neutrality by 2050 at the latest and to achieve a reduction of net GHG emissions by at least 55 % compared to 1990 by 2030.²⁷ One line of these legislative measures involves renewable energy sources. Here, the framework Directive called the Renewable Energy Directive (RED III) has the explicit goal of increasing the use of energy from renewable sources across a variety of energy-intensive industries, including the transport sector.²⁸ The ReFuelEU Aviation Regulation specifically targets the air transport sector. The Regulation applies as of 1 January 2024. However, the obligations regarding the supply and uptake of alternative fuels for aviation fuel suppliers, aircraft operators and airports apply from 1 January 2025.²⁹

By laying down harmonised rules on the uptake and supply of SAF in commercial air transport flights,³⁰ the ReFuelEU Aviation Regulation seeks to attain a number of policy objectives. Following in particular Recitals 14, 15 and 16 of the Regulation, these objectives are ensuring a well-functioning Union air transport market, bolstering the development of the market for alternative aviation fuels, and contributing to the attainment of the EU’s net-zero carbon emissions targets.³¹

To deliver on these goals the ReFuelEU Aviation Regulation, first and foremost, obliges airlines to use certain minimum shares of alternative aviation fuels to operate commercial flights. From 1 January 2025, aviation fuel suppliers have the obligation to ensure that all aviation fuel made available to aircraft operators at each Union airport contains a minimum share of alternative fuels.³² This minimum share increases every

²⁶ Art. 1 ReFuelEU Aviation Regulation.

²⁷ Art. 2 and 4 Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) No 2018/1999 (‘European Climate Law’), OJ L 243, 9.7.2021, p. 1.

²⁸ (Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, OJ L 328, 21.12.2018, p. 82, last amended by Directive (EU) 2023/2413 (RED III). See also https://single-market-economy.ec.europa.eu/industry/strategy/energy-intensive-industries_en

²⁹ Art. 18 read in conjunction with Arts. 4, 5, 6, 8, 10 and Annex I ReFuelEU Aviation Regulation.

³⁰ Article 3(4) ReFuelEU Aviation Regulation defines a ‘commercial air transport flight’ as ‘a flight operated for the purposes of transport of passengers, cargo or mail for remuneration or hire, including a business aviation flight operated for commercial purpose.’ In this memo the term ‘commercial flights’ is used.

³¹ These objectives are also stressed in Recitals 2, 3, 5, 6 and 9 ReFuelEU Aviation Regulation. In setting out these objectives, the EU legislature is mindful of the risks the scaling up the production of alternative aviation fuels at affordable costs entails for sustainability. As a result, feed and food crop-based aviation biofuels are not eligible as alternative fuels under the Regulation. See Art. 3(8)(c) and Recital 23 ReFuelEU Aviation Regulation.

³² Art. 4 ReFuelEU Aviation Regulation.

five years, starting at 2% in 2025, eventually ascending to 70% in 2050.³³ Given that the Regulation further obliges airlines to uptake at least 90% of the yearly aviation fuel needed at a given Union airport, airlines are required, in effect, to operate their commercial flights at an EU-law prescribed weighted minimum level of alternative fuels from 1 January 2025 onwards.

In addition to these mandatory supply and uptake requirements regarding alternative aviation fuel technologies, the Regulation lays down uniform criteria for a consumer-facing labelling scheme regarding the levels of emissions performance of airline-operated commercial flights. This scheme, which is voluntary in nature, is intended to enable consumers to compare the environmental impact of commercial flights of different airline operators.³⁴ The label will signal the following information:

- (a) the expected carbon footprint per passenger, expressed in metrics such as in kilograms of CO₂ per passenger, for the period of validity of the label;
- (b) the expected CO₂ efficiency per kilometre, expressed in metrics such as in grams of CO₂ per passenger per kilometre, for the period of validity of the label.³⁵

The fuel used in the flight, including alternative aviation fuel technologies, is one of the factors determining the expected carbon footprint, along with factors like the type of aircraft, number of passengers and freight loads, and the total fuel uptake. As a baseline, the expected carbon footprint must be determined based on a standardised and science-based methodology. It is the European Aviation Safety Agency that will award the voluntary label.³⁶

3.2 The interplay with the UCPD

How then does the ReFuelEU Aviation Regulation, including its voluntary labelling scheme, relate to the UCPD? It holds out to be a *lex specialis* in relation to the legal framework governing the use of energy from renewable sources (i.e RED III). Yet, does it also constitute a *lex specialis* in relation to the UCPD? For this to be the case, as determined by Article 3(4) UCPD, three cumulative conditions must be fulfilled:

1. The provisions have the status of EU law,
2. These provisions regulate a specific aspect of commercial practices, such as information requirements and rules on the way the information is presented to the consumer, and;
3. There is a conflict between these provisions and the UCPD or the content of the other EU law provision overlaps with the content of the relevant UCPD provision, for

³³ Annex I ReFuelEU Aviation Regulation.

³⁴ Art. 14(3) and Recital 27 ReFuelEU Aviation Regulation.

³⁵ Art. 14(3) second subparagraph ReFuelEU Aviation Regulation.

³⁶ Art. 14(4) ReFuelEU Aviation Regulation

instance by regulating the conduct at stake in a more detailed manner and/or by being applicable to a specific sector.³⁷

Considering the ReFuelEU Aviation Regulation includes a consumer-facing labelling scheme regarding the levels of emissions performance of airline operated commercial flights, the Regulation addresses specific aspects of B2C commercial practices, namely those regarding information shared with passengers about the environmental impact of commercial flights. As noted, the goal of the labelling scheme is to enable these consumers to identify, distinguish and compare between commercial flights offered by airline operators in relation to the emissions performance.

It must be stressed, however, that the labelling scheme does not regulate how airline operators can use the term SAF in commercial communications targeting European consumers. Under the scheme, the use of alternative fuel technologies is just one out of several factors determining the levels of emissions performance of commercial flights. In other words, the label is not a seal of approval for the use of the term SAF in B2C commercial communications. The fact that airline operators use alternative aviation fuels, does not entitle them to a label, nor does it mean that the label awarded will signal environmental performance that is better than commercial flights operated by different airlines. The use of alternative aviation fuels is merely one factor in a broader spectrum of variables.

What is more, the ReFuelEU Aviation Regulation does not lay down specific rules on what is considered misleading as a B2C commercial practice. In the absence of any conflict between the Regulation and the UCPD on this essential matter, the framework of the UCPD on the clarification, specification and substantiation of environmental claims in B2C commercial communications regarding the use of alternative aviation fuels continues to apply. Like is the case for the Energy Labelling Regulation, the UCPD continues to apply in parallel to the use of the term SAF in B2C commercial communications.³⁸

Consequently, the ReFuelEU Aviation Regulation does not overrule the provisions of the UCPD on commercial practices targeting European consumers. Moreover, there is no legal ground to suggest that the Regulation or its labelling scheme can provide a safeguard against the application of the UCPD to B2C commercial communications involving the term SAF, nor that it immunizes airline operators against enforcement

³⁷ Commission Guidance 2021, 8. See also Recital 10 UCPD and Joined cases C-54/17 and C-55/17, *Autorità Garante della Concorrenza e del Mercato v Wind Tre SpA and Vodafone Italia SpA*, 13 September 2018, para. 58- 61. Importantly, even if sector-specific regulation is in place, the UCPD can still apply in a complementary manner since the more specific requirements laid down in other EU rules typically add to the general requirements set out in the UCPD. See Commission Guidance 2021, 9 and Joined Cases C 544/13 and C-545/13, *Abcur AB v Apoteket Farmaci AB and Apoteket AB*, 16 July 2015.

³⁸ Cf. Commission Guidance 2021, p. 74.

action under the UCPD. The UCPD continues to apply to any such communications targeting consumers in the EU.

4. Environmental claims under the UCPD (2024)

In February 2024, the European Parliament and Council adopted new rules regarding the use of environmental claims in B2C commercial communications. These rules are laid down in the Directive Empowering Consumers for the Green Transition, which amends the UCPD provisions currently in force.³⁹ The EU Member States must implement the new rules by 27 March 2026 and these will then apply from 27 September 2026.

4.1 The use of term SAF as a generic environmental claim

The new UCPD (2024) not only defines what an “environmental claim” is.⁴⁰ It also determines the conditions under which a so-called “generic environmental claim” can be made lawfully. Such a generic claim involves ‘any environmental claim made in written or oral form, including through audiovisual media, that is not included on a sustainability label and where the specification of the claim is not provided in clear and prominent terms on the same medium’.⁴¹ Examples of generic environmental claims include ‘environmentally friendly’, ‘eco-friendly’, ‘green’, ‘nature’s friend’, ‘ecological’, ‘environmentally correct’, ‘climate friendly’, ‘gentle on the environment’, ‘carbon friendly’, ‘energy efficient’, ‘biodegradable’, ‘biobased’ or similar statements that suggest or create the impression of excellent environmental performance.⁴² The combination of these expressions with implicit claims such as colors (green, blue) and imagery (forests, oases, coral reefs, etc.) may also constitute a generic environmental claim.⁴³ The term “sustainable” also constitutes such a claim where it links to the ecological characteristics or performance of a product, product category, brand or

³⁹ Directive (EU) 2024/825, OJ L, 2024/825, 6.3.2024.

⁴⁰ Art. 2(1)(o) UCPD (2024): “environmental claim” means any message or representation which is not mandatory under Union or national law, in any form, including text, pictorial, graphic or symbolic representation, such as labels, brand names, company names or product names, in the context of a commercial communication, and which states or implies that a product, product category, brand or trader has a positive or zero impact on the environment or is less damaging to the environment than other products, product categories, brands or traders, or has improved its impact over time.

⁴¹ Art. 2(1)(p) UCPD (2024). A sustainability label is defined in Art. 2(1)(q) UCPD (2024): as ‘any voluntary trust mark, quality mark or equivalent, either public or private, that aims to set apart and promote a product, a process or a business by reference to its environmental or social characteristics, or both, and excludes any mandatory label required under Union or national law’. The (mis)use of such labels is regulated by Annex I, under 2a UCPD (2024) and Art. 2(1)(r) UCPD (2024). See also Recitals 7 and 8 UCPD.

⁴² Recital 9 Directive Empowering Consumers for the Green Transition.

⁴³ *Ibid*, *in fine*.

trader.⁴⁴ Likewise, the term SAF (in full or abbreviated) hints at the ecological characteristics or performance of commercial flights of an airline or the business operations of the airline itself, and will therefore constitute a generic environmental claim under the amended UCPD (2024) if the specification is not provided in clear and prominent terms on the same medium.

The use of generic environmental claims in B2C commercial communications is restricted under the new UCPD (2024). The Annex of the UCPD, which includes commercial practices which are in all circumstances considered unfair, has been updated to include generic environmental claims. This ‘blacklist’ now identifies as unfair the commercial practice of ‘[m]aking a generic environmental claim for which the trader is not able to demonstrate recognised excellent environmental performance relevant to the claim.’⁴⁵ Such “recognised excellent environmental performance” means ‘environmental performance compliant with [the EU Ecolabel Regulation/PV] or with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in the Member States, or top environmental performance in accordance with other applicable Union law’.⁴⁶

These new rules imply that traders will be able to make general environmental claims substantiated by the EU Ecolabel or by state-recognised national or regional ecolabelling such as the Blue Angel and Nordic Swan.⁴⁷ As regards ‘top environmental performance in accordance with other applicable Union law’, the Directive Empowering Consumers for the Green Transition refers to class A in accordance to the Energy Labelling Regulation, but other Union law may apply.⁴⁸

The ReFuelEU Aviation Regulation should not be considered such applicable Union law. The Regulation’s labelling scheme enables consumers to compare the environmental impact of commercial flights of different airline operators. Crucially, the scheme does not focus specifically on alternative aviation fuels. As such, it does not authorize the use of any particular descriptor of ‘sustainability’ for such fuels. As noted, within the labelling scheme, the use of alternative aviation fuel technologies is merely one out of several factors determining the levels of emissions performance of commercial flights.⁴⁹ Accordingly, the labelling scheme does not justify the use of the term SAF in B2C commercial communications, nor does it regulate how airline operators can use

⁴⁴ Recital 10 Directive Empowering Consumers for the Green Transition. See also Commission Guidance 2021, 76.

⁴⁵ Annex I, under 4a UCPD (2024).

⁴⁶ Art. 2(1)(s) UCPD (2024).

⁴⁷ See for a list of nationally and regionally officially recognised EN ISO 14024 type I ecolabelling schemes in Europe: https://environment.ec.europa.eu/topics/circular-economy/eu-ecolabel/community-and-helpdesk_en#national-ecolabels

⁴⁸ Recital 10 Directive Empowering Consumers for the Green Transition.

⁴⁹ See main text at notes 34-36 *supra*.

that term in such communications. As a consequence, the ReFuelEU Aviation Regulation cannot be relied upon by airlines to demonstrate the “recognised excellent environmental performance” of alternative aviation fuels or any other products, product categories, brands or traders using such fuels.

All this leads to the conclusion that the general use of the term SAF in B2C commercial communications is prohibited under the UCPD (2024).

4.2 The use of the term SAF as a specified environmental claim

The use of the term SAF in a B2C commercial communication loses its character of a ‘generic environmental claim’ under the UCPD (2024) if the airline operator specifies the term in a clear and prominent way on the same medium.⁵⁰ This means that the airline must set out in detail in the same advertising spot or online selling interface in clear and prominent terms, amongst others, the type of alternative aviation fuel technology used, the exact blend of alternative fuels and conventional fuels used in the commercial flight(s) promoted, the uptake of alternative aviation fuels at company-level, and the environmental impact of these alternative fuels in the flight(s) promoted or the company’s overall environmental performance.⁵¹ However, what needs to be disclosed *in concreto* depends on the overall context in which the claim is made.

Provided that the airline operator sufficiently specifies the term SAF, the use of that term implies that the operator still makes an ‘environmental claim’ within the meaning of the UCPD (2024).⁵² As such, the specified use of the term SAF remains subject to the general provisions of the Articles 6, 7 and 12 UCPD, which demand that the claim is accurate and substantiated.⁵³ This is buttressed by the updated Annex I of the new UCPD (2024). According to this Annex, the following commercial practice must always be regarded as unfair: ‘Making an environmental claim about the entire product or the trader’s entire business when it concerns only a certain aspect of the product or a specific activity of the trader’s business’.⁵⁴ This provision bans the use of the term SAF by airlines to create the false impression that the use of alternative aviation fuels in their promoted commercial flight(s) or overall business operations is currently leading to sustainable flights or a sustainable aviation industry. The Recitals of the UCPD specify that this ban ‘should not prevent a trader from making environmental claims about its entire business, provided that those claims are accurate and verifiable and that they do not overstate the environmental benefit’.⁵⁵ Representations regarding the use of

⁵⁰ Art. 2(1)(p) and Recital 9 UCPD (2024).

⁵¹ See main text at footnotes 23-25 *supra*.

⁵² Art. 2(1)(o) UCPD (2024).

⁵³ See Commission Guidance 2021, 75-86 and District Court of Amsterdam 20 March 2024, [ECLI:NL:RBAMS:2024:1512](#) (*Fossielvrij/KLM*), para. 4.41 and 4.53.

⁵⁴ Annex I, under 4b UCPD (2024).

⁵⁵ Recital 11 UCPD (2024).

alternative aviation fuel technologies in commercial flights, business operations, as well as the environmental implications of the use of these technologies, must therefore be clear, precise, accurate and substantiated such that consumers are not misled. The plain use of the term SAF in B2C commercial communications will be regarded as too absolute a claim for the current realities of alternative aviation fuels usage by individual airlines, as it is now under the existing UCPD framework (see at paragraph 2).

4.3 The use of alternative aviation fuels as a regulatory requirement

Finally, the new UCPD (2024) has also updated the blacklist of Annex I to include a prohibition of the following commercial practice: ‘Presenting requirements imposed by law on all products within the relevant product category on the Union market as a distinctive feature of the trader’s offer’.⁵⁶ The Recitals of the UCPD (2024) hold that ‘[t]his prohibition should apply, for example, where a trader advertises a given product as not including a specific chemical substance when that substance is already forbidden by law for all products within that product category in the Union.’⁵⁷ Therefore, regulatory compliance with EU law should not be presented as a unique selling point in B2C commercial communications.⁵⁸

As a result of the application of the ReFuelEU Aviation Regulation, airlines will be obliged to use certain minimum shares of alternative aviation fuels to operate commercial flights. From 1 January 2025, aviation fuel suppliers have the obligation to ensure that all aviation fuel made available to aircraft operators at each Union airport contains each year a minimum share of alternative fuels.⁵⁹ This minimum share increases every five years, starting at 2% in 2025, eventually ascending to 70% in 2050.⁶⁰ Given that the Regulation further obliges airlines to uptake at least 90% of the yearly aviation fuel needed at a given Union airport, airlines are required, in effect, to operate their commercial flights at an EU-law prescribed weighted minimum level of alternative fuels from 1 January 2025 onwards.

Considering the ban of the UCPD regarding regulatory compliance, airlines will not be allowed to present in B2C commercial communications the alternative fuel minimum shares they are held to as a result of the ReFuelEU Aviation Regulation as a distinctive feature of their commercial flights. In other words, airlines cannot lawfully state in an advertising campaign that a distinctive characteristic of their commercial flights or business operations is the uptake of alternative aviation fuel technologies at the level of the minimum shares as required by the ReFuelEU Aviation Regulation. Should an airline

⁵⁶ Annex I, under 10a UCPD (2024).

⁵⁷ Recital 15 UCPD (2024).

⁵⁸ See also Netherlands Authority for Consumers and Markets, [Guidelines on Sustainability Claims](#) (2023), p. 9 and 14.

⁵⁹ Art. 4 ReFuelEU Aviation Regulation.

⁶⁰ Annex I ReFuelEU Aviation Regulation.

use more alternative fuels than these minimum shares, it goes beyond what it is legally required to do and it is allowed to promote this practice as a selling point in B2C commercial communications. However, in that situation of overcompliance, the airline must still make clear in specific and prominent terms what the use of alternative aviation fuels implies for the particular commercial flight promoted or the business operations of the airline. Moreover, the environmental claim that the term SAF inherently involves remains subject to the general provisions of the Articles 6, 7 and 12 UCPD, which demand that the claim is clear, specific, accurate and substantiated.

5. Conclusion

This memo set out to answer the question of whether and to what extent the so-called ReFuelEU Aviation Regulation involves that airlines can lawfully use the term SAF in B2C commercial communications. It was established that the conditions for the lawful use of environmental claims pertaining to the term SAF in these communications are governed by the UCPD, as recently amended by the Directive Empowering Consumers for the Green Transition Directive. The UCPD, now and in the future, prohibits the general use of the term SAF in commercial communications targeting European consumers, in particular based on Articles 6, 7 and 12 UCPD and on its Annex I. Only to the extent that the term SAF and the environmental impact of these alternative fuels are clear, specific, accurate and substantiated in B2C commercial communications, such a commercial practice may be considered lawful.

The ReFuelEU Aviation Regulation does not alter this conclusion. The Regulation, including its labelling scheme, does not set aside the rules of the UCPD regarding the environmental claim the term SAF inherently involves. The labelling scheme does not focus specifically on alternative aviation fuels and does not authorize the use of any particular descriptor of 'sustainability' for such fuels. Accordingly, the scheme does not justify the use of the term SAF in B2C commercial communications, nor does it regulate how airline operators can use that term in such communications targeting European consumers. The UCPD continues to apply to this commercial practice, now and in the near future.