



GREENWASHING IN AVIATION: SUSTAINABILITY CHALLENGES FACED BY MISLEADING BUSINESS PRACTICES

The airline industry is facing increasing pressure from governments and international bodies to reduce its emissions and address the challenges of climate change. For over a decade, airlines have been in the spotlight of ecological transition authorities due to the increase in global greenhouse gas (GHG) emissions from their operations.

Simultaneously, heightened social awareness of environmental impacts and the growing demand for more sustainable consumption and production patterns have prompted the implementation of measures to urgently address the climate crisis. In this context, airlines, like companies in other sectors, have adopted practices and marketing strategies to demonstrate their commitment to sustainability.

However, amidst this wave of "green" initiatives, concerns have been raised regarding the authenticity and transparency of the companies' claims. Therefore, this newsletter will delve into the issue of *greenwashing* in the airline industry, which has received significant attention in recent years, and outline the existing regulation at European and national level.

WHAT IS GREENWASHING?

Greenwashing is a widely discussed phenomenon across various economic sectors, characterized by unfair commercial practices that take advantage of society's growing environmental awareness. Specifically, it involves presenting products or services as environmentally friendly, when in fact they are not, often through "exaggerated" or "misleading" claims, allowing companies to exploit citizens' environmental concerns for "illicit" gains. As we will explore, this phenomenon has also had a notable impact on the aviation sector.

Although air transport contributes only 3.8% of total GHG emissions generated in Europe¹, a significant increase in air operations is expected in the coming years, which could increase GHG emissions and thus their environmental impact.

To challenge this trend and demonstrate their commitment to sustainability, airlines have stepped up their efforts by adopting measures such as carbon offset projects, investment in renewable energy and improvements in air traffic management, among others.

Moreover, this commitment to sustainability has led companies to adopt a public image of environmental responsibility through advertising campaigns and corporate messages. However, as is the case in other sectors, this approach has also led to *greenwashing* practices.

This practice is particularly alarming within the aviation industry due to its perceived negative environmental reputation, often exacerbated by media scrutiny of its emissions, further perpetuating the misconception of the industry's negative impact.

EUROPEAN AND SPANISH REGULATORY FRAMEWORK IN RELATION TO GREENWASHING

In terms of the regulatory framework, it is crucial to highlight the significant role played by the European Union in shaping the landscape of "green marketing" and combatting *greenwashing*.

The European Commission (EC) has adopted several measures to enhance transparency in companies' environmental practices aiming safeguard consumers². These measures include the (i) Directive 2005/29/EC on Unfair Commercial Practices, which, among others, prohibits misleading practices that may cause consumer misunderstanding regarding the environmental characteristics of a product or service, addresses the *greenwashing* problem and the lack of transparency in sustainability labels; and the (ii) Directive 2011/83/EU on consumer rights, which indirectly addresses this issue by containing relevant provisions regarding misleading commercial practices, and providing clear and transparent information to consumers³.

However, a study carried out by the EC in 2020 revealed that over half of the environmental claims reviewed in the EU were vague, misleading or unfounded, with 40% being completely unfounded⁴. These facts prompted the European legislator to strengthen the current regulatory framework, which has been realized through the amendment of the Unfair Commercial Practices Directive and the adoption of a new Unfair Commercial Practices Directive, which is currently in the final stage of the legislative process.

On the one hand, Directive (EU) 2024/825, published on 6th March 2024 in the Official Journal of the European Union, amends Directives 2005/29/EC and 2011/83/EU, aiming to boost ecological transition and promote informed purchasing decisions among consumers. The new regulation, which must be transposed into national legislations by 27th March 2026, establishes greater requirements for information on the sustainability of products and services, especially regarding environmental claims or "Green Claims". These claims must be supported by clear, objective and publicly available commitments, which should undergo regular verification by independent third-party experts⁵.

On the other hand, the Proposal for a Directive of the European Parliament

¹ Total emissions from all other modes of transport amount to 24.7% of the total. For more details, we refer to the data on aviation emissions [published by the European Commission](#).

² This newsletter will focus exclusively on consumer protection measures. Any other regulations that may exist with regard to sustainable investments and environmental business activities will not be discussed.

³ The content of both Directives was transposed into Spanish legislation by [Act 29/2009 of 30th December 2009](#) and [Act 3/2014 of 27th March 2014](#), as we will point out below.

⁴ For further reference, please be referred to the [study published by the European Commission](#).

⁵ For better reference, please be referred to [Directive \(EU\) 2024/825 of the European Parliament and of the Council of 28th February 2024](#) amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and through better information.



and of the Council 2023/0085 (COD) on the substantiation and communication of explicit environmental claims (*Environmental Claims Directive*) has been published⁶. This legislation aims to ensure that consumers can make informed choices about the potential environmental impact of products or services and play an active role in the ecological transition. For this purpose, clear and transparent labelling will be promoted, while the use of misleading environmental claims will be prohibited.

At the Spanish level, the Unfair Competition Act, the General Act for the Defence of Consumers and Users, and the General Advertising Act provide a comprehensive legal framework to address greenwashing and other misleading practices. These laws, which have incorporated the content of the European Directives through several amendments, essentially forbid any action that could harm or mislead the consumer⁷.

In addition, on 15th March 2024, the Spanish Ministry of Social Rights, Consumption and Agenda 2030 announced a new Sustainable Consumption Act, which will face greenwashing and misleading communication practices. At the same time, a "Sustainable Communication Guide" developed by the Ministry was presented to help companies include environmental information in their strategies and campaigns, which certainly gives us an idea of the legislator's focus⁸.

Finally, independent bodies like the Spanish advertising self-regulatory organization *Autocontrol* have developed manuals to fight and address measures against misleading commercial practices⁹.

HEADS UP: TO BE GREEN OR JUST LOOK GREEN

Turning our attention to the airline industry, it is crucial to note that, as previously mentioned, several airlines have faced criticism for what is perceived as *greenwashing*.

The truth is that, despite efforts to promote transparency and accountability, the aviation industry undergoes constant scrutiny due to its inevitable environmental impact, which has also generated criticism of the communication strategies of those claiming its commitment to environmental responsibility.

Without going any further, the recent ruling of the Dutch District Court of Amsterdam against a Dutch company for its advertising campaign entitled *"Fly Responsibly"* illustrates this issue. The court deemed the company's environmental claims, such as "creating a more sustainable future" and promoting its "commitment to the climate goals of the Paris Agreement" as well as offering opportunities for customers to "offset" the climate impact of their flights, were misleading and therefore unlawful¹⁰.

This decision could undoubtedly constitute a significant legal precedent in international aviation, potentially hindering the substantial advances that airlines are making to mitigate their impact.

Unlike other industries, aviation currently lacks viable alternatives to fossil fuels for powering commercial aircraft. While the development of electric and hydrogen-powered aircraft offers hope for "greener" aviation, widespread adoption remains years away.

Therefore, we believe that the adoption of modest measures, such as emission reduction plans implemented by airlines, should not be interpreted, as the Dutch court holds, as "an overly optimistic portrayal of their impact", but rather as a realistic response to current challenges and solutions.

This case is not an isolated incident. In June 2023, the consumer organisation named BEUC, in collaboration with 22 other associations, filed a formal complaint in the European Commission and the Consumer Protection Authorities network against 17 European airlines due to practices they deemed to be contrary to the Unfair Commercial Practices Directive¹¹. Additionally, in December 2023, the UK Advertising Standards Authority banned three international airlines from advertising on Google for failing to comply with ASA (*Advertising Standards Authority*) standards and giving a misleading impression of environmental impact¹².



These cases underscore the importance of transparent and honest communication by airlines. However, while we must emphasize the need to strengthen such communication with consumers, it is also essential to recognise the industry's progress and commitment to sustainability.

SUSTAINABILITY CHALLENGES IN THE AVIATION SECTOR

In conclusion, it is undeniable that aviation industry faces unique sustainability challenges, which has prompted a commitment to an ambitious regulatory framework and intensified efforts and investments by airlines in this direction.

Beyond the challenge of decarbonizing the aviation sector and the legislative measures taken, both at European and national levels to reduce greenhouse emissions, it is paramount to consider the new challenges and obligations arising in terms of clear and coherent advertising of companies' products and services, especially in relation to the green transition.

Although it may be premature to conduct an in-depth analysis of the obligations that will arise at national level with the transposition of Directive (EU) 2024/825, airlines are already facing strong accusations of greenwashing from consumers and environmental groups. Consequently, they will be subjected to ongoing scrutiny regarding their compliance with the new *greenwashing* requirements. It will therefore be crucial to establish effective internal compliance systems to ensure compliance and avoiding practices that could be considered misleading.

At the same time, it is necessary to establish a clear and effective regulatory framework by the legislator, while avoiding regulatory overreach that could hamper innovation and economic growth. Striking the right balance between protecting the environment and fostering a dynamic and flexible business environment is needed. Collaborative efforts among government, business and other stakeholders are indispensable to achieve sustainable solutions that benefit all parties involved. This collaborative approach will lead the way for progress toward a more sustainable and prosperous future in the aviation sector, which in turn promotes fair competition based on responsible environmental practices.

PionAirLaw

Guillermo Budi Hycka
Silvia Frade Sosa

⁶ For better reference, please be referred to the [Proposal for a European Directive](#).

⁷ Royal Legislative Decree 1/2007 of 16th November, approving the revised text of the General Act for the Defence of Consumers and Users; Act 3/1991 of 10th January, on Unfair Competition; and Act 34/1988 of 11th November, General Advertising.

⁸ For further reference, please be referred to the [information](#) published by the Ministry of Social Rights, Consumption and Agenda 2030 and to the aforementioned [Sustainable Communication Guide](#).

⁹ There are currently twenty *Autocontrol Codes of Advertising Conduct* published, classified by subject matter, and whose application is recommended to all companies.

¹⁰ For better reference, please be referred the content of the [judgment published by the Dutch Court](#).

¹¹ For better reference, we refer to the [formal complaint by BEUC](#).

¹² For better reference, we refer to a [news item that echoes the above](#).