

Plastic recycling claims are misleading consumers

An analysis of EU and UK consumer protection law

Recycling claims have come to misrepresent what is a limited and incomplete fix for the environmental impact of plastic packaging. The law must intervene to stop recycling having the perverse effect of holding back the necessary move away from plastic packaging.

Contents

Key messages	3
1 Introduction.....	3
2 The facts.....	4
3 Legal analysis	11
4 Questions.....	17
5 Conclusion and recommendations.....	18

Key messages

- Plastic packaging commonly features circular loop symbols and statements which instruct consumers that the plastic packaging is recyclable and/or explain how to recycle it (**'plastic recycling claims'**).
- The average consumer understands a plastic recycling claim to mean that, if the packaging is disposed of correctly, (i) it will be recycled, and (ii) recycling will adequately mitigate the environmental impact of plastic packaging. It is well-established that the environmental impact of a product, including its recyclability, is likely to impact consumer decision-making.
- However, the vast majority of plastic cannot and will not be recycled and so is incinerated, landfilled or dumped into the environment (91% in 2019).¹ Even where recycling does take place, this only ever delays the disposal process. Recycling rates for soft plastics are especially low, due to technical barriers and lack of infrastructure and end markets. A 2024 investigation by Everyday Plastic and Environmental Investigation Agency (**'EIA'**)² using 40 trackers attached to soft plastic recycled via supermarket collection schemes run by Tesco and Sainsbury's found that, of the 17 trackers that reached a final destination, 70% were incinerated or burnt as fuel, with the remainder downcycled into lower quality plastic, which itself is likely to be disposed.
- All plastic recycling claims, including labels which give an impression of closed loop circularity and environmental neutrality, carry the potential to mislead consumers as to the true environmental impact of plastic packaging. In their current form, plastic recycling claims also undermine the established concept of the waste hierarchy, which prioritises avoiding, or reusing packaging over recycling, and recycling over energy recovery, incineration and landfill.
- Consumer protection regulators should intervene where strong evidence is available that plastic recycling claims are misleading consumers, as in the case of: (i) claims made in relation to plastics that are very difficult to recycle, such as soft plastics and (ii) plastic recycling claims that use prominent circular/triangle symbols and misleading statements that imply plastic can be recycled over and over again, such as *'100% recyclable, 100% recycled'*. In light of the Everyday Plastic and EIA investigation, the UK Competition and Markets Authority (**'CMA'**) should require UK supermarkets to substantiate claims about the recyclability of soft plastic packaging using evidence based on real world conditions.
- A policy to encourage recycling must support - not deter - the primary objective of reducing plastic packaging waste. Companies and regulators must assess recycling claims according to a robust definition of recyclable and additionally ensure consumers are not misled about the total environmental impact of plastic packaging.

1 Introduction

ClientEarth is a not-for-profit environmental law organisation that uses the power of the law to protect people and the planet. We support legal action to hold corporations accountable for key narratives misleading consumers about highly polluting products and businesses, such as the recent EU-wide complaint regarding

¹ OECD (2022), *Global Plastics Outlook: Economic Drivers, Environmental Impacts and Policy Options*, page 14, accessible [here](#).

² Everyday Plastic and EIA (2024), *The hard truth about soft plastic*, accessible [here](#).

recycling claims made on plastic water bottles,³ the first cases against oil and gas majors for misleading claims⁴ and the judgment against airline KLM's unlawful promotion of sustainable aviation and 'offsetting'.⁵ We tackle greenwashing because it is a barrier to progress in addressing environmental crises, enabling the most highly polluting companies to appear responsible whilst continuing to harm the environment, including through the escalating plastic pollution crisis.

This briefing argues that all plastic recycling claims which give an impression of closed loop circularity carry the potential to mislead consumers about the environmental impact of plastic packaging, in breach of UK and EU consumer protection law.

The analysis first summarises the facts regarding plastics recycling (Section 2). It then outlines and applies consumer protection law governing these claims, concluding that these claims mislead consumers (Section 3). It then engages with questions (Section 4), before making recommendations for enforcement (Section 5).

2 The facts

2.1 What is the meaning of 'recycling' and 'recyclable'?

'Recycling' is defined under EU and UK law⁶ as *'any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.'*

The definition of 'recyclable' varies across EU and UK law and industry initiatives. As defined in the recently adopted EU Regulation on Packaging and Packaging Waste (PPWR),⁷ packaging is 'recyclable' if it fulfils the following conditions:⁸ (i) it is designed for material recycling (which excludes energy recovery)⁹ which enables the use of resulting secondary raw materials that are of sufficient quality when compared to the original material that it can be used to substitute primary raw materials; and (ii) it can be sorted into specific waste

³ ClientEarth supported a complaint by European Consumer Organisation ('**BEUC**') to the EU Consumer Protection Cooperation Network that vague statements such as 100% recyclable, 100% recycled and use of circular loop and green imagery on the packaging of plastic water bottles are misleading consumers as to the environmental impact of plastic packaging, in breach of the UCPD ('**BEUC complaint**'). As a result of the complaint, in August 2024 the Hungarian consumer protection regulator announced they were investigating Coca-Cola for making potentially misleading '100% recyclable' claims on water bottles sold under the Naturaqua brand.

⁴ BP greenwashing complaint sets precedent for action on misleading ad campaigns | ClientEarth; TotalEnergies fails to stop historic net zero greenwashing case from proceeding | ClientEarth

⁵ Historic win against greenwashing as KLM's advertising ruled illegal | ClientEarth

⁶ Article 3(17) Waste Framework Directive (Directive 2008/98/EC) ('**WFD**') (accessible here). Implemented in the UK via The Waste (England and Wales) Regulations 2011 (as amended) (accessible here) which applies in the UK as Retained EU law (see dashboard accessed August 2024).

⁷ Position of the European Parliament adopted on 24 April 2024 on the proposal for a regulation of the European Parliament and of the Council on packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC, accessible here. See Article 6 (Recyclable packaging).

⁸ The first condition (Article 6(2)(a)) applies from 2030, the second condition (Article 6(2)(b)) applies from 2035.

⁹ As per Article 3(39) PPWR, '*material recycling*' means *'any recovery operation, by which waste materials are reprocessed into materials or substances whether for the original or other purposes, with the exception of biological treatment of waste, reprocessing of organic material, energy recovery, and reprocessing into materials that are to be used as fuels or for backfilling operations'*.

streams without affecting the recyclability of other waste streams and be recycled at scale. For plastic packaging, 'at scale' refers to an annual recycling rate equal or greater than 55%.¹⁰

UK law¹¹ defines 'recyclable' as capable of being recycled and does not currently provide guidance on how to assess recyclability. Absent further guidance from government, the packaging industry (led by the UK Plastics Pact and Waste Resources Action Programme (WRAP)) define packaging as recyclable '*if its successful post-consumer collection, sorting, and recycling is proven to work in practice and at scale*', at scale being a recycling rate of 30%.¹² This definition is used to set recyclability targets as explained below.

However, the UK government is in the process of introducing a new Extended Producer Responsibility (EPR) scheme for packaging.¹³ Although the definition of 'recyclable' is unchanged, the draft regulations provide that packaging producers will be required to assess recyclability according to guidance published by the EPR administrator.¹⁴ Consultation documents indicate that this assessment should consider, at least: that the packaging item can be collected and sorted, that reprocessing facilities are available and that a market exists for the reprocessed material.¹⁵

- The UK Plastics Pact is a pact of businesses across the plastics supply chain, including leading supermarkets and brands, who have committed to four key targets to reducing plastic waste, one of which is to ensure 100% of their plastic packaging is reusable, recyclable or compostable by 2025. The businesses that make up the UK Plastics Pact (who pay for membership) are responsible for over 75% of all consumer plastic packaging.
- WRAP, which organises the UK Plastics Pact, is a climate action charity that works with businesses and government to deliver a circular economy and reduce greenhouse gas emissions. Its priorities include improving recycling and the circularity of plastic packaging.

¹⁰ Article 3(38) PPWR

¹¹ Environmental Protection Act 1990 Schedule 2AA paragraph 15(1) defines '*recyclable waste*' as waste that is capable of being recycled, accessible [here](#).

¹² As further explained on the WRAP [website](#), the package can be considered recyclable if its main packaging components, together representing >95% of the entire packaging weight, are recyclable according to the definition, and if the remaining minor components are compatible with the recycling process and do not hinder the recyclability of the main components. 'At scale' is considered a 30% recycling rate.

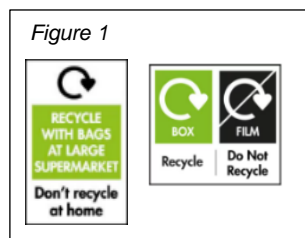
¹³ UK government Extended Producer Responsibility scheme, accessible [here](#).

¹⁴ Draft Extended Producer Responsibility Regulations, draft regulation 11, accessible [here](#). As per Regulation 2(1), 'recyclable' in relation to packaging or materials, means any packaging which is, or materials which are, capable of being recycled.

¹⁵ See Defra [2021 consultation](#) on Extended Producer Responsibility Scheme, page 74, paragraph 7.12 and Defra [2023 consultation](#) on the draft Regulations, page 18.

2.2 What are plastic recycling claims?

Plastic recycling claims cover a wide range of voluntary business-to-consumer communication practices regarding the recyclability of plastic packaging. Plastic recycling claims are commonly made on packaging, but may also be made in-store and via collection bins (Figure 2), via online grocery shopping platforms and on trader webpages.



Plastic recycling claims include labels or instructions explaining whether the plastic packaging is recyclable and how to recycle the packaging, such as the On Packaging Recycling Label (OPRL) scheme. OPRL Ltd¹⁶ provides standardised recycling labels featuring the Recycle Now logo¹⁷ alongside instructions such as: ‘Recycle / Don’t recycle / Recycle with bags at large supermarket’ (Figure 1). The OPRL scheme is currently voluntary but is proposed to become mandatory from

2026/2027 under EPR.¹⁸ Plastic recycling claims also encompass overt symbols and statements emphasising the circularity of the plastic packaging, such as ‘100% recyclable’, ‘100% recycled’.¹⁹

Most plastic recycling claims generally involve circular or triangular ‘closed loop’ symbols, which communicate to consumers that plastic recycling is a circular and closed loop process, giving a connotation of environmental ‘neutrality’. Accompanying green imagery symbolise to consumers that recycling is a sustainable, green and/or environmentally positive action. These symbols are widely recognised: in 2022 76% of England and Ireland had seen the circular Recycle Now logo and 65% had seen the OPRL labels.²⁰



2.3 What are the impacts of plastic packaging?

Plastic is a highly polluting substance, which pollutes at each stage of its life cycle, from extraction to disposal. Plastics are 99% derived from fossil fuels and production consumes significant energy: 90% of GHG emissions from plastic occur during the production stage.²¹ By 2050, global emissions from plastic production are estimated to account for one-fifth of the Earth’s remaining carbon budget.²² Plastic waste, of which plastic packaging comprises 42%,²³ has been documented in all the major ocean basins, beaches, rivers, lakes, terrestrial environments and even in the Arctic and Antarctic.²⁴ Whilst the impact of plastic waste on marine

¹⁶ OPRL is a voluntary, not-for-profit membership-based recycling labelling scheme. Accessible [here](#).
¹⁷ The Recycle Now logo, developed by WRAP, appears on a variety of packaging materials in the UK, including paper glass and plastic, and in public communications about recycling.
¹⁸ Draft Extended Producer Responsibility Regulations, Regulation 23, accessible [here](#). See also Ecosurety news article (April 2024), accessible [here](#).
¹⁹ BEUC complaint. See [report](#), [legal study](#) and [annex of identified practices](#).
²⁰ According to the UK Recycling Tracker Survey Spring 2023, accessible [here](#).
²¹ OECD (2022), *Global Plastics Outlook: Economic Drivers, Environmental Impacts and Policy Options*, page 14, accessible [here](#).
²² Lawrence Berkeley National Laboratory (2024) *Climate Impact of Primary Plastic Production*, page 5, accessible [here](#).
²³ OECD (2022), *Global Plastics Outlook: Economic Drivers, Environmental Impacts and Policy Options*, page 39, accessible [here](#).
²⁴ OECD (2022), *Global Plastics Outlook: Economic Drivers, Environmental Impacts and Policy Options*, page 46, accessible [here](#).

and coastal ecosystems is well-known,²⁵ it is also a threat to soil health and freshwater, particularly via microplastic pollution.²⁶ Finally, a growing body of scientific evidence suggests microplastics and chemical additives which leach from plastic packaging damage can impact reproductive health and cause disease, disability and premature death.²⁷

2.4 Can recycling neutralise the environmental impact of plastic packaging?

Recycling cannot adequately mitigate the environmental impacts of single use plastic packaging. In 2019, 91% of global plastic waste was incinerated, landfilled, burnt in open pits or dumped into the environment, with only 9% recycled.²⁸ The official UK government statistics record that in 2023 52.5% of post-consumer and industrial plastic packaging was recycled, lower than the rates for metal (71.2%) and glass (67.8%).²⁹

Even where plastic packaging is collected for recycling, the inherent weaknesses of plastic make it very difficult to recycle via a circular or closed loop process³⁰ into a product of similar quality or function. A circular system does not exist in Europe even for the 'easiest to recycle' plastics such as PET; in fact it is estimated that 75% of PET placed on the market is lost.³¹ Evidence suggests closed loop systems can exist for other materials, such as aluminium beverage cans³² and glass.³³ It is estimated that of the 78 million tonnes of plastic packaging produced globally in 2013, only 2% was recycled via closed loop recycling and 8% was recycled into other lower-value applications, which are not again recyclable after use.³⁴

Why? The primary solution for recycling plastic is a process called mechanical recycling (sort, shred, flake, wash, separate by density and extrude) to produce plastic granulates or flakes. Plastic degrades as it is recycled, reducing the quality of the recycled plastic and its continued recyclability.³⁵ Contamination with ink, adhesives, food, chemicals and additives, and the mixing of polymer types generate secondary plastics of low value.³⁶ EU regulations on recycled plastic and



²⁵ In a 2016 report, the Secretariat of the Convention on Biological Diversity (CBD) recognized that marine debris is a globally significant stressor on the marine and coastal environment, as studies show that almost 800 marine species are affected by plastic pollution. The impacts include smothering, ingestion of marine litter, ecosystem disruption by microplastics, engagement of animals, damage to coral reefs and harmful toxic effects.

²⁶ UNEP (2021), *Plastic planet: How tiny plastic particles are polluting our soil*, accessible [here](#).

²⁷ Annals of Global Health (2023), *The Minderoo-Monaco Commission on Plastics and Human Health*, accessible [here](#).

²⁸ OECD (2022), *Global Plastics Outlook: Economic Drivers, Environmental Impacts and Policy Options*, page 14, accessible [here](#).

²⁹ UK government 2023 statistics on waste from households, accessible [here](#).

³⁰ Closed loop recycling refers to the process in which post-consumer waste is collected and recycled preserving the value of the material so it can be used again to make the same product category it came from with minimal loss of quality or function, as defined in the position paper of AIJN, Natural Mineral Waters Europe, UNESDA, the Changing Markets Foundation and Zero Waste Europe (accessible [here](#)), as cited in the BEUC complaint legal study, footnote 50, page 10, accessible [here](#).

³¹ Zero Waste Europe and Eunomia (2022), *How circular is PET*, page 16, accessible [here](#).

³² Zero Waste Europe and Eunomia (2022), *How circular is PET*, page 4, accessible [here](#).

³³ Zero Waste Europe and Eunomia (2022), *How circular is Glass*, page 28, accessible [here](#). According to Eunomia modelling, Germany has a closed-loop recycling rate of 77.2% for glass.

³⁴ WEF, Ellen MacArthur Foundation and McKinsey (2016), *The New Plastics Economy: Rethinking the future of plastics* (2016), page 27, accessible [here](#).

³⁵ Huiying Jin et al., (2012) *The effect of extensive mechanical recycling on the properties of low density polyethylene*, accessible [here](#).

³⁶ Geyer R, Jambeck JR, Law KL (2017) *Production, use, and fate of all plastics ever made*, accessible [here](#).

food safety restrict the types of recycled plastics that can be used for food packaging.³⁷ Essentially, recycling delays, rather than avoids, final disposal³⁸ and therefore only postpones the harm caused by plastic packaging to the environment.

2.5 Is recycling ‘better’ than other forms of waste management?

Whilst all methods of managing plastic waste harm the environment and contribute to climate change, incineration of plastic (with or without energy recovery), landfill or dumping into the environment is more harmful. Waste incineration is a contributor to nitrous oxide pollution³⁹ with emissions three times more likely to affect economically deprived areas.⁴⁰ Landfilling poses environmental health risks due to the leaching of toxic substances to soil and waterways and emissions from degradation of waste.⁴¹ Finally, mismanaged plastic waste (burnt in open pits or dumped in the environment) releases harmful chemicals, reduces air and water quality, threatens biodiversity, harms human health and contributes to climate change.⁴² For these reasons, under UK and EU law,⁴³ businesses and public bodies that produce or handle waste⁴⁴ are required to take all reasonable measures to apply the ‘waste hierarchy’, which ranks waste management methods according to what is worst for the environment.⁴⁵ The waste hierarchy prioritises above all preventing waste in the first place; then re-use, then recycling (as defined above) then energy recovery, and last of all disposal (e.g. landfill or incineration without energy recovery).⁴⁶

2.6 What are soft plastics?

Soft or flexible plastics (films and bags commonly made of mono and mixed material polyethylene (PE) and polypropylene (PP)) occupy a large share (24% in the UK in 2021, according to WRAP) of consumer plastic packaging.⁴⁷ However, these materials have very low recycling rates: according to RECOUP just 12% of local authorities offer kerbside recycling for soft plastics and in 2022 just 7% of soft plastics placed on the UK market were collected for recycling this way.⁴⁸ Since 2021, major supermarkets in the UK have offered consumers the ability to ‘recycle’ their soft plastic via in-store collection points, with approximately 0.4% of consumer plastic film placed on the market in 2021 (341kt) collected this way.⁴⁹ The UK Government has committed to introducing mandatory household kerbside collection for all soft plastic by the end of FY 2026/2027.⁵⁰

Most soft plastic packaging features a specialist OPRL instructing consumers to recycle the soft plastic at supermarkets (see first image in Figure 1 above). Supermarket soft plastic collection points additionally tell

³⁷ Regulation (EU) 2022/1616 on recycled plastic materials and articles intended to come into contact with foods, accessible [here](#).

³⁸ Geyer R, Jambeck JR, Law KL (2017) *Production, use, and fate of all plastics ever made*, accessible [here](#).

³⁹ Eunomia (2020), *Greenhouse Gas And Air Quality Impacts Of Incineration And Landfill*, page 25, accessible [here](#).

⁴⁰ Greenpeace (2020) *UK waste incinerators three times more likely to be in poorer areas*, accessible [here](#).

⁴¹ CIEL (2019), *Plastics and Climate*, page 62, accessible [here](#).

⁴² EIA (2021), *The UK’s Trade in Plastic Waste*, page 2, accessible [here](#).

⁴³ Codified in EU and UK law by the EU WFD.

⁴⁴ Includes where a business imports, produces imports, produces, collects, transports, recovers or disposes of waste.

⁴⁵ The Waste (England and Wales) Regulations 2011, regulation 12(1) See also DEFRA guidance, accessible [here](#).

⁴⁶ Art. 4(1) WFD

⁴⁷ WRAP (2022), *Plastic Market Situation Report*, page 9, 16, accessible [here](#).

⁴⁸ RECOUP (2023), *UK Household Plastic Packaging Collection Survey*, page 7, accessible [here](#).

⁴⁹ WRAP (2022), *Plastic Market Situation Report*, page 16, accessible [here](#). In 2021, 341,000 tonnes of consumer film placed on the market in the UK versus 1,390 tonnes reported as collected (via supermarkets) (0.4%) and 14,000 tonnes (4%) collected via pilot kerbside collection schemes.

⁵⁰ UK government (Defra) (2021), *Consultation on EPR*, page 84, accessible [here](#).

consumers to recycle their soft plastics (see Figure 2 above). Supermarket websites also provide consumers with further information about how to return their soft plastics for recycling and what will happen to the soft plastic.⁵¹

2.7 Are soft plastics recyclable?

As stated by WRAP, '*commercially recycling plastic film can be highly challenging*'.⁵² This is because '*higher levels of contamination and high sorting costs, due to frequent use of hand-picking, lead to higher prices than virgin alternatives. Additionally, regulation on materials used in food contact packaging limit the use of recycled plastic in food-grade packaging, which dominates flexible packaging use. For these reasons, large scale commercial recycling of film has been very challenging to achieve outside of use clean C&I [commercial and industrial] material.*'⁵³

The UK Government has similarly acknowledged that '*End markets for recycled plastic film are limited and largely represent 'down cycling' (e.g. film/soft plastic packaging recycled into construction materials)*'⁵⁴ and described soft plastic as '*of poor quality and hence of low value*' and the collection and sorting infrastructure as '*poorly developed*'.⁵⁵ According to WRAP, the UK has capacity to recycle 190kt of plastic film (consumer and industrial) of which only a '*small percentage*' is available for post-consumer film.⁵⁶ By way of comparison 341kt of post-consumer plastic film was placed on the market in 2021.⁵⁷

The UK Plastics Pact states that soft plastics do not meet its definition of recyclable (explained above) as it is not collected at scale.⁵⁸ It is also uncertain that soft plastics will satisfy future recyclability assessments to be required under the UK EPR scheme, given the UK's insufficient capacity to reprocess the material and lack of end markets for the processed material. It is also unlikely that they would satisfy the definition of 'recyclable' outlined in Article 6 PPWR for the same reasons.

Due to the limitations with conventional mechanical recycling, in recent years fossil fuel and petrochemical companies have promoted and funded⁵⁹ pilot-stage 'advanced' or 'chemical' recycling technologies as a solution for recycling soft plastic. However, these technologies are expensive and carbon-intensive and there are concerns that they will be used to produce fuel or 'downcycled' plastic;⁶⁰ moreover investigations have revealed the majority of facilities are unlikely to be viable, or are not operational.⁶¹ In July 2024, Shell announced that its prior ambition to chemically recycle 1 million tonnes of plastic waste per year was '*unfeasible*'.⁶² WRAP stated in October 2023 that there is currently no commercial scale non-mechanical

⁵¹ For example, see (i) Sainsburys (14 June 2021), *Helping our customers to recycle flexible plastics*, accessible [here](#) (accessed 30 September 2024) and (ii) Tesco (23 August 2021), *Shoppers can now return all their soft plastic packaging to recycling points at every large Tesco store in the UK*, accessible [here](#) (accessed 30 September 2024).

⁵² WRAP (2022), *Plastic Market Situation Report*, page 18, accessible [here](#).

⁵³ WRAP (2022), *Plastic Market Situation Report*, page 18, accessible [here](#).

⁵⁴ UK government (Defra) (2021), *Consultation on EPR*, page 206, accessible [here](#).

⁵⁵ UK government (Defra) (2021), *EPR Impact Assessment*, pages 13 and 14, accessible [here](#).

⁵⁶ WRAP (2022), *Plastic Market Situation Report*, page 4, accessible [here](#). This suggests that the UK has capacity to recycle 29% of soft plastic placed on the market in 2021 (341kt post-consumer and 324kt non-consumer).

⁵⁷ WRAP (2022), *Plastic Market Situation Report*, page 3, accessible [here](#)

⁵⁸ UK Plastics Pact (2023), *Annual Progress Report 2022-2023*, page 15, accessible [here](#).

⁵⁹ Center for Climate Integrity ('CCI') (2024), *The Fraud of Plastic Recycling*, page 26, accessible [here](#).

⁶⁰ Reuters (2021), *The Recycling Myth: Big Oil's Solution for Plastic Waste Littered with Failure*, accessible [here](#). The article cited the lack of demonstrated commercial viability for some types of chemical recycling, technological failures to deliver as promised, abandoned investments and high emissions.

⁶¹ CCI (2024), *The Fraud of Plastic Recycling*, page 59, accessible [here](#).

⁶² Guardian (July 2024), *Shell quietly backs away from pledge to increase 'advanced recycling' of plastics*, accessible [here](#).

recycling infrastructure in the UK.⁶³ Given the significant economic and technical barriers it is uncertain such a system can exist at scale.⁶⁴

2.8 What happens to soft plastic recycled via supermarket collection points?

In light of the limited infrastructure to recycle soft plastics and technical challenges, journalists and NGOs have sought to answer this question using trackers attached to soft plastic waste recycled via collection points. In July 2023 and February 2024 Everyday Plastic and EIA used AirTag trackers to track 40 bundles of plastic waste returned to collection points in Sainsbury's (22) and Tesco (18) across England. Of the 17 tracked bundles that were determined to have reached a final destination:⁶⁵

- 5 bundles were sent to incinerators for energy recovery;⁶⁶
- 7 bundles were sent to producers of fuel pellets;⁶⁷ and
- 5 bundles were sent to facilities that downcycle plastic waste into lower quality applications, which due to their diminished recyclability are unlikely to be recycled a second time.⁶⁸

In total, 70% of the tracked waste that reached a final destination will have been incinerated or burnt as fuel. The methodology used to track the soft plastics is outlined in detail in the Everyday Plastic and EIA report.⁶⁹

2.9 Does the plastic production industry recognise the limitations of plastic recycling?

Yes. A 2024 report by Center for Climate Integrity documents decades long campaigns by the plastics industry to promote and fund plastic recycling, despite internal recognition since the 1970s that it is technically and economically unfeasible at scale.⁷⁰ As a plastic industry trade association put it in the 1980s:⁷¹

'[r]ecycling cannot go on indefinitely, and does not solve the solid waste problem'.

'recycling cannot be considered a permanent solid waste solution, as it merely prolongs the time until an item is disposed of.'

In September 2024 the Attorney General (AG) of California filed a lawsuit against fossil fuel company Exxon Mobil for promoting the false solution of recycling to sustain fossil fuel demand despite knowledge of the environmental and human health crises caused by plastic production and pollution, following a two-year

WRAP (2022), *Plastic Market Situation Report*, page 13, accessible [here](#). The report also found 'firms in developmental stages are still at risk from a lack of investment, with at least one company entering administration in the UK in 2022'.

⁶⁴ Guardian (July 2024), *Shell quietly backs away from pledge to increase 'advanced recycling' of plastics*, accessible [here](#).

⁶⁵ Everyday Plastic and EIA (2024) *The hard truth about soft plastic*, pages 36 and 40, accessible [here](#).

⁶⁶ Three to facilities in the UK, and two which travelled overseas to be burnt at facilities in the Netherlands and Sweden.

⁶⁷ These producers shred, dry and compact the hard-to-recycle plastic waste and convert it into SRF (Solid Recovered Fuel) and RDF (Refuse Derived Fuel), which is then used in the production of energy for furnaces and kilns. This is not considered a form of recycling.

⁶⁸ Only one bundle was downcycled in the UK.

⁶⁹ Everyday Plastic and EIA (2024) *The hard truth about soft plastic*, Appendix 5: Methodology and assumptions, accessible [here](#).

⁷⁰ CCI (2024), *The Fraud of Plastic Recycling*, page 9, accessible [here](#).

⁷¹ CCI (2024), *The Fraud of Plastic Recycling*, accessible [here](#). The first quotation is a statement by the Founding Director of the Vinyl Institute (VI) to a conference in 1989 (page 9) and the second is from a 1986 VI Report (page 10).

investigation.⁷² The AG claim argues that ExxonMobil undertook a campaign of deception by (1) misrepresenting the recyclability of plastics, (2) omitting or misstating the limited availability and efficacy of plastic recycling; and (3) affirmatively promoting the company's plastic-input products as recyclable and/or made from recycled plastics.⁷³ The AG claim further states (emphasis added):

“The plastics industry, through its deceptive public messaging regarding plastic recycling, is responsible for one of the most devastating global environmental crises of our time: the plastic waste and pollution crisis.”⁷⁴

“ExxonMobil’s deceptive statements were designed to mislead consumers and the public—including the State, its businesses, and its residents—about the serious adverse consequences that would foreseeably result from continued and increased production of plastic products. ExxonMobil’s deceptions undermined consumers’ ability to make informed choices to avoid the catastrophic harms we are experiencing.”⁷⁵

“ExxonMobil wants the public to believe that its “advanced recycling” program can process mixed and post-consumer plastics that mechanical recycling cannot. However, pyrolysis “advanced recycling,” or “chemical recycling,” technology cannot process high volumes of mixed post-consumer plastic waste like potato chip bags and candy wrappers. Indeed, a recent study commissioned by the Association of Plastic Recyclers confirmed that mixed post-consumer film and flexible packaging (FFP) is not currently suitable for pyrolysis “advanced recycling.””⁷⁶

3 Legal analysis

3.1 Consumer protection law

The legal framework governing consumer-facing claims is the EU Unfair Commercial Practices Directive ('UCPD'),⁷⁷ implemented in the UK by the Consumer Protection from Unfair Trading Regulations 2008 ('CPR') (and subsequently the Digital Markets, Competition and Consumers Act ('DMCCA')).⁷⁸ The associated EU Commission and UK regulatory guidance on green claims is also relevant.⁷⁹

This is a rapidly developing area of law: environmental claims in the EU will also be governed by forthcoming EU legislation such as the Directive on Empowering Consumers for the Green Transition ('ECGT

⁷² In parallel, a coalition of NGOs filed a separate claim against ExxonMobil addressing the same crises. See *Sierra Club, Surfrider Foundation, Heal the Bay and Bay Keeper v Exxon Mobil Corporation*, filed in the San Francisco Superior Court on Monday 23 September 2024, accessible [here](#).

⁷³ *State of California, ex rel. Rob Bonta, Attorney General of California v Exxon Mobil Corporation* (“AG claim”), filed in the San Francisco Superior Court on Monday 23 September 2024, paragraph 55, accessible [here](#). Remedies sought by the AG claim include injunctive relief ordering ExxonMobil to cease and desist public statements related to its plastic operations including use of the terms “advanced recycling,” “chemical recycling,” “circular,” and “recyclable. See AG claim, paragraph 464.

⁷⁴ AG claim, paragraph 1.

⁷⁵ AG claim, paragraph 6.

⁷⁶ AG claim, paragraphs 266 and 267.

⁷⁷ Directive 2005/29/EC, accessible [here](#).

⁷⁸ The DMCCA (accessible [here](#)) replaced the UK CPRs.

⁷⁹ UK CMA (2021), *Green Claims Code*, accessible [here](#). EU Commission (2021), *Guidance on the interpretation and application of the UCPD* ('EU UCPD Guidance'), accessible [here](#).

Directive).⁸⁰ The UCPD imposes a general prohibition on traders in all sectors from engaging in unfair commercial practices with respect to consumers.⁸¹ The UCPD prohibits as misleading actions or omissions commercial practices (claims) which:

- (i) contain false information and are therefore untruthful OR in any way, including overall presentation, deceive or are likely to deceive the average consumer, even if the information is factually correct, in relation to the main characteristics of a product;⁸² or
- (ii) in their factual context, omit material information (information that the average consumer requires to make an informed transactional decision); and
- (iii) in either case, cause or are likely to cause the average consumer to take a transactional decision they would not have taken otherwise (the **'transactional decision test'**).⁸³

The key principles of the UK guidance include that claims must be truthful and accurate, clear and unambiguous, not omit or hide important information, be substantiated and consider the lifecycle of the product or service.⁸⁴

The UK guidance identifies that claims that products are recyclable can be problematic given they often only apply to parts of products or in certain conditions.⁸⁵ Environmental claims should relate to aspects that are significant in terms of the product's environmental impact over its lifecycle, including its supply chain.⁸⁶ Traders should not distort claims about the composition of the product (including raw materials), or its use, manufacture, transport or end-of-life impacts by emphasising the importance of positive aspects, which are in reality only marginal or whereas the overall environmental impact resulting from the product's life cycle is negative.⁸⁷

The EU UCPD Guidance furthermore clarifies that *'highly polluting industries'* (though undefined, the guidance references jurisprudence regarding fossil fuel products i.e. analogous with plastics) attract heightened obligations. Highly polluting industries may be required, in order not to mislead, to make it clear to the consumer in their environmental claims that the product has an overall negative impact on the environment. e.g. *'less harmful for the environment'* not *'environmentally friendly'*.⁸⁸

EU and UK guidance is that claims must be based on *'robust, independent, verifiable and generally recognised evidence which takes into account updated scientific findings and methods'*.⁸⁹ The substantiation requirements are relatively strict, that is to say protective of consumers. For example, EU UCPD Guidance states: *'[i]f expert studies give rise to significant disagreement or doubt over environmental impacts, the trader*

⁸⁰ Directive EU (2024/825). Adopted by the EU Commission in March 2024, ECGT Directive amends the UCPD with the aim of banning greenwashing and enabling consumers to make informed purchasing decisions and contribute to more sustainable consumption. Member States have until March 2026 to transpose ECGT Directive into national law.

⁸¹ 'Commercial practice' means any act or omission by a trading relating to the promotion or supply whether before or after the promotion or supply (s.223(3) and (5) DMCCA, a similar definition is given in Article 2(d) UCPD).

⁸² Art. 6(1)(b) UCPD provides a non-exhaustive list of main characteristics, which includes the benefits, risks and composition of the product. It is clear from EU and UK guidance, as well as a feature of recent UCPD jurisprudence, that the main characteristics of a product include its environmental impact. Art 1(2)(a) ECGT Directive also amends 6(1)(b) to explicitly include environmental or social characteristics and circularity aspects.

⁸³ Art. 6(1) and 7(1) UCPD.

⁸⁴ UK Green Claims Code, Section 3 (Principles).

⁸⁵ UK Green Claims Code, paragraph 3.57. See also paragraph 3.7: *'Businesses must not claim, or otherwise give the impression, that a product is 'recyclable' if it is not, or if only parts of it are and others are not, preventing recycling.'*

⁸⁶ EU UCPD Guidance, point 4.1.1.3 and 4.1.1.4; UK Green Claims Code paragraph 3.71: *'It will be important for businesses to think about the claim they are making and the whole life cycle of the relevant product'*.

⁸⁷ EU UCPD Guidance, point 4.1.1.3.

⁸⁸ EU UCPD Guidance, point 4.1.1.3.

⁸⁹ EU UCPD Guidance, point 4.1.1.5, similar guidance is provided in paragraph 3.132 UK Green Claims Code.

should refrain from the claim altogether.⁹⁰ UK guidance further requires evidence to be based on 'real world conditions'.⁹¹

Average consumer: The benchmark for assessing the impact of a commercial practice is the 'average consumer'. This is not a statistical test, but a normative test, whereby courts should take into account the 'presumed expectations of an average consumer who is reasonably well informed and reasonably observant and circumspect'.⁹²

Transactional decision test: As per EU UCPD Guidance the definition of transactional decision⁹³ is interpreted broadly, to cover a wide range of pre-purchase and post-purchase decisions made by a consumer in relation to a product, including to enter a shop, to purchase a product and to dispose of a product. It is not necessary to show that the consumer's transactional decision has actually been distorted, rather it is sufficient to show that the claims are capable of having such an impact.⁹⁴

EU and UK guidance is that environmental claims (which include plastic recycling claims) are increasingly important to the average consumer and thus they should be treated as capable of causing the average consumer to take a transactional decision they would not have taken otherwise.⁹⁵ The UK guidance explains 'A good rule of thumb would be to assume that consumers are likely to want to know about the overall environmental impact, including how easily a product, and its packaging, can be disposed of or recycled';⁹⁶ 'People are increasingly encouraged to recycle packaging wherever possible and are increasingly interested in doing so'⁹⁷ and 'the durability or disposability of a product can have a significant effect on its environmental impact. It can be an important consideration for consumers in deciding what to buy'.⁹⁸

3.2 Application of legal framework

Applying the legal framework to the facts, plastic recycling claims carry the potential to: (i) mislead consumers as to the characteristics of the product: the environmental impact of its plastic packaging and (ii) impact purchasing decisions. Therefore, they may constitute unfair commercial practices prohibited under consumer protection law.

3.2.1 Commercial practice

Plastic recycling claims are mostly business-to-consumer claims, and thus are commercial practices within the meaning of the UCPD. Often, they are on the packaging of a product (so 'directly connected with the [...] sale' of the product). They are environmental claims as defined in the UK guidance⁹⁹ as they create or suggest the impression that the product or plastic packaging has a positive or neutral environmental impact, as explained above.

⁹⁰ EU UCPD Guidance, point 4.1.1.5.

⁹¹ UK Green Claims Code, paragraph 3.135: 'If a claim is based on evidence where the conditions are unlikely to be replicated in normal day-to-day use, or only replicated in very specific circumstances, then it could be misleading.'

⁹² Recital 18 UCPD. See also s.244 DMCCA.

⁹³ Art. 2(k) UCPD.

⁹⁴ EU UCPD Guidance, point 2.4.

⁹⁵ UK Green Claims Code, Appendix, paragraphs 44-45.

⁹⁶ UK Green Claims Code paragraph 3.87.

⁹⁷ UK Green Claims Code, paragraph 3.82.

⁹⁸ UK Green Claims Code paragraph 3.89.

⁹⁹ UK Green Claims Code, paragraph 2.5.

3.2.2 Misleading action or omission

In light of the evidence summarised above regarding the environmental impact of plastic packaging and the problems with recycling, plastic recycling claims which give an impression of closed loop circularity and environmental neutrality, including via circular loop and green imagery, are, in their overall presentation, likely to deceive the average consumer in relation to the main characteristics of a product: the environmental impact of its packaging

Applying EU UCPD Guidance 4.1.1.3 cited above, such claims are likely to distort the reality of the packaging's environmental impact across its lifecycle, by unduly emphasising the importance of positive aspects (e.g. the theoretical availability of recycling). These are in reality only marginal, given that: (i) recycling is unlikely and closed loop recycling very unlikely and (ii) recycling merely postpones the negative environmental impact of plastic packaging. Furthermore, plastic packaging is highly polluting, and therefore environmental claims on plastic packaging may need to make it clear to the consumer that the product has an overall negative impact on the environment, which green and circular loop imagery does not. Finally, plastic recycling claims suggest that the primary way to address the environmental impact of plastic is to recycle plastic packaging, rather than avoid or reuse it, in subversion of the established concept of the waste hierarchy.

We consider that plastic recycling claims made in relation to soft plastic are misleading, in light of the evidence that: (i) the infrastructure required to effectively recycle soft plastic at scale does not exist in the UK or elsewhere and (ii) in confirmation of this the Everyday Plastic and EIA investigation found that 70% of the plastic that reached a final destination was incinerated for energy recovery or burnt as fuel, with the remainder downcycled into lower quality plastic destined for eventual burning, landfill or dumping. Soft plastic recycling claims are misleading consumers as to its recyclability, inconsistent with the waste hierarchy which makes legal distinctions between recycling, recovery, and incineration. There is a significant gap between the average consumer understanding of a soft plastic recycling claim, and the reality, in apparent breach of EU and UK guidance that requires claims to be based on *'robust, independent, verifiable and generally recognised evidence which takes into account updated scientific findings and methods'*.¹⁰⁰ EU and UK consumer protection law therefore requires supermarkets to substantiate claims using evidence based on real world conditions, and cease or modify claims if this is not possible.¹⁰¹

We also consider that plastic recycling claims featuring especially overt circular and triangular symbols and vague statements such as *'100% recyclable'* or *'100% recycled'* are misleading consumers. These communicate that plastic can be recycled forever when the reality is that plastic degrades as it is recycled, and recycling can only ever delay disposal. In this context we highlight that in August 2024 the Hungarian consumer protection regulator announced they were investigating Coca-Cola for making potentially misleading *'100% recyclable'* claims on certain water bottles, following the complaint submitted by BEUC to the EU CPC network with ClientEarth's support.

Alternatively or in addition, plastic recycling claims have the potential to be misleading by omission as they omit material information required to make an informed transactional decision: accurate information regarding the environmental impact of plastic packaging. Consumer protection law therefore requires plastic packaging to communicate its true environmental impact and the primary need to avoid it, in accordance with the waste hierarchy.

¹⁰⁰ EU UCPD Guidance, point 4.1.1.5, similar guidance is provided in paragraph 3.125 – 3.126 UK Green Claims Code.

¹⁰¹ UK Green Claims Code, paragraph 3.135: *'If a claim is based on evidence where the conditions are unlikely to be replicated in normal day-to-day use, or only replicated in very specific circumstances, then it could be misleading.'*

3.2.3 Average consumer understanding

In our view, the average consumer understanding is that, if the packaging is disposed of correctly, (i) it will be recycled, and (ii) recycling will adequately mitigate or reduce the environmental impact of plastic packaging.

Although consumer surveys are not legally determinative, this interpretation is supported by consumer research undertaken by the UK Advertising Standards Authority (ASA)¹⁰² published in November 2023 ('**ASA study**'), which sought to assess the consumer understanding of green disposal claims.¹⁰³ The ASA study found consumers have strong faith in the green disposal management process. Pertinently, most participants presumed (ii) recycling processes were cyclical and always work properly from start to end and (ii) the terms explored (recyclable, compostable, biodegradable) were wholly positive for the environment, and brands were being truthful and transparent in using them.¹⁰⁴ The ASA study drew on 30 in-depth interviews exploring green disposal claims in ads, conducted across the UK and with participants from varying demographic groups, locations and engagement with the subject matter. As the research informing the ASA's approach to applying the CAP and BCAP Codes (derived in part from the UCPD) we consider this a relevant indicator for the average consumer test in the UK.

Other consumer research also consistently evidences positive attitudes towards and consumer demand for recycling and recyclable packaging, and the understanding that recycling is a positive environmental behaviour. For example:

- 2021 WRAP research found 2 in 3 UK consumers say plastic waste is an important issue to them and making packaging more recyclable was considered the most important improvement to make.¹⁰⁵
- The most recent EU Commission barometer survey of attitudes towards the environment found that: (i) when asked about the most effective actions that should be taken to tackle environmental problems, 58% of Europeans mention the promotion of the circular economy through reducing waste and reusing or recycling products in first, second, third or fourth position; and (ii) 66% of respondents thought correctly sorting waste for recycling was an effective waste reduction strategy, above reusable packaging (52%) and minimally packaged products (49%).¹⁰⁶
- 2023 behavioural science research by the Behavioural Insights Team found that consumers considerably overestimate the positive environmental impact of recycling.¹⁰⁷
- In relation to soft plastics, 2021 research by the University of Sheffield found most participants thought recycling soft plastics would be good (96%) and worthwhile (91%).¹⁰⁸ Over 80% thought most of their significant others would approve of recycling soft plastics. In a 2024 poll conducted by FindOutNow and commissioned by Everyday Plastic, 53.6% of those polled associated the OPRL featured on soft

¹⁰² As the UK's independent regulator of advertising, the UK ASA ensures that ads across all media are legal, decent, honest and truthful, taking action where ads are misleading, harmful, offensive or otherwise irresponsible, in accordance with the *UK Code of Non-broadcast Advertising and Direct & Promotional Marketing* (CAP Code) and *The UK Code of Broadcast Advertising* (BCAP Code).

¹⁰³ ASA (2023), *Consumer Understanding of Green Disposal Claims in Ads*, accessible [here](#).

¹⁰⁴ ASA (2023), *Consumer Understanding of Green Disposal Claims in Ads*, pages 6 and 21, accessible [here](#).

¹⁰⁵ WRAP (2021), *Plastics Tracking Survey 2021 Behaviours, attitudes and awareness around plastic waste*, accessible [here](#).

¹⁰⁶ EU Commission (2024), *Attitudes of Europeans towards the environment*, pages 15 and 35, accessible [here](#).

¹⁰⁷ Behavioural Insights Team (2023), *How to build a net zero society*, page 154, accessible [here](#).

¹⁰⁸ Meade, K., Webb, T. L., & Ryan, A. J. (2021), *EPPIC Survey on Flexible Plastics*, accessible [here](#).

plastic packaging (first image in Figure 1 above) as positive for the environment¹⁰⁹ and 46% agreed or strongly agreed that recycling soft plastic via front-of-store collection points at the supermarket is positive for the environment.¹¹⁰

3.2.4 Transactional decision test

Plastic recycling claims are likely to satisfy the transactional decision test as they are likely to cause the average consumer to take a transactional decision they would not have taken otherwise. The UK and EU guidance is that green claims are important to consumers and can impact purchasing decisions (e.g., see Green Claims Code paragraph 3.89, cited above).

General awareness of plastic's harm to the environment in the UK and many EU member states, and concern about environmental crises, is high and consumers see purchasing recyclable products as a key action they can take to reduce plastic waste, as demonstrated by the 2024 EU Commission study cited above.

Consumer research also identifies a clear link between environmental impact and purchasing decisions. The EU Commission study also found that almost six in 10 respondents were willing to pay more for products that are easier to repair, recyclable and/or produced in an environmentally sustainable way.¹¹¹ Pertinently, 2024 research commissioned by DS Smith into UK consumer perception of supermarket plastic packaging found that (i) one in four respondents admitted they have avoided purchasing a product due to its excessive plastic wrapping; (ii) over a quarter of respondents (28%) were frustrated by packaging that isn't recyclable, and (iii) 24% are willing to pay up to 33p more for an item with environmentally friendly packaging.¹¹²

The impact on purchasing decisions is demonstrable by the labels themselves, which are often prominent or distinctive on product packaging or point of purchase. At times, they are printed in explicitly promotional presentations, and are also made at point of purchase online. Market communication of clear alternatives to single-use plastic packaging ('*plastic free*' or '*zero plastic*')¹¹³ is also instructive: consumers in many cases are able to select a plastic-free alternative or to shop elsewhere. This is further indicated by increasing competition between traders on plastic-related environmental issues, for example on plastic reduction and on the recyclability of their plastic packaging.¹¹⁴

¹⁰⁹ Everyday Plastic and EIA (2024), *The hard truth about soft plastic*, Appendix 1: Find Out Now Poll 2024, question 1, accessible [here](#).

¹¹⁰ Everyday Plastic and EIA (2024), *The hard truth about soft plastic*, Appendix 1: Find Out Now Poll 2024, question 3, accessible [here](#).

¹¹¹ EU Commission (2024), *Attitudes of Europeans towards the environment*, page 43, accessible [here](#).

¹¹² Research commissioned in August 2024 by DS Smith. A nationally representative survey of 2,000 people in the UK was undertaken by OnePoll. See DS Smith (2024) *Plast-icks: Brits Supermarket Packaging Pet Peeves Revealed*, accessible [here](#).

¹¹³ For example, in the UK Boots' online shopping [page](#) enables consumers to apply a filter for plastic free and recyclable packaging. Accessed September 2024.

¹¹⁴ For example, in the UK: 1) Sainsburys [states](#) that it was the first retailer to make a significant commitment to reduce plastic and remove certain single use plastic bags; 2) Aldi [states](#) that it was the first UK retailer to join a coffee pod recycling scheme; and 3) organic vegetable company Riverford Farmers [states](#) that in 2020 its vegetables boxes used 82% less plastic than supermarket organic equivalents (all links accessed 1 September 2024).

4 Questions

4.1 Aren't recycling claims legally required disposal instructions, not green claims?

The commercial interest in communicating positive information about the recyclability of plastic packaging is reflected in the high levels of concern about waste and positive attitudes to recycling evidenced in the consumer research summarised above. UK guidance is that information about recyclability is, for consumers, a strong indicator for environmental impact.¹¹⁵ The most overt triangular or 'circular loop' recycling symbols, and vague statements such as '100% recyclable' and '100% recycled'¹¹⁶ clearly form part of a company's sales strategy. Whilst recycling labels/instructions are required by law in some jurisdictions,¹¹⁷ often even those that may appear 'neutral' at first glance such as the OPRL featured on plastic packaging in the UK, are currently voluntary and communicate circularity, not just disposal instructions.



The substantive effect of plastic recycling claims is clear on comparison to alternatives which do not feature circular or triangular loop symbols or green imagery, or other symbols which more faithfully communicate the negative environmental impacts of plastic packaging, such as the 'Plastic in Product' symbol required under EU law¹¹⁸ to feature on certain single use plastic products.

4.2 Do recycling instructions equate to a claim that the packaging will actually be recycled?

The UCPD does not test the literal meaning of claims, and this would plainly be insufficient to protect consumers from advertising, which relies on suggestion. Instead it prohibits a claim which '*in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct.*'¹¹⁹ The reality is that closed loop recycling (the process implied by recycling claims) is not feasible at scale for plastic packaging. Relying on technical or theoretical recyclability is at least likely to deceive the average consumer about the reality of recycling and the overall environmental impacts of plastic packaging across its lifecycle, contrary to EU and UK guidance cited above. Moreover, the consumer research summarised above does not suggest consumers treat recycling claims as empty claims or 'puffery', rather, they trust and act upon them.¹²⁰ Finally, under EU and UK law, the average consumer test refers to a notional consumer who is reasonably well informed and reasonably observant and circumspect, not one who is unusually suspicious. Whilst the average consumer may have some scepticism about corporate business practices, they are unlikely to have detailed knowledge of the negative environmental impacts of plastic packaging, or the limitations of recycling.

¹¹⁵ UK Green Claims Code paragraph 3.89: '*the durability or disposability of a product can have a significant effect on its environmental impact. It can be an important consideration for consumers in deciding what to buy.*'

¹¹⁶ See BEUC complaint.

¹¹⁷ For example the black Triman symbol required by French law to feature on packaging classified as recyclable.

¹¹⁸ As of July 2022, under the Single Use Plastics Directive (EU) 2019/904, all cups containing any plastic sold in the EU must carry the 'Plastic in Product' or 'Made of Plastic' turtle logo to inform users that they contain plastics.

¹¹⁹ Art. 6(1) UCPD

¹²⁰ Defined in EU UCPD Guidance, footnote 138 as a '*subjective or exaggerated statement about the qualities of a particular product, which is not meant to be taken literally.*'

4.3 Does it matter if the waste is exported?

The export of waste is another aspect of the environmental impact of packaging that is not communicated to consumers. Waste exported abroad has a much higher risk of being mismanaged¹²¹ causing damage to the environment and the human rights and health of impacted communities.¹²² In 2021 47% of plastic packaging reported as recycled was exported for recycling, the majority of which to countries with low recycling rates and problems with illegal dumping and burning.¹²³ The Everyday Plastic / EIA investigation also identified significant issues with the export of soft plastic waste abroad, with at least 8/40 bundles confirmed to have been sent overseas, including to a recycling facility in Turkey.

4.4 Don't we need clear labels to encourage consumers to recycle?

Some behavioural science literature, as reviewed in a 2021 WRAP report, suggests that consumers are confused about how to recycle correctly and consumers can be overwhelmed by the inconsistency of different recycling labels and regulations.¹²⁴ Labels such as the OPRL have been designed with the valid objective of encouraging citizen recycling behaviours. For example, WRAP explains that green is '*an obvious colour recommendation for a recycling label*' since it is a colour '*citizens can instantly associate with recycling*', moreover symbols can be '*an easy way for citizens to process information*'.¹²⁵

However, this does not give companies free rein to use potentially misleading recycling symbols and imagery. Firstly, consumer protection law is not concerned with the underlying objective of a communication practice, but whether it is truthful. By way of illustrative example, claiming that packaging is recyclable (when it is not) may encourage recycling but the communication remains false or misleading. Secondly, encouraging recycling behaviours at the cost of inhibiting the primary aim of reduction of plastic and the secondary aim of encouraging reuse is neither desirable nor consistent with the waste hierarchy. This is particularly the case given the inherent limitations of recycling in addressing the environmental impact of plastic, as documented above. Encouraging sustainable behaviours requires influencing consumers at the point of consumption (relevant to prevention and re-use) as well at the point of disposal (relevant to recycling). Businesses should communicate disposal instructions and encourage recycling behaviours, where recycling is possible, without misleading consumers as to the environmental impact of plastic packaging.

5 Conclusion and recommendations

5.1 Conclusion

All plastic recycling claims which give an impression of closed loop circularity and environmental neutrality carry the potential to mislead consumers as to the true environmental impact of plastic packaging. There is strong evidence that recycling claims made in relation to soft plastic packaging are misleading consumers given the significant gap between the reality of soft plastic recycling, as highlighted by the Everyday Plastic and EIA investigation, and the consumer understanding of plastic recycling claims and the legal distinction

¹²¹ Almost all countries that receive or have received large quantities of imported plastic waste are those that also have some of the highest mismanagement rates in the world. See EIA (2021), *The Truth Behind Trash* (2021), page 9, accessible [here](#) and Jambeck et al. (2015). *Plastic waste inputs from land into the ocean*, accessible [here](#).

¹²² Human Rights Watch (2022), *Turkey: Plastic recycling harms health, environment*, accessible [here](#).

¹²³ EIA (2021), *The UK's Trade in Plastic Waste*, page 2, accessible [here](#).

¹²⁴ WRAP (2021), *On-pack labelling and Citizen Recycling Behaviour*, page 4, accessible [here](#).

¹²⁵ WRAP (2021), *On-pack labelling and Citizen Recycling Behaviour*, page 24, accessible [here](#).

between prevention, recycling, recovery and incineration. There is also strong evidence that plastic recycling claims that use prominent circular/triangle symbols and misleading statements that imply plastic can be recycled over and over again, such as *100% recyclable*, *100% recycled* are misleading consumers.

5.2 Recommendations

Consumer protection regulators recognise that, as governments pursue targets to reduce emissions and protect nature, consumer regulation must play its part in helping economies to grow sustainably.¹²⁶ As is evident from regulatory investigations in the UK¹²⁷ and EU¹²⁸ and emerging consumer litigation,¹²⁹ misleading claims about plastic packaging are gaining more attention. Regulators accept the need to intervene to ensure that plastic recycling claims are truthful and accurate, consider the full lifecycle and communicate that plastic packaging has an overall negative impact on the environment. Accordingly, the UK CMA should require supermarkets and other producers to substantiate claims about the recyclability of soft plastic packaging and order companies to cease or modify their claims if they cannot provide evidence based on real world conditions.

To this end, it is important that consumer protection regulators can scrutinise recyclability claims armed with a robust legal definition of recyclable and clear guidance from government on how to assess recyclability. In the UK, forthcoming guidance for the assessment of recyclability of packaging under the EPR must contain sufficient safeguards to prevent plastic packaging without viable end markets or recycling capacity (i.e. soft plastics), from being advertised as recyclable.¹³⁰ It is plainly inadequate that soft plastics packaging is advertised as recyclable when industry (in the form of the UK Plastics Pact) acknowledge that it does not meet its own definition, which requires recycling at a scale of only 30%. In order to protect consumers from misleading claims, the UK CMA must interpret future government guidance on the recyclability of plastic packaging in the strongest possible sense and require companies to substantiate claims with evidence based on real world conditions.¹³¹

Regulators have an opportunity to send a clear signal to businesses and consumers about the (il)legality of misleading claims which propagate a myth of circular plastic, with beneficial consequences for climate and

¹²⁶ For example, in the EU the Green Transition Directive and draft Green Claims Directive was brought as part of the EU's Circular Economy Action Plan and the European Green Deal. In the UK the ASA has based its agenda of work around sectors and issues identified by the UK's Climate Change Committee as priority areas for carbon reduction and consumer behaviour change including green disposal of products (see ASA [article 28 November 2023](#)) and the CMA has made broadening its work on green claims a priority in its [Annual Plan 2024-2025](#).

¹²⁷ In the UK, in January 2023 the UK CMA announced a [review of environmental claims](#) in the FMCG sector and in December 2023 announced an [investigation](#) into green claims by Unilever.

¹²⁸ See BEUC complaint. As noted above, a result of this complaint, in August 2024 the Hungarian consumer protection regulator announced it was investigating a Coca-Cola water bottle brand for misleading 100% recyclable claims.

¹²⁹ In the USA a number of lawsuits have been filed against FMCG companies including Pepsi, Coca-Cola and BlueTriton and retailers such as 7-Eleven and Walmart in relation to misleading claims about recycling. See [Plastics Litigation Tracker](#), accessible [here](#).

¹³⁰ The PPWR design for recycling criteria, as outlined in Article 6(4) PPWR (accessible [here](#)) and to be established by way of future EU legislation may provide a helpful precedent. Among other things this requires taking into account (i) the ability of packaging waste to be separated into different material streams for recycling, sorted and recycled, so that the resulting secondary raw materials are of sufficient quality compared to the original material and can be used to substitute primary raw materials for packaging or other applications where the quality of the recycled material is retained, where feasible; (ii) established collection and sorting processes proven in an operational environment and cover all packaging components; and (iii) accessible recycling technologies, their economic and environmental performance, including the quality of the output, the availability of the waste, the energy needed and GHG emissions.

¹³¹ However, as consumer protection law prohibits both false and misleading claims regulators may also need to prohibit claims regarding the recyclability of plastic packaging that satisfy the basic legal definition of recyclable but nonetheless misleads consumers about the circularity of plastic packaging and its environmental impact.

pollution goals. Absent such intervention, consumers will not be empowered to make an informed choice between allegedly recyclable plastic packaging and more sustainable alternatives, such as reuse/refill. Given the trust consumers have in the recycling process and clear demand for recyclable packaging, the legal meaning of 'recyclable' must be sufficiently robust and protected by regulators via enforcement. The evidence is clear that recycling is not a solution to the plastic waste crisis and consumer protection law requires that consumers are not misled as to that reality.

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