





Protecting the consumer - The path towards reliable and transparent green marketing and environmental statements

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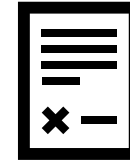
Role of the Consumer Ombudsman

- Enforcement of the Marketing Practices Act (MPA) and other consumer related legislation taking the viewpoint of the consumer
- Independent authority
- Prioritize own activities
- Means of enforcement:
 - Negotiation
 - Issue warnings
 - File lawsuits
 - Report to the police
- On lex specialis – cooperation with other authorities

The Marketing Practices Act's prohibition against misleading information

- Marketing information must not be misleading (§§ 5-6) 
 - "§ 5. A trader's commercial practice shall not contain false information or by virtue of its form or otherwise mislead or be likely to mislead the average consumer, regardless of whether the information is factually correct"
 - "§ 6. A trader's commercial practice shall not mislead by omitting or concealing essential information or presenting essential information in an unclear, incomprehensible, ambiguous or inappropriate manner"
- The prohibitions against misleading are punishable (§ 37, stk. 3) 

Claims must be correct, relevant and verifiable



- It must be possible to substantiate factual information (§ 13)
 - "§ 13. The economic operator shall be able to demonstrate the accuracy of the facts."
- Messages must be correct, accurate, relevant and balanced
- Requirements arising from legislation may not be used independently in marketing
- Claims need to be reassessed/updated
- As a general rule, it must be possible to support opinions/studies from independent bodies with recognised professional competence



The overall impression

- A marketing initiative is assessed on the basis of the overall impression that it is likely to give the average consumer
- Wording, *layout*, **choice of colours**, images, sounds, etc. may give the impression of an environmental advantage



Environmental marketing a focus area in Denmark

- 2011/14: Environmental and Ethics Marketing Guide
- 2019: Green Power Guidelines
- 2021: Quick Guide for Companies on Environmental Marketing
- 2021: Additional appropriation in the Finance Act of 2022-25



From the Environmental and Ethics Marketing Guide (2011/14)

General statements **without** explanation

- E.g. "Environmentally friendly"
- An **absolute** statement – relates to the **entire product**
- Must show **significantly less impact** on the environment than similar products
- The documentation must be based on an **LCA**

General statements **with** explanation

- E.g. "Environmentally friendly - The packaging consists of 50% recycled plastic"
- The environmental merit **explains the claim** and must be **verifiable**
- **Four requirements** for the importance of environmental excellence, *see next page ->*

Concrete, neutral information about measures

- E.g. "The packaging consists of 50% recycled plastic"
- The **correctness** of the statement/actions must be **verifiable**
- Consumer Ombudsman's **recommendation**



Requirements for statements with an explanation

1. The benefit must not be significantly overshadowed by the overall environmental impact of the product (proportionality in a life-cycle perspective)
 - a) Simple proportionality
 - b) Highly environmentally harmful product groups
2. The benefit must not have come from activities that in themselves harm the climate/environment (burden shifting)
3. The benefit must not be usual for similar products (de facto standard)



Specificly on climate claims

Climate compensation – a complex business

Compensation of CO₂e emissions is questioned in four dimensions:

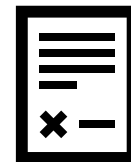
- **Additionality**
 - Would the activities take place disregarding the specific compensation project or does this specific project and the funding of it make the difference?
- **Timeliness**
 - Does the compensation (the capture of CO₂ or the conservation of areas that would otherwise release CO₂) happen in connection with or immediately following the emission of the CO₂ in question?
- **Permanence**
 - Which guarantee is given that the reductions are permanent, i.e. not reversed in future (time frame of maybe 100 years)?
- **Leakage**
 - What guarantee is given that the project does not create a market push, relocating pre-project activities and continuing CO₂ emitting activities at a nearby location.



The Arla case from Sweden

The Arla case from Sweden as of February 2023 confirms our approach to compensation:

- Arla claimed milk to have a net zero climate impact through climate credits from tree planting projects.
- Although Arla did use acknowledged schemes like Plan Vivo and Gold Standard, the compensation was still spread over 100 years in forest protection or forest planting projects.
- The Swedish Court of Patents and Markets sentenced Arla based on the compensation activities with the following argumentation:
 - The consumer is judged to expect the product not to have any climate emission, or that the compensation is fully reached within a reasonable time span, not after 100 years.
 - It was considered unacceptable that the compensation was only reached in full after 100 years, because no one will be able to observe nor guarantee the full compensation 100 years from now.





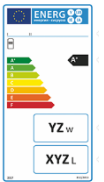
On life cycle assessment (LCA), labelling and certification

Life cycle assessment (LCA)

- An LCA must cover all relevant phases of the product's life cycle:
 - Raw materials -> production -> use -> discard
- An LCA must include all relevant impact categories:
 - Climate, toxicity, biodiversity, acidification, eutrophication etc.
- LCAs must be carried out by professionals according to acknowledged standards and be verified by third party experts
 - Acknowledged standards: ISO 14040 and 14044

Labels and certifications

- Labelling and certification schemes can provide a significant support of the documentation that is incumbent on the company to provide for marketing statements.
- A labelling or certification scheme is characterised by a set of criteria to be met as well as a control function. The criteria involved and the distribution of responsibilities in the system should be clear.
- Marketing statements should reflect the subject and target level of the certificate.
 - For example, if a scheme is solely about energy consumption, this cannot be used to market a product as "sustainable" or "environmentally friendly".
 - For example, if a scheme contains a target level corresponding to the environmentally best third of the market, this cannot justify marketing with relative statements, e.g. as "least environmentally harmful".
- The subject matter of the scheme must be respected.
 - For example, if a scheme deals with requirements for products, it may not be used in marketing statements about the company – and vice versa.





Sustainable products ?

Claims on sustainability

- “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”
(the Brundtland report, United Nations, 1987)

How to understand sustainability

1. The hierarchy of sustainability
2. The SDGs - A normative framework from the UN
3. Technical topics of environmental sustainability
4. Perspectives of sustainability



The hierarchy of sustainability

Sustainability

Environment

People

Economy

Climate

Biodiversity

Chemicals

etc.

Health

Education

etc.

Finance

Tax

etc.

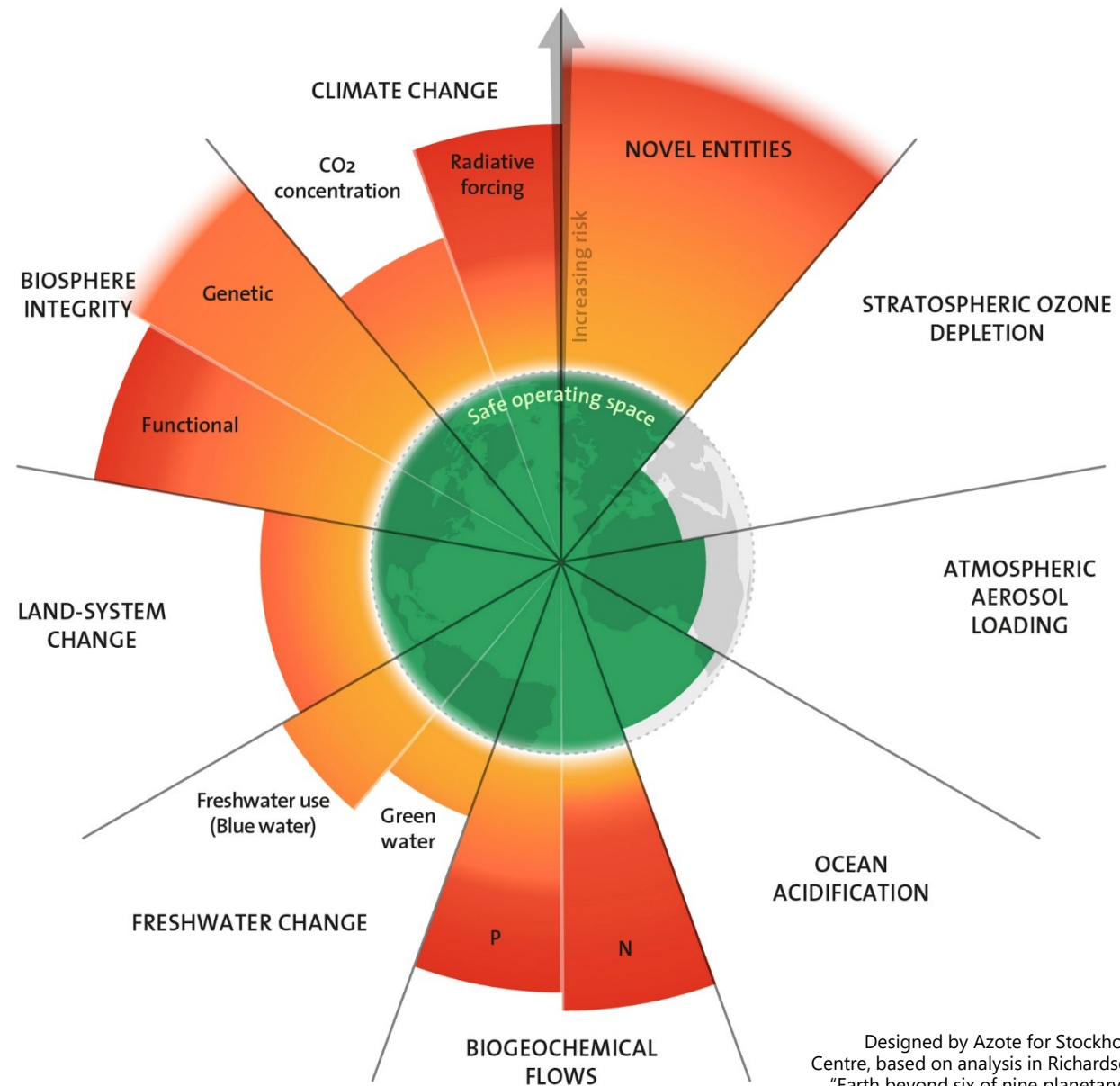


SUSTAINABLE DEVELOPMENT GOALS

<p>1 NO POVERTY</p>	<p>2 ZERO HUNGER</p>	<p>3 GOOD HEALTH AND WELL-BEING</p>	<p>4 QUALITY EDUCATION</p>	<p>5 GENDER EQUALITY</p>	<p>6 CLEAN WATER AND SANITATION</p>
<p>7 AFFORDABLE AND CLEAN ENERGY</p>	<p>8 DECENT WORK AND ECONOMIC GROWTH</p>	<p>9 INDUSTRY, INNOVATION AND INFRASTRUCTURE</p>	<p>10 REDUCED INEQUALITIES</p>	<p>11 SUSTAINABLE CITIES AND COMMUNITIES</p>	<p>12 RESPONSIBLE CONSUMPTION AND PRODUCTION</p>
<p>13 CLIMATE ACTION</p>	<p>14 LIFE BELOW WATER</p>	<p>15 LIFE ON LAND</p>	<p>16 PEACE, JUSTICE AND STRONG INSTITUTIONS</p>	<p>17 PARTNERSHIPS FOR THE GOALS</p>	

Technical topics: The Planetary Boundaries

- Safe operating space for the planet on 9 topics
- 6 out of 9 boundaries are exceeded



Designed by Azote for Stockholm Resilience Centre, based on analysis in Richardson et al 2023: "Earth beyond six of nine planetary boundaries".

The perspective: State of sustainable development in the world

Ecological Footprint per Person

vs

UN Human Development Index

as of 2017

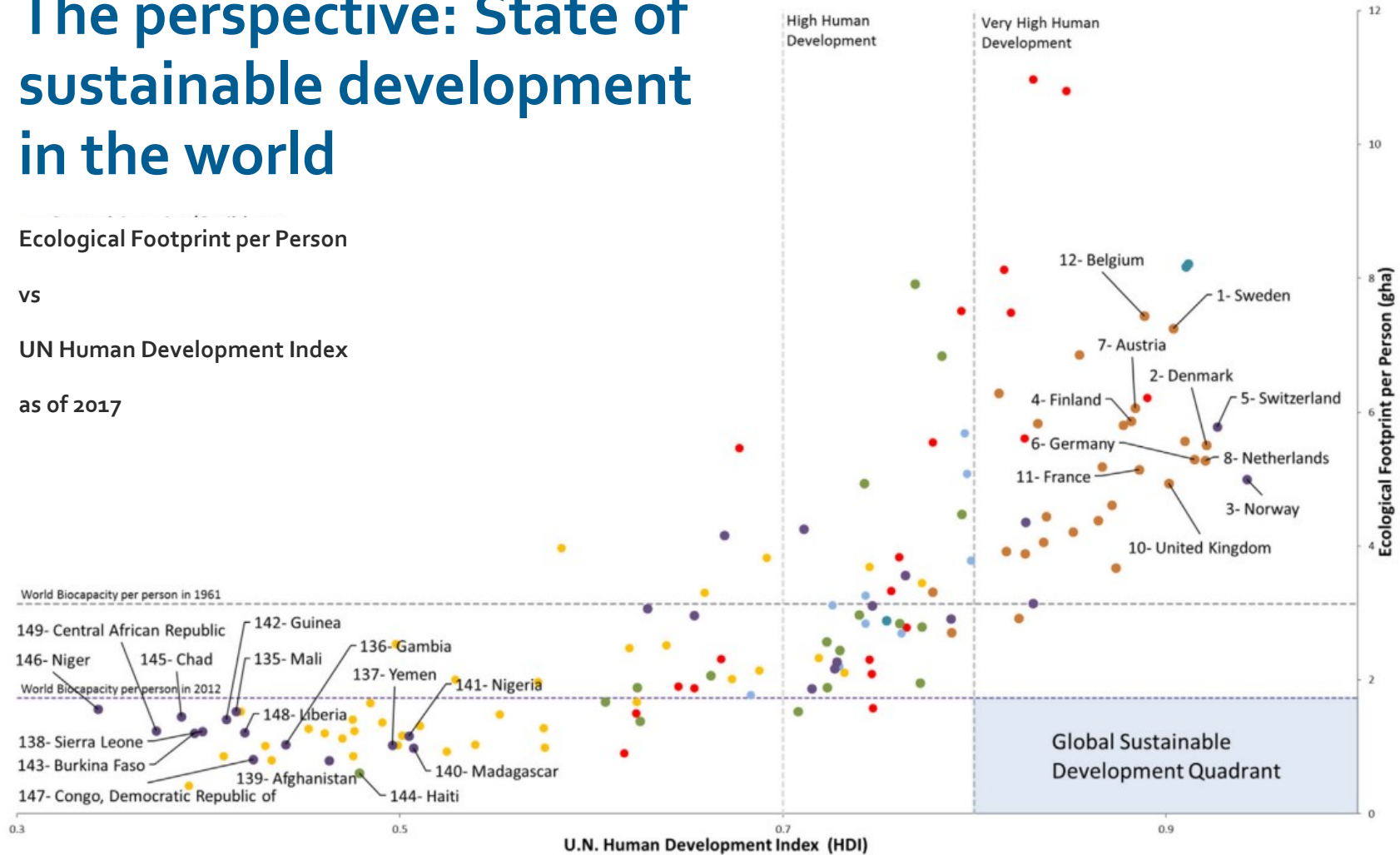


FIGURE 1 | Ecological Footprint per person and HDI by country indicate how close each country is to basic global sustainable development criteria (high human development, within resource requirements that are globally replicable). Each number indicates the country's ranking on the sustainable development goal (SDG) index (only top and bottom 10 are marked here).

Sustainable products ?

- If a product is marketed as sustainable:
 - It is an absolute statement that the product during its life cycle does not impair the ability of future generations to meet their needs.
 - This shall be demonstrated by a life cycle assessment covering all relevant environmental and social aspects.
 - The UN's Sustainable Development Goals can form the basis for choosing topics.
 - The model of the planetary boundaries sets the proportions.
- It is easier to use statements:
 - To pursue sustainability (with a plan) or
 - About sustainability measures (with an explanation about the measure)
 - →

Sustainability initiatives etc.

- Statements about **pursuing** sustainability or about sustainability **initiatives** may be OK if:
 - There is a **concrete plan, verified by independent** body, e.g. via a recognized implemented management system on environment / sustainability
 - The plan must **address the significant impacts** from the product's or company's activities and result in the product or company continuously being developed in a way that gradually but **significantly reduces the impact** on nature, the environment and people
 - The plan must be **initiated or imminent**.
 - The initiatives must be **well described** and the **effects must be measurable**



Cases on “sustainable products”

- The companies marketed their products with statements of absolute sustainability, e.g. "sustainable bottle", "sustainable toys", "sustainable styles", "sustainable designs", etc. or with their own "sustainability label"
- Companies could not provide evidence
- Several of the companies stated that the background for the statements was that the products consisted of, for example, 100% organic cotton, 50% recycled material, free of BPA, or that they had a label from a labelling scheme, a certification, etc.
- **Misleading to market products as sustainable**

Recommendation

- Is a **significant effort** being made for the environment?
 - Then it is an **important message** to be able to market.
- Be as **specific** as possible – Concrete statements are significantly **easier to document** and provide **more accurate information** to consumers.
- Remember: The **overall impression** is crucial.





What is in the pipeline from the EU ?



Revision of the Unfair Commercial Practices Directive (UCPD)

- The proposal for the new marketing directive bans the use of generic environmental statements without an "excellent environmental performance". But how is this defined? And can we conclude on the contrary that it would be legal to use terms about environmental friendliness if you have an "excellent environmental performance"?
- Strict requirements are imposed on sustainability labels.



Taxonomy and disclosure regulations

- Lex specialis for "sustainable" economic activities/investments.
- Six climate and environmental targets with technical screening criteria and "do no harm".
- Criteria largely correspond to the levels of legislation – i.e. a kind of compliance mechanism that is expected to be tightened continuously via delegated acts.
- Our interpretation: If you meet the requirements (Article 9 of the disclosure), you can call the investment/activity "sustainable". However, this does not make the product sustainable according to the Marketing Act.



Proposal for a Directive on Green Claims (GCD)

Unclear how the interaction between GCD and UCPD should be, but:

- Stricter requirements for certifications and labelling schemes as well as cut-off dates for existing and new schemes.
- There must always be verification by a third party, but the role of the Consumer Ombudsman in assessing the statements is unclear.
- Perhaps there will be a comprehensive verification practice where DANAK accredits companies to certify or verify documentation linked to marketing statements.
 - It can become problematic because it is important that it be 1:1 and accurate.
 - Example: Afforestation projects, which are verified against e.g. Gold Standard, but which despite this verification are not valid documentation for climate compensation (ref. the Arla case from Sweden) due to lack of timeliness and permanence.



Thank you for your attention

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