



## Decision of the Netherlands Authority for Consumers and Markets within the meaning of Section 12h of the Establishment Act of the Netherlands Authority for Consumers and Markets

**Reference** ACM/UIT/ 583383  
**Case number** ACM/21/053823  
**Date** 19 August 2022

### 1 Request

1. On August 16, 2022, the Netherlands Authority for Consumers and Markets (hereafter: ACM) received a request, within the meaning of Section 12h of the Establishment Act of the Netherlands Authority for Consumers and Markets (hereafter: Establishment Act), filed by Decathlon Netherlands B.V. (hereafter: Decathlon).<sup>1</sup>
2. In this decision, ACM assesses the request for declaring a commitment of Decathlon binding. In chapter 2, the background of the investigation into Decathlon is explained, as well as a description of the course of the procedure. Chapter 3 contains the contents of the commitment. In chapter 4, ACM discusses the legal framework. In chapter 5, ACM assesses the commitment itself. Finally, chapter 6 contains the declaration itself, which declares the commitment binding for a period of two years.

### 2 Background and course of the procedure

3. As part of its focus on sustainability issues, ACM in 2020 carried out a study into the use of sustainability claims by businesses.<sup>2</sup> ACM launched this study because more and more sustainability claims emerge in different sectors. Behavioral research shows that consumers increasingly take into account sustainability aspects (and in this case, more specifically, environmental aspects) in their day-to-day purchasing decisions, but that they do not always trust the claims that are made.<sup>3</sup> ACM finds it important that consumers are able to make sustainable choices on the basis of trustworthy information *and* that businesses that *do* operate in a sustainable manner are able to set themselves apart from their competitors by using their sustainability claims. These were critical reasons for launching a study into the sustainability claims used in different sectors, and to check whether they could be misleading. In the study, ACM found that sustainability claims were quite common, and that

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<sup>1</sup> ACM/IN/709450.

<sup>2</sup> Sustainability claims are statements in advertisements and marketing regarding the environment and labor conditions, also referred to as 'environmental claims' and 'ethical claims'. Sustainability claims can come in written forms or in visual forms, for example logos or illustrations.

<sup>3</sup> ACM/UIT/573214, annex 8.

they were not always clear or correct.<sup>4</sup>

4. Although the application of legislation regarding unfair commercial practices to sustainability claims was not new,<sup>5</sup> this study still provided an opportunity to give businesses more information about the use of sustainability claims. It resulted in the publication of the Guidelines regarding Sustainability Claims (hereafter: the Guidelines) by ACM in January 2021.<sup>6</sup> In these Guidelines, ACM offers businesses guidance about honest communication regarding sustainability aspects in the form of five rules of thumb.
5. On 30 April 2021, ACM sent letters to over 170 businesses in the clothing<sup>7</sup>, energy<sup>8</sup>, and dairy<sup>9</sup> sectors. In this letter, ACM reminded those businesses of the Guidelines, and explained what problems ACM at that point saw in their respective sectors.<sup>10</sup> In that context, ACM indicated, using examples, what the most frequent misleading sustainability claims were, specifically in the clothing sector. In the letter, ACM also explained how such claims can be brought in line with the relevant rules and regulations.
6. In that context, ACM asked these businesses to review their commercial sustainability claims in all their communication channels, and, where necessary, to bring these in line with legislation regarding unfair commercial practices. In addition, ACM has indicated that it would continue its investigation from 14 June 2021, and that traders making sustainability claims that do not comply with the aforementioned legislation run the risk of enforcement by ACM from that date onwards.<sup>11</sup>
7. Following these letters, ACM has received various questions and comments. On 27 May 2021, ACM published on its website a list with frequently asked questions together with the answers to those questions.<sup>12</sup>
8. Of the 170 businesses that ACM had sent a letter, over 60 are active in the clothing sector, including Decathlon.<sup>13</sup> After 14 June 2021, ACM checked ten businesses in the clothing sector in more detail. This selection was made on the basis of the highest turnover in the Netherlands from online sales. Decathlon is one of these businesses. This check specifically focused on the use of misleading sustainability claims on the basis of three types of violations:
  - i. Using vague/unclear/absolute terms, as a result of which the product's sustainability benefit is not clear. In addition, the substantiation of those terms is missing or not easily found.

<sup>4</sup> See also [Rules of thumb for sustainability claims have been finalized, serving as basis for ACM's enforcement | ACM.nl](#)

<sup>5</sup> For example, there has been guidance from the European Commission regarding the use of sustainability claims since 2016, laid down in the 'Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices and an earlier version from December 2000, the "Guidance on Making and Assessing Environmental Claims".

<sup>6</sup> [Guidelines sustainability claims | ACM.nl](#).

<sup>7</sup> [Sector letter regarding sustainability claims in clothing sector \(acm.nl\)](#)

<sup>8</sup> [Sectorbrief energie duurzaamheidsclaims \(acm.nl\)](#) (in Dutch)

<sup>9</sup> [Sector letter regarding sustainability claims in dairy sector \(acm.nl\)](#)

<sup>10</sup> [Sector letter regarding sustainability claims in clothing sector \(acm.nl\)](#)

<sup>11</sup> [Letters to companies in the energy, clothing, and dairy sectors about sustainability claims | ACM.nl](#)

<sup>12</sup> <https://www.acm.nl/nl/faq-duurzaamheidsclaims-nav-sectorbrieven> (in Dutch)

<sup>13</sup> ACM/UIT/564029, April 30, 2021

- ii. Incorrect or improper use of the claim “organic cotton”. In addition, the substantiation of such terms is missing or not easily found.
  - iii. Using sustainability filters and sustainable collections without making clear what criteria are used, or providing a substantiation as to why a specific product falls under such a filter or collection.
9. In August 2021, ACM launched a follow-up investigation into six companies in the clothing sector where ACM found the most potentially misleading sustainability claims. One of these companies is Decathlon.<sup>14</sup>
10. In a letter of October 1, 2021, ACM informed Decathlon that ACM's investigation had revealed that Decathlon had sustainability claims on its website that probably do not comply with the rules regarding unfair commercial practices. In the same letter, ACM indicated that the investigation into Decathlon would be continued with an eye to enforcement. Finally, ACM in the letter requested information regarding sustainability claims that were made.<sup>15</sup>
11. On March 2, 2022, ACM announced that it was in the process of drawing up a statement of objections, and asked Decathlon to respond to the body of facts that had been established during the investigation.<sup>16</sup> On March 16 and 17, 2022, Decathlon responded to the body of facts both in writing as well as orally.<sup>17</sup>
12. In April 2022, Decathlon contacted ACM in connection with the opportunity to file a request for declaring binding a commitment within the meaning of Section 12h of the Establishment Act.<sup>18</sup> Between April 22, 2022, and August 10, 2022, the applicant and ACM held discussions about filing a request for a commitment decision. ACM stressed that the bar for such a request in the case at hand is high, in part because of the commercial practice's nature and scope as well as the subsequent potential harm. ACM has also stated that it would continue with the procedure without abatement.
13. In the discussions with Decathlon, ACM explained its findings of the investigation. The most important findings of ACM's investigation into Decathlon's commercial practices were:
  - Decathlon uses the sustainability claim “*Ecodesign*”, without immediately specifying clearly the sustainability benefits with the claim.. In addition, an explanation regarding the sustainability benefits is missing for specific products. Also, the sustainability benefits of several products are not or only sparingly explained on the product page. Finally, Decathlon uses a sustainability filter “*Ecodesign*” of which the explanation is vague and unclear. In the explanation of the filter, the criteria for the “*Ecodesign*” products are not clear.
  - Decathlon uses the “*Environmental labelling system*”, in which they gave grades to, in any case, “*Ecodesign*” products, ranging between A and E. These grades and the functioning of the

<sup>14</sup> ACM/INTNZP/011001.

<sup>15</sup> ACM/UIT/562231.

<sup>16</sup> ACM/UIT/571797 and ACM/UIT/573088.

<sup>17</sup> ACM/IN/680659 and ACM/IN/684409.

<sup>18</sup> ACM/UIT/581182.

Environmental labelling system were not or only sparingly explained by Decathlon.

14. On August 16, 2022, Decathlon filed a formal request with ACM for declaring a commitment binding.<sup>19</sup>

### 3 Contents of the commitment

15. In the introduction of its request for a commitment decision, Decathlon has declared the following:

(1) *Decathlon NL has taken note of the documents, and, taking them into consideration, is prepared to:*

- *acknowledge that it should have used clearer information on its website;*
- *make improvements in this area in order to prevent uncertainties and vagueness in the future;*
- *make serious efforts to provide clearer information to its consumers.*

(2) *Decathlon NL is and remains committed to complying with the relevant rules and regulations, as well as with ACM's Guidelines regarding Sustainability Claims (the "Guidelines").*

16. Decathlon requests ACM to declare binding the following commitment:

#### COMMITMENTS

##### Website of Decathlon NL<sup>20</sup>

###### *General*

I. Decathlon NL uses the following timeline for the changes to the website:

- All sustainability claims will be temporarily removed from the website before August 22, 2022.
- Decathlon NL aims to reattach all sustainability claims to the products in question on the website before October 31, 2022.

###### *Product page*

II. Decathlon NL will implement textual improvements to the sustainability claims as well as to the explanations thereof, which will be added to the ecodesign products in question. In that context, Decathlon NL uses the following step-by-step guide:

1. The sustainability claim(s) will be improved. For example: the old text "With 80% recycled polyester guaranteeing excellent use characteristics" [in Dutch: "*Met 80% gerecycled polyester dat garant staat voor goede gebruikseigenschappen*"] will be replaced with the new text: "This product is composed of 80% recycled polyester" [in Dutch: "*Dit product is samengesteld uit 80% gerecycled polyester*"].

<sup>19</sup> ACM/IN/709450.

<sup>20</sup> The website's design, after all changes have been implemented, is still not final, and can, in practice, deviate from what is outlined in this Request. Decathlon NL commits to ensuring that, as soon as the sustainability claims have been republished on the website, they will be in line with the Guidelines and the relevant rules and regulations.

2. The explanation of the sustainability claim(s) (technical information) will be improved. For example: the old explanation “By recycling [plastic bottles or partially textile waste] to make our polyester, we reduce the use of fossil fuels, and, at the same time, the fabric offers the same breathability that is essential for trail running” [In Dutch: *"Door [plastic flessen of deels textielafval] te recycleren om ons polyester te maken, verminderen we het gebruik van fossiele brandstoffen en tegelijk biedt de stof hetzelfde ademend vermogen dat essentieel is bij trail running"*] will be replaced with “We make recycled polyester from plastic bottles or worn-out textile. By reusing this into a product, no new fossil fuels are used. The fabric remains of the same quality, and has the same excellent characteristics” [In Dutch: *"Gerecycled polyester maken we uit plastic flessen of versleten textiel. Door dit opnieuw in een product te verwerken worden er geen nieuwe fossiele brandstoffen gebruikt. De stof blijft wel van dezelfde kwaliteit en heeft dezelfde goede eigenschappen"*].
3. In the comparison of the ecodesign method with the conventional method, Decathlon NL will include information about the specific benefits of the ecodesign method.
4. Both the sustainability claim(s) and the explanation thereof will be included in a single text on the product page.
5. New products will be checked through the translation process before they are published on the website. This additional check will also become a standard element if a change is made to products that have already been published on the website.

#### *Communication about ecodesign*

III. For additional information about ecodesign and sustainability, links will be added in various locations on the website, which will guide consumers to the general ecodesign information page. Examples of additional ecodesign information are:

- Web page with an extensive overview of everything about ecodesign<sup>21</sup>
- Links to videos with explanations about sustainability and ecodesign
- Web page with additional information about sustainability and ecodesign<sup>22</sup>
- YouTube page of Decathlon with Sustainability with videos about ecodesign<sup>23</sup>

#### *Overview pages and filter pages*

IV. Decathlon NL may add filter pages (new or otherwise), with each of them concerning a specific sustainability benefit. In that way, consumers are able to filter products with one specific sustainability benefit. With regard to all filter pages (possible or actual), criteria will be created with which products must comply in order to fall under the filter in question.

<sup>21</sup> See: <https://sustainability.decathlon.com/its-because-we-design-our-products-that-we-can-ecodesign-them>

<sup>22</sup> See: <https://sustainability.decathlon.com/our-ecodesign-approach-and-criteria>

<sup>23</sup> See: <https://www.youtube.com/channel/UCkU4eJ5FBSaUBuiQzT2a4Sw>

- V. Furthermore, Decathlon NL will add a new sticker to the ecodesign products on the overview pages and filter pages that clarifies the specific sustainability benefits of the product in question. This new sticker replaces the old 'Ecodesign' sticker or will be added as additional sticker.

### **Compliance program**

- VI. Decathlon NL will create a compliance program with regard to the sustainability claims on textile products.

- On September 1, 2022, Decathlon NL will appoint a legal counsel compliance (on the condition that the probationary period is completed). The legal counsel compliance checks the sustainability claims with regard to textile products on the current and new product pages using the Guidelines and the relevant rules and regulations. The legal counsel compliance does so together with the sustainability team of Decathlon NL.
- Decathlon NL will use an automated product-information system for product engineers at a group level. This system must ensure that Decathlon NL complies with the relevant rules and regulations. Product engineers can enter product data into this system, which then assesses automatically whether the product in question meets the criteria for a specific sustainability benefit. This internal audit instrument will be implemented before December 31, 2022.
- Before August 31, 2022, Decathlon NL will instruct its employees that are active in primary teams and that are responsible for the content (and for sustainability claims on textile products) on its website. These employees will receive clear instructions on how sustainability claims on textile products on the website should be made in practice. These instructions will be checked every six months by the legal counsel compliance, and will be updated, if necessary. At the request of ACM, Decathlon NL will present an example of the instructions.

- VII. Decathlon NL will provide training to its employees that are active in the primary teams.

- Each employee will follow a mandatory training on sustainable development and ecodesign, as part of their onboarding program. This training is part of the onboarding for new members of staff, and will be followed within the first three months.
- The customer service team (CRC: Customer Relations Center), the online team, and the marketing and communications team will follow the mandatory training on sustainability and ecodesign within the first three months (1.5 hours). This training covers the following topics:
  - o Context regarding climate change;
  - o Decathlon's sustainable development objectives;
  - o Sustainability projects of Decathlon NL;
  - o Communication concerning sustainability.
- The training about sustainability and ecodesign is given by the local Decathlon NL employee responsible for sustainability, and is supported by the legal counsel compliance.

- The online team and the marketing and communications team follow two mandatory additional workshops per year (one workshop every six months, 3 hours) about the updates of the ecodesign approach and sustainability actions. The mandatory additional workshops cover the following topics:
  - o The Guidelines, other relevant rules and regulations regarding sustainability and the relevant updates in this area;
  - o Communications about sustainability topics;
  - o Explanation of new initiatives and new online communication about sustainability topics;
  - o All trainings are updated each year by the sustainability team together with the legal counsel compliance in order to ensure that new information about sustainable development and ecodesign are included in the trainings.

### **Audit**

VIII. Decathlon NL conducts one external audit and two internal audits with regard to the commitments in this Request.

1. Eight months after this commitment decision, Decathlon NL will have an audit conducted by an external, independent auditor;
2. Sixteen months and 24 months after this commitment decision, Decathlon NL will have an internal audit conducted by the internal legal counsel compliance.

IX. The audit consists of the following elements:

- A check of whether the information with textile products with sustainability claims are in accordance with the Guidelines and other relevant rules and regulations regarding sustainability claims.
- A check of the execution of the compliance program;
- An overview of the changes to the website with regard to sustainability claims for textile products and the assessment of any new sustainability claims;
- An overview and status update of the compensation expenditures.

### **Compensation**

X. Decathlon NL will donate an amount of €400,000 to initiatives that make a positive contribution to sustainability, more specifically the distribution of knowledge, transparency, and professionalization with regard to eco-conception and sustainability with regard to textile products in the Dutch market.

XI. Decathlon NL attaches the following conditions to the donation in order to be sure that the money reaches its intended recipient, and that it is spent on the intended objective:

- The donation results in an additional investment and in an additional sustainability benefit, which is verifiable in an objective manner;
- The donation is linked to sustainability of textile products;
- It must be clear on what specific project the money is spent, so that it can be verified whether the money has reached its intended recipient and is spent on the intended objective;
- The donation is independent of the interests (financial or otherwise) of Decathlon NL, which means that the donation will not result in a profit for Decathlon NL;
- The donation will not be deducted on Decathlon NL's tax return;<sup>24</sup>
- The charity or the organization that receives the donation is a non-profit organization.

XII. Decathlon NL has selected the following charities / non-profit organizations:

- **Research firm:** funding research into sustainable and circular textile materials. Decathlon NL has identified two research initiatives, which are:
  - o Formulating a taxonomy and cascading, as a result of which textile can be recycled better;
  - o A weather information system for farmers that grow sustainable cotton in Africa.
- **Non-profit organization:** a global NGO that aims to making biomimicry (design and innovation inspired by nature) better-known and using this to find solutions to environmental and social challenges. This NGO's aim is systemic change in order to make industrial sectors sustainable. Decathlon NL will donate to projects in order to promote systemic change in the textile sector. In this context, Decathlon NL has identified a project for boosting textile recycling.

XIII. All communications about the compensation will include references to ACM's commitment decision.

XIV. Decathlon NL will sign the contracts with the research firm and the abovementioned non-profit organization before September 30, 2022 (subject to due diligence of the organizations in question). In order to guarantee the effect of the compensation, Decathlon NL plans to transfer the amount in installments, with the intention to transfer the total amount before December 31, 2022.

(3) Decathlon NL requests ACM to declare the commitments binding under Section 12h of the Establishment Act, and to end the investigation.

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<sup>24</sup> Donations up to €100,000 per year (and up to 50% of the return) are tax deductible. Decathlon NL has already covered that amount of €100,000 through various donations in 2022. Decathlon NL will, before the end of May 2023, demonstrate in its tax returns that it did not claim the donations as deductions.

## 4 Legal framework

17. Under Section 12h of the Establishment Act, ACM may hand down a decision in which it declares binding a commitment made by a market organization. When declaring a commitment binding, ACM's power to impose administrative fines or orders subject to periodic penalty payments on that market organization for the practices in question expires, under Section 12h, paragraph 1, of the Establishment Act. Requests for commitment decisions must be filed before ACM issues a decision regarding the imposition of an administrative fine or order subject to periodic penalty payments.
18. Under Section 12h of the Establishment Act, ACM can declare binding a commitment if it deems the declaration of a commitment binding more efficient than the imposition of an administrative fine or an order subject to periodic penalty payment.
19. In order to determine whether the declaration of a commitment binding is more efficient than the imposition of an administrative fine or order subject to periodic penalty payments, ACM will look at, among other aspects, what stage the investigation into the alleged violation is currently in, as well as at the nature of the violation.
20. In addition, the contents of the commitments must:
  - Make a plausible case that Decathlon will comply with the decision in a verifiable manner;
  - Guarantee to ACM that, with the commitment decision, Decathlon acts in accordance with the statutory instructions or prohibition for which the commitment has been made.
21. Under Section 12h, paragraph 5 of the Establishment Act, the undertaking must act in accordance with the decision after ACM has handed down a decision declaring a commitment binding. If an undertaking does not act in accordance with the decision, it will risk an administrative fine (under Section 12m of the Establishment Act) or ACM may amend or repeal the decision.

## 5 ACM's opinion

### 5.1 The adjusted commercial practice

#### Changes to the website

22. The request for a commitment decision shows that Decathlon has acknowledged that the provision of information regarding sustainability on its website in the past should have been clearer and more complete. Decathlon is prepared to make improvements in order to prevent any uncertainties and vagueness from occurring. Decathlon has indicated to make serious efforts to provide clearer information to its consumers. In addition, Decathlon indicates that it will change or already has changed its commercial practices on the website. Decathlon has committed to implementing or has already implemented the following changes to its website:

23. Decathlon has indicated to remove temporarily the sustainability claims from its website. In addition, Decathlon has committed to possibly replacing the Ecodesign label or expanding it by adding various labels and filters with specific sustainability benefits, and providing explanations about these sustainability filters using concrete criteria. Decathlon additionally committed to, on the product page under the heading Ecodesign, providing a further explanation to the sustainability benefits regarding the sustainable materials/technologies that are used. Also, Decathlon has indicated that a link will be added to the website to the information page about Ecodesign. That page will include an extensive explanation and videos about the benefits of Ecodesign.
24. Finally, Decathlon has committed to maintaining the above changes, and to ensuring that future sustainability claims, too, are in line with the relevant rules and regulations.
25. With this commitment, Decathlon will end the concerns identified by ACM and listed in paragraph 13 of this decision.

### **Compliance**

26. The request shows that Decathlon has committed to appointing a legal counsel compliance and to creating a compliance program, which will consist of, among other elements, a legal check of all current and future sustainability claims. Other elements of the compliance program are regular and up-to-date instructions and workshops for employees that are involved in the creation of sustainability claims.
27. With the compliance program, checks of Decathlon's sustainability claims will be improved. As such, ACM is confident that Decathlon has built in sufficient safeguards to ensure that, when using sustainability claims, it will continue to act in accordance with consumer protection regulations. The risk of consumers being misled as a result of misleading sustainability claims is thus reduced as much as possible.

## **5.2 Compensation**

28. Decathlon has committed to donating an amount of 400,000 euros as compensation to two non-profit institutions that conduct research into the development of sustainability in the production of and during the life cycle of pieces of clothing. With its donation, Decathlon has included a form of compensation in the commitment decision. Decathlon has pledged that this donation will go to institutions that pursue an additional sustainability benefit and that are independent of Decathlon, and that the spending of the donation on projects can be verified.
29. ACM aims to have consumer harm as a result of the insufficiently clear sustainability claims compensated. However, in this case, identifying the specific harm of individual consumers that have been harmed is not that easy. With the pledged donation, Decathlon contributes to developments that promote sustainability in the clothing sector, and, as such, offers compensation for the harm inflicted on society.

### 5.3 Verifiability

30. ACM is of the opinion that the commitment is sufficiently verifiable. Over the next two years, Decathlon, every eight months, submits a report to ACM about the execution of the compliance program, an overview of changes to its websites with regard to sustainability claims, and the assessment of any new sustainability claims.
31. With the first report (after the first eight months), Decathlon provides a report from an external independent party (for example an accountant), which checks whether the execution of the compliance protocol has worked in practice. For the duration of the commitment decision, Decathlon will also submit evidence regarding the execution of the compensation.
32. With the submissions of the reports and evidence, ACM is able to verify compliance with the commitment.

### 5.4 Conclusion

33. The request for declaring a commitment binding was filed before ACM finalized the statement of objections (investigation report), and therefore also before a decision regarding the imposition of an administrative fine or an order subject to periodic penalty payments.
34. ACM believes, on the basis of the foregoing, that declaring the commitment binding is effective in this case. In that context, ACM takes into account the fact that, with this commitment, a potentially protracted sanctioning procedure is prevented. With this commitment, sustainability claims by Decathlon will be brought as quickly as possible in line with the rules and regulations, and will continue to be so. At the same time, Decathlon offers compensation for any harm to society. Furthermore, publication of this decision can take place sooner than publication of any sanctioning decision. Publication of this commitment decision aims to bring about a broad effect with regard to the improvement of sustainability claims in the entire clothing sector.

## 6 Decision

35. Considering Section 12h, paragraph 2 of the Establishment Act, ACM decides to declare the commitments referred to in chapter 3 binding on Decathlon.
36. As such, ACM no longer has the power to continue the investigation launched against Decathlon into its use of sustainability claims between June 14, 2021 and August 16, 2022.
37. ACM has the power to enforce compliance with this commitment. ACM can impose a fine in the case of non-compliance with this commitment. In addition, ACM can repeal this decision, and subsequently relaunch the investigation. ACM can assess new information that it receives after the commitment has been declared binding.

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38. This decision will be effective for two years, starting from the date of publication.

The Netherlands Authority for Consumers and Markets,  
on its behalf,

Edwin van Houten  
Director  
Consumer Department

*Anyone whose interest is directly affected by this decision can file an objection against this decision with the Netherlands Authority for Consumers and Markets within six weeks after the publication date of this decision. The objection must be sent to the following address: ACM, Legal Department (DJZ), P.O. Box 16326, 2500 BH, The Hague, the Netherlands. Under Section 7:1a, paragraph 1 of the Dutch General Administrative Law Act, an interested party may request the Netherlands Authority for Consumers and Markets in its objection to agree to filing an appeal with the Dutch Trade and Industry Appeals Tribunal (CBb) directly.*