



## 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

<b>Reference</b>	ACM/UIT/ 583382
<b>Case number</b>	ACM/22/179209
<b>Date</b>	19 August 2022

### 1 Request

1. On August 15, 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 H&M Hennes & Mauritz Netherlands B.V. (hereafter: H&M).<sup>1</sup>
2. In this decision, ACM assesses the request for declaring a commitment of H&M binding. In chapter 2, the background of the investigation into H&M 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

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<sup>1</sup> ACM/IN/709136.

<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.

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 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>

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

<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>.

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8. Of the 170 businesses that ACM had sent a letter, over 60 are active in the clothing sector, including H&M.<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. H&M is one of these businesses. This check specifically focused on the use of misleading sustainability claims on the basis of three types of violations:
- 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.
  - Incorrect or improper use of the claim "organic cotton". In addition, the substantiation of such terms is missing or not easily found.
  - 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 H&M.<sup>14</sup>
10. In a letter of October 1, 2021<sup>15</sup>, ACM informed H&M that ACM's investigation had revealed that H&M 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 H&M would be continued with an eye to enforcement. Finally, ACM in the letter requested information regarding sustainability claims that were made.
11. On March 11, 2022, ACM announced that it was in the process of drawing up a statement of objections, and asked H&M to respond to the body of facts that had been established during the investigation.<sup>16</sup> In an email of April 7, 2022, H&M responded to the body of facts.<sup>17</sup>
12. On June 2, 2022, the statement of objections in connection with the investigation into the use of misleading sustainability claims was sent to H&M.<sup>18</sup>
13. On June 30, 2022, H&M contacted ACM in connection with the option of filing a request for declaring binding a commitment within the meaning of Section 12h of the Establishment Act.<sup>19</sup> Between June 30, 2022 through August 12, 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

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<sup>13</sup> ACM/UIT/564028.

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

<sup>15</sup> ACM/UIT/561995.

<sup>16</sup> ACM/UIT/571793.

<sup>17</sup> ACM/IN/689039.

<sup>18</sup> ACM/UIT/574814.

<sup>19</sup> ACM/UIT/580410.

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.

14. In her contact with H&M, ACM explained its findings of the investigation. The most important findings of ACM's investigation into H&M's commercial practices were:
- H&M uses the sustainability claims "*Conscious*" and "*Conscious Choice*", without explaining what these actually mean. In addition, an explanation of the sustainability benefits for specific products is lacking.
  - H&M provides information about its sustainability efforts under the heading "product background" (in Dutch: "productachtergrond") of individual products, regardless of whether these are made of "more sustainable" materials, which may incorrectly give the impression that these products have sustainability benefits. In these texts, H&M emphasizes the intentions to work with more sustainable materials, without making clear what the current status is with regard to those intentions, thereby allowing too rosy a picture about the current state-of-play to emerge. Moreover, in the text about cotton, H&M gives the impression that all cotton that H&M Nederland uses is "sustainable" (in Dutch: "duurzaam"). The majority of the cotton is purchased through the Better Cotton Initiative (hereafter: BCI). However, with cotton purchased through BCI, it is impossible to guarantee that an individual product actually contains any Better Cotton threads, thus making it impossible to claim with certainty that the cotton is sustainable.
15. On August 15, 2022, H&M filed a formal request with ACM for declaring a commitment binding.<sup>20</sup>

### 3 Contents of the commitment

16. H&M requests ACM to declare the following commitment binding:

#### 1 Commitments

1. H&M makes the following commitments:

##### 1.1 Acknowledgement

2. H&M acknowledges that the provision of information regarding sustainability on its website in the past should have been clearer and more complete. By implementing changes, H&M expects to inform its customers better about the sustainability aspects of its products.

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<sup>20</sup> ACM/IN/709136.

## 1.2 Compensation

3. H&M commits to donating **EUR 500,000** (five hundred thousand euros) to a non-profit organization that is active in sustainability.
4. This is an organization that is not affiliated with H&M. Also, H&M has never donated to this organization before and will only do so as part of this request for a commitment decision. This donation will thus result in an additional investment *and* in an additional sustainability benefit.
5. H&M commits to not deducting this investment on its tax return. H&M will provide evidence for this at a later stage.

## 1.3 Changes to Website

### 1.3.1 Use of the "Conscious" label

6. With the intention to improve the communication regarding the sustainability labels used by H&M, H&M commits to doing the following:
  - A. Removal (until further notice) of the "Conscious" and "Conscious Choice" labels, both on the specific product pages, the product overview pages as well as on the rest of H&M's Website.
7. H&M commits to implementing the change under A within **one to two weeks** after the commitment has been declared binding.
8. H&M will assess how, in the future, it can communicate best to consumers the sustainability benefits of its products. On the basis of that assessment, H&M may decide to have the "Conscious" label and any references thereto (in an altered form, and in line with the relevant rules and regulations) return to its Website.

### 1.3.2 Product descriptions

9. With regard to the product descriptions on its product pages, H&M commits to doing the following:
  - B. Changing the product descriptions (including the design thereof), more specifically:
    - i Removal of the heading "More-sustainable materials" (in Dutch: "Duurzamere materialen"), so that only the heading "Composition" (in Dutch: "Samenstelling") remains;
    - ii Description of the used materials in accordance with the names in the Textile regulation ("elastane", "polyester" etc.). If applicable, H&M will add brackets to indicate whether more-sustainable materials have been used (in full or partially).

10. H&M aims to have this technical solution ready within **three months**, but no later than **six months** after the commitment has been declared binding. Until the technical solution is completely ready, H&M commits to the following:

**C.** Removal of the heading "More-sustainable materials" (in Dutch: "Duurzamere materialen") from the product description, so that only the heading "Composition" (in Dutch: "Samenstelling") remains.

11. H&M commits to implementing the change under C within **one to two weeks** after the commitment has been declared binding.

#### 1.3.3 *Product background*

12. With regard to the product background information that H&M has added to its product pages as pop-up screens, H&M commits to the following:

**D.** Changing the current texts regarding the materials (conventional or otherwise) that are used, as currently presented in the "product background" (in Dutch: "productachtergrond") pop-up screen on the product page. Information regarding H&M's aspirations for the future or sustainability efforts will be left out, and will be included elsewhere on the Website.

13. In addition, H&M commits to the following:

**E.** Changing the text on cotton, as presented in the "product background" (in Dutch: "productachtergrond") pop-up screen on the product page. H&M will clarify what the *Better Cotton Initiative* (BCI) entails exactly, and that there is no guarantee that any particular piece of clothing contains more-sustainable materials per se (explanation of *mass balance system*).

**F.** Adding texts about recycled or more-sustainable materials in the "product background" (in Dutch "productachtergrond") pop-up screen on the product page, if it follows from the product description that the product in question is made (entirely or in part) from recycled or more-sustainable materials.

14. H&M commits to implementing the changes under D and E within **one to two weeks** after the commitment has been declared binding. H&M aims to implement the change under F within **three months**, but no later than **six months** after the commitment has been declared binding. This is the same period that is needed for implementing the change under B (changing the product descriptions). Until the changes under B and F have been implemented, H&M will (as a temporary solution) implement the change under C: removal of the heading "More-sustainable materials" (in Dutch: "Duurzamere materialen") from the product description, so that only the heading "Composition" (in Dutch: "Samenstelling") remains.

## 1.4 Future

15. It goes without saying that H&M aims to comply fully with the relevant rules and regulations with regard to sustainability claims. H&M will test future sustainability claims against the rules and regulations applicable at that point in order to ensure that such claims are in line with them.

## 1.5 Compliance

16. H&M commits to organizing the compliance protocol as follows:
  - i. H&M appoints one or two internal employees (compliance officers) that will monitor the progress of the commitments, and that will check regularly whether the changes to the Website pledged by H&M are actually implemented.
  - ii. If the progress of the commitments does not proceed as planned, the compliance officers will make adjustments where necessary, and inform external parties (ACM and/or auditor) thereof, if necessary.
  - iii. Future changes concerning communications relating to sustainability will, prior to the implementation thereof, be submitted to H&M's legal division or an external law firm.
17. H&M commits, for the duration of the commitment decision, to reporting to ACM every eight months about the progress of the commitments (three times in total). The first report (which will be submitted to ACM after the first eight months) will be drawn up by an external independent party (auditor/accountant).

## 1.6 Duration

18. The commitments will be in force for a period of 24 months.

## 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 commitment must:
  - Make a plausible case that H&M will comply with the decision in a verifiable manner;
  - Guarantee to ACM that, with the commitment decision, H&M 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 H&M has acknowledged that the provision of information regarding sustainability on its website in the past should have been clearer and more complete. H&M expects that, by implementing changes, it will inform its customers better about the sustainability aspects of its products. H&M has committed to changing its website.
23. The most important changes that H&M has committed to implementing are the removal (until further notice) of references to the “*Conscious*”/ “*Conscious Choice*” labels, and the removal of information about sustainability aspirations and sustainability efforts from the heading ‘product background’ (in Dutch “productachtergrond”). In addition, H&M has indicated that, should it start using the “*Conscious*” label again, it will do so in an altered form and in accordance with the rules and regulations. H&M additionally indicated it will change the current texts in the product backgrounds regarding the used materials (conventional or otherwise). Finally, H&M has committed to clarifying the information about the composition of its products, for example, by indicating what share of the used material concerns a more sustainable variant.
24. In addition, H&M has committed to ensuring that future sustainability claims, too, will be in line with the rules and regulations.
25. With this commitment, H&M will end the concerns identified by ACM and listed in paragraph 14 of this decision.



## Compliance

26. The request shows that H&M has committed creating a compliance protocol, which will consist of, among other elements, a legal check of all current and future sustainability claims. The compliance program will consist of the appointment of compliance officer(s) and also of monitoring / regular checks whether the pledged changes in paragraph 16 will be implemented. Future changes relating to sustainability will be submitted to the legal division or an external law firm. Finally, H&M has indicated that, if it establishes that the commitment is not complied with, it will report this to ACM or the auditor, if necessary.
27. As such, ACM is confident that H&M 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. H&M has committed to donating an amount of 500,000 euros as compensation to a non-profit organization [Confidential]. H&M has pledged that this donation will go to an organization that pursues an additional sustainability benefit and that is independent of H&M, 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 possible. With the pledged donation, H&M 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. During the next two years, H&M, 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), H&M provides a report from an external independent party, which checks whether the execution of the compliance protocol has worked in practice. For the duration of the commitment decision, H&M will also submit evidence regarding the execution of the compensation.

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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 took a decision regarding the imposition of an administrative fine or an order subject to periodic penalty payments.
34. Even though the statement of objections (investigation report) had already been completed, 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 H&M will be brought as quickly as possible in line with the rules and regulations, and will continue to be so. At the same time, H&M offers compensation for 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 H&M.
36. As such, ACM no longer has the power to continue the investigation launched against H&M into its use of sustainability claims between 14 June 2021 and 15 August 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 investigate new information that it receives after the commitment has been declared binding.

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

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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.*