

NOTE

Extracts from the Consumer Agency memorandum No. 2018/529 of 2018/12/07 re revised general advice on consumer information about new passenger cars' fuel consumption and carbon dioxide emissions. Pps 9/10 from the document linked below. Unofficial translation. Footnotes not included

<https://www.konsumentverket.se/contentassets/dcac36a19d2a4f5c8c6b451ce8dfc4dd/allmanna-rad-remisspromemoria-2018-kov-tillganglig.pdf>

Promotional materials

In the current general guidance, as in the directive, the concept of "advertising material" was focused on printed advertising, such as newspaper advertisements, brochures and posters. Of course, such advertising still exists in the marketing of new passenger cars, but it does not reflect how the advertising landscape has changed and the marketing channels used today.

Commission Recommendation 2003/217 / EC states that the Directive's provisions on "promotional materials" should also be applied to other media and materials other than printed material. Accordingly, the recommendation states that Internet marketing should be included, as well as marketing material that has been stored electronically. The 2017 recommendation also speaks of electronic advertising material.

Against the above background, the Consumer Agency proposes in the revised general guidance that information on fuel consumption and carbon dioxide emissions should be provided, as before, in printed advertising material, but also in different types of digital marketing, e.g. on websites, digital billboards and in various social media. The general advice is also applicable in moving representations.

Digital marketing is referred to in the general guidance as "electronic advertising material". Regarding variable requests, the 2003 recommendation states that radio and television broadcasts are not included in the recommendation. The guidance provided by the trade organizations BIL Sweden and the Swedish Motor Industry Association, MRF, states that information on fuel consumption and emissions need not be provided in movie clips. For example, moving representations are mentioned on the trader's website, on Youtube, Twitter, Instagram (or similar service that plays movie clips) or on movie clips on a digital billboard.

According to the Swedish Consumer Agency's assessment, consumer protection would risk being eroded if moving representations were excluded. It can also be assumed that such representations will become more and more common as they are perceived as easier and more interesting and thus have a greater ability to penetrate the extensive information flow that consumers encounter every day.

Furthermore, it is the trader who has the opportunity to choose the channel and method of production and, if moving representations were generally excluded, would not have to provide any information on consumption and emissions in these cases. The application would also risk becoming somewhat limp with this scheme. Information would have to be provided if a particular car model was displayed on a digital billboard, but not if the same model was displayed on the same billboard but through a movie clip.

The Swedish Consumer Agency considers that there is legal support for the above proposals. According to the 2003 recommendation, it is "television broadcasts" according to Article 1 of Directive 89/552 / EEC30, as amended by Directive 97/36 / EC31. Both Directive 89/552 / EEC and Directive 97/36 / EC have been repealed. The new directive that addresses the definition of what a television broadcast might be is 2010/13 / EU, the "AV Directive". The Swedish preliminary work (prop. 2009/10:

115 p. 279) states: *"The decisive factor for a television broadcast is that the broadcast refers to television programs and that it is available at the same time and without special request for anyone who wants to receive it"*(KOV's underlining). I

In addition, it is explained in article 1b of the AV Directive what a program is, and 1e of the same Directive states that a television broadcast is an audiovisual media service provided by a service for simultaneous television viewing according to a program schedule. Movie clips on a website, through Youtube clips etc. that have been touched upon above and proposed to be covered by the general councils, thus fall outside the definition and do not constitute a television broadcast. The Swedish Consumer Agency's assessment is that the proposal is proportionate since significant consumer benefit is achieved if consumers are given access to essential information also in the case of moving petitions.

The Consumer Agency is aware that restrictions may exist in a communication medium, as well as technical limitations. As with information on the "point of sale", which has been touched upon above, the assessment also needs to be made with regard to advertising material based on the circumstances that exist in the individual case. Important factors are what opportunities the trader has to provide the information and what conditions the consumer has to make use of, for example with regard to the clip duration. If the movie clip goes on for a long time, and can be paused and replayed, it indicates that the information should be provided in accordance with the advice. If, on the other hand, the clip is very volatile and if there are technical limitations in the service, e.g. how many characters can be used and how the presentation can be edited, it argues instead that the information should not be provided. An assessment may be made in each case.

Corresponding reasoning could be given for podcast broadcasts, which can last for a long time, versus advertising elements in e.g. commercial radio. However, in the case of radio, the Swedish Consumer Agency considers that information on consumption and emissions is more difficult for consumers to utilize. These cases do not provide visual information, but would require a reading of figures / figures in decimal form which would probably be difficult to obtain and remember for the consumer. Radio advertising is thus excluded from the scope of the General guidance.

The information that should be provided in promotional material and how clear it should be is further discussed in section 2 of the Guidance and section 2.4 of the memorandum.

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