



# European Federation of Jewellery Position paper on The new EU consumer agenda

*The case of diamond terminology*





#### Key points:

- ❖ The EFJ applauds the European Commission's willingness to reinforce consumer rights by proposing a new EU Consumer Agenda. The Federation considers that consumers must receive full and accurate information on the products they buy in order to make informed choices.
- ❖ The EFJ is committed to contributing to the current reflection of the European Commission in order to shape an ambitious European consumer policy up to today's challenges and wishes to flag the issue of diamond terminology in this position paper.
- ❖ Protecting consumers against misleading and fraudulent advertising practices on diamonds, which own high financial and emotional value, is perfectly in line with the current EU political agenda. To achieve this goal, the EFJ advocates the adoption of an EU legal (or legally binding) definition that would:
  - define the characteristics of a natural and synthetic diamond and the fundamental differences between them.
  - oblige the trade to accurately inform consumers, by means of a certificate, about the jewellery product they are purchasing.

**Diamonds are a unique creation of the Earth.** Their lasting legacy – they were formed deep within the Earth from 1 to 3 billion years ago and are not created by nature anymore - make them an **exceptional natural product**. Symbolism and history around diamonds is an important part of their value: they represent beauty, eternity, strength, love, commitment and **they are commonly offered to mark a special personal event**. According to a survey conducted in France in 2018, 81% of the French purchase a natural diamond for a special occasion in their lives. Beyond their financial value, diamonds have a significant emotional value since they are passed on from generation to generation, and are an integral part of European history and culture.

**The EFJ strongly believes that laboratory-grown diamonds, commonly also called synthetic diamonds, are legitimate but different products.** Even if they have the same physical and chemical characteristics as natural diamonds, they are artificial replicas produced in an industrial and standardised way. The start of their production goes back to the first part of the 20<sup>th</sup> century. At that time, they were only used for industrial needs mainly in the automotive, aerospace, construction and healthcare sectors. Gem quality synthetic diamonds are a recent phenomenon of which the production has significantly risen over the last five years. This increase in production with potentially unlimited capacity has lowered the average manufacturing cost from €3500 per carat in 2008 to currently €100 per carat, mainly thanks to technological progress and scaling of volumes. The bulk of the synthetic



production is being produced in Asia - notably in India, Singapore, China, but also in Russia and the US. Synthetic diamonds currently represent 2% to 5% of the global wholesale diamond market.

Owing to their lack of uniqueness and their mode of production, synthetic diamonds do not benefit from the same authenticity as natural diamonds and therefore cannot be considered substitutes. **The fact that natural diamonds are a high value and prestigious product leads to misleading and fraudulent advertising practices.** For instance, some operators intentionally use terminologies such as *cultivated* or *above-ground* diamonds instead of *synthetic*. We also notice that some other terms, namely *ethical*, *ecological* or *sustainable* are often wrongly used to qualify synthetic diamonds. These words completely mislead the consumers by making them think that they buy a natural, yet more ethical and environmentally friendly product with no justification of such claims. In reality, it is estimated that synthetic diamonds have a negative environmental impact that is 69% higher than natural diamonds on average<sup>1</sup> mainly due to high emission and energy consumption levels. On the other hand, the natural diamond sector plays a key economic and social role in providing livelihoods to around 10 million people mainly in Africa and in India. It should also be stressed that thanks to the Kimberley Process (KP)<sup>2</sup>, 99,8% of the global supply of rough diamonds are traded by KP participants, including the EU, ensuring that they did not contribute to the fuelling of armed conflicts. And last but not least, the 8 largest producers of natural diamonds provide a global net benefit of more than 16 billion USD, infusing more than 6.8 billion USD into local businesses in diamond mining communities and 292 million USD into infrastructure and social programmes in those same communities<sup>3</sup>. In this sense, the development of the EU jewellery industry relies on its reputational values and Corporate Social Responsibility (CSR) practices within the global value chain to sustain the credibility of the product that is ultimately sold to consumers.

**This confusing terminology can take place because of the current legal vacuum at the European level.** The EFJ thinks that on top of the existing Unfair Commercial Practices Directive 2005/29<sup>4</sup>, there is still a lot of potential for improvement of the legislative framework protecting the consumer from misleading advertising practices. **The current patchwork goes against creating a level playing field at**

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<sup>1</sup> To know more about diamonds:

[www.diamondfacts.org](http://www.diamondfacts.org)

<https://www.trucost.com/publication/the-socioeconomic-and-environmental-impact-of-large-scale-diamond-mining/>

<sup>2</sup> Created in 2003 under the United Nations, the Kimberley Process is a multilateral trade regime designed to certify, through the Process Certification Scheme, that the mining and distribution of rough diamonds do not finance armed conflicts against governments. Further information on: <https://www.kimberleyprocess.com/en>

<sup>3</sup> Source: Total Clarity: the reality of modern diamond mining, Natural Diamond Council (2019)

<sup>4</sup> Directive 2005/29/EC of the European Parliament and the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0029&from=EN>



**the European level and undermines the “high level of protection” that each European consumer is entitled to have<sup>5</sup>.**

As an example of this differentiated situation, France adopted a decree in 2002<sup>6</sup> which requires calling diamonds that are not naturally produced “synthetic” and forbids the use of several words such as “cultivated”, “real”, and “cultured” for synthetic diamonds. This regulation, however, has not defined penalties in case of breach and therefore suffers from a lack of enforcement capacity in terms of consumer protection. In other countries like Germany and Italy, there is no legal definition, whereas in Belgium there are legal requirements but only for business to business transactions<sup>7</sup>. In this case, the **international sectorial guidelines**, developed under the World Jewellery Confederation (CIBJO)<sup>8</sup> and signed by the leading jewellery industry organisations, can be instrumental, but there is a clear lack of an enforceable legal framework with standardised agreed language that protects consumers.

As a result, **consumers are in a vulnerable situation** because they often lack knowledge about the difference between synthetic diamonds<sup>9</sup> and natural diamonds in terms of origin and value. The impossibility to distinguish the two products by the naked eye does not help in this regard. While underlining that consumers are free to buy either natural diamonds or synthetic diamonds jewellery, the EFJ strongly advocates the necessity to **provide full disclosure**. This is key to ensure that **consumers can make informed choices and avoid any deceptive purchases** for a product offered on a special occasion, having therefore a strong emotional value. It is essential to maintain consumer confidence in diamond jewellery produced by world-renowned European brands.

A step in the right direction is the **publication on the 31<sup>st</sup> of October 2019 of the new European customs code for synthetic diamonds**. This code, introduced in the European combined nomenclature

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<sup>5</sup> Article 169 paragraph 1 of the Treaty on the functioning of the European Union lays down that “In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the (...) economic interests of consumers, as well as to promoting their right to information (...) in order to safeguard their interests”.

<sup>6</sup> Decree n° 2002-65 of 14 January 2002 related to the trade of gemstones and pearls, based on the ISO standard 18323. CEN approved the ISO norm.  
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000593364&dateTexte=&categorieLien=id>

<sup>7</sup> In Belgium, the Royal Decree of 30 April 2004 concerning the supervision of the diamond industry sets some requirements that diamond traders have to fulfill when selling diamonds to another economic operator. For instance, any misleading or fraudulent statement regarding the origin of the diamond is forbidden. The Royal Decree does not apply to business-to-consumer transactions.

<sup>8</sup> CIBJO “represents the interests of all individuals, organisations and companies earning their livelihoods from jewellery, gemstones and precious metals, covering the entire industry”. Further information on: <https://www.cibjo.org/>

<sup>9</sup> According to a survey carried out in 2016 by Luxury Society among millennials from Europe, Asia and the US, 63% of respondents did not know what synthetic diamonds are.



(Chapter 71) by the Commission Implementing Regulation 2019/1776<sup>10</sup>, entered into force on the 1<sup>st</sup> of January 2020. It will be applied until the 1<sup>st</sup> of January 2022, when the HS6 customs code, which was adopted by the World Customs Organisation (WCO), will be applied at the European level. This crucial decision will put a halt to a legal loophole where rough diamonds could be illicitly declared as synthetic diamonds, thus circumventing the Minimum Requirements of the Kimberley Process.

While welcoming the acknowledgement of the difference between natural diamonds and synthetic diamonds by the European Commission through the new customs code, the EFJ is convinced that further steps still need to be taken to regulate the rapid emergence of volume- and cost-driven production of synthetic diamonds in the interest of consumers. **This is why the EFJ urges the European Union to adopt a European legal (or legally binding) definition of diamond inspired by the French and Belgian legislations in order to ensure that consumers will be duly informed. The new legal framework advocated by the EFJ would aim at differentiating natural from synthetic diamonds by clearly disclosing their respective core characteristics and origin and by defining the terminology of each product.** In this regard, the EFJ is in favour of creating a certificate that would be handed over to each purchaser at both wholesale and retail level. As far as the elements of the definition are concerned, the EFJ is proposing the following wording:

- A diamond comes by definition from the Earth. If not further qualified, a diamond means a natural diamond.
- When selling a synthetic diamond, it is forbidden to use misleading terms such as genuine, natural, precious, cultivated or cultured.
- A synthetic diamond must always be unambiguously defined as synthetic, laboratory-created or laboratory-grown.

**In conclusion, the EFJ recalls that with Antwerp, the EU is home to the world's largest diamond trading centre<sup>11</sup> and equally ranks as one of the largest consumer markets in the world, holding several major jewellery brands<sup>12</sup>. Taking these factors into account, combined with the fact that the EU aims to achieve a high level of consumer protection<sup>13</sup>, the EFJ strongly urges the EU to take legislative action by providing a comprehensive and enforceable framework that protects consumers from malicious trade and sales practices in a European industry that is only able to**

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<sup>10</sup> Commission Implementing Regulation (EU) 2019/1776 of 9 October 2019 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff: [http://publications.europa.eu/resource/cellar/4fdaf64e-fc25-11e9-8c1f-01aa75ed71a1.0006.01/DOC\\_1](http://publications.europa.eu/resource/cellar/4fdaf64e-fc25-11e9-8c1f-01aa75ed71a1.0006.01/DOC_1)

<sup>11</sup> 86% of all rough diamonds are traded in Antwerp.

<sup>12</sup> The EU is a market of more than 500 million consumers.

<sup>13</sup> According to Article 114 of the Treaty on the Functioning of the European Union, the EU will take a high level of consumer protection as a base for adopting harmonisation measures for the internal market.



survive when the true value of and thus consumer confidence in the European jewellery can be maintained.

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**EFJ members:**

- ❖ **UFBJOP** - Union Française de la Bijouterie, Joaillerie, Orfèvrerie, des Pierres et des Perles (France)
- ❖ **ARS NOBILIS** – Fédération Belge du Bijou et de la Montre (Belgium)
- ❖ **AORP** - Associação de Ourivesaria e Relojoaria de Portugal (Portugal)
- ❖ **FEDERORAFI** - Federazione Nazionale Orafi Argentieri Gioiellieri Fabbricanti (Italy)
- ❖ **AWDC** - Antwerp World Diamond Centre (Belgium)

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