

Important Notice:

This report was produced by PROSPECT C&S for DG Health and Consumer Protection and represents PROSPECT C&S views on the "Study on verification and control of environmental product claims ". These views have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's or DG Health and Consumer Protection's views.

The European Commission does not guarantee the accuracy of the data included in this report, nor does it accept responsibility for any use made thereof.

A0-2600/97/000226

STUDY ON
VERIFICATION AND CONTROL OF ENVIRONMENTAL PRODUCT CLAIMS

Final Report

Authors:

Susan Lebuscher
Wolfgang Hager
Catherine Wattiez
Jennifer Farmer Momburù
Emilia Liaska

(September 1998)

PROSPECT C&S

Rue des Pierres, 29
B - 1000 Bruxelles
Tel : 32.2. 514 55 34
Fax : 32.2. 514 01 97

CONTENTS

EXECUTIVE SUMMARY	4
<hr/>	
1. GREEN CLAIMS	12
<hr/>	
1.1. INTRODUCTION	12
1.2. TRENDS	12
1.2.1. CURRENT PRACTICE	12
1.2.2. THE NEXT PHASE	13
1.3. FORM AND CONTENT OF GREEN CLAIMS	15
1.3.1. TYPES OF INFORMATION CONTAINED IN GREEN CLAIMS	15
1.3.1.1. Symbols and logos	16
1.3.2. MEANS OF DELIVERY OF CLAIMS	18
1.3.3. ASSESSMENT OF CLAIMS	19
1.3.4. COMPARATIVE CLAIMS	20
1.4. THE CONSEQUENCES OF ENVIRONMENTAL CLAIMS	21
1.4.1. EFFECTS ON CONSUMER BEHAVIOUR	21
1.4.2. ECONOMIC IMPLICATIONS	22
1.5. CONCLUSIONS	23
2. THE CONTROL OF GREEN CLAIMS IN THE MEMBER STATES	25
<hr/>	
2.1. THE EVOLUTION OF NATIONAL CONTROL REGIMES	25
2.2. SANCTIONS	29
2.3. CONTROLLING GREEN CLAIMS	30
2.4. THE EFFECTIVENESS OF GREEN CLAIM CONTROL REGIMES	33
2.4.1. ACCESS	33
2.4.2. LEVEL OF ACTIVITY	34
2.4.3. EFFECT ON CLAIMS	34
3. INTERNATIONAL INSTRUMENTS	36
<hr/>	
3.1. INTRODUCTION	36
3.2. GREEN CLAIMS	36
3.3. CONTROLS	38
3.3.1. INTERNATIONAL GUIDELINES	38
3.3.1.1. The UN Guidelines for Consumer Protection	38
3.3.1.2. OECD	40
3.3.2. CODES OF PRACTICE	41
3.3.2.1. ICC Code on Environmental Advertising	41
3.3.2.2. ISO Environmental Standards	43
3.4. SELF-REGULATION	45
3.4.1. REGULATORY BODIES	45
3.5. MULTINATIONAL APPROACHES	47

4.	<u>POLICY OPTIONS FOR THE VERIFICATION AND CONTROL OF ENVIRONMENTAL CLAIMS</u>	50
4.1.	INTRODUCTION	50
4.2.	POLICY BACKGROUND	51
4.2.1.	INTERNATIONAL CONTEXT	51
4.2.2.	COMMUNITY CONTEXT	51
4.2.2.1.	Impetus for Community Involvement	52
4.2.2.2.	Member State Recognition of a Community Role	52
4.2.2.3.	Other Institutional Involvement	53
4.3.	OPTIONS FOR COMMUNITY ACTION	55
4.3.1.	ACTIONS OUTSIDE THE REGULATORY SPHERE	57
4.3.2.	ACTIONS REQUIRING MINIMAL REGULATORY ACTION	57
4.3.3.	STATUTORY INSTRUMENTS	59
4.3.3.1.	Modifications	59
4.3.3.2.	Basis for new instruments	60
4.3.3.3.	Trade implications of controlling claims	61
4.3.3.4.	Technical annex to the Misleading Advertising Directive	62
4.3.3.5.	Certification	63
4.3.3.6.	Eco-profiles	65
5.	<u>APPENDICES</u>	67
5.1.	ORGANISATIONS CONTACTED	67
5.2.	BIBLIOGRAPHY	67
5.2.1.	LEGISLATION AND CODES:	67
5.2.2.	BOOKS AND REPORTS:	68
5.2.3.	ARTICLES, POSITION PAPERS AND PRODUCT DOCUMENTATION:	68
5.3.	WEBSITES	70
5.3.1.	GREEN CLAIMS	70
5.3.2.	SELF-REGULATION	70
5.3.3.	REGULATORY	70
5.3.4.	CONSUMER AND ENVIRONMENT GROUPS	71

EXECUTIVE SUMMARY

This study examines the means used in the EU's 15 Member States to control misleading marketing claims using or related to the environmental quality of the goods in question. Detailed reports for each country can be found in the Annex.

The general Report is structured to provide the basis for the ultimate purpose of the study, which is to set out options for Community action. It summarises the country findings on a comparative basis, first by describing the phenomenon of green claims itself and developing a typology for such claims; secondly, by describing the evolution and performance of national control regimes; and thirdly, by documenting international efforts currently underway in this area at voluntary, intergovernmental and Community levels. The last section sets out options for Community action.

Green marketing claims are a distinctive sub-set of claims because, in addition to the issues of fair competition and the protection of individual consumers addressed in the Directive on Misleading Advertising, they are a key element in any move towards sustainable consumption. While the consumer's potential contribution to improved environmental performance is now internationally recognised, his or her ability to exercise this responsibility depends on accurate information regarding the 'green' qualities of a given type of product and/or individual brands.

What is the current situation regarding the extent and quality of green claims in the Community? In most Member States where green claims are a potentially powerful sales argument, the worst excesses of claims in the classic advertising media (print, broadcasting, etc.) have been successfully limited.

One response by the advertising industry has been to change technique, avoiding outright false textual claims. This has involved a shift to subliminal advertising using images and colour, which may be used to promote both individual products and, increasingly, corporate images. While these forms of misleading advertising may cause less concern on competition grounds than the cruder claims of the past, they falsely suggest general progress in product or process design, weakening the consumer's motivation to look for environmentally friendly alternatives.

Another approach, which more directly compromises the capacity of the consumer to support sustainable consumption objectives, is to make on-package claims which are vague enough to have escaped scrutiny and control from all but the strictest Member States (e.g. the Nordics). On-pack claims are now increasingly recognised as the most important area for regulation, as evidenced by the development of the draft ISO standard 14021 on self-declared on-pack claims.

One form of misleading on-pack claim, particularly widespread in the southern Member States, is to give prominence through logo and/or text to the mere observance of existing law (e.g. CFC-free sprays, biodegradable detergents, cadmium-free batteries). Since such claims are both true and misleading, only some Member States have intervened to control them. International production and its associated uniform packaging leads to bad practice remaining standard practice. (One insidious quality of such claims is that any single producer who does not declare his product CFC-free etc. may appear less environmentally friendly than his competitors to the majority of consumers, who are not likely to be aware of current legislation. Responsible packaging may thus be sanctioned by a loss of market share).

Another half-true but misleading form of on-pack claim relates to recycling. Indeed, this is the most frequently used category of on-pack claim in the Community. Such claims take several forms:

- ◆ they refer to the packaging itself, but can be mistaken to apply to the product;
- ◆ they denote recyclability which is theoretical in the absence of specialised local facilities;
- ◆ they denote that a fee has been paid (Green Dot) but suggests eco-qualities;

- ♦ they suggest product origin from recycled materials while merely denoting the potential to recycle.

Lastly, the study has revealed a problem deriving not from misleading on-pack claims, but rather the proliferation of justified claims and logos from sources ranging from NGOs to industry federations, individual producers, and retailers. This leads to confusion and perceptual overload on the part of the consumer, especially since most logos use variants of trees, flowers, birds in flight, suns or a combination of the above.

These 'leading' claims distract from generally higher quality official eco-labels, such as the EC Daisy or Nordic Swan.

NATIONAL CONTROL REGIMES

Member State regimes for controlling misleading marketing claims have certain common elements:

- ♦ a solid legal foundation in competition law and its enforcing institutions, dating back to the beginning of the century;
- ♦ a tripartite-based system of self-regulation by the advertising industry based on ICC Codes;
- ♦ the EU Directive on Misleading Advertising, which combines competition with consumer protection concerns, and which has been more or less formally transposed in all Member States except Germany (where legal practice increasingly takes it into account).

As regards the control of green claims, Member States fall broadly into two categories: those where self-regulation has developed special codes, and those where the State takes a strong lead in both norm-giving and institutional enforcement.

Certain key Member States, notably France and the UK, do not fit well into this scheme (see below).

Countries with strong consumer protection and environmental policies have successfully combined two requirements for controlling the explosion of green claims following the growth of green consciousness in the 1970s. These requirements were

- ♦ a strong legal basis for control; and
- ♦ a system of enforcement which mostly did not rely on Courts for enforcement.

Although a 'hard' issue, green claims did not fit easily into the legal frameworks set up to regulate fair competition or to protect the consumer from fraud. As regards the latter, the damage to any single individual from being misled by a green claim tends to be small (as compared, for example, to a health claim). As regards competition, on the other hand, control through competition rests too much on the willingness of agents to sue each other. This may lead to too few challenges to claims – for instance, 'ozone-free' claims are tolerated by all competitors; or to excessive challenges, from the standpoint of environmental consumer choice, as innovators are attacked by their peers – e.g., Italian paint manufacturers agreeing at association level to omit green claims from advertising.

The most serious problem posed by treating green claims as a hard issue, however, was to match the flexibility and speed of 'administration' of self-regulatory controls without relying on the institutions of self-regulation.

The countries which have (a) experienced a significant growth of green claims, and (b) managed to control the phenomenon (at least in the context of classic advertising) have adopted a three-tier system. (The following remarks apply to the three Scandinavian countries, the Netherlands, and Germany.)

At its apogee are the Courts, as an instance of last resort, but also as an important source for creating case law through test cases which become reference points for the main control activity, which takes place below the level of formal litigation.

The next lower level is constituted by quasi-courts – Complaints Boards, etc. - staffed by professional lawyers (but not acting as magistrates), and other members of society who may or may not be delegated by corporatist sponsors.

Below this level exists the level of the informal warning - *Abmahnung*, letters from a consumer Ombudsman, etc.

One can even identify a fourth institutional level. The bureaucracies serving the quasi-judicial apparatus, in the person of the Secretary etc., may act as judge and jury of the first instance, with the right to refuse complaints, to settle them by informal means, or to pass them on to higher levels of complaints settlement and litigation.

In terms of numbers of cases, the three levels form a pyramid, with the largest number of cases, mostly unseen and unpublicised, taking place at the lowest level, and the fewest going to formal litigation. Court cases can be comparatively numerous when new rules are tested, e.g. in Scandinavia in the early 1990s. Once benchmarks for behaviour and the basis for threatened sanctions have been established, however, the lower levels of control can act swiftly and confidently.

While all Member State institutional systems ultimately rest on law, the extent to which certain functions are carried out by quasi-governmental actors (quangos) or independent actors differs among the group of most active Member States. In Italy, the quasi-judicial level is represented by an unusually well developed self-regulatory body which occupies an institutional niche left vacant by the State. In Holland, the complaints-board level is also represented by a self-regulatory body, the *Stichting Reclame Code*, but one strictly regulated and circumscribed by government instruments.

As the table below demonstrates, genuine self-regulatory Codes for regulating green claims are characteristic of countries where the government has not taken an active role in this matter.

Instruments for controlling green claims in EU Member States

Member State	Specific Law	Official Code	SELF-REGULATORY CODE
Austria	No	No	<i>Werberat</i> sub-codeces (1) environment (2) motorcars
Belgium	Environment mentioned in 84/450 transposition, Loi de 1991	(1) Code for logos planned (2) Self-reg. Code foreseen under Loi 91 ⇒	JEP green code since 1998
Denmark	Environment Act of 1994 § 8 on green marketing	Nordic Ombudsmen's Green code	No
Finland	No	Nordic Ombudsmen's Green code	No
France	No	Official request for ⇒	BVP Code de déontologie environm. 1990
Germany	No	No	No
Greece	Market regulation 1998 concerning use of word 'eco'	No	Appendix III of voluntary Adv. Code
Ireland	No	No	Sec 11, Code of Adv. Standards
Italy	(packaging/information law of 1991)	No	No
Luxembourg	(packaging Règlement 1992)	No	Code déontologique env. 1998
Netherlands	No	Environmental	Advertising Code
Portugal	(Art. 7 of Consumer Protection Act) (Art. 22 A on motor vehicles ads)	No	Code of Practice for Environmental Advertising
Spain	No	No	No
Sweden	No	Nordic Green Code	No
United Kingdom	Contemplated by present Government	- Dept. of Environment Green Claims Code (1998) - DTI voluntary Code on non-advertising green claims (1994)	Section 49 of the Advertising Standards Authority Codes

Another noteworthy feature of activist, government-led systems for controlling green claim is government-sponsored information through the mediation of local advice offices, subsidised programmes carried out by NGOs, sponsored material for schools, leaflets, etc. These information activities minimally publicise the national Eco-label and other high-quality schemes, but also identify and warn against spurious logos and messages.

The effectiveness of such information campaigns depends, of course, partly on the size of the problem created by the proliferation of green claims and consequent consumer confusion or apathy.

THE INTERNATIONAL DIMENSION

Green claims are increasingly international as regards both their source – international producers – and the media through which they are delivered: inter- or pluri-national magazines and newspapers, cross-border message dissemination through travel, and on-pack claims. Advertising agencies now offer their international clients international campaigns to promote their products or image.

To this must be added the problem of proliferation – the simple addition of even valid claims based on some national certification body (NGO, producers, retailers, etc.) which, through trade, add up to the international airing of a wide range of similar and confusing messages.

Systems of control, however, remain national. Consumers, consumer representatives, and government agencies can only address, often ineffectively, a small part of the problem through recourse to national systems of control and redress.

The classic international approach consists in raising standards through (non-binding) common guidelines. Examples are:

- ♦ *The UN Guidelines for Consumer Protection*

These stipulate, inter alia, that:

Procedures and regulation for consumer protection should not become barriers to international trade;

Products should be safe for either intended or normally foreseeable use;

Governments should provide effective protection against practices which could adversely affect the economic interests of consumers;

Government should provide consumers with the means for effective redress;

Informed choice being a crucial element of consumer protection, information programmes should cover traditional consumer concerns, including, ‘as appropriate, pollution and the environment’.

Work has started at committee level to incorporate sustainable consumption concerns more fully into the Guidelines.

- ♦ *OECD*

The Consumer Policy Group came to some important conclusions in its deliberations on green claims completed in 1991, including that dealing with such claims should rely on existing institutions rather than the creation of special fora; that specific guidelines for green claims should be issued; and that governments should develop legislation which sends an unambiguous message to the private sector. The OECD has also noted that it is both easier and less expensive to make industry change its advertising methods than it is to educate consumers to change their purchasing behaviour.

- ♦ *ICC Code on Environmental Advertising*

This International Chamber of Commerce Code was adopted in 1991. Its adherents theoretically agree to the following provisions:

Don't abuse consumer concern and exploit lack of knowledge;

Don't encourage actions which contravene laws and generally accepted standards of environmentally responsible behaviour (*this latter formulation seems to posit the existence of a type of 'customary law' of business behaviour*);

Don't mislead as to the environmental qualities of a product or the eco-record of your company;

Scientific/technical evidence must be based on serious science (*this stipulation reinforces burden of proof requirements for the producer and would exclude industry self-assessment of claims without external verification procedures being in place*);

Testimonials should be recent and refer to current products and practices;

'Superior' performance claims require demonstrated significant eco-advantage;
Partial advantages should be identified as such;
Logos and symbols should indicate sources and not falsely suggest official approval;
Recycling claims must refer to methods actually available;
Substantiation of claims should be available without delay.

Business consensus does not extend, however, to criteria for interpreting these articles, or to verification procedures and sanctions for violations. The ICC does not monitor adherence to the Code among its member companies, some 2000 of which have formally signed up to the Code. Since the credibility of self-regulation is thus weakened, the ICC, while unable to exercise control itself, sees the possibility of using independent certification companies to verify compliance.

ISO ENVIRONMENTAL STANDARDS

The International Standards Organisation is currently working on an important set of environmental standards:

ISO 14020 on environmental labelling
ISO 14021 on self-declared environmental claims
ISO 14024 on symbols and logos and testing and verification methodologies.

ISO 14021 is specifically aimed at on-pack claims, and will be voted on by the end of 1988 for adoption in 1998/99. If ISO 14021 is consequently adopted by CEN, Member States will have to publish the text unchanged and withdraw conflicting national standards.

The standard forbids vague or non-specific claims; a claim of '-free' may only be made when the level of the relevant substance is that of an acknowledged trace contaminant or background level. Environmental management plans must not be used in ways which suggest qualities of the product itself. Recycling symbols, like the Mobius loop, may only be used for either the content origin (with the recycled proportion given in %) or the disposal qualities of a product. Verifiable evaluation systems must be in place before a claim is made. Claims which can only be verified by violating confidential business information must not be made.

Comparative claims are more stringently circumscribed than in any other standard, although room for confusion persists (see International chapter).

THE EUROPEAN UNION'S ROLE

There is clearly a role for action at EU level on an issue such as environmental claims, which forms one interface of consumer, environment and economic policy. Options include informal actions, most of which can be carried out with the help of consumer associations, and either 'light' or full regulatory measures that extend Member State Best Practice to the level of the Community as a whole.

Actions not requiring legislation could include funding BEUC and other international and national consumer groups to:

- ◆ give annual awards to the most truthful and useful green claims
- ◆ establish and publicise scorecards, on the Austrian example, rating green claims that are commonly used
- ◆ test the performance of national complaints systems using comparable challenges.

The Community itself could institute purchasing guidelines that bypass products or producers using misleading claims; publish as a guidance note a Black List of terms to be avoided in market claims of all kinds and publicise these through consumer organisations, the Internet, etc.; and

encourage the formation of Euro-wide fora of producers, retailers etc. using similar logos with a view to reducing their variance.

In general, regulatory attempts to control green claims can aim (1) minimally to insure factual accuracy; (2) require statements to be true in the entire message they imply or signal to the consumer; and (3) allow only claims that refer to significant advantages including the production process itself.

The latter option would require statutory action by the Community. (1) and (2) could be achieved relatively easily through Decisions addressed to producers, retailers and advertisers stating, for example:

- ◆ Specific information should be made explicit, not represented by a symbol. (e.g., ‘we have paid a fee and met the following requirements, etc.’, instead of displaying the Green Dot or the WWF panda);
- ◆ Require phase out for information which is true but irrelevant and therefore misleading (e.g., ‘no CFCs’);
- ◆ Raise the status of the Black List as mentioned above to a legal requirement;
- ◆ Establish a disclosure requirement for the basis of green claims, with information to be made available to qualified institutions within a specified delay;
- ◆ Adopt the informal ‘requests to desist’ practice successfully used in many Member States.

Other actions could require some modification of existing legislation, or the establishment of legal instruments of greater complexity than a Decision. These might include

- ◆ Voluntary agreements at EU level:
The phase out of certain practices, where these are linked to an identifiable group of producers, retailers, etc. This requires great circumspection, so that agreement is not bought at the expense, for example, of officially endorsing a new but meaningless label.
- ◆ Link to EMAS:
Linking the certification of management systems under EMAS to an ecolabel would meet the requirements of sustainable production and consumption, if and where EMAS certification is strengthened and made to include meeting externally set criteria which go beyond the merely procedural.

One such requirement would be for EMAS certified companies to follow the ISO codes described above as part of their management programme.

- ◆ Establishing minimum standards:
This would essentially involve giving legal force to the observance to the new ISO codes, with certification by an external verifier even for minimum claims. This would be a complex system, and likely to be honoured in the breach.
- ◆ Claims testing:
The Commission could set up a system, with the cooperation of Member States and consumer organisations, to evaluate and possibly endorse various widely used claims. Approved logos and slogans could gain the right to use some visual addition, e.g., a small EC attachment to the logo.

Testing/certification could be carried out through a hierarchy of certifying institutes assuring uniform practice. However, the problem of whether to set minimal targets or look for best practice familiar from the ecolabel process would also arise in such a scheme.

Finally, if the Commission wants to ensure realisation of the integration requirements of the Amsterdam Treaty, it could propose new legislation to ensure that all product claims be based on

verifiable best practice of sustainable production techniques, thereby enabling consumers to practice and understand the long term goals of sustainable consumption.

This could be achieved in stages. The first would set out certification requirements, in the form of procedural provisions that could then be fleshed out with environmental standards (or labour, social, nutritional, etc. standards for other uses).

Certification would eliminate some of the current label/logo confusion facing consumers by replacing multiple 'own' logos with a certification logo, which could be widely publicised for public recognition (as is the case for the Nordic Swan, for example).

Standards under such a system could obviously range from minimal to stringent; a great deal of work is currently being carried out to formulate realistic and environmentally sound standards by groups in the OECD, the ISO, the USA, and several Member States.

Such a process could eventually lead to what would be the most certain method for educating consumers and thereby ensuring the evolution of sustainable consumption and production patterns – development of an 'eco-profile' label. This 'report card' approach, developed by a Canadian group, would put a standard label on all products, whether they wish to claim environmental virtues or not.

One half of the label sets out the main production, use and disposal charges on the environment caused by the product, with a quantitative description of such charges. The other half of the label contains a graph or bar chart indicating the environmental position of the product in relation to other products/processes on the market.

Such a label would function as a standard, a certification and an educational tool simultaneously. By requiring disclosure of environmental performance, judged independently, of all producers, it would ensure the integration of economic, consumer and environmental criteria in the daily life of EU citizens.

1. GREEN CLAIMS

1.1. INTRODUCTION

Extensive study of the use and control of environmental ('green') claims in all 15 Member States has clearly demonstrated two facts that are fundamental for consumers wishing to buy environmentally friendly products. First, the use of misleading green claims is changing in nature, but the phenomenon as a whole is showing an increase - in both numbers and sophistication - in all Member States. Secondly, the ability of the majority of Member States to control such claims is poor.

Several Member States have systems in place - regulatory, quasi-regulatory, or voluntary - which control the use of misleading claims in print and broadcast advertising reasonably effectively. The greater problem now lies (1) in the use of on-pack claims, and particularly of claims which are general, vague, or symbolic and evocative, such as images of pristine nature, statements of environmental friendliness or naturalness, and 'environmental' colours; and (2) in the widespread use of spurious but official-looking logos.

Such claims are proliferating in all Member States. They are considered a cause for concern even in those countries which pride themselves on having established efficient control and verification systems for misleading claims as a whole, including environmental advertising in the 'usual' (print) sense. No Member State has an effective system in place to deal with these vague claims and logos.

Government officials, consumer organisations, environmental groups, and self-regulatory authorities throughout the EU with whom we spoke lamented the fact that significantly increased use of such claims, which play on consumer concerns about the environmental impact of products, is giving rise to consumer confusion and wariness. This, in turn, is producing an unfortunate backlash against authorised logos, official national eco-labels and the European eco-label. Unable to remember what has formal backing and what is self-proclamatory, the average consumer simply discounts all logos or labels and buys on the basis of traditional factors such as price, packaging appeal, or past experience.

1.2. TRENDS

1.2.1. CURRENT PRACTICE

The prevalence of environmental claims within the Community varies significantly by region. Southern Member States, where there is greater reliance on markets and small shops rather than supermarkets and 'grandes surfaces', have not yet achieved the advertising saturation of northern countries. Nonetheless, as a recent study of on-pack claims in Belgium, France, Italy, Portugal and Spain makes clear,¹ on-pack claims are already widely used in these countries as well (particularly on products imported from other Member States) in certain product categories.

¹ *Analyse des arguments ecologiques et des eco-labels utilises dans l'etiquetage de produits*, EDIDECO, EAC, EDOCUSA, Test-Achats, June 1998

Detergents	Paper products	Aerosols ^(*)	Batteries
Of 515 products: - 78% green claim - 66% packaging logo - 26% product logo	Of 265 products: - 36% green claim - 52% packaging logo - 26% product logo	Of 909 products: - 33% green claim - 56% packaging logo - 41% product logo	Of 189 products: - 24% green claim - 67% packaging logo - 37% product logo

^(*) Aerosols included a number of product categories, among them cosmetics, insecticides, household cleaners.

To some extent, this is a reflection of the internationalisation of markets, as many claims in southern Member States are found on products manufactured to a single European specification. In addition, southern Member State competitors tend to imitate standard international practice to conform to what is considered 'normal' in these product categories (e.g., the claim of 'CFC-free' on 77 out of 79 aerosols in Italy).

Given the increasing importance of international production of consumer goods, it is almost certainly only a matter of time before the level of claims and logos throughout the Community reaches that currently found in northern Member States.²

Environmental claims were not merely ubiquitous, but also chaotic from the consumer's point of view. Aerosols and detergents were found to carry the most numerous and most varied green claims, although such claims tend to be largely spurious for both these product categories. Aerosols were labelled 'CFC-free' or 'ozone-friendly' (including on insecticides) despite the fact that the use of CFCs in this application is forbidden by an EC Regulation, while dishwashing detergents claim biodegradability without specifying that this is a legal requirement.

1.2.2. THE NEXT PHASE

The current shift from print advertising to on-pack claims is the result of a move by advertisers to unregulated areas, as Member States have dealt with increased levels of misleading environmental advertising through specific environmental provisions in self-regulatory Codes, semi-regulatory regimes charged with controlling environmental advertising, or specific consumer protection laws.

In cases where companies do not want to bother basing claims on evidence, but see profit in playing on consumer concern about the environment, on-pack claims have become the cheapest, easiest way to attract consumer attention without any danger of attracting sanctions. At the same time, of course, this means that there is no impetus for these companies to attempt to achieve an ecolabel, at either EC or national level.

As on-pack claims in turn become the object of regulatory scrutiny (e.g., a draft ISO standard on green claims, the UK Green Claims Code), vague and unsubstantiated on-pack claims are again changing form, with an increased use of subliminal rather than textual advertising, in the form of 'natural' pictures and colours, as well as the use of spurious logos.

² Consumers International has documented a similar trend in the countries of Eastern Europe (*Environmental Labelling in Central and Eastern Europe*, March 1996), where Western goods in certain product groups were highly likely to carry green claims (ex. 68% of 84 products examined in Russia; 58% of 166 products in Slovenia; 45% of 57 products in Poland). These goods, for the moment, appear primarily in stores aimed at the wealthier segments of the population. Goods designed for characteristic national markets remain claim-free.

Yet even symbols and logos show signs of soon becoming the advertising of the past. Manufacturers and retailers are now turning to increasingly sophisticated methods of implying environmental friendliness, with implicit claims being extended beyond products to entire product lines, or even an entire company or technology:

- ◆ Some supermarkets and do-it-yourself stores are selling their own **'green' product lines** (e.g., paper products, detergents and cleaning products). These are usually based on in-house criteria, which may or may not in turn be based on sound environmental science and on wider consultation with consumer or environmental groups.
- ◆ Some companies, particularly large international firms, are bypassing products altogether and 'selling' a **'green' company or technology image** to consumers. These may be backed up by criteria (e.g., Ecover, The Body Shop), or may simply be marketing techniques with no criteria or verification underpinning the claims made (e.g. Monsanto's £1 million UK campaign to explain that genetically modified foods are environmentally and nutritionally sound).
- ◆ In some cases, company image takes the form of an **overall company symbol** implying affinity with (and presumably care for) nature. Thus, for example, Swiss chemicals giant Ciba-Geigy has recently carried out an extensive advertising campaign to publicise its new symbol, a brightly coloured butterfly.
- ◆ At an even more abstract level, the use of **meaningless logos** is becoming extremely widespread, in all Member States. This is a logical shift in advertising tactics. Since 'real' logos are proliferating, with some products carrying multiple *bona fide* logos (an extreme case of this can be seen on any German computer carton), consumers accept that a certain shape and format of sign indicates an official 'endorsement' of some sort. Very few consumers are in a position to distinguish official from spurious logos.
- ◆ This trend appears to have reached its apogee in the new phenomenon of **'endorsements for sale'**. For example, the UK environment journal *ENDS Report* was recently invited to subscribe to a newsletter called *ECO*, which offers its subscribers the right to use the logo of the ECO 'standards labelling system' (which reads 'environmentally conscious organisation') as they please.³

A similar phenomenon is to be found on the Internet, where German company *Express AG Informationssysteme Nürnberg* has set up a 'green information' site which includes an 'Ecomall'. This supposedly functions as a 'virtual warehouse' for 'green' products - but any manufacturer who pays a fee may advertise its products on the site. The site's Internet address is www.Umwelt.de - a strong indication that control of Internet claims is an area that needs to be considered urgently.

This shift to endorsements is being complicated by the entry into the field of major environmental organisations themselves. Both the Forest Stewardship Council and the Marine Stewardship Council have been developed and maintained by NGO groups. Both Councils have criteria and verification processes, but in both cases there have been some awards of logos in dubious cases, leading to concern among some NGO members about growing industry control over criteria establishment.⁴

More misleading, because playing on decades of trust, are logos attributed to products by individual NGOs in exchange for fees. The Worldwide Fund for Nature (WWF), for example, for years had its logo appearing on plastic (PET) bottles of Spa mineral water in Belgium, despite the absence of any national recycling schemes for plastic.

³ **The ENDS Report**, No. 277, February 1998, p. 30

⁴ Personal communications; Jean-Pierre Kiekens, 'Certification: International Trends and Forestry and Trade Implications', November 1997 (Environmental Strategies Europe)

Greenpeace, for its part, has used its name on a range of products in its shops, without any guarantees as to their environmental friendliness. According to a report in *The Economist*, it is now considering going one step further, by 'licensing the group's name as a brand'. *The Economist* notes that an American firm of management consultants estimates the value of a Greenpeace 'brand' at some \$410 million worldwide.

The use of logos or symbols without any text is generally seen by consumer organisations as the greatest problem in the green claims area. Yet, used properly, logos in particular are of great value to the individual consumer and to consumer associations. Product line logos based on set criteria (e.g., textiles, carpets, wood) are useful when they are meaningful, since it is easier to monitor compliance under such systems. In addition, the establishment and oversight of criteria for product group logos easily lend themselves to involvement of consumer and environmental groups, as well as producers and retailers.

1.3. FORM AND CONTENT OF GREEN CLAIMS

Environmental advertising may now be found for almost every conceivable type of product in Member States where its use is advanced. In addition, the line separating health and nutritional claims from environmental claims has at some points become very thin indeed, particularly in the case of cosmetics and basic foods of the type which can be labelled 'natural' (dairy products, cereals, breads). (Health and nutritional claims include issues that cannot be dealt with in the scope of this report and will therefore not be considered further here.)

Although a rigorous examination of the use of green claims was not possible within the scope of this study, a certain number of general observations about the nature of green claims can be made based on our findings. Specific examples of claims are described in greater detail in individual country reports (see Annex).

1.3.1. TYPES OF INFORMATION CONTAINED IN GREEN CLAIMS

Green claims generally relate to the following information categories:

Category of information	Examples
Pollution	'does not deplete the ozone layer', biodegradable
Production methods	'dolphin friendly' tuna; non-chlorine-bleached paper; no phosphates
Hazard reduction	'natural' insecticides; batteries made without certain heavy metals (e.g., 'no cadmium')
Packaging content and disposal	use of recycled material, or the possibility of post-use recycling; specification of plastic types
Resource use	reduced water, raw materials or energy use
Compliance with legislation, guidelines, codes of conduct	compliance with criteria set out in formalised guidelines or codes, or provisions of national or EU legislation
Health and nutrition	'bio' foods, 'natural' cereals, 'organic' breads, 'natural' and 'bio' cosmetics
Environmental management systems	company participation in an environmental management system (e.g., EMAS) or voluntary management standards (e.g., OECD Screening Test).

Within the above categories, claims may assume a wide number of variants. Moreover, the most common claims are often so vague that they can be used within a number of these categories (e.g., 'sustainably managed sources' as a compliance claim, a resource use claim, or an environmental management system claim; 'biodegradable' for packaging, hazard reduction or pollution). Multiple claims may also appear on a single product - typically one (or more) relating to the product itself, and another (or others) relating to the packaging of the product.

The claims that appear repeatedly in all Member States and across a number of the most frequently used product lines (paper products, washing liquids and powders, aerosols, as well as packaging) are:

- ◆ Manufactured from recycled materials
- ◆ Recyclable
- ◆ Biodegradable
- ◆ Energy efficient
- ◆ From sustainably managed sources (ex. forests, fisheries)
- ◆ Product lines with green names (ex. *Green Clean* or *Green Choice* in the UK)
- ◆ Pictures of pristine nature or the planet, without textual claims
- ◆ Single evocative words ('pure', 'nature', etc.)
- ◆ Use of evocative colours (green, blue)
- ◆ Green 'company claims' (separate from any specific product): ex. Ecover, Maison Verte
- ◆ Environmentally friendly
- ◆ Kind to the environment
- ◆ Natural
- ◆ Caring for/respecting the environment
- ◆ Ozone friendly: e.g., 'Does not destroy the ozone layer', 'Contains no CFCs'
- ◆ Biodegradable

1.3.1.1 Symbols and logos

As noted above, symbols and logos are becoming particularly problematic for those attempting to monitor and control claims, since they largely escape regulation under existing, print-oriented regulatory systems. The familiarity of many consumers with 'official' logos such as national ecolabels is likely to trigger an initial reaction of trust towards anything that looks like an official endorsement, making misleading logos a particularly insidious form of misleading advertising.

In fact, unofficial logos are doubly misleading: first, in the claims they put forward; and secondly, in their implied official capacity.

The most common forms for logos and symbols (= non-text claims) include:

Packaging symbols or logos:

These generally indicate that recycled materials have been used in making packaging, or that packaging is recyclable upon disposal. Examples include Mobius strips, arrows, and the German Green Dot.

Product logos:

These generally take the form of pictorial logo-type claims, made by manufacturers themselves and not connected to any criteria or standards. These are common for CFC-free claims, as well as for vague environmental statements.

Logos indicating non-official 'compliance':

These are logos which are connected to some sort of criteria or guidelines, set by manufacturers themselves, with or without any third-party 'verification' (examples include

Johnson's 'people working for a better world' logo on aerosols, Colgate-Palmolive's 'preservons notre environnement' on detergents, and Henkel's 'milieu-informatie' on detergents)

Logos with semi-official status:

Logos with 'semi-official status' are attached to some sort of set criteria and verification procedures but do not have international status. In fact, most recognised logos fall into this category. They include the Green Dot, the Forest Stewardship Council, the Marine Stewardship Council, Fair Trade, and many others (see International Instruments).

Logos with international status:

These 'official' logos are linked to government-determined and -agreed criteria, and include official ecolabels and markings indicating ISO compliance with ISO standards, which are elaborated by firms and government representatives jointly. It must be noted, however, that official recognition does not necessarily mean that verification of any kind has taken place or will ever take place. This is the case, for example, for ISO standard 14021 on environmental claims, for which no external verification system is envisaged (see International Instruments).

1.3.2. MEANS OF DELIVERY OF CLAIMS

Following the basic categories set out by the European Advertising Standards Alliance (EASA) and its members, the vectors for delivery of claims are as follows:

Category	
Press	<ul style="list-style-type: none"> - newspapers (including in the form of 'planted' articles or articles based entirely on company information sheets) - magazines - free newspapers
Broadcasting	<ul style="list-style-type: none"> - television (including via sponsorship of programmes rather than through advertisements directly) - radio
Screen	<ul style="list-style-type: none"> - cinema commercials - electronic media advertisements <ul style="list-style-type: none"> - computer games - videos - viewdata services - CD-Rom - Internet
Direct marketing	<ul style="list-style-type: none"> - billboards - handbills - mail order catalogues - brochures - direct mail - inserts
Indirect marketing	<ul style="list-style-type: none"> - annual reports - stationery (claims and logos as parts of company letterheads or footers) - school information packs
Outdoor	<ul style="list-style-type: none"> - posters - transport advertising - aerial announcements
Point-of-sale	<ul style="list-style-type: none"> - on-pack - in-pack - labels - packaging

Point-of sale claims, which are increasing in frequency and, as noted above, are for the most part uncontrolled within the Community (as well as difficult to control), are most often found in the following types of stores:

Type of store	Types of claim
Supermarkets	<ul style="list-style-type: none"> - recycled/recyclable packaging - detergents and washing products - paper products - aerosols
Health food stores	<ul style="list-style-type: none"> - organic - natural
Pharmacies	<ul style="list-style-type: none"> - 'bio' and 'natural' cosmetic and personal care lines
Garden centres	<ul style="list-style-type: none"> - 'natural' peat (incl. with logos) - 'biodegradable' pesticides - CFC-free insecticides - 'organic' compost, plant food
Appliance stores	<ul style="list-style-type: none"> - CFC-free (fridges) - energy efficiency - cadmium/mercury free batteries
Do-it-yourself stores	<ul style="list-style-type: none"> - lead-free paints - solvent-free paints - energy-saving insulation - CFC-free insulation
Furniture stores	<ul style="list-style-type: none"> - sustainable wood sources (incl. FSC or International Tropical Timber Organisation references)
Office machinery	<ul style="list-style-type: none"> - recyclable - energy efficiency
Stationers	<ul style="list-style-type: none"> - recycled - no chlorine bleach
Car showrooms	<ul style="list-style-type: none"> - recyclable components - technology that reduces consumption and/or emissions

1.3.3. ASSESSMENT OF CLAIMS

Environmental claims *per se* have the potential to become a powerful market tool in working towards the realisation of more sustainable consumption and production patterns. The fact that so many of them are at present misleading does not demonstrate that they are a nuisance whose use should be sharply curbed.

In those Member States where verification systems for green claims work reasonably well, such claims are considered useful tools for educating the public in the ways of sustainable consumption, as well as providing encouragement for sustainably produced products. At the same time, however, it is recognised that the current chaos of unsubstantiated claims cannot continue without severe damage being done to consumer trust in such claims - and therefore, ultimately, in official systems such as national and Community ecolabels as well.

While misleading claims may mislead in an almost infinite variety of ways, these misrepresentations can largely be categorised as follows⁵:

Type of misrepresentation	Examples
Partial (single-attribute labels)	Applies to only one aspect of the product (e.g., insecticides labelled as CFC-free; cars marketed as having recyclable components)
Unclear claims	'Recycled', where this could apply to pre- or post-consumer waste, and where no proportions are given
Meaningless claims	'Phosphate-free' for cleaners that do not use phosphates anyway; 'recyclable' where no facilities exist
Exaggerated claims	Degradable plastics (which take a very long time to decompose)
Vague claims	'Environmentally friendly', 'natural', etc.
Absence of substantiation	Wood from 'sustainably managed' sources, without certification
Misleading negative listings	'No CFCs' (CFCs are now illegal in the EU); no NTAs for detergents, when these are barely used now
Misleading statement of adherence to a code or guidelines	Simple misrepresentation, or adherence in principle without carrying out any verification (ex. ICC code)
Comparative advertising	'X% less damage to the environment' when a product is still bad for the environment, or worse than the majority of its competitors on the market

1.3.4. COMPARATIVE CLAIMS

This last category represents a particularly problematic area, which gives rise to dispute even among consumer associations. The draft ISO 14021 code on self-proclaimed environmental claims sets out stringent requirements for comparative claims. Several consumer groups are in favour of comparative advertising. The UK's National Consumer Council - author of the most complete available study on the use of green claims - believe that such ads can assist the consumer in making balanced choices.⁶

German consumer groups see the German Government's opposition to comparative advertising as encouraging producer cartels for the *status quo*.⁷ And, indeed, the advertising industry is strongly against permitting comparisons, as made clear by EASA.⁸

At the same time, other groups - including consumer organisations and government officials who deal with advertising criteria - see a danger in such ads.⁹ The problems can easily be understood by considering the proposed ISO comparative requirements (see International Instruments chapter). Advertisers making green comparative claims would have to specify to what extent (%) and compared to what (their own or a competitor's product) and in regard to what (recycled material, energy use, resource use, etc.) their product is superior.

⁵ As outlined in the National Consumer Council's *Green Claims*, Chapter 4

⁶ Personal communication

⁷ Personal communication

⁸ Personal communication

⁹ Personal communications

Such claims would have to be based on specific formulas for calculating improvement, based on the use of accepted international or industry standards, and the information used to calculate improvement would have to be released to the public upon request.

In practice, however, what the consumer will see at the end of this long process is a claim that looks something like this: '5% additional recycled content', or '10% less energy use'. Unfortunately, even environmental specialists would not be able to judge the actual meaning of such a claim, and the average consumer is certainly unable to do so.

Comparative advertising is, as its name proclaims, about making comparisons. But if a consumer does not know whether Product X used excessive amounts of energy 2 years ago, the statement that it now uses 10% less energy will be meaningless. Similarly, a claim to contain 5% more recycled content than Competitor Y will be meaningless if Y's use of recycled materials is negligible. Again, no consumer will have the basis to make such judgements, and accordingly to obtain a realistic view of what a comparative claim really represents.

The only obvious way to avoid this problem would be to follow the example of the Swiss and Norwegian systems, which require that in order to make a comparative claim, a product must in fact be better than others in the same product groups, not merely slightly better than the worst products available on the market or than an earlier, worse formulation of the same product.

Within the EU system, this would require an addition to the proposed ISO provisions for companies operating within the EU: for example, (1) either a company would also have to belong to the EU environmental management scheme EMAS, so that compliance with existing legislation could be assured; or (2) the company would have to be eligible for an official EU or national ecolabel, in any Member State; or (3) the company would have to agree to third-party verification.

1.4. THE CONSEQUENCES OF ENVIRONMENTAL CLAIMS

As Consumers International points out, advertising 'operates in the realm of beliefs'¹⁰. It is the impression created by a representation that is the crucial element in determining what is deceptive.

All of the types of claims used above - in all their forms and variations - have the potential to provide useful information or to deceive. There is thus nothing inherently wrong with green claims; rather, the problem lies with green claims put forward without a basis in fact.

1.4.1. EFFECTS ON CONSUMER BEHAVIOUR

Conversations with and reports by consumer organisations and government officials in all Member States have made it clear that the proliferation of misleading environmental claims is playing havoc with consumer confidence and beginning to undermine trust in national and EU ecolabels and other 'official' labels.

At the same time, paralysis in the face of floods of green claims is weakening official systems, particularly the fledgling EU ecolabel, thus serving further to undermine efforts to increase Daisy credibility.

¹⁰ Consumers International and UNEP, *Environmental Labelling in Central and Eastern Europe* (London, 1996), p.8

A 'scorecard' published by the Austrian *Arbeitskammer* makes clear the threat being posed to official ecolabels by this two-fold phenomenon:

Authority	Logo	Strict	Remarks	R*
Austria	Umweltzeichen	High	Paper. Appliances, paints, etc Tight standards	###
Germany	Blue Angel	Medium	Standards uneven	##
Nordic Countries	Swan	High	'The only strict multi-country system'	###
Netherlands	Milieukeur	High	Life-cycle; annual control	###
European Union	EU-daisy	Strict	' Very weak standards '	#

*R = recommended: ### = highly to # = not recommended

Given this situation, it is almost impossible for consumers to judge claims' validity, except in those Member States where claims must be substantiated when challenged, and where strongly enforced national ecolabels provide a stable base for consumer choice (e.g., the Nordic countries and the Netherlands).

There is clearly a lesson in Best Practice to be learned here. In the absence of the establishment of an interlinked and efficient system for monitoring and controlling claims, weaker systems (including the Daisy) will be swamped by consumer mistrust. Under such conditions, it is likely that even stringent national systems will be put at risk, as imports flaunting claims elaborated under weak or non-existent regimes increasingly penetrate pan-European markets.

1.4.2. ECONOMIC IMPLICATIONS

It is widely recognised that sustainable consumption is an important tool - possibly the most important tool - for bringing about the realisation of sustainable production. Yet no amount of regulation at EU or national level will be able to substitute for economic benefit as a means of encouraging producers to change their production processes to more environmentally benign methods.

At the same time, a failure to control green claims puts at a disadvantage the producer who seriously attempts to alter his production methods in order to reduce environmental impact. If a firm spends money to achieve such reductions while other firms may claim equivalent achievement without instituting measures, the environmentally responsible firm is put in a disadvantageous position economically.

This is particularly important for small and medium enterprises (SMEs), whose human and economic resources cannot compete with those of larger companies. This could be understood as coming under Article 86 (b) and (c) of the EEC Treaty which, as Stephen Weatherill notes, 'may be used to require a dominant firm to respond to consumer demand.'¹¹

Under these provisions, abuse of a dominant position by undertakings may consist of:

- '(b) limiting production, **markets** or technical development **to the prejudice of consumers;**
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.' (*emphasis added*)

¹¹ Stephen Weatherill, *EC Consumer Law and Policy* (Longman, London, 1997), p.38

Huge advertising budgets - in some cases used specifically to put forward misleading green claims - are available to large firms, particularly international companies, and cannot possibly be matched by smaller producers or by retail groups.

The most blatant recent example of this in the area of environmental claims has been Monsanto's current £1 million advertising campaign - in the UK alone - to convince consumers of the environmental and nutritional soundness of environmentally modified foods.¹² This is being carried out to counter demands by retail groups including Eurocommerce and Eurocoop that modified crops (especially soya) be segregated from unmodified crops (a demand that Monsanto has steadfastly rejected), as well as a Mori opinion poll showing that 70% of EU consumers are opposed to genetically modified foods.¹³

A budget of this size cannot be matched by even a consortium of smaller firms. Nor can consumers judge the correctness of the claims put forward in the face of such a sophisticated and sustained advertising blitz.

The only way to deal with this problem is through action taken at the Community level, even if maximum flexibility is left to Member States. As BEUC has noted:

'Given that the EU puts emphasis on the market to improve the level of environmental protection in the Union, information on the environmental responsibility of companies, their products and their production methods is critical.'¹⁴

1.5. CONCLUSIONS

That judging misleading environmental claims is extremely difficult is beyond doubt. Consumers have repeatedly responded to surveys by stressing their eagerness to be given clear and useful information about the environmental characteristics of the products they buy; consumer groups have repeatedly called for regulation of misleading green claims; and EASA has opposed comparative advertising because it is difficult to assess accurately.

This is a problem of long standing. BEUC and the European Environment Bureau (EEB) complained about too many green claims in 1991¹⁵, in particular vague claims and comparative claims. They supported the ecolabel approach for claims, in which products must meet certain criteria and be better than other similar products on the market in order to make a claim.

A 1992 Eurobarometer showed consumers already sharing this concern, with 61-88% of those questioned asking to be better informed about the environment, and 76-92% of consumers (depending on Member State) requesting better information on the environmental risks posed by everyday products.¹⁶

BEUC, in 1994, in its manifesto for the European Parliament elections, called for swift action on a proposal for a Directive regulating green claims made for both goods and services.¹⁷ It has reiterated that call on several occasions since then, both in communications to the Commission and in communications with us.

¹² Giving rise to 30 complaints to the Advertising Standards Authority thus far.

¹³ Stephen Armstrong, 'You say tomato, we say genetically altered food product that's good for the environment', *The Guardian*, 1998

¹⁴ BEUC position paper

¹⁵ BEUC, 'Too many green claims', *Consumer Affairs* no 111, May/June 1991

¹⁶ Commission of the European Communities, 'Europeans and the Environment in 1992'

¹⁷ BEUC, 'A Consumer Manifesto for the 1994 European Parliament Elections'

Consumers International also wants to see on-pack claims dealt with, as well as claims which create a misleading impression while remaining technically accurate (ex. 'CFC-free' for aerosols). Towards that end, it notes the need to deal with the issues of verification of claims, burden of proof, and enforcement beyond what is being done at present.

The 'bottom line', however, has been nicely summed up by the UK Consumers' Association: 'Ultimately for the consumer it does not matter whether regulation is being carried out by the industry or by a statutory agency - what matters is that it works.'¹⁸

¹⁸ Consumers' Association, 'Self-regulation of advertising', June 1997, p.2

2. THE CONTROL OF GREEN CLAIMS IN THE MEMBER STATES

2.1. THE EVOLUTION OF NATIONAL CONTROL REGIMES

Green claims are only the latest of successive concerns which have inspired control of advertising and other marketing claims since the beginning of this century. Newer regulatory concerns have not replaced older ones, but added new layers to existing foundations.

Exactly where and how control of green claims has been grafted onto existing structures in different Member States depended on the stage of development of national advertising control regimes at the time, the division of labour between self-regulation and State regulation, and the level of 'green' consciousness.

The European pattern has assumed a measure of convergence from two sources. The first concerns the self-regulation of classic advertising, harmonised both in content and institutional practice through the Code of the International Chamber of Commerce (ICC), first formulated in the 1930s, with Spain at the latest recruit as recently as 1995.

The second harmonising influence is, of course, the EU Directive on Misleading Advertising, which has become national law (if not necessarily effective practice) everywhere except Germany.

The evolution of advertising control in Europe:

Purpose	Concern for	Laws	Self-regulation	Special Codes	Pro-Active information
Competition	Producers	Early 1900s			
Misleading consumers	Consumers	Adaptation of above			
Taste and Decency	Society		From 1920s (ICC 1934)	Violence, Health etc.	
Protecting consumer	Safety + econ. Fraud	1950s – (EU Directives impl.)			Labelling; info standards for adverts
Empowering consumer	Consumer	Labelling	Tightening of ICC etc.		Official Logos 1980s
Extend to green claims	Consumer	Official green codes (Control of on-package claims)		Green advert. Codes	
Create green consumer	Environment				Govt.-sponsored info

The oldest foundation for the control of advertising in Europe is concern for fair competition, as exemplified by the still valid German Unfair Competition Act, UWG, dating from 1909. This continues to be the only area of advertising control where criminal sanctions are in theory possible in a number of the Member States. The objective of such legislation is not, in the first instance, to protect the consumer, but rather to prevent producers and traders from their fellow and potentially fraudulent competitors. To this day, complaints against misleading advertising are as likely to come from competitors or industrial associations as from consumers or their representatives.

Control of green claims on the basis of competition concern can be a double-edged sword from both a consumer and environmental standpoint. As cases cited for Germany and Italy show, the laws can be used by industries to enforce a cartel of the *status quo*, preventing competitors from claiming justified if partial improvements in process technology or product qualities.

In the 'competition' context of controlling advertising claims, the consumer appears merely as agent for the proper working of the market – a potentially weak link in the chain which must be protected in the interest of the economy. It is striking that this notion of the consumer as *agent of policy* has returned in a new guise in the most recent Scandinavian view on green advertising, where the role of the consumer is to improve the environment through sustainable consumption, by rewarding producers of less damaging products with increased market share and thereby encouraging both process and product innovation.

It required merely a shift in interpretation rather than a change of legal language to extend the notion of economic damage from intra-company competition to the individual consumer as victim in his own right. The action in both cases is described by the term 'misleading', but its consequences are judged differently, requiring different proof.

The legal archaeology of the term 'misleading' is most revealing in the case of Germany, where Courts have traditionally applied an empirical test to prove transgression (i.e., x% of consumers are in fact misled by a message, which distorts the market), whereas the majority (and Community) use rests on the potential to mislead. While under the German legal notion *perfectly true claims can be ruled out of order*, under the British legal tradition even false claims may be admissible if it cannot be proved 'beyond reasonable doubt' that the advertiser *intended to deceive*.

Even these brief examples indicate why formal recourse to the Law has become the exception rather than the rule in the control of advertising in Europe. Proving transgressions in a Court of Law on a case-by-case basis is slow at best, and uncertain given the problem of proof. Para-legal and voluntary mechanisms have thus been created in most Member States to deal with the bulk of control cases through mediation, arbitration, and sanctions.

The need for alternatives to Court procedures became particularly important as two further control issues were added to the traditional competition/economic fraud concerns. These were: (1) taste and decency, which became an issue in the 1930s, and (2) modern consumer protection dating from the 1950s.

Concern for safeguarding taste and decency reflected the growing influence of advertising in 'culture' and society. Here, control regimes provide protection not for the individual consumer as such, but rather for society as a whole. This is the area where self-regulation plays the dominant role in all European countries, both as a source of norms and as regards the institutional mechanisms of control. The main reason is that values change more rapidly than Laws, and magistrates are not necessarily the best judges in such cases. An example is provided by the exploitation of women in advertising, which now constitutes 90% of the cases handled by the Austrian *Werberat*.

European practice in the second, newer area of advertising regulation – consumer protection – does not rely heavily on self-regulation, but rather on public regulation and legislation. What distinguishes this policy layer from earlier attempts to protect the consumer from being misled is the stress on accurate information, whether this concerns safety, price, or product composition. One consequence of this shift in emphasis – a direct result of the consumer movement – is the tendency to drop the distinction between advertising and other, notably on-pack claims. This, by itself, tends to marginalise self-regulatory bodies which are built around the advertising industry in the standard tripartite pattern – media, advertisers, and agencies –

which is followed in all countries except the Netherlands (where self- and public regulation have effectively merged).

The reliance on law for consumer protection re-created an institutional problem which had been solved by the growth of self-regulation decades earlier: the unsuitability of formal Court procedures for controlling a large number of constantly changing messages using dozens of print media, billboards, and sponsoring (and, more recently, Radio/TV).

Self-regulation has sought to adapt to this challenge, in some countries like Italy or the Netherlands successfully, by adding special Codes in such areas as health, hazards, environment, etc. to its deontological armoury.

In key countries, however, the State itself has assumed one of the most important functions of self-regulation, namely the provision of informal channels of redress which avoid recourse to the Courts.

The clearest case is provided by the Consumer Ombudsman in the three Scandinavian Member States, Denmark, Finland and Sweden. This is a government-appointed official, closely linked to the Consumer Protection Agencies of these countries. His or her task is to settle cases out of Court, although exceptionally he may choose to bring test cases for adjudication by the Courts.

In spite of formal differences, much of the same role is played by the German quango, the *Zentrale zur Bekämpfung des Unlauteren Wettbewerbs*. While formally an independent association, its bureaucracy is the officially designated body to handle (i.e. judge the merits of) complaints¹⁹ in the first instance. It is authorised by law to issue cease and desist orders (*Abmahnungen*) to offending advertisers and threaten judicial procedures in case of non-compliance. (Consumer organisations have similar statutory rights to issue *Abmahnungen*.)

The Portuguese Consumer Institute, an agency directly attached to the Prime Minister, is similarly authorised to issue precautionary cease and desist orders. It does not, however, initiate litigation, but refers the matter if necessary to the Inspector or the Economics Ministry.

The problem of combining law with flexible and efficient administration is solved in two different ways by the Netherlands and Italy.

Whereas in the five cases discussed above, the State mimics self-regulation through the informal style of what are essentially regulatory agencies, in Italy self-regulation mimics the State.

The absence, until the early 1990s, of detailed legislation regulating advertising created a void which has been filled by the *Autodisciplina Pubblicitaria*. The *Istituto* has not only ventured heavily into norm-making, but has made these norms legally enforceable through private contract law.²⁰ Alone among self-regulatory agencies, it handles cases through a Jury which is not composed of members of the IAP, but of independent jurists and other experts. (Following the implementation of the EC Directive on Misleading Advertising, in 1992 there is now also a formal institution, *Ufficio Pubblicità Ingannevole* in the anti-trust division, *Autorità Garante della concorrenza de mercato*, as yet largely untested.)

¹⁹ Those, like green claims, which fall under the competition law, rather than involve taste and decency, which are handled by the self-regulatory *Werberat*.

²⁰ Adherence to the Code or Codes is a mandatory component in contracts between advertiser and agency.

The Netherlands has pursued the opposite route, with the State co-opting an elaborate self-regulatory structure (*Stichting Reclame Code*), giving it wide powers but:

- ♦ laying down in law the institutional/procedural standards for exercising these rights through Tribunals (*Commissies*);
- ♦ being an equal party, through the Ministries concerned, in the process of drawing up the general and specific Codes regulating advertising;
- ♦ funding the self-regulatory agencies as if they were government bodies.

In spite of this close association, the State leaves the *Stichting* and its Tribunals a great deal of freedom in their dispute settlement and arbitration activities. Unlike the Scandinavian model, in which the State acts as the champion of the consumer, under the Dutch model the consumer associations are directly represented at all levels of the self-regulatory system. This means that the usual tripartite structure of self-regulation in Europe, involving (1) media, (2) advertisers, and (3) agencies is complemented by an equal 4th party, comprising consumer (and environmental) organisations.

The Spanish system of advertising controls combines elements of all the preceding examples, although the far-reaching delegation of consumer responsibilities to the 17 Autonomous Communities prevents meaningful action at the national level. The *Instituto Nacional de Consumo* is a quango, which merely coordinates with the Communities. With its governing bodies including consumer organisations, it resembles the Dutch *Stichting* model, while its broader brief as the executive agency for consumer policy resembles the Scandinavian Konsumverket/Ombudsman model. While this system could evolve towards the flexible and responsive character of some northern systems, the co-existence of several criminal and civil laws with an untested and de-centralised “modern” institutional structure has an inhibiting effect on dealing with claims.

In part in response to legal and institutional uncertainties, the Spanish advertising community introduced self-regulation on the classic tripartite/ICC pattern in 1995.

In sharp contrast to most preceding examples, the French system of control is characterised by the complete autonomy between the state machinery of control, as represented by the *Direction Générale de la concurrence, de la consommation et de la répression des fraudes* on the one hand, and the self-regulatory body, *Bureau de Vérification de la Publicité*. The latter is the classic ICC-type tripartite body dating from 1935 and limited to advertising in the classic sense. The only cross-over between self-regulation and the State machinery is the practice of Courts to take into consideration the rules elaborated by the BVP.

Unlike most other national systems, which are essentially complaints driven, the French DGCCRF acts chiefly (if rather infrequently as regards green claims) on its own initiative, monitoring compliance with the Law (*Code de la Consommation*) and issuing *procès verbaux* if necessary. It is in this tradition that its recent and potentially important initiative regarding on-pack green claims must be seen: the establishment of an inventory of green claims on goods of current consumption, scientifically assessed for their veracity. Once completed, judicial action initiated by the State will be possible and indeed mandatory under the terms of the existing Law.

The French self-activating public (and even self-regulatory) control system differs sharply from the UK practice. Neither the self-regulatory *Advertising Standards Authority* (ASA) nor the public system (DTI, plus 204 Local Authority trading standards departments) tend to act on their own initiative. Both are reactive and complaints driven. Comparing the respective records, society appears to be a more fertile source of scrutiny on claims than a government inspectorate.

In the U.K., the relationship between public regulation and self-regulation is particularly complex. Classic (and non-broadcast) advertising is regulated by the independent *Advertising Standards Authority* through the Codes of Advertising and Sales Promotion. These Codes have statutory backing from the Office of Fair Trading, to whom difficult complaints can be referred. ASA thus has strong authority to tell its members not to run certain ads (Cf. the cease and desist orders of other systems directed at the advertiser/producer).

This combination of State-endorsed self-regulation backed by official sanction resembles the successful Dutch *Stichting* model (minus consumer representation). Green claims are succinctly covered in section 49 of the Codes.

The picture is confused, however, by two government sponsored Codes dealing with green claims which, paradoxically, have no link to any Law and thus lack both sanctions or, indeed, institutional expression. These are (a) the 1994 voluntary code on non-ad green claims sponsored by the Department of Trade and Industry; and (b) the 1998 Code on Green Claims sponsored by the Department of the Environment

Although enforcement of consumer law ('trading standards') is even more decentralised than in Spain – there are 204 trading standards authorities - a central coordinating institution, LACOTS, (*Local Authority Body on Food and Trading Standards*), with a remit rather like the Instituto Nacional de Consumo, does provide some central, ombudsman-like arbitration services, able to filter out cases that can be settled out of court. One important feature of LACOTS is that it can deal with on-pack claims. However, the high threshold which current law poses for successful prosecutions considerably weakens LACOTS' potential control function.

Ireland leaves enforcement entirely to the Director of Consumer Affairs and Fair Trading, an official of the competent Ministry (Enterprise and Employment).

2.2. SANCTIONS

The summary table below mentions five types of sanctions which may be imposed under public or self-regulatory control regimes of the Member States. Of these, two are all but irrelevant. The possibility of a prison sentence is highly theoretical and, on balance, probably weakens the effectiveness of judicial recourse. Light fines are a symbolic expression of transgression, but cannot be considered an important deterrent.

Most European practice relies on desist orders which, by themselves, are sanctions only if changing an advertising campaigns is costly. In fact, in many countries desist orders themselves rely on the threat of further sanctions, i.e. formal court proceedings.

Large differences can be observed as regards the most significant instrument of sanctions: publicity. Its significance derives both from the frequency with which it is used, and its effective deterrent effect on agents whose very business consists in creating positive images.

There are three principal approaches to using publicity in relation to green claims which are considered in breach of rules.

The first is the German approach, where both the official quango (Zentrale) and consumer organisations offer discretion as an *incentive* to comply with a desist request (Abmahnung). Cases thus settled are not publicised in any form.

The second approach, practiced by Scandinavia, the Netherlands, Belgium and Italy is to condemn a transgressor to pay for publicity admitting and rectifying his misleading claim. This approach is designated by the word 'active' in the summary table.

The third approach, practiced by all countries except Germany, is to publish the outcome of all cases, positive and negative, in annual reports, where they are thus available to specialists but ignored by the general public.

Sanctions for Misleading Claims:

Member State	Prison	Heavy Fine	Light Fine	Cease order	Publicity
Austria	no	yes	no	yes	active
Belgium	(if intent)	no	no	yes	active
Denmark					
Finland	no	yes	yes	yes	active
France	yes	yes	yes	yes	active
Germany	(yes)			yes	no*
Greece					
Ireland					
Italy	yes	no	yes	yes	Rectification**
Luxembourg					
Netherlands	no	no	no	yes	yes
Portugal	yes	(yes)	yes	yes	no
Spain	no	yes		yes	(Rectification)
Sweden	no	yes		yes	yes
United Kingdom	yes	yes	yes	yes	Limited

* Information on Court cases can be obtained from Court records. Anonymous summaries of cases are available from the Zentrale.

** of the false impression given, not necessarily publicity concerning the judgement.

2.3. CONTROLLING GREEN CLAIMS

With the growth of 'green consciousness' in Northern Europe, beginning in the 1970s, a new form of claims emerged which had to be dealt with by adapting existing control regimes.

One possible choice was to treat green concerns as a 'value' issue, to be dealt with through the deontological apparatus of self-regulation.

Most countries where green advertising arose early as a problem – the three Nordic countries, the Netherlands, and Germany – chose instead to treat this as a 'hard issue' – a matter for government and its appointed agents.

There are several reasons for this, some linked to previous traditions as described above but one which is uniquely linked to green claims.

The first motive for sidelining self-regulation in favour of a legally backed regime, especially strong in Germany, was the perception that green claims were a powerful marketing argument, i.e. a serious potential source of market distortions.

The second motive, originally dominant in Scandinavia, conceived the regulation of green claims as an extension of environmental policy, itself a core activity of government. The consumer-as-agent had to be able to discharge his co-responsibility for the environment (the Swedish view) or at least be empowered to contribute if he/she chose to do so (the Danish, and incidentally, German view).

Although a hard issue, green claims did not fit perfectly into the legal framework set up to regulate fair competition, or to protect the consumer from fraud. As regards the latter, the damage to any single individual from being misled by a green claim is small (as compared, e.g., to a health claim). As regards competition, on the other hand, control through competition rests too much on the willingness of agents to sue each other. This may lead to too few challenge to claims – for instance 'ozone-free' claims are tolerated by all competitors; or to excessive claims, from the standpoint of environmental consumer choice, as innovators are attacked by their peers – e.g., Italian paint manufacturers agreeing at association level to omit green claims from advertising.

The most serious problem posed by treating green claims as a hard issue, however, was to match the flexibility and speed of 'administration' of controls of self-regulation, without relying on the institutions of self-regulation.

The countries which have experienced (a) a significant growth of green claims, and (b) managed to control the phenomenon (at least in classic advertising) have adopted a three-tier system. The following remarks apply to the three Scandinavian countries, the Netherlands, and Germany.

At the system's apogee are the Courts, as an instance of last resort, but also as an important source for creating case law through test cases which become reference points for the main control activity, which takes place below the level of formal litigation.

The next lower level is constituted by quasi-courts – Complaints Boards, etc. - staffed by professional lawyers (but not acting as magistrates), and other members of society who may or may not be delegated by corporatist sponsors.

Below this level exists the level of the informal warning off - *Abmahnung*, letter by a consumer Ombudsman, etc.

One can even identify a fourth institutional level. The bureaucracies serving the quasi-judicial apparatus, in the person of the Secretary etc., may act as judge and jury of the first instance, with the right to refuse complaints, to settle them by informal means, or to pass them on to higher levels of complaints settlement and litigation.

In terms of numbers of cases, the three levels form a pyramid, with the largest numbers of cases, mostly unseen and unpublicised, taking place at the lowest level, and the fewest going to formal litigation. Court cases can be comparatively numerous when new rules are tested, e.g., in Scandinavia in the early 1990s. Once benchmarks for behavior, and the basis for threatened sanctions, have been established, the lower levels of control can act swiftly and confidently.

While the whole institutional system rests on law, the extent to which certain functions are carried out by quasi-government actors (quangos) or independent actors differs among the group of most active Member States. In Italy, the quasi-judicial level is represented by an unusually well developed self-regulatory body which occupied an institutional niche left vacant by the state. In Holland, the complaints-board level is also represented by a self-regulatory body, the *Stichting Reclame Code*, but one strictly regulated and circumscribed by government instruments.

As the table below demonstrates, genuine self-regulatory Codes for regulating green claims are characteristic of countries where the government has not taken an active role in this matter.

Instruments of control specific to Green Claims:

Member State	Specific Law *	Official Code	SELF-REGULATORY CODE
Austria	No	No	<i>Werberat</i> sub-codeces (1) environment (2) motorcars
Belgium	Environment mentioned in 84/450 transposition, <i>Loi de 1991</i>	(1) Code for logos planned (2) Self-reg. Code foreseen under Loi 91 ⇒	JEP green code since 1998
Denmark	Environment Act of 1994 § 8 on green marketing	Nordic Ombudsmen's Green code	No
Finland	No	Nordic Ombudsmen's Green code	No
France	No	Official request for ⇒	<i>BVP Code de déontologie environm. 1990</i>
Germany	No	No	No
Greece	Market regulation 1998 concerning use of word 'eco'	No	Appendix III of voluntary Adv. Code
Ireland	No	No	No
Italy	(packaging/information law of 1991)	No	No
Luxembourg	(packaging Règlement 1992)	No	<i>Code déontologique env. 1998</i>
Netherlands	No	Environmental	Advertising Code
Portugal	(Art. 7 of Consumer Protection Act) (Art. 22 A on motor vehicles ads)	No	No
Spain	No	No	No
Sweden	No	Nordic Green Code	No
United Kingdom	Contemplated by present Government	Dept. of Environment Green Claims Code (1998) DTI voluntary Code on non-advertising green claims (1994)	Section 49 of the Advertising Standards Authority Codes

* Not included are laws related to EC or national Eco-labels

2.4. THE EFFECTIVENESS OF GREEN CLAIM CONTROL REGIMES

The quality of different national regimes can be judged according to a number of different but not mutually exclusive criteria:

- ♦ Does the regime provide easy, cheap and speedy access to, and settlements of, complaints procedures?
- ♦ Is there significant claims activity?
- ♦ Are misleading claims rare, or becoming rarer?
- ♦ Do sales-related communications empower the consumer to make informed choices?
- ♦ Have public or self-regulatory regimes regarding green claims promoted sustainable consumption?

This study was designed to provide empirical evidence as regards criteria one and two, and gain hearsay evidence, from interviews, regarding the third test of success. Some preliminary and speculative judgements can be made regarding question 4. Answering the last question would require sophisticated studies on *ex-ante* and *ex-post* market shares, filtering out the effect of regulatory environmental policies, general labelling laws, etc.

Member State	Access		Activity Public/Self		Effect on Claims*	Consumer information
	public	self-reg	public	self-reg		
Austria	Good		None		+	Average +
Belgium			None/significant		+	Av./poor
Denmark	Good		Very active		++	Very active
Finland	Excellent		Active		++	Active
France	Good/Good		Limited		+	?
Germany	Good/Good		Active		++	Active
Greece	Fair/fair		None/none			Poor
Ireland			None			Poor
Italy	Fair/Good		Limited		+	Poor
Luxembourg						?
Netherlands	Excellent		Very active		++	Active
Portugal	Fair		None			Poor
Spain	Fair		None		-	Poor
Sweden	Excellent		Very active		++	Very active
United Kingdom	Fair/Good		Active		+	Average

* Excluding on-pack claims

2.4.1. ACCESS

The criterion of individual access is perhaps less important in determining the success of control in the area of green claims than in other areas of consumer concerns, since complaints will typically originate from professional bodies and even branches of the public administration itself.

Access is particularly easy (and cheap) where the state provides for (directly or by subsidy) an intermediate body which follows up claims, including through litigation. The same can in

theory be said for countries like France, where the citizen can write to a Ministry which then may or may not act. The difference between systems with intermediary bodies, like the Ombudsman, *Stichting*, or *Zentrale* is that the complainant has a formal right to reply and may himself take part in the complaints settlement procedure. This is particularly important for consumer and environmental organisations.

2.4.2. LEVEL OF ACTIVITY

This criterion for judging the success of control regimes is a useful indicator especially for distinguishing systems which exist merely on paper from those which clearly function.

Within this latter group, however, a comparatively low level of activity can be a sign of success, denoting that every one has 'got the message' and the rules are observed. Thus, in Scandinavia, complaints activity may have peaked since the early 1990s.

It is useful to ask whether it is the fault of the national system if there is no activity. If green claims are not valued highly in society, (a) misleading claims do not much matter, since consumers pay no attention anyway; and (b) civic organisations may not avail themselves of the possibilities that exist. The latter case seems to be represented by Austria, with a high level of concern for the environment, but where other issues claim the attention of consumer advocates.

2.4.3. EFFECT ON CLAIMS

The most valid measure of success is the presence or otherwise of misleading claims. While no systematic evidence is available, it appears that the initial proliferation of green claims in classic advertising has been successfully contained in countries where such claims mattered most. As has been noted earlier, advertisers have found ways to escape these constraints by subliminal appeals through images and colour. The damage caused by that form of misleading claims is somewhat different, however.

Traditional false environmental product claims mislead the consumer, undermine his sovereign choice, and deprive genuine eco-products of their fair market share. Collectively, they undermine the market incentive for industry to innovate production and product technology. They prevent a potentially significant minority of consumers from moving towards sustainable consumption, both by depriving them of correct information and by generally fostering confusion and cynicism regarding green claims.

Subliminal green advertising has some of these latter effects, but more subtly suggests that industry is moving on its own to fulfil the objectives of sustainable consumption. This may generally reduce public support for environmental regulation of all kinds, and more specifically, stop the recruitment of new 'concerned' consumers to join a minority which must reach a minimum critical size to have an effect on the market. Some Nordic cases cited in the country studies show that ombudsmen are trying to combat these more subtle forms of green claims, although not necessarily successfully.

The most serious shortcomings of all control regime studied is in theory amenable to redress – the proliferation of doubtful logos. Here, too, the Scandinavians have shown that one type of false claim, via logos – the claim of virtue for applying current law – can be effectively stopped.

However, they still fail to deal with two, rather different sources of confusion. One is the sort of half-true claim related to recyclability. Mobius loops of all kinds, and the German Green Dot are misleading while not strictly false.

A second problem is, however, posed by *well-founded* claims, when they are expressed through too many independently licensed institutions. These range from foundations to consumer groups to industry federations, individual corporations or retailers. When other worthy causes are added to the environmental endorsement list, e.g., fair trade, plus the legally required logos of standards certification institutes, consumer overload is certain. Some hard choices may have to be made in future, if the aim of informing the consumer is not to be defeated by excess. This is an area where they most 'progressive' countries resemble the more permissive ones in the sheer number of on-pack logos, even if the content – spurious versus useful – is at least partially different.

3. INTERNATIONAL INSTRUMENTS

3.1. INTRODUCTION

There are no 'international' statutory instruments governing misleading environmental advertising - that is, with the power to force those making false green claims to withdraw those claims or amend them - except within the EU itself.

Outside the EU, all 'international' regulation of environmental claims is by definition self-regulation, until such time as it is codified by a national legal system. Governments have discussed regulation of green claims over a number of years within the UN, the OECD, and the International Organisation for Standardisation (ISO).

Regulation is also continuously discussed within multi-national business associations such as the International Chamber of Commerce (ICC) and the European Advertising Standards Alliance (EASA), whose 25 members include Eastern European members and non-European correspondents.

3.2. GREEN CLAIMS

In most cases, there is of course little point in discussing environmental claims in an international context. Current systems used to verify and regulate green claims are generally based on bringing a complaint in the country in whose media an advertisement has appeared.²¹ There have been suggestions at various times that verification be carried out on a country-of-origin basis, but the self-regulatory organisations (SROs) fear that this could create a 'flag of convenience' approach to verification and prefer to maintain country of advertising as their basis for action.

It is clear that most claims will continue to be dealt with at national level, whether they being regulated through EU, national or voluntary instruments. This is appropriate for the burgeoning product claims in retail stores of all types.

At the same time, however, there is a growing internationalisation of information dissemination, which includes environmental claims:

- ◆ Enormous growth in **international travel** means that more people are reached by advertisements in in-flight magazines and at airports, and on-pack claims on airport goods and in-flight purchases.
Example: The first thing a visitor arriving at Zaventem in Brussels will see, as he awaits his luggage, is a large tripartite Nestle billboard which, on its face, is advertising Nature through 'prettified' pictures of trees and greenery.
- ◆ A number of national newspapers have in reality become **global newspapers**, based on the large international audience they reach on a daily basis (in some cases as the result of being printed in several locations). These include the *Financial Times*, *The Times*, the *International Herald Tribune*, the *Wall Street Journal*, *Le Monde*, *Le Courier*, the *Neue Zürcher Zeitung*, and the *Frankfurter Allgemeine Zeitung*, as well as the weekly *Time Magazine*, *Newsweek*, *The Economist*, *Der Spiegel*, and *Figaro*. International-circulation newspapers have become particular favourites for a new type of advertisement which

²¹ Interviews with EASA, UK Advertising Standards Authority

claims environmental friendliness for an **entire company** - or even sector - often in half-page or even full-page layouts.

Examples:

- The 'life sciences' industry (itself a new type of environmental claim, for an entire technology) - routinely advertises genetically modified crops in ads showing pictures of fields and trees, or the planet seen from a distance.
 - The nuclear industry's ads often feature trees and plants.
 - Elf Atochem took up two pages of *Le Courrier* in 1997 with an ad claiming that it was the first company to act to save the ozone layer.
 - Ciba Specialty Chemicals has adopted a huge multicoloured butterfly as its emblem.
- ♦ **Equity markets** are booming in Europe and elsewhere, as privatisation attracts small investors to stocks in large numbers. **Annual reports** have therefore become a way to reach large audiences to convey messages and claims. As the *ENDS Daily* has noted, some firms are now using these reports to put forward environmental, economic and social messages concurrently.

Example: Monsanto has 'reviewed its progress towards sustainable development' in a document 'published alongside its latest annual corporate report.'²²

- ♦ **International meetings** of all types, especially for business groups and policymakers, are multiplying at a rapid rate and provide an excellent opportunity to present large numbers of people with 'marketing information' that does not comprise advertising in the usual sense but which may present misleading claims.

Example: At the 1997 meeting of Parties to the Montreal Protocol, Elf Atochem, Solvay and Allied Signal set out marketing information on their new CFC substitute substances. Solvay's cover features a colour photo of a tree set in fields of waving grain, Allied Signal's is filled with a blue and green planet Earth seen from space, and Elf Atochem features a small green and blue planet on the cover's corner.

Elf and Allied Signal also used this occasion to provide tables setting out the main parameters of their new products. These include ozone depletion potential (ODP) and halocarbon global warming potential (HGWP). The latter has been substituted for GWP, the term used in all the literature and relevant legislation, because it looks like GWP but is some 10 times lower. Thus, conference participants looking for environmental substitutes for their current processes will be lulled into thinking they have found them because of the similarities between the terms - with huge potential for market capture and environmental damage.

Although this type of deception is upstream from consumer purchasing, it is one with potentially serious consequences for consumers, since it may have a powerful impact on curtailing sustainable production.

- ♦ **Schools** are increasingly being targeted as recipients of 'educational material' that in some cases may be indistinguishable from 'marketing information/misleading environmental claims'. The authorities responsible for controlling the dissemination of such materials are of course completely different from those monitoring advertising or on-pack claims.

Example: British Petroleum has sent information packs to schools explaining climate change from the point of view of fossil fuel producers.

The proliferation of such misleading environmental advertising creates serious problems of accountability. The average consumer, finding an 'international' claim misleading, will be hard pressed to discover where a complaint should be directed, and in what form. This of

²² *ENDS Environment Daily*, 3.4.98

course leaves the field open to those making false claims for environmentally damaging products - a problem which can only grow as world population (and the number of households even in countries with stable populations) rises and consumer spending continues dramatically to increase.

Reaction to this growth in green claims of all types has been, increasingly, for private groups to set up their own control and approval systems. However, the proliferation of these in turn, and the confusion they produce for the consumer, is likely to have negative consequences for the acceptance of the EU's own ecolabel, which may appear just another meaningless symbol rather than a guarantee of environmental quality.

3.3. CONTROLS

According to Consumers International, while environmental advertising is reasonably well regulated in a number of countries, either through statutory or self-regulatory systems, on-pack claims remain uncontrolled everywhere. This problem is particularly difficult to handle because of the fact that in many countries, self-regulation is the dominant means of controlling misleading claims. Self-regulatory systems are based on obtaining cooperation from the advertising industry in its various forms; on-pack claims, however, are for the most part made by manufacturers rather than advertisers, and the former have no uniform code of practice similar to that which many advertisers have signed on to.

As this problem becomes better understood, international discussions about environmental claims are turning increasingly to questions of sustainable consumption and production rather than simply that of accurate language. Both the UN and the OECD are considering these issues.

3.3.1. INTERNATIONAL GUIDELINES

3.3.1.1. *The UN Guidelines for Consumer Protection*

The General Assembly adopted these Guidelines by consensus on 9 April 1985, based on the recognition by the UN Economic and Social Council that consumer protection has an important bearing on economic and social development.

Its **objectives** include facilitating consumer-oriented production and distribution, encouraging high levels of ethical conduct for producers and distributors, and curbing abusive business practices at both the national and international levels.

Its **general principles** include promoting the economic interests of consumers, supplying information that would allow consumers to make informed choices, and ***making effective consumer redress available***. This is understood to require that 'Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies.'

The **Guidelines** cover a number of major areas relating to consumer legislation:

- ◆ Procedures or regulations for consumer protection should not become ***barriers to international trade***.

International trade requirements have now become a potential obstacle to almost every kind of environmental policy or instrument. Any further development in EU consumer policy

should be carried out using methodologies and justifications that would provide the EU with a strong position vis-à-vis possible WTO challenges.

- ♦ Governments should ensure that products 'are *safe for either intended or normally foreseeable use*.'

This section would provide a firm basis for encouraging sustainable production processes. It calls on manufactures or distributors to notify authorities and the public where unforeseen hazards become evident, and states that when products constitute a substantial and severe hazard even when properly used, they should be recalled or substituted.

The substitution principle, in particular, is one that informs criteria for judging green claims in the Nordic countries, and has found some support in EU legislation.

- ♦ *International cooperation* is encouraged, in order to ensure that the quality of products, and information on these, 'does not vary from country to country in a way that would have detrimental effects on consumers.'

The only basis for such cooperation would of course be an international standard of some sort. Both the ISO standard and the ICC code provide a potentially useful basis for a harmonised approach to protecting consumers from misleading environmental claims.

- ♦ Government policies should aim at 'effective protection against practices which could adversely affect the *economic interests of consumers* and the exercise of choice in the market-place'. That aim is to be supported by ensuring that manufacturers and distributors adhere to established laws and mandatory standards, that consumer organisations are 'encouraged to monitor adverse practices...such as false or misleading claims...', and that Governments encourage a free flow of accurate information on all aspects of consumer products.
- ♦ Governments should encourage safety and quality *standards* (particularly international), and ensure the availability of facilities to test and certify safety, quality and performance of essential consumer goods and services.
- ♦ 'Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organisations to obtain *redress* through formal or informal procedures that are expeditious, fair, inexpensive and accessible.'
- ♦ *Informed choice* is considered a crucial point of consumer protection. Information programmes should therefore cover aspects such as:
 - health and nutrition
 - product hazards
 - product labelling
 - relevant legislation
 - systems of redress
 - information on price, quality, etc.
 - 'as appropriate', pollution and environment.

Consumer International is working with the UN to try to get sustainable consumption guidelines into Chapter 4 of Agenda 21, to reflect the above objectives. Discussions on this are taking place within the Commission on Sustainable Development (CSD), where there is 'keen interest' in incorporating sustainable consumption issues into the Guidelines.

At the CSD's May meeting, a new draft ECOSOC decision on Consumer Protection Guidelines for Sustainable Consumption was informally introduced. Delegates at that meeting agreed to CSD considerations of policies to promote sustainable production patterns.

Specifically, Germany asked that UNEP examine the establishment of minimum international environmental standards, and the US suggested that the CSD set out the conditions necessary for corporate pursuit of sustainable development.

3.3.1.2. OECD

The Committee on Consumer Policy is active within the OECD but is no longer dealing with misleading green claims. However, the OECD carried out some work on the subject in 1992, in its Consumer Policy Group. Certain of the observations and conclusions made at that time are still highly relevant to today's situation.

First, the group noted growing concern about the state of the environment among the public in all OECD members. It also noted a willingness by consumers to pay more for environmentally friendly products, combined with a risk of consumer backlash against green products if misleading claims were not controlled.

Mechanisms. The OECD report noted three main mechanisms for dealing with misleading environmental claims (advertising rather than on-pack or packaging):

- ♦ **Rely on existing regulation**, treating misleading green claims as no different from misleading advertisements in any other field.
- ♦ **Issue specific guidelines to address green claims directly.** Guidelines are often not legally enforceable, but they have the practical weight of law because they guide the actions of enforcement authorities. The Dutch have taken this approach.
- ♦ **Promulgate legislation regulating misleading advertising.** This approach is similar to that of guidelines, but more clearly enforceable. It may also send a stronger message to the private sector. This is the model used by Switzerland and the US.²³

The Swiss specifically regulated misleading environmental advertising in 1986, through the Ordinance relating to Environmentally Hazardous Substances. The law states that manufacturers shall not print on packaging 'or for any other publicity purpose' any information about a substance, product or article that 'could lead to error regarding its environmental impact or to underestimation of the hazards or could result in incorrect use or disposal.' (Symbols, colours, images, etc. are not covered by this Ordinance.)

The phrasing used by the Swiss tackles a number of environmental problems through rules on advertising. Under this Ordinance, for example, it would not be possible to claim recyclability for packaging if facilities were not available. A number of the complaints made against environmental ads through the self-regulatory systems in Member States (see various country chapters) would also have been forbidden under this law: dangerous substances, for example, could not be presented in an environmental light because only one aspect - or a comparative aspect - of their impact was put forward.

The report also noted, however, that the Ordinance had run into enforcement problems because the demarcation between permitted and banned advertisements was not sufficiently clear. To remedy this, the Swiss issued federal guidelines clarifying what was permitted, and also established greater uniformity among the Cantons, whose authorities were responsible for taking measures against misleading claims.

²³ Communication from the Environment Directorate, OECD: Carlo Pessa, 'Efforts to control misleading advertising in OECD countries', Spring 1992

Descriptions are also given by the OECD of some of the definitions that have been laid down by states in the USA. These are in some cases, and for certain categories (e.g., recyclable), extremely detailed and based on technical assessments. Those definitions, and others currently in use in other OECD countries (including EU members such as Sweden), tend to represent **best practice** in the field of regulating environmental advertising and would be worth a much more detailed analysis than can be carried out in this report.

In 1992, codes, guidelines and regulations in OECD countries already had certain points in common:

- Claims should be specific and avoid generalities
(Swiss law forbids the use of the prefixes 'eco', 'bio', and 'Nature'.)
- Claims should be able to be substantiated
- Claims should avoid false comparisons
(Norway's guidelines prohibit environmental claims for a product if several competing products have a better environmental standard.)
- Products should not be termed environmentally friendly if considerable waste problems result from their production process or normal use.

The OECD is no longer working specifically on environmental claims, but rather concentrating on sustainable consumption and production. The organisation held a special session on the new ISO environmental standards on 4 May and is now putting together a position paper on the entire ISO package relating to environment.

3.3.2. *CODES OF PRACTICE*

The two most important international codes relating to environmental claims are the ICC Code on Environmental Advertising and the draft ISO standard 14021.

3.3.2.1. *ICC Code on Environmental Advertising*

The ICC Code on Environmental Advertising was adopted in 1991. It applies to all advertisements containing environmental claims, in all media, and is intended to be applied in the spirit as well as in the letter.

Basic principles:

All environmental advertising should be:

- decent, honest and truthful;
- ***consistent with environmental regulations and mandatory programmes;***
- conform to principles of fair competition
- 'No advertisements or claims should be such as to impair public confidence in the efforts made by the business community to improve its ecological performance.'

Rules:

Article 1: Honesty:

'Advertisements should be so framed as not to abuse consumers' concern for the environment, or exploit their possible lack of environmental knowledge.'

Article 2: Environmental behaviour:

Ads should not approve or encourage actions which contravene laws or codes or 'generally accepted standards of environmentally responsible behaviour.'

In theory, therefore, controls on environmental advertising can be linked to environmental policy objectives as well as to laws.

Article 3: Truthful presentation:

Ads should not be such as likely to mislead consumers 'in any way about the environmental aspects or advantages of products, or about the actions being taken by the advertiser in favour of the environment.'

This Article would clearly apply to general company claims as well as specific product claims; these 'should not be used unless a very high standard of proof is available.'

Article 4: Scientific research:

Ads should use technical or scientific findings about environmental impact only when these are backed by 'serious scientific work'.

This reinforces the burden of proof on the producer, but also excludes the use of industry assessments as the basis for environmental claims.

Article 5: Testimonials:

When used to support a claim, testimonials must be up to date (that is, no changes in product formulation or market circumstance should have taken place since the time they were made).

This amounts to a non-binding requirement for continuous assessment.

Article 6: Superiority:

May only be claimed when 'a significant advantage can be demonstrated' .

Article 7: Product ingredients and elements:

Partial claims may not be applied to a product as a whole and should where necessary 'clearly indicate to which stage or which property they refer'; if claims are made for improved environmental performance, they must be backed up.

Article 8: Signs and symbols:

Source must be clearly indicated, with no confusion over meaning. Should not falsely suggest official approval.

Article 9: Recycling and disposal:

Method must be accepted and available.

Article 10: Substantiation:

Descriptions, claims or illustrations relating to verifiable facts should be capable of substantiation. Advertisers should have such substantiation available so that they can produce evidence without delay' to self-regulatory organisations.

Although containing no specific criteria (the ICC is working on setting out specific definitions for some of the terms in the Code), the Code sets out clear requirements for truthfulness and full product consideration in making claims, with the burden of proof squarely on the producer or distributor. The members of the European Advertising Standards Alliance (EASA - see below) consider the Code a sufficient basis for action and have all taken it as the model for their national codes.

Nonetheless, it must be pointed out that there are at present no set criteria for interpreting the Articles of the Code, no verification procedure, and no sanctions for violation of the Code's Articles.

The ICC has an Environment Commission, and 13 working parties (technical and policy), including one on ecolabelling. The working parties are the outcome of a post-Rio explosion of environmental working parties, but in fact only five are active at present (of which the ecolabel WP is not one). None are working on fleshing out the Codes.

The ICC admits that although it can generate codes, follow-up, enforcement, compliance monitoring and verification procedures are not activities open to it. With some 7500 corporate members, the ICC cannot be seen to be acting as a policeman. Increasing numbers of consumer products companies and distributors are joining the organisation.

This creates a serious problem of credibility for those basing regulatory systems upon the Code. The ICC says some 2000 companies have signed up to its 1991 Sustainable Consumption Code, but there is no way of knowing whether companies are actually complying. In a way, therefore, the mere act of signing on to the ICC Environmental Advertising Code, if a company or institute does not intend to comply, is a type of misleading advertising.

Although it does not have the resources or political support from its members to allow it to carry out verification, the ICC sees the possibility of using independent certification companies (of which there are some 15 major ones worldwide) as a possible path for verification that would not meet with the same degree of industry opposition as would a government system.

3.3.2.2. ISO Environmental Standards

The ISO is currently working on a package of environmental standards. ISO 14021, which deals with self-declared claims, has now come out in draft form for comment. The full package includes:

- ISO 14020 on environmental labelling (general principles)
- ISO/DIS 14021 (draft) on self-declared environmental claims (manufacturers and retailers labels)
- ISO/FDIS 14024 on environmental labelling type I:guiding principles and procedures

ISO 14021 is specifically intended to close the loophole of on-pack and packaging claims. The standard is to be voted on by the end of September and is expected to be formally adopted by the end of 1998 or early 1999.

If ISO 14021 is accepted by CEN (European Committee for Standardization), it will become a European Standard. In that case, Member States will have to publish the text unchanged as their national standard and withdraw any conflicting domestic standards.

The standard sets out the objective of self-declared claims as being to 'encourage demand for those products that cause less stress on the environment'. It forbids vague or non-specific claims, and states that 'general claims of sustainability are not appropriate at this time.' If a claim may lead to misunderstanding, explanatory language must accompany it.

A claim of '*... free*' may only be made when 'the level of the specified substances is no more than that which would be found as an acknowledged trace contaminant or background level.' This is an important benchmark for what constitutes the appropriate level of substance use in sustainable production.

The general requirements set out in the standard are quite similar to those found in the ICC Code, but applied to on-pack claims, packaging and symbols. In the latter category, there is a noteworthy prohibition on using *environmental management plan* symbols 'in such a way that it could be misunderstood as an environmental symbol indicating the environmental aspects of a product.' That is, there is a clear differentiation between company management and the characteristics of the products that a company might produce.

Certain commonly - and fuzzily - used symbols are precisely defined. The *Möbius loop*, for example, may only be used for claims of *recycled content* and *recyclable*: in the former case it must be accompanied by a percentage indicating recycled content; in the latter case it stands alone.

Evaluation methods are given a backup absent from most existing systems. Point 7.2 requires that evaluation measures 'shall be implemented to achieve reliable and reproducible results necessary to verify the claim' *before* the claim is made. Producers wishing to make product claims will therefore first have to have functioning methodology in place. Moreover, they will have to be able to produce full documentation for any evaluation carried out.

A further important condition is that 'claims shall not be used if they can only be verified by *confidential business information*' (7.5.1).

Definition of *evaluation methods* is a bit more problematic. These shall follow, in order of preference, either international standards, recognised regional or national standards, or 'industry or trade methods which have been subjected to peer review.' Until it is made clear who will carry out such a peer review, this opens the way for replication of all the problems that arise during the use of self-regulatory Codes written by the industry (see adjudications in various country chapters).

Comparative claims still remain a problem, although much more stringently described than in any other existing guideline or standard. Comparisons must be based on a published standard or recognised test method (set out in clause 7.4) and be applied to comparable products. Units of measurement must also be comparable. However, the result of this may be expressed in terms of percentage improvement or absolute values - neither of which is likely to mean much to the non-technician consumer. (For example, how many consumers will understand what it means when a company claims 15% reduced water use compared to a prior process - and will the claim be meaningful if its previous water use was 35% more than for comparable products on the market?)

It should be noted here as well that *reduced energy and water consumption* (Points 8.6 and 8.7) do not include reductions in the manufacturing process of the product, but apply only in respect of product use. This addresses sustainable consumption, but does nothing to address sustainable production.

Similarly, Point 8.3.2.6 (already a bad sign) states that 'if an increase in consumption of other resources occurs as a result of the claimed reduction of resource use, the increased resource and percentage shall be stated in an explanatory statement.' This posits a degree of technical knowledge that the consumer cannot be expected to possess, and **puts the consumer in the position of having to read complicated text in order to make a simple purchase.**

A similar degree of over-complexity is found in Point 8.4.2.2, on *recovered energy*. Here, 'the type and quantity of waste that has been used for recovery shall be stated.' Again, to expect the average consumer to be able to distinguish between various plastics and understand their emissions characteristics is both unrealistic and user-unfriendly.

There are additional problems with this particular point, which states that when a claim of energy recovery is made, 'the claimant shall ensure that adverse effects on the environment resulting from this activity are managed and controlled.' Since product producers do not necessarily control incinerator operations, this provision diffuses responsibility to an extent that will make compliance with its terms impossible.

The standard also gives detailed *definitions* of a number of commonly (mis)used terms, such as compostable, degradable, reusable, etc.

Several groups have voiced their approval of the standard as a basis for harmonised international action on misleading on-pack claims (for example, EASA and its members). As the OECD has noted, however, the ISO system completely lacks *verification or enforcement* procedures for application of the standards themselves. This will have to be addressed if the system is to have any chance of functioning in a serious fashion. (It is interesting to note in this regard that the standard **uses legally binding language** throughout.)

3.4. SELF-REGULATION

3.4.1. REGULATORY BODIES

The European self-regulatory body for advertising is EASA, the European Advertising Standards Alliance. EASA has members in every Member State, and members at the European level as well.

It deals with all types of advertising, including cross-border complaints, but does not have any instruments to address on-pack claims. Complaints addressed to EASA will be passed on to national members for adjudication, based on the country in which the offending advertisement was aired.

EASA acts as the coordinating body for its 25 national members. (The European Parliament has suggested that EASA be reinforced as a monitoring system and turned into a quasi-regulatory body.) It also puts out position papers on relevant issues, sends out guidance notes, holds information days, and publishes a newsletter, which goes out to 1 000 recipients, including consumer groups, the press, the Commission, and permanent representations.

According to EASA, the self-regulatory system varies enormously from one State to another. For example, staff numbers are 65 in the UK, 1 in Portugal and Luxembourg, and 24 in France. In addition, certain legal systems allow different EASA members to function in different ways. In some countries, for example, consumer associations may complain on behalf of individuals. Generally, systems are more 'administrative' and less flexible in the southern Member States.

Self-regulation is built on a coalition of advertisers - advertising agencies - media, with the media representing the most important link in the chain since they effectively apply sanctions by withholding advertising space. The media are involved in national SROs to a reasonable extent in most Member States, although Portugal and Greece could be improved.

Self-regulation generally follows one of four models:

- ♦ The *Anglo-Saxon model* represents a framework approach, within which consensual self-regulation works on the basis of codes and guidelines. Democratic participation - and therefore number of complaints - is high, and people tend to be informed about their rights.

- ♦ The **French model** is much less flexible. The French *Code de la Consommation*, for example, is 950 pages long. The number of complaints is very low in France, but the number of requests for pre-publication copy advice is extremely high. This is largely due to legal concerns: advertisements on any subject where there are legal requirements will have to obtain a visa prior to publication.
- ♦ The **German model** is very legalistic. Self-regulation in fact really only applies to matters of taste and decency. Everything else is relatively regulatory in nature. Even the 'self-regulatory' system rests on the threat of court action.
- ♦ The **Scandinavian model** relies heavily on use of a State-appointed Ombudsman, thereby removing the basis for self-regulation. However, EASA says that some Ombudsmen have suggested sharing their burden with SROs, on the basis of cost. The problem here is that the Scandinavian systems are based on State codes, while the whole point of the self-regulatory (ICC-based) system is that industry is meant to be regulating itself.

In most Member States, all types of ads are grouped together in the self-regulatory system. The exceptions are Germany and the UK, with the former split between taste & decency and misleading advertising, and the latter separating broadcast and non-broadcast advertising.

Generally, under all these systems and in all Member States, the 'big actors' will comply with the rules, but SMEs are difficult to pull into the system. National rules will also reflect national consumer preferences and attitudes. For this reason, EASA believes that the harmonisation of advertising rules (being advocated by DG XV) will be difficult to achieve. Even the rules themselves present a problem, as translations into national languages may render them quite different in their final form.

Rule-making. Under the self-regulatory system, rules are written by the advertising industry itself. Some members will consult with other groups, such as consumer associations, extensively before finalising their codes, but non-industry representatives are generally not permitted to take part in formulating codes (there are some exceptions). EASA also notes that some rules, particularly sectoral codes, are not in fact written by the SRO, but rather by the industry sector itself.

Ultimately, EASA's understanding of the self-regulatory process is that **if industry is not writing the codes itself, it will not comply with them.**

Adjudication process. EASA has explained that most SROs, when examining complaints, will look primarily at the language of the claim rather than its content, although some of them will also run surveys to see if their adjudications are perceived as being correct. Substantiation of a claim is always required.

Making complaints is seen as a very important part of the self-regulatory system, because it is consumer use of the complaints procedure that makes the entire system function. This aspect - of being complaint-driven - within both statutory and self-regulatory systems has been criticised by some consumer groups.

Sanctions. Sanctions may include:

- withdrawal of advertising space
- compulsory pre-publication clearance of subsequent ads
- adverse publicity through publication of complaints adjudications
- withdrawal of preferential mailing rates
- ultimately, referral to the statutory authority.

Self regulation and the State

Interaction between self-regulators and the State varies enormously across Europe. Generally, SROs try to remain as independent as possible. EASA does not accept Community funding, and recommends that its members not accept State funds. Its members are also meant to be independent, which includes not lobbying for the industry.

In some States, however, SROs have a close relationship with the State. The UK ASA, for example, belongs to some UK standards bodies. In France, the SRO sits in ministry committees setting food and product standards.

Cross-border complaints

EASA members work together to attempt to deal with cross-border complaints within Europe. The number of such complaints is growing, especially regarding the Internet. Contact among self-regulatory authorities is consequently increasing.

The SRO in the country of origin handles the complaint. All adjudications of cross-border complaints are published by EASA in the Alliance newsletter.

Marketing information

EASA will deal with actual advertisements, but it will not deal with gray areas such as marketing information, even if such information has a twofold function that includes advertising a product. This excludes from the self-regulatory system all descriptions of products put out in the form of combined policy paper - advertising brochure, such as are frequently distributed by industry members at environmental conferences.

Schools

EASA also does not deal with information in schools. Here again, there is a fine line between what is presented as an information package and what actually serves as an advertisement. EASA believes that such infopaks could easily be banned by school authorities, and it is up to them to act to block such materials from classrooms.

EASA also suggested that in such cases consumer and environmental groups could simply put out their own information materials or visit schools themselves.

3.5. MULTINATIONAL APPROACHES

Consumers International has no criteria or certification of its own for environmental claims, but has put out studies indicating that these claims pose a problem calling for regulation and verification.

Bureau Européen des Unions de Consommateur (BEUC)

BEUC wants to see misleading environmental claims for both goods and services regulated. In a position paper presented to the Commission, BEUC has called for objective information to be provided to consumers, noting:

'Given that the EU puts emphasis on the market to improve the level of environmental protection in the Union, information on the environmental responsibility of companies, their products and their production methods is critical.'

Eurocommerce

Eurocommerce has no concrete policy or criteria on environmental claims and has put out no policy papers on the subject, except in relation to the ecolabel. They have, however, held a colloquium on company policy regarding environmental labelling.

Eurocommerce has also been extremely active in the effort to ensure that accurate advertisements and on-pack claims would be required for genetically modified foods.

Eurocoop

Eurocoop has no specific policy or criteria for environmental labelling but, like Eurocommerce, has been very active in trying to ensure that consumer labelling is accurate and complete. Eurocoop Sweden has noted that failure by governments to act on environmental product information puts a very heavy responsibility on the consumer and is not an efficient way of going about achieving sustainable consumption.

ECPA

ECPA (European Crop Protection Association) has no specific policy or criteria relating to claims, but its members are meant to adhere to the *FAO International Code of Conduct on the distribution and use of pesticides*.

Article 11 of the Code concerns advertising, which is defined as 'all forms of promotion, **including word of mouth**'. Advertising must give 'accurate and unambiguous information' and claims 'must not be **likely** to mislead, by implication or omission.' (Emphasis added).

Industry is meant to ensure that all claims may be technically substantiated, that no misleading statements or visual presentations are made - including wrong comparisons with other pesticides, that jargon or 'irrelevancies' are not used in claims, and that claims like 'safe' or 'non-toxic' are not made. No mention is made of environmental claims.

The FAO (UN Food and Agriculture Organisation) also puts out a check list for production, formulation and packaging, but these do not refer to environmental claims of any sort.

Ironically, all the material in the information packet sent out by ECPA - which includes briefings on EU pesticide approval instruments, pesticides and water protection, and ECPA's annual report - contains multiple pictures of precisely the type of visual presentations likely to mislead consumers about the nature of pesticides: e.g., close-ups of butterflies, mountain streams, water lilies on lakes.

CEFIC

CEFIC, the European Chemicals Federation, has no specific policy or criteria for environmental claims, although they have both a product stewardship programme and a programme of Responsible Care. The guidelines for these programmes differ from one Member State to another, but CEFIC does not think that any of them go into such detail that they would set guidelines for advertising or on-pack labelling content.

Both these initiatives are quite general in nature. Where they do affect claims is that CEFIC has specifically asked its members, under these programmes, to tell their customers (chemical producers) how to treat the chemical substances they purchase.

Worldwide Fund for Nature

We have contacted the WWF European Policy Unit, which does not deal with this issue at a European level, and WWF International, which was unable to tell us who deals with WWF product logo criteria and have not come back to us.

WWF does, however, have its own environmental claims, both through the use of its panda logo by certain producers (see Green Claims chapter) and through the 'international' certification systems initiated by WWF and carried out through the Forest Stewardship Council (FSC) and the Marine Stewardship Council (MSC). (see Policy Options chapter: certification)

Greenpeace

Greenpeace International does not deal with environmental claims, and nor does the EU Unit in Brussels. Greenpeace Business has been contacted but has not responded. Greenpeace offices have on occasion brought complaints against misleading environmental claims, but the group has no official criteria for products. Criteria supported by the organisation are set in the course of campaigns on various issues.

Environmental NGO labels

While environment NGOs generally support the control of misleading environmental advertising, even if they do not specifically work on the issue of advertising, some NGOs distribute their own logos for use on products - either their own or others'. (See Green Claims chapter)

The UK National Consumer Council has noted, in this regard: '... our research has also shown that products with the endorsement of these [environmental] organisations are not necessarily offering any greater environmental benefits than those without them.'²⁴

This indicates a need for consultation between environmental and consumer associations to determine a common position on the use of NGO logos.

²⁴ National Consumer Council, *Green Claims*, p.110

4. POLICY OPTIONS FOR THE VERIFICATION AND CONTROL OF ENVIRONMENTAL CLAIMS

4.1. INTRODUCTION

Extensive study of the use and control of environmental ('green') claims in all 15 Member States has clearly demonstrated two facts that are fundamental for consumers. First, the use of misleading green claims is changing in nature, but the phenomenon as a whole is showing an increase - in both numbers and sophistication - in all Member States. Secondly, the ability of the majority of Member States to control such claims is poor.

Several Member States have managed to establish systems which control the use of misleading claims in print and broadcast advertising reasonably effectively. The greater problem now lies in the use of on-pack claims, and particularly of claims which are general, vague, or symbolic and evocative, such as images of pristine nature, statements of environmental friendliness or naturalness, and 'environmental' colours. Such claims are proliferating in all Member States.

Still less can Member States deal with an increasingly sophisticated use of 'open-ended' claims playing on company names (e.g., Faith in Nature), technology characterisation (e.g., 'life sciences'), product line names (e.g., Greencare), or deliberate confusion between marketing information and false claims (e.g., fabricated calculations of global warming potential for HFCs).

One impetus for the increasing use of such claims is the knowledge that consumers (and even industrial customers) are becoming more concerned about the environmental effect of the products they buy (as shown by Eurobarometer surveys and others); another is the pressure on producers and retailers to use green claims to match the environmental 'concern' shown by competitors.

These are both market-based goods. As such, they call for Community action. At the same time, of course, the implications of environmental advertising and consumer response for consumer protection, environmental protection, and - well beyond these - the development of a society based on sustainable production and consumption are so great that the issue of controlling misleading use of such claims must involve actors at all levels of decision-making and civil society.

Seen in this context, the control of environmental claims is an opportunity to further integrate consumer, competition, and environment policy, and to consider manufacturers, distributors, retailers and consumers as market actors who must all be able to count on a level playing field if the market is to function effectively and fairly.

At present, however, the consumer occupies a relatively weak economic and political position, with no guarantee that manufacturers and suppliers are meeting obligations not to mislead, and with minimal capacity to challenge misleading claims, especially of a vague or general nature.

Member State systems tend, whatever the details of their mechanisms and competence, to be divided into two rough categories. In some, a pro-active policy ensures that information about claims is disseminated so that consumers may make informed choices (Austria, Germany, Denmark, Sweden, Finland, Netherlands).

In other States, laws, standards, codes, etc. - and bodies to implement them - are in place, but the consumer learns little or nothing about misleading claims except that he has the right to bring a complaint against them, either individually or through a consumer association (and in some cases, is not even aware of that right).

As a whole, therefore, Member State systems are largely complaints-driven. Administrative authorities in some Member States may consider claims on their own initiative, but this is the exception. The consumer is largely left to fend for himself as a result.

4.2. POLICY BACKGROUND

4.2.1. INTERNATIONAL CONTEXT

Discussions with important implications for the use of environmental claims are currently taking place within the OECD, the Commission on Sustainable Development (CSD), the International Chamber of Commerce, and the ISO - all of which have now understood that sustainable development must encompass both sustainable production and sustainable consumption. For this integration to take place, producers, suppliers and consumers must be considered as linked elements in a continuum rather than discrete parts of a (potentially adversarial) market.

The OECD has stopped considering environmental claims *per se*, and has moved to dealing with them as one element of sustainable consumption and production.²⁵ Within the CSD, Germany has asked that UNEP (United Nations Environment Programme) consider the establishment of minimum international environmental standards, while the US has asked for clarification of the conditions needed for businesses to pursue sustainable development.²⁶

The need to integrate sustainable consumption and production and to find instruments capable of effectively addressing both at once is urgent. As Consumers International has pointed out,²⁷ the dramatic rise in consumer spending in the past 30 years has wiped out efficiency improvements in product manufacture. The market, on its own, therefore cannot produce sustainable development.

4.2.2. COMMUNITY CONTEXT

Member States have all put systems in place to deal with misleading advertising. Some systems are highly formal in nature (e.g., France), some exist almost entirely on paper thus far (e.g., Spain), some encourage extensive involvement by consumer organisations (e.g., Netherlands, Nordics), and some are in practice based almost entirely on self-regulatory bodies (e.g., UK, Italy and Ireland).

Clearly, a dismantling of these systems in favour of a Community system for verifying and controlling green claims is not a practical option, and would ignore the differences in consumer and legal cultures which have fashioned the systems currently in place.

At the same time, however, it is quite clear that national provisions on misleading advertising are only being harmonised, as envisaged in Directive 84/450, in the sense that all Member

²⁵ Personal communication, OECD

²⁶ *Earth Negotiations Bulletin*, 30 April 1998, www.iids.ca

²⁷ Maria Elena Hurtado, presentation to the seventh Environment Foundation Consultation, 2-4 June 1997

States (except Germany) have transposed the Directive into national law. No harmonisation of consumer protection has taken place as a result of that transposition.

Thus, while goods move freely throughout the Community, the consumers of those goods are fixed within purely national systems. Confusion is a common result of this imbalance (e.g., consumers in Ireland or Portugal finding themselves faced with a German Green Dot).

4.2.2.1. Impetus for Community Involvement

The Union Treaty for the first time specifically provided a basis for Community action on behalf of consumers through the adoption of Title XI: Consumer Protection. Title XI contained one Article - Article 129a, which specified that the Community is to contribute to the 'attainment of a high level of consumer protection', through (a) measures adopted under Article 100a (completion of the internal market) and (b) actions undertaken to support and supplement consumer policy in the Member States and to provide adequate information to consumers.

Although Article 129a envisaged that consumer measures would be adopted on the legal basis of Article 100a, it made specific reference to the 'health, safety and economic interests of consumers'. The consumer is therefore not merely an economic actor whose right to free choice must be protected; his safety and health are important in their own right.

As amended, Article 129a of the Amsterdam Treaty strengthens those consumer protection requirements, and explicitly states that these are to be taken into account *in defining and implementing other Community policies and activities*. The objectives set out in the Article are still to be attained through internal market measures and measures supporting and/or supplementing Member States' policy.

This broadening of the scope of the Article 'provides a point of convergence' for the definition of 'consumer', as someone 'who is both an internal market actor and, increasingly, an individual who can and should benefit from Community-level regulation of the market.'²⁸

Environmental integration requirements have also been strengthened, through the new language on sustainable development contained in the Preamble and Article B, and the new Article 3C requiring environmental protection requirements to be integrated into the definition and implementation of Community policies, including consumer protection.

Community action to harmonise the conditions for controlling environmental claims, through information, *ex ante* criteria, certification, or other means, would meet Article 129a requirements; further the integration of the consumer, environmental and economic spheres; and yet still allow Member States to choose the means by which they would meet consumer protection goals, thus complying with subsidiarity requirements.

4.2.2.2. Member State Recognition of a Community Role

- (1) The need for some type of Community level action was informally recognised by the 16 June 1998 **Environment Council**. In a discussion on the EU ecolabel, Member States called for the co-existence of the EU and national labels, and noted that this would require closer coordination between Member States and the Commission, in particular as concerns production criteria. The majority of Member States also called for a '*more integrated approach to production and environmental policies*'.

²⁸ K. Mortelmans and S. Watson, in *Enhancing the Legal Position of the European Consumer*, ed. Julian Lonbay (British Institute of International and Comparative Law, 1996), as cited in John Dickie, *Consum.L. J.* Vol 5, No 2 (1997)

(2) The 23 April 1998 **Consumer Council** agreed on two texts that would further integration of economic and consumer interests, with implications for environmental claims as well:

- (i) It reached political agreement on a *proposed Directive on the sale of consumer goods*, including requirements that guarantees made by producers legally bind the offerer, and that the contents of a guarantee must be set out in plain and intelligible language.

The provisions of the Directive refer to defective goods, but the requirements that consumer information be set out in clear language and that claims made will bind the party making them are also relevant as political statements on an evolving parity of position between producers and consumers.

- (ii) The Council formally *adopted Directive 98/27 on injunctions for the protection of consumers' interests*.²⁹ The Directive will ensure that 'qualified entities' (public bodies and/or consumer associations) in a Member State where a practice contrary to certain consumer Directives occurs will have access to courts or administrative authorities in the country where the practice originated (see below).

The Directive on misleading advertising is covered by the new Directive. Thus, if a Portuguese consumer association finds that local stores are being flooded by products carrying the Green Dot, it may apply to the German authorities or Courts for an injunction, based on the fact that the promise of recycling implicit in the Green Dot is misleading outside of Germany.

There is no question that the Directive will have an enormous impact if consumer associations choose to use it extensively, since it would eliminate 'fraudulence havens' - Member States whose poorly functioning consumer protection systems allow producers from any other Member State to widely air unsubstantiated claims on exported products.

(3) The **Internal Market Council** of 18 May 1998 took two decisions on foodstuffs and substances that furthered the practical integration of environment, consumer and economic policy.

- (i) It reached unanimous political agreement to extend the scope of the Directive on the classification, packaging and labelling of dangerous preparations to include provisions for environmental classification and labelling, and *added user information requirements for low-level dangerous substances which normally would not have to be classified according to risk*.
- (ii) A majority of Member States rejected the label 'may contain genetically modified...' for foodstuffs, considering it inappropriate *'in view of the requirement that clear and precise information should be given to the consumers'*.³⁰

4.2.2.3. Other Institutional Involvement

Several Directorates General, as well as the European Parliament, have taken an interest in recent developments in consumer information and rights.

DG XV has, according to EASA, been supporting the idea of dealing with misleading claims at the point of origin as well as at the point of airing. EASA has opposed this idea, but

²⁹ *Official Journal* L 166 of 11.6.98, p.51

³⁰ Press release: 2094th Council meeting, Internal Market, 18 May 1998, p.18

Directive 98/27 in effect puts it into force, thereby strengthening the cohesion of the internal market by turning Member State consumers into empowered market actors.

DG III has taken a strong interest in several labelling issues, including for dangerous substances and genetically engineered foods, and has recently concluded a voluntary agreement with the detergents industry (see below).

DG V, in the context of social labels, has commissioned the New Economics Foundation to examine existing social labels and their modes of operation at a number of levels (international, company, etc) to see how label use may be made more effective.³¹

DG VI has set out suggested courses of action for fair trade which have important implications for claims as a whole. It suggests:

- ♦ the establishment of production criteria, accepted by acknowledged reputable organisations;
- ♦ reinforcement of certification organisations;
- ♦ awareness raising among the public;
- ♦ nomination of a competent authority in each Member State, as required in the organic sector, to facilitate recognition and accreditation of labelling organisations;
- ♦ steps to avoid the airing of false claims, including restriction of the term 'fair trade' to products which have been certified or are marketed by recognised organisations.

DG XI has expressed an interest in widening the scope of its environmental auditing system (EMAS) so as to include 'activities, products and services' more directly in the verification and certification process.

It is suggesting that certification would be made known publicly via a new logo which would be authorised for use in promotional materials addressed to the public (leaflets and advertising), but not on products and packaging.

The **European Parliament**, in relation to advertising which discriminates against women, has put forward the suggestion that EASA become a 'fully fledged self-regulatory body ... with the powers of regulation and recommendation in cross-border complaints' (a suggestion EASA believes goes beyond its capabilities). It also called, in general, for greater convergence of national rules and advertising regulations at the European level.³²

In relation to the role in Community decision-making of **consumer and environment NGOs**, DG XI has commissioned a study³³ on elaboration of standards, which suggests:

- ♦ standards bodies should have a mandatory screening stage to examine whether public interest concerns are affected by decisions;
- ♦ there should be transparency at EU and Member State levels via public access to information, documentation of all decision-making, reasons required for all decisions taken;
- ♦ participation rights for public interest advocates;
- ♦ evaluation of conformity to EU and other legislation;
- ♦ establishment of a Consultative Committee for Environmentally Relevant Standards.

These steps all have direct relevance to setting criteria for environmental claims as well.

³¹ 'Social Labels: Civil Action through the Market', Executive Summary

³² *Alliance Update* no 10

³³ Fuhr *et al.*, 'Reform of European Standardisation Procedures', September 1995

4.3. OPTIONS FOR COMMUNITY ACTION

Development of an integrated but flexible approach to consumer issues by the Commission would (1) serve to work towards achieving the aims set out in Article 129a of the Amsterdam Treaty, and (2) facilitate the spread of Best Practice among all Member States.

The most efficient systems in place within the EU to verify misleading environmental claims are based on highly complex institutional structures, based on clear and specific laws, quasi-judicial structures with widely representational boards, and institutions able to act informally, short of judicial procedures. Reproduction of these systems throughout the EU could not be required by Community law without creating serious difficulties for a number of Member States.

However, more flexible means for dealing with the problem of misleading environmental claims are possible, based on existing EC instruments:

Three legal instruments are central to the control of environmental claims.

(i) ***Directive 84/450 on misleading advertising***

There has been extensive debate about whether the Directive's definition of misleading advertising covers on-pack claims and, even more so, newer forms of 'intangible' claims (product lines, company names, technology names, etc.). Since Article 2 defines 'advertising' as the 'making of a representation in any form' in order to promote goods or services, however, there does not seem to be any reason to think that this would need to be redefined to cover new claims phenomena.

As it stands, 84/450 requires no harmonisation of the means used by Member States to control misleading claims, simply stipulating that effective means shall exist for that purpose. This, combined with an encouragement of self-regulatory organisations, has served to fragment Member State control approaches to such an extent that misleading claims, which are dealt with in the Member State of airing, have a good chance of going unchallenged in large sections of the Community.

(ii) ***Directive 93/13 on unfair terms in consumer contracts***

The Unfair Terms Directive has not largely entered the debate about misleading claims because it refers to (written) consumer contracts, but it could have interesting implications for textual claims as well. The purchase of a product on the basis of a green claim can be seen as a contractual agreement between the producer or supplier - whose claim sets out the 'terms' of his part of the contract - and the consumer, who accepts those terms by buying the product.

This interpretation merely gives play to the full meaning of 'unfair', which is always discussed in its meaning of 'not equitable' but can also mean 'not honest' or 'not impartial'.

As Mario Serio has written:³⁴

'This [Directive] is a major step in setting up a brand new contractual category - one that other civil law systems have already conceived - that of consumer contracts, where contracts are made by members of the public whose legal position is expected to be weaker and needs a protective shield against the contractual force the other party is presumed to exercise.'

³⁴ **Amicus Curiae**, January 1998, Institute of Advanced Legal Studies, London.

Serio believes this signals the creation of a contractual category based upon unequal legal positions, which:

- ♦ acknowledges that equality of bargaining power is a myth, and
- ♦ paves the way to measures aimed at filling the gap between consumers and professionals.

As Weatherill notes, the Directive has as its theoretical base 'a suspicion about matters such as unilateral decision making power, lack of proportionality and lack of information,'³⁵ all of which are important elements in the realm of environmental claims.

It has additional relevance to claims through its stipulation that contract terms be drafted in plain, intelligible language, and that it applies to terms which have been drafted in advance (i.e., where the consumer has not been able to influence their elaboration).

Its Annex of terms which may be considered unfair is also relevant, with point (q) referring to unduly restricting the evidence made available to the consumer or 'imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.' Under the Misleading Advertising Directive, of course, the burden of proof currently lies with the person who introduces the complaint.

(iii) ***Directive 98/27 on injunctions for the protection of consumers' interests.***

Directive 98/27 effectively fills the huge hole that lies at the centre of Directive 84/450, produced by the difficulty encountered by consumer associations seeking to act against misleading claims in order to protect the collective interest.

The Directive approximates Member State provisions relating to actions for injunctions - with a view to ensuring the smooth functioning of the internal market.

It requires each Member State to designate Courts or administrative authorities competent to rule on proceedings initiated by 'qualified entities', and stipulates that the latter may include any body or organisation which has a legitimate interest in ensuring that the collective interests of consumers are met. This includes, in particular, public bodies (ombudsmen, etc.) and/or consumer interest organisations. Mutual recognition will apply to these bodies and groups.

Injunctions may be sought for infringements of any of the Directives covered by 98/27, which include the Misleading Advertising Directive and the Unfair Terms Directive. Most important, any 'qualified entity' from a Member State where the interests it protects are affected by the infringement may seize the court or administrative authority in the Member State where the infringement originated, as long as that entity figures on the list of recognised entities to be published in the *Official Journal* every six months.

The Recitals of the Directive make clear that its purpose is to prevent the creation of marketing 'fraudulence havens' (Member States where no effective system of acting against misleading claims exists), to maintain consumer confidence in the internal market, and to ensure that organisations representing collective interests may carry out their responsibilities.

It is also clearly set out that 'the objective of the action envisaged can only be attained by the Community' and 'it is therefore incumbent on the Community to act.' (Recital 7).

³⁵ Weatherill, p.81

4.3.1. ACTIONS OUTSIDE THE REGULATORY SPHERE

A number of actions to control misleading environmental claims - or simply the confusing proliferation of such claims, whether misleading or not - could be taken without the need for new or amended regulatory instruments, by simply turning to examples of Best Practice. This would entail extending to the EU level schemes already in place in one or more Member States or other areas of EU policy.

- (i) Fund BEUC and national consumer groups to give annual awards to the most truthful green claims, and publicise the most misleading claims, thereby using publicity as a sanction (as is done in Germany and the Scandinavian countries).
- (ii) Fund national consumer associations to follow the example of Austria and set up scorecards in which various claims found on the national market are rated according to their reliability.
- (iii) Arrange for consumer associations in all Member States to bring test cases against misleading claims in order to see whether the systems in place for verification of claims are in fact functioning to protect consumers.
- (iv) Following the model of its commitment to the use of recycled paper, etc., the Commission and other Community institutions could refuse to buy any supplies from producers displaying misleading claims on their products.
- (v) Have the Commission put out a 'black list' of terms to be discouraged in environmental advertising of all types, including on the Internet, and in addition fund consumer and environment groups to publicise these.³⁶

This could also be tied in to UNEP's Clean Production newsletter and website.

- (vi) Have the Commission encourage the formation of EU-wide associations for producers, retailers and advertisers making claims for similar products, in order to take a first step in reducing the proliferation of labels by agreeing on a limited number of labels and logos for any given product group.

4.3.2. ACTIONS REQUIRING MINIMAL REGULATORY ACTION

There are three main ways of dealing with the problem of misleading and proliferating environmental claims; for example:

- (1) Set out information requirements relating purely to the information itself, rather than to the phenomenon it claims to represent: that is, essentially follow the method used by the self-regulatory authorities, of judging whether a statement is factually correct.
- (2) Set out requirements that information be true in the spirit as well as in the letter. For example, forbid the use of claims that are true but misleading, such as 'contains no CFCs' when CFC use in the EU is illegal.
- (3) Elaborate a system that requires claims to reflect the entire production process of the product to which they attach. There are various means available for achieving this goal, but they all require statutory action and will therefore be dealt with below.

³⁶ Suggested by Bob Schmitz, "Green Advertising in Europe: A need for common EU rules?", *PRP* 6, Feb 1995, p.3

Categories (1) and (2) could be instituted relatively easily (for example, via Decisions addressed to producers, retailers and advertisers). Methods for doing this could include:

- ◆ ***Require that, wherever possible, information be presented as straightforward information rather than in the form of a green claim.***

For example, the Green Dot should be replaced by a text saying 'We have paid to belong to the Dualsystem Deutschland'. This would mean something to German consumers, who need to know this information, while conveying nothing in those Member States where a Green Dot is a meaningless symbol but nonetheless implies environmental benefit.

Similarly, PET plastic should be labelled PET, instead of showing a recycling arrow. This information would assist sorters, who need to know what type of plastic they are handling, without giving the impression to consumers that recycling facilities are readily available, if they are not.

- ◆ ***Require that information which is true but not relevant (and therefore misleading) should be phased out throughout the EU within a given period of time.***

For example, allow companies currently using various 'CFC-free' claims to write, in equal size lettering, on their cans - 'EC law now forbids the use of CFCs in aerosol cans' for a specified transition period, after which no further 'CFC-free' claims will be allowed (except for export to non-EU countries, where this is still an important and valid environmental claim - this is one aspect of all such limitations on claims that needs to be considered.)

- ◆ ***Set up a positive list of non-permitted claims.***

This would represent an effective but minimalist response at EU level and could include vague, overly general, and meaningless claims, as well as symbols such as trees, planets, birds, suns, etc. Verification would remain *ex post* and national, with Member States having the flexibility to extend the list as they wish.

This approach has the appeal of simplicity. It would send an immediate and clear message to producers which favour misleading or vague green claims, and by eliminating whole categories of vague claims, symbols and logos would make it far easier for Member State authorities and consumer associations to carry out assessments of the claims remaining on the market.

- ◆ ***Establish a disclosure requirement.***

The Commission could specify that information forming the basis for a claim, symbol, etc. must be made available upon request to any of the qualified entities designated under Directive 98/27, within a delay of two weeks, failing which the claim would have to be withdrawn on any further production runs.

- ◆ ***Adopt 'invisible' controls***

Several Member States (Germany, Denmark, Finland, Sweden, Greece, UK, Netherlands) use 'invisible' controls to convince advertisers to withdraw offending claims through the threat of refusal of advertising space or of adverse publicity. This is a popular instrument both for consumer organisations and self-regulatory authorities.

At Commission level, it could be carried out by a warning letter, combined with the threat to publish names of persistent offenders in the Official Journal and on DG XXIV's website. The difficult with such a scheme, of course, is the size of the problem. One would have to hope

that after the first few dozen cases, misleading claims would be withdrawn voluntarily; otherwise, the plan could turn into a never-ending chore.

A further problem with this plan of action is that already mentioned in some country reports: namely, that because it is invisible, it has very little effect in raising public awareness of the issues involved in environmental claims.

4.3.3. STATUTORY INSTRUMENTS

Other actions that could be taken to reduce the use of misleading claims would require some modification of existing legislation, or the establishment of legal instruments of greater complexity than a Decision.

4.3.3.1. Modifications

♦ *Voluntary agreements on EU level*

Where claims are limited largely to a single product line, agreements between industry representatives and the Commission could be used to phase out this misleading advertising through an institutional agreement.

Great care, however, would have to be taken about the way in which such agreements were developed. A recent voluntary programme agreed with the detergent industry, for example, will primarily serve to put in place yet another meaningless logo, to be used on packaging, in advertisements and on a website.³⁷

The website - www.washright.com - is a masterpiece of producer irresponsibility. It gives no useful information about the products used, no information about the companies involved, and makes clear that the burden for environmental improvement is entirely on the consumer. The page consists of five 'useful hints if you want to help the environment when doing your laundry':

- Reduce packaging waste
- Pre-sort your laundry
- Avoid underfilling the machine
- Measure according to soil and water hardness (a very useful tip for the average consumer!)
- Use the lowest recommended temperature.

Detergents are one of the biggest problem areas for misleading and/or superfluous claims in every single Member State, and it is unlikely that the Washright initiative will be able to address this problem in any way.

The EEB points out that this industry group has for years been working against stricter ecolabel criteria for its products, as well as for looser labelling criteria in general.³⁸ Given this history, it is noteworthy that the Washright voluntary agreement appears to have been developed and adopted without consultation with consumer and environmental groups, although such consultation is a requirement of the Commission's Communication on voluntary agreements in the environmental field.

³⁷ ENDS Daily, 24/7/98

³⁸ Personal communication, EEB

♦ *Link to EMAS*

DG XXIV and DG XI might consider strengthening the link between EMAS certification and ecolabels. The complementarity of the two schemes - one providing certification of company management and the other providing consumer information - is quite obvious.

If such a system is to meet objectives of sustainable production and consumption, however, it would require a strengthening of EMAS requirements, so that they are linked to external criteria rather than serving merely as internal management systems.

As an official of the UK Ecolabelling Board noted in a 1996 letter to the *Financial Times*, EMAS is a site-based scheme and 'gives no information to consumers', while the whole point of the ecolabel is to provide such information.

♦ *Minimum standards*

Have the Commission set up minimum standards that must be met by any producer or retailer wanting to make a green claim. Such standards would be based on existing consumer legislation, as set out in relevant Directives, as well as on the ISO standards package relating to environmental claims, labels and management systems. External verification by an independent verifier could be required, even for minimum claims.

This is not an ideal solution for dealing with claims, since it requires a complex system to be set up without at the same time guaranteeing results. The same result could probably be obtained more easily by allowing product claims to EMAS registered companies (see above), but adding to EMAS the requirement that the relevant ISO codes be followed as well as part of the company's management programme.

♦ *Claims testing*

The Commission could set up a system, in cooperation with the Member States and consumer groups, to evaluate various widely used claims on the market, beginning with those assumed to be useful, such as product lines and logos based on criteria and certification requirements.

If such systems were found to be functioning properly, in the consumer's interest, they would be allowed to affix a small EC to their own symbol or logo or name.

Evaluation of systems could be simplified by having them done by private certification firms or testing institutes (or apportioning several to each Member State, institute, firm or consumer group willing to do testing, loosely following the model of risk assessments by various Member States). The main drawback to such a scheme is that it is likely to do little to reduce the number of claims being used. In addition, it presents the Commission with a repetition of the problem faced in regard to the ecolabel: does one test for minimum or maximum efficiency?

It would probably be more efficient in the long run - if more difficult in the short term - to go a step further and adopt detailed guidance criteria (see statutory instruments, below).

4.3.3.2. *Basis for new instruments*

Several developments described above appear to be creating the ideal situation for the development of rules that integrate economic, consumer and environment considerations in judging the acceptability of environmental claims of all types. These include the recent adoption of the Directive on consumer injunctions and the finalisation of draft ISO standard 14021 on self-declared environmental claims.

Further supporting this trend is a recent European Court of Justice (ECJ) ruling in which the Court stated that European rules must meet the expectations of the average consumer.³⁹ The Court held that in order to know whether a label is misleading, one needs to consider what the expectations of the average consumer (who is reasonably well informed and attentive) would be. In case of doubt, a national opinion poll or expert advice may be sought to determine what those expectations would be.

Under this test, based on the results of Eurobarometer surveys, Swedish consumer group surveys, and studies by various consumer associations (National Consumer Council, Consumers International, etc.), the average consumer must be judged to be confused and hoping for more complete and meaningful information.

4.3.3.3. Trade implications of controlling claims

Codification of a Community approach to controlling environmental claims would probably help to protect the Community from challenges based on WTO rules. As noted earlier, the internationalisation of product markets is leading to new types of claims which will be even more difficult to control than are current, classic claims.

Failure to come to grips with the phenomenon of environmental product and company claims will put the EU and national governments at a disadvantage in determining the future patterns of consumption and production for Europe. There is no question that the current 'environmental' advertising blitzes by some of the bigger multinationals will eventually be translated into pressure on the WTO to interpret ISO criteria in the light of industry standards in general, and weak Codex Alimentarius norms in the area of food.

Community action to set out stringent criteria for claims - based on Treaty provisions, international (ISO) standards, and EU interpretations of those standards grounded in scientific evidence of environmental degradation caused by unsustainable production processes - will go a long way to protecting the EU from attacks by (especially US) multinationals within the WTO.

'Filling in' of ISO provisions is critical from this point of view, in particular Principles 2 and 3 of ISO 14020. Principle 2 requires that procedures and requirements for environmental labels and declarations not create unnecessary obstacles to international trade. Principle 3 states that such labels and declarations shall be based on 'scientific methodology' capable of supporting the claim made and which 'produces results that are accurate and reproducible'.

Such language can help to ensure false claims are reduced. It can also, however, ensure that environmental claims criteria based on a precautionary approach would be ruled inadmissible by the WTO if challenged.

The best way to simultaneously meet the requirements of consumer information, sustainable development and international trade requirements would be through adoption of a technical annex to the Misleading Advertising Directive, in which scientific methodology and criteria are set out as clearly as possible.

Such an approach is also likely to give rise to long-term advantage in dealing with new members of the EU. As Stephen Weatherill warns, 'As states with less well-developed administrative infrastructures seek to join the Community, it is all the more plausible that

³⁹ Case C-210/96 of 16 July 1998, as reported in *eurofocus* 27/98, p.5

obligations undertaken on paper in the realms of, for example, environmental and consumer protection will have inadequate counterparts in practice.⁴⁰

4.3.3.4. Technical annex to the Misleading Advertising Directive

The word 'deceptive' creates confusion in deciding how to deal with misleading claims. Discussions about misleading advertising in a number of Member States tend to centre around how to detect and deal with intentional deceit by advertisers. This is also, by implication, the vantage point of the self-regulatory authorities, who separate form from content and concentrate on ensuring that the former does not mislead.

One of the great advantages of a technical annex to the Misleading Advertising Directive is that it would shift the judgement of misleading claims from one of 'fault' to one of veracity. For the same reason, a technical annex would be much more useful than effort spent trying to fine-tune the definition of 'misleading'. The definition in the current Directive will do nicely. Rather, the goal of Community action should be to determine criteria to allow 'misleading' to be judged purely on the basis of whether a claim can be substantiated or not.

Such an approach eliminates both liability and the concept of fraudulence. It reduces claims to the level of proof. If substantiation is available, a claim may be made. If a claim cannot be substantiated, it will not be permitted.

Australian and New Zealand law have recently shifted to such a basis, so that 'whilst not shooting the messenger, the ... law requires factually accurate messages to be sent.'⁴¹ In such a case, the judiciary 'has no task in evaluating the reasonableness of inaccuracies or the *bona fides* of the belief in facts as represented.'

Such a view of green claims would immediately clarify cases such as that of Bayer being allowed to advertise pesticides as protecting nature because this represents their 'opinion' (see Ireland chapter), or of Orimulsion being allowed to state that it is better for birds than oil in the case of a spill, despite being highly toxic to aquatic ecosystems (see UK chapter).

The logical corollary to this view, of course, would be that criteria for determining the validity of claims would have to be elaborated. In part, these exist already, in the form of national, Community and international legislation, as well as generally accepted guidelines and standards.

'Better' and 'Best' Practice

A technical annex could be divided into two sections - 'better' and 'best' - following the approach used by the Nordic countries, where the Falcon symbol indicates a product that is better than others on the market in its environmental characteristics, while the Nordic Swan indicates that a product belongs to the top tier of its product category in terms of environmental friendliness, as compared to competitors' products.

A sound basis for 'better' would be the ICC code on environmental advertising - which large numbers of companies already adhere to in theory - filled in with the details of ISO 14021, which is meant to be adopted by early 1999. The ISO standard applies specifically to on-pack and packaging 'own' claims and has wide support from industry, governments and consumer groups.

⁴⁰ Weatherill, 'Implementing EC directives on consumer protection - short-term choices by the UK', *Amicus Curiae* 3 (1998), p.13

⁴¹ Warren Pengully, 'Misleading Conduct Legislation as a Remedy for Contract Law Deficiencies', *Consum. L. J.* 5, 3 (1997), p.94

If adopted by CEN, ISO 14021 would become a European Standard and Member States would be expected to publish it in full, withdrawing any conflicting national standards. If, on the other hand, 14021 were to be incorporated as a technical annex of 84/450, it could be posited as a minimum requirement, which would allow Member States to deal with other aspects of environmental claims if they so wished.

This would constitute the 'better' aspect of the technical annex, which would set criteria for products that are among the best on the market in their group, essentially complementing the ecolabel. The Commission could adopt the detailed Nordic guidance criteria that are already in existence.

With such an annex in place, producers and suppliers would have to be far more careful in making claims, particularly given the recent adoption of the Directive on consumer injunctions. This should improve the efficiency of controlling misleading claims; as the OECD notes, in terms of money and efficiency, it is easier to influence industry than consumers.⁴² Verification of claims would remain an *ex post*, national task.

Use of the ISO standard as a basis for dealing with green claims would also further understanding of sustainable consumption and production criteria among authorities and producers, thus meeting the call of the EU Environment Council to better integrate the Community's approach to production and environmental policies.

Comparative claims

One area where the Community would have to flesh out ISO provisions is in the area of comparative advertising. Comparative advertising may take two forms: comparisons to one's own, earlier product version, and comparisons to products of competitors. The ISO draft 14021 would lay down specific requirements for comparative advertising of either type, including percentile indications of improved performance, based on accepted international criteria or previous performance.

Unfortunately, this is likely merely to result in confusion, since most consumers are unable to judge the value of such claims, which require a fairly high level of understanding of the technical aspects of production processes.

A more useful approach might be that already found in the Netherlands, Germany, Switzerland, and Norway, which requires that comparative claims take account of the market as a whole. That is, a company may not make an environmental claim for a product which is environmentally harmful compared to other, similar products on the market, even if it is slightly less harmful than an earlier, even more inadequate version of the same product or than a small number of competing products. Under a double annex system, all comparative advertising would thus have to be in the 'best' category.

This is a crucial point, since consumers are not technical experts and are simply not able to judge what comparative claims really mean. In a system which made consideration of the entire market compulsory, one could expect competitors - who are technical experts - to take a much more active role in monitoring product development.

4.3.3.5. Certification

Consumer and government experts we spoke to were almost unanimous in their praise for draft ISO standard 14021 as a serious attempt to deal with the thus-far uncontrolled phenomenon of on-pack 'own' claims. They also, however, all strongly made the point that without a verification system, the standard was unlikely to work.

⁴² Personal communication, OECD

At present, verification is strongly tied to the idea of certification systems, such as those used by NGO and company logos, for example. A set certification procedure would go some way to bridge the gap between private industry and public information.⁴³ Yet certification is not an answer in itself: if every logo on the market today were certified, there would still be too many logos, giving rise to consumer confusion.

General provisions of a certification framework could include:

- ◆ Criteria (based on ICC-ISO/Nordic Swan/others? standards)
- ◆ Nomination by Member States of a competent authority
- ◆ Competent authorities to notify accredited organisations to the Commission (certification body criteria to be determined through consultation of interested groups and authorities, with reference to ISO 65 and EN 45011)
- ◆ Accredited organisations could assign labels/logos based on the standards set
- ◆ Monitoring provisions, to be carried out by the entities named in the Consumer Injunctions Directive
- ◆ Sanctions could be tied in with Consumer Injunctions Directive

Clear standards would be elaborated within this framework, and the certification seal would have to eventually replace the logos it is certifying.

This is the approach taken by the non-profit certification group Green Seal in the United States. The Green Seal develops environmental standards on a category-by-category basis, based on suggestions by industry, environmentalists, consumer groups and the public. The process that follows, to determine standards for certification, is as follows:

'Categories are generally chosen according to the significance of the associated environmental impacts, and the range of products available within the category.

'Once a category is selected, a study of the environmental impacts of products in that category is conducted. The study identifies the characteristics of the product and the points in the manufacturing process, use of the product and disposal that have significant environmental effects. The study is released in the form of a proposed standard.

'Proposed standards are circulated for public review and comment. Manufacturers, trade associations, environmental and consumer groups, government officials and the public are invited to comment. After reviewing the comments, Green Seal publishes a final standard.'⁴⁴

That standard then forms the basis for certification. It includes compliance with all relevant legislation, disclosure of violations of permits or authorisations, and agreement to on-going factory inspection and product testing.

Green Seal criteria are set to only allow about 20% of products within a given category to meet them - that is, it aims at 'best' rather than 'better'. Nonetheless, since its establishment in 1990, the group has set standards for over 50 products or service categories and certified more than 300 specific products and services.

⁴³ The Environmentally Sound Packaging Coalition of Canada, *Reassessing Environmental Labelling: The consumer perspective*, April 1997

⁴⁴ Green Seal Standards Homepage

Steps in the certification process are:

1. information acquisition from manufacturing, government, and environmental groups.
2. Green Seal contracts with consultants (such as research institutes) to conduct product impact evaluations.
3. Green Seal formally invites public comment on the standards derived from the product evaluations.
4. Comments are evaluated the final standards are released.⁴⁵

A certification instrument for environmental claims could also be used to apply to other problematic areas such as social labels and nutritional claims. This type of multiple approach with a relatively uniform institutional and methodological framework can be found, for example, in the revision of the Generalised System of Preferences to give added incentives for compliance with environmental and labour standards.

It is the standards themselves, of course, which are the core difficulty in certification systems. Decisions on what should constitute Community standards for environmental claims would have to be preceded by a thorough consideration of current standards development schemes.

This is seen as a problem in the US as well, despite schemes such as Green Seal. The US Environmental Protection Agency (EPA) is currently carrying out a Consumer Labeling Initiative to determine the appropriate standardised environmental information for toxic product labels. This is a joint venture between the EPA, the Consumer Product Safety Commission, the Food and Drug Administration, and other industry, environmental and consumer stakeholder groups. Preliminary findings are due to be published soon.⁴⁶

4.3.3.6. Eco-profiles

A certification system for environmental claims would make possible a smooth complementarity between environmental management programmes and consumer information. It would almost certainly serve to reduce consumer confusion and to discourage environmental 'cowboys' from making misleading claims.

However, its main requirements would be largely procedural in nature. Its substantive aspect - the standards chosen as the basis for certification - could of course range from extremely stringent to rather weak. There is thus no guarantee that certification would significantly further sustainable production and consumption.

The latter goal is more certain to be served by what the Environmentally Sound Packaging Coalition of Canada calls a 'certified eco-profile' label. This is a 'report card' label, based on 'scientific certification'.⁴⁷

The label is divided in two: the left side lists a number of appropriate criteria for the product and its packaging and notes an amount for each criterion (including burdens from production, distribution, use and disposal). For example, under 'solid waste', the Coalition's demonstration label states grams of non-hazardous waste per gallon capacity.

The right half of the label is in the form of a graph, which shows the product's environmental performance for each of the criteria listed against other products of the same type on the market. That is, it combines a US-type certification system with a Nordic Swan style 'best' system.

⁴⁵ www.yale/comments/html

⁴⁶ www.epa.gov/opptintr/labeling/phase1/index.html

⁴⁷ *Reassessing Environmental Labelling: The consumer perspective*, April 1997, p. 89

This label eliminates all possible problems related to environmental claims, including comparative claims. The producer makes no claim: the lists and graphs say it all.

This is a format already familiar to consumers from nutritional labelling of food products. It is a complex system, in that it requires sustainability criteria and measurement systems to be developed. On the other hand, such systems could be set up to begin with on the basis of existing criteria, including those used by large certification firms, Nordic guidelines, ISO guidelines, EPA programmes, and other such schemes.

Such a label would also give real meaning to EMAS certification. It would act as a complementary instrument to EMAS, providing the objectivity needed to give EMAS greater credibility among consumer and environment groups. Coordination between the two systems would further the integration of consumer, economic and environmental policies.

Sustainability goals would be given a significant boost. Once consumers understood how to read such labels, they would be able to make choices based on a reasonable understanding of the environmental consequences of their purchasing decisions. The scorecard thus also functions as an educational tool, since it graphically describes what resources go into an individual product and what pollution and waste by-products result from its use and disposal.

There is no question that such a system would be costly, long and difficult to put into place. It could slowly be developed on the back of a certification instrument, however. And there is no question that it would set the EU on the path to realising the integration objectives of the Treaty.

5. APPENDICES

5.1. ORGANISATIONS CONTACTED⁴⁸

OECD Environment Directorate and Consumer Policy Unit

European Advertising Standards Alliance (EASA)

International Chamber of Commerce

Consumers International

Bureau Européen des Unions des Consommateurs (BEUC)

National Consumer Council

Eurocommerce

Traidcraft

European Environmental Bureau (EEB)

Greenpeace European Unit

Greenpeace Business

WWF International

CEFIC

European Crop Protection Association

5.2. BIBLIOGRAPHY⁴⁹

5.2.1 LEGISLATION AND CODES:

Directive 84/450 concerning misleading advertising

Directive 93/13 on unfair terms in consumer contracts

Directive 97/55 amending Directive 84/450 so as to include comparative advertising

Directive 98/27 on injunctions for the protection of consumers' interests

Treaties Establishing the European Communities, Abridged edition (Office for Official Publications, Luxembourg, 1987)

Treaty on European Union (Office for Official Publications, Luxembourg, 1992)

Andrew Duff, ed., *The Treaty of Amsterdam, Text and Commentary* (Federal Trust, London, 1997)

Council of the European Union:

Press release: 2084th Council meeting, Consumer Affairs, 7681/98;

Press release: 2094th Council meeting, Internal Market, 8528/98

⁴⁸ For further contacts, see individual country reports

⁴⁹ For further reading, see individual country reports

Food and Agriculture Organization (FAO), *FAO International Code of Conduct on the Distribution and Use of Pesticides*

ISO (International Organization for Standardization):

Draft International Standard ISO/DIS 14021.2, *Environmental labels and declarations - Self-declared environmental claims*, 1998;

International Standard ISO/FDIS 14020, Final Draft, *Environmental labels and declarations - General principles*, 1998

United Nations, *Guidelines for Consumer Protection* (UN, New York, 1986)

5.2.2. BOOKS AND REPORTS:

Consumers International, 'International measures for infrastructural support of consumer research on sustainable consumption', preliminary report, September 1997

EDIDECO (avec la collaboration de EAC, ECODUSA et Test-Achats), *Analyse des Arguments Ecologiques et des Ecolabels Utilisés dans l'Etiquetage de Produits*, June 1998

National Consumer Council,

Consumers and the Environment: Can consumers save the planet? (London), September 1997;

Green Claims (London),

Organisation for Economic Cooperation and Development (OECD):

Sustainable Consumption and Production (Paris, 1997);

Sustainable Consumption and Production: Clarifying the Concepts (Paris, 1997)

Stephen Weatherill, *EC Consumer Law and Policy* (Longman, London, 1997)

5.2.3. ARTICLES, POSITION PAPERS AND PRODUCT DOCUMENTATION:

Advisory Committee on Business and the Environment, 'Integrating the Environment into Business Decisions: The Consensus Approach'

AISE, 'Code of Good Environmental Practice for Household Detergents', January 1997

Allied Signal, 'Genetron 134a Product Brochure', 1997

Stephen Armstrong, 'You say tomato, we say genetically altered food product that's good for the planet', *The Guardian*, 6 July 1998

Arthur D Little, 'Companies can measure environmental performance and progress under index developed by Arthur D Little', June 1995

BEUC, 'Too many green claims', **Cons. Aff.** 111, May/June 1991

British Petroleum, 'Explaining climate change'

Richard Burnett-Hall, 'Enforcement through civil proceedings', **Amicus Curiae**, November 1997, pp.24-26

Peter Chapman, 'Committee to investigate advertising barriers get off to a slow start', **European Voice**, 7-13 May 1998

Commission of the European Communities, 'European and the Environment in 1992'

Consumer Choice, 'Food claims on labels', May 1997

Consumers International:
Environmental Labelling in Central and Eastern Europe, March 1996;
 Presentation to the Seventh Environmental Foundation Consultation, Windsor UK, 2-4 June 1997

Consumer Law Today, 'Eco-labels attacked by WWF', March 1997

Courrier International, 'La Dictature Alimentaire', no 381, 19-25 fevrier 1998

Elf Atochem, 'Forane 141b', 1997

ENDS Daily, 'EU in green deal with detergent industry', 24/07/98

Environmentally Sound Packaging Coalition of Canada, *Reassessing Environmental Labelling: The consumer perspective*, April 1997

Environment Watch Western Europe:
 'Sweden to Integrate Environmental Rules into Other Areas', 6 Feb 1998, p.14
 'FSC Approval for Swedish Forestry Criteria Draws Criticism', 6 Feb 1998, pp.14-15

European Advertising Standards Alliance, *Alliance Update* 1997 issues

European Crop Protection Association (ECPA):
 'Approval of crop protection products within the EU';
Annual report 1996-1997;
 'Crop protection and water: keeping Europe's water clean'.

Europe Environment, 'Consumer Redress: Commission Recommendation on out-of-court dispute settlement', no 521, 21 April 1998

eurofocus, 'Consumers: The word 'cereals' on a box of eggs?', 27/98, p.5

Food Magazine:
 'Food supplements: Ten claims that go over the top?', August 1997
 'A hype too far?', August 1997
 'Health claims and the law', August 1997

Framatome, 'To combat the green house effect, there's also nuclear energy', advertisement
European Voice, Brussels

P. Hindle et al., 'Managing the Environmental Aspects of a Business: a Framework of Available Tools', **Gen. Papers Risk & Ins.** 21 (1996), pp.341-359

Institute of Directors, 'The Protection of the Environment', London, August 1997

Cecilia Kye, 'Environmental Law and the Consumer in the European Union', **J. Envt. Law** 7 (1995), pp.31-54

Michael B. Mazis and Mary Anne Raymond, 'Consumer Perceptions of Health Claims in Advertisements and on Food Labels', **J. Cons. Affairs** 31, 1 (1997), pp.10-25

Monsanto:
www.monsanto.com/monsanto/Src/gateway.htm
 'Food labelling: It has Monsanto's full backing', *Observer* 21 June 1998;
 'More biotechnology plants mean less industrial ones', *Observer* 6 July 1998

Warren Pengilly, 'Misleading Conduct Legislation as a remedy for contract law deficiencies', **Consum. L. J.** 5, 3 (1997), pp. 88-109

Novartis, 'Sustainable growth', advertisement, 1998

Proctor & Gamble:
 'Environment and Social Responsibility', 1997;
 'Environmental Progress Update', 1997

Jerry Rendell, letter to the Editor, *Financial Times* 9 September 1996

Gianluca Sepe, 'National Models of European Contract Law: A comparative approach to the concept of unfairness in Directive 93/13', **Consum. L. J.** 5, 4 (1997), pp.115-122

Solvay, '3rd generation of blowing agents for plastic foams', 1997

Stephen Weatherill, 'European Law: Implementing EC directives on consumer protection - short-term choices by the UK', **Amicus Curiae** 3 (1998), pp.11-13

WWF (Worldwide Fund for Nature) press release, 'Fact sheet: WWF and the Marine Stewardship Council New Hope for World Fisheries', 12 January 1998, www.panda.org/

5.3. WEBSITES

5.3.1. GREEN CLAIMS

www.umwelt.de/cgi-bin/bwshop/web

[www.Boehringer - Versand.de/bio.htm](http://www.Boehringer-Versand.de/bio.htm)

www.blueplanet.de/

www.castelldefels.com/planetat/

www.washright.com/

www.j-sainsbury.co.uk/environment/organicstakesroot.html

www.persil.de/html

www.unilever.com/index.htm

www.neckermann.de

www.yves-rocher.de/

www.redoute.com

www.quelle.de

www.tesco.co.uk/

www.procter.de

www.traidcraft.co.uk

5.3.2. SELF-REGULATION

www.easa-alliance.org/

www.iccwbo.org

5.3.3. REGULATORY

www.ftc.gov/

www.unepie.org

5.3.4. CONSUMER AND ENVIRONMENT GROUPS

www.beuc.org

www.panda.org

www.consumersinternational.org

www.greenpeace.org

www.eeb.org