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### Textile labelling

*A concern for the EU consumer?*

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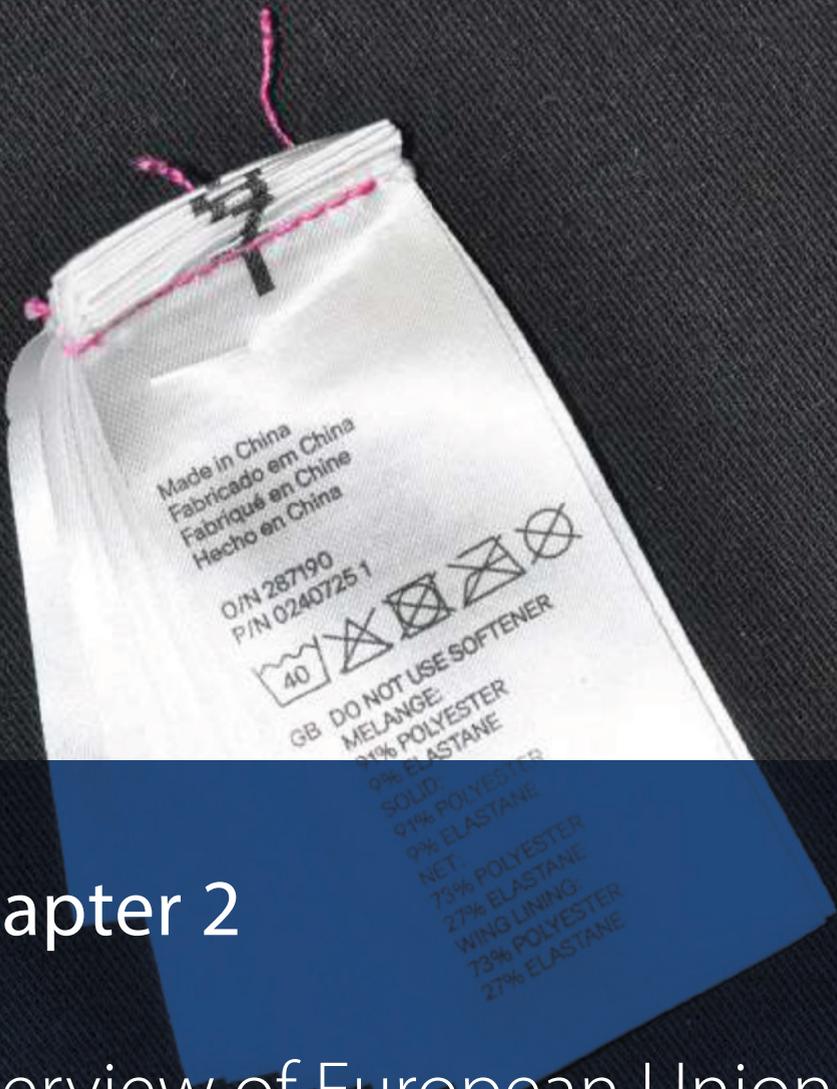
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# Chapter 2

## Overview of European Union Policy

## 2.1 Introduction

As noted in the previous chapter<sup>115</sup>, in general, European consumer policy has focused on empowering consumers by creating a more transparent market and offering the consumer a high level of product diversity (e.g., with regard to product quality and fabrics)<sup>116</sup>. Micklitz et al. noted that under the simple phenomenological approach consumer law could be described as the body of law protecting consumers<sup>117</sup>. In general, legal scholars have noted that information duties or mandated disclosures are among the most popular regulatory instruments in EU consumer legislation<sup>118</sup>.

Hesselink notes that the potential for market failure was the rationale for the introduction of consumer protection<sup>119</sup>. As a consequence of the power concentration of businesses on the supply side of the market, the market functions improperly, with little incentive for traders to consider consumers' interests if all competitors follow the same strategy. On the demand side of the market, market failure could thus result from conveying to consumers insufficient or no information, which would lead to them making uninformed and potentially disappointing transactional decisions. This can be remedied by the introduction of provisions of consumer law, in particular by granting consumers adequate pre-contractual information rights. Despite the arguments for remedying market failure through the introduction of consumer protection measures, it is noticeable that some academics, for example, Howells and Weatherill, consider governmental intervention inefficient or even counterproductive. The use of information duties

<sup>115</sup> See subsection 1.4.

<sup>116</sup> Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy, *OJ C 92*, 25.04.1975, p. 1–1;

Second Programme of the European Economic Community for a consumer protection and Information Policy, *OJ 133/2*, 03.06.1981; Commission of the European Communities, Three year Action plan of consumer policy in the EEC 199–1992, 3 May 1990. COM (1990) 98, p. 3;

Commission of the European Communities, second commission three-year action plan of Consumer Policy 1993–1995, 28 July 1993. COM (1993) 378 final;

Commission of the European Communities, Priorities for Consumer Policy 1996–1998. 31 October 1995. 31 October 1995 COM (1995) 519 final;

Council Regulation of 28 June 1999 on Community Consumer Policy 1999 to 2001, *OJ C 206*, 21.07.1999, p. 1–3;

Communication from the Commission of 7 May 2002 to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - 'Consumer Policy Strategy 2000–2006. COM (2002) 208 final, *OJ C137/2*, 08.06.2002;

Communication of 13 March 2007 from the Commission to the Council, the European Parliament and the European Economic and Social Committee, 'EU Consumer Policy Strategy 2007–2013'. COM (2007) 99 final. Commission Staff working Paper Executive Summary of the impact assessment, Proposal for a Regulation of The European Parliament and of the Council on a consumer programme 2014–2020 on 9 November 2011. COM (2011) 707 final.

<sup>117</sup> Micklitz, H. W., Stuyck, J., & Terry, E., eds. *Consumer Law: lus Commune Casebooks for a Common Law of Europe*. Bloomsbury Publishing (2010), p. 1.

<sup>118</sup> Grundmann, S., Kerber, W., & Weatherill, S., eds. *Party autonomy and the role of information in the internal market*. Walter de Gruyter, (2001), p. 230–233;

Howells, G., Janssen, A. & Schulze, R., eds. *Information rights and obligations: a challenge for party autonomy and transactional fairness*. Gower Publishing, Ltd., 2005, see chapter 8;

Twigg-Flesner, C. & Schulze, R. 'Protecting rational choice: information and the right of withdrawal' in Howells, G., Ramsay, I. & Wilhelmsson, T., eds. *Handbook of research on international consumer law*, Edward Elgar Publishing (2010), p. 130.

<sup>119</sup> The description of the rationale of consumer law is described by Hesselink, M., SMEs in European Contract Law in K. Boele-Woelki & W. Grosheide, eds. 'The Future of European Contract Law', Essays in honour of Ewoud Hondius, Kluwer, Alphen aan den Rijn, (2007).

as a means of consumer protection has the advantage of appearing to regulate lightly and thus minimally interfering with market autonomy<sup>120</sup>.

Ugur mentioned that the adoption of EU policy in the 1970s was influenced by the liberal approach of Germany and the Netherlands<sup>121</sup>. This approach contained a low level of protectionist measures in the textile industry. Therefore, the Commission was of the view that it was wrong to tackle the industry's problems without structural adjustment<sup>122</sup>. To do this, it suggested that one of the aims of EEC policy should be to ensure that production in the Community's textile and clothing industry does not decrease.<sup>123</sup> This was then considered when drafting the first directive for the T&C industry, which was adopted as early as 1971. This aimed to harmonise the names of textile products as well as regulate labelling and marketing documents thereof<sup>124</sup>. This Directive is introduced in this chapter jointly with other binding measures on textile labelling in the EU, with the analysis focusing on the information duties and labelling requirements that may arise from them<sup>125</sup>. However, it was only in 2006 that the discussion about labelling of textile and clothing products in the EU became more substantial<sup>126</sup>.

## 2.2 Objective

In order to answer the sub-question of how European consumer policy evolved with regard to T&C labelling, this chapter illustrates the development of European consumer policy in the area of labelling of textile and clothing products. The principal themes in European consumer policy are set out and the consumer policy strategy from 1975 until 2020 in the field of textile labelling is described. A more in-depth analysis of the current labelling policy of the EU is provided in Chapter 4.

In line with the objective, this chapter concludes with the answer to the sub-question of how the EU policy has evolved in safeguarding and empowering consumer rights in the context of accurate and reliable information on textile labels.

<sup>120</sup> Howells, G.G. & Weatherill. S. *Consumer protection law*. Aldershot (2005), p. 39-42.

<sup>121</sup> Ugur, M. 'Explaining protectionism and liberalization in European Union trade policy: the case of textiles and clothing', *Journal of European Public Policy* (1998-4), p. 652-670.

<sup>122</sup> Debates of the European Parliament 1975-1976 Session, no. 192, 1975, p. 236.

<sup>123</sup> Commission of the European Communities, Commission Communication to the Council on the Situation and Prospects of the Textile and Clothing Industries in the Community, Brussels, 28 January 1981, COM (1981) 338. OJ C 77, 29.03.1982.

<sup>124</sup> Council Directive 71/307/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to textile names, OJ L 185, 16.8.1971, p. 694-704.

<sup>125</sup> Directive 73/44/EEC of 26 February 1973 on the approximation of the laws of the Member States relating to the quantitative analysis of ternary fibre mixtures, OJ L 83, 30/03/1973 p. 1-18; Directive 96/73/EC of 16 December 1996 on certain methods for the quantitative analysis of binary textile fibre mixtures, OJ L 032, 03.02.1997, p. 1-37; Directive 96/74/EC of 16 December 1996 on textile names requires the labelling of the fibre composition of textile products using only the harmonised names listed in Annex I to the Directive and the Directive 2008/121/EC of 14 January 2009 on Textile Names, OJ L 19, 23.01.2009, p. 39.

<sup>126</sup> Interview Toine Manders, see Appendix IV. The revision of EU legislation on Textile Names and Labelling was announced in 2006 in the 'First progress report on the strategy for the simplification of the regulatory environment' and was included in the Commission Legislative and Work Programme for 2008.

## 2.3 The European Consumer & Textile and Clothing Policy 1970-2020

Member States have developed their consumer policy over many years but only limited tools of consumer protection were introduced at EU level<sup>127</sup>. The harmonisation of European standards goes back to April 1951 with the signing of the Treaty of Paris<sup>128</sup> and the inception of the European Coal and Steel Community. After the signing of the 1957 Treaties of Rome, the current standard-setting institutions of the EU were established<sup>129</sup>. The case law based on the 'Cassis de Dijon' principle<sup>130</sup> stipulates that the Member States mutually recognise goods, also within the T&C industry, that have been allowed access to the market in one of them, unless there are overriding policy interests opposing such freedom of movement of goods.

Despite the application of the mutual recognition principle, a limited number of legislative actions were proposed where common harmonised approaches were deemed crucial for proper functioning of the market<sup>131</sup>. Most of the existing EU consumer laws were based on the principle of 'minimum harmonisation'. This approach was entirely valid at a time when consumer rights were very different between the Member States and consumers could be used to enjoying a higher level of consumer protection in their Member State<sup>132</sup>. However, the EU has pursued a new approach based on the 'full harmonisation' principle in consumer law. This implies that Member States can no longer apply restrictive or prescriptive consumer protection measures at national level upon adoption of the European consumer protection rules in a given area<sup>133</sup>.

By the 1970s, the political commitment to the establishment of a consumer protection programme at EU level had grown irresistible as the Member States expressed a general desire to reach beyond economic affairs into the social sphere and so there was a call for the submission of a programme of consumer protection policy<sup>134</sup>. In 1971, the first step was taken by the Council towards harmonisation in the field of textile labelling by adopting a directive to harmonise the

<sup>127</sup> Reilly, T. 'The harmonization of standards in the European union and the impact on U.S. business', *Bus Horiz* 1995-2, p. 28-34, DOI: [http://dx.doi.org.proxy.uba.uva.nl:2048/10.1016/0007-6813\(95\)90052-7](http://dx.doi.org.proxy.uba.uva.nl:2048/10.1016/0007-6813(95)90052-7).

<sup>128</sup> The Treaty of Paris, formally, the Treaty establishing the European Coal and Steel Community was signed on 18 April 1951. The treaty came into force on 23 July 1952 and expired on 23 July 2002.

<sup>129</sup> Ibidem. The Treaties of Rome, signed in Rome in 1957 on the 25 of March, brings together France, Germany, Italy and the Benelux countries in a community which aim is to achieve integration via trade with a view to economic expansion.

<sup>130</sup> Case 120/78 ECLI:EU:C:1979:42 (Cassis de Dijon), European Court Reports (1979), p. 649.

<sup>131</sup> Between 1985 and 2002 a series of Directives were adopted, such as: The Doorstep Selling Directive 85/577/EEC. OJ 372/31, 31.12.1985.; The implementation of the Product Liability Directive 85/374, (1985) OJ L 210/29, 07.08.1985; Directive 93/13/EEC of 5 April 1993 on Unfair Terms in consumer contracts OJ L 95/29, 21.4.1993; Directive on Distance Selling 97/07/EC (1997). OJ L 144/19, 04.06.1997; Directive on Sale of Consumer Goods and Guarantees 99/44/EC (1999). OJ L 171, 07.07.1999; Unfair Commercial Practices Directive EC/2005/29 (1999) OJ L 171/12.

<sup>132</sup> Maletic, I. *The law and policy of Harmonisation in Europe's Internal market*. Edward Elgar Publishing, UK (2013), p. 5-17.

<sup>133</sup> Ibidem.

<sup>134</sup> Weatherill, S. *EU consumer law and policy*, Edward Elgar Publishing 2013, p. 6

names of textile products as well as their appearance on labels and marketing documents<sup>135</sup>. This Directive was amended a few times and consolidated in the following Textile Directives<sup>136</sup>:

- Directive 73/44/EEC on the approximation on the laws of the Member States relating to the quantitative analysis of ternary fibre mixtures<sup>137</sup> and;
- Directive 96/73/EC on certain methods for the quantitative analysis of binary textile fibre mixtures<sup>138</sup>.

In the same period, as the Member States acknowledge that harmonisation of legal enactments of textile names was required, a debate in the European Parliament started which stressed the need for a coherent and effective consumer protection policy. The Commission considered in the Preliminary Programme of the European Economic Community for a consumer protection and information policy<sup>139</sup> that *“non-harmonised textile fibre names in the EU Member States would create a technical barrier to trade in the Internal Market. In addition, consumer interests would be better protected if the information provided in this area were the same within the Internal Market”*.

In 2006, the Commission determined that revision of the legislation on textiles names was essential for more transparency of the process of adding new fibres to the list of harmonised fibre name<sup>140</sup>. In 2009, the Commission replaced a the Textile Directives by the Regulation on Textiles Names. The Textile Regulation is based on Article 95 of the EC Treaty<sup>141</sup> and aims at establishing an internal market for textile products while ensuring that consumers receive accurate information. It may be regarded as the codification in one single legal instrument of the aforementioned textile directives that existed previously.

In its proposal, the Commission considered that in most Member States textile products are subject to mandatory provisions with regard to their names, composition and labelling, whereas these provisions vary from one Member State to another and consequently hinder the establishment and proper functioning of the common market. As such, labelling should be compulsory in order to achieve the objectives of the underlying national provisions in this field<sup>142</sup>.

In the following subsections the EU consumer policy and strategy over the period 1970 until 2020 is elaborated. In this review, the emphasis is placed on labelling in the T&C industry.

<sup>135</sup> OJ L 185, 16.8.1971, p. 693-704.

<sup>136</sup> See <<https://ec.europa.eu/growth/sectors/fashion/textiles-clothing/legislation.nl>> last viewed on 13 December 2016.

<sup>137</sup> Directive 73/44/EEC of 26 February 1973 on the approximation of the laws of the Member States relating to the quantitative analysis of ternary fibre mixtures. OJ L 83, 30/03/1973 p. 1-18.

<sup>138</sup> Regulation (EU) No. 1007/2011 of 27 September on textile fibre names and related labelling and making of fibre composition of textile products, OJ L 272, 18.10.2012, p. 1.

<sup>139</sup> OJ C 092, 25.04.1975, p. 2-16.

<sup>140</sup> Commission of the European Communities, Brussels, 30.01.2009. COM (2009) 31 final. See also Proposal for a Regulation, EC of the European Parliament and of the Council of the Textile names and related Labelling of textile products, 2009/0006 (COD), SEC (2009)90/91.

<sup>141</sup> Now: Article 115 Treaty on the Functioning of the Union (TFEU).

<sup>142</sup> OJ L 185, 16.08.1971, p. 694.

### 2.3.1 Resolution for Consumer Protection 1975 & Second Programme 1981

In the 1970s, the political atmosphere slowly became conducive to consumer-related measures<sup>143</sup>. The EC indicated that consumers needed to be better informed of their rights and better protected against abuses, which might arise from unfair commercial practices<sup>144</sup>. For that reason, a list of five basic rights was drawn up, namely, the right:

1. to protection of health and safety;
2. to protection of economic interests;
3. of redress (right to damages);
4. to information and education;
5. of representation (right to be heard)<sup>145</sup>.

Around the same time, the first European directives in the areas of textile labelling and clothing policy were enacted. As mentioned earlier, the developments in these fields were influenced by the liberal approach of Germany and the Netherlands<sup>146</sup>. This approach argued for the introduction of a low level of protectionist measures in the textile and clothing industry<sup>147</sup>. The EC suggested that one of the aims of the EEC policy should be to ensure that production levels in the Community's textile and clothing industry did not decrease<sup>148</sup>.

As mentioned above, in general, European consumer policy was focused on empowering consumers by creating a more transparent market, and offering consumers a range of products of different quality and fibres<sup>149</sup>. Although the 1975 Resolution<sup>150</sup> fell short of what was expected (as a very small number of consumer related measures has been adopted mostly in the technical field of food labelling)<sup>151</sup> with regard to the safety of textiles, the Commission meant to continue to study problems of textile flammability, with particular reference to health risks likely to result from the use of fireproofing substances. The Commission indicated that it would examine risks

<sup>143</sup> Weatherill, S. *EU consumer law and policy*, Edward Elgar Publishing 2013, p. 7.

<sup>144</sup> Loos, M.B.M. & A. Keirse, A.L.M. 'The optional instrument and the Consumer Rights Directive: alternative ways to a new ius commune in contract law: *Ius commune europaeum* (2012), p.2.

<sup>145</sup> Weatherill, S., *EU consumer law and policy*, Edward Elgar Publishing 2013, p. 6; OJ C 092/1, 25.04.1975.

<sup>146</sup> Ugur, M. 'Explaining protectionism and liberalization in European Union trade policy: the case of textiles and clothing', *Journal of European Public Policy* 1998-4, p. 652-670.

<sup>147</sup> Debates of the European Parliament 1975-1976 Session, no. 192, 1975, p. 236.

<sup>148</sup> Debates of the European Parliament 1975-1976 Session, no. 192, 1975, p. 228-230.

<sup>149</sup> Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy, OJ C 92, 25.04.1975, p. 1-1; Second Programme of the European Economic Community for a consumer protection and Information Policy, OJ 133/2, 03.06.1981; Commission of the European Communities, Three year Action plan of consumer policy in the EEC 199-1992, Brussels 3 May 1990. COM (1990) 98; Commission of the European Communities, second commission three-year action plan of Consumer Policy 1993-1995, Brussels 28 July 1993, COM (93) 378 final; Commission of the European Communities, Priorities for Consumer Policy 1996-1998. Brussels, 31 October 1995 COM (95) 519 final; Council Regulation of 28 June 1999 on Community Consumer Policy 1999 to 2001, OJ C 206, 21.07.1999, p. 01-03; Communication from the Commission of 7 May 2002 to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - 'Consumer Policy Strategy 2000-2006, COM (2002) 208 final, OJ C137/2, 08.06.2002; Communication of 13 March 2007 from the Commission to the Council, the European Parliament and the European Economic and Social Committee, 'EU Consumer Policy Strategy 2007-2013'. COM (2007) 99 final; Commission Staff working Paper Executive Summary of the impact assessment, Proposal for a Regulation of The European Parliament and of the Council on a consumer programme 2014-2020 on 9 November 2011, Brussels COM (2011) 707 final.

<sup>150</sup> Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy, OJ C 92, 25.4.1975, p. 1-1

<sup>151</sup> Weatherill, S., *EU consumer law and policy*, Edward Elgar Publishing (2013), p. 9.

arising from the use of raw materials or other substances such as colouring agents. Additionally, the Commission mentioned its intention to continue to take consumer interests into account in the implementation of this policy and stressed that all information provided on labels at the point of sale or in advertisements should be accurate<sup>152</sup>.

The 1975 Resolution on the preliminary programme was followed by the Council Resolution of May 1981 on a second programme of the European Economic Community for consumer protection and information policy<sup>153</sup>. The economic situation in the 1980s was characterised, among other things, by a slowdown in income growth and continuing unemployment, which affected most Member States. Consumers needed to pay more attention to the way in which they used their income, particularly as regards the quality of goods and services bought in order to derive the maximum benefit from them.

The Community institutions claimed that measures taken or scheduled in accordance with the preliminary programme contributed towards improving the situation of consumers in terms of their health, safety and economic interests by providing them with appropriate information and education<sup>154</sup>. Moreover, measures were taken to improve consultation between representatives of consumers on the one hand and representatives of manufacturers and retailers on the other hand<sup>155</sup>. As mentioned in the Programme, one of the priority measures for the Commission was to organise consultation meetings between the representatives of consumers, producers, distributors and suppliers in order to promote the introduction and development of a voluntary labelling system by means of informing consumers about the characteristics of products (or services)<sup>156</sup>.

In 1989, the European Community's Council of Ministers (Council) adopted a Resolution on future directions for EC consumer protection policy<sup>157</sup>. The Council reaffirmed the importance of a high level of safety and better information on the quality of both products and services to ensure consumer confidence in the functioning of the market. The Community consumer protection and information policy gave priority to promoting the general safety of goods. Three years after implementing this Resolution, the Council passed the Product Safety Directive<sup>158</sup>. The Directive provided for a comprehensive system of notification and exchange of information within the Community. These provisions codified and modified the Rapid Information Exchange System (RAPEX) that had been established in 1985<sup>159</sup>. The Product Safety Directive is further described in Chapter 3.

<sup>152</sup> *OJ J 133*, 03.06.1981, p. 2.

<sup>153</sup> Second Programme of the European Economic Community for a consumer protection and Information Policy, *OJ 133/2*, 03.06.1981.

<sup>154</sup> *OJ J 133*, 03.06.1981, p. 2.

<sup>155</sup> *OJ J 133*, 03.06.1981, p. 9.

<sup>156</sup> *OJ J 133*, 03.06.1981, p. 10.

<sup>157</sup> Council Resolution of 9 November 1989 on future priorities for relaunching consumer protection policy, *OJ C 294*, 22 November 1989, p. 1-3.

<sup>158</sup> Council Directive 92/59/EEC of 29 June 1992 on general product safety, *OJ L 228*, 11 August 1992, p. 24-32.

<sup>159</sup> Council Decision of 2 March 1984: Introducing a Community system for the rapid exchange of information on dangers arising from the use of consumer products. (COM 84/133/EEC), *OJ L70*, p. 16-17.

### 2.3.2 Consumer & Textile and Clothing policy strategy 1990-1992<sup>160</sup>

The first of the Commission's three-year action plans on consumer policy pertained to the period 1990-1992 and focused on building consumer confidence and strengthening the Internal Market. The Commission acknowledged the importance of consumer policy but restricted its proposals on consumer protection measures to those areas where their introduction was essential for the strengthening of the Internal Market. In the Action plan, the Commission itself linked consumer policy to textile labelling legislation by emphasising that:

*"... the development of labelling legislation, inevitably piecemeal fashion, had to be examined to ensure that confusions are revised or eliminated and that anticipated consumer requirements are met"*<sup>161</sup>.

The Commission suggested developing the concept of labelling to support quality goods. Reference was made to the 1985 Product Liability Directive<sup>162</sup> as the producer is liable for certain types of damage caused by a defect in the product. However, a reduction of liability of the manufacturer is granted in cases of negligence on the part of the victim. Such negligence may arise where the textile product was well labelled and the consumer had disregarded the instructions provided through the labels. Therefore, from the producer's perspective, liability may significantly decrease by properly labelling T&C products.

Furthermore, in the 1990s European governments developed restrictions regarding residues of chemicals in clothing due to health concerns. Especially the German government's ban on azo-dyes (German Consumer Goods Ordinance banning certain dyes) in certain consumer goods has had an impact on the textile industry and was followed by an overall EU ban on azo-dyes<sup>163</sup>. With respect to the origin marking, a discussion started on the possibility to introduce the indication of origin of certain textile and clothing products<sup>164</sup> due to the growing incidence of misleading and fraudulent origin marks being carried by imported products<sup>165</sup>.

By the end of 1992, it was apparent that consumers were increasingly able to enjoy the benefits of an integrated market as they enjoyed the right to move freely across borders and conduct cross-border shopping<sup>166</sup>. The Court has made plain its view that consumers have the right to treat the EU as border-free and to travel freely to the territory of another Member State to shop under the same conditions as the local population<sup>167</sup>.

<sup>160</sup> Commission of the European Communities, Three year Action plan of consumer policy in the EEC 1990-1992, Brussels 03 May 1990. COM (1990) 98 final.

<sup>161</sup> *Ibidem* p. 9.

<sup>162</sup> The Product Liability Directive 85/374, (1985) OJ L 210/29.

<sup>163</sup> Jørgensen, M.S. & Jensen, C.L. 'The shaping of environmental impacts from Danish production and consumption of clothing', *Ecol Econ* 2012-0, p. 164-173, DOI: <http://dx.doi.org.proxy.uba.uva.nl:2048/10.1016/j.ecolecon.2012.04.002>.

<sup>164</sup> COM (1980) 557 final, 20.10. 1980, p. 3.

<sup>165</sup> *Ibidem*.

<sup>166</sup> Weatherill, S., *EU consumer law and policy*, Edward Elgar Publishing (2013), p. 10.

<sup>167</sup> Case C-362/88 EU:C:1990:102 (*GB-Inno-BM v. Confederation du Commerce Luxembourgeois*)

### 2.3.3 Consumer & Textile and Clothing policy strategy 1993-1995<sup>168</sup>

The second-three year action plan for 1993-1995 with the subtitle 'Placing the single market at the service of European consumers' was driven by two basic concerns:

1. Consolidation of community legislation in favour of the consumers and
2. Selective priorities for raising the level of consumer protection<sup>169</sup>.

Measures at EU level were taken to protect the health, safety and economic interests of consumers and to provide adequate consumer information<sup>170</sup>. According to the Commission, consumers should be well informed about the products and services and about their rights as European consumers<sup>171</sup>.

It was not until this second-three year action plan for 1993-1995 that legislation in the area of textile products was back on the political agenda. In the Communication from the Commission called 'The Impact of International Developments on the Community's Textile and Clothing Sector', the Commission mentioned that more measures covering the textile and clothing industry had to be implemented and reinforced in accordance with the Council's comprehensive programme of April 1994.

According to the Commission, Member States in cooperation with the Commission had to strengthen their fight against fraud, counterfeiting and other unfair trade practices within the textile industry. In order to improve the competitiveness of the EU textile industry, the Commission suggested creating more fashionable and higher quality products and introducing quality labels or trademarks on textile products<sup>172</sup>.

In the interests of consumers, the Commission employed a series of measures in several industries (as well as the textile industry, the food industry and the pharmaceutical industry) designed to implement and ensure good informative labelling. The Commission also acknowledged the importance of strengthening consumer information to improve consumers' awareness of their choice of products and consequences of their choices on the environment. In this context, the 1992 proposal for a Resolution underlines that<sup>173</sup>:

*"The individual, as a consumer, can make a fully informed and rational choice only if the product information with which the consumer is provided covers all relevant aspects such as performance, reliability, energy efficiency, durability, running costs etc. and if this information is given in a neutral form, supported by effective and dependable guarantees".*

<sup>168</sup> Commission of the European Communities, Second commission three-year action plan of Consumer Policy 1993-1995, Brussels 28 July 1993. COM (93) 378 final.

<sup>169</sup> Ibidem p. 6-8.

<sup>170</sup> Ibidem.

<sup>171</sup> Ibidem p. 16-20.

<sup>172</sup> Communication of 06 October 1995 'The Impact of International Developments on the Community's Textile and Clothing Sector', p. 16. <[http://ec.europa.eu/enterprise/sectors/textiles/files/com1995\\_0447en\\_en.pdf](http://ec.europa.eu/enterprise/sectors/textiles/files/com1995_0447en_en.pdf)> last viewed on 28 January 2017.

<sup>173</sup> Commission of the European Communities, Proposal for a Resolution of the Council of the European Communities on a Community programme of policy and action in relation to the environment and sustainable development, Brussels 27 March 1992 COM(1992) 23 Final, volume II, p. 68.

Furthermore, with regard to sustainability in industry (including the T&C industry), the 1992 Council Regulation on a Community Eco-Label award scheme<sup>174</sup> complemented the second-three year action plan for 1993-1995. This eco-label award scheme was intended to promote the design, production, marketing and use of products that have a reduced environmental impact during their entire life cycle. Furthermore, it aimed to provide consumers with better information on the environmental impact of products without compromising on product or worker safety or significantly affecting the properties of the product by establishing an interest group of representatives from the industry, consumer organisations, environmental organisations etc. The EU eco-label award scheme is the basis for the more sector-specific EU eco-label for textiles<sup>175</sup>.

### 2.3.4 Consumer & Textile and Clothing policy strategy 1996-1998<sup>176</sup>

The third three-year action programme sets out ten 'priority areas for action', which address the broad range of policy areas in which consumer interests are affected. With the programme, the Commission aimed at, inter alia:

- Improving the education and information of consumers. Providing consumers with inadequate information is related to many consumer problems, hence supplying consumer with proper information might prevent consumer difficulties.
- Reviewing and maintaining an up-to-date framework to ensure consumers' interests were fully taken into account.
- Encouraging a practical approach to sustainable consumption. To this end, the Community would create awareness, educate consumers as well as design suitable general information and require businesses to adjust the labelling of products and services.

In the Communication of 15 May 1996, the Commission mentioned that action should be taken to support subcontracting in the textile industry as the free flow of information and communication between manufacturers and subcontractors could be improved. The Commission took the view that an improved provision of information would facilitate the dissemination of best practices in the supply chain and subsequently provide consumers with relevant information about the textile products<sup>177</sup>.

During this period, Directive 96/73/EC on certain methods for the quantitative analysis of binary textile fibre mixtures<sup>178</sup> and Directive 96/74/EC of 16 December 1996 on textile names<sup>179</sup> were adopted, further determining the labelling of the fibre composition of textile products. In these

<sup>174</sup> Council Regulation 880/92/EEC of 23 March 1992 on a Community Eco-label award scheme (1992) OJ L 099, 11.04.1992, p. 1-7.

<sup>175</sup> See further chapter 2.5.7. Commission Decision of 9 July 2009 establishing the ecological criteria for the award of the Community Ecolabel for textile products. OJ L 197, 29.07.2009, p. 70-86.

<sup>176</sup> Commission of the European Communities, Priorities for Consumer Policy 1996-1998. Brussels 31 October 1995. COM (95) 519 final.

<sup>177</sup> Communication of 15 May 1996, 'The competitiveness of subcontracting in the textile and clothing industry in the European Union', COM/96/210 final. OJ C 66, 03.03.1997, p. 18.

<sup>178</sup> OJ L 32, 03.02.1997, p. 01-37.

<sup>179</sup> OJ L 32, 03.02.1997, p. 38-55.

two Directives, provisions were set out for methods to determine the use of fibre names and textile fibre mixtures<sup>180</sup>.

Although the EC in its 1985 White Paper condemned voluntary schemes as obstructions to the free movement of goods and a hindrance to the common European market<sup>181</sup>, in the field of sizing the EC has worked closely with international standard-setting bodies such as the European Committee for Standardization (CEN)<sup>182</sup>. CEN prepared since 1998 the EN13402 standard. The EN13402 standard for labelling clothes sizes is based on body dimensions and aims to replace many older national clothing-size systems<sup>183</sup>.

In the area of origin marking, during this period discussion continued on the possibility to introduce the indication of origin of certain textile and clothing products that had started with the second-three year action plan<sup>184</sup>. The discussion ensued due to the growing incidence of misleading and fraudulent origin marks being carried by imported products<sup>185</sup>. The European Economic and Social Committee (EESC) discussed the topic in a 'Plan of action' to increase the competitiveness of the European textile and clothing industry. The EESC asked national and Community authorities to 'consider' the establishment of marking which showed the place of manufacture in order to combat evasion of rules and ensure transparency and proper information for the consumer. Furthermore, the EESC underlined the fact that consumers are often poorly informed or uninformed about the origin and production conditions of the products available to them, which in its view would warrant carrying out a study on the introduction of country of origin marking on labels for non-food products<sup>186</sup>. It was only five years later that the Commission mentioned the issue in a Communication on the future of the textile and clothing industries in the enlarged EU<sup>187</sup>. Further on, in Chapter 2.3.6 and in Chapter 4, the (unsuccessful) introduction of a 'country of origin' label for the textile sector<sup>188</sup> is discussed.

### 2.3.5 Consumer & Textile and Clothing policy strategy 1999-2001<sup>189</sup>

In the Consumer Policy Action Plan for 1999-2001, one of the Commission's aims was to enable consumers to play an active role in the European Community. The consumer policy had to adjust to the increasing globalisation of trade, the development of new markets and the new communication and information processing technology, such as digitisation of society and

<sup>180</sup> Ibidem.

<sup>181</sup> COM (1985), 310 final, p. 18-19.

<sup>182</sup> Reilly, T. 'The harmonization of standards in the European union and the impact on U.S. business', *Business Horizons*. (1995-2), p. 28-34, DOI: [http://dx.doi.org.proxy.uba.uva.nl/2048/10.1016/0007-6813\(95\)90052-7](http://dx.doi.org.proxy.uba.uva.nl/2048/10.1016/0007-6813(95)90052-7).

<sup>183</sup> See <[www.nen.nl](http://www.nen.nl)> last viewed on 26 January 2017.

<sup>184</sup> COM (1980) 557 final p. 3.

<sup>185</sup> European Commission, 'Made in the EU Origin Marking-Working Document of the Commission Services, 12 December 2003. See <[http://trade.ec.europa.eu/doclib/docs/2005/may/tradoc\\_115557.pdf](http://trade.ec.europa.eu/doclib/docs/2005/may/tradoc_115557.pdf)> last viewed on 15 February 2017.

<sup>186</sup> OJ C 214, 10.07.1998, p. 95-103.

<sup>187</sup> COM (2003) 649 final, 29 October 2003, p. 33.

<sup>188</sup> See Chapter 4.7. In 2013, the Commission withdrew its proposal, COM(2005) 661, 16.12.2005 as a majority of Member States did not support the introduction of 'Made In'. A few days after this decision, the Commission introduced an almost identical, but even farther-reaching, proposal under the heading 'consumer safety'.

<sup>189</sup> Council Regulation of 28 June 1999 on Community Consumer Policy 1999 to 2001, OJ C 206, 21.07.1999, p. 1-3.

businesses. Mass-production slowly started making room for the revival of specialised products in response to the growing demand from consumers. These products were often produced outside the EU, going through several production stages, each occurring in a different (non-EU) country<sup>190</sup>. The first objective of the consumer policy strategy was to provide EU consumers with a more powerful voice. According to the Commission, the increasing sales volume of consumer products, marketing techniques, the development of more complex services and their liberalisation created an important role for consumer organisations in educating and informing consumers. Therefore, with the adoption of Decision number 283/1999/EC<sup>191</sup> the Commission established a 'General Framework for Community Activities in Favour of Consumers'. Consumer organisations were expected to make an important contribution to increasing product safety by educating consumers to require more information about products, particularly with regard to young people, vulnerable consumers and other disadvantaged citizens.

The second objective was to provide EU consumers with products whilst ensuring high levels of health and safety. During this period of time, consumer awareness increased about the potential health impact of food and non-food products<sup>192</sup>. With regard to textile products, consumer attention focused primarily on clothing and household textiles. Clothing manufacturers increasingly responded by examining the chemicals contained in clothing, which were causing allergenic reactions to consumers. In particular, emphasis was placed on chemicals used in the finish of clothing. To this end, the EU introduced a new chemical policy. In 2001, the EC promulgated a 'White Paper on the Strategy for a Future Chemicals Policy'<sup>193</sup> in which it outlined the major drawbacks of the current regulatory regime and proposals for a consistent and coherent pan-European chemicals policy.<sup>194</sup> The White Paper was followed by the preparation of a regulation that stipulated that certain chemical substances used or placed on the EU market above certain volumes had to be subjected to registration and, where necessary, an evaluation and authorisation/restriction procedure<sup>195</sup>. These were the first major steps towards a draft Regulation on REACH ((Registration, Evaluation and Authorisation of Chemicals), which would come into force only in 2007. REACH is elaborated further in Chapter 4.

At the same time, the Commission encouraged environmentally friendly and sustainable consumption. By introducing CSR labelling schemes consumers could be better informed about products, which have been produced in a sustainable way. Considering consumer needs, the Commission argued that any labels that would be introduced should be relevant, credible and

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<sup>190</sup> Ibidem.

<sup>191</sup> Decision n° 283/1999/EC of the European Parliament and of the Council of 25 January 1999 establishing a General Framework for Community Activities in Favour of Consumers. OJ L34/1 of 09/02/99.

<sup>192</sup> Loureiro, M. L., & McCluskey, J. J. Consumer preferences and willingness to pay for food labeling: A discussion of empirical studies. *Journal of Food Distribution Research*, (2000) 34(3), p. 95-101. See also Tallontire, A., Rentsendorj, E., & Blowfield, M. Ethical consumers and ethical trade: a review of current literature, 2001 (NRI Policy Series 12), p. 25-30.

<sup>193</sup> COM (2001) 88 final, adopted 27.02.2001.

<sup>194</sup> Koslosky, D. R. 'Beyond Harmonisation: Comparative Regulatory Preemption in European Chemicals Policy'. *London Law Review* (2006), p. 465.

<sup>195</sup> Orellana, M. A. 'Sound Chemicals Management: Europe's REACH. A New Chapter in International Chemicals Law', *Sustainable Development Law & Policy* 2006.

reliable. In addition, the information on the labels should be market driven, non-discriminatory, proportionate and transparent regarding the production process. The Commission mentioned that labelling in general could be based on internationally agreed standards<sup>196</sup>. Therefore, the current certification organisations, operating on a national or international level, should be entrusted with such tasks, preferably under the control of public authorities insofar as there is a public recognition of their certification<sup>197</sup>.

### 2.3.6 Consumer & Textile and Clothing policy strategy 2002-2006<sup>198</sup>

The focus of the Consumer Policy Strategy for 2002-2006 was to provide relevant health and safety requirements and safeguard economic interests to ensure a high level of consumer protection. Furthermore, consumers had to be protected from fraudulent, inaccurate and misleading commercial practices. The European Community's consumer policy aimed to establish a consistent and common environment to ensure that consumers are confident about shopping across borders throughout the EU. Consumer interests would be better protected if the information regarding consumer products were the same within the Internal Market<sup>199</sup>.

As mentioned in Section 2.3.4, on 29 October 2003 the EC adopted the Communication 'The future of the textiles and clothing sector in the enlarged European Union'<sup>200</sup>. In it, the Commission stated that:

*"A 'Made in Europe' label could help increase the confidence of consumers, that when they are purchasing a garment they are paying a price that corresponds to the highest standards of production and style expected from European manufacturing"*

Thus, the Commission made a commitment to further examine the introduction of origin marking for textile and clothing products in the EU in order to better inform consumers<sup>201</sup>. In order to follow up on the ideas and suggestions mentioned in this Communication, the Commission set up a 'High Level Group on textiles and clothing'. The group had a mandate to formulate recommendations to improve the conditions for the competitiveness of the European textiles and clothing industry<sup>202</sup>.

<sup>196</sup> The basic labour rights are defined in the ILO Declaration on Fundamental Principles and Rights at Work, June 1998, as: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

<sup>197</sup> Jordan, A, Wurzel, R.K.W., & Zito, A. R. 'Consumer responsibility-taking and eco-labelling schemes in Europe', *Micheletti et. al.* (2011), p. 161-180.

<sup>198</sup> Communication from the Commission of 7 May 2002 to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - 'Consumer Policy Strategy 2000-2006' (COM (2002) 208 final - OJ C137/2, 08.06.2002).

<sup>199</sup> Communication from the Commission to the European Parliament, the Council, the Economic and social committee and the committee of the regions of 7 May 2002. COM (2002) 208.

<sup>200</sup> Communication of 29 October 2003 on the future of the textiles and clothing sector in the enlarged European Union - COM(2003) 649 final. Press Release of 28/10/2003. See <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3An26105>>, last viewed on 15 February 2017.

<sup>201</sup> *Ibidem* p. 33.

<sup>202</sup> The group produced a report 'The challenge of 2005-European Textiles and Clothing in a Quota Free Environment' on June 30, 2004. The Commission reacted to this report on 13 October 2004 in its Communication 'Textiles and clothing after 2005 - Recommendations of the High Level Group on textiles and clothing'.

The High Level Group addressed the growing concerns of consumers regarding chemicals in products and the increasing importance of clean production and corporate responsibility in the textile industry<sup>203</sup>. Based on the recommendations of the High Level Group regarding chemicals in consumer products, the Commission decided to develop an 'Action List' to conduct an analysis of chemical substances and preparations used in the production of textile products. Subsequently, a category of substances of critical importance (Restricted Substances List, RSL) for the textile industry was drawn up<sup>204</sup>. This RSL was intended to inform T&C companies on regulations, such as REACH<sup>205</sup> and Biocidal Products Regulation<sup>206</sup>, that restricted or banned the use of chemicals in apparel products including accessories attached to textile products, for example, zip fasteners and buttons, and packaging materials. Furthermore, the High Level Group recommended that the Commission undertake a study on the use of unfair practices by retailers towards consumers as the increasingly oligopolistic retail structures prevalent in the EU potentially create the risk of producing anti-competitive effects, which need to be effectively addressed. The Commission noted that Article 82 of the EC Treaty<sup>207</sup> offers sufficient safeguards to investigate practices by dominant firms who abuse their market position.

Furthermore, the revision of the EU legislation on Textile Names and Labelling, which led to the 2011 Textile Regulation, was announced in 2006 in the 'First progress report on the strategy for the simplification of the regulatory environment' and was included in the Commission Legislative and Work Programme for 2008<sup>208</sup>.

In 2006, the labelling of textile and clothing products in the EU became a more prominent issue<sup>209</sup>, which then led to the debate regarding the revision of the 1996 Directive on Textile Names<sup>210</sup>. In the next subsection, Consumer & Textile and Clothing policy strategy 2007-2013, a more detailed overview is given of the debate started by the then Member of the European Parliament Toine Manders<sup>211</sup>.

<sup>203</sup> [http://ec.europa.eu/enterprise/sectors/textiles/files/hlg\\_report\\_18\\_09\\_06\\_en.pdf](http://ec.europa.eu/enterprise/sectors/textiles/files/hlg_report_18_09_06_en.pdf) last viewed on 28 January 2017;

<sup>204</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, under its Title VIII of Restrictions on the manufacturing, placing on the market and use of certain dangerous substances and preparations and its Annex XVII of Restrictions on the manufacturing, placing on the market and use of certain dangerous substances, preparations and Articles. OJ L 396, 30.12.2006, p 1-849.

<sup>205</sup> OJ L 396, 30.12.2006.

<sup>206</sup> OJ L 167, 27.06.2012.

<sup>207</sup> Now: Article 102 Treaty on the Functioning of the Union (TFEU).

<sup>208</sup> Commission Working Document First progress report on the strategy for the simplification of the regulatory environment, Brussels 14.11.2006. COM (2006) 690 final.

<sup>209</sup> Interview Toine Manders, see Appendix IV. The revision of EU legislation on Textile Names and Labelling was announced in 2006 in the 'First progress report on the strategy for the simplification of the regulatory environment' (COM (2006) 689 and was included in the Commission Legislative and Work Programme for 2008. COM (2007) 640, p. 14.

<sup>210</sup> Directive 2008/121/EC on textile names (recast) requires the labelling of the fibre composition of textile products using only the harmonised names listed in Annex I to the Directive. Directives 96/73/EC and 73/44/EEC specify the methods of analysis to be used to check whether the composition of textile products is in conformity with the information supplied on the label.

<sup>211</sup> At the time, Manders was a member of the Internal Market and Consumer Protection Committee and was appointed as Rapporteur for the revision of this Directive as of 14 September 2009 until 30 June 2014 <[http://www.europarl.europa.eu/meps/en/4560/TOINE\\_MANDERS\\_home.html](http://www.europarl.europa.eu/meps/en/4560/TOINE_MANDERS_home.html)> last viewed on 03 January 2017.

Finally, the UCPD was adopted on 11 May 2005<sup>212</sup>. The Commission initiated the legislative process in 2001 with a Green Paper on Consumer Protection<sup>213</sup>. The Commission explained that its aim was to create a legislative instrument that could provide a uniform and comprehensive standard for governing unfair commercial practices. The instrument would have a twofold objective: to enhance the confidence of consumers in making cross-border transactions, and to eliminate differences in national laws that may discourage businesses from exploring the full potential offered by the single market<sup>214</sup>. In line with the Consumer policy strategy 2002-2006, the Commission opted for full harmonisation, which signalled a shift in regulation technique since until then most directives concerning consumer protection were based on minimum harmonisation.

According to Van Boom et al.<sup>215</sup>, the core of the UCPD lies in 'the information paradigm', which means that consumers should be provided with correct and meaningful information so that they can take an undistorted transactional decision according to their preferences. The UCPD is applicable to all business-to-consumer commercial practices and also covers misleading aspects of labelling, especially with reference to 'commercial', i.e. non-mandatory, labelling<sup>216</sup>. The UCPD is further discussed in Chapter 3.

### 2.3.7 Consumer & Textile and Clothing policy strategy 2007-2013<sup>217</sup>

As mentioned earlier, the importance of securing an integrated market had been at the heart of the Commission's policy documents concerning consumer protection since the Internal Market moved to political centre-stage in the 1980s. The first of the Commission's three-year Action Plans of consumer policy (1990-1992)<sup>218</sup> selected points of focus with reference to building the consumer confidence necessary to support the realisation of the Internal Market. These included consumer information, access to justice and consumer health and safety. As stated in the previous subsection, the Consumer Policy Programme for 2002-2006<sup>219</sup> stated a need to review and reform existing EU consumer protection directives in order to minimise variations in consumer protection rules across the EU that created fragmentation of the Internal Market to the detriment of consumers and businesses. As such, the main themes in the Commission's Strategy for 2007-2013 include a strong emphasis on the benefits to the consumer of the Internal Market, including discussion of how lack of confidence acts as an obstacle to the integration of retail markets.

<sup>212</sup> Directive 2005/29 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'). OJ L 149/22, 11.06.2005.

<sup>213</sup> COM (2001) 531; see also the Commission's Follow-up Communication to the Green Paper on EU Consumer Protection, Brussels 11 June 2002. COM (2002) 289.

<sup>214</sup> Collins, H. 'The unfair commercial practices directive', *European Review of Contract Law* (2005-4), p. 417-441.

<sup>215</sup> Van Boom, W-H., Garde, A. & Akseli, O. 'Introduction to The European Unfair Commercial Practices Directive', Van Boom, Garde & Akseli, *the European Unfair Commercial Practices Directive-Impact, Enforcement Strategies and National Legal Systems* (Ashgate 2014), p. 6.

<sup>216</sup> *Ibidem*.

<sup>217</sup> Communication of 13 March 2007 from the Commission to the Council, the European Parliament and the European Economic and Social Committee, 'EU Consumer Policy Strategy 2007-2013', COM (2007) 99 final.

<sup>218</sup> COM (1990) 98.

<sup>219</sup> COM (2002) 208.

EU consumer policy during this period focused on, inter alia, improving the monitoring of consumer markets and national consumer policies by market studies and/or consumer scoreboards<sup>220</sup> in order to protect consumers effectively from serious risks and threats. Market surveillance was to be reinforced through the existing tools, such as the RAPEX<sup>221</sup> and through concluded cooperation agreements in the field of consumer product safety between the Community and third-countries or international organisations<sup>222</sup>.

Another goal of the European legislators was to better inform and educate consumers by improving the provision of information to them, by creating such new channels of communication as the European Consumer Centres Network (ECC-Net) and by initiating information campaigns in the new Member States<sup>223</sup>.

Moreover, transforming Europe's economy into a sustainable one by 2050 was a clear objective of the Commission. Therefore, several measures were employed to make production and consumption sustainable and to incentivise investors to promote green innovation, such as eco-design and eco-labelling.

This was followed by the commissioning of a study on 'Policies to encourage sustainable consumption'<sup>224</sup>. In this regard, the EU Eco-label scheme for the product group of textiles was set out<sup>225</sup>, in accordance with the Annex to European Commission Decision 2009/567/EC<sup>226</sup> in which new criteria were announced for textile and clothing products eligible for the EU's Eco-label program<sup>227</sup>. The Eco-label program defines the product group of textile products as textile and clothing products that are subject to environmentally-friendly production practices and that comply with rules of CSR. According to the Eco-label program, textile and clothing products only qualify for the label if the use of chemicals that are hazardous (or potentially hazardous) to public health and the environment is restricted or omitted altogether. The CSR criteria apply to the cut/make/trim stages of production for textile products, ensuring that the applicants observe the fundamental principles and rights at work as described in the ILO's Core Labour Standards, the

<sup>220</sup> COM (2008) 31 final.

<sup>221</sup> RAPEX is the EU rapid alert system for a quick exchange of information within the European Union between the Member States themselves and the Commission. It contains information on the measures that are taken to prevent or restrict the marketing or use of products posing a serious risk to the health and safety of consumers and professional users, both the measures deployed by the Members States' authorities as well as the non-compulsory measures taken voluntarily by producers and distributors. <[http://ec.europa.eu/consumers/consumers\\_safety/safety\\_products/rapex/alerts/repository/content/pages/rapex/index\\_en.htm](http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/repository/content/pages/rapex/index_en.htm)> last viewed on 11 January 2017.

<sup>222</sup> E.g. China and the US.

<sup>223</sup> Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, EU Consumer Policy strategy 2007-2013 of 13 March 2007, Brussels, COM (2007) 99 final.

<sup>224</sup> See <[http://ec.europa.eu/environment/eussd/pdf/report\\_22082012.pdf](http://ec.europa.eu/environment/eussd/pdf/report_22082012.pdf)> last viewed on 14 January 2017.

<sup>225</sup> Regulation (EC) No 66/2010 of the European Parliament and the Council of the European Parliament and the Council of the European Union, OJ L 27, 30.01.2010, p. 1-19.

<sup>226</sup> Ibidem.

<sup>227</sup> Commission Decision of 5 June 2014 establishing the ecological criteria for the award of the EU Eco-label for textile products, (notified under document C (2014) 3677), OJ L 174/45, 13.06.2014.

UN Global Compact and the OECD Guidelines for Multi-National Enterprises<sup>228</sup>. For consumer information purposes, the box of the Eco-label may contain wording selected from the following: *'More sustainable fibre production'; 'Less polluting production processes'; 'Restrictions on hazardous substances' and/or 'Tested for durability'*<sup>229</sup>.

In the field of origin marking for textile products, the European Parliament voted in a huge majority in favour of re-opening the legislative procedure and submitting a proposal for regulation on the indication of the country of origin of certain products imported from outside the EU<sup>230</sup>. The European Parliament emphasised the importance of such rules for ensuring a high level of consumer protection<sup>231</sup>. However, a few years later (January 2013) the members of Parliament stated that since Member States had failed to agree on mandatory origin labels for goods such as clothing, shoes, jewellery and glassware imported from third countries, the Commission should adopt a different approach to level the playing field for EU manufacturers and their third-country competitors<sup>232</sup>. The EC then announced in February of that same year that it would indeed withdraw the proposed regulation as it was found to be incompatible with the EU's obligations under the WTO and as no agreement could be found within the Council on the desirability of mandatory labelling<sup>233</sup>.

During this period, the debate on textile labelling was spurred on by the proposal for a Regulation on textile names and related labelling of textile products<sup>234</sup>. The proposal aimed to reduce the administrative burden incurred by Member States when transposing into national legislation new rules concerning textile names, as a technical adaptation was required each time a new fibre name was added to the list of harmonised names. Furthermore, the Commission took the decision to revise the legislation on textile names in order to enhance the process of introducing new fibre names into the existing Directives. The idea for a revision of Textile Names legislation emerged as a result of previous adverse experience when regular technical amendments were necessary in order to introduce new fibre names into the existing legal framework. The revision should introduce more flexibility to adapt legislation in order to keep up with technological developments expected in the textiles industry<sup>235</sup>. The Textile Regulation is based on Article 95

<sup>228</sup> OJ L 174, 13.06.2014, p. 45 and see Annex.

<sup>229</sup> OJ L 174, 13.06.2014, p. 70.

<sup>230</sup> P7 TA (2009) 93 Origin marking European Parliament resolution of 25 November 2009 on origin marking. The signing of Treaty of Lisbon, gave new powers of co-decision to the European Parliament in matters of trade, the European Parliament gained an equal voice and the decision no longer solely fell to the Council.

<sup>231</sup> See European Parliament legislative resolution of 21 October 2010 on the proposal for a regulation of the European Parliament and of the Council on the indication of the country of origin of certain products imported from third countries, COM (2005) 661–C7-0048/2010 2005/0254 (COD))(2012/C70 E/33). OJ C 70 E, 08.03.2012, p. 211–220.

<sup>232</sup> Newsroom: EU must require 'made in' labels on imports from third countries, say MEPs, <<http://www.europarl.europa.eu/news/en/news-room/content/20130114IPR05315/html/EU-must-require-made-in-labels-on-imports-from-third-countries-say-MEPs>> last viewed on 14.12.2016

<sup>233</sup> Sohlberg, M. & Maniatis, B. 'No EU Regulation for 'Made In' Labelling in Sight – Commission Set to Withdraw Proposal', *Hogan Lovells Focus on Regulation*, posted on 4 February 2013 <<http://www.hlregulation.com/2013/02/04/no-eu-regulation-for-made-in-labelling-in-sight-commission-set-to-withdraw-proposal/>> last viewed on 14 December 2016.

<sup>234</sup> Kidmose Rytz, B., Sylvest, J. & Brown, A. 'Study on labelling of textile products' (2010), p. 6. <<http://ec.europa.eu/DocsRoom/documents/10481/attachments/1/translations>> last viewed on 15 March 2017.

<sup>235</sup> Commission of the European Communities, Brussels, 30.01.2009 COM (2009) 31 final. Proposal for a Regulation EC of the European Parliament and of the Council of the Textile names and related labelling of textile products, 2009/0006 (COD). SEC (2009) 90/91.

of the EC Treaty<sup>236</sup> and aims at establishing an internal market for textile products while ensuring that consumers receive accurate information. It may be regarded as the codification in one single legal instrument of all the Directives existing previously. The substantive provisions of the Textile Regulation are discussed in Chapter 3.3.

The debate on the Textile Regulation<sup>237</sup> started by the Member of the European Parliament, Toine Manders. In the explanatory statement of the report of the European Parliament's Internal Market and Consumer Protection Committee<sup>238</sup>, Rapporteur Manders remarked that on a global level the EU industry plays a leading role in the development of new textile products, especially technical and non-woven textiles for novel applications such as hygiene products or smart textile (nanotechnology). As such, the existing regulatory framework for the development and uptake of novel fibres has to be simplified and/or new legislation in this field is necessary. The aim is to encourage innovation in the T&C industry whilst allowing fibre users and consumers to benefit more readily from innovative products<sup>239</sup>. Similarly, in its opinion on the proposal the EESC indicated that the number of requests for new fibre names to be added to EU legislation had increased in recent years and this trend was expected to strengthen as the European textile industry was evolving into a more innovative one<sup>240</sup>.

Moreover, in an interview I conducted with him, Manders highlighted the importance of harmonising or standardising textile labels<sup>241</sup>. After all, European consumers should be provided with accurate, relevant, intelligible and comparable information about textile products. His main concern is the introduction of a minimum set of regulations at EU level that is applicable to manufacturers supplying the European market with labelled textile products. According to Manders, extensive legislation is not beneficial since it is difficult to create strict, specific regulations and to monitor these to ensure the industry's compliance. Manders was also conscious of the need to strike a balance between a high level of consumer protection, the T&C industry interests and the simplification of the regulatory framework for textile products. Therefore, according to him, the European legislator should ensure that extending compulsory labelling would not create a disproportionate burden for businesses. Compulsory labelling should bring real added value for consumers, namely, by prevention of confusion caused by an excess of information on textile and clothing labels.

<sup>236</sup> Now: Article 115 Treaty on the Functioning of the Union (TFEU).

<sup>237</sup> COD, Ordinary legislative procedure (ex-co decision procedure) Regulation, 2009/0006 (COD).

<sup>238</sup> Report </Titre<Titre>on the proposal for a Regulation of the European Parliament and of the Council on textile names and related labelling of textile products, Committee on the Internal Market and Consumer Protection. A7-0122/2010</NoDocSe><Date>{30/04/2010}30.4.2010</Date>. </Commission></Titre<DocRe(COM (2009) 31-C6-0048/2009/0006(COD)</DocRef>, p. 34-38.<Commission>{IMCO}</Commissio.

<sup>239</sup> Opinion of the EESC on the Proposal for a Regulation of the European Parliament and of the Council on textile names and related labelling of textile products, COM (2009) 31 final - COD 2009/0006, p. 35.

<sup>240</sup> Opinion of the EESC on the Proposal for a Regulation of the European Parliament and of the Council on textile names and related labelling of textile products, COM (2009) 31 final - COD 2009/0006, p. 35-36.

<sup>241</sup> See interview Toine Manders, Appendix IV.

At the same time, the European legislator should investigate whether the introduction of other means than mandatory labelling requirements could not equally or more efficiently help consumers in making informed choices. According to the Rapporteur, textile and clothing labelling may facilitate progress in better provision of information to consumers but only as long as it is regulated by the industry, which might motivate and push manufacturers towards the use of a sustainable and efficient supply chain for the textile and clothing industry<sup>242</sup>.

Manders considered that the main political issue is whether EU legislation should be extended to include other labelling requirements beyond the fibre composition and harmonisation of textile fibre names, and whether this would ensure additional benefits for consumers. To that end, Manders called on the European Commission to submit a report to the European Parliament and the Council regarding possible new labelling requirements to be introduced at the EU level in order to harmonise, standardise and simplify the labelling of textile products. A significant area of attention in this context is to furnish consumers with accurate, relevant, intelligible and comparable information on the composition, properties, care, origin and size of textile products<sup>243</sup>. The Rapporteur considered that a Working Group on Textile Names and Labelling legislation could constitute an appropriate forum as a starting point for the discussion. Manders emphasised that the Commission should ensure a more systematic involvement of civil society, consumer representatives, social partners and institutional stakeholders in order to guarantee that the composition of the Working Group reflects the positions of all interested parties. This ultimately resulted in the establishment of the Commission Expert Group on textile names and labelling<sup>244</sup>. The members of the Group are experts appointed by the Member States but the European Commission may invite, on an ad hoc basis, observers and experts from outside the group with competence on specific subjects to attend the meetings and participate in the work of the group. The Working Group aims to provide expertise and advice on matters related to new fibre names and labelling and also discuss and exchange information on aspects relevant to the application of Regulation EU 1007/2011<sup>245</sup>. The view of these stakeholders will be expanded on in the next chapter.

In its position at first reading concerning the adoption of a Regulation on Textile names and related labelling of textile products held on 18 May 2010, the European Parliament adopted a number of substantive amendments with regard to rules on origin of marking, indication of animal-derived materials and the use of language-independent symbols<sup>246</sup>. The amendment of the rules on origin marking followed the lines of a proposal submitted by the Commission in 2005<sup>247</sup> which covered several categories of goods, including textile products.

<sup>242</sup> Ibidem.

<sup>243</sup> Ibidem.

<sup>244</sup> Communication C (2010)7649 and Commission Staff Working Document SEC (2010) 1360.

<sup>245</sup> <[https://ec.europa.eu/growth/sectors/fashion/textiles-clothing/labelling-expert-group\\_en](https://ec.europa.eu/growth/sectors/fashion/textiles-clothing/labelling-expert-group_en)> last viewed on 22 December 2016.

<sup>246</sup> Communication from the Commission to the European Parliament concerning the position of the Council on the adoption of a Regulation on textile names and related labelling of textile products. COM (2010) 724 final, 2009/006 (COD).

<sup>247</sup> Proposal for a regulation of the European Parliament and of the Council on the indication of the country of origin of certain products imported from third countries. Brussels 16.12.2005 COM (2005) 661.

Despite Parliament's overwhelming support for this proposal, no significant progress was made in the Council. Ultimately, the Council and the Parliament could only agree on requiring the EC to submit, by 30 September 2013, a report to the European Parliament and to the Council regarding possible new labelling requirements to be introduced at EU level<sup>248</sup>. It could be accompanied, where appropriate, by further legislative proposals. This agreement was ultimately laid down in Article 24 of the 2011 Regulation on textile fibre names and related labelling and marking of the fibre composition of textile products (the Textile Regulation)<sup>249</sup>. This Regulation is currently the sole sector-specific EU legislation applicable to textile and clothing products. It applies to all products containing at least 80% by weight of textile fibres, including raw, semi-worked, worked, semi-manufactured, semi-made or made-up products. The Textile Regulation contains provisions for the requirements for the labelling and marking of textile products only in regard to the fibre composition.

The European Parliament's Committee on Internal Market and Consumer Protection had the task of investigating whether other relevant textile labelling provisions could be asserted in EU legislation and petitioned for a *'Study on labelling of textile products'*<sup>250</sup>, which will be set out hereafter.

The European Commission is required, pursuant to Article 24 (review) and Article 25 of Regulation No 1007/2011, to conduct studies regarding new labelling requirements of textile and clothing products and to examine the causal link between allergic reactions and chemical substances or mixtures used in textiles. Furthermore, the EC commissioned the *'Study on the causal link between allergic reactions and chemical substances or mixtures used in textiles'*<sup>251</sup> and the *'Study of the need and options for the harmonisation of the labelling of textile and clothing products'*<sup>252</sup>.

Based on these studies, the Commission reported possible new labelling requirements to the European Parliament and the Council<sup>253</sup>; the findings of these studies are outlined next.

## 1. Study on labelling of textile products

As indicated above, the study on labelling of textile products<sup>254</sup> was petitioned by the European Parliament's Committee on Internal Market and Consumer Protection. The objective of the

<sup>248</sup> This report was supposed to include an origin labelling scheme aimed at providing consumers with accurate information on the country of origin and additional information ensuring full traceability of textile products, taking into account the results of developments on potential horizontal country-of-origin rules.

<sup>249</sup> Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products and repealing Council Directive 73/44/EEC and Directives 96/73/EC and 2008/121/EC of the European Parliament and of the Council, OJ 2011, L 272/1.

<sup>250</sup> Kidmose Rytz, B., Sylvest, J. & Brown, A. 'Study on labelling of textile products' (2010). <<http://ec.europa.eu/DocsRoom/documents/10481/attachments/1/translations>> last viewed on 15 March 2017.

<sup>251</sup> De Wolf, K., Devaere, S. & Albrecht, E. 'Study on the Link Between Allergic Reactions and Chemicals in Textile Products', (2013). <<http://ec.europa.eu/DocsRoom/documents/10481/attachments/1/translations>> last viewed on 15 March 2017.

<sup>252</sup> Matrix Insight, 'Study of the need and options for the harmonisation of the labelling of textile and clothing products', (2013), on <[http://ec.europa.eu/enterprise/sectors/textiles/files/studies/study-report-labelling-textile\\_en.pdf](http://ec.europa.eu/enterprise/sectors/textiles/files/studies/study-report-labelling-textile_en.pdf)> last viewed on 15 March 2017.

<sup>253</sup> Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products, Brussels 25 September 2013. COM (2013) 656 final.

<sup>254</sup> Kidmose Rytz, B., Sylvest, J. & Brown, A. 'Study on labelling of textile products' (2010). The study was carried out pursuing a request by the IMCO Committee and to the exchange of views with the textile industry during the visit of a delegation of the IMCO Committee to Milan in November 2009.

study was to gain insight into the impact of new labelling requirements on consumers and the T&C industry. This study also explores whether other textile labelling requirements could be implemented in the EU legislation, including care instructions, information on chemical substances, implementation of the electronic labelling, multi-lingual labels, country of origin information, and ecological and size labelling.

The study was conducted to assess consumers' perceptions and attitudes on labelling, as well as legal and administrative challenges and implications for the industry, following the introduction of mandatory requirements on labelling<sup>255</sup>. In the conclusion, the study emphasises the necessity to harmonise and standardise textile labelling (with the exception of fibre composition labelling), with a view to facilitating the free movement of textile products in the Internal Market and to achieve a uniform and high level of consumer protection throughout the EU. The outcome of this study is intensively elaborated on in Chapter 4.

## 2. Study on the causal link between allergic reactions and chemical substances or mixtures used in textiles

Article 25 (and recital 27) of the Regulation EU 1007/2011 as well as the provisions of the Regulation (EC) No 1907/2006<sup>256</sup> require the European Commission to assess hazardous substances used in textile products. The aim is to prepare, where appropriate, legislative proposals to address such issues in the context of existing EU legislation. This study, conducted by RPS Group<sup>257</sup> on behalf of the EC, addresses the problem of a causal link between allergic reactions and chemicals used and remaining on finished textile products. In the production process of textile and clothing products, numerous chemicals are used that may result in consumers suffering from allergic reactions. The source of allergy might be both the clothing materials and chemical additives used in processing the fabric. The aforementioned research focused specifically on substances likely to cause allergic reactions. Within this research, information was obtained from scientific literature, epidemiological sources, consultations with the textile industry and a review conducted of existing, related EC regulations. A lack of current information on the concentrations of allergenic chemicals used in finished textile products and a lack of standard testing methods on allergies related to textiles created a barrier to establishing any solid, conclusive links, according to RPS<sup>258</sup>. The study was, however, able to conclude that textile dyes, finish resins and some other chemicals such as flame-retardants and biocides can induce allergic reactions. The study proposed to consider the introduction of new information requirements for consumers under relevant existing legislation and to combine non-regulatory (voluntary action such as codes of conduct and standards) and

<sup>255</sup> Kidmose Rytz, B., Sylvest, J. & Brown, A. 'Study on labelling of textile products' (2010), p. 8-9.

<sup>256</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, under its Title VIII of Restrictions on the manufacturing, placing on the market and use of certain dangerous substances and preparations and its Annex XVII of Restrictions on the manufacturing, placing on the market and use of certain dangerous substances, preparations and Articles. COM 2003/0644 Final, OJ L396, 30.12.2006, p. 1-849.

<sup>257</sup> Multi-disciplinary international consultancy group, [www.rpsgroup.com](http://www.rpsgroup.com)

<sup>258</sup> See <http://www.rpsgroup.com/Group/News/News-Archives/2013/Mar-2013/EC-Publishes-RPS-Research-on-Allergenic-Chemicals.aspx> last viewed on 12 January 2017.

further harmonisation of control procedures of the presence of sensitizers in the product and indication of sensitizers on labels<sup>259</sup>.

### 3. Study of the need and options for the harmonisation of the labelling of textile and clothing products

The objective of this study, also conducted on behalf of the EC, was to examine consumer and stakeholder views regarding the amount of information that should be supplied on the label of textile products, as well as other means of labelling, in order to provide additional information to consumers regarding the textile product.

The study is based on data from several major sources. In each Member State, interviews were conducted with stakeholders, i.e. consumer organisations, public authorities and industry associations. The last group included voluntary schemes such as the European Committee for Standardization (CEN) and GINETEX, the international association for Textile Care labelling.

Additionally, a consumer survey was conducted in the following Member States (France, Germany, Italy, Poland, Spain, Sweden and the United Kingdom). The findings of the study exposed the complexity of textile labelling, showing that many stakeholders consulted during the study did not fully understand all of the issues involved<sup>260</sup>. The study concluded that in the field of care instructions and CSR claims potential policy directions have been set out. Irrespective of the policy adopted by Member States, educating consumers about the significance of potential labelling schemes and ensuring the textile industry buy-in to these schemes is going to be essential, according to the study<sup>261</sup>.

Based in part on the abovementioned studies, the Commission argued that additional labelling requirements should not be adopted in the Textile Regulation, given the fact that they are currently in place or being developed under other regulatory or non-regulatory frameworks<sup>262</sup>. More specifically, the care and size labelling are being addressed either by voluntary schemes or standards, e.g., a harmonised standard size designation and coding system, at EU member state and international level. The country of origin labelling is being addressed by the Commission's proposal for a Regulation on Consumer Product Safety, which should provide in its Article 7 for a cross-sector solution to country of origin and traceability related aspects<sup>263</sup>. Article 7(2) states that non-preferential origin rules, in order to determine the country of origin of products, are set out in what are now Articles 59 to 61 of the Union Customs Code (UCC)<sup>264</sup>. Furthermore, the

<sup>259</sup> De Wolf, K., Devaere, S. & Albrecht, E. 'Study on the Link Between Allergic Reactions and Chemicals in textile Products', 2013, p. 90. <<http://ec.europa.eu/DocsRoom/documents/10481/attachments/1/translations>> last viewed on 15 March 2017.

<sup>260</sup> European Commission, Matrix Insight, 'Study of the need and options for the harmonisation of the labelling of textile and clothing products', (2013), p. 6. <<http://www.industrial-europe.eu/Sectors/TCL/2013/Study%20labelling%20textile%20products%20-%20final%20report%20Matrix.pdf>> last viewed on 15 March 2017. See also Chapter 1.2.

<sup>261</sup> European Commission, Matrix Insight, 'Study of the need and options for the harmonisation of the labelling of textile and clothing products' (2013), p. 129.

<sup>262</sup> Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products, Brussels 25 September 2013. COM (2013) 656 final, p. 8.

<sup>263</sup> *Ibidem* p. 8.

<sup>264</sup> The UCC was adopted on 9 October 2013 as Regulation (EU) No 952/2013 of the European Parliament and of the Council, OJ L

Commission noted that regarding the presence of hazardous substances (including allergenic substances) in textile products, more in-depth research is deemed necessary in order to inform consumers sufficiently.

Finally, on environmental labelling the Commission<sup>265</sup> noted that results from the abovementioned study reveal that consumers are sufficiently informed about the existing CSR schemes at an international, national or EU level that set standards for labelling, such as organic labelling (private system), environmental labelling (EU Eco-label, Nordic Swan, Blue Angel, etc.) and social labelling (ISO 26000 standard). According to the Commission, several environmental labels already limit the use of hazardous substances, which can negatively impact the environment and induce allergic reactions<sup>266</sup>. The EC therefore regarded adopting CSR and chemical substances labelling in the Textile Regulation as superfluous.

### 2.3.8 Consumer & Textile and Clothing policy strategy 2014-2020<sup>267</sup>

The EC adopted on 9 November 2011 proposals for the 2014-2020 Health for Growth and Consumer Programmes. The proposals are based on Article 169 of the Treaty on the Functioning of the European Union (TFEU)<sup>268</sup>. The principal objective is *“to place consumers at the centre of the Single Market and to empower them to participate actively in the market”*<sup>269</sup>.

In the field of textiles and clothing, the Commission’s Expert Group on textile names and labelling regularly organised meetings<sup>270</sup> to exchange information on relevant aspects of the application of Regulation EU 1007/2011. The meetings of the Commission’s Expert Group on textile names and labelling were in part focused on the standardisation request regarding methods of textile fibre analysis, on good practices of CSR pertaining to labelling and on information provision on textile labels and e-commerce<sup>271</sup>.

The discussion revolved around the labelling of the chemical content in textile products. The Expert Group<sup>272</sup> suggested that the Swedish Chemical Agency KEMI should take part in this

<sup>269</sup> 2011/10.10.2013. Its substantive provisions apply from 1 May 2016. The Regulation has replaced a previous version of the UCC, which contained similar rules on non-preferential origin rules.

<sup>265</sup> Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products, Brussels 25 September 2013. COM (2013) 656 final, p. 6.

<sup>266</sup> Ibidem.

<sup>267</sup> Regulation (EU) No 254/2014 of the European Parliament and of the Council of 26 February 2014 on a multiannual consumer programme for the years 2014-20 and repealing Decision No 1926/2006/EC. OJ L84/42, 30.03.2014.

<sup>268</sup> Measures adopted under Article 169 TFEU should have as their object the promotion of consumer interests and a high level of consumer protection. The choice of Article 169 TFEU as a legal basis is thus justified by the objective and the content of the proposal.

<sup>269</sup> European Commission Press Release, IP-12-491 A new European Consumer Agenda – Boosting confidence and growth by putting consumers at the heart of the Single Market. <[http://europa.eu/rapid/press-release\\_IP-12-491\\_en.htm](http://europa.eu/rapid/press-release_IP-12-491_en.htm)> last viewed on 15 March 2017.

<sup>270</sup> OJ L 272, 18.10.2011, p. 1-3.

<sup>271</sup> Regulation (EU) No 254/2014 of The European Parliament and of the Council on a multi annual consumer programme for the years 2014-2020 and repealing Decision no 1926/2006/EC. OJ L 84, 20.03.2014, p. 42.

Commission Staff working Paper Executive Summary of the impact assessment, Proposal for a Regulation of The European Parliament and of the Council on a consumer programme 2014-2020 on 9 November 2011, Brussels COM (2011) 707 final, p. 2-6.

<sup>272</sup> Summary minutes Meeting of the Commission Expert Group on Textile Names and Labelling, Brussels, 14 May 2014 <[http://ec.europa.eu/growth/sectors/fashion/textiles-clothing/labelling-expert-group\\_nl](http://ec.europa.eu/growth/sectors/fashion/textiles-clothing/labelling-expert-group_nl)> last viewed on 15 March 2017.

meeting and present the results of its report on allergenic substances<sup>273</sup>. The chairman reminded the group that the report on labelling (Article 24) and on allergenic substances (Article 25) had been adopted and that the main focus of the report (Article 23) was the assessment of the application of the Regulation. The Member States requested more insights into innovative ways of labelling, with a view to removing potential barriers to e-commerce purchasing notably related to Article 16.3 of the Regulation<sup>274</sup>.

Regarding the national approaches to labelling, the Expert Group mentioned that labelling requirements, other than fibre composition, are not compulsory at the EU level. Several Member States have developed additional labelling requirements, notably on care labels, which are voluntary in certain Member States and compulsory in others. The discussion that followed highlighted the importance of involving the International Standardisation Organisation (ISO) in the process to harmonise the symbols of the care labels<sup>275</sup>. This issue will be expanded on in the next chapter.

In order to comply with the requirements of CSR labelling and the good practices of social and working conditions within the T&C industry, the industrial European representative presented the Fair Wear Foundation (FWF) initiative on improving working conditions in clothing factories<sup>276</sup>. According to the Expert Group<sup>277</sup>, the FWF provides reliable information to consumers regarding the application of the ILO Convention on Social and Working Conditions<sup>278</sup>. The Convention is a de facto standard that covers, in particular, human rights and labour law, and health and safety aspects. This implies that the members of the FWF scheme have to comply with the FWF code of labour practices and perform (external) inspections in order to improve the working conditions in the supply chain<sup>279</sup>.

Furthermore, the UK member of the Expert Group informed the group about a business-led discussion on barriers to e-commerce. A report to the UK government was presented which identified certain requirements of the Textile Names and Labelling Regulation, notably those that concern language translation and physical labelling, as a burden and a source of additional costs<sup>280</sup>. The report recommended using electronic (virtual) labelling for e-commerce. During the discussion that followed it was mentioned that the Textile Names and Labelling Regulation

<sup>273</sup> 'Chemicals in textiles, risks to human health and the environment'. Report from a government assignment (Juni 2014) <<https://www.kemi.se/files/8040fb7a4f2547b7bad522c399c0b649/report6-14-chemicals-in-textiles.pdf>> last viewed on 15 March 2017.

<sup>274</sup> Summary minutes Meeting of the Commission Expert Group on Textile Names and Labelling, Brussels, 14 May 2014, p. 3. <[http://ec.europa.eu/growth/sectors/fashion/textiles-clothing/labelling-expert-group\\_nl](http://ec.europa.eu/growth/sectors/fashion/textiles-clothing/labelling-expert-group_nl)> last viewed on 15 March 2017.

<sup>275</sup> Ibidem.

<sup>276</sup> Fransen, L. 'Why do private governance organizations not converge? A political-institutional analysis of transnational labor standards regulation.' *Governance* 24.2, 2011, p. 359-387.

See also Levi-Faur, D. (Ed.). *Handbook on the Politics of Regulation*. Edward Elgar Publishing, 2011, p. 590-603.

<sup>277</sup> Ibidem Summary minutes Meeting of the Commission Expert Group on Textile Names and Labelling, p. 4. According to the Expert Group the FWF does not certify products, factories or brands, but carries out independent on-site inspections and off-site interviews with workers in the local language, operates a local-language hot line available to workers, and looks how well brand owners manage their Corporate Social Responsibility process and their monitoring of industrial suppliers.

<sup>278</sup> International Labour Organisation, see <<http://ilo.org/global/standards/lang-en/index.htm>> last viewed on 18 March 2017.

<sup>279</sup> Ibidem Summary minutes Meeting of the Commission Expert Group on Textile Names and Labelling, p. 4-5.

<sup>280</sup> Ibidem.

obligations apply to both on-line (internet) and on-site (shop floor) sales, and removing the physical label from products sold on-line requires changing certain provisions of the Textile Names and Labelling Regulation<sup>281</sup>.

On 29 October 2014, the Commission published a report on the application of Regulation 1007/2011 on textile fibre names, and on related labelling and marking of the fibre composition of textile products<sup>282</sup>. The Commission's report, which covers the period since the beginning of the Textile Regulation's application until June 2014, provides an overview of the Regulation's core provisions and how it has been functioning. The report states that the period for carrying out an evaluation of the Textile Regulation's application (May 2012 to June 2014) was limited and *"insufficient for detecting all the strengths and weaknesses of the legislation for the time being. The general outcome seems to show that the Regulation has been functioning well since it entered into force. Despite the practical challenges involved in applying certain provisions in the current regulatory framework, no major gaps, inconsistencies or administrative burdens have been detected that would require amendment of the Regulation"*.

In the next chapter, the findings of the report are elaborated on in greater detail.

## 2.4 Conclusion

This chapter presented a descriptive overview of European consumer policy in a historical context, specifically in the area of textile and clothing labelling. The aim was to illustrate how the use of information duties has evolved in the EU consumer policy related to T&C labels.

A review of legislation reveals that currently around 90 EU directives<sup>283</sup> cover consumer protection issues and this might be why the consumer acquis remains complex and inconsistent. Moreover, since European directives need to be transposed into national law and the greater part of EU consumer law remains based on minimum harmonisation, the corresponding national legislation (either pre-existing or adopted later to transpose a directive) can go even further than the relevant directive. In practice, this means that, traders (and consumers alike) generally still need to be aware of the relevant national legislation (in particular, regarding matters left to national law). It is imperative to note that since the legislative acts are directives, the Member States would still be able to adopt a different (wider) definition, regardless of full harmonisation. Thus, although there is concern in the EU legislation about unfairness in commercial practices, the question is whether there should be more attention to such practices. It is observed that the provisions are

<sup>281</sup> Ibidem.

<sup>282</sup> OJ L 175, 14.06.2014, p. 6–8.

<sup>283</sup> EU Mapping: Overview of Internal Market and Consumer Protection related legislation, Study for the IMCO Committee, European Parliament, 2015. <[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536317/IPOL\\_STU\(2015\)536317\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536317/IPOL_STU(2015)536317_EN.pdf)> last viewed on 19 January 2017.

fragmented and that harmonised consumer policy is equally inappropriate for all 28 Member States due to the diversity of consumer preferences per Member State<sup>284</sup>.

With regard to the issue of T&C labelling, the EU took the first step towards harmonising fibre names and the related labelling and marking of fibre composition as early as 1971. It then continued to regulate this area on a piecemeal basis. Therefore, in 2011, the adoption of the Textile Regulation replaced several Textile Directives which were then in force. With this legislative tool, the EU took the first step in the regulation of textile products, with the aim of protecting and safeguarding consumer interests by obligating economic operators to provide substantive information to consumers regarding fibres and textile composition.

Furthermore, in consumer policy, 'empowering' consumers by providing them with information has become an important element<sup>285</sup> as the EU has endeavoured to remedy the unbalanced economic relation between the producers and consumers, specifically in the field of information discrepancy<sup>286</sup>. According to the Commission, this could mean putting in place a common set of simple EU rules on safety requirements and unfair commercial practices<sup>287</sup>. However, this consumer policy did not have an effect on textile labelling. On the basis of the evaluations carried out, the Commission concluded that further labelling requirements (e.g., on care instructions, chemical substances, size indication, environmental and social issues) should not be addressed in the Textile Regulation, given they are currently in place or being developed under other regulatory or non-regulatory frameworks<sup>288</sup>.

Thus, the sub-question of how European consumer policy evolved with regard to textile and clothing labelling can be answered as follows. Whilst it is noticeable that European consumer policy has contributed significantly to the provision of information on textile labels regarding textile names and fibre composition labelling, this consumer policy can also be criticized. In particular, diversity of national legislation in the field of T&C labelling among the Member States still exists as the landscape of EU consumer law is characterised by a combination of mandatory EU based and national law rules and voluntary labelling schemes. Furthermore, it is argued that instead of voluntary rules and national law, legislation on an EU level could be more appropriate to ensure a coherent and accessible legal framework for consumer transactions in the internal T&C market<sup>289</sup>. Finally, the consumer policy strategies suggest that EU action should concentrate on

<sup>284</sup> Weatherill, S., *EU consumer law and policy*. Edward Elgar Publishing, 2013, p. 316-317.

<sup>285</sup> Hondius, E. H., Rijken G.J & Van Ardenne-Dick, M.M.R. *Handboek consumentenrecht: een overzicht van de rechtspositie van de consument*. Zutphen: Paris, (2011), p. 51;

See also Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee (2007), EU Consumer Policy Strategy 2007- 2013: Empowering Consumers, Enhancing their welfare, effectively protecting them, Brussels, March 2007. COM (2007) 99 final, p. 2-6.

<sup>286</sup> The description of the rationale of consumer law is described by Hesselink, M. 'SMEs in European Contract Law' in K. Boele-Woelki & W. Grosheide, eds. *The Future of European Contract Law*, Essays in honour of Ewoud Hondius, Kluwer, (Alphen aan den Rijn, 2007).

<sup>287</sup> See the Commission's Follow-up Communication to the Green Paper on EU Consumer Protection, 11 June 2002. COM (2002) 289, p. 5.

<sup>288</sup> Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products, Brussels 25 September 2013. COM (2013) 656 final.

<sup>289</sup> Twigg-Flesner, C. 'A cross-border-only regulation for consumer transactions in the EU'. In *A Cross-Border-Only Regulation for Consumer Transactions in the EU*. Springer New York, 2012, p. 18-19.

the cross-border context given that the current legal framework in the area of textile labelling is fragmented and that significant differences between national consumer laws in the jurisdictions of the trader and consumer may deter them from transacting across borders<sup>290</sup>. The sometimes fragmentary and overly detailed nature of EU legislation points to the need for regulatory reform in parallel with the introduction of any new legal structure.

Thus, although the EU took the first step towards harmonising fibre names and the related labelling and marking of fibre composition, continuity in the implementation of more labelling requirements in regulation is deemed important in order to achieve the objectives of the consumer policy pursued by the EU.

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<sup>290</sup> Ibidem. See also the Opinion of the Economic and Social Committee on the 'Green Paper on European Union Consumer Protection', EESC, 2001; Better Implementation of EU Legislation is not just a question of taking Member States to Court, EIPA, (2011).