Textile labelling

A concern for the EU consumer?

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Chapter 4

Labelling of textile products
4.1 Introduction

Shin states that the most accessible way of obtaining information about products is by the use of product labels456. As noted in Chapter 3, appropriate information should be supplied through a comprehensive label to help consumers make a deliberate choice regarding their product and further to protect the consumer against unfair commercial practices that affect their economic behaviour. As some legal scholars457 noted, information provisions are instruments to achieve consumer self-determination and to maximise the choice of the consumer. Pre-contractual information counterbalances the consumer’s weaker position and helps to bring the consumer on a par with the trader. The obvious reason for compelling a business to provide information to consumers is to ensure that consumers are sufficiently equipped to engage in rational market behaviour458. Moreover, in order for the consumers to be able to choose between various options available on the market, they need to be adequately informed about the products and their characteristics. In this regard, Ben-Shahar et al.459 note that nowadays information provisions are the ‘standard staple of consumer protection’ and probably the most common legislation technique in the field of EU consumer law. From this perspective, imposing duties of disclosure is a means of promoting rational consumer decision-making and consumer empowerment460.

From the perspective of traders, labels have their advantages as well. Labels are a means to draw attention to products and increase revenues for businesses461. Consumer interests and business interests therefore need not point in different directions here. From the perspective of governments, labels can be an useful instrument in the realisation of particular policy objectives, such as empowering consumers. Most importantly for the given context, they might change the behaviour of the T&C industry as well as of consumers. Requiring the T&C industry to make use of labels may ensure that consumers are supplied with adequate and reliable product information. In turn, this could then enable consumers to make more rational decisions when it comes to purchasing textile products.

Moreover, when a label is designed correctly and is recognisable, well understood, reliable and perceived as essential by consumers, labelling of products can influence the purchasing behaviour of consumers462. Thus, labels might be a powerful information tool to guide and change

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consumer behaviour towards, for example, sustainable choices\textsuperscript{463}. However, with the magnitude of information and symbols on textile labels due to mandatory and voluntary rules, consumers could become overwhelmed and unsure about which information to trust\textsuperscript{464}. Moreover, as noted in Chapter 1, the information provision by means of labelling of textile products varies from one Member State to another. Therefore, it is essential to properly inform the consumer about the products and the characteristics in order for them to make an informed choice of the various options of textile products available on the consumer market within the EU.

### 4.2 Objective

The objective of this chapter is to analyse whether existing EU legislation related to textile labelling safeguards consumers’ right to accurate and clear information about the properties of textile products. In addition to the foregoing, this chapter aims to give an answer to the following sub-question: In what way do self-regulatory (voluntary) labelling schemes safeguard consumers’ rights to accurate and clear information on T&C labels?

As already mentioned in Chapter 1.3, the labelling requirements that will be elaborated are the following:

1. Care labelling;
2. Chemical substance labelling;
3. CSR labelling;
4. Size labelling;

The traditional way of providing such information is by a sewn-in label in the fabric of the textile product and a hangtag. In addition to these traditional ways of informing consumers, information may also be disclosed to the consumer by way of electronic labelling. In theory, electronic labelling could facilitate provision of all information traditionally provided on physical labels\textsuperscript{465}. For this reason, where appropriate, also the form in which the information is provided will be addressed in this chapter. In the next sections, the following is analysed:

- The current legal situation in the EU related to applicable labelling requirements or labelling systems at EU level (see further under ‘Current situation’). The outline is based on desk research on the EU’s policy but also on interviews conducted with the representatives of the European Parliament’s Committee on the Internal Market and Consumer Protection and the industry organisation MODINT (see Annex III for a list of interviews).

\textsuperscript{463} Ibidem.
\textsuperscript{464} Ibidem.
\textsuperscript{465} GS1. ‘Advantages of RFID for the retail industry.’ Brussels 2014, www.GS1.org. Interview Enzo Blonk, see Appendix IV.
• The opinion and view of consumers and consumer organisations in the EU regarding the labelling policy. The analysis is based on both desk research and surveys of consumers (more than 3,500 respondents) in the Netherlands and other Member States.

• The opinions and views of the T&C industry and industry organisation in the EU regarding textile and clothing labels. This section elaborates on the findings of interviews with representatives of the European textile industry, aforementioned studies of the EC Directorate-General Enterprise and Industry and of the European Parliament’s Committee on Internal Market and Consumer Protection.

• Finally, in the Textile labelling & Consumer law sections below, horizontal legislation has been taken as the starting point for a discussion of each separate labelling requirement. Identifying the applicable sector legislation for textile products may be complicated since the applicable horizontal legislation discussed in this chapter may include other product categories than textiles and clothing.

This chapter concludes with a discussion about the applicability of the findings and by answering the question about in what way do voluntary labelling schemes safeguard consumers’ right to accurate and reliable information.

4.3 Care labelling

4.3.1 Current situation

A care label can be defined as a permanent label or a hangtag containing regular care information and instructions. According to Merwe et al. effective labelling entails conveying specific and accurate instructions for the use and care of textiles and clothing products. The primary responsibility for supplying the aforementioned information lies with the textile industry. Originally, care labels were developed to benefit clothing manufacturers by adding written care instructions on labels. This offered manufacturers legal protection from consumers who improperly laundered their clothing and then claimed compensation from the manufacturers arguing that the clothing did not meet their legitimate expectations. This then evolved into the inclusion of care symbols on the labels. According to Yan et al., care symbols were supposed to overcome deficiencies of written languages, as consumers were often confused about the correct care methods. The symbols were meant to indicate certain proper laundering and care processes.


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in order to avoid any irreversible damage to the products. In order to further address this problem, the industry began to the draw attention of consumers by attaching additional labels to products. The British company Sealskinz did this for its waterproof and breathable products. Due to the fact that these products contain a waterproof ‘Moisture Vapor Transpiration’ membrane, additional care instructions are required, as they need a specific wash treatment. The company therefore has care instructions on the packaging and attached to their product labels.

Moreover, the T&C industry placed emphasis on care methods information obtained from clothing labels due to consumer complaints and legal claims against it related to colour change, deformation and damage of fabrics caused by laundering.

The International Fabricare Institute (IFI), the trade association for professional dry cleaners, stated that the textile care industry experiences that a indicated method of care on clothing labels is not always the most appropriate for the given textile product. According to the Institute, all too often the scenario described in the following box occurs.

**Box 4.1 International Fabricare Institute**

'A customer’s clothing is damaged in cleaning even though the dry cleaner followed the care instructions. Because the care instructions were followed the cleaner informs the customer that they should return the clothing to the retailer because the manufacturer did not provide adequate or proper instructions. The retailer tells the customer, “If the dry cleaner were a professional and handled the clothing properly it would not have been damaged”.

The customer then returns to the dry cleaner unsatisfied and, to say the least, unhappy. The dry cleaner pays the customer, not because he felt that he was responsible, but to retain the business. Still, the customer often loses faith in the dry cleaner’s ability to do a good job'.

Thus, according to the dry cleaners’ organisation, the accuracy and reliability of the method of care provided by the textile industry could be questioned both then and now. Another fact is that the European care label regime consists primarily of voluntary care labelling requirements. In general, two standardised care label systems are in place, viz. the ASTM D5489-14 and ISO 3758/GINETEX (hereafter GINETEX). The ISO 3758 standard on the care symbols was developed by GINETEX, the International Association for Textile Care Labelling. ASTM is another standardised

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470 Ibidem.
474 ISO 3758:2012 establishes a system of graphic symbols, intended for use in the marking of textile products and for providing information on the most severe treatment that does not cause irreversible damage to the product during the textile care process, and specifies the use of these symbols in care labeling.
development organisation, which created a Standard Guide for Care Symbols for Care Instructions on Textile Products\textsuperscript{475}. Negotiations are ongoing to harmonise the two major systems, ASTM and GINETEX, into a universal symbol system for care instructions\textsuperscript{476}. It remains the decision of the Member States whether to adopt the GINETEX, the ASTM or their own symbol system for care instructions\textsuperscript{477}.

In the next box, an idea is given about the plethora of care symbols that consumers may find on a textile product as a result of the fact that care label systems are not harmonised\textsuperscript{478}.

**Box 4.2 Care label Tommy Hilfiger Europe Collection, November 2014**

GINETEX has devised an internationally applicable care labelling system for textiles based on symbols. The pictograms used are registered trademarks in most countries and are protected by the intellectual property rights of GINETEX\textsuperscript{479}. The care symbols used in GINETEX illustrate five main treatments and appear in the order of washing, bleaching, drying, ironing and professional textile care. The standard established a system of graphic symbols intended for use in the marking of textile products and for providing information on the most severe treatment that does not cause irreversible damage to the product during the textile care process\textsuperscript{480}.

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\textsuperscript{475} See <www.astm.org> last viewed on 15 January 2017.
\textsuperscript{478} Please note that the indication US concerns the ASTM care symbols, the indication EU concerns the GINETEX care symbols and Korea, Japan Taiwan en China created their own mandatory care labelling symbols.
\textsuperscript{479} In 1990 GINETEX allowed ISO to incorporate the symbols into the ISO 3758 standard. The ISO 3758 in turn was adopted by CEN as a European standard ISO EN 37584.
\textsuperscript{480} Intertek, ‘Care Labelling. Caring about the consumers beyond the label’, 2012, p. 2.
4.3.2 Care labelling vs. consumers & consumer organisations

The findings of existing research indicate that in the current system consumers encounter different care symbols within the EU as no mandatory care labelling requirement at an EU level is in place\(^{481}\). As noted in Chapter 1, on a Member State level the regimes differ as the majority of Member States have voluntary regimes while the rest have mandatory regimes based on the GINETEX standard.

A majority of consumers indicate that better consumer information regarding care symbols would influence their purchasing behaviour and ensure appropriate treatment of the textile product\(^{482}\). Yet, the study conducted by the Directorate-General for Internal Policies stated that the absence of a harmonised care label system is not considered to be problematic by the European consumer organisations BEUC and ANEC\(^{483}\).

By contrast, some of the national consumer organisations\(^{484}\) are convinced that care labelling should be harmonised across the EU by a mandatory care-labelling regime. In their view,\(^{485}\) harmonising care symbols could strengthen consumer confidence in cross-border shopping by offering a common set of care instructions. Furthermore, consumer organisations are of the opinion that a multi-lingual care label might confuse consumers due to the absence of a single linguistic care instruction\(^{486}\). It seems that the introduction of care symbols could remove the problem of multilingual care labels as well.

Calisir et al.\(^{487}\) noted that care labels with symbols are efficient, resulting in cost savings when compared to written care instructions on labels. With reference to the aforementioned, abolishing language differences in written text on labels by replacing them with harmonised care symbols could reduce the number of liability claims against the industry\(^{488}\).

Thus, the current, voluntary system entails the risk of companies creating their own care symbols. The upshot of this is that consumers encounter diverse care symbols on textile products across the EU. With a harmonised (mandatory) regime, consumers would encounter the same care symbols throughout the EU. As they would be more familiar with these symbols, it seems likely

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\(^{482}\) Ibidem European Commission, Matrix Insight, p. 43.


\(^{484}\) See note of ‘The Federation of German Consumer Organisations VZBV (Germany), Consumers Protection Center KEPKA (Greece) and Association Belge des Consommateurs Test-Achats ASBL (Belgium)’ in ‘Study of Labelling of Textile Products’ (2010), p. 23.


\(^{486}\) Ibidem.


\(^{488}\) Ibidem.
that consumers would be more confident in selecting the appropriate instruction for caring for the textile product.

### 4.3.3 Care labelling vs. the textile industry & textile industry organisations

As indicated in Section 4.3.1, care labels were originally created to prevent liability of the T&C industry as written care instructions indemnified businesses against liability for faulty textile products that actually resulted from consumers’ mistreatment of the product\(^{489}\).

The main arguments put forward by the T&C industry against the introduction of a mandatory system of care labels are the related costs of such a system and the risk of ‘under-labelling’\(^{490}\). ‘Under-labelling’ implies that manufacturers are too careful with the instructions regarding the use and care of the clothing due to the fear that the issuer could be held liable for damages to the product as a result of washing\(^{491}\). Gosh et al.\(^{492}\) conducted research regarding under-labelling of textile products. They concluded that consumers are regularly advised to undertake a more expensive form of fabric treatment (e.g. dry-cleaning) than necessary, given the fibre composition of the clothing, just so that the liability of the manufacturer is limited.

Manufacturers and retailers are obligated by law to conduct testing of chemical substances on finished textile and clothing products. According to Weemaes, a former representative of MODINT\(^ {493}\), there is a risk that the introduction of a mandatory care label system could lead retailers to require manufacturers to carry out additional tests for the purpose of indicating the proper wash instructions as the retailer might be held liable for omitting to disclose the correct care instructions to the consumer. For small and medium textile manufacturers, this would imply additional costs. For this reason, the T&C industry is not in favour of mandatory care label legislation\(^ {494}\). However, my interviews with representatives of individual textile and clothing companies reveal that they are actually in favour of an introduction of a EU uniform system based on the GINETEX symbols, since these symbols are familiar to them\(^ {495}\).

The main legal implication that would follow from the introduction of a mandatory scheme is related to the trademarks of the GINETEX symbols. The use of a mandatory scheme based on GINETEX symbols would lead to an increase in costs for the textile industry (see also Chapter 1.4). As the national committees control the implementation and application of care labelling in their country, the license fees differ from Member State to Member State\(^ {496}\). This suggests that

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\(^{493}\) Interview Marieke Weemaes, former representative of the trade association MODINT, see Appendix IV.

\(^{494}\) See also Interview Marieke Weemaes, former representative of the trade association MODINT, see Appendix IV.


\(^{496}\) See also Interview Retailers, see Appendix III.
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introducing a mandatory scheme based on the GINETEX symbols would require the trademark issue to be settled. Essentially, such as compulsory scheme would oblige T&C businesses to pay license fees to GINETEX, as a private organisation, in order to conform with the requirements of the legislation\(^497\). Another option to solve the GINETEX trademark issue might be the introduction of a self-created new EU standard care labelling instructions in alignment with the US standard of ASTM. The major changes necessary for this alignment would be to determine the sequence of symbols as well as the introduction of the use of specific words, in English, to describe the necessary care instructions.

4.3.4 Care labelling & Horizontal legislation

Accuracy of care labels is important for consumers since, if followed, it ensures the durability and good appearance of the textile product\(^498\). The issue being raised in this regard concerns the plethora of care symbols in the consumer market that may confuse the consumer and the risk of under-labelling\(^499\).

In the GB-INNO-BM\(^500\) case, the CJEU pointed out that ".. access to information is an essential requirement for the protection of the consumer".

The CJEU referred to the First and Second Consumer Protection Programs (1975, 1981) of the European Council\(^501\), stating that the protection of the economic interests of the consumer is to "ensure the accuracy of information provided to the consumer, but without refusing him access to certain information". (emphasis added.)

Hence, the CJEU emphasised the concept of an ‘educated consumer’ who, at least in general, is able to deal with trade practices and to whom more information is beneficial rather than a threat\(^502\). Since for an average consumer it is difficult or impossible to assess the correctness of the wash instruction on the care label, it is relevant that the labels are accurate and comprehensive. Otherwise, questionable care labels could mislead consumers.

The fact that currently a plethora of care symbols is used, which might be regarded as confusing marketing, cannot be considered as an unfair commercial practice under the UCPD. However, the use of a multitude of care symbols might be seen as an infringement of the requirement that consumers must be provided with clear and intelligible information in order to make a transactional decision. The definition of transactional decision is found in the UCPD, Article 2(k). It means any decision taken by a consumer concerning "retaining or disposing of a product or


exercising a contractual right in relation to the product, whether the consumer decides to act or to refrain from acting”.

So, the plethora of care symbols might mislead the consumer as to the proper care to be applied to a particular textile product, and as a result the consumer may end up with a damaged product or even may have to dispose of the textile.

In this context, it is also interesting to consider how trademark law perceives the misleading of the average consumer. The CJEU emphasised that the average consumer is unable to compare the marks directly and that the consumer’s level of attention depends on the type of good or service. Hence, the CJEU determined that the average consumer when buying expensive and high-end products, in relative terms, pays more attention to the product, e.g. watches (LeClerc) and electronics (Bang & Olufsen). This is in contrast with the labelling doctrine (see Chapter 3.4.1), according to which consumers are assumed to have carefully studied product labels and the characteristics of the product before purchasing.

According to the EC Guidance on the UCPD (see Chapter 3.4.1), the reasoning applied by the CJEU in trademark law cases might also be used in the application of the UCPD for assessing the misleading character of labels. If this is true then, just as in trademark law cases, with regard to misleading labels it may be argued that the consumer’s level of attention differs between products. More specifically, the attention is not high when it concerns everyday consumer products, for example, basic textile products such as underwear and socks.

In the EC’s Study on Labelling Textile Products, the issue of under-labelling is highlighted as the T&C industry often prescribes a stricter and/or more costly form of treatment for the fabric to consumers than is actually necessary. In this respect, the provisions of the UCPD on misleading commercial practices should be taken into consideration. Care labels include information about the main characteristics of the product, which, inter alia, could include fitness for purpose, results expected from its use and material features. Thus, the trader deliberately supplies the consumer with incorrect information when he engages in ‘under-labelling’, which renders the consumer unable to make a well-informed purchase decision.

Also, the existence of contradictory instructions such as ‘dry clean only’ and ‘hand-wash cold’ appearing side by side on the same label could be perceived as misleading and thus unfair, as traders thus in fact providing incorrect or misleading material information as to the accurate wash instruction for the product. Even if the trader’s care label with different care instructions may be

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503 Case C-342/97, EU:C:1999:323 (Lloyd Schuhfabrik).
504 Case T-47/03, EU:T:2006:10 (LeClerc).
factually correct, it is nonetheless likely to be misleading as the average consumer would have been misled as to what the proper care treatment of the product is, in a way likely to cause him to make a different transactional decision. This can be substantiated by the fact that the majority of consumers indicate that better consumer information regarding care symbols would impact their purchasing behaviour and ensure appropriate treatment of the textile product\textsuperscript{509}.

However, a certain degree of criticism is expected of the consumer regarding the confusing care symbols and under-labelling. Furthermore, as the AG in the case Mediaprint remarks, the consumer is expected to be capable of recognising the potential risk of certain commercial practices of the trade and to take rational action accordingly, for instance, by requesting additional information from the trader\textsuperscript{510}. The mere fact that the information is incorrect or not complete, therefore, does not automatically mean that the trader is liable. Moreover, it must be kept in mind that if textile products are damaged, even after following the care instructions on the label, under national contract law and the Consumer Sales Directive\textsuperscript{511}, consumers are likely to first turn to the seller of the textile product to obtain a remedy as the textile product would be considered defective\textsuperscript{512}. In this respect, the chance that a consumer would hold the T&C trader liable is not particularly high.

### 4.4 Chemicals substances labelling

#### 4.4.1 Current situation

In the textile industry, many chemicals are used in producing a finished consumer product from raw materials. In general, these chemicals are not intended to remain in the final textile products but the diversity of chemicals used in the production of raw materials responds to the requirements of the fabric and clothing\textsuperscript{513}. The increased use of chemicals causes a risk to the environment and to consumer health. Allergies due to chemical substances are a growing global problem\textsuperscript{514}. These can occur at an early age and cause other diseases to humans, which lead to a long-term need for treatment\textsuperscript{515}.

\textsuperscript{510} Case C-540/08, ECLI:EU:C:2010:660 (Mediaprint).
\textsuperscript{512} Non-conformity is covered by the Consumer Sales and Guarantees Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. Under Articles 3 and 5 of that Directive, the ‘seller shall be liable for any lack of conformity which exists at the time the goods were delivered’ and which ‘becomes apparent within two years from delivery’, i.e. within the two-year legal guarantee period.
\textsuperscript{514} Ibidem KEMI ‘Chemicals in textiles’, p. 41-53.
\textsuperscript{515} Ibidem KEMI ‘Chemicals in textiles’, p. 41-53.
In an attempt to control the problem of chemicals in textile products (among other things), the EU started in 1992 its own EU Flower Eco-label\textsuperscript{516}. The goal was to create a voluntary, harmonised EU standard and to protect the consumer from the misuse of the term ‘organic’ by those in the industry wishing to engage in unfair competition. The Flower Eco-label\textsuperscript{517} contains stringent restrictions not only in terms of chemicals that may be present in the products marked by it but also on which chemicals may be used in the processing of textiles, or which may be present as residue or impurities in the raw textile (i.e. cotton, wool, polyester).

The following European legislative instruments are applicable regarding chemicals used in textile and clothing products: the AZO Dyes Directive,\textsuperscript{518} the Pentachlorophenol Commission Decision,\textsuperscript{519} the Nickel Release Directive,\textsuperscript{520} the FOS (Perfluorooctane sulfonates) Directive,\textsuperscript{521} the Dimethyl Fumarate Commission Decision\textsuperscript{522}, the Organotin Compounds Commission Decision\textsuperscript{523} and the Biocidal Products Regulation\textsuperscript{524}.

The Biocidal Products Regulation is particularly relevant to this study as it incorporates pre-existing rules about the authorisation of biocidal products but also includes a number of provisions relating to the marketing of products (labelling requirements)\textsuperscript{525}. Biocidal textiles have the strongest antimicrobial effects and have initially been used in medical textiles and biological protective clothing; recently, they became more available in the consumer market\textsuperscript{526}.

\textsuperscript{516} 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 L174/45, 13.06.2014. The regulation provides that specific eco-label criteria are established for product groups and that these are regularly reviewed. The criteria are divided into three main categories: textile fibers, processes and chemicals and fitness for use.

\textsuperscript{517} OJ L174/45, 13.06.2014, See Annex.


The AZO Colorants Directive specifies that azo dyes (now on REACH Restricted Substances List) which may release one or more of the 22 aromatic amines in detectable concentrations, above 30 ppm, in the finished product or in the dyed components may not be used in textile and leather products which may come into direct and prolonged contact with the human skin or oral cavity.

\textsuperscript{519} Commission Decision 94/783/EC of 14 September 1994 concerning the prohibition of pentachlorophenol (PCP) notified by Germany, OJ (1994) L 316/43.

Due to its toxicity to the aquatic environment, pentachlorophenol (PCP) is banned in textile products worldwide.


\textsuperscript{522} Commission Decision 2009/251/EC of 17 March 2009 requiring Member States to ensure that products containing the biocide dimethylfumarate are not placed or made available on the market, (2009) OJ L74/32.


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Consumer textile products, such as antimicrobial socks with Biocidal properties, require additional label requirements. Inter alia, the label should supply adequate information regarding the Biocidal properties of the product with regard to how it reacts to possible skin contact and the effects of its release into the environment. Furthermore, the label must be clearly visible, well written in the Member State’s language, be legible and appropriately durable. Any claim that the product possesses Biocidal properties should be substantiated. This last issue is discussed further in this chapter.

In February 2013, the EC published a study about the link between allergic reactions and chemicals in textile products. The study concludes that it is difficult to determine the number of persons suffering from allergic reactions to chemicals in textile products. This is partly because the available data are out-dated and the patients in the conducted studies were selected on the basis of various criteria, which makes the results from these studies difficult to compare. Cardoso, a policy officer at the EC, stated that uncertainty remains about the actual release and the safe threshold concentration of levels of sensitizing and irritating chemical substances on finished textile products. This makes it difficult to gather accurate and relevant information about risks for consumers. Therefore, the EC advises the T&C industry to inform the consumer of the risk of remaining chemicals in the finish of the fabric and to suggest to the consumer to “wash the textile product before wearing” to ensure that the consumer reduces or even eliminates the remaining chemical substances in the finish of the textile product.

Notwithstanding the conclusion of the aforementioned study of the EC, which seems to indicate no need for concern about chemicals used in textiles, the Swedish Chemical Agency (KEMI) suggested that the Member States should consider the introduction of a textile label for products containing Substances of Very High Concern (SVHC label). KEMI noted as problematic the fact that consumers often lack the necessary information at the time they decide which products to buy and that there is no legal requirement to pass the obligation to provide such information down the chain to recyclers or waste management companies. According to the European Apparel and Textile Confederation, Euratex, which represents the interests of the European T&C industry, the recommendation of KEMI is “unfounded, not justified and prejudicial to the European textile industry. It will only cause additional costs with debatable additional benefits.”

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527 OJ L167, 27.06.2012.
528 Article 58 (3) BPR, OJ L 167, 27.06.2012.
530 See Interview European Commission Julio Cardoso 2014, see Appendix IV.
531 Ibidem.
However, research conducted by both Greenpeace534 and BEUC members535 shows that hazardous chemicals have been found in children’s clothes and shoes produced by major brands including Disney, Burberry and Adidas. This shows that such information is clearly not passed on willingly.

### 4.4.2 Chemical substances labelling vs. consumers & consumer organisations

Consumer surveys reveal that consumers regard information on a label concerning its potential allergenic effects as very important536. Among consumers, there is a growing awareness and concern over the real or potential safety issues related to the presence of chemicals in products. This includes an increased knowledge of the hazards associated with chemicals used in the textile and clothing industry537.

As a result of rapid technological progress, consumer organisations are concerned that the chemical substances contained in textile products are not adequately reported and might pose a serious threat to human health538. ANEC and BEUC stated that the area of chemical substances is an area of great concern, mainly in the field of nanotechnologies539. The amount of chemicals used in the production of textiles integrated with nanotechnology is relatively high. Consumer organisations call for clear definitions of nanotechnologies and for research on safety, health and environmental risks of nano materials, which could then be used for a risk assessment procedure. This has been prioritised by the EC since it has been reported that inhaled nano-products can reach the blood and may reach other target sites such as the liver, heart or blood cells.

Consumer organisations highlighted the importance of labels as an instrument for informing consumers. However, the disclosure of chemical risks information on a label does not imply that consumers are able to figure out the risk of chemical substances products or make a safety evaluation on the basis of the information provided on labels540. Therefore, according to the EC, labelling requirements for products should not be considered sufficient or an adequate substitute for substantive measures such as compulsory ‘pre-market safety assessment systems’541.

539 Nanotechnology is used to improve textile-manufacturing processes including nano-fibre spinning, fibre-processing, dyeing and finishing.
Based on the above, a standardised chemical label could be an important instrument to provide information to consumers and create consumer awareness of the benefits of labels. In my opinion, this poses a challenge for the textile industry to provide the used chemical information in a textile product in such a way that the consumer can easily understand the chemical substances information. This can include, for instance, additional (warning) hangtags or an electronic label on the textile product enabling easy access to information that is posted on the company’s website. However, in a study conducted by Fransson and Molander regarding chemicals in textiles, it was concluded that consumers rarely ask about chemicals and that when they do, it is normally shortly after an incident has been highlighted in the media. They also noted that company policies on chemical substances labelling differ among textile companies. This suggests that labelling requirements alone cannot adequately safeguard consumers' interests regarding protection from chemical substances.

4.4.3 Chemical substances labelling vs. the textile industry & textile industry organisations

Textile supply chains are often long and complex and the flow of chemical information in the supply chains is generally not adequate. As Fransson and Molander already noted, representatives of the textile industry indicate that there is a poor demand among their consumers for the labelling of used chemicals. According to the study conducted by Matrix Insight, the British industry representative considered that it is not efficient to use labelling as an instrument in relation to chemicals as the information pertaining to chemicals is too complex for the consumer to comprehend.

In general, consumers consider other aspects of the textile product essential, such as design, quality and price of the product. It has been suggested that a reason for poor consumer demand for a chemical substances label is that chemicals in textiles have not been considered by consumers to be dangerous to their health. This view was supported in an interview with an expert working at the EC. However, this contradicts other sources, which are outlined below.

Borjeson et al. noted that the environmental and health impact of textile production is high and risks caused by the use of hazardous chemicals are evident at several steps along the supply chain. From manufacturers’ point of view, there is a shortage of knowledge and data on

547 Interview Julio Cardosa, see Appendix IV.
the properties of most substances used on the market and in the textile industry. This is true especially with regard to the potential combination (or ‘cocktail’) effects of mixtures of substances used in textile products, as those combined effects may be even more problematic than the effects of the separate substances used. The applicable regulatory frameworks are not globally coordinated and neglect to provide control mechanisms, which results in a problematic situation in the T&C supply chain. The international initiatives in the SAICM programme “Chemicals in Products” took a step forward to improve the information exchange along the supply chain.

As the Programme noted, information exchange is one key factor for enabling actors to avoid hazardous chemicals and to manage risks to users and the environment. The need for better communication throughout the product chain has been identified and the overall aim of this initiative is to facilitate informed decision-making in relation to this issue.

Many textile companies fear that chemical labelling would be harmful for their businesses. They state that their brand name should stand for safety and environmentally friendly products. Other companies feel that a chemical substances ‘warning’ label on some of their products would somehow signal that all of their products contained dangerous chemical substances.

At the same time, empirical research reveals that the T&C industry uses additional (disclaimer) tags regarding the chemical process used in the finish of the textile product (this issue will be expanded on in the next chapter). It appears that to these companies the fact that a chemical disclaimer label could be harmful for their businesses, as Fransson and Molander stated, is probably not so much of an issue since their consumers seem to value more the fact that the information is conveyed to them.

Obviously, the main goal of the disclaimer tag is to protect the company from the liability claims of consumers, which may result from the harm suffered due to the presence of chemical substances in the finishing of the fabric. Nevertheless, the fact that textile and clothing companies are

552 Ibidem SAICM.
555 Ibidem.
556 Ibidem.
placing disclaimer tags on clothing products may be an indication that these companies supply consumers with relevant information about chemical contents of textile products, for example, the special coating on trousers.

4.4.4 Chemical substances labelling & Horizontal legislation

The GPSD\textsuperscript{558} deals with safe products and measures to be taken when products lead to risks to human health. For example, there is a general obligation to ensure that products in the consumer market should be safe (Article 1.1). It contains rules on the provision of information to users, rapid intervention procedures in case of unsafe products (such as recalls), as well as on market surveillance and exchange of information between authorities in the Member States (RAPEX system).

At the same time, the GPSD does not apply (Article 1.2) to products subject to specific safety requirements imposed by Community law insofar as the risks or categories of risks covered by the specific legislation are concerned, such as the Biocidal Regulation. For example, if a specific directive regulates chemical risks related to a type of product but not to other types of risks (such as mechanical risk or noise), the GPSD only applies to the latter types of risk. The Directive includes a definition of when a product is considered to be a safe product and, importantly, sets out that, when there are no national rules, the safety of the product is to be assessed according to, among others, European standards\textsuperscript{559}. The GPSD is less relevant in the field of disclosing chemical information by means of labels\textsuperscript{560}. Based on the GPSD, the EU Commission may decide on a temporary ban for marketing of products that can cause serious risk to the health and safety of consumers. However, legislation is not very extensive in this field and consumers may be exposed to toxic dyes and other hazardous chemicals, even without them knowing about them.

The UCPD does not regulate in detail what is required of a trader with regard to the verification of the claims he makes; this is left to national law to determine. However, the trader who makes the claim that there are no chemicals or only certain chemicals used in its products is responsible for the claim being correct and has to be able to substantiate it\textsuperscript{561}. The method of verification is not regulated in detail in the Directive and has to be decided on a case-by-case basis. For example, a claim that a Biocidal product has a positive effect, for example, an antibacterial effect, is qualified as an environmental claim\textsuperscript{562}. The UCPD does not provide specific rules on environmental claims, but it does provide a legal basis to ensure that traders do not present environmental claims in ways


\textsuperscript{559} OJ L 11, 15.01.2002. Article 2(b).


\textsuperscript{560} See also Chapter 4.4.1.

\textsuperscript{561} See Articles 6, 7 and 12 of the UCPD, OJ L 149, 11.06.2005, p. 22–39.

that are unfair to consumers. There are also standards for environmental claims that can guide the application of the legislation. These will be discussed in more detail in the next subsection on CSR. Furthermore, regarding the presence of chemicals in the finish of textile products, the following can be argued. In the framework of the UCPD, the trader is failing (omitting) to provide sufficient information about the product or provides it in an unclear, unintelligible, ambiguous or untimely manner. As a result of this approach taken by the trader, a different purchase decision is likely to be taken by the average consumer\textsuperscript{563}. If the trader had disclosed the use of certain chemicals, the consumer might not have purchased a given good. Therefore, the lack of proper chemical labelling may constitute an unfair commercial practice.

Concerning the protection of the health and safety of consumers, for example, through the danger of the presence of chemical residue in the finish of a clothing product, particular caution is required from companies (professionals) that specifically target vulnerable consumers (such as fashion textiles for children or the elderly) because their bodies are more sensitive to chemical substances. For example, the elderly may be particularly vulnerable to practices connected with dyeing, and finishing agents may irritate sensitive skin, especially if the skin is abraded\textsuperscript{564}. If information pertaining to such effects of finishing agents is missing, these vulnerable consumers may purchase textile products that are not suitable to their specific needs. This implies that the UCPD can be deployed as it offers protection to consumers who may be particularly vulnerable to the product and whose economic behaviour may, as a result of the commercial practice in question, be distorted. The misleading character of a commercial practice will be assessed from the perspective of an average member of that group whose vulnerability the trader could reasonably be expected to foresee. Moreover, as the test is objective, it is not necessary that the trader actually foresaw the effect (or likely effect) on vulnerable consumers, only that he could reasonably have been expected to foresee it\textsuperscript{565}.

4.5 Corporate Social Responsibility labelling

4.5.1 Current situation
The clothing and textile industry uses vast amounts of natural resources, such as water, oil and land. The World Bank estimates that textile dyeing and treatment contribute up to 20 percent of total industrial water pollution\textsuperscript{566}. The production of clothing requires approximately one third of the world’s fresh water resources. The clothing and textile industry is one of the world’s major energy consumers. Fuel consumption in textile mills is almost directly proportional to the


\textsuperscript{565} Recital 18 and 19 and Art 5(2) (3) UCPD, OJ L 149, 11.06.2005, p. 22–39.

\textsuperscript{566} Heida, L., Yale Environment 360, Yale Education (12 June 2014) <http://e360.yale.edu/features/can_waterless_dyeing_processes_clean_up_clothing_industry_pollution> last viewed on 29 January 2017.
amount of water consumed. Not surprisingly, environmental concerns constitute a first pillar of the debate regarding CSR. The second pillar pertains to social concerns. In 2014, a report was published about child labour and ‘modern slavery’ in Indian spinning mills that supply to well-known garment brands clothing companies. The report drew a lot of public attention. Subsequently, the Council of the EU stressed that business activities in partner countries should respect human and labour rights and promote decent labour work. The Council has requested to strengthen the external dimension of the forthcoming revised EU Strategy for Corporate Social Responsibility, and the European Parliament noted in a briefing to initiate on a label for textiles and clothing produced according to social and environmental standards. Initiatives have also been taken at Member State level. A notable example is the fact that the Dutch government, along with a group of trade organisations and NGOs, announced a textile covenant in March 2016. The aim of the covenant is to prevent child labour and improve poor working conditions and low wages in textile producing countries such as Bangladesh, India, Pakistan and Turkey.

The EC defines CSR as:

“A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with the stakeholders on a voluntary basis”

CSR labelling is a method of differentiating products that meet social (ethical) and ecological (label scheme) standards with respect to other products. The eco and social labels are special quality marks awarded by public or private organisations. These organisations aim to inform consumers and promote products that are not harmful to humans and are environmentally friendly while having comparable usability and functional qualities. In general, specific words are used, such as environmental label, eco-label and social-label. CSR labels aim to enhance the information provided to consumers and subsequently create more transparency about the supply chain of the product. The label providers hope that consumers prefer the ‘social’ products to other, often cheaper, products.

Many countries across the EU have introduced CSR products or business ‘labels’ to help consumers make informed choices about their purchases. Some countries (e.g. Greece, Bulgaria and Slovakia) have recently begun to introduce such labels and to inform consumers what these labels

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567 Ibidem.
mean\(^{576}\). On the one hand, CSR labels could be an effective tool that enables communication with consumers and a major factor driving their purchasing decisions\(^{577}\). On the other hand, these frequently cause confusion and frustration is seen in the market. Koszewska indicates that consumers expect more transparent and clearer information in this area. The problem is that globally more than 450 eco-labels exist in 197 countries and 25 industry sectors\(^{578}\), with more than 100 labels covering textile products. Therefore, the number of eco-labels for textile products seems overwhelming. Considering the great number of ecological labels and other labels, consumers encounter difficulties distinguishing between them\(^{579}\). Box 4.3 provides an overview of the most popular labels covering the T&C industry.

**Box 4.3 Ecolabels\(^{580}\)**

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578 This information is collected by Eco label index, which is the largest global directory of eco-labels. Different types of organizations including governments, non-profit and profit organization have developed eco-label programs. Not all labels focus on the same aspects. Certain labels are based on energy use during equipment operations, whereas other eco-labels are based on life cycle environmental concerns. Various manufacturers started to make their own environmental labelling schemes.


See also Consumer’s survey conducted by European Fashion Business School, 2012, PE 429.992.

580 Edited source <www.ecolabelindex.com>, last viewed on 14 January 2015
According to Redclift and Woodgate\(^{581}\), one of the reasons for redesigning the European environmental policy was the development of the ‘consumer-citizen’ standard. In other words, consumers can express their preferences for goods, services and their personal household consumption. The EU then acts on this readiness to regulate matters in the areas of agricultural, consumer and environmental regulations\(^{582}\).

In an interview, former MEP Manders\(^{583}\) stated that CSR topics are mostly enclosed in codes of conduct and guidelines instead of legislation on an EU level. In his opinion, it will be problematic to put forward legislation related to CSR in the T&C industry over the coming years. Manders mentioned that there is an increasing awareness both among the industry and among consumers that enterprises are contributing to sustainable development by integrating environmental and social concerns into the supply chain. In view of the complex and highly internationalised textile and clothing supply chain, the CSR issue is likely to become increasingly important in the sector. Therefore, the EU should initiate and proceed with the legislative process over the next decade, taking it step by step, in order for the industry to comply with CSR standards or specific legislation on labelling. Moreover, according to Manders, a shift in consumer attitude is required. Consumers should consume less and consider recycling textiles. More environmental accountability should also follow from the use of innovative technology by textile manufacturers. For instance, the technology of AirDye heats up fabric and then injects dye directly into the fibers in the form of a gas. The technology uses 85 percent less energy and saves between 25 and 285 litres in the dyeing of a pound of fabric compared to traditional dyeing methods\(^{584}\). Another example is the company Bionic Yarn that joined forces with (singer-songwriter) Pharrell Williams and G-star Raw to create a denim collection made in part from recycled plastic materials retrieved from the world’s oceans and shores\(^{585}\).

Interestingly, research in this area shows that the impact of negative messages (negative labelling) affects both consumers and producers\(^{586}\). Consumers with an intermediate environmental concern might not choose products with a positive eco-label but they would avoid products with negative labels. This in turn could encourage product development in a more environmentally beneficial direction. In general, independent eco-labelling organisations examine, certify and eco-label products based on standards, awarding a positive eco-label only when these standards have been met\(^{587}\). Note, however, that currently eco-labelling is done on a voluntary basis and

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\(^{582}\) Readiness to regulate is a political cultural variable, which is one of the four general context factors and may lead to the implementation of new rules and regulations. See Boström, M., & Klintman, M. Eco-standards, product labelling and green consumerism, Palgrave Macmillan Basingstoke 2008, p. 73-86.

\(^{583}\) Toine Manders, at the time Member of the Committee on the Internal Market and Consumer Protection, European Parliament, Directorate-General for Internal Policies. Interview December 2012. See Appendix IV.

\(^{584}\) See <www.airdye.com>, last viewed on 25 November 2016.


its introduction implies a financial cost for the producer. It is not likely that a producer would voluntarily pay an independent organisation to have a product labelled as "worse than average unfriendly for the environment". To implement a system that not only includes positive but also neutral and negative eco-labels, a regulation that prescribes that all products should be classified into for instance one of three categories (green, orange or red) would be needed. Regulating the use of negative labels may also lead to driving products out of the market. If it becomes common knowledge that unless certain standards are met, a negative label has to be attached to the product, such products may be recalled.

4.5.2 CSR labelling vs. consumers & consumer organisations
According to the outcome of several consumer surveys, consumers are mainly concerned about the health and safety of workers (e.g. labour conditions), human rights (e.g. child labour, slavery) and safeguarding the environment in general. Vermeir and Verbeke in this regard noted that environmental concerns do not always result in the desired consumer behaviour, such as purchasing environmentally sustainable products. Butler and Francis noted that while consumers believe that the environment should be considered when purchasing textiles and apparel, it does not play a role in their actual purchasing decision. The discrepancy between concerns for the environment and purchasing behaviour has been reported in numerous studies of environmental and socially responsible consumers in the context of textile and apparel consumption, as well as other product categories. Koszewska discussed the issue that the purchasing decision of the consumer is mainly impeded by the unavailability of relevant information, problems with distinguishing the non-CSR textile product from the CSR textile product, and by the consumer's limited or non-existent confidence in manufacturers' declarations. A range of surveys and assessments she presents show that consumers are frequently sceptical about the credibility of some of the labels and uncertain about their actual message. Notwithstanding, consumers perceived greater benefit and value in the offerings of a socially-responsible firm, and were shown to be willing to pay an additional percentage for its product, judging this price differential to be fair.

591 See also European Fashion Business School TMO, research conducted by Berg Van der, M., & Streelder, P., PE 429.992,(2012).
Still, consumer organisations state that consumers are increasingly interested in environmentally friendly products, such as natural and organic products, within various product areas, including textiles. This implies that, according to consumer organisations, there is definitely a demand for eco-labelling in the EU. In general, CSR labels, especially the European eco-label, are not well known. Consumer organisations, therefore, state that the most important aspect for the ecological labels is to provide a trustworthy and distinguishable label for consumers. With respect to textiles, this might be challenging due to the numerous steps involved in the textile supply chain. Consumer organisations, therefore, are in favour of regulation of ecological labels in textiles, such as setting minimum requirements and common definitions for organic or natural products. Moreover, the introduction of a mandatory labelling of environmental friendly products, such as organic and natural products, covering the latter issue is seen as positive by consumer organisations. Furthermore, consumer organisations stated that it should be elucidated whether, for instance, eco-labelled textile products cover genetically modified products and, whether a textile product can be considered ecological in which a RFID chip is embedded.

A Euro barometer survey (from 2014) confirms to some extent that consumers are prepared to pay more for environmentally friendly products. However, readers should bear in mind that, as Vermeir and Verbeke noted, environmental concerns of consumers do not necessarily result in a related purchasing decision. Accordingly, the findings of surveys and interviews indicate that the majority of the respondents consider an eco or social label for textiles important. According to the respondents, the ‘ideal’ eco-social label should cover three elements: safe working conditions, reduction of energy use and consumer safety. These three elements are by far the most important CSR aspects according to consumers. The addition of safe working conditions to this list was foreseeable since the use of child labour and the lack of safe working conditions in the production supply chain have recently been singled out in the media and consequently traders are being publicly admonished for a lack of proper CSR standards in these areas.

597 Ibidem.
598 Ibidem.
599 Ibidem.
600 Ibidem.
4.5.3 CSR labelling versus textile industry & textile industry organisations

For the T&C industry, transparency in the production process is a sensitive issue due to the fact that the textile industry is one of the world’s most polluting\(^5\). Although CSR has attracted interest among businesses and Member States of the EU, the T&C industry has rejected mandatory regulation\(^6\).

Production processes have been reassessed in the past few years by major clothing brands to make improvements to environmental issues and working conditions in emerging markets. An increasing number of clothing companies, such as Nike and Levi Strauss, are implementing substantive changes to their production processes by beginning to use organic materials, modifying product design, and by developing methods of manufacturing “eco-fashion” to protect the environment\(^7\). Box 4.4 shows an example of Nike’s green initiatives. Their approach is called ‘Brand Social Responsibility’ (BSR), which has as its intention to make the product or service more socially and environmentally responsible.

**Box. 4.4 Case study Nike Better World Recycled Polyester\(^8\)**


\(^8\) See <www.nike.com> Nike is ranked as one of the 10 greenest companies in the US. Last viewed on 15 January 2015.
Several authors have examined the effects of the CSR labels of the T&C industry on consumers. These scholars concluded that the usefulness of eco-labels is questionable. They state that textile companies have used labels to convey brand name, to build brand identity, to educate consumers about product attributes, to inform consumers about the company’s mission and ethos, and to reinforce both product labelling and advertising, which, in turn, may guide consumers’ purchase decisions. Hyllegard et al. noted that consumers might be confused or overwhelmed by too much information provided by the industry on hangtags, such as the overuse of technical jargon and explicit illustrations or an overemphasis on the “product story”. The T&C industry holds the view that consumers are unaware of the several production processes in the supply chain. According to the Dutch trade organisation MODINT, the consumer is, in principle, interested in a fashionable product at a low price. As such, consumers do not take facts such as biological fibres, the social conditions in the production companies or the environmental aspects of the textile product into consideration when purchasing textile products. The ‘discerning’ consumers pointed to the lack of sufficient CSR information as the main obstacle for not purchasing a CSR product. Thus, although consumers indicate their willingness to pay more for CSR products, in practice, unfortunately, only a minority of consumers actually purchase these products.

According to the industry organisation MODINT, a CSR label (logo) such as ‘UTZ’ from the food retailers could be a model for a textile CSR label. Furthermore, MODINT mentioned that, in general, retailers are unable to force textile manufacturers to comply with international standards such as ISO 14001 (environmental management standards). Therefore, according to the industry organisation, mandatory rules are necessary to involve every business in the selected path of CSR compliance. Secondly, labour conditions have to improve and child labour should be banned. Thirdly, the refinery of the raw material process should be controlled. Finally, textiles should be traceable in the supply chain. In this regard, determining the way in which governments are planning to deal with subcontracting is important. Therefore, only when the textile sector begins to conduct itself in a sustainable and responsible way CSR labelling will become superfluous.

Furthermore, MODINT believes that EU retailers should not be held responsible for flaws they have no part in, especially in the supply chain of textiles. The production cost of the product will rise when extra social responsibility steps are added into the production process. MODINT argues

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611 Interviews MODINT, (2012, 2013 and 2014) and European Commission, Julio Cardoso, 2014, see Appendix IV.

612 Interviews MODINT, (2012, 2013 and 2014) and European Commission, Julio Cardoso, 2014, see Appendix IV.

613 Interview Marieke Weemaes, former representative of the trade association MODINT, see Appendix IV.

614 See <www.utzcertified.org> last viewed on 28 November 2016.

615 See <https://www.iso.org/home.html> ISO 14001 provides practical tools for companies and organizations looking to identify and control their environmental impact and constantly improve their environmental performance.
that the social responsibility lies with both the textile industry and the purchase decision of the consumer\textsuperscript{616}.

While analysing the position of MODINT, it should be borne in mind that it is a trader’s organisation and, therefore, their opinion is a reflection of their lobbying activities for their business members in the T&C industry. Moreover, the argument of MODINT does not represent the general view of the T&C industry, which states that the average consumer is unaware of the numerous production processes in the supply chain and the fact that findings of surveys and interviews\textsuperscript{617} indicate that the majority of the respondents considers an eco or social label for textiles important, although the purchase behaviour of consumers does not always bear this out.

Based on the aforementioned, the T&C industry sees no ground for mandatory labelling unless a set of clear CSR rules with which businesses must comply are set out in every link of the supply chain of textiles and consumer awareness of the CSR labelling product is raised.

\textbf{4.5.4 CSR labelling & Horizontal legislation}

In general, most CSR standards and schemes are developed by industry or NGOs, although certification bodies independently verify most of the schemes and monitor their ‘impact’ (effectiveness). In practice, both private or self-certification schemes and third party certification schemes exist. In the case of private/self-certification schemes, producers themselves, non-governmental bodies, trade associations or retail companies establish standards and undertake assessment and monitoring of the standards and use of the logo, such as “organic cotton” and “H&M Conscious”. In a third party certification scheme, there is no relationship between the companies the third party audits and certifies or with the owners of the standards. The standards-setting organisations are usually contracted to supply certification and assessment services and usually operate to internationally recognised standards such as ISO\textsuperscript{618}.

Thus, beyond the aspects covered by specific EU legislation, such as the eco-label for textiles, the UCPD is the main instrument of horizontal legislation for assessing the fairness and thus also the non-misleading character of environmental claims\textsuperscript{619}. The EC defines the expressions ‘environmental claims’ or ‘green claims’ as\textsuperscript{620}:

\textit{“The practice of suggesting or otherwise creating the impression (in the context of a commercial communication, marketing or advertising) that a product, is environmentally friendly (i.e. it has a positive impact on the environment) or is less damaging to the environment than competing goods. This may be due to, for example, its composition, the way it has been manufactured or produced, the way it can be disposed of and the reduction in energy or pollution, which can be...”}

\textsuperscript{616} Interview Marieke Weemaes, former representative of the trade association MODINT, see Appendix IV.


\textsuperscript{618} Skinner, G.A. ‘Smart labelling of foods and beverages’, Advances in Food and Beverage Labelling: Information and Regulations 2014, p. 191.


expected from its use. When such claims are not true or cannot be verified, this practice could be described as ‘green washing.’

Based on this definition, examples can include a short text on a product claiming its energy efficiency, that it is produced in an environmentally friendly way or that its package is recyclable or biodegradable; labels and logos claiming that a product meets multiple or certain environmental criteria; or advertisements presenting products in a green and natural environment and suggesting that they are more environmentally-friendly.621

Consumers may be influenced by environmental considerations when purchasing T&C products. Therefore, in order for environmental claims to be informative for consumers, to properly guide them in their decision-making process and to be effective in promoting textile goods with lower environmental impacts, such as organic cotton, it is crucial that the claim is clear, truthful, accurate and correct (not misleading). Any trade-offs or negative impacts of the product on the environment must not be hidden.622

The Commission discussed the introduction of verification requirements for environmental claims on the basis of the eco-label for textiles.623 Recital 10 of the Directive states that it “provides protection for consumers where there is no specific sectorial legislation at Community level and prohibits traders from creating a false impression of the nature of products”.

According to the Commission, the application of the environmental claims provisions of the UCPD can be summarised in two main principles. Traders must:

1. above all, present their environmental claims in a specific, accurate and unambiguous manner (general clause); and
2. have scientific evidence to support their claims and be ready to provide it in an understandable way if the claim is challenged.624

A good example is the case of Roundup (Monsanto-Scotts France). In this case, the French appeal court declared that a pesticide labelled as ‘biodegradable’ and ‘good for environment’, although several of the substances contained in the pesticide were still harmful to soil, was giving the misleading impression that the product itself was environmentally-friendly.625

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Hence, according to the provisions of the UCPD it is important to clearly define criteria on the basis of which the CSR label may be used, and these criteria need to be published widely. Furthermore, care should be taken that these criteria and consumers’ expectations as to what the label might mean are not mismatched\(^\text{626}\).

However, even if the criteria used by the trader are appropriate, it is vital to ensure that appropriate monitoring systems are in place to avoid abuse of the system, in which other third-party information may also be useful. In many Member States, independent consumer organisations such as Stiftung Warentest, Which?, Test-Achat and Consumentenbond publish reports on the quality of goods and services, which are often relied on by consumers in deciding on whether to purchase a particular good\(^\text{627}\).

Similarly, codes of conduct of trade associations permit their members to advertise their compliance with such codes as an indication of quality\(^\text{628}\). However, under the UCPD, complying with a code of conduct does not imply immunity against claims of an unfair commercial practice\(^\text{629}\). There is no legislation that lays down criteria that ‘fair’ codes of conduct would have to meet and neither are there any provisions that tackle unfair codes\(^\text{630}\).

It should be noted that the UCPD does not call a trade association to account if it creates a code of conduct that promotes or contains unfair practices. The authorities in the individual Member States may take the decision to whether legal action may be directed against a code owner (Article 2(g) UCPD) if the relevant code promotes non-compliance with legal requirements (Article 11(1) paragraph 2(b) UCPD). By leaving this to the Member States, the European Commission intended to avoid the risk that trade associations would become reluctant to draft codes of conduct\(^\text{631}\).

As mentioned earlier, more than 100 third party certification labels cover sustainable and socially produced textile products. The vast number of these different labels confuses consumers and undermines consumer confidence in environmentally friendly textile products\(^\text{632}\). It might be concluded that in the context of the UCPD the ‘average’ consumer might encounter difficulties distinguishing reliable CSR labels from unreliable ones, subsequently mistrusting them all. In this regard, judicial interpretations, in determining whether or not trademark infringement has

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\(^\text{630}\) ISO 14021:1999 ‘Environmental labels and declarations - Self-declared environmental claims’ (Type II environmental labelling).


occurred (likelihood of confusion), have given some indications as to the expectations of the behavior of the average consumer⁶³³.

According to the General Court⁶³⁴, “...the average consumer habitually perceives a trademark as a whole and does not proceed to analyse its various details. It should also be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods and services in question⁶³⁵.”

Thus, if the same criteria may be applied to the effect of labelling on consumers as to these trademarks, “among the factors to be taken into account in order to assess whether the labelling at issue in the main proceedings may be misleading, the length of time for which a name (here: a label, AJ) has been used is an objective factor which might affect the expectations of the reasonable (average) consumer⁶³⁶.”

As mentioned in Chapter 3, a good example on a national level can be found in a judgment of an Italian administrative tribunal. Essentially, the Italian court took into consideration with regard to the (electricity) retail market that “the average consumer had not yet adapted to the (new) market situation and that the reasonable level of knowledge one could expect from the average consumer had to be fixed accordingly⁶³⁷.”

Pursuant to the latter case law, it might be concluded that the plethora of CSR labels in the T&C industry is likely to confuse the average consumer and as a consequence consumers cannot inform themselves about the characteristics of the textile products and accordingly make efficient choices⁶³⁸. As already mentioned above, a range of surveys and analyses has shown that consumers are frequently sceptical about the credibility of some of the labels and uncertain about their actual message⁶³⁹.

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⁶³⁴ Joined Cases T-183/02 and T184/02 (Mundicolor), EU:T: 2004:79, Para 68. See also case T-20/02 EU: T: 2004:95 (Happy dog), para 37.
⁶³⁵ Case C-446/07, EU:C: 2009:530 (Alberto Severi v Regione Emilia-Romagna), para 62.
⁶³⁶ Ibidem.
4.6 Size labelling

4.6.1 Current situation
Top-notch clothing fit is the major aim in the design and manufacture of fashion to ensure consumers’ comfort and to enhance their appearance. Determining the right fit is a complex issue influenced by the customer’s anthropometry, fashion and social trends. In the late nineteenth century, the ready-to-wear clothing industry introduced coded size categories for women’s clothing by using numbers or letters, with numerical codes indicating the age or bust measurement of the consumer. Currently, size designations of clothes are communicated through size labels in clothing textile products, allowing the consumer to identify the clothing or textile product that is designed for a particular body size. National standardisation institutions classify label-size systems and manufacturers can either opt to use a classified label-size system or create their own size designation system. In general, different systems are used to define label-sizes. The most commonly used are:

- **Body dimensions**: The product label states for which range of body dimensions the product was designed for, for example, headgear labelled ‘head girth: 56-60 cms’.

- **Product dimensions**: The label states characteristic measures of the product. For instance, trousers are labelled with their inner-leg length in centimetres or inches, such as ‘Leg length 31’.

- **Ad-hoc size**: The system refers to a label-size providing a number, letter or code with no obvious relationship to any measurement, such as ‘size 14’, ‘XL’. The brand defines the measurements that classify the ad-hoc size.
  - Single-size refers to ad hoc sizes usually defined by numbers. E.g., ‘38’, ‘12’, ‘90’ used for textile products to fit a small body-size range.
  - Double-size refers to ad-hoc sizes defined by letters, for example, ‘S’, ‘M’, ‘L’; used for garments to fit a large body-size range, usually two single sizes (e.g. size M classifies the size range of 38-40).

Sizing systems include both the standards developed by various countries based on anthropometric data from their populations and systems developed by individual firms to fit their target consumer market. Therefore, the label-size systems vary by country because of national standards. The label-systems represent different information as listed above and so size labels come in different measurement units (centimetres or inches), numbers (38, 90, 12) and letters (XXL, A).

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643 Ibidem.

The use of different size systems leads to many problems in practice, such as the potential for: inaccurate information; information on additional body size or clothing dimensions being insufficiently displayed on the size label; misleading information as changes in body dimensions have not been updated; and the phenomenon of ‘vanity labelling’\(^645\), which will be expanded on further in this subsection.

In general, correct textile labels aim to facilitate easy and efficient ways of appropriate clothing selection, which serve as references for future consumer purchases and help to enhance consumer satisfaction. In addition, the textile industry can benefit from correct size labels as correct size labelling can lead to reductions of markdowns or returns of the clothing\(^646\). Size labelling standards are voluntary in the EU. In my opinion, currently, size labels lack adequate information to guide consumers in the proper selection of clothing as the size designation differs within the EU (see as an example the next table).

MODINT, the Dutch trade association of, among other, manufacturers, has put forward a template known as ‘Global Sizing Chart 2014’\(^647\), which gives size designation within several EU Member States. The next box gives an overview of the size designation within the EU.

**Box 4.5 European Sizing Chart 2014**

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<th>Sizing Chart Men 2014</th>
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<td>Bulgaria/Hungary/Czech Rep./Slovak Rep./slovenia/Croatia</td>
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*Italy has a different sizing scheme for men; the jumps are smaller (± 2 cm). Edited source: Sizing Chart, MODINT 2014.*

\(^645\) Ibidem.

\(^646\) Interviews MODINT(2012, 2013 and 2014) and European Commission, Julio Cardosa, 2014, see Appendix IV.

\(^647\) Seminar Sizing, Pro-fit from it, Modint, 29 October 2013.
The above ‘Global Sizing Chart’ shows that within the EU there are at least five different systems used to indicate clothing sizes. Italy and the United Kingdom each use their own system, while most of the other Member States use other standard sizing system\(^648\). This disparity makes cross-border shopping difficult for consumers within the EU.

A review of the literature indicates that problems related to clothing fit stem from a variety of factors. The study by Alvanon\(^649\), a global fashion consulting company and fit expert, states that the main factors affecting sizing systems and consequently the fit of the ready-made apparel-to-be are the diverse population measures (body measurements), the design features (design and construction of the apparel), the fit issues (fit quality management) and the communication of sizing and fit (size labelling). The focus of this study was on communication of sizing and fit, which, first, requires that measurements and body form indicated on the size labels reflect the true picture of the target market (population). Second, the information given on the clothing label must be adequate and legible to enable consumers to efficiently and effectively select appropriate apparel.

According to Ashdown\(^650\), sizing systems could be considered from a more generic perspective by focusing on the design features of the clothing, the level of individual fit desired, the number of sizes needed and the variation in the population. For his part, Winks\(^651\) states that the size indication on clothing products should be consistent with the sizing system used in the country in which this product will be sold.

Moreover, traditionally textile products have been labelled by many different ad-hoc size systems\(^652\). This approach has led to a number of problems. Ad-hoc sizes have been changed over time, often due to ‘vanity labelling’. Vanity labelling can be defined as inflation in body dimensions associated with a size to avoid confronting ageing customers with uncomfortable anthropometric truths\(^653\). As manufacturers do not adhere to sizing guidelines and can pursue vanity sizing to varying degrees, a significant variation in size designation exists across clothing retailers\(^654\).

The EC intends to harmonise the size system by introducing the European voluntary standard EN13402 on size designation of clothes.\(^655\) In 1996, the European Committee for Standardization, CEN, began the process of developing a new system for labelling clothing size, the EN 13402.

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648 Ibidem.
655 Seminar Sizing, Pro-fit from it, MODINT, 29 October 2013.
"Size designation of clothes". According to CEN, the standard provides a good basis for a harmonised sizing system in Europe. However, there is still no consensus among the Member States on whether to apply it. CEN states that retailers are not willing to modify the new system voluntarily as it will alienate their national clients. A harmonised system will only work if it is introduced as a legislated, harmonised system although CEN warns that even regulated sizes might not necessarily be entirely harmonised as retailers might interpret the standards in a way that fits their needs best. Therefore, mandatory harmonisation of size labelling might push the T&C industry to agree on the intervals for each size, meaning how to cut the clothing product to conform to the size designation.

In a petition to members of the European Parliament, a German petitioner called for uniform clothing sizes in an international system of units. The petitioner advocated the introduction of a uniform system to indicate clothing sizes instead of the existing systems, which vary between countries, manufacturers and even from year to year. According to the petitioner, every tailor knows that it is possible to ascertain from a small number of figures whether clothing fits and, therefore, considers the indication of sizing by means of ‘metre’ to be the most appropriate. As such, these figures ought to be indicated on a label in the clothing product. This would also considerably facilitate the sale of clothing over the Internet and dramatically reduce the costs incurred from consumers returning clothing, which does not fit.

Upon request from the European Parliament’s Committee on Petitions, the EC replied to this petition, stating that Article 24 of the Textile Regulation requires the Commission to report on possible new labelling requirements, including size labelling. In that report, it acknowledged that European standards for size designation of clothes have been developed and the coding system (part 4 of EN 13402) potentially constitutes a good basis for a uniform EU-wide standard-based size labelling system for relevant textile products.

4.6.2 Size labelling vs. consumer & consumer organisations
Research conducted by Faust et al. shows that more than half of in-store female consumers take two identical pieces of clothing in different sizes to the fitting room and that approximately half of the merchandise purchased from web shops is returned, which suggests that a similar approach may be taken by consumers shopping online. This leads to a waste of time and unnecessary

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658 Ibidem.
659 European Parliament, Committee on Petitions, 27.05.2014, Notice to members Petitions 0499/2013 by K.H. (German) concerning uniform clothing sizes in SI units.
661 Ibidem.
hassle in the purchasing process and – in case of online shopping – high transportation costs, environmental issues etc. when the improperly fitting clothing needs to be returned\footnote{Seminar Sizing, Pro-fit from it, MODINT, Zeist. The Netherlands, 29 October 2013.}

Research conducted by the EC suggests that size labelling is not perceived as a major consumer concern as consumers rarely complain about improper sizing of T&C products\footnote{Kidmose Rytz, B., Sylvest, J., & Brown, A. ‘Study on labelling of textile products’ (2010), p. 45. <http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/429992/IPOL-IMCO_ET(2010)429992_EN.pdf> last viewed on 15 March 2017.}. Generally, consumers manage to obtain the necessary information on the product’s sizing at retail stores or, regarding (cross-border) distance selling, consult the size conversion table on the company’s website\footnote{Ibidem.}. Moreover, consumers can exercise the right to withdraw from the sales contract concluded at a distance within 14 days from the day of the delivery of goods if the size was incorrect\footnote{Article 9 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights OJ L304/64, 22.11.2011.}. This, of course, does not limit traders’ (or societal) costs associated with selling incorrectly sized clothing to consumers but it does limit consumer risks\footnote{In such case the consumer – if properly informed – only bears the financial costs of returning the clothing (and the time spent in vain), but is reimbursed for the original purchase price and the original costs of transportation, see art. 13(1) and 14 (1) Consumer Rights Directive.}

More than a quarter of consumers indicate that they have had to return products due to a misfit\footnote{European Commission, Matrix Insight, ‘Study of the need and options for the harmonisation of the labelling of textile and clothing products’ (2013), p. 43. <http://www.industriall-europe.eu/ Sectors/TCL/2013/Study%20labelling%20textile%20products%20%20final%20report%20Matrix.pdf> last viewed on 15 March 2017.}. This indicates, to my mind, that consumers would shop more confidently if they could immediately assess the sizing information.

Research conducted by Which?, the largest consumer organisation in the UK, reveals that nine out of ten women were frustrated with the lack of uniform sizes on the high street, while six out of ten admitted they needed to try on different sizes in the changing room to work out which size fitted properly. The findings are set out in the next box.

Box. 4.6 Which? High street size 12 varies by 4 cm

Which?, the consumer body, measured size 12 dresses in eight leading high street fashion chains and found the circumference varied enormously.

The waist measurement of a size 12 dress can vary by 4 cm, Which? Found a size 12 in Next was just 71 cm, while a 12 in Marks & Spencer was 74 cm and 75 cm in New Look, which suggests someone who fitted into a 12 in M&S or New Look would be forced into the larger size 14 at Next. Part of the problem for retailers has been keeping up with the changing shape of women. The average British woman today is 5 ft 5 in, an inch taller than 50 years ago; her bust and hip measurements have grown by an inch and her waist by 6½ inches. She has grown from a size 10 to a size 12.

Other research findings reveal that the ‘sizing issue’ in the T&C industry is experiencing turbulence due to the fact that retailers using their own company-based standards.

Moreover, research conducted by Faust & Carrier and Ashdown et al. demonstrates that additional size information (such as rise or crotch length of pants) was appreciated by women and should be supplied on pants’ size labels as the silhouette of consumers varies. They stated that consumers deserve more information when it comes to size, and the label should provide additional relevant information regarding size measurements. Modifying the appearance of and the content of information provided on a new size label offers an opportunity to modernize retail shopping and could also contribute to eliminating confusion on textile sizing among customers.

4.6.3 Size labelling vs. the textile industry & textile industry organisations

The size systems differ in both Member States and among retailers within Member States. Generally, this results in a poor fit, unmarketable textile products and products being returned. The majority of the clothing manufacturers create and adjust their own size charts. Clothing manufacturers use sales studies, returned merchandising reports and small customer surveys as a reference and benchmark for creating their own size charts. The used methodologies are the ‘Trial and Error methodology’ or the ‘Different Fit model’. The Trial and Error methodology is characterised by repeating varied body dimensions until the desired fit for the average consumer is achieved. The Different Fit model covers the target market of a retailer and represents the body

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673 Seminar Sizing, Pro-fit from it, MODINT, Zeist. The Netherlands, 29 October 2013.
674 Ibidem.
dimensions selected by the company to define the proportional relationships needed to achieve the fit the company has determined. For example, the textile & clothing company Nike aims to fit one body type, generating base patterns and grade rules from the measurements and proportions of their fit model\textsuperscript{675}. For example, the size designation of Nike consists of the following sizing: XXS, XS, S, M, L, XL, XXL, XXXL\textsuperscript{676}.

The industry agrees that the absence of a European standardised size system is a source of confusion for consumers. Generally, the consumer does not comprehend how the different size labelling systems are related to each other\textsuperscript{677}. Major European retailers stated they prefer an international standardisation procedure developed by an organisation, such as the ISO, over a European initiative as the ISO aims to harmonise size standards on a global scale and T&C industry players often operate globally rather than just within the EU\textsuperscript{678}. This is why a major European retailer and some members of the European Branded Clothing Alliance (EBCA) abandoned the working group at CEN to join the ISO Technical Committee (TC) 133 (ISO/TC 133)\textsuperscript{679}.

In 2014, more ISO standards were published that dealt with virtual garments for digital fitting (ISO/DIS 18163, 18825-1/2, 18831, which are still under development)\textsuperscript{680}. The principal objective was to increase customer satisfaction and to reduce costly returns as a result of poorly fitting clothing. The secondary objective was to eliminate trade barriers by harmonising the practices of size marking worldwide and the terms of reference in the clothing industry\textsuperscript{681}. This will facilitate a common understanding between different key players such as manufacturers, retailers and consumers, thereby increasing the quality of production and fit of clothing in the retail sector\textsuperscript{682}.

### 4.6.4 Size labelling & Horizontal legislation

The entire information flow, from the sizing system designed and produced by the manufacturer to the selection of the appropriate size by the consumer by means of the size label, ultimately affects consumer satisfaction with the textile product’s selection process and with the quality of the product. In general, this information flow is affected by two main problems.

Firstly, the T&C industry lacks the used size and fit-related information. This impairs the buying and wearing experience for consumers\textsuperscript{683}. Preferences of consumers on issues related to the sizing and fit of clothing are frequently not communicated back to the T&C companies, thus limiting


\textsuperscript{676} Seminar Sizing, Pro-fit from it, MODINT, Zeist. The Netherlands, 29 October 2013.

\textsuperscript{677} Ibidem.


\textsuperscript{679} Ibidem.


\textsuperscript{682} Ibidem.

a source of valuable information for improving sizing systems. The first issue would need to be solved through the adjustment of internal policies of T&C companies and is outside the scope of the UCPD.

However, the information on the size indications retrieved from a size label may be perceived as part of relevant information about the characteristics of the product that consumer needs. Whether this information is correct and reaches consumers could be relevant for the assessment of whether a given label does not mislead the consumer, pursuant to the UCPD provisions.

In light of the UCPD, in general, consumers are able to retrieve and verify the information themselves (simply by trying the clothes on)\(^684\). However, if the provided size designation information is missing, ambiguous or inaccurate, it shall also be regarded as a misleading omission of the trader. Retrieving and verifying of size designation might be problematic in the case of distance selling, although consumers are able to exercise the right to withdraw from the sales contract concluded at a distance within 14 days from the day of the delivery of the goods. It should be mentioned, however, that in general consumers consider the procedure for returning goods as time-consuming and that consumers have to bear the returns cost to the trader. It is therefore reasonable and fair that the trader bears at least the costs for returning the goods or, even better, provides proper information to consumers as to the used size and other fit-related information.

Secondly, consumers perceive the phenomenon of vanity sizing, described in more detail in Section 5.8.2, as confusing and misleading as in general they do not comprehend the size chart and the size inflation\(^685\). In the marketing practice of vanity sizing, the aim is to persuade consumers to take certain purchasing decisions. This focus on influencing consumer decision-making is very much within the scope of the UCPD. One of the key criterions of unfairness under the UCPD is that the practice in question is likely to materially distort the economic behaviour of consumers (Article 5) or, put more concretely, to cause consumers to make transactional decisions that they would not otherwise have taken (Article 6-8). In addition to these general Articles, the specific ‘blacklisted’ provisions in Annex I to the Directive aim to ensure that traders make responsible use of codes of conduct (for example, own size charts) in their marketing activities\(^686\).

As mentioned in Chapter 3, the UCPD among others aspects aims at preventing traders from unduly exploiting the consumers’ trust in self-regulatory codes\(^687\).

\(^{684}\) European Commission, Matrix Insight, ‘Study of the need and options for the harmonisation of the labelling of textile and clothing products’ (2013), p. 89.


In the case of the size designation system created by the ISO, the UCPD recognises the importance of self-regulation. Non-governmental bodies, such as code owners and self-regulatory bodies can play an important part in enforcement. In particular, Member States may stimulate appropriate monitoring by code owners on unfair commercial practices\(^{688}\). However, this is not deemed to be necessary in case of strict and rigorously applied self-regulatory codes as they might reduce the need for enforcement by an administrative or judicial system. Moreover, when industry operators largely comply with self-regulatory standards or codes of conduct, these standards may serve a useful term of reference for national authorities and courts to determine whether, in a particular case, a commercial practice is unfair\(^{689}\).

### 4.7 Country of origin labelling

#### 4.7.1 Current situation

Country of origin labelling has been the subject of numerous debates in the T&C industry. One of the main stated purposes of origin marks was, and is, to allow consumers to make informed purchase decisions with regard to the origin of the product\(^{690}\).

According to Eberl, a mark of origin (‘Made in’ label) is a permanent sign (word or symbol) on a product, which identifies its geographical origin (e.g. country, region or city)\(^{691}\). The European Community stated in the context of the mark of origin that ‘a textile product shall be deemed to originate in an EU-country only if it underwent at least two of the following stages of manufacture: spinning, weaving, finishing or making-up’\(^{692}\). The main arguments in favour of the made-in label scheme were initially to establish a ‘level playing field’ for the T&C industry in the whole of the then European Community and to improve European producers’ competitiveness as many trade partners outside the EU already required country of origin marking\(^{693}\). In addition, the introduction of this label would allow transparency on the processes in the supply chain, allowing the consumer to make a better informed purchasing decision. Generally, Community legislation requires a declaration of origin to accompany imported goods\(^{694}\), at the same time, EU legislation within the field of origin marking specifically for textile products is lacking.

The supply chain of textile and clothing products is extremely globalised, fragmented and complicated. Raw materials (and the components and parts) for the textile production are produced, finished, inspected and shipped from one set of countries to another country where the

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\(^{691}\) Ibidem.


final products are assembled. In literature, this phenomenon is called the ‘triple-transformation rule’ for textile products.

As mentioned in Chapter 1, Manders noted the importance of the introduction of mandatory legislation in order to ensure consumers’ right to accurate and reliable information with respect to the ‘Made in’ label. The current system may contribute to consumers being deceived by origin labels indicating ‘Made in the EU’ when production is actually outsourced to a third country. The regulation of origin marking would facilitate consumer choice and contribute to reducing fraudulent, inaccurate and/or misleading claims of origin. In the absence of specific legislation, the European Parliament feared that consumers risk purchasing products, which have either been labelled misleadingly or have been counterfeited. For textile manufacturers producing within the EU, the country of origin indication labelling might be an advantage as consumers perceive European quality standards and social conditions as high, compared to, for instance, manufacturing in India. Thus, for manufacturers producing in Europe it might be of value to show consumers that the textile product is made in one of the EU Member States.

The next box provides an overview of the opinion of the Foreign Trade Association (FTA) regarding the ‘Made in’ label. The FTA is a European association for trade policy and global supply chains. It is one of the most important voices in the industry as it brings together over 1,300 retailers, importers, brand companies and national associations to improve the political and legal framework for trade. Therefore, their opinion is regarded as essential for the T&C industry. As such, much of what is said below in subsection 4.7.3 is derived from FTA statements.

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697 Chapter 2.3.7. See also interview Toine Manders, Appendix IV.
700 Ibidem.
701 See also www.fta-eu.org last viewed on 25 March 2017.
**Box 4.7 MADE IN … labelling should remain on a voluntary basis**

The European Business community representatives and signatories of this paper strongly oppose the introduction of compulsory origin marking for products imported to the EU. It would be a clear statement of the European Union against free trade, and against the interests of both the European business community and European consumers, because the proposal …

… is inappropriate to create transparency;
… provides ambiguous and unreliable information;
… does not protect against counterfeiting and piracy;
… creates new bureaucratic barriers.

The European Business community representatives and signatories of this paper therefore call for rejection of the Commission proposal!

In this regard, the FTA also stated that a mandatory country of origin label is an inappropriate tool to create transparency. The information could be unintelligible and inaccurate as by relying on the declaration of origin, the non-preferential customs origin rules in the UCC does not subsequently lead to the desired transparency. This is especially the case regarding the production process of textile products where textile fabrics and trimmings originate from different geographical regions as questions arise about what could be seen as an ‘important stage of manufacture’. This issue is discussed further in this Chapter and Chapter 6.5.3.

In the scholarship, the introduction of new dimensions or levels of ‘Country of Origin’ (COO), such as ‘Country of Design’ (COD), ‘Country of Assembly’ (COA), ‘Country of Production’ (COP) and ‘Country of Manufacture’ (COM) has been argued for.  

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The term COD refers to the country where the final product was initially conceived. The abbreviation COA describes the country where the product is partially or fully assembled but not ready-made. The three capital letters of COP stand for the country where component parts are produced. COM refers to the country where the final product is manufactured and ready-made

Many companies today reveal both COO and COM information on their labels. For example, G-Star Raw, a Dutch designer clothing company, cited ‘COD: Netherlands’ on their clothing products whereas the T-shirts are made in Dhaka and obviously are cited as ‘COM: Bangladesh’.

According to Brookshire and Jung the ‘one country’ origin determinations are misleading in the case of hybrid or multinational products and thus multilevel COO displays must be utilized to reflect the production process. This would help consumers be less subject to fraud or deception that may occur from inaccurate COO labels and less turned off by an exorbitant price for completely locally-made products.

Bhaduri & Ha-Brookshire stated that the majority of the clothing companies do not provide accurate, in-depth and comprehensive information on the movement of their raw materials and parts and the final manufacturing locations. Thus, it is extremely difficult for consumers to acquire the information on where the major components, such as fabrics, were sourced from and assembled. Still, companies strongly believe that consumers pay attention to the relationship between COO and COM when making purchasing decisions. There are even a few examples of companies that originate from emerging economies but manufacture textile products for companies in developing economies, such as Prada, Louis Vuitton, Armani, Calvin Klein. For example, Chinese fashion firms established manufacturers in Italy in order to capitalise on the ‘Made in Italy’ label as this has favourable COO associations.

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707 Ibidem.
709 The triple-transformation rule means that the raw materials (fiber), the cloth and the clothing itself must be processed within the free trade region in order to be Nafta-eligible and therefore obtain the mark ‘Made in the US’. However, many manufacturers in the US do mark their products as being of US origin although one of the production processes was outside the Nafta countries.
4.7.2 Country of origin labelling vs. consumers & consumer organisations

A review of the literature indicates that academic researchers have debated the extent to which country of origin has an impact on consumers’ willingness to buy a product. Research conducted by Oberecker and Diamantopoulos shows that the country of origin matters to consumers when consumers have imperfect knowledge or lack knowledge about the product. Other studies note that the brand or the origin of the design is often more important for the consumer than the country of origin. Examples mentioned include Nike shoes, which are perceived by US consumers as 'American' even though they are in fact manufactured in China.

In general, consumers may be deceived regarding the true origin of products by lack of/or misleading COO labels and could be unable to make an informed purchase decision. Additionally, transparency of origin as an ethical argument should be taken into account for consumers who for reasons of principle avoid buying products from certain countries with, for instance, a poor human rights record or a political system that conflict with their own values. A good example is the call for a boycott of 'Made in China' products by the consumer movement 'Ethical Consumer' as a response to Chinese violations of the most basic humans rights in its continuing occupation of Tibet.

The outcome of a recent consumer survey confirmed the importance of the labelled ‘country of origin’ information as 64% of the interviewed consumers regarded the country of origin information to some extent as valuable, irrespective of how they chose to interpret the disclosure of the country of origin information. With reference to the latter, it has been noted that consumers occasionally perceive the origin label as misleading by assuming that the supplied information does not reflect the production country of the product accurately. Conveying accurate and reliable country of origin information could have a positive impact on more than a quarter of the consumers who claim to ‘always’ take labels into account when shopping and, to a lesser extent, on the almost 40% who claim to ‘sometimes’ do so. The findings of the survey reveal that in terms of the most common reason for consumers not using origin labels is that they are often misled.

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716 See <www.ethicalconsumer.org> last viewed on 01 February 2017.

717 Viz. the consumer could be misinterpreted the country of origin information. The consumers noted a certain quality (higher or lower) and (better or worse) working conditions of the labelled than non-labelled country of origin products. See European Commission, Matrix Insight, ‘Study of the need and options for the harmonisation of the labelling of textile and clothing products’ (2013), p. 90. <http://www.industriall-europe.eu/Sectors/TCL/TCL2013-Study%20labelling%20textile%20products%20-\%20final%20report%20matrix.pdf> last viewed on 15 March 2017.

rarely notice these labels at all. The second most frequently mentioned reason is the lack of trust regarding the disclosure of country of origin information on these labels. The study suggested that, if implemented correctly and made public to consumers, a European definition of country of origin could initially be based on the UCC definition\textsuperscript{720}. As mentioned in Chapter 2, this definition means that if one country is involved in the production of a textile product, the ‘wholly obtained’ concept will be applied. If a product is not wholly obtained in a country, its origin is generally determined according to the principle of last substantial transformation\textsuperscript{721}. An alternative could be to establish a definition of country of origin in accordance with the provisions of the GPSD, which will be set out in Section 4.7.4.

Consumer organisations cited the difficulties with COO labelling as a consequence of the various stages in the international supply chain of textile products\textsuperscript{722}. One of the consumer organisations emphasised the need for clear definitions and subsequently the need for quality control of the information provided\textsuperscript{723}. The Commission’s proposal states that the ‘Made in’ label should give the country in which the last substantial change to the textile product occurred\textsuperscript{724}. According to consumer organisations this may not be comprehensive enough for the consumer, as they may want to know where the fabrics originate from as well\textsuperscript{725}. Thus, traceability should become a key aspect at all stages of the supply chain in order to convey accurate information to consumers.

4.7.3 Country of origin labelling vs. the textile industry & textile industry organisations

The textile industry is keen to take part in the debate on the new Product Safety Regulation (CPSR) as, if adopted in its present shape, labelling of the country of origin will become mandatory for textiles\textsuperscript{726}. The European Parliament sought to include country of origin marking already in the Textile Regulation\textsuperscript{727} but this requirement was removed from the proposal of that Regulation due to disagreement in the Council\textsuperscript{728}. In order to be more specific, the legislative process on this proposal was concluded at the Council level because of a disagreement among Member States on the proposed mandatory obligation to mark the country of origin on each consumer product\textsuperscript{729}. Several stakeholders, such as Euratex, pointed to the problems with adopting a

\textsuperscript{720} See Glossary.

\textsuperscript{721} O\slash L 269, 10.10.2013, p. 30.


\textsuperscript{725} Ibidem.

\textsuperscript{726} Article 7 of the proposal for a regulation on consumer product safety (COM (2013), 78). See also VVA Europe, Implementation of the new regulation on Market Surveillance: Indication of Origin, final report 06.05.2015, p. 6-7.

\textsuperscript{727} Regulation 1007/2011, O\slash L 272, 18.10.2011.


uniform definition of country of origin\textsuperscript{730}. They expressed uncertainty as to whether the ‘country of origin’ definition should indicate the country of origin of the fibre where the main assembly of the product took place, where the product was finalised, or somewhere else. The supply chain of textile products varies in production steps. Therefore, the fabric can be altered or treated in many different countries, which are not shown on the label\textsuperscript{731}.

Based on this observation, the T&C industries suggested the introduction of a standard defining the meaning of the expression ‘Made in’ which could reduce the prevalence of misleading claims\textsuperscript{732}. Moreover, it could be of value to manufacturers producing within the EU to show consumers that the product is made in an EU Member State. In general, the T&C industry in Northern Europe tends to be against a ‘Made in’ label approach as it tends towards outsourcing of the production worldwide\textsuperscript{733}. For example, Hennes & Mauritz, selling under the brand H&M, has production facilities worldwide. The supplier list, which covers 95 percent of H&M’s production, includes 785 suppliers worldwide who, in turn, operate 1,798 factories\textsuperscript{734}.

In contrast, the T&C industry in Southern and Eastern Europe are in favour of a ‘Made in’ label due to the fact that production mainly takes place within that part of Europe\textsuperscript{735}. For example, Inditex, originating from Spain, is one of the main fashion distributors in the world and has eight commercial brands (Zara, Pull and Bear, Massimo Dutti, Bershka, Stradivarius, Oysho, Zara Home and Uterqüe) and over 6,460 stores in 88 countries. Over 50% of the Group’s production is manufactured locally, mainly in Spain and Portugal, and both this production and the rest, regardless of its origin, goes to the logistics centres of each chain in Spain, from which it is distributed to all the stores\textsuperscript{736}.

The industry noted that the proposed CPSR concerns only goods imported into the EU from third countries and it requires that the origin marking is present at the time of entry into the Single Market\textsuperscript{737}. The stakeholders stated that consequently this might lead to lengthy customs controls if all ‘Made in’ labels were to be checked\textsuperscript{738}. In practice, however, due to the immense flow of goods it is no longer possible for customs officers to check every declaration. Therefore, custom control is, inter alia, conducted by random checking of declarations\textsuperscript{739}.

\textsuperscript{730}VVA Europe, Implementation of the new regulation on Market Surveillance: Indication of Origin, final report 06.05.2015, p. 74.
\textsuperscript{733}Ibidem Kidmose Rytz, B., Sylvest, J. & Brown, A., p. 32.
\textsuperscript{735}Ibidem ‘Study in Labelling of textile products’, p. 32.
\textsuperscript{737}VVA Europe, Implementation of the new regulation on Market Surveillance: Indication of Origin, final report 06.05.2015, p. 44-46.
\textsuperscript{738}Ibidem.
Labelling of textile products

However, since this checking is random and not systematic, inaccurate or not transparent origin information would not be corrected. Subsequently, the information on the declaration of origin in accordance with the UCC does not provide accurate information pertaining to the country of origin of the product. For example, in the case of the production of a coat, the inner fabric may be sourced from Korea whereas the outer material might be imported from Vietnam. Both parts are assembled in Spain. According to the proposal, the coat should be labelled ‘Made in Spain’. From the consumer’s perspective, the label would not improve his or her position in making an informed transactional decision. The information the consumer receives is fairly ambiguous and might be seen as deceitful from certain viewpoints.

Thus, compliance with the UCC does not necessarily lead to the kind of information the consumer is seeking for regarding the country of origin designation. From the perspective of the consumer, country of origin information based on the UCC might be considered to be useless if the consumer is seeking more information regarding the various stages of the production process of a textile product. In contrast to the above, the next box sets out an example of a clothing company with an extensively detailed digital dossier about the material, manufacturing details and carbon footprint of the product. The company claims to communicate the “honesty of the business” as promised in the label. Interestingly, according to the company, the only reason that T&C companies do not provide this information is because consumers do not understand that they can demand it. As the founder of a prominent fashion label stated: “If people [consumers] asked for it, it can happen tomorrow”740. Following this, if consumers demanded detailed country of origin information, the industry would need to meet this.

4.7.4 Country of origin labelling & Horizontal legislation

The GPSD\textsuperscript{742} applies to the country of origin labelling, as the Directive obliges manufacturers and distributors to provide consumers with sufficient, clearly worded and easily comprehensible information on the origin of the product\textsuperscript{743}. The Directive includes a definition of what is a safe product\textsuperscript{744} and, importantly, sets out that, when there is no specific European or national rules, the safety of the product is to be assessed according to, among others, European standards, providing indications for safety labelling of specific products\textsuperscript{745}.

As mentioned in Chapter 3, the EC published a proposal for a CPSR, which aims to replace the GPSD\textsuperscript{746}. The proposed CPSR puts emphasis on enhanced product identification and traceability (Article 7). Additionally, the procedures to develop new or update existing standards are

\textsuperscript{741} Edited source: <www.honestby.com> last viewed on 14 November 2016.
\textsuperscript{744} Article 2(b) GPSD, OJ L 11, 15.1.2002, p. 4–17.
\textsuperscript{745} Article 3(2) GPSD, OJ L 11, 15.1.2002, p. 4–17.
significantly simplified and, therefore, enhance the role of standards in the field of consumer product safety. The CPSR obliges manufacturers and importers to ensure that either these products or their packaging or accompanying documents bear an indication of the country of origin or are labelled ‘Made in EU’ when the country of origin is a Member State.

However, the abovementioned provision leaves the definition of ‘country of origin’ up in the air as, relying on the declaration of origin in accordance with the non-preferential customs origin rules in the UCC would not subsequently lead to transparency about the origin of products. Especially regarding the supply chain of the T&C industry, where textiles fabrics and trimmings originate from different geographical regions, questions arise about what could be seen as an ‘important stage of manufacture’. Therefore, a mandatory origin label should be included on textile products that defines different levels of country of origin such as, COD, COA, COP and COM in order to convey intelligible and accurate information to consumers. It should be pointed out that the provision of too detailed information on labels runs the risk of an overload of information for consumers, resulting in consumer indifference or loss of confidence.

As mentioned in Chapter 3, case law reveals that Member States are divided as to the meaning of the term ‘country of origin’. Some courts held that this refers to the concept of ‘manufacturing geographical origin’ in accordance with provisions of the former Community Custom Code (now replaced by the UCC), while some others that the expression refers to the ‘juridical origin’ of a product, which is exclusively connected to the manufacturer having responsibility for the product itself. In general terms, an indication of source is deemed to be deceptive when the use of marks, images or anything else may induce consumers to believe that the product originates from a specific country. For example, the expression ‘designed and produced in Italy’ on apparel products manufactured in Moldava has been deemed as false and deceptive information provided to consumers on the geographical origin of the product.

The UCPD requires labels not to be misleading to consumers and for material information to be provided to consumers. As such, it applies to questions of country of origin and traceability. It is, however, difficult to ascertain whether a label is in accordance with the Directive as this depends on what definition of the country of origin is used and whether that definition itself complies with

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748 See the proposal for a new Consumer Product Safety Regulation, (and then specify where).
754 Ibidem.
the UCPD. This is difficult to ascertain since the provisions of the UCPD have been drafted at a more abstract level. The Directive defines material information as including information, which the average consumer needs, according to the context, to make an informed transactional decision. If an invitation to purchase may be perceived as a commercial practice, then material information will also include ‘the geographical address of the trader’ and the geographical address of any other trader on whose behalf he is acting, where this is not apparent from the other material information provided\(^7\). However, the geographical address of the trader does not need to be the same as the country of origin of a product, especially if the latter is determined as COD or COM, for example. The question then remains whether consumers would perceive information on various origins of the production process of textile products as material information. We could assume that at least some consumers could be influenced in the context of making a transactional decision if the origin designation of the product in question is either wrong or sufficiently ambiguous. As mentioned earlier, in general, the average consumer perceives the geographical origin as country of origin of the products as determining the characteristics of the product.

4.8 Conclusion

The objective of this chapter is to analyse in what way self-regulatory (voluntary) labelling schemes safeguard consumer rights to accurate and reliable information on textile and clothing labels. In general, the EU has developed a body of general consumer law that partially influences how traders label their textile products. This encompasses instruments designed to ensure the safety of products placed on the market, instruments protecting consumers from unfair commercial practices, as well as instruments, which seek to guarantee that consumers are provided with clear and correct information in order to make a purchase decision. Thus, it can be concluded that pursuant to these general rules of consumer protection the conveyed information on the label should be useful and appraisable for the consumer to enable him or her to make an informed transactional decision.

In the field of chemical substances in textiles, mandatory labelling requirements apply. The justification of the introduction of this regulation is that the health of consumers may be at stake. The lack of information disclosures has been pointed out as a major obstacle for consumer protection. Representatives of the textile industry noted that there is poor consumer demand for a chemical substances label as textiles have not been considered to be dangerous for the health of the consumer. However, this is in contrast with the numbers of RAPEX notifications\(^6\), reports from Greenpeace\(^7\) and the study of the Swedish Chemical Agency (KEMI)\(^8\).

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\(^7\) Article 6 UCPD, OJ/L 149, 11.06.2005, p. 22–39.
\(^4\) See <www.kemi.se> last viewed on 15 January 2017.
Currently, care, size, CSR and COO labelling is being addressed by voluntary standards on both an EU and international level. Currently, COO labelling is addressed by the Commission proposal for a CPSR, which might provide for a cross-sector solution to country of origin and traceability related aspects of products. The care-labelling regime is generally based on the ISO/GINETEX\textsuperscript{759} care symbols. Major European consumer organisations are not following the recommendations in the field of care labelling, which may indicate that care labelling is not regarded as a priority. According to the consumer organisations, it seems that the current ISO/GINETEX care labelling system constitutes good practice and poses only minor problems to consumers within the EU. The consumer organisations would prefer the system to be made mandatory as this would increase consumer confidence by ensuring that consumers always encounter the same wash symbols throughout Europe.

The textile industry argued that the legal implications of introducing a mandatory care, size and CSR labelling scheme in the EU would be that the economic operators would require additional tests to be carried out as the businesses may held liable if they did not provide the consumers with correct care instructions.

However, it is obviously difficult or even impossible for an average consumer to judge any claims regarding, for example, the use of chemicals, CSR production or the country of origin aspect of the textile products. In the light of the UCPD, claims made about the characteristics of a product, such as the ecological characteristics of a textile product, are also important for identifying the product and the applicable sector legislation. Most of the applicable sector legislations discussed in this thesis require that claims are substantiated. The verification can be done by an expert authority on the basis of all available evidence but usually has to be demonstrated by the person seeking an authorisation or the person who places a product on the market. However, detailed requirements for specific testing methods are lacking and have to be decided on a case-by-case basis.

Moreover, consumers report that they encounter difficulty in understanding which products are truly environmentally-friendly as well as understanding the meaning of (environmental) logos and care symbols. Added to this, consumers seem to make no distinction between non-certified (self-declarations) and third-party certified labels\textsuperscript{760}. Self-declared green claims are made by an organisation on the basis of text, a label or logo (often registered as a trademark) without involving external review by an independent third party. The level of control is much lower in comparison to third-party certified claims and therefore they contain a higher risk of providing consumers with incorrect information.

In the light of the honest use of codes of conduct and trust marks, such as the aforementioned self-created CSR logos by T&C companies, the provision of the UCPD does not oblige Member States to control of unfair commercial practices by code owners, nor does it require them to foster

\textsuperscript{759} ISO (International Organization for Standardization) is the world’s largest developer of voluntary International Standards.

\textsuperscript{760} See Chapter 4 and Consumer Market Study on environmental claims for non-food products (2014).
the development of codes. Article 17 requires Member States, where appropriate, to encourage traders and code owners to inform consumers of their code of conduct, for example, by placing an additional hangtag on the textile product.

Furthermore, it should be highlighted that the indication of a country of origin on a label does not necessarily provide comprehensive information as to where the product has been manufactured. In cases where textile products and the constituent parts are manufactured in the global supply chain, the principle of the last substantial transformation of the UCC would not necessarily provide the consumer with an accurate or reliable picture as to where the product in question has been manufactured.

An interesting fact is, as can be retrieved from the UCPD online database and as Pavillon noted, that the blacklist seems to have a deterrent effect as there are hardly any administrative or court decisions regarding the honest use of codes of conduct (blacklist provisions). Thus, on the sub-question of in what way do voluntary labelling schemes safeguard consumers’ right to accurate and reliable information on T&C products, the following answer can be given. Generally, the UCPD ensures that consumers and professional users are not misled by false or misleading claims about the characteristics of a product. The focus of the UCPD is to determine whether the information is ‘material’ and is ‘needed’ by the ‘average consumer’ in order for them to make an informed decision. As mentioned in this chapter, at least the information regarding sizing and care instruction is considered by consumers as material information. However, due to the unharmonised and fragmented self-regulation of care and size labelling requirements, the average consumer will remain uncertain about the significance of the information on textile labels – quite apart from the magnitude of labels and hangtags and the diversity of symbols used on T&C products. Moreover, due to the lack of compulsory legislation on labelling requirements, between 30% and 50% of textile products within the EU are unlabelled (excluding the mandatory fibre composition labels). Therefore, the T&C industry is omitting or providing potentially misleading material information needed by the consumer to make an informed choice. The result is that the average consumer will remain uncertain about the characteristics of the T&C products and will face problems while making a well-informed purchase decision. The absence of other forms of labelling (CSR, chemical substances and COO) might have some negative effect if they could be seen as material information. This is likely the case for chemical substances given the potential health issues but less so for other forms of labelling.