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Textile labelling

A concern for the EU consumer?

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Chapter 6

Assessment

6.1 Introduction

In the previous chapters, both the European consumer policy regarding textile labelling and the applicable horizontal legislation have been discussed (Chapters 3 and 4). In conjunction with this, empirical research was conducted in order to explore the labelling policies of the T&C industry and to assess their compliance with the legal requirements (Chapter 5). As mentioned in Chapter 2, the Consumer Programme 2014-2020⁹⁴⁷ was drawn up to ensure (among others things) a high level of consumer protection with the intention of empowering consumers and placing the consumer at the heart of the Internal Market⁹⁴⁸. As such, it can clearly be established that the protection of consumer interests was one of the formal goals that provided the basis for harmonisation of the Textile Regulation.

The Council and the European Parliament observed in the preamble to the Textile Regulation that consumer protection postulates transparent and consistent trade rules with the aim of protecting consumers against inaccurate or misleading claims. In fact, the provision of accurate information to consumers is a key issue in the Textile Regulation and in horizontal legislation such as the UCPD and GPSD. Hence, one of the goals of consumer protection in the context of unfair commercial practices must be to reduce commercial practices that lead to distorted purchase decisions and, if possible, to impose (information) requirements with the aim of enhancing the consumers' ability to make an informed purchase decision⁹⁴⁹.

This objective raises, among other things, the question of in what way horizontal legislation is effective in protecting consumers against inaccurate or misleading information on T&C labels. Whether effective consumer protection is guaranteed can then be ascertained if the provided information to consumers by labelling is in compliance with the horizontal legislation and allows the average consumer to make an informed transactional decision. Firstly, it implies that any information on a textile label provided by traders must be accurate, truthful and non-misleading unless the inaccuracies would not impact the consumer transaction decision-making. Secondly, the information should be provided in such a manner and in such language that the average consumer would be able to process the information. Thirdly, the trader should not omit or hide material information or provide it in an unclear, unintelligible, ambiguous or untimely manner. Fourthly, utmost priority must be given to product safety. The multitude of factors that must be considered demonstrate that the matter under discussion is rather complex. These issues are addressed in this final chapter.

⁹⁴⁷ OJ L 84/42, 20.03.2014.

⁹⁴⁸ See Chapter 2.5.8

⁹⁴⁹ Trzaskowski, J. 'The unfair commercial practices directive and vulnerable consumers.' *14th Conference of the International Association of Consumer Law 2013*, p. 2.

Please note that the general aims of the UCPD are to contribute to the completion of the internal market by removing barriers that are due to differences in the national laws on unfair commercial practices and to provide a high level of consumer protection. See also Chapter 3.1.

6.2 Objective

This chapter of the thesis addresses the main research question:

“To what extent does European consumer policy protect European consumers against inaccurate or misleading information on textile & clothing labels?”

In order to arrive at a satisfactory response to the research question, both a detailed analysis of EU consumer policy and a closer look at the provisions of the UCPD in relation to textile labelling. This is called for in order to be able to comment on the present consumer protection policy (Chapter 2) and to provide meaningful input to answer the following sub question:

“How has European consumer policy evolved with regard to textile and clothing labelling?”

As horizontal legislation is relevant in the evaluation of EU consumer protection policy in the area of textile labelling, Chapter 3 presented a comprehensive analysis related to answering the following sub-question:

“In what way can horizontal legislation safeguard consumers’ rights to accurate information on textile and clothing labels?”

The answer to the main research question and the evaluation of the level of consumer protection offered against unclear and misleading labels in this industry requires us not only to look into black-letter law, soft law and voluntary self-regulation but also to examine the everyday practice of the T&C industry. It was, therefore, important to scrutinize the retailers’ knowledge of the information standards and their compliance with the legal rules and self-regulatory labelling schemes (Chapter 4) in this area, which is why they were interviewed (Chapter 5).

The preceding chapters provide answers, respectively, to the following sub-questions:

“In what way do self-regulatory labelling schemes safeguard consumers’ rights to accurate information?”

In what way does the T&C industry convey accurate and clear information on T&C labels?”

During the interviews, retailers also voiced their opinion saying that self-regulation of the labelling requirements in the T&C industry would be a sustainable option. Whether this view is supported by the objective of my research is a matter that will also be considered.

6.3 The attention of policymakers is misguided

In my opinion, it is clear that the attention of EU consumer policymakers is predominantly focussing on the mere imposition of information requirements. The effects of information on consumers in practice and the harmonisation of the T&C labelling requirements might be

insufficiently assessed⁹⁵⁰. My research shows that within the 28 EU Member States the labelling requirements of T&C products differ (see Chapter 1), with the result that consumers and traders contracting cross-border are confused. As a result, the T&C industry attaches detailed information on a multitude of textile labels and hangtags (e.g. 5 hangtags are attached to and a bundle of 15 labels are stitched into a single clothing product⁹⁵¹) in order to comply with the national legislation of each Member State⁹⁵², and/or to provide information which is truly needed by a consumer to make a transactional decision, and/or to provide information of a merely commercial nature. Thus, alongside important and very relevant information, the consumer is provided with meaningless information such as marketing information about the coating of a pair of trousers⁹⁵³. In this respect, excessive information on products labels might cause consumer confusion, which negatively impacts their final decision-making. Consumers may experience an information overload and may then even ignore some of the crucial bits of information, such as warning labels indicating a possible link between allergic reactions and chemical substances used in the textile product⁹⁵⁴. This overload of information may thus cause consumers to make an unconsidered purchase decision. This implies that the provision of meaningless (commercial) information may defy the very purpose of labels, which is to facilitate consumers in making informed purchase decisions⁹⁵⁵.

With the provision of information which is not needed for the consumer's decision-making process, I have the impression that this is sometimes even intended or taken for granted by traders wish to stimulate their sales. Even if these consequences are not intended, the impact on consumers could still render these practices unfair.

In addition to the problem of overloading consumers with information, policymakers and the textile industry ignore the fact that non-harmonised information requirements, in particular where these differ from one country to the next and traders feel forced to add different forms of the same information to cater for national preferences and customs, create additional costs for cross-border traders which are eventually transferred to the consumer when in fact, as mentioned above, the consumer would not even benefit from this information.

Moreover, not all information that must be disclosed to consumers needs to be printed on the label. Information such as the name and the address of the importer/seller and the complaints procedure may be furnished on the receipt or could be made easily accessible by a product code linking the consumer to the traders' website, for example. This may even be more effective

⁹⁵⁰ See also Howells, G-W. 'The potential and limits of consumer empowerment by information', *Journal of Law and Society* (2005-3), p 349- 363; Durovic, M. 'The Subtle Europeanization of Contract Law: The Case of Directive 2005/29/EC on Unfair Commercial Practices', *European Review of Private Law* (2015-5), p. 718.

⁹⁵¹ See Appendix II and Chapter 3, H&M product.

⁹⁵² See Chapter 1.

⁹⁵³ Interview Scotch & Soda, G-Star Raw, Tommy Hilfiger, see Appendix III.

⁹⁵⁴ See also: Johnson, E. J., & Russo J. E. 'Product familiarity and learning new information'. *Journal of Consumer Research* 11.1 (1984), p. 542-550.

⁹⁵⁵ See also Niemann, A. M. 'Male and female consumers' knowledge, perceptions and use of clothing labels.' Diss. North-West University (2010), p. 2.

than, in particular, hangtags which tend to be removed shortly after the purchase when, in fact, consumers need this type of information at a later time. Therefore, labelling should not be seen as the only way for traders to comply with mandatory information requirements.

6.4 Textile labelling; An (un)fair commercial practice?

Duivenvoorde pointed out that the level of consumer protection that follows from the UCPD on the one hand corresponds to the trader's responsibility not to act unfairly, e.g., by hiding essential information from consumers or by providing it in a misleading way, and on the other hand to the consumer's responsibility to critically assess the information on labels and to obtain the required information⁹⁵⁶.

The relationship between consumer protection and mandatory disclosures is a complex one. In general, it can be assumed that where traders provide consumers with information through textile labels this would increase the level of protection offered to consumers. That is why the T&C industry not only observes the Textile Regulation but has also developed voluntary regulations, codes of conduct etc. to achieve the common goal of providing the consumer with information by means of textile labels⁹⁵⁷. However, as mentioned in the preceding chapters⁹⁵⁸, research has shown that consumer confidence in the information provided on textile labels is decreasing instead of rising⁹⁵⁹. Consumers are not aware of or do not comprehend the information on a textile or clothing label⁹⁶⁰. It is difficult to determine whether this signals the need for less or more regulation in the area. In this context, it is remarkable to note, though, that many disclosures have not yet been regulated in EU law, i.e. no labelling information requirements have been laid down in the Textile Regulation concerning the origin of the product, washing instructions, size designation, and the presence of substances potentially detrimental to human health, and instructions or warnings to the consumer with regard to the use of textile products. The details on existing labels are therefore the result of self-regulation and the application of voluntarily established standards, and of marketing techniques by the T&C industry. Labels offering information on these issues are, however, subject to the requirements of the UCPD.

It should be noted that according to the report on the application of the UCPD, Member States did not face particular challenges with regard to the application of Article 6 UCPD (Misleading Actions). However, the report provides contextually little insight into whether and how the UCPD

⁹⁵⁶ Duivenvoorde, B.B. *The consumer benchmarks in the Unfair Commercial Practices Directive* (2014), p. 26 and 196.

⁹⁵⁷ See Chapter 5.9.

⁹⁵⁸ See Chapter 1.4 and 4.5.4.

⁹⁵⁹ Koszewska, M. 'Social and eco-labelling of textile and clothing goods as means of communication and product differentiation', *Fibres & Textiles in Eastern Europe* (2011-4), p. 87.

See also Helberger, N. 'Diversity label: exploring the potential and limits of a transparency approach to media diversity', *Journal of Information Policy* (2011), p. 337-369.

⁹⁶⁰ European Commission, Matrix Insight, 'Study of the need and options for the harmonisation of the labelling of textile and clothing products' (2013), p. 46. <<http://www.industriall-europe.eu/Sectors/TCL/2013/Study%20labelling%20textile%20products%20-%20final%20report%20Matrix.pdf>> last viewed on 15 March 2017.

manages to ensure the accuracy and non-misleading character of labels⁹⁶¹. It is a challenge for national authorities to take action and to prohibit or penalise unfair practices of the trader under the UCPD. The reason for this is that in order for national authorities to take action, they must show on a case-by-case basis that an incorrect or misleading label could distort the economic behaviour pattern of the 'average consumer'⁹⁶², which may be seen as rather burdensome.

At the same time, the 'reasonably well-informed and reasonably observant and circumspect' consumer, i.e. the benchmark consumer under the UCPD, can indeed be expected to make a serious effort at collecting and understanding all available information on an essential aspect of the textile product⁹⁶³. This phenomenon has become known as the 'labelling doctrine'⁹⁶⁴. The labelling doctrine can be seen as part of the information paradigm in EU consumer law, i.e. from a more general point of view that consumers are well-protected by providing consumers with adequate and relevant information on the product. In this context, the CJEU requires the consumer to be sufficiently alert so as "*not to be misled by products due to their different composition, naming and packaging*"⁹⁶⁵.

As mentioned in Chapter 3, there is not only the matter of a misleading omission when information is not provided but it may also be the case that information is in fact provided but in a 'hidden,' 'unintelligible,' 'ambiguous,' or 'untimely' manner. Hence, in some cases it may be necessary to give the information in a non-written form (e.g. pictures or symbols) in order to have a real impact. In such cases, it might be argued that not doing so may result in the information being 'unintelligible' or even 'hidden'. In other cases, additional information may not be needed because the indication, such as the size designation 'one size', is generally known and furnishes all the information that consumers need to make an informed decision.

It is evident that the UCPD to some extent can be used to combat misleading labelling⁹⁶⁶. The UCPD, therefore, constitutes a legal basis for combating care, size, origin, chemical substances and CSR labelling that is either misleading due to a lack of labelling, the falsity of the information provided on the label, or products being labelled in a misleading way.

⁹⁶¹ See First report from the Commission on the application of Directive 2005/29/EC, COM (2013)139 final, p. 20-21.

⁹⁶² Ibidem First report from the Commission on the application of Directive 2005/29/EC, COM (2013)139 final, p. 18.

⁹⁶³ (SEC (2009) 1666), pp. 27–28, pp. 32–33; See also Willett, C. 'Fairness and consumer decision making under the unfair commercial practices directive.' *Journal of consumer policy* 33.3 (2010), p. 269–271.

⁹⁶⁴ See Chapter 3.1.1. Among others: Joined cases C-133-136/85, EU:C:1987:244 (*Walter Rau*), Case C-178/84, EU:C:1987:126 (*Reinheitsgebot*) and CJEU 14 July 1988, Case C-407/85, EU:C:1988:401 (*Drei Glocken*).

⁹⁶⁵ Duivenvoorde, B. B. *The consumer benchmarks in the Unfair Commercial Practices Directive*, (2014), p. 32.

⁹⁶⁶ See First report from the Commission on the application of Directive 2005/29/EC, COM (2013) 139 final, 14 March 2013, p. 18-20; European Commission, Matrix Insight, 'Study of the need and options for the harmonisation of the labelling of textile and clothing products' (2013), p. 27-28. <<http://www.industrial-all-europe.eu/Sectors/TCL/2013/Study%20labelling%20textile%20products%20-%20final%20report%20Matrix.pdf>> last viewed on 15 March 2017.

6.5 Types of labelling and information accuracy

6.5.1 Care labelling

As noted in Chapter 4, accuracy of care labels is important to consumers since it ensures, when followed, the durability and good appearance of the textile product. In my opinion, certain care labels might also influence consumers' ability regarding transactional decision-making as, for example, some consumers could be discouraged from purchasing goods which require more elaborate care processes. With regard to washing instructions on the labels, the issues of under-labelling (the trader prescribes a stricter and/or a more costly form of treatment for the fabric to consumers than is actually necessary⁹⁶⁷) and the existence of contradictory instructions such as 'dry clean only' and 'hand-wash cold' appearing side by side on the same label, have been highlighted in field research conducted among representatives of the T&C industry⁹⁶⁸. For the average consumer, it is difficult or impossible to assess the correctness of the washing instruction on the care label. This has given rise to many questionable care labels. In this respect, it is remarkable to note that in its case law the Court of Justice expressed its trust in the capability of the consumer to recognise the potential risk of certain commercial practices of traders and to take rational action accordingly⁹⁶⁹; in our case, by requesting additional information about the care instructions and explanation of the care symbols of the trader. Although the average consumer test is not a statistical test, in my view courts should take into consideration that the majority of consumers indicate that better consumer information regarding care symbols would impact their purchasing behaviour and would ensure appropriate treatment of the textile product⁹⁷⁰.

Thus, although a certain degree of criticism is expected of the consumer regarding the correctness of the care instructions (symbols) and despite the fact that the trader's care label might be factually correct, the information offered is nonetheless likely to be misleading as the average consumer would be misled as to what the proper treatment of the product is in a way that would be likely to result in a different transactional decision.

6.5.2 Size labelling

It is clear that when it comes to size labelling, the information on the size indication retrieved from a size label is perceived as an essential piece of information for consumers to make an informed transactional decision⁹⁷¹. This is relevant when assessing whether a given size label misleads the consumer, even though the information contained therein is factually correct.

In general, two main issues affect the information flow of sizing. Firstly, practice has shown that the T&C industry can select a classified label-size system⁹⁷² or use a size designation system

⁹⁶⁷ See Chapter 4.3.3

⁹⁶⁸ See Chapter 4.3.4

⁹⁶⁹ Case C-540/08, ECLI:EU:C:2010:660 (Mediaprint).

⁹⁷⁰ See Chapter 4.3.4.

⁹⁷¹ See Chapter 4.6.2 and 5.8.

⁹⁷² See Chapter 4.6.1.

created by themselves, with the unwelcome result that consumers are kept in the dark about any modification a company has made to the classified label-size system. At the same time, it should be noted that the T&C industry frequently uses 'vanity sizing' (inflation in body dimensions associated with a size, to avoid confronting ageing customers with uncomfortable anthropometric truths). This has been shown to confuse and mislead the consumer, as in general consumers do not comprehend the concept of size inflation, i.e. that the size chart has been amended.

This focus on influencing consumer decision-making is very much within the scope of the UCPD. One of the key criteria of unfairness under the UCPD is that the practice in question is likely to materially distort the economic behaviour of consumers or, to put it more concretely, to cause consumers to make transactional decisions that they would otherwise not have taken. The size designation of the product that is either false or sufficiently ambiguous so as to mislead a consumer to a material degree regarding the provenance of the product constitutes a clear breach of the UCPD.

In my opinion, an accurate and reliable size indication is an important factor in the purchasing decision of consumers. Moreover, a poor fit is one of the main reasons why clothing products are returned. The need felt by consumers to return poorly fitting clothes is costly as it is time-consuming for consumers *and* traders, and transportation costs arise, particularly for distance sales products. If consumers had been properly informed about the actual size, these costs, in time and money, could have been prevented. The obvious conclusion is that the misleading size information may indeed have led to a different transactional decision. Therefore, the practice may be considered unfair.

Having said that, however, based on my view and expertise, consumers purchasing textile and clothing products in stores or online can mitigate some of the damage from the unfair practice by retrieving and verifying the size designation themselves (simply by checking the label for size designation or by trying the clothes on)⁹⁷³, although retrieving and verifying size designations might prove problematic when a size indication is absent on the product or company website (in case of distance selling) or if it has been incorrectly provided (e.g. due to vanity sizing). Therefore, not including correct and specific size designations on labels may demonstrate another important dimension of unfair commercial practices, namely that omissions can also constitute an unfair commercial practice.

⁹⁷³ See Chapter 4.3.4.

6.5.3 Country of origin labelling

In some cases, the recognition of misleading information with respect to the COO labelling may be clear-cut, e.g., in case a textile product that is wholly manufactured in China is labelled '*Made in Italy*'. The matter is, however, more complex for products with a multitude of links in the supply chain or in cases when constituent parts originate from different countries, for example, raw materials (and components and parts) for the textile production are produced, finished and inspected in one country and shipped to another country where the final products are assembled⁹⁷⁴. In academic literature, this phenomenon is called the 'triple-transformation rule' for textile products⁹⁷⁵.

Thus, specifically on the subject of COO labelling, 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 Community Custom Code would not necessarily provide the consumer with an accurate or reliable picture as to where the product in question has been manufactured.

As mentioned in Chapter 4, according to case law, Member States are divided when it comes to the meaning of the term '*country of origin*'. Some courts take the view that this information refers to the concept of 'manufacturing geographical origin' (the products shall be deemed to originate in the country where they underwent their last substantial processing in the T&C supply chain), in accordance with the provisions in the Community Custom Code. However, others are of the opinion that 'country of origin' refers to the 'juridical origin' of a product, which is exclusively connected to the region of the manufacturer of the product that bears the responsibility for the final product⁹⁷⁶.

Considering these different theories, the country of origin information on labels is likely to be misunderstood or misinterpreted by consumers since they cannot know pursuant to which fashionable way the trader labelled its products, leading subsequently to the making of misinformed decisions on the consumers' part. In general, based on, among other things, the findings of field research, three issues have been identified.

First, a consumer who seeks out a textile product of a particular origin (such as '*Made in Italy*') might in fact purchase a product that to a large extent was produced elsewhere. A product labelled as being manufactured in a country with (perceived) higher quality, safety and labour standards might in fact be composed of parts produced elsewhere.

⁹⁷⁴ Dicken, P. *Global shift: Reshaping the global economic map in the 21st century*. Sage, 2003, p. 330-346.

⁹⁷⁵ See Chapter 4.7.1.

⁹⁷⁶ See Chapter 4.7.4. See also < <http://www.cajola.com/newsletters/index.asp> > last viewed on 15 January 2017.

Second, field research reveals that, generally, COO labelling might not be an effective indicator of quality or safety as such but consumers may perceive it in such a way. Whilst specific countries of manufacture may more likely be associated with certain undesirable product characteristics (pertaining to safety, quality, sustainability or working conditions), there are also manufacturers in the very same countries that are producing to higher standards⁹⁷⁷.

Finally, the more complex the textile product is, the less likely an origin label will contribute to transparency, given that it would have to name the countries of all various components of a given product, and the less likely consumers would be able to make a more informed choice concerning the product's origin. The question then arises: *what added value would naming the countries of origin on labels have for consumers?*

In general, it may be suggested that consumers are interested in the origin of textile products, even if they do not invariably check labels and the naming of the country of origin, even if the country of origin information does not invariably impact consumer decisions⁹⁷⁸. However, findings from in-depth interviews with T&C retailers revealed that the industry does not provide accurate country of origin information to consumers as they consider the information superfluous and not part of the material information that the consumer needs to make an informed decision. The FTA shares this view (see Chapter 4.7.1) as they oppose the introduction of mandatory origin marking of textile products, as it would provide ambiguous and unreliable information to consumers.

This poses the question whether it is possible for the trader to provide accurate and reliable country of origin information on textile labels or whether any information as to 'country of origin' is to be regarded as a misleading and therefore unfair commercial practice insofar as the 'country of origin' label is provided without additional information as to the place where, in particular, the textile product is assembled and where the raw materials were produced.

In my opinion, the origin label should be redesigned and be accurate so it is necessary to define different levels of country of origin such as '*Country of Design*', '*Country of Assembly*', '*Country of Production*' and '*Country of Manufacture*⁹⁷⁹' in order to offer the consumer accurate and reliable information⁹⁸⁰. Only based on the latter different levels of country of origin information will the consumer be able to make an informed transactional decision and traders will be likely to comply with the UCPD.

In conclusion, in my view it may be difficult to claim that the current practice of indication of the country of origin on T&C labels provides consumers with sufficient and accurate information to make an informed decision. The origin designation of the product that is either false or sufficiently

⁹⁷⁷ Dicken, P. *Global shift: Reshaping the global economic map in the 21st century*. Sage, 2003, p. 330-346.

⁹⁷⁸ See Chapter 4.7.

⁹⁷⁹ Abbreviations are COD, COA, COP and COM.

⁹⁸⁰ Country of Design (COD), Country of Assemble (COA), Country of Production (COP) and Country of Manufacture (COM), See also Chapter 4.7.1.

ambiguous to mislead a consumer to a material degree as to the true origin or provenance of the product, therefore, constitutes a clear breach of the UCPD provision insofar as the information on the country of origin would be considered essential consumer information. In my opinion, naming the country of origin is considered material information by the average consumer. Although the average consumer test is not a statistical test, many or even most consumers perceive the country of origin of the products as a determining characteristic of the product, thus constituting an unfair practice as consumers are misled the origin of the textile product.

6.5.4 CSR labelling

As noted in Chapter 4, CSR labelling is a method of differentiating products that meet social (ethical) and ecological standards with respect to other products. As for CSR labelling in accordance with UCPD standards, the T&C industry needs to ensure that any environmental and social claims are clear, accurate and reliable for consumers to make an informed choice.

Regarding ecological claims, the fact is that environmental claims are widespread both on product packaging and in advertising as nearly 80% of all non-food products assessed in the retail market include an environmental claim, i.e. a message or a suggestion that the product or its packaging has certain environmental benefits⁹⁸¹. Concurrently, consumers show a low level of understanding when it comes to environmental claims. The majority of consumers state that they encounter a difficulty in understanding which products are truly environmentally-friendly, are unable to understand the meaning of environmental logos, and subsequently seem to make no distinction between non-certified (self-declarations) and third-party certified labels⁹⁸².

Most environmental claims take the form of a logo. However, I also found many textual messages as well as more implicit environmental claims (such as the use of specific images and colours) that suggested the sustainability of traders' policies⁹⁸³. The retailers involved in the in-depth interviews more or less admitted to labelling their products with logos, green buttons, green trees or statements such as '*Made with respect for people & planet in ...*'. In my opinion, these logos, symbols and statements are meaningless and can only be seen as marketing instruments used to induce consumers to purchase goods. Therefore, constituting a 'green claim' as scientific evidence to support the claim is lacking.

With regard to social issues, Van Dam critically noted that the poor living and working conditions in the 'sweatshops' are structural and that this fact has been known and documented for a long time. In fact, not much has changed since colonial times and the response of the companies

⁹⁸¹ See Chapter 4 and Consumer Market Study on environmental claims for non-food products, Justice and Consumers, (2014). <http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/green-claims-report.pdf> last viewed on 15 January 2017.

⁹⁸² See Chapter 4 and Consumer Market Study on environmental claims for non-food products (2014) <http://ec.europa.eu/consumers/consumer_evidence/market_studies/docs/green-claims-report.pdf> last viewed on 15 January 2017.

⁹⁸³ See Chapter 3.3.4.

in question is almost identical: as Van Dam puts it, it seems they all bought the same 'PR Do-it-yourself kit' and ethical certification may in fact be one big sham⁹⁸⁴.

I have experienced the same attitude from the interviewed representatives of the T&C industry. The majority of the retailers interviewed acknowledged being fully aware of the questionable social and environmental issues in their supply chain, which did not justify the use of a CSR label. The companies interviewed all claimed to be working hard to abolish such socially undesirable practices. However, it remained unclear to what extent actual steps towards socially responsible textile production were being taken.

The question remains whether a label suggesting CSR production could be perceived as misleading under the UCPD if unethical practices did occur in the supply chain. This would depend on whether consumers were motivated to purchase certain textile products solely or mainly on the basis of CSR claims made by retailers.

Even if the answer to this question is in the affirmative and consumer decision-making could be influenced by CSR claims, it would remain difficult to assess the veracity of CSR claims because the technical information justifying the environmental benefits and/or social issues of the product is often not readily available or cannot be substantiated and the UCPD leaves it up in the air how to determine the accuracy of the CSR claim. Even in the UCPD Guidance document, specific guidance is absent on the use of environmental claims on products or services linked to the general principles of the UCPD⁹⁸⁵.

The fact that the burden of proof rests on the trader reflects the principle in Article 12(a) of the UCPD that enforcement authorities should have the power '*to require the trader to furnish evidence as to the accuracy of factual claims in relation to a commercial practice*'⁹⁸⁶. This requirement implies that a CSR claim about a textile product and its characteristics or facts about a trader or his CSR activities should be capable of being substantiated by scientific documentation. In my view, traders should err on the safe side by having the CSR labelling scheme substantiated by independent third-party certification. This includes periodic checks and verification of compliance with the set requirements. It may be argued that an accurate and reliable CSR label should either comply with the requirements of independent, certified CSR schemes and/or the trader should include enough factual information in a specific, accurate and unambiguous way, for example, by means of electronic labelling or by means of a link to the retailer's website, which features information on the supply chain of the product. Any trade-offs or negative impacts of the textile product on the environment must not be hidden; the information should be available to the consumer in a fair and transparent manner. The trader should be in the possession of the necessary scientific

⁹⁸⁴ Dam, Van C. 'Enhancing Human Rights Protection: a Company Lawyer's Business' (2015), p. 1-4.

See also Interview T&C companies in Chapter 5.10.

⁹⁸⁵ SEC (2009) 1666, p. 5-7.

⁹⁸⁶ Article 12 UCPD, OJ L 149, 11.06.2005, p. 22-39.

substantiation to support the CSR claim. Subsequently, the trader should be ready to present such scientific evidence in case the claim is challenged.

6.5.5 Chemical substance labelling

As follows from Chapter 4, textile products can contain chemicals, which may harm humans. A lack of information on dangerous substances used in textiles makes it difficult for consumers to make well-informed choices. The regulation of dangerous substances in textiles is fragmented⁹⁸⁷ and, at the same time, the voluntary initiatives that are in place vary with regard to the chemical substances that need to be made known to consumers. By contrast, rules have been set out about rapid intervention procedures when products are found to be unsafe (recall etc.), in addition to rules about market surveillance and the exchange of information between authorities in the Member States (RAPEX system). Most legislative systems referring to chemical substances in T&C products (see Chapter 4.4.2) have specific rules concerning the labelling and information provision to consumers. For example, sector-specific legislation, such as the Biocides Regulation, often contains rules setting out which information about a product must be presented to a consumer in commercial messages such as in advertising and on labels.

Sector-specific legislation is complemented by horizontal legislation. 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 legislation implementing the Directive. However, the trader (seller etc.) claiming that there are no chemicals or only certain chemicals have been used in its products is responsible for the claim being correct and has to be able to substantiate this. The method of verifying is not regulated in detail in the Directive and has to be decided on a case-by-case basis.

In my view, it can be argued that when chemicals are present in the finish of textile products which have not been (properly) disclosed by the trader, within the framework of the UCPD, then that trader has failed (omitted) to provide sufficient information about the product or provided it in an unclear, unintelligible, ambiguous or untimely manner. As a consequence, the average consumer takes (or is likely to take) a different decision. If the trader had disclosed the use of certain chemicals, the consumer might not have purchased a given good. Field research reveals that some retailers attach an additional hangtag issuing a warning for chemical substances in the special finish, such as a coating on the fibre. However, even if the trader takes the conceivable risk that the reputation of the company is damaged in the process as it may raise questions among consumers that in one product there may be harmful substances whereas none are revealed in another, it might still not release him from his obligations under the UCPD and the product safety rules. This would depend, among other things, on whether the additional warning hangtag was clearly brought to the attention of the consumer.

⁹⁸⁷ See Chapter 4 and 5.

In my view, textile companies should exercise particular caution if they are targeting vulnerable consumers (e.g., fashion textiles for children, elderly etc.) due to the fact that their bodies are more sensitive to chemical substances. For example, elderly persons and children might be particularly vulnerable to certain practices connected with dyeing as finishing agents may irritate a sensitive skin, especially if the skin is abraded⁹⁸⁸. 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. The test is objective; it is not necessary for the trader to actually foresee the effect (or its likely effect) on individual vulnerable consumers but only whether he could reasonably have been expected to foresee that his practice would or could have such an effect on such consumers. Although the use of the most dangerous substances, such as biocides and AZO dyes⁹⁸⁹, is prohibited in the case of textile products – and this legislation certainly protects consumers – scientific evidence is still needed to verify claims and so is documentation regarding chemicals that are being used in textile products.

6.6 Textile labelling: Regulation?

Requiring that consumers be provided with information in a pre-contractual phase is a regulatory technique that has been extremely popular in the development of consumer policy generally⁹⁹⁰. The need to promote an 'informed consumer' is so appealing that mandatory information obligations are frequently employed as a technique to address health and safety issues⁹⁹¹. However, scholars argue that European consumer law, in general, has been less successful in protecting consumers through the adoption of mandatory information obligations than lawmakers and commentators tend to believe. The measures they commonly employ may bring about unintended consequences⁹⁹². These scholars argue that many of these protective rules are unlikely to help consumers⁹⁹³ as, generally speaking, disclosures are unreadable and unread by consumers due to the complexity of the disclosure and the sheer amount of information provided to consumers in general ('information overload'). Consumers tend to overlook, skip or scan disclosures when making a transactional decision⁹⁹⁴. Moreover, cases in which consumers fail to make good (informed) transactional decisions are due to either asymmetric information or imperfect rationality (and often a combination of the two)⁹⁹⁵.

⁹⁸⁸ See Chapter 4.4.4.

⁹⁸⁹ See Chapter 4.4.1.

⁹⁹⁰ Hadfield, G.K., Howse, R. & Trebilcock, M.J. 'Information-based principles for rethinking consumer protection policy.' *Journal of Consumer Policy* 21.2 (1998), p.131-169. Weatherill, S., *EU consumer law and policy*, Edward Elgar Publishing (2013), p. 92.

⁹⁹¹ See Chapter 2, e.g. REACH, GPSD etc.

⁹⁹² Bar-Gill, O., & Ben-Shahar, O. 'Regulatory techniques in consumer protection: a critique of European consumer contract law' (2012), p. 3-4. See also Smits, J. M. 'Full harmonization of consumer law? A critique of the draft directive on consumer rights', *European Review of Private Law* (2010), p. 5-14.

⁹⁹³ See Chapter 3.3.1.

⁹⁹⁴ See Ben-Shahar, O. & Schneider, C.E. *More than you wanted to know: The Failure of Mandated Disclosure*, Princeton University Press (2014), p. 11. See also Micklitz, H-W. *The many concepts of social justice in European private law*, Edward Elgar Publishing (2011), p. 37.

⁹⁹⁵ See Chapter 4.

Therefore, whenever traders use information disclosures it is essential to make the information available in an 'intelligible' and 'unambiguous' manner. In this way the consumer can make an informed purchase-decision. The consumer should not be misled by the omission of important information or by overloading the consumer with information to the extent that the consumer is no longer capable of discerning the relevant information.

The interviewed representatives of the T&C industry did not support additional mandatory labelling requirements. There are several reasons for this. First, according to the T&C industry, voluntary rules and standards are set and properly applied by the industry. Secondly, the UCPD framework is in place, which prohibits CSR labelling (including environmental and social claims), chemical substances labelling and COO labelling, as far as the use of such labels is misleading within the context of the UCPD. Both types of instruments may address the information asymmetry and may alleviate the information gap⁹⁹⁶.

Thirdly, on the one hand, consumers may prefer high quality products with a high level of consumer protection, even if these high-quality, protection-intensive products are more expensive. On the other hand, consumers might also choose to pay a lower price and thus obtain lower quality products at a lower level of consumer protection⁹⁹⁷ or, contextually, with less or incomplete consumer information. A fourth reason for traders not to support additional mandatory labelling requirements is that labelling raises seller' costs (at least to some extent), which will have to be passed on to consumers in the form of higher prices for products⁹⁹⁸. In this way, consumers will (indirectly) end up paying for the protection that (according to scholars criticising the introduction of information obligations in general) did not help them in the first place since they will have overlooked, skipped or only scanned the information. However, it should be noted that this criticism also applies to the self-regulation of textile labelling and, as such, does not seem particularly truthful coming from companies that voluntarily make use of such self-regulatory schemes. Moreover, the passing-on argument does not sound very credible given the fact that the T&C retailers interviewed in Chapter 5 indicated that they do not pass on the costs of an additional information provision displayed on (RFID) hangtags as the T&C industry is extremely competitive and therefore highly sensitive to any price-increasing costs⁹⁹⁹. Moreover, compared to overall costs, the cost of additional labels¹⁰⁰⁰ can be considered negligible.

In my opinion, notwithstanding the opposition from the T&C industry, mandatory labelling could contribute to the achievement of a level playing field in the Union (among the fashion retailers)

⁹⁹⁶ See Chapter 5. See also European Commission, Matrix Insight, 'Study of the need and options for the harmonisation of the labelling of textile and clothing products' (2013), p. 10 ff. <<http://www.industrialleurope.eu/Sectors/TCL/2013/Study%20labelling%20textile%20products%20-%20final%20report%20Matrix.pdf>> last viewed on 15 March 2017.

⁹⁹⁷ Smits, J. 'Full Harmonization of Consumer Law-A Critique of the Draft Directive on Consumer Rights.' *European Review Private Law*. 18 (2010), p. 5-14.

⁹⁹⁸ See Ben-Shahar, O., & Schneider, C.E. *More than you wanted to know: The Failure of Mandated Disclosure*, Princeton University Press (2014), p. 74.

⁹⁹⁹ See Appendix II.

¹⁰⁰⁰ See Chapter 1.4. The cost for a printed label is approximately 0.01 and 0.05 (RFID label) per textile product depending on the volume.

as the entire T&C industry would then bear the same labelling costs, although it is somewhat premature to make definitive statements on the latter issue as empirical evidence is lacking. In particular, I would argue for at least the introduction of mandatory labelling regulations on size and care labelling. These mandatory labelling rules would benefit consumers as the information about size designation and washing instructions is deemed as material information needed by the average consumer to make an informed decision, within the meaning of the UCPD, and the absence of such reliable information is therefore likely to bring about a transactional decision he might otherwise not have taken. This issue is commented upon in the following chapter.

6.7 Textile labelling: Self-regulation?

As mentioned in Chapters 2 and 3, the T&C industry has set voluntary rules and standards in cooperation with industry organisations (codes of practice) relating to the labelling requirements and the conduct of the T&C firms in the industry. These codes of conduct and standards, e.g., care labelling (GINETEX) and size labelling (ISO standards etc.), are voluntarily accepted rules and are supplementary to both legislation and case law¹⁰⁰¹. Governments have been involved in setting the standards within the T&C industry, viz. the EN13402 on size designation of clothes. Some of these intergovernmental standards are soft laws, in other words, non-binding declarations, codes of conduct, recommendations etc. and although not bound by them, in general, a court would likely take them into account if, for example, the parties relied on their applicability¹⁰⁰². For instance, ISO standard 3757/GINETEX for care instruction, per se, is not legally binding on any of the parties although many traders within the T&C industry adopt them within a national framework of standards that is used voluntarily by businesses operating in a Member State¹⁰⁰³.

According to its proponents¹⁰⁰⁴, the benefits of industry self-regulation are apparent. In general, standard setting and identification of breaches are the responsibility of practitioners and specialists with detailed knowledge of the industry. This will arguably lead to more practicable standards that are more effectively policed. Moreover, there is also the potential for utilising peer pressure and for successfully internalising responsibility for compliance¹⁰⁰⁵. This argument is underscored by the findings of the conducted field research. The T&C companies interviewed consistently mentioned that multinational T&C companies, such as H&M, serve as a model for the SMEs. Standard labelling initiatives should be initiated and supported by them¹⁰⁰⁶ as those multinational companies are regarded as an authority with detailed knowledge (and better

¹⁰⁰¹ Pavillon, C. 'The Interplay between the Unfair Commercial Practices Directive and Codes of Conduct', *Erasmus Law Review* (2012-4), p. 268-288.

¹⁰⁰² Krut, R, & Gleckman, H. *ISO 14001: A missed opportunity for sustainable global industrial development*, Routledge (2013), p. 36.

¹⁰⁰³ Krut, R, & Gleckman, H. *ISO 14001: A missed opportunity for sustainable global industrial development*, Routledge (2013), p. 37.

¹⁰⁰⁴ See Wood, S. 'Voluntary environmental codes and sustainability', (2006), p. 229-276; Gunningham, N. 'Corporate environmental responsibility, law and the license to operate.' (2007) p. 498.

¹⁰⁰⁵ See Chapter 3. Findings from field research show that the interviewed T & C companies became member of the Business Social Compliance Initiative (BSCI), mostly after the Rana Plaza catastrophe.

¹⁰⁰⁶ See Appendix I. Qualitative Coding & Analysis In-depth interview; see also Appendix II. Retailers Interview.

financial resources). Their leadership could thus set the tone for the T&C industry if they were to decide to initiate (community) labelling initiatives. A good example for how peer pressure may function is the conclusion of the Dutch Agreement on Sustainable Garment and Textile Sector¹⁰⁰⁷, which was concluded by trade associations such as MODINT, the Dutch government, trade unions and civil society organisations. The 'covenant' is intended to address the issue of social responsibility in the coming years and aims to include at least 35 brands that together form 30 percent of the Dutch market for clothing products in 2016¹⁰⁰⁸, and 80% by 2020.

In the context of this study, self-regulation implies that T&C companies should cooperate and exchange knowledge on how to furnish the consumer with accurate information by means of textile labels, hangtags and their company websites (assessable via a QR code or an RFID chip)¹⁰⁰⁹. However, even where labels, hangtags and company websites could in theory fulfill such a purpose, in practice companies primarily use these as a marketing tool¹⁰¹⁰. Obviously, fibre composition labelling is the exception to the rule as in this case mandatory rules apply. The clash between the traders' profit-making interests and the consumers' needs may thus undermine the benefits of leaving labelling regulation to the market.

Moreover, self-regulatory standards are often criticised by scholars¹⁰¹¹ as weak as enforcement is ineffective and punishment is relatively mild. Furthermore, self-regulation is frequently seen as nothing more than an attempt to deceive the consumer into putting faith into the responsibility of an irresponsible industry, where companies enforce their own corporate or industry codes (self-regulatory tool)¹⁰¹². In this regard, the critics might have a point. As noted in previous chapters, the T&C industry is often depicted as the number two polluter of clean water, after agriculture. Moreover, the social conditions of the workers are often poor¹⁰¹³. The retailers interviewed stated that they are in the process of taking steps towards a responsible industry by implementing self-regulatory standards, such as the Business Social Compliance Initiative¹⁰¹⁴, and by participating in standards for recycling textile fibres, known as the 'circular economy for textiles'. However, the industry is struggling as the CSR topics are mainly recorded in unclear codes of conduct and guidelines of the T&C industry organisations¹⁰¹⁵.

¹⁰⁰⁷ See <<https://www.ser.nl/en/publications/publications/2016/agreement-sustainable-garment-textile.aspx>> last viewed on 9 January 2017.

¹⁰⁰⁸ See <<https://www.rijksoverheid.nl/documenten/toespraken/2016/04/25/toespraak-minister-ploumen-over-eu-textielinitiatief>> last viewed on 20 June 2016.

¹⁰⁰⁹ Collins, H. 'Harmonisation by example: European laws against unfair commercial practices', *The Modern Law Review* (2010-1), p. 99. Collins defines this form of self-regulation as social self-regulation.

¹⁰¹⁰ See Appendix I Qualitative Coding & Analysis In-depth interview; Appendix II Retailers Interview.

¹⁰¹¹ Howells, G. G. et. al. *Handbook of research on international consumer law*, Edward Elgar Publishing (2010), p. 538-562. See also McAllister, L. K. 'Harnessing Private Regulation.' (2014), p. 298-328.

¹⁰¹² Gunningham, N., & Rees, J. 'Industry self-regulation: an institutional perspective', *Law & Policy* (1997-4), p. 363-414. See also Dam, Van C. 'Enhancing Human Rights Protection: a Company Lawyer's Business', (2015), p. 4.

¹⁰¹³ See Chapter 1.4; Chapter 5.

¹⁰¹⁴ See Glossary.

¹⁰¹⁵ See 4.5.1

These so-called soft law obligations do not always carry any legal consequences: in a case against a company an injured party may then not directly invoke any of these obligations in a court of law and Member States may not fine the company if it does not comply with the corporate code¹⁰¹⁶. Indirectly, legal sanctions may flow from generic legislation, e.g., the UCPD can come into play as Articles 10 and 11 of the UCPD define the role of self-regulation through the use of codes of conduct in controlling unfair practices. In addition, quality standards in codes of conduct may become part of the contractual relationship between the parties, e.g. in case they are included or referred to in standard terms or in the conditions of the contract, or used as a source of inspiration by the courts when interpreting a contract¹⁰¹⁷. In such cases, not abiding by these soft law obligations may render the textile product to be lacking conformity, which would then lead to liability of the T&C retailer vis-à-vis the consumer.

Moreover, even if there is no legal sanction, a company may still suffer reputational damage when it does not comply with soft law obligations, e.g., if it becomes the centre of a media storm. In this respect, my field research¹⁰¹⁸ showed that the T&C industry is very sensitive to adverse publicity. Adverse publicity could seriously affect the company's competitiveness, especially as media critics closely monitor the leading fashion companies.

According to Howells, the UCPD is '*not overly friendly towards codes*'¹⁰¹⁹. Howells notes that that Article 10 of the UCPD suggests that Member States in addition to court or administrative proceedings may encourage the recourse to self-regulatory bodies. However, this provision does not oblige Member States to stimulate the control of unfair commercial practices by code owners, nor does it require them to foster the development of codes. Conversely, Article 17 merely requires Member States, *where appropriate*, to encourage traders and code owners to inform consumers of their codes of conduct¹⁰²⁰, not entailing any legal obligation.

Particular attention should be drawn to the fact that codes of conducts and standards (non-binding) not only cannot be considered to be 'safe harbors' but they cannot even be presumed to be in compliance with the UCPD, not even if they have been publicly endorsed by a public or private body¹⁰²¹. There is no legislation that lays down criteria that 'fair' codes of conduct should meet. Moreover, there are no provisions in the UCPD that tackle unfair codes. The yardstick is, as usual, the distortion of the decisionmaking process of 'the average consumer'.

Having examined the benefits and detriments of self-regulation, I can conclude that the proponents and opponents might both have a point, as there is an enormous variation in the

¹⁰¹⁶ Dam, Van C. 'Enhancing Human Rights Protection: a Company Lawyer's Business' (2015), p. 4.

¹⁰¹⁷ Howells, G., Micklitz, H. W., & Wilhelmsson, T. *European fair trading law: The unfair commercial practices directive*, Routledge (2016), p. 195-217.

¹⁰¹⁸ See Chapter 5.

¹⁰¹⁹ Howells, G., Micklitz, H. W., & Wilhelmsson, T. *European fair trading law: The unfair commercial practices directive*, Routledge (2016), p. 1-25.

¹⁰²⁰ See Chapter 3.3.5.

¹⁰²¹ See also Pavillon, C. 'The Interplay Between the Unfair Commercial Practices Directive and Codes of Conduct', *Erasmus Law Review* (2012-4), p. 272.

(in-) effectiveness of self-regulation, which makes it difficult to generalise. As noted above, T&C labelling is largely based on self-regulation, and rules on monitoring and enforcing this self-regulation are lacking¹⁰²². In the context of this study, members of the European Parliament as well as of the EC emphasised that currently in the T&C industry a viable situation for textile labelling has been created by combining both a regulatory (the Textile Regulation) and self-regulatory framework (e.g., care, size and CSR labelling are being addressed either by codes of conduct, voluntary schemes or standards)¹⁰²³. More particularly, in the absence of any labelling regulation, field research reveals a willingness among the retailers to apply voluntary standards and codes of conduct. According to the members of the European Parliament, this has proved to be workable in practice and for that reason compulsory regulation is considered superfluous¹⁰²⁴. In my view, a critical note must be added here since the opinion of the European legislator seems to marginalize consumers' concerns with regard to the accuracy of the information on labels. With the non-harmonised and fragmented self-regulation of care, size, country of origin and CSR labelling requirements, consumers will remain uncertain about the significance of the information on textile labels, given the magnitude and diversity of symbols and hangtags used in the T&C market.

6.8 Conclusion. Textile labelling: a concern for the EU consumer?

The introduction of this thesis (Chapter 1) started with the discussion in the EU on the introduction of labelling requirements at EU level that strives to harmonise, standardize and simplify the labelling of textile products. Initially, the Commission strongly supported developments in this area but then concluded that despite the fact that new labelling requirements for textile products are of interest to the consumer, there is no need to address these requirements in the Textile Regulation¹⁰²⁵.

Based on the findings mentioned in the assessment made in this chapter, the question arises on the extent to which consumers are currently protected against inaccurate and misleading textile labels by the EU consumer policy. So far, this research has demonstrated that the answer to this question requires a subtle approach, given that the EC's argument in favour of not further regulating textile labelling on an EU level has been found to be unconvincing. Thus, a more

¹⁰²² See Chapter 4.5.4. See also European Commission, Matrix Insight, 'Study of the need and options for the harmonisation of the labelling of textile and clothing products' (2013). <<http://www.industrialleurope.eu/Sectors/TCL/2013/Study%20labelling%20textile%20products%20-%20final%20report%20Matrix.pdf>> last viewed on 15 March 2017.

¹⁰²³ Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products, Brussels 25 September 2013. COM (2013) 656 final. See also Chapter 2.

¹⁰²⁴ See Interview EU Member Julio Cardoso, Appendix III.

¹⁰²⁵ Report from the Commission to the European Parliament and the Council regarding possible new labelling requirements of textile products and on a study on allergenic substances in textile products, Brussels 25 September 2013. COM (2013) 656 final, p. 8.

fundamental discussion is called for to define the level of accurate and reliable information that should be provided to consumers by means of textile and clothing labels.

Although labelling should create a win-win situation for both the consumer and the trader, in practice currently labelling is not fulfilling its potential. According to the UCPD, traders are not obliged to disclose all the information and/or the detailed particulars about the product but they do need to provide material information to enable consumers to make an informed choice. As to the latter, it has been estimated that, between 30 and 50 percent of textile products within the EU are not labelled (not taking into account the mandatory fibre composition labels)¹⁰²⁶. Simply put, traders' use of labels as an information tool is inconsistent and the effectiveness of labelling as a means of informing consumers is questionable.

As noted in Chapter 4, the reasons for this failure are multifarious but start on the part of the consumer with the simple fact that there is a lack of consumer interest in the information that a textile label may provide. Even when consumers are interested in general, in practice they consider it difficult to make use of the information provided on textile labels as the information is often excessive, confusing and poorly presented. Moreover, many consumers do not know what information is needed to make an informed choice. This is problematic, as the duty to inform should be tailored in such a way that these consumers receive accurate and reliable information, which is useful.

However, in the area of providing consumer information, as mentioned earlier, there is not one single ideal level of information provision as consumer preferences in the various countries where a trader may be active may differ due to social, cultural and linguistic factors.

Despite the potential lack of attention of consumers to labels and the fact that the informative functions of labels are weaker than policymakers are convinced of, this research confirms that accurate and non-misleading labels could to some extent safeguard consumers' rights. Labels should fulfill the role of allowing consumers to make an informed choice at the point of sales about whether to purchase a product and, if they do so, to consider how they can properly use that product.

Therefore, the traders should provide accurate and non-misleading labels to consumers, especially with information that consumers consider as material when making their transactional decisions. As mentioned earlier, the information about size designation and care instructions is deemed to be material information needed by the average consumer in order to make an informed decision, within the meaning of the UCPD. In my view, in general, the information offered on size and care labels currently is difficult to comprehend by the average consumer as it is given in cryptic symbols, as well as being inaccurate or hidden among too much irrelevant information. In such a way, the trader is misleading the consumer by omitting information on size or washing

¹⁰²⁶ See Chapter 1.4.

instructions of a T&C product or by providing such information in an untruthful (e.g. by way of under-labelling), incomplete or unclear (unintelligible, untimely) manner or by overloading the consumer with information to the extent that the consumer is no longer capable of discerning the relevant information, which therefore results in the average consumer taking a different decision than he would have taken if he had not been misled. Despite the existence of horizontal European consumer legislation that should oblige traders to provide accurate and non-misleading information to consumers, this empirical study showed that in practice traders are engaging in some questionable practices that could be classified as unfair commercial practices. Hence, the main question can be answered as follows:

At present, European consumer policy expressed in textile and horizontal legislation does not suffice to safeguard consumers against inaccurate or misleading information on textile & clothing labels.

In order to prevent traders' actions or omissions misleading consumers, it is advisable to introduce a (harmonised) mandatory labelling scheme specifying a uniform, non-misleading content and design for the label of T&C products as currently the information provision by means of labelling of textile products varies by Member State and self-regulation by the T&C industry is inadequate. The content of the label must at least encompass information about the size designation and washing instruction in a clear, intelligible and unambiguous manner, as well as, obviously, the fibre composition. This study does not provide conclusive evidence that also information regarding country of origin, CSR and chemical substances must be provided on such a label.

Nevertheless, I remain of the opinion that mandatory legislation in the area of size and care labelling is deemed to be necessary as strong efficient legislation is still the best starting point, and self-regulation might only facilitate the implementation of fair practices. At best, they might prove to supplement each other.

Accordingly, the following epilogue discusses the labelling requirements in a constructive manner in order to pave the way for a possible future modification of T&C labelling. The aim is to provide the consumer with accurate and reliable information in a clear, intelligible and unambiguous manner on T&C labels in order for him to make an informed transactional decision.